

**Electronically Filed
Intermediate Court of Appeals
CAAP-20-0000160
05-JUL-2024
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NO. CAAP-20-0000160

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

Pinmei Wang; John Does 1-100; Jane Does 1-100,
Plaintiff-Appellant, v. Zhong Fang aka Johnson Fang;
Mei Hu aka Michelle Hu; Jiajia Wang; Zhe Fang; Lamei Fang;
Hawaii City Plaza LP, Hawaii Ocean Plaza LP; California
Regional Center LLC; California Investment Regional
Center LLC, Defendants-Appellees,
and
John Does 1-10; Jane Does 1-10; Doe Partnerships 1-10;
Doe Corporations 1-10; Doe Entities 1-10; and
Doe Governmental Units 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Case No. 1CCV-19-0002025)

and

Tao Jiang; Chuanjiao Yu; Tiange Yang; Xiaomin Huang;
Pinmei Wang; Xiaohui Wu; Yuyang Jing; Li Wang; Dong
Zhang; Ke Yuan; Wei Jiang; Xiujuan Li; Songhua Zhang;
Yihao Xu; Wei Wang; Ruigang Tan; Jing Liu; John Does 1-100;
Jane Does 1-100, Plaintiffs-Appellants, v. Zhong Fang
aka Johnson Fang; Min Hu aka Michelle Hu; Zhe Fang;
Jia Yu aka Jiajia Wang; Lamei Fang; Hawaii City Plaza LP,
Hawaii Ocean Plaza LP; California Regional Center LLC;
California Investment Regional Center LLC; Wuhan
Western U.S. Investment Immigration Consultant Inc.,
Defendants-Appellees,
and
John Does 1-10; Jane Does 1-10; Doe Partnerships 1-10;
Doe Corporations 1-10; Doe Entities 1-10; and
Doe Governmental Units 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Case No. 1CCV-19-0002037)

and

Yanli Xu; Naomi Hasegawa; Kazuhiro Ishida; Atsushi Morita; Jubee Aizawa; Kasumi Ishida; Tatsuto Ehara; Makoto Ishida; Hun-Dong Yu; Lili Wu; Tao Jiang; Chuanjiao Yu; Tiange Yang; Xiaomin Huang; Pinmei Wang; Xiaohui Wu; Yuyang Jing; Li Wang; Dong Zhang; Ke Yuan; Wei Jiang; Xiujuan Li; Songhua Zhang; Yihao Xu; Wei Wang; Ruigang Tan; Jing Liu; John Does 1-100; Jane Does 1-100, Plaintiffs-Appellants, v. Zhong Fang aka Johnson Fang; Min Hu aka Michelle Hu; Zhe Fang aka Jay Fang; Jiayu Wang aka Jiajia Wang; Lamei Fang; USA Realty Construction Group Inc.; California Investment Regional Center LLC; California Regional Center LLC; American Investment Immigration Fund; Hawaii City Plaza LP; Hawaii Ocean Plaza LP; Los Angeles City Plaza LP; LA Valley Garden Plaza LP; 9920 Valley Blvd LP, Defendants-Appellees, and John Does 1-10; Jane Does 1-10; Doe Partnerships 1-10; Doe Corporations 1-10; Doe Entities 1-10; and Doe Governmental Units 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Case No. 1CCV-19-0002169)

SUMMARY DISPOSITION ORDER

(By: Leonard, Acting Chief Judge, Hiraoka and McCullen, JJ.)

This appeal involves three lawsuits pending in the Circuit Court of the First Circuit. The first was filed by Pinmei **Wang** against several defendants on October 24, 2019.¹ The second was filed by Wang and 16 more plaintiffs² against the same defendants, plus one new defendant,³ on October 31, 2019. The third was filed by the plaintiffs in the second lawsuit, plus ten

¹ The named defendants were Zhong Fang aka Johnson Fang; Mei Hu aka Michelle Hu; Jiajia Wang; Zhe Fang; Lamei Fang; Hawaii City Plaza LP, Hawaii Ocean Plaza LP; California Regional Center LLC; and California Investment Regional Center LLC.

² The new plaintiffs were Tao Jiang; Chuanjiao Yu; Tiange Yang; Xiaomin Huang; Xiaohui Wu; Yuyang Jing; Li Wang; Dong Zhang; Ke Yuan; Wei Jiang; Xiujuan Li; Songhua Zhang; Yihao Xu; Wei Wang; Ruigang Tan; and Jing Liu.

³ The new defendant was Wuhan Western U.S. Investment Immigration Consultant Inc.

new plaintiffs,⁴ against all except one of the defendants named in the second lawsuit,⁵ plus five new defendants,⁶ on November 18, 2019. The complaints and amended complaints in each lawsuit were materially identical.

Notices of pendency of action under Hawaii Revised Statutes (HRS) § 634-51 (***lis pendens***) were filed in each lawsuit. The defendants moved to expunge the *lis pendens*. The circuit court entered orders granting the motions on March 16, 2020.⁷

The circuit court consolidated the lawsuits. After consolidation, the defendants moved to "dismiss and/or strike duplicative actions." The circuit court entered orders granting the motions on March 16, 2020.

The plaintiffs appeal from the orders expunging the *lis pendens* and granting the motions to dismiss and/or strike.

(1) The orders granting the defendants' motions to dismiss and/or strike were identical. The first and second lawsuits were dismissed, but each order stated:

4. The Plaintiffs shall be given leave to amend the complaint to consolidate all claims and causes of action into the case of Yanli Xu, et al. v. Zhong Fang, et al. (Civil No. 1CCV-19-0002169) [the third lawsuit].

The orders did not dispose of any claim against any party. They were not reduced to separate judgments in favor of and against the appropriate parties under Hawai'i Rules of Civil Procedure (HRCP) Rule 58 or certified for appeal under HRCP Rule 54(b). Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). They were not

⁴ The new plaintiffs were Yanli Xu; Naomi Hasegawa; Kazuhiro Ishida; Atsushi Morita; Jubee Aizawa; Kasumi Ishida; Tatsuto Ehara; Makoto Ishida; Hun-Dong Yu; and Lili Wu.

⁵ Wuhan Western U.S. Investment Immigration Consultant Inc. was not named as a defendant in the third lawsuit.

⁶ The new defendants were USA Realty Construction Group Inc.; American Investment Immigration Fund; Los Angeles City Plaza LP; LA Valley Garden Plaza LP; and 9920 Valley Blvd LP.

⁷ The Honorable Dean E. Ochiai presided.

appealable under the collateral order doctrine or the Forgay doctrine. See Greer v. Baker, 137 Hawai'i 249, 253, 369 P.3d 832, 836 (2016). The record does not reflect that the circuit court allowed an interlocutory appeal under HRS § 641-1(b). The plaintiffs' appeal from the orders granting the defendants' motions to dismiss and/or strike is dismissed for lack of jurisdiction.

(2) The orders granting the defendants' motions to expunge the *lis pendens* are appealable under the collateral order doctrine. See Knauer v. Foote, 101 Hawai'i 81, 84-85, 63 P.3d 389, 392-93 (2003). We review for abuse of discretion. S. Utsunomiya Enters., Inc. v. Moomuku Country Club, 75 Haw. 480, 504, 866 P.2d 951, 964 (1994).

Lis pendens is authorized only in "actions directly seeking to obtain title to or possession of real property." Utsunomiya, 75 Haw. at 510, 866 P.2d at 966. The nature of the action is determined on the face of the complaint without regard to likelihood of success on the merits. Id. at 505-06, 866 P.2d at 964. The plaintiffs' first amended complaints were the operative complaints in each lawsuit when the orders expunging the *lis pendens* were entered. See id. at 506, 866 P.2d at 964 (analyzing amended complaint filed in response to motion to expunge *lis pendens*). We do not consider the second amended complaint filed in the third lawsuit because it was filed after entry of the order expunging the *lis pendens*.

The plaintiffs claim to have invested money, through the defendants, in two EB-5 entities,⁸ *Hawaii City Plaza LP* and *Hawaii Ocean Plaza LP*. They claimed the defendants fraudulently induced their investments, mismanaged the EB-5 entities, commingled their funds, and underfunded and significantly delayed the EB-5 entities' real estate development projects. The

⁸ EB-5 is a federal program under which foreign investors are eligible to apply for lawful permanent residence if they meet certain requirements. See EB-5 Immigrant Investor Program, <https://www.uscis.gov/working-in-the-united-states/permanent-workers/eb-5-immigrant-investor-program> (last visited May 22, 2024) [<https://perma.cc/FQL3-E5KB>].

plaintiffs sought return of their investments, appointment of a commissioner to operate the entities, and an award of damages. After the motions to expunge *lis pendens* were filed, the plaintiffs amended their complaints to allege "settlement of property titles." But none of the plaintiffs claimed title to, or sought to possess, any real property. Rather, they sought to "resettle all the titles of the real properties involved in the Defendants' EB-5 operations" among the various entity defendants. Under these circumstances the circuit court did not abuse its discretion by granting the defendants' motions to expunge the *lis pendens*.

For these reasons, the March 16, 2020 Order[s] Granting Defendants' Motion[s] to Expunge Lis Pendens are affirmed. The plaintiffs' appeal from the March 16, 2020 Order[s] Granting [Defendants'] Motion[s] to Dismiss and/or Strike Duplicative Actions is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, July 5, 2024.

On the briefs:

Wen Sheng Gao,
for Plaintiffs-Appellants.

/s/ Katherine G. Leonard
Acting Chief Judge

David R. Squeri,
Sol V. Yi,
for Defendants-Appellees
Zhong Fang aka Johnson Fang;
Min Hu aka Michelle Hu;
Zhe Fang aka Jay Fang;
Yujia Wang aka Jiajia Wang;
Lamei Fang; USA Realty
Construction Group Inc.;
California Investment Regional
Center LLC; California
Regional Center LLC; Wuhan
Western U.S. Investment
Immigration Consultant Inc.;
American Investment Immigration
Fund; Hawaii City Plaza LP; and
Hawaii Ocean Plaza LP.

/s/ Keith K. Hiraoka
Associate Judge

/s/ Sonja M.P. McCullen
Associate Judge