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Supreme Court
SCAP-14-0000379
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SCAP-14-0000379

IN THE SUPREME COURT OF THE STATE OF HAWAII

SURFRIDER FOUNDATION; HAWAII'S THOUSAND
FRIENDS; KA IWI COALITION; and KAHEA - THE
HAWAIIAN-ENVIRONMENTAL ALLIANCE,
Respondents/Appellants-Appellees,

vs.

KYO-YA HOTELS & RESORTS, LP, Petitioner/Appellee-Appellant,

and

ZONING BOARD OF APPEALS, CITY & COUNTY OF
HONOLULU; DIRECTOR OF THE DEPARTMENT OF
PLANNING & PERMITTING, CITY & COUNTY OF HONOLULU;
and 20,000 FRIENDS OF LABOR,
Respondents/Appellees-Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CAAP-14-0000379; CIV. NO. 13-1-0874-03)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

Upon consideration of Petitioner/Appellee-Appellant
Kyo-ya Hotels & Resorts LP's (Kyo-ya) appeal from the Circuit
Court of the First Circuit's "Order Denying Appellee Kyo-ya

Hotels & Resorts LP's Motion for Attorneys' Fees and Costs Under HRS § 607-14.5 Filed on 11/13/2013" (Order Denying Kyo-ya's Attorneys' Fees), entered on January 6, 2014, together with all submissions in support thereof, and in light of our decision in Surfrider Found. v. Zoning Bd. of Appeals, No. SCAP-13-0005781, 2015 WL 5597179 (2015), we conclude that the claims presented by Respondents/Appellants-Appellees are not frivolous within the meaning of HRS § 607-14.5 (Supp. 2014) so as to merit recovery by Kyo-ya of attorneys' fees and costs. See Tagupa v. VIPDesk, 135 Hawai'i 468, 479, 353 P.3d 1010, 1021 (2015) ("A frivolous claim is a 'claim so manifestly and palpably without merit, so as to indicate bad faith on the [pleader's] part such that argument to the court was not required.'" (alteration in original) (quoting Coll v. McCarthy, 72 Haw. 20, 29-30, 804 P.2d 881, 887 (1991))). Accordingly,

IT IS HEREBY ORDERED that the Order Denying Kyo-ya's Attorneys' Fees is affirmed.

DATED: Honolulu, Hawai'i, November 2, 2015.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

