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Supreme Court  
SCWC-13-0000040  
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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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DEUTSCHE BANK NATIONAL TRUST COMPANY,  
a National Banking Association, as Trustee of the  
IndyMac INDX Mortgage Loan Trust 2006-AR12,  
Mortgage Pass-Through Certificates Series 2006-AR12,  
Under the Pooling and Servicing Agreement Dated July 1, 2006,  
Respondent/Plaintiff-Appellee,

vs.

RONALD PAJELA AMASOL and JEAN LOUISE MORALES AMASOL,  
Petitioners/Defendants-Appellants.

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SCWC-13-0000040

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(CAAP-13-0000040; CIV. NO. 11-1-2129)

APRIL 14, 2015

OPINION CONCURRING IN THE RESULT BY RECKTENWALD, C.J.

Respectfully, I concur in the result.

Our recent decision in Association of Condominium  
Homeowners of Tropics at Waikele v. Sakuma, 131 Hawai'i 254

(2013), governs this case. Although the Dissent in Sakuma raised strong arguments in support of a contrary result, those arguments did not prevail. Under the present circumstances, I do not believe that Sakuma should be overruled.

Stare decisis is a "principle of self-restraint . . . with respect to the overruling of prior decisions." State v. Garcia, 96 Hawai'i 200, 205, 29 P.3d 919, 924 (quotation omitted). This principle is designed to "clear[ly] guide . . . the conduct of individuals, to enable them to plan their affairs with assurance against untoward surprise; . . . eliminat[e] the need to relitigate every relevant proposition in every case; and maintain[] the public faith in the judiciary as a source of impersonal and reasoned judgments." Id. (citations omitted, some alterations in original); see Lewis F. Powell, Jr., Stare Decisis and Judicial Restraint, 47 Wash. & Lee L. Rev. 281, 286-87 (1990). "The inevitability of change touches law as it does every aspect of life. But stability and moderation are uniquely important to the law. In the long run, restraint in decisionmaking and respect for decisions once made are the keys to preservation of an independent judiciary and public respect for the judiciary's role as a guardian of rights." Powell, Stare Decisis and Judicial Restraint, 47 Wash. & Lee L. Rev. at 289-90.

"[S]tare decisis [i]s a rule of stability, but not inflexibility." Id. at 284.

Courts should "not depart from the doctrine of stare decisis without some compelling justification." Garcia, 96 Hawai'i at 206, 29 P.3d at 925 (quoting Hilton v. South Carolina, 502 U.S. 197, 202 (1991) (emphasis original to Garcia)); cf. Dairy Road Partners v. Island Ins. Co., Ltd., 92 Hawai'i 398, 421, 992 P.3d 93, 116 (2000) ("a court should not overrule its earlier decisions unless the most cogent reasons and inescapable logic require it") (internal quotation marks and citations omitted). Although we have "rejected a doctrine of disability at self-correction," we have done so because stare decisis is subordinate to "manifest injustice." McBryde Sugar Co., Ltd. v. Robinson, 54 Haw. 174, 180, 504 P.2d 1330, 1335 (1973) (quotation and footnote omitted). In other words, Hawai'i courts have a longstanding and consistent approach to avoid revisiting prior decisions except where doing so would lead to manifest injustice.

In evaluating whether to stand by precedent or reexamine prior holdings, our court is "informed by a series of prudential and pragmatic considerations," which essentially "gauge the respective costs of reaffirming and overruling a prior case." Garcia, 96 Hawai'i at 206, 29 P.3d at 925 (quoting Planned Parenthood of Southeastern Pennsylvania v. Casey, 505

U.S. 833, 854 (1992)). These considerations include developments since the earlier decisions at issue either in the law, or of pertinent and reliable factual developments either generally or in the case at bar.

Here, the record does not indicate developments since Sakuma was decided 16 months ago that would outweigh the respective costs of overruling it. Moreover, this is a matter that could readily be addressed through an amendment to the appellate rules. Accordingly, I concur in the result.

/s/ Mark E. Recktenwald

