

**Electronically Filed
Intermediate Court of Appeals
CAAP-19-0000795
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NO. CAAP-19-0000795

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

THE ESTATE OF KAREN I. STIRLING, whose full name is
KAREN INGALLS STIRLING, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(P. NO. 18-1-0109(3))

ORDER APPROVING STIPULATION TO DISMISS APPEAL

(By: Ginoza, Chief Judge, Leonard and Wadsworth, JJ.)

Upon consideration of the Stipulation to Dismiss Appeal With Prejudice (Stipulation), filed April 29, 2020, by Petitioner-Appellee Benjamin W. Gale (Gale), Personal Representative of the Estate of Karen I. Stirling, the papers in support, and the record, it appears that:

(1) The appeal has not been docketed;

(2) On November 27, 2019, Gale filed a notice indicating that on October 25, 2019, Applicant-Appellant Olga V. Bordenyuk (Bordenyuk) filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court, District of Hawaii, Case No. 19-01368, which apparently the parties and the probate court clerk believed stayed the appeal under 11 U.S.C. § 362(a) (2010) and Hawaii Rules of Appellate Procedure (HRAP) Rule 54(c);

(3) It is not clear that the bankruptcy petition stayed the appeal, because an automatic stay under 11 U.S.C. § 362 applies to suits against the debtor, not suits by the debtor, see Parker v. Bain, 68 F.3d 1131, 1138 (9th Cir. 1995), and Bordenyuk

initiated the underlying case by filing an application for intestate informal appointment of personal representative;

(4) In the instant Stipulation, Gale and Bordenyuk's bankruptcy court trustee agree to dismiss the appeal with prejudice, under HRAP Rule 42(b), as part of a settlement agreement reached in the bankruptcy case, and that the parties shall bear their own attorneys' fees and costs. The Stipulation is dated and signed by counsel for all parties appearing in the appeal. Attached to the Stipulation is a certified copy of the bankruptcy court order approving the settlement agreement, which appears to comply with HRAP Rule 54(c); and

(5) It appears that if there was a bankruptcy stay in effect in this appeal, it has terminated. Because the appeal has not been docketed, dismissal is authorized by HRAP Rule 42(a).

Therefore, IT IS HEREBY ORDERED that the Stipulation is approved and the appeal is dismissed with prejudice. The parties shall bear their own attorneys' fees and costs.

DATED: Honolulu, Hawai'i, May 8, 2020.

/s/ Lisa M. Ginoza
Chief Judge

/s/ Katherine G. Leonard
Associate Judge

/s/ Clyde J. Wadsworth
Associate Judge