

**Electronically Filed
Intermediate Court of Appeals
CAAP-24-0000479
31-AUG-2026
08:01 AM
Dkt. 68 SO**

NO. CAAP-24-0000479

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

DUDLEY LEINANI FULLARD-LEO, Trustee of the Dudley and Martha Fullard-Leo Joint Revocable Trust; BETTY FULLARD-LEO, Trustee of the Ainsley and Betty Fullard-Leo Joint Revocable Trust, Plaintiffs/Counterclaim Defendants-Appellants,

v.

HAWAIIAN ISLAND DEVELOPMENT COMPANY,
Defendant/Counterclaimant-Appellee,

and

F-L MANAGEMENT, INC., an Oregon corporation, LEAD MASTER I, LLC, a Washington limited liability company, LEAD MASTER II, LLC, a Washington limited liability company,
and MARCUS FULLARD-LEO,

Additional Counterclaim Defendants-Appellants,

and

JOHN DOES 1-10, JANE DOES 1-10, AND DOE ENTITIES 1-10,
Additional Counterclaim Defendants

(CIVIL NO. 1CC141001649)

AND

2280 KUHIO AVENUE DEVELOPMENT LLC, and F-L MANAGEMENT INC.,
Plaintiffs/Counterclaim Defendants-Appellants,

v.

PETER B. SAVIO, GARRET TOM, HAWAIIAN ISLAND STUDENT SUITES, LLC, HAWAII STUDENT SUITES, INC., HAWAIIAN ISLAND HOMES, LTD., HAWAIIAN ISLAND DEVELOPMENT CO., INC.,
KALO STUDENT SUITES, LLC,

Defendants/Counterclaimants-Appellees

and

KUHIO AVENUE HOLDING, LLC, a Washington limited liability company, DUDLEY LEINANI FULLARD-LEO, Trustee of the Dudley and Martha Fullard-Leo Joint Revocable Trust, BETTY FULLARD-LEO, Trustee of the Ainsley and Betty Fullard-Leo Joint Revocable Trust, LEAD MASTER I, LLC, a Washington limited liability

company, LEAD MASTER II, LLC, a Washington limited liability company and MARCUS FULLARD-LEO, Additional Counterclaim Defendants-Appellants,
and

JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, DOE AGENCIES 1-10, DOE GOVERNMENTAL UNITS 1-10, DOE ENTITIES 1-10, Additional Counterclaim Defendants

(CIVIL NO. 1CC141002445)

APPEALS FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT

SUMMARY DISPOSITION ORDER

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

This appeal stems from a dispute regarding a settlement agreement between Plaintiffs/Counterclaim Defendants and Additional Counterclaim Defendants-Appellants Dudley Leilani Fullard-Leo, Trustee of the Dudley and Martha Fullard-Leo Joint Revocable Trust; Betty Fullard-Leo, Trustee of the Ainsley and Betty Fullard-Leo Joint Revocable Trust; F-L Management, Inc.; Lead Master I, LLC; Lead Master II, LLC; Marcus Fullard-Leo; 2280 Kuhio Avenue Development, LLC; and Kuhio Avenue Holding, LLC (collectively, the **Fullard-Leo Parties**) and Defendants/Counterclaimants-Appellees Garret Tom, Peter B. Savio, and Hawaiian Island Homes, Ltd. (collectively, the **Savio Parties**). The Fullard-Leo Parties appeal from the *Findings of Fact, Conclusions of Law and Order Denying [the Fullard-Leo Parties'] Motion to Set Aside the Stipulation for Dismissal With Prejudice of All Claims and Parties [DKT. 289] (FOFs/COLs/Order)*, entered on June 24, 2024, in the Circuit Court of the First Circuit (**Circuit Court**).^{1/}

After a global settlement of the underlying consolidated cases and several other pending lawsuits and disputes (the **Settlement Agreement**), the parties filed an October 13, 2023 *Stipulation for Dismissal With Prejudice of All Claims and All Parties (Dismissal)*. The Dismissal was filed under Hawai'i Rules of Civil Procedure (**HRCP**) Rules 41(a)(1)(B) and 41.1, without order of the Circuit Court. The parties agreed to resolve any disputes relating to the Settlement Agreement

^{1/} The Honorable Dean E. Ochiai presided.

pursuant to a mediation/arbitration provision contained therein.

On April 15, 2024, the Fullard-Leo Parties filed a motion to vacate an arbitrator's decision (**Motion to Vacate**), which allegedly modified the Settlement Agreement in violation of the arbitrator's authority.

On April 16, 2024, the Fullard-Leo Parties filed a motion to set aside the Dismissal (**Motion to Set Aside** or **Motion**). The Motion to Set Aside cited HRCP Rule 60 and sought to set aside the Dismissal so that the Fullard-Leo Parties could file the Motion to Vacate.

On June 24, 2024, the Circuit Court entered its FOFs/COLs/Order denying the Motion to Set Aside, which concluded in part:

4. As the movants, the Fullard-Leo Parties had a burden to set forth the extraordinary circumstances justifying the request to set aside the Dismissal. See Franco v. Reinhardt, 153 Haw. 406, 415, 539 P.3d 934, 943 (2023).

5. "[E]quity principles guide Rule 60(b) motions." Franco v. Reinhardt, 153 Haw. 406, 415, 539 P.3d 934, 943 (2023) (citations omitted).

6. "HRCP Rule 60(b) (6) is not for the purpose of relieving a party from free, calculated and deliberate choices [they have] made." Pennymac Corp. v. Godinez, 148 Haw. 323, 331, 474 P.3d 264, 272 (2020) (quoting In re Hana Ranch Co., 3 Haw. App. 141, 147, 642 P.2d 938, 942 (1982)).

7. Equity weighs in favor of leaving the Dismissal in place.

8. The Fullard-Leo Parties and Savio Parties voluntarily agreed to globally resolve, settle, and dismiss all claims between them.

9. The Dismissal was a material term to the Settlement Agreement.

10. The parties to the Settlement Agreement have performed a number of subsequent actions in reliance of the Dismissal, including but not limited to, the unwinding of businesses, the transfer of property interests, and the dismissal of all other litigation.

11. Many of the parties to the Settlement Agreement were not a party to this Lawsuit or served a copy of the Motion.

12. The Fullard-Leo Parties have set forth no extraordinary circumstances to justify setting aside the Dismissal, which they voluntarily chose to execute. The Motion does not set forth sufficient basis to set aside the Dismissal. Accordingly, under the Court's discretion and

based on the foregoing reasons, the Court finds good cause does not exist to set aside the Dismissal.

(Emphases added.)

On appeal, the Fullard-Leo Parties contend that the Circuit Court abused its discretion by denying the Motion to Set Aside. Relatedly, they contend that COL 7 and part of COL 12, as underlined above, are wrong.^{2/}

In addition to addressing these contentions, the Savio Parties argue in their answering brief that the appeal should be "denied" as moot. The Savio Parties also filed an October 25, 2024 motion to dismiss the appeal (**Motion to Dismiss**) on the ground that "[t]here is [n]o [a]ppellate [j]urisdiction or [s]tanding" and because the appeal is moot.

After reviewing the record on appeal and the relevant legal authorities, and giving due consideration to the issues raised and the arguments advanced by the parties, we resolve their contentions as follows, and affirm.

A. Jurisdiction and Mootness

We first address the Savio Parties' contentions that this court lacks jurisdiction over the appeal or, alternatively, that it is moot. The Savio Parties argue: (1) "[t]here is [n]o [a]ppellate [j]urisdiction, or [s]tanding because Plaintiffs [w]aived the [r]ight to [a]ppeal" decisions by the arbitrator; and (2) the appeal is moot due to this waiver - and because the time to appeal the arbitrator's final award expired one day before the Fullard-Leo parties filed their Motion to Vacate.

The Fullard-Leo Parties correctly note that this appeal is from the Circuit Court's FOFs/COLs/Order - not a decision by the arbitrator - which denied the Motion to Set Aside the Dismissal. Regardless of the propriety of the Circuit Court's ruling, the Motion to Dismiss does not identify where the Fullard-Leo parties waived their right to a judicial appeal of the FOFs/COLs/Order.

^{2/} The opening brief fails to provide "[a] concise statement of the points of error set forth in separately numbered paragraphs[,]" as required by Hawai'i Rules of Appellate Procedure Rule 28(b)(4).

In any event, the alleged standing defect would not defeat this court's appellate jurisdiction. See Tax Found. of Hawai'i v. State, 144 Hawai'i 175, 192, 439 P.3d 127, 144 (2019) ("[I]n Hawai'i state courts, standing is not an issue of subject matter jurisdiction, but arises solely out of justiciability concerns based on prudential concerns of judicial self-governance, and is based on 'concern about the proper – and properly limited – role of courts in a democratic society.'" (footnote omitted)).

The mootness argument, like the standing argument, is based in part on the Fullard-Leo Parties' alleged waiver of the right to appeal the arbitrator's decisions. However, this does not establish a waiver of their right to appeal the FOFs/COLs/Order, which was timely filed. See Ditto v. McCurdy, 103 Hawai'i 153, 160, 80 P.3d 974, 981 (2003) ("An order denying a motion for post-judgment relief under HRCP 60(b) is an appealable final order under HRS § 641-1(a)." (citing First Tr. Co. of Hilo v. Reinhardt, 3 Haw. App. 589, 592, 655 P.2d 891, 893 (1982))). Similarly, the Fullard-Leo Parties' alleged failure to timely challenge the arbitrator's final award does not render this appeal moot.

If this court were to conclude on the merits that the FOFs/COLs/Order was erroneous, then the Fullard-Leo Parties would presumably have an effective remedy and the opportunity on remand to set aside the Dismissal and pursue any available relief. The Circuit Court did not rule on the merits of the Fullard-Leo Parties' desired challenge to the arbitrator's decision, and only concluded that they did not meet their burden to set aside the Dismissal under HRCP Rule 60(b).

Accordingly, this Court has jurisdiction to decide the appeal, and it is not moot.^{3/}

^{3/} We further note that the Dismissal, which was filed under HRCP Rules 41(a)(1)(B) and 41.1, was effective without order of the Circuit Court, and "a separate judgment [wa]s neither required nor authorized[.]" Amantiad v. Odum, 90 Hawai'i 152, 158 n.7, 977 P.2d 160, 166 n.7 (1999); see Standard Mgmt., Inc. v. Kekona, 99 Hawai'i 125, 131 n.9, 53 P.3d 264, 270 n.9 (App. 2001) (a stipulation executed by the parties under HRCP Rule 41(a)(1)(B) "is regarded as a final adjudication on the merits . . . and hence obviates the need for a final judgment terminating the lawsuit" (citation omitted)). In
(continued...)

B. The Fullard-Leo Parties' Contentions

The Fullard-Leo Parties contend that the Circuit Court abused its discretion in denying the Motion to Set Aside where the court "had jurisdiction and the inherent authority to review the Motion to Set Aside." More specifically, the Fullard-Leo Parties argue that: (1) this court's decision in Gilmartin v. Abastillas, 10 Haw. App. 283, 869 P.2d 1346 (1994), which authorized the filing of the Motion to Set Aside, did not require a showing of extraordinary circumstances to vacate the Dismissal; (2) the Circuit Court expressly retained jurisdiction and the inherent authority to enforce the Settlement Agreement;^{4/} and (3) alternatively, the Leo-Fullard parties met the "exceptional circumstances" standard to vacate the Dismissal under HRCF Rule 60(b) (6).

"The trial court has a very large measure of discretion in passing upon motions under HRCF Rule 60(b) and its order will not be set aside unless we are persuaded that under the circumstances of the particular case, the court's refusal to set aside its order was an abuse of discretion." James B. Nutter & Co. v. Namahoe, 153 Hawai'i 149, 161, 528 P.3d 222, 234 (2023) (brackets omitted) (quoting Haw. Hous. Auth. v. Uyehara, 77 Hawai'i 144, 147, 883 P.2d 65, 68 (1994)). "The burden of establishing abuse of discretion in denying a HRCF Rule 60(b) motion is on the appellant, and a strong showing is required to establish it." Id. at 162, 528 P.3d at 235 (quoting Ditto, 103 Hawai'i at 162, 80 P.3d at 983).

In Gilmartin, this court ruled:

A dismissal of a lawsuit with prejudice is generally regarded as an adjudication on the merits of all issues that were raised or could have been raised in the pleadings . . . and terminating the trial court's jurisdiction over the

^{3/} (...continued)
this context, we have jurisdiction to review the FOFs/COLs/Order. See Amantiad, 90 Hawai'i at 158 n.7, 977 P.2d at 166 n.7.

^{4/} The Fullard-Leo Parties argue that during the settlement hearing, the Circuit Court stated that it would retain such jurisdiction, and the parties agreed in the Dismissal that the Circuit Court "retains jurisdiction with respect to enforcement of the Settlement and as otherwise stated in the Settlement." We note, however, that the Dismissal was filed under HRCF Rules 41(a) (1) (B) and 41.1 without order of the Circuit Court. See supra.

lawsuit.

When an action is dismissed with prejudice as part of a settlement agreement which is subsequently breached, the trial court thereafter has no jurisdiction to enforce the settlement agreement unless a party to the agreement takes one of two courses of action.

First, an independent action may be brought for specific performance of the settlement agreement.

Second, a motion to vacate the dismissal order and reopen the original proceedings may be filed. Unless the vacatur is first granted, however, no jurisdiction would exist in the court to enter any remedial orders in the case.

10 Haw. App. at 288-89, 869 P.2d at 1349-50 (citations and footnote omitted); see Amantiad, 90 Hawai'i at 159, 977 P.2d at 167 (adopting and quoting the reasoning of Gilmartin).

We further noted in Gilmartin that "[t]he authority for filing a motion to vacate an order of dismissal [upon a stipulated dismissal] is HRCPP Rule 60(b)(6), which provides, in pertinent part[, that] . . . '[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: . . . (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time.'" 10 Haw. App. at 289 n.3, 869 P.2d at 1349 n.3 (formatting altered, original brackets omitted); see Kekona, 99 Hawai'i at 131-32, 53 P.3d at 270-71 (applying HRCPP Rule 60(b)(6) to a stipulated dismissal filed under HRCPP Rule 41(a)(1)(B)).

Gilmartin set out the means by which a trial court may gain jurisdiction over disputes concerning a settlement agreement that produced a stipulated dismissal with prejudice. It did not change the applicable standard when a party opts to file a motion for relief under HRCPP Rule 60(b)(6). "HRCPP Rule 60(b)(6) provides for extraordinary relief and is only invoked upon a showing of exceptional circumstances." Uyehara, 77 Hawai'i at 148, 883 P.2d at 69 (brackets omitted) (quoting Isemoto Contracting Co. v. Andrade, 1 Haw. App. 202, 205, 616 P.2d 1022, 1025 (1980)); see Franco v. Reinhardt, 153 Hawai'i 406, 415, 539 P.3d 934, 943 (2023). "HRCPP Rule 60(b)(6) 'is not for the purpose of relieving a party from free, calculated and deliberate

choices they have made.'" Pennymac Corp. v. Godinez, 148 Hawai'i 323, 331, 474 P.3d 264, 272 (2020) (brackets omitted) (quoting Uyehara, 77 Hawai'i at 149, 883 P.2d at 70).

Here, the Motion to Set Aside merely asserted that relief was necessary to allow the Fullard-Leo Parties to file their Motion to Vacate the disputed arbitration award, quoted a portion of the Dismissal, and generally referenced HRCP Rule 60 and the attached declaration of counsel. That declaration offered only a conclusory statement that "[g]ood cause exists to grant the instant Motion as the Arbitrator clearly exceeded its authority in modifying the terms of the Settlement Agreement, and court intervention is needed to resolve this dispute."

In denying the Motion to Set Aside, the Circuit Court made the following findings, among others, none of which are disputed:^{5/} (1) "the Fullard-Leo Parties and the Savio-Parties agreed to settle any and all claims between them through a global walkway of all disputes" (FOF 4); (2) "the Fullard-Leo Parties, Savio Parties, and a number of other related persons and entities executed [the Settlement Agreement]" (FOF 5); (3) "[t]he Settlement Agreement was executed by 51 separate parties" (FOF 6); (4) "[n]ot all parties to the Settlement Agreement are parties to this Lawsuit" (FOF 7) and "[m]any of the parties to the Settlement Agreement were not . . . served a copy of the Motion" (COL 11); (5) "[t]he Settlement Agreement explicitly states, among other things, that the Fullard-Leo Parties and Savio Parties intended to effectuate a global and final resolution between the parties" (FOF 8); and (6) "[t]he parties to the Settlement Agreement have also performed a number of subsequent actions in reliance on the Dismissal, including but not limited to, the unwinding of their businesses, the transfer of property interests as required and governed by the Settlement Agreement, and the dismissal of all other litigation and/or the waiver and release of other pending or unfiled claims the parties had against each other" (FOF 15).

^{5/} See Okada Trucking Co. v. Bd. of Water Supply, 97 Hawai'i 450, 458, 40 P.3d 73, 81 (2002) (unchallenged findings of fact are binding on appeal).

The Circuit Court considered these and other factors in light of the conclusory Motion to Set Aside and determined that "[e]quity weighs in favor of leaving the Dismissal in place" and "[t]he Fullard-Leo Parties have set forth no extraordinary circumstances to justify setting aside the Dismissal" On this record, we cannot conclude that COL 7 or 12 is wrong or that the Circuit Court abused its discretion in denying the Motion to Set Aside.

For these reasons, we affirm the *Findings of Fact, Conclusions of Law, and Order Denying Plaintiffs', Counterclaim Defendants', and Additional Counterclaim Defendants' Motion to Set Aside the Stipulation for Dismissal With Prejudice of All Claims and Parties [DKT. 289]*, entered on June 24, 2024, in the Circuit Court of the First Circuit.

DATED: Honolulu, Hawai'i, August 31, 2026.

On the briefs:

Christian P. Porter and
H. Maxwell Kopper
(Porter Kiakona Kopper, LLP)
for Plaintiffs/Counterclaim
Defendants and Additional
Counterclaim Defendants-
Appellants Dudley Leilani
Fullard-Leo, Trustee of the
Dudley and Martha Fullard-Leo
Joint Revocable Trust; Betty
Fullard-Leo, Trustee of the
Ainsley and Betty Fullard-Leo
Joint Revocable Trust; F-L
Management, Inc.; Lead Master
I, LLC; Lead Master II, LLC;
Marcus Fullard-Leo; 2280 Kuhio
Avenue Development, LLC; and
Kuhio Avenue Holding, LLC.

/s/ Clyde J. Wadsworth
Presiding Judge

/s/ Sonja M.P. McCullen
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge

Harvey J. Lung,
Grant F. Allison, and
David E. Case
(Lung Rose Voss & Wagnild)
for Defendants/Counter-
claimants-Appellees Garret
Tom, Peter B. Savio, and
Hawaiian Island Homes, Ltd.