

NO. CAAP-20-0000521

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

BANKS PACIFIC CONSTRUCTION, INC., a Hawai'i corporation,  
Plaintiff/Counterclaim Defendant-Appellee,

v.

MAX TSAI, Defendant/Counterclaimant/  
Cross-claimant-Appellant,

and

VALLEY ISLE SURVEYORS, INC., a Hawai'i corporation,  
Defendant/Cross-claim Defendant

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(CIVIL NO. 2CC161000371)

**SUMMARY DISPOSITION ORDER**

(By: Leonard, Presiding Judge, Hiraoka and Wadsworth, JJ.)

Defendant/Counterclaimant/Cross-claimant-Appellant Max **Tsai** appeals from the **Judgment** in favor of Plaintiff/Counterclaim Defendant-Appellee **Banks** Pacific Construction, Inc. entered by the Circuit Court of the Second Circuit on July 22, 2020, and the "Order Denying Defendant/Counterclaimant/Cross-Claim Plaintiff Max Tsai's Rule 60(b) (1), (2), and (6) Motion for Relief from Judgment, Filed June 15, 2020[,]" (**Order Denying Relief from Judgment**) entered by the circuit court on August 17, 2020.<sup>1</sup> For the reasons explained below, we dismiss this appeal as moot.

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<sup>1</sup> The Honorable Rhonda I.L. Loo presided.

Banks sued Tsai and Valley Isle **Surveyors, Inc.** Banks alleged that Tsai owed money under a construction contract, and that Surveyors negligently staked building corners and points for construction of Tsai's home. Tsai filed a counterclaim against Banks and a cross-claim against Surveyors. The circuit court approved the parties' stipulation to stay proceedings pending arbitration of the claims between Banks and Tsai, and a Design Claim Conciliation Panel hearing on the claims against Surveyors.

An **Arbitration Award** was issued on May 26, 2019. Banks filed a motion to confirm the award pursuant to Hawaii Revised Statutes (**HRS**) § 658A-22. A self-represented Tsai mailed a letter to the circuit court stating that he didn't object to Banks's motion. The circuit court granted Banks's motion to confirm by order entered on October 16, 2019. Banks then moved for an award of attorney's fees and costs and prejudgment interest. Tsai did not oppose the motion. The circuit court granted the motion by order entered on June 12, 2020.

Tsai, represented by counsel, filed a Hawai'i Rules of Civil Procedure (**HRCP**) Rule 60 motion for relief from judgment on June 15, 2020. Banks opposed the motion. The Judgment was entered on July 22, 2020.<sup>2</sup> The Order Denying Relief from Judgment was entered on August 17, 2020. A Satisfaction of Judgment was filed on August 18, 2020.

Tsai's notice of appeal was filed on August 24, 2020.<sup>3</sup> On June 7, 2023, we issued an order to show cause why this appeal should not be dismissed as moot. The mootness doctrine is properly invoked when "events subsequent to the judgment of the trial court have so affected the relations between the parties that the two conditions for justiciability relevant on appeal –

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<sup>2</sup> The Judgment contained a finding of no just reason for delay and directed entry of a judgment in favor of Banks and against Tsai, presumably pursuant to HRCP Rule 54(b). In substance, however, it was a judgment on the arbitration award entered pursuant to HRS § 658A-25.

<sup>3</sup> The thirtieth day after July 22, 2020, was Friday, August 21, 2020, a state holiday. See HRS § 8-1 (2009). The notice of appeal was timely filed.

adverse interest and effective remedy – have been compromised." Lathrop v. Sakatani, 111 Hawai'i 307, 313, 141 P.3d 480, 486 (2006) (citations omitted).

Banks filed its response on June 21, 2023. Banks argued that the appeal was moot because the Judgment had been satisfied, and that no exceptions to the mootness doctrine applied. Tsai filed his response on August 23, 2023. Tsai agreed that his appeal should be dismissed as moot because the parties "have settled their dispute."

For the foregoing reasons, this appeal is dismissed as moot.

DATED: Honolulu, Hawai'i, September 8, 2023.

On the briefs:

Michael J. Collins,  
for Defendant/Counterclaimant/  
Cross-claimant-Appellant  
Max Tsai.

/s/ Katherine G. Leonard  
Presiding Judge

/s/ Keith K. Hiraoka  
Associate Judge

Gary Robert,  
for Plaintiff/Counterclaim  
Defendant-Appellee Banks  
Pacific Construction, Inc.

/s/ Clyde J. Wadsworth  
Associate Judge