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SCWC-13-0002064

IN THE SUPREME COURT OF THE STATE OF HAWAII

JOHN HASIRCOGLU AND MARIA HASIRCOGLU,
Petitioners/Plaintiffs-Appellants,

vs.

FOPCO, INC.,
Respondent/Defendant-Appellee.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-13-0002064; CIV. NO. 11-1-0111)

DISSENT BY NAKAYAMA, J.,
IN WHICH RECKTENWALD, C.J., JOINS

I disagree with the majority's position that FOPCO's response to the August 27, 2008 letter raises a genuine issue of material fact as to whether there was an agency relationship between FOPCO and Estes and/or Clark based on expressed or implied actual authority. Accordingly, I respectfully dissent.

Viewed in the light most favorable to Petitioners, the document at best suggests that Clark and Estes possessed information about the Moloka'i construction project and work site

such that the State could contact them if any questions or concerns arose, and that Clark's emergency contact address was the same as FOPCO's. Such facts are not sufficient to support the reasonable conclusion that FOPCO expressly granted Estes or Clark actual authority to act on its behalf and that Estes or Clark consented to so act. See Cho Mark Oriental Food, Ltd. v K&K Int'l, 73 Haw. 509, 515, 836 P.2d 1057, 1061 (1992). Nor do such facts indicate, in any way, that Estes or Clark reasonably believed, based on the conduct of FOPCO communicated directly or indirectly to them, that FOPCO desired them to act on its behalf as its agents. See State Farm Fire and Cas. Co. v. Pac. Rent-All, Inc., 90 Hawai'i 315, 325-26, 978 P.2d 753, 763-64 (1999).

Therefore, in my view, Petitioners did not establish a genuine dispute of any material fact relevant to the legal doctrine governing the formation or existence of an agency relationship. I would affirm the ICA's July 26, 2016 Judgment on Appeal entered pursuant to its June 30, 2016 Memorandum Opinion.

DATED: Honolulu, Hawai'i, April 21, 2017.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

