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Intermediate Court of Appeals
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NO. CAAP-19-0000043

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

LAND VALUE HOLDINGS, LLC, Plaintiff-Appellant, v.
RICHARD AMONG, JONAH KUMULAE, HELEN M. KUMULAE,
RAYMOND K. ORNELLAS, JR., JONATHAN KONO,
LYSA KONO, JONAH KUMULAE III, LUANA KUMALAE,
LLEWELLYN KUMULAE, CELESTE KUMALAE, MARK KANE,
ALEXIS KANE, KRISTEN VAN BAMBERGER, KONALE MACHADO,
CRAIG KAGAWA, JARRI KAGAWA, WANDA FUJIMOTO, BUCK HAR BOGAEV,
PAULINE KAWAMATA, NORINE UEHIRA, STATE OF HAWAII,
and DOES 1-100, Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
PUNA DIVISION
(CIVIL NO. 3RC13-1-001020)

SUMMARY DISPOSITION ORDER

(By: Wadsworth, Presiding Judge, Nakasone and McCullen, JJ.)

Plaintiff-Appellant Land Value Holdings, LLC (**LVH**)
appeals from the District Court of the Third Circuit, Puna
Division's¹ two December 5, 2018 Orders of Dismissal

¹ The Honorable Harry P. Freitas presided.

(collectively, **2018 Dismissal Orders**) in Case No. 3RC13-1-001020. On appeal, LVH contends the district court abused its discretion in dismissing the case.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the issues raised and the arguments advanced, we resolve the point of error as discussed below, and affirm.

LVH is a Wyoming-based limited liability company, with its principal place of business in Cheyenne, Wyoming. Among the twenty-one (21) named defendants (collectively, **Defendants**), only Wanda Fujimoto (**Fujimoto**) and Pauline Kawamata (**Kawamata**) filed answering briefs in this appeal. According to LVH's pleadings, the parties in this case own real property located in Puna, Hawai'i Island (**Property**) as Tenants in Common.

In December 2013, LVH filed a complaint in district court, claiming it paid \$5,049.75 in "delinquent real property taxes" assessed on the Property and seeking reimbursement of that money with interest, attorneys' fees, and costs. Kawamata and Fujimoto answered, denying owing any property taxes.

Between December 19, 2014 and February 27, 2015, no action took place in this case, so the district court² *sua sponte* dismissed the case pursuant to the Rules of the District Courts

² The Honorable Barbara T. Kai Takase presided over the 2015 Dismissal Orders.

of Hawai'i (**RDCH**) Rules 28 and 29 on February 27, 2015 (collectively, **2015 Dismissal Orders**). LVH then moved to vacate the 2015 Dismissal Orders, which the district court granted.

No further substantive action took place for over three years, between March 10, 2015 and December 5, 2018.³ The district court again dismissed the case via the 2018 Dismissal Orders, and LVH moved to vacate. The district court denied LVH's motions, and LVH appealed.

In its motions to vacate the 2018 Dismissal Orders, LVH's Hawai'i counsel explained: (1) he was attempting to have counsel based on the continent send money to pay the costs for service by publication, but was not informed of that counsel's "1985" death⁴ until late 2017; (2) it was impossible to know if the volcanic eruptions on Kīlauea would render the Property "useless and valueless";⁵ (3) he suffered medical issues rendering him unable to work for six months; (4) Defendants "have not been prejudiced in any manner"; and (5) "we exercised due diligence under the circumstances."

³ The only filing between March 10, 2015 and December 5, 2018 was an April 10, 2017 notice by Fujimoto's attorneys of the law firm's name change.

⁴ LVH suggests this is a typographical error as counsel based on the continent purportedly died in 2015.

⁵ LVH offers no specific reasoning as to or timeline on how the eruptions caused delays in litigating this case before the district court.

A trial court's *sua sponte* dismissal for want of prosecution is reviewed for abuse of discretion. Ryan v. Palmer, 130 Hawai'i 321, 323, 310 P.3d 1022, 1024 (App. 2013) (quoting Compass Dev., Inc. v. Blevins, 10 Haw. App. 388, 397-98, 876 P.2d 1335, 1340 (1994)). "To determine whether the circumstances justify dismissal for failure to prosecute, we must examine the procedural history of the case." Compass Dev., Inc., 10 Haw. App. at 398, 876 P.2d at 1340; see also Hawaii Auto. Retail Gasoline Dealers Ass'n v. Brodie, 2 Haw. App. 99, 101, 626 P.2d 1173, 1175 (1981) ("What constitutes a failure to prosecute depends on the facts of each case and the court must consider all pertinent facts").

In the time period between the filing of the Complaint in 2013 and entry of the 2015 Dismissal Orders, it appears no attempt was made to serve at least six of the defendants, including the State. Likewise, in the time period between vacating the 2015 Dismissal Orders and entry of the 2018 Dismissal Orders, no meaningful action of any kind took place in the case.

LVH's attempts to explain its inaction are vague and conclusory at best. The death of continent-based counsel, the volcanic activity, and the inability to work for six months do not justify the lack of service and prosecution for over three years. See generally, Compass Dev., Inc., 10 Haw. App. at 398,

876 P.2d at 1340. In light of these circumstances, the district court did not abuse its discretion in dismissing this case under RDCH Rules 28 or 29.⁶

Based on the foregoing, we affirm the district court's 2018 Dismissal Orders.

DATED: Honolulu, Hawai'i, May 20, 2024.

On the briefs:	/s/ Clyde J. Wadsworth Presiding Judge
Everett Walton, for Plaintiff-Appellant.	/s/ Karen T. Nakasone Associate Judge
James Shin, Lois H. Yamaguchi, (Roeca Luria Shin), for Defendant-Appellee Wanda Fujimoto.	/s/ Sonja M.P. McCullen Associate Judge
Steven E. Tom, for Defendant-Appellee Pauline Kawamata.	

⁶ In her answering brief, Fujimoto asserts LVH's violation of Hawai'i Revised Statutes § 428-1008 (2004) as a basis for affirming the dismissal of this case, but based on our decision here, we need not address Fujimoto's assertion.