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SCWC-19-0000047

IN THE SUPREME COURT OF THE STATE OF HAWAII

FREDERICK T. CAVEN, JR., on behalf of himself
and a class of similarly situated persons,
Respondent/Plaintiff-Appellant,

vs.

CERTIFIED MANAGEMENT, INC., dba ASSOCIA HAWAII,
Petitioner/Defendant-Appellee.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-19-0000047; CASE NO. 1CC161001778)

DISSENT BY GINOZA, J.

The majority concludes that Petitioner/Defendant Certified Management, Inc., dba Associa Hawaii (**Associa**) had a statutory duty under Hawai'i Revised Statutes (**HRS**) §§ 514B-152 (2018) and 514B-154.5 (2018) to *prepare* a seven-page Project Information Form RR105c (**Form RR105c**) and a Statement of Account (**SOA**) for Respondent/Plaintiff Frederick T. Caven, Jr. (**Caven**) related to the sale of his condominium unit (**Unit**). Further, because Associa made these documents available on its Community Archives website (from which Caven's realtor ordered the

documents knowing there would be a fee), the majority concludes these documents and others made available on the site must be provided at no cost.

I respectfully dissent. HRS § 514B-152, § 514B-154.5, and the relevant statutory scheme do not require that a managing agent create documents for unit owners related to the sale of units. Further, § 514B-154.5(e) provides that an association may make required documents available to unit owners via download through an internet site, and if done in this manner, it will be at no cost. By its express terms, § 514B-154.5(e) does not apply to a "managing agent,"¹ which is defined separately from an "association"² under HRS Chapter 514B. The record establishes that the condominium association for Caven's unit had its own website, separate and distinct from Associa's website, from which unit owners or their agents could download documents for free.

I would affirm the Circuit Court of the First Circuit (**Circuit Court**),³ which granted summary judgment to Associa on

¹ A "Managing agent" is defined as "any person retained, as an independent contractor, for the purpose of managing the operation of the property." HRS § 514B-3 (2018).

² An "Association" is defined as "the unit owners' association organized under section 514B-102 or under prior condominium property regime statutes." HRS § 514B-3 (2018).

³ The Honorable James H. Ashford presided.

these issues in its Order IV and Order V,⁴ and vacate the judgment on appeal entered by the Intermediate Court of Appeals (ICA).

I. DISCUSSION

Caven was a member of two associations – the Poipu Kai Association (**PKA**), a planned community association, and the Regency at Poipu Kai AOA (**Regency AOA**), a condominium association. Associa was the managing agent for both associations. Relevant to this appeal are issues pertaining to the Regency AOA under HRS Chapter 514B.

The contract for the sale of Caven's unit required him to provide the buyer with Form RR105c. Caven's realtor, Jill Pembroke (**Pembroke**), ordered Form RR105c online from Associa's Community Archives website knowing that there would be a fee. She also knew that the Regency AOA had its own individual website where members could access association documents.

Form RR105c is a seven-page disclosure form copyrighted and used by the Hawai'i Association of Realtors to

⁴ Order IV is the Circuit Court's "Order Granting Defendant Certified Management, Inc., dba Associa Hawaii's Motion for Partial Summary Judgment on Count I and Count II of the First Amended Complaint as to all Claims Related to Form RR105C and Statements of Account[,]" filed on July 19, 2018. Order V is the Circuit Court's "Order Granting Defendant Certified Management, Inc., dba Associa Hawaii's Motion for Partial Summary Judgment on Count I of the First Amended Complaint as to the Claimed Prohibition Against Charging Fees for Association Documents Made Available Electronically for Download Through an Internet Site[,]" filed on September 20, 2018.

get up-to-date information pertaining to a condominium association when an association unit is being sold. Form RR105c requires detailed information to be provided about the project in sections identified as General & Legal, Insurance, Financial, and Project Condition. The General & Legal section requires information such as the number of units and guest parking stalls; the percentage of units sold (excluding to the developer); the percentage of units that are primary residences, second homes or investor properties; the number of foreclosures filed by the Board of Directors in the last twelve months; the percentage of owners more than one month delinquent in maintenance fees; multiple questions about any leased fee interest in the land, including the possible purchase of the fee interest, whether the association has a loan to acquire the fee interest, and whether owners are assessed to repay any such loan; whether there are any lawsuits, arbitrations or mediations affecting the project or the association; whether any single entity, individual or partnership owns more than 10% of the common interest in the property; whether association approval is needed to transfer ownership; whether asbestos, formaldehyde, radon gas, lead-based paint, mold, mildew or fungus has been discovered by the association at the project; and whether there are commercial units or commercial use of common areas or common

elements. The Insurance section of Form RR105c requires disclosure regarding whether any project improvements are in a designated flood hazard zone that require insurance; whether the project is covered by flood insurance, is located in a tsunami inundation area, or has had any substantial damage due to earthquake, fire, floods, winds, landslides, tsunami, or violence within the last five years. The Financial section of the form requires disclosures including whether the maintenance fee covers specified items, utilities, and taxes; whether other fees are billed to the owners; whether the association Board has approved a maintenance fee increase, special assessment or loan; and whether any special assessments or loans are currently in effect. The Project Condition section of the form requires disclosures including whether any major repairs are required or planned in the next twelve months for twenty-six specified common element or common area items; whether lanai enclosures are allowed; and regarding the common elements or common areas, whether there have been any termites, leaks or water damage, or structural problems caused by water, settling, sliding, subsidence or filled land in the past year.

As explained in the declaration of Richard Emery, a vice-president for Associa:

the information necessary to complete the [Form RR105c] changes regularly, requiring the individual completing the

form to spend a significant amount of time researching the various facts and information needed to provide accurate information for the buyer as part of a contract between buyer and seller. Moreover, the failure to provide accurate information which is derived from multiple sources including the Association's board of directors, and Association management employees, and files from other management companies could expose Associa to liability if later proved inaccurate.

The SOA provides the outstanding charges owed by a unit owner to the condominium association. The escrow company for Caven's transaction, Old Republic Title, ordered a Regency AOA SOA for Caven's unit from Associa, to ensure that all fees and costs owed to the Regency AOA for his unit were cleared. The SOA was needed to close Caven's transaction. An SOA may have to be completed twice – once when escrow is opened and again right before the sale closes. In creating an SOA, Associa employees must consider factors affecting the owner's account, including future charges, loan payoffs, returned checks, fines, utility charges, and adjusted closing dates. Due to the nature of the information, those involved in a real estate transaction often request an SOA on an expedited basis.

A. Associa does not have a statutory duty under HRS Chapter 514B to complete Form RR105c or create a Statement of Account.

The majority interprets HRS §§ 514B-152 and 514B-154.5 to require a managing agent to make available to unit owners sufficiently detailed records relating to the resale of units, including disclosures that are not pre-existing documents.

Thus, per the majority, Associa had a duty to prepare and create both Form RR105c and the Regency AOA SOA for Caven's sale of his unit. I respectfully disagree with that interpretation based on the plain language of the statutes and the legislature's expressed intent in 2014, when it adopted HRS § 514B-154.5 and amended HRS § 514B-152, that it was not creating new requirements that did not previously exist. See 2014 Haw. Sess. Laws Act 188, §§ 1-2 at 641-43.

HRS § 514-152 states:

The association shall keep financial and other records sufficiently detailed to enable the association to comply with requests for information and disclosures related to resale of units. Except as otherwise provided by law, all financial and other records shall be made available pursuant to section 514B-154.5 for examination by any unit owner and the owner's authorized agents. Association records shall be stored on the island on which the association's project is located; provided that if original records, including but not limited to invoices, are required to be sent off-island, copies of the records shall be maintained on the island on which the association's project is located.

(Emphases added.)⁵ HRS § 514B-152 does not contain any language suggesting that the association must prepare or create documents

⁵ HRS § 514B-152 was amended in 2014, to its current version. The 2014 amendments to this statute were:

The association shall keep financial and other records sufficiently detailed to enable the association to comply with requests for information and disclosures related to resale of units. Except as otherwise provided by law, all financial and other records shall be made [~~reasonably~~] available pursuant to section 514B- for examination by any unit owner and the owner's authorized agents.

related to the resale of units. By its plain terms it is referring to pre-existing documents which the association must "keep," and which shall be "made available" for "examination." Further, HRS § 514B-152 does not reference a managing agent.

HRS § 514B-154.5 states in relevant part:

(a) Notwithstanding any other provision in the declaration, bylaws, or house rules, if any, the following documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, shall be made available to any unit owner and the owner's authorized agents by the managing agent, resident manager, board through a board member, or the association's representative:

- (1) All financial and other records sufficiently detailed in order to comply with requests for information and disclosures related to the resale of units;

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(b) Subject to section 514B-105(d), copies of the items in subsection (a) shall be provided to any unit owner or owner's authorized agent upon the owner's or owner's authorized agent's request; provided that the owner or owner's authorized agent pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.⁶

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(e) An association may comply with this section or section 514B-152, 514B-153, or 514B-154 by making the required documents, records, and information available to unit owners or owners' authorized agents for download through an internet site, at the option of each unit owner

2014 Haw. Sess. Laws Act 188, § 8 at 645. HRS § 514B-152, both before and after Act 188, does not impose a duty on a managing agent.

⁶ In the 2025 legislature session, HRS § 514B-154.5(b) was amended to remove the phrase "and other administrative costs associated with handling the request." See Gov. Msg. No. 1261 (June 3, 2025), https://www.capitol.hawaii.gov/sessions/session2025/bills/GM1261_.pdf [<https://perma.cc/Q4YZ-KG7L>].

or owner's authorized agent and at no cost to the unit owner or owner's authorized agent.

(f) Any fee charged to a unit owner or owner's authorized agent to obtain copies of the association's documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, shall be reasonable; provided that a reasonable fee shall include administrative and duplicating costs and shall not exceed \$1 per page, or portion thereof, except that the fee for pages exceeding eight and one-half inches by fourteen inches may exceed \$1 per page.

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(h) Nothing in this section shall be construed to create any new requirements for the release of documents, records, or information.

(Emphases added.)

In adopting Act 188, which enacted HRS § 514B-154.5, the legislature provided the following purpose and explanation:

The legislature finds that a large percentage of persons in Hawai[']i live in condominiums and are members of their condominium unit owners' association. The legislature further finds that under existing statute, condominium unit owners are entitled to receive a variety of documents, records, and information from a condominium association, board, or managing agent within thirty days of receipt of the unit owner's written request. However, the legislature also finds that references to releasing these required documents, records, and information appear throughout chapter 514B, Hawai[']i Revised Statutes, which may lead to confusion among unit owners.

Therefore, the purpose of this Act is to create a new section under chapter 514B, Hawai[']i Revised Statutes, that:

- (1) Clarifies the documents, records, and information that must be made available to any unit owner and the unit owner's authorized agents; and
- (2) Specifies that all documents, records, and information shall be provided to a unit owner no later than thirty days after receipt of the unit owner's written request.

The legislature notes that nothing in this Act creates new requirements for the release of documents, records, or information. Rather, this Act merely consolidates into one section the existing requirements for documents, records, and information that already must be released or provided to unit owners, within thirty days, under existing statute. 2014 Haw. Sess. Laws Act 188, § 1 at 641 (emphases added). See also HRS § 514B-154.5(h).

Key to this analysis is whether the Form RR105c and the Regency AOA SOA are documents/records/information "required to be provided" under HRS §§ 514B-152, 514B-153 or 514B-154, or under HRS § 514B-154.5(a)(1) requiring "records sufficiently detailed in order to comply with requests for information and disclosures related to the resale of units[.]"

As earlier noted, HRS § 514B-152 by its plain terms refers to pre-existing documents which the association must "keep," and which shall be "made available." Further, nothing in HRS §§ 514B-153 or 514B-154 indicates that a managing agent must create documents or prepare forms. Rather, HRS § 514B-154(d) indicates otherwise, stating that a managing agent shall provide records that are "maintained" as follows:

(d) The managing agent shall provide copies of association records maintained pursuant to this section and sections 514B-152 and 514B-153 to owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the managing agent of a reasonable charge to defray any administrative or duplicating costs. If the project is not managed by a managing agent, the foregoing requirements shall be undertaken by a person or entity, if any, employed by the association, to whom this function is delegated.

(Emphasis added.)

As for HRS § 514B-154.5(a)(1), requiring "records sufficiently detailed in order to comply with requests for information and disclosures related to the resale of units[,]" the plain language has no requirement to create documents. Further, consistent with the legislature's expressed intent in adopting Act 188 to consolidate existing requirements into HRS § 514B-154.5, this provision is a restatement of HRS § 514B-152, which previously addressed "disclosures related to resale of units." As noted, HRS § 514B-152 has no requirement to create documents.

For each unit involved in a sales transaction, Association employees research information from association and other records to be able to fill out Form RR105c and create an SOA.⁷

⁷ The Circuit Court's oral explanation distinguishing Form RR105c from other documents required to be provided under HRS Chapter 514B is helpful:

I contrast a questionnaire that seeks information with existing documents and information. So other than as a blank form, the information that eventually is set forth and requested in this Form RR105c doesn't exist until the party requests that it be filled out for a specific real estate transaction.

The statutes at issue require that the AOA - or that any covered AOA or planned community association maintains documentary records on an ongoing basis for the benefit of all the association members, but the information provided in the form that's at issue here is generated for the parties in a specific private transaction. . . .

So in my view, the form - the answers that are put into the form are basically a synthesis of association documents or information. In that sense, the form, when

Thus, Associa and the Regency AOA do not "maintain" such documents, nor are they "kept." See HRS § 514B-154.5(a). Each Form RR105c and SOA is individual to the subject unit and is also based on relevant information at the time they are created.

Under the legislature's intended statutory scheme, documents, records, and information must be provided to unit owners so that they can comply with providing needed disclosures. However, given the legislative purpose in adopting HRS § 514B-154.5 and because there was no legislative intent to establish new requirements, I conclude there was no statutory duty for Associa to create Form RR105c or the Regency AOA SOA in this case. Although Associa prepared the documents as a commercial

filled out, is basically an opinion that's rendered by its author. In my view, this is analogous to a title report that's prepared when a title examiner reviews recorded deeds, leases, easements or other documents that effect title. So just because the filled-out form relates to the association or is compiled based upon a review of the association's documents, that does not convert the form to a document of the association.

(Emphases added.)

The Circuit Court's analysis of the SOA is also helpful:

the fact of filling out the [SOA] does not convert the form to an association document. In that sense, it's similar to Form RR105C. It's basically an opinion by the author as to the current amount, if any, owed by the unit owner, and further it's an opinion as to what charges are routinely charged to the specific unit that would be filled out on the form.

service, the majority's holding that Associa had a duty to create these new documents is far broader than the legislature intended when it adopted HRS § 514B-154.5, given that the relevant provisions pre-dating HRS § 514B-154.5 do not contain such a mandate. See HRS § 514B-154.5(h) ("Nothing in this section shall be construed to create any new requirements for the release of documents, records, or information.").

Thus, I respectfully dissent and conclude the ICA erred in holding that Form RR105c and the Regency AOA SOA are disclosures that Associa was required to create under HRS § 514B-154.5(a). See Caven v. Certified Mgmt, Inc., No. CAAP-19-0000047, 2024 WL 1235426, at *3 (Haw. App. Mar. 22, 2024) (SDO).

I would affirm the Circuit Court's holding that Associa did not have a statutory duty to create Form RR105c and the Regency AOA SOA in this case.

B. HRS § 514B-154.5(e), by its plain language, does not apply to managing agents.

HRS § 514B-154.5(e) states in relevant part:

An association may comply with this section or section 514B-152, 514B-153, or 514B-154 by making the required documents, records, and information available to unit owners or owners' authorized agents for download through an internet site, at the option of each unit owner or owner's authorized agent and at no cost to the unit owner or owner's authorized agent.

(Emphases added.)

The plain and unambiguous language of HRS § 514B-154.5(e) provides that it applies to an "association" and not to a managing agent. HRS § 514B-3 (2018) defines "Association" as "the unit owners' association organized under section 514B-102 or under prior condominium property regime statutes." HRS § 514B-3 separately defines "Managing agent" as "any person retained, as an independent contractor, for the purpose of managing the operation of the property." Thus, I disagree with the majority's holding that where managing agents make documents available for download, they must do so at no cost under HRS § 514B-154.5(e).

This court has held that "implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself." State v. Wheeler, 121 Hawai'i 383, 390, 219 P.3d 1170, 1177 (2009) (citation omitted). "[W]here the legislature uses different terms in different parts of a statute, we must presume this was intentional, and that the legislature means two different things." In re Manuel, 152 Hawai'i 290, 298, 526 P.3d 267, 275 (2023) (internal quotation marks omitted) (quoting Peer News LLC v. City & Cnty. of Honolulu, 138 Hawai'i 53, 67, 376 P.3d 1, 15 (2016)).

The fact that an "association" and "managing agent" are independently defined in HRS § 514B-3 demonstrates the legislature's intent to treat each as a distinct entity under HRS Chapter 514B. This distinction is evident when reading through HRS §§ 514B-152, 514B-153, 514B-154 and 514B-154.5, as different provisions explicitly apply to associations, managing agents or others. Based on fundamental principles of statutory construction, I respectfully disagree with the majority's determination that it is "immaterial" for purposes of HRS § 514B-154.5(e) whether an internet site is maintained by an association or managing agent. HRS § 514B-154(d) states "[t]he managing agent shall provide copies of association records maintained pursuant to this section and sections 514B-152 and 514B-153 to owners . . . during normal business hours," and does not address in any manner the managing agent providing association records by way of download for free. (Emphasis added.) However, HRS § 514-154(g) - like HRS § 514B-154.5(e) - expressly applies to associations and states: "An association may comply with this part by making information available to unit owners, at the option of each unit owner and at no cost to the unit owner for downloading the information, through an internet site." (Emphases added.)

The majority's interpretation of HRS § 514B-154.5(e) will impact the way managing agents make documents available. HRS § 514B-154.5(e) is discretionary but given that it will now apply to managing agents, they will be disinclined to provide documents, especially those they have created or completed, for download on the internet because they will not be able to charge for the time and effort involved.

Act 161, recently signed into law and effective on June 3, 2025, further supports my view that "managing agent" should not be read into HRS § 514B-154.5(e). See Gov. Msg. No. 1261 (June 3, 2025), https://www.capitol.hawaii.gov/sessions/session2025/bills/GM1261_.pdf [<https://perma.cc/Q4YZ-KG7L>]. In Act 161, the legislature again adopted a requirement specific only to associations, creating a new section in Chapter 514B which states:

§514B- Governing documents; electronic copies. (a) Notwithstanding any other provision to the contrary in the declaration, bylaws, or house rules, an association shall provide an electronic copy of its governing documents, as amended or restated, to a unit owner or the unit owner's authorized agent, upon request, at no cost to the unit owner or the unit owner's authorized agent.

(b) For the purposes of this section, "governing documents" means the declaration; bylaws; covenants, conditions, and restrictions; and house rules.

See id. at 2 (emphases added) (formatting altered).

Additionally, Act 161 amended HRS § 514B-154.5(b) to "repeal the authority of condominium associations to charge a fee for administrative costs associated with the handling of a request

for association documents.” Conf. Comm. Rep. No. 24, at 1 (Apr. 24, 2025),

https://www.capitol.hawaii.gov/sessions/session2025/CommReports/SB385_CD1_CCR24_.pdf [<https://perma.cc/NJF9-FN64>]. The purpose of Act 161 was “to require condominium associations to make their governing documents available on the association’s website and make them accessible to all owners . . . free of charge.” S. Stand. Comm. Rep. No. 798, at 1 (Feb. 27, 2025) (emphases added), https://www.capitol.hawaii.gov/sessions/session2025/CommReports/SB385_SD1_SSCR798_.pdf [<https://perma.cc/328N-RQ8U>]. The Senate Committee on Commerce and Consumer Protection stated that “a request for a copy of the documents in electronic form is reasonable, as there would be no costs incurred to produce the copy.” Id. at 2.

The legislature continues to treat managing agents and associations separately, as the legislature only applied these new requirements in Act 161 to associations on association websites, and only repealed the authority of associations to charge a fee for administrative costs. Further, as noted by the Senate Committee on Commerce and Consumer Protection, there would be no costs to produce a copy of an association’s governing documents for download. Form RR105c and an SOA are

distinguishable because of the time and effort involved to prepare and create them.

I therefore respectfully disagree with the majority's holding that when a managing agent makes documents available for download on the internet, they must do so at no cost. I would affirm the Circuit Court's ruling that HRS § 514B-154.5(e) applies to associations and not managing agents.

II. CONCLUSION

For these reasons, I respectfully dissent. I would vacate the ICA's judgment on appeal, and affirm the Circuit Court's Final Judgment regarding Order IV and Order V entered in favor of Associa related to the issues in this appeal.

DATED: Honolulu, Hawai'i, September 5, 2025.

/s/ Lisa M. Ginoza

