

NO. CAAP-14-0000421

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

ASSOCIATION OF APARTMENT OWNERS OF KULANA,
Plaintiff-Appellant, v. TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a Connecticut corporation;
and COUNTY OF KAUAI, a political subdivision of
the State of Hawai'i, Defendants-Appellees

COUNTY OF KAUAI, a political subdivision of the
State of Hawai'i, Cross-Claimant, v. TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a Connecticut corporation,
Cross-Claim Defendant

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA,
a Connecticut corporation, Cross-Claimant, v.
COUNTY OF KAUAI, a political subdivision of the
State of Hawai'i, Cross-Claim Defendant

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(CIVIL NO. 12-1-0027 RGBV)

ORDER

(1) DENYING THE OCTOBER 18, 2016
REQUEST TO EXTEND THE TEMPORARY REMAND;

AND

(2) APPROVING IN PART THE NOVEMBER 10, 2016
STIPULATION FOR DISMISSAL WITH PREJUDICE

(By: Fujise, Presiding Judge, Leonard and Reifurth, JJ.)

Upon consideration of the "Association of Apartment Owners of Kulana's Response to Fourth Report on Status on [sic] Settlement Filed on October 17, 2016," filed October 18, 2016, by Association of Apartment Owners of Kulana (AOAO of Kulana), the "Stipulation for Dismissal With Prejudice as to All Claims and All Parties," filed November 10, 2016, by Travelers Casualty and Surety Company of America (Travelers), the papers in support and in response, and the record, it appears that:

(1) On September 28, 2015, the court temporarily remanded appeal numbers CAAP-14-0000421, CAAP-14-0000437 and CAAP-14-0000507 to the circuit court for 180 days so the parties could pursue actions to effectuate a proposed settlement agreement;

(2) The court subsequently extended the temporary remand three times. On September 19, 2016, the court extended the temporary remand to October 26, 2016, subject to further court order, and ordered the parties to file a motion or stipulation to dismiss the appeals by October 14, 2016, or file a status report on or before October 17, 2016;

(3) On October 17, 2016, Travelers filed a status report indicating the circuit court in the underlying case, Civil No. 12-1-0027, approved the class settlement on September 14, 2016;

(4) On October 18, 2016, the AOAO filed a response, and requested the court to extend the temporary remand an additional thirty days;

(5) On October 20, 2016, Travelers filed a reply, and joined the AOAO's request for an extension of the temporary remand;

(6) Because the parties failed to demonstrate that any further action is contemplated or required by the circuit court in the underlying case, an extension of the temporary remand is unnecessary;

(7) Pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 42(b), the parties stipulate to dismiss the appeal with prejudice, and bear their own costs and attorneys' fees on appeal;

(8) The stipulation is dated and signed by counsel for all parties appearing in the appeal;

(9) The appeal has not been docketed; and

(10) HRAP Rule 42(b) governs dismissal of docketed appeals, whereas HRAP Rule 42(a) authorizes dismissal before an appeal is docketed.

Therefore, IT IS HEREBY ORDERED that the AOA's October 18, 2016 request to extend the temporary remand is denied.

IT IS FURTHER ORDERED that the stipulation to dismiss the appeal is approved in part and the appeal is dismissed with prejudice, pursuant to HRAP Rule 42(a). The parties shall bear their own costs and attorneys' fees on appeal. The court takes no position on the stipulation terms concerning the so-called "Collateral Agreement," and Judge Gail Nakatani's (Ret.) jurisdiction.

DATED: Honolulu, Hawai'i, November 17, 2016.

Presiding Judge

Associate Judge

Associate Judge