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Intermediate Court of Appeals
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NO. CAAP-21-0000369

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

IN THE MATTER OF
THE PEGGY S. ISHITANI REVOCABLE LIVING TRUST,
DATED MAY 4, 2012

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1TR151000083)

ORDER APPROVING STIPULATION TO DISMISS

(By: Hiraoka, Presiding Judge, McCullen and Chan, JJ.)

Upon consideration of the letter and accompanying documents, filed August 23, 2022, by Respondent-Appellant Shon Lahui's (Lahui) counsel, Fred Paul Benco (Benco), which the court collectively construes as a stipulation to dismiss the appeal with prejudice, the papers in support, and the record,¹ it appears that:

(1) The appeal has been docketed and the filing fees have been paid;

(2) The parties stipulate to dismiss the appeal with prejudice and bear their own attorneys' fees and costs, under HRAP Rule 42(b);

¹ On June 14, 2022, the court ordered, among other things, "that within five days from the date of the order, Lahui shall file a certificate of service reflecting service of the Stipulation for Dismissal With Prejudice and separate letter to the court, both filed June 3, 2022, at dockets 46 and 48, upon Morito at his new address on record." Lahui failed to comply with the order. Benco is cautioned that future failure to comply with a court order may result in sanctions. Hawai'i Rules of Appellate Procedure (HRAP) Rule 51.

(3) HRAP Rule 42(b) authorizes the "parties to a docketed appeal" to "sign and file a stipulation for dismissal";

(4) Benco's August 23, 2022 documents contain a Stipulation for Dismissal With Prejudice that is dated and signed by counsel for all parties represented in the appeal, but it is not signed by self-represented Respondent-Appellee Melvin T. Morito (Morito), who entered an appearance by filing a change of address on June 9, 2022. The certificate of service indicates Benco mailed the August 23, 2022 documents to Morito at his address on record in the appeal. In the cover letter to the court, Benco states that on August 3, 2022, he mailed a letter to Morito requesting Morito to sign and return the enclosed stipulation, but Morito did not respond;

(5) In a previous letter to the court, filed June 3, 2022, Benco stated that Morito's only claim in the underlying case, 1TR151000083, concerned Morito's corporation, but Morito did not retain counsel, and neither Morito nor his corporation have participated in this appeal; and

(6) Because Morito has not asserted an interest in the outcome of this appeal, the court considers Morito a nominal appellee, whose signature is not required on the stipulation to dismiss the appeal. See HRAP Rule 2(b).

Therefore, IT IS HEREBY ORDERED that the stipulation to dismiss the appeal with prejudice, filed August 23, 2022, is approved and the appeal is dismissed with prejudice. The parties shall bear their own attorneys' fees and costs on appeal.

IT IS FURTHER ORDERED that all pending motions and stipulations are dismissed.

DATED: Honolulu, Hawai'i, August 26, 2022.

/s/ Keith K. Hiraoka
Presiding Judge

/s/ Sonja M.P. McCullen
Associate Judge

/s/ Derrick H.M. Chan
Associate Judge