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NO. CAAP-24-0000580

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

ASSOCIATION OF APARTMENT OWNERS OF MAUI KAI,
Plaintiff-Appellee,
v.
THOMAS HOLT COFFEY, AS TRUSTEE UNDER THAT CERTAIN
UNRECORDED THOMAS HOLT COFFEY REVOCABLE LIVING TRUST
DATED SEPTEMBER 29, 1982, AS COMPLETELY RESTATED ON
JUNE 2, 2000, AS AMENDED, Defendant-Appellant,
and
JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10,
DOE CORPORATIONS, DOE ENTITIES AND DOE GOVERNMENTAL UNITS 1-10,
Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CASE NO. 2CCV-23-0000144)

SUMMARY DISPOSITION ORDER
(By: Leonard, Presiding Judge, and Wadsworth and Guidry, JJ.)

This appeal arises out of a dispute concerning the replacement of lanai sliding doors and exterior windows for two condominium units in the Maui Kai condominium project (the **Project**) in Kāʻanapali owned by Defendant-Appellant Thomas Holt Coffey, as Trustee Under that Certain Unrecorded Thomas Holt Coffey Revocable Living Trust Dated September 29, 1982, as Completely Restated on June 2, 2000, as Amended (**Coffey**). Plaintiff-Appellee Association of Apartment Owners of Maui Kai (**AOAO**) asserted, and the Circuit Court of the Second Circuit[1/] (**Circuit Court**) agreed, that these sliding doors and exterior

[1/] The Honorable Kelsey T. Kawano presided.

windows are limited common elements for which the costs of replacement are the responsibility of the unit owner. Coffey appeals from the Circuit Court's July 31, 2024 *Judgment* entered in favor of the AOAO. Coffey also challenges the July 31, 2024 *Findings of Fact, Conclusions of Law, and Order Granting in Part and Denying in Part [the AOAO's] Motion for Default Judgment and Summary Judgment Against [Coffey]*.

On appeal, Coffey contends that the Circuit Court erred: (1) "when it allowed the Complaint for Declaratory Relief [(**Complaint**)] filed [o]n May [23,] 2023[,] to proceed when Mr. Coffey sought to arbitrate this matter pursuant to Hawaii Revised Statutes [(**HRS**)] § 514B-162[,]" quoted below; (2) "when it found that this action is not subject to mandatory arbitration and that the action was properly filed in the Circuit Court"; and (3) "when it found that the lanai sliding doors, exterior windows, and the frames and hardware for such doors and windows in the apartments at the Project are limited common elements and that Mr. Coffey is responsible for the costs of repair and replacement."

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 Coffey's contentions as follows, and affirm.

(1) and (2) Coffey contends that his dispute with the AOAO was subject to mandatory arbitration under HRS § 514B-162 and that the Circuit Court erred in allowing the AOAO's Complaint to proceed and in resolving its claim for declaratory relief.

It is uncontested that Coffey demanded arbitration of his dispute with the AOAO pursuant to HRS § 514B-162. Additionally, the record shows that both parties initially agreed to arbitrate, but after one arbitrator withdrew, the parties were unable to agree on another arbitrator before the AOAO filed the Complaint. The AOAO contends that its declaratory relief claim was exempt from arbitration under HRS § 514B-162(b) and, in any event, Coffey waived his right to arbitrate by acts that "were inconsistent with an intent to actually arbitrate."

HRS § 514B-162(a) (2018) provides, in relevant part:

> **Arbitration.** (a) At the request of any party, any dispute concerning or involving one or more unit owners and an association, its board, managing agent, or one or more other unit owners relating to the interpretation, application, or enforcement of this chapter or the association's declaration, bylaws, or house rules adopted in accordance with its bylaws shall be submitted to arbitration. The arbitration shall be conducted, unless otherwise agreed by the parties, in accordance with the rules adopted by the commission and of chapter 658A[.]

Under this provision, any party to a dispute involving a condominium unit owner and a condominium association can request that the matter be submitted to arbitration. However, HRS § 514B-162(b) exempts certain disputes from arbitration and, here, the AOAO invoked the following exemptions:

> (b) Nothing in subsection (a) shall be interpreted to mandate the arbitration of any dispute involving:
>
> . . . .
>
> (4) Actions seeking equitable relief involving threatened property damage or the health or safety of unit owners or any other person;
>
> . . . .
>
> (7) Actions for amounts in excess of $2,500 against an association, a board, or one or more directors, officers, agents, employees, or other persons, if insurance coverage under a policy or policies procured by the association or its board would be unavailable because action by arbitration was pursued[.]

The dispute between the parties – which involves defective sliding glass doors and exterior windows in need of replacement – falls squarely within the scope of subsection (b)(4). The Complaint asserted a single claim for equitable (*i.e.*, declaratory) relief, seeking a determination that the disputed doors and windows are limited common elements, the owner to which those elements are appurtenant is responsible for paying the costs of their maintenance and replacement, and the AOAO may deny approval if Coffey's proposed replacements do not meet their specifications. The Complaint alleged in part:

> 23. [Coffey] has further demanded, and continues to demand, that the sliding glass door in Apartment 901 be replaced with a door smaller in size of [Coffey]'s choice, although the door does not meet the specifications set forth by the [AOAO's Board of Directors (**Board**)] and the Board has

> determined that the installation of a smaller door may jeopardize the soundness or safety of the building and reduce the value of the Project by providing a non-uniform appearance.
>
> . . . .
>
> 29. This dispute is not subject to arbitration under HRS §§ 514B-162(b)(4) and (7) as this is an action seeking equitable relief involving threatened property damage and insurance coverage is unavailable.

In correspondence to Coffey that preceded the lawsuit, the AOAO similarly informed him that installing a smaller lanai door, as he allegedly said he would do, "possibly impacts the structural integrity of the building, waterproofing, and other common elements . . . ."[2] On this record, the parties' dispute was exempt from arbitration under HRS § 514B-162(b)(4), and the Circuit Court did not err in concluding that the Complaint was not subject to mandatory arbitration.[3]

(3) Coffey contends that the Circuit Court erred in concluding that "the lanai sliding doors, exterior windows, and the frames and hardware for such doors and windows in the apartments at the Project are limited common elements ***and that*** Mr. Coffey is responsible for the costs of repair and replacement." He argues that under HRS § 514B-41, quoted below, charges to owners for limited common element costs and expenses must be determined as set forth in the condominium declaration; here, the AOAO relied on a resolution by the Board; and "[t]here was no evidence below confirming that the . . . Maui Kai condominium declaration was the basis for charging Mr. Coffey for the costs of repair and replacement."

Coffey makes no argument supporting his contention that the lanai sliding doors and exterior windows were erroneously determined to be limited common elements. See Hawaiʻi Rules of Appellate Procedure Rule 28(b)(7). In any event, the applicable authorities support the Circuit Court's conclusion.

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[2] Moreover, in opposing the AOAO's later motion for default judgment and summary judgment, Coffey stated in his declaration: "The glass can fall out of the failing frames causing injury to a tenant and prevent the use for months from the deteriorating doors. The glass was falling out of one of my units."

[3] Accordingly, we need not decide whether the dispute was exempt from arbitration under HRS § 514B-162(b)(7).

"Generally, the declaration and bylaws of a condominium serve as a contract between the condominium owners and the association, establishing the rules governing the condominium." Harrison v. Casa De Emdeko, Inc., 142 Hawaiʻi 218, 226, 418 P.3d 559, 567 (2018) (citing Ass'n of Apartment Owners of Maalaea Kai, Inc. v. Stillson, 108 Hawaiʻi 2, 9, 116 P.3d 644, 651 (2005)). Here, however, there is no dispute that the Declaration of Horizontal Property Regime of Maui Kai (**Declaration**), recorded in 1969, does not classify the lanai sliding doors or perimeter windows as common elements or limited common elements, and does not discuss who is responsible for the costs and expenses of limited common elements. The Restated By-Laws of the Association of Apartment Owners of Maui Kai as of July 13, 1991 (**By Laws**), are similarly silent on these issues. In these circumstances, we turn to applicable statutory law. See Harrison, 142 Hawaiʻi at 227, 418 P.3d at 568.

HRS § 514B-35 applies. It states, in relevant part:

> **Unit boundaries.** Except as provided by the declaration:
>
> . . . .
>
> (4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, lanais, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but are located outside the unit's boundaries, are limited common elements appurtenant exclusively to that unit.

HRS § 514B-35(4) (2018) (emphases added). Under HRS § 514B-3, "'[l]imited common element' means a portion of the common elements designated by the declaration or by operation of section 514B-35 for the exclusive use of one or more but fewer than all of the units." (Emphasis added.)

Here, Coffey does not dispute that the lanai sliding glass door and exterior windows in each of his units serve only the respective unit. They are therefore limited common elements by operation of law, and the Circuit Court did not err in reaching this conclusion.

As for payment of limited common element expenses, HRS § 514B-41(a) (2018) provided, during the relevant time period:

> **Common profits and expenses.** (a) The common profits of the property shall be distributed among, and the common expenses shall be charged to, the unit owners, including the developer, in proportion to the common interest appurtenant to their respective units, except as otherwise provided in the declaration or bylaws. In a mixed-use project containing units for both residential and nonresidential use, the charges and distributions may be apportioned in a fair and equitable manner as set forth in the declaration. <u>Except as otherwise provided in subsection (c) or the declaration or bylaws, all limited common element costs and expenses, including but not limited to maintenance, repair, replacement, additions, and improvements, shall be charged to the owner or owners of the unit or units to which the limited common element is appurtenant in an equitable manner as set forth in the declaration</u>.

(Emphasis added.)

Subsection (c) allows a condominium board to adopt a resolution to assess certain limited common element expenses based on the undivided common interest appurtenant to each unit, "if the board reasonably determines that the extra cost incurred to separately account for and charge for the [limited common element expenses] is not justified[.]" HRS § 514B-41(c). In the absence of such a resolution, or some alternative provision in the declaration or by-laws, the default rule embodied in HRS § 514B-41(a) appears to require the condominium board to charge the owner of the unit to which the limited common element is appurtenant for related expenses.

Here, as discussed above, neither the Declaration nor the By-Laws address who is responsible for limited common element expenses. It is also undisputed that the Board did <u>not</u> adopt a resolution under HRS § 514B-41(c).[4] In these circumstances, we do not read HRS § 514B-41(a) as applying only when a condominium declaration or by-laws expressly identifies who is responsible for these expenses. On this record, the Circuit Court did not err in concluding that Coffey is responsible for the costs and expenses of the lanai doors and exterior windows appurtenant to his units.

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[4] Indeed, while this dispute was pending, the Board adopted an October 30, 2022 resolution confirming that each owner is responsible for his or her own exterior windows and lanai doors. <u>See</u> Hawaiʻi Administrative Rules § 16-107-65(b) ("If the project's declaration and association's by-laws fail to clearly state whether a particular part of a condominium project is association property, the board may adopt a resolution allocating responsibility for that part to the association, an individual owner, or individual owners.").

For the reasons discussed above, the July 31, 2024 *Judgment* is affirmed.

DATED: Honolulu, Hawaiʻi, September 11, 2026.

On the briefs:

Mitchell S. Wong
for Defendant-Appellant.

Shannon S. Sheldon,
Kristine Tsukiyama, and
Kelly A. Laprade
(Horovitz Tilley LLC)
for Plaintiff-Appellee.

/s/ Katherine G. Leonard
Presiding Judge

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge