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SCAP-13-0002732

IN THE SUPREME COURT OF THE STATE OF HAWAII

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VIRENDRA NATH, NANCY MAKOWSKI, KRISHNA NARAYAN,  
and SHERRIE NARAYAN,  
Plaintiffs-Appellees,

vs.

THE RITZ-CARLTON HOTEL COMPANY, L.L.C., THE RITZ-CARLTON  
DEVELOPMENT CO., INC., MARRIOTT INTERNATIONAL, INC.,  
MARRIOTT VACATIONS WORLDWIDE CORPORATION, MARRIOTT  
OWNERSHIP RESORTS, INC., THE RITZ-CARLTON  
MANAGEMENT COMPANY, L.L.C., MARRIOTT TWO FLAGS, LP,  
and MH KAPALUA VENTURE, LLC,  
Defendants-Appellants,

and

KAPALUA BAY, LLC, MAUI LAND & PINEAPPLE CO., INC.,  
KAPALUA REALTY CO., LTD., EXCLUSIVE RESORTS, LLC, MLP  
KB PARTNER, LLC, EXCLUSIVE RESORTS CLUB I HOLDINGS, LLC,  
EXCLUSIVE RESORTS DEVELOPMENT COMPANY, LLC, ER  
KAPALUA INVESTORS FUND HOLDINGS, LLC, ER KAPALUA  
INVESTORS FUND, LLC, KAPALUA BAY HOLDINGS, LLC, ET AL.,  
Defendants-Appellees.

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ON REMAND FROM THE UNITED STATES SUPREME COURT  
(CAAP-13-0002732; CIV. NO. 11-1-0216)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Nakayama, McKenna, and Pollack, JJ.,  
and Circuit Judge Nakasone, in place of Wilson, J., recused)

This appeal concerns the arbitrability of certain “purchase-based” claims pursuant to an arbitration clause contained in the Declaration of Condominium Property Regime of Kapalua Bay Condominium. On June 30, 2015, we affirmed the Circuit Court of the Second Circuit’s (circuit court) order denying Defendants’ motion to compel arbitration pursuant to our opinion in Narayan v. Ritz-Carlton Development Co., 135 Hawai‘i 327, 350 P.3d 995 (2015) (Narayan I).

On January 11, 2016, the Supreme Court of the United States vacated and remanded Narayan I and this case for further consideration in light of its decision in DIRECTV, Inc. v. Imburgia, 136 S. Ct. 463 (2015).

The questions presented in this appeal are controlled by our decision in Narayan v. Ritz-Carlton Development Co., No. SCWC-12-0000819, at 3 (Haw. July 14, 2017) (pub. op.) (Narayan II), which affirmed our decision in Narayan I and held that “under long-standing Hawai‘i contract law, the arbitration clause is unconscionable.”

Pursuant to our analysis in Narayan II, the circuit court’s July 12, 2013 order denying Defendants’ motion to compel arbitration is affirmed.

DATED: Honolulu, Hawai‘i, July 14, 2017.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Karen T. Nakasone

