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NO. CAAP-24-0000649

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

ONE WAILEA DEVELOPMENT LLC, Appellant-Appellant, v.
MAUI PLANNING COMMISSION, Appellee-Appellee
and WAILEA SF-S PARTNERS LP, Appellee/Intervenor-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CASE NO. 2CCV-23-0000154)

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

The Maui County **Planning Commission** granted a Special Management Area Use **Permit** to One Wailea Development **LLC** in June 1999. The Planning Commission decided to "close and/or terminate" the Permit on February 14, 2023. LLC appealed the Planning Commission's *Findings of Fact, Conclusions of Law,* ***Decision and Order*** *Closing Subject SMA Permit SM1 1999/0010* to the Circuit Court of the Second Circuit. The circuit court affirmed the Decision and Order, granted the Planning Commission's motion for sanctions, and entered a *Final Judgment*.[1] LLC filed this secondary appeal. We affirm.

In May 1999, Michael J. **Szymanski** contracted to buy 21.3 acres of real **Property** on Maui from **Wailea Resort** Company. Szymanski then formed LLC; he is its sole member and manager. Szymanski planned to use LLC to develop the Property into twenty single-family home lots.

[1] The Honorable Kirstin M. Hamman presided.

The Property is located in a Coastal Zone Management Special Management Area (**SMA**). Development in an SMA requires a permit. Hawaii Revised Statutes (**HRS**) § 205A-28 (2017). LLC applied to the Maui County **Planning Department** for an SMA use permit in June 1999. The Planning Commission's SMA **Rules** required the applicant to provide "documentation of ownership or authorization by the owners of the parcel on which the proposed action is to occur[.]" SMA Rules § 12-202-12(c)(2)(A).[2] LLC's application included a letter from Wailea Resort Co. authorizing LLC to apply for the SMA use permit.

By letter dated November 24, 1999, the Planning Department informed LLC that the Planning Commission had approved its permit application, subject to conditions. LLC had to start construction by November 30, 2001, and construction had to be completed within five years.

Beginning in October 2001 LLC asked for, and received, several extensions of the deadline to begin construction because Szymanski was "working with the seller to complete the sale" of the Property.

The Szymanski-Wailea Resort Co. transaction did not go well. In July 2002, Title Guaranty Escrow Services filed an **Interpleader Action** for funds it held in escrow. Title Guar. Escrow Servs., Inc. v. Wailea Resort Co., 146 Hawaiʻi 34, 38, 456 P.3d 107, 111 (2019) (**Title Guaranty**). Szymanski and Wailea

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[2] SMA Rules § 12-202-12 (eff. Sept. 28, 1997) provided:

> (c) Assessment applications shall be filed in accordance with the following:
>
> . . . .
>
> (2) Any applicant seeking an assessment shall submit an application form, provided by the department, to the central coordinating agency. The application shall require the following information and documentation:
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> (A) Identification of the applicant along with documentation of ownership or authorization by the owners of the parcel on which the proposed action is to occur[.]

Resort Co. filed cross-claims. Id. Each claimed the other had breached their **Land Sales Contract.**

In September 2002 LLC asked for a 90-day extension of the deadline to complete construction because it was in "the final stages of closing the transaction and are awaiting the partial mortgage release from the seller's Japanese lender." The Planning Department stated it would hold LLC's request "in abeyance until December 31, 2002, however,
this will be the last deferral to be granted. After this date the request will be forwarded to the Maui Planning Commission for appropriate action."

In December 2002 LLC asked for another extension of the deadline to complete construction. In January 2003 the Planning Department asked Wailea Resort Co. whether it continued to authorize LLC to proceed to develop the Property. In February 2003 LLC's attorney told the Planning Department about the Interpleader Action and opined that LLC was likely to "obtain a decree of specific performance requiring [Wailea Resort Co.] to comply with the Contract and convey the [P]roperty to Szymanski." It appears that the Planning Department took no further action pending resolution of the Interpleader Action.

In 2004 the trial court presiding over the Interpleader Action granted summary judgment on Szymanski's and Wailea Resort Co.'s cross-claims. The court ruled that Szymanski breached the Land Sales Contract and was not entitled to specific performance by Wailea Resort Co. The **2004 Summary Judgment** was certified as final under Hawaiʻi Rules of Civil Procedure (**HRCP**) Rule 54(b). Szymanski appealed. We affirmed. Title Guar. Escrow Servs., Inc. v. Szymanski, No. 27254, 2009 WL 1112604 (Haw. App. Apr. 27, 2009) (SDO), cert. rejected, 2009 WL 2974724 (Haw. Sept. 17, 2009). The only issue remaining was who should receive the interpleaded funds.

Szymanski nevertheless continued to challenge the 2004 Summary Judgment. He moved to vacate the 2004 Summary Judgment, arguing the judge who entered it should have recused. See Title Guaranty, 146 Hawaiʻi at 39, 456 P.3d at 112. The motion was denied. Id. at 40, 456 P.3d at 113. Szymanski moved for

reconsideration. Id. Reconsideration was denied. Id. Szymanski appealed. We affirmed. Title Guar. Escrow Servs., Inc. v. Wailea Resort Co., No. CAAP-12-0000711, 2016 WL 4555771 (Haw. App. Aug. 31, 2016) (mem. op.), cert. rejected, 2017 WL 127710 (Haw. Jan. 12, 2017), cert. rejected, 2018 WL 5817276 (Haw. Nov. 7, 2018), cert. denied. sub nom., Szymanski v. Wailea Resort Co., 583 U.S. 827, 138 S. Ct. 164, 199 L. Ed. 2d 39 (2017).

Undaunted, "Szymanski filed yet another motion to vacate" the 2004 Summary Judgment based on the trial judge's failure to recuse. Title Guaranty, 146 Hawaiʻi at 41, 456 P.3d at 114. The motion was denied. Id. at 42, 456 P.3d at 115. Szymanski appealed. We affirmed. Title Guar. Escrow Servs., Inc. v. Wailea Resort Co., Nos. CAAP-14-0001138 and CAAP-16-0000034, 2018 WL 3198379 (Haw. App. June 29, 2018) (SDO), aff'd in part, vacated in part, 146 Hawaiʻi 34, 456 P.3d 107 (2019).

On certiorari, the supreme court affirmed the denial of the motion to vacate the 2004 Summary Judgment. Title Guaranty, 146 Hawaiʻi at 46, 456 P.3d at 119 (holding that "the ICA did not err in applying the law of the case doctrine with respect to Szymanski's 2014 Renewed Motion to Vacate Judge Loo's 2004 Summary Judgment Orders that again asserted Judge Loo should have been disqualified"). The 2019 Title Guaranty decision conclusively affirmed that Szymanski breached the Land Sales Contract and was not entitled to specific performance by Wailea Resort Co. The supreme court also held that we erred by affirming the circuit court's disbursal of the escrowed funds to Wailea Resort Co., and remanded to the circuit court for disposition of the funds. Id. at 48-49, 456 P.3d at 121-22.

On October 6, 2020, the Planning Department notified LLC it had determined that LLC had neither an ownership interest in, nor authorization from Wailea Resort Co. to develop, the Property. The Planning Department closed LLC's Permit.

LLC requested a contested case hearing. A hearing officer was appointed. The hearing officer proposed findings of fact and conclusions of law, and recommended a decision. The

Planning Commission adopted the hearing officer's report and recommendation, and entered the Decision and Order on February 14, 2023. LLC requested reconsideration. The Planning Commission denied reconsideration.

LLC appealed to the circuit court. The circuit court affirmed the Decision and Order. The court also granted the Planning Commission's motion for HRCP Rule 11 sanctions against LLC. The Final Judgment was entered on June 6, 2024. LLC moved for reconsideration. Reconsideration was denied. This secondary appeal followed.

(1) LLC contends the circuit court "made numerous procedural errors, and numerous factual and legal errors." But in this secondary appeal, we apply the standards in HRS § 91-14(g) (2012 & Supp. 2019) to the Planning Commission's Decision and Order, not to the circuit court's order affirming it. Sierra Club v. D.R. Horton-Schuler Homes, LLC, 136 Hawaiʻi 505, 515-16, 364 P.3d 213, 223-24 (2015).

LLC contends the Decision and Order was arbitrary and capricious and should be vacated under HRS § 91-14(g)(6). LLC challenges the Planning Commission's findings of fact (**FOF**) nos. 55 and 56. The Planning Commission's other findings of fact, which are unchallenged, are binding on appeal. Okada Trucking Co. v. Bd. of Water Supply, 97 Hawaiʻi 450, 459, 40 P.3d 73, 82 (2002).

The Decision and Order stated:

> 55. The Supreme Court remanded the matter to the Circuit Court only as to the deposit issue: "[W]e vacate the ICA's judgment on appeal only as to the disbursal of escrow funds to [WRC]. This case is remanded to the circuit court for further proceedings consistent with this opinion." (December 24, 2019 Hawaii Supreme Court decision[.])
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> 56. As a result of these court appeals regarding the status of the Land Sales Contract, it has now been judicially determined that:
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> a. Szymanski was the party in breach of obligations under the Land Sales Contract;
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> b. Szymanski is not entitled to an order directing that the Land Sales Contract should be specifically performed such that Szymanski would become the party entitled to be the owner and successful buyer of the Subject Property;

> c. The Land Sales Contract has been terminated, and
>
> d. The only remaining issue to be determined is a question of who is entitled to receive the interpleaded escrow funds of $50,000 and associated interest. (December 24, 2019 Hawaii Supreme Court decision[.])

The label *finding of fact* or *conclusion of law* does not determine the standard of review. Pave v. Prod. Processing, Inc., 152 Hawaiʻi 164, 171, 524 P.3d 355, 362 (App. 2022). Whether a determination is a finding of fact, a conclusion of law, or a mixed finding and conclusion is a question of law freely reviewable on appeal. Id. FOF nos. 55 and 56 were actually conclusions of law construing the 2019 Title Guaranty decision.

We review an agency's conclusions of law de novo under the *right/wrong* standard. Sierra Club, 136 Hawaiʻi at 516, 364 P.3d at 224. The supreme court's 2019 Title Guaranty decision conclusively affirmed that Szymanski breached the contract to buy the Property and was not entitled to specific performance by Wailea Resort Co. FOF nos. 55 and 56 were right.

The Planning Commission then concluded:

> 13. Szymanski and [LLC] do not have any ownership interest in the Subject Property nor any contractual right to purchase or acquire an interest in the Subject Property and have no authorization from the owner of the Subject Property to pursue a SMA permit. Consequently, [LLC] and Szymanski do not qualify for and are not entitled to be a holder of an SMA permit for the Subject Property.
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> 14. Accordingly, it is appropriate for the Department to close and/or terminate the subject SMA permit. *See* the Commission's SMA Rules, Chapter 202, §[ ]12-202-12(c)(2)(A) (an applicant for an SMA use permit must provide "documents of **ownership** or **authorization by the owner** of the parcel on which the proposed action is to occur.") (emphasis added).

These conclusions of law were also right.

LLC contends it was the "owner" because it held "an equitable interest" in the Property. LLC's briefs fail to describe the nature of the equitable interest, how it arose, or why it was not divested by the supreme court's 2019 Title Guaranty decision. We disregard the point of error. See Hawaiʻi

Rules of Appellate Procedure (**HRAP**) Rule 28(b)(7) ("Points not argued may be deemed waived.").

LLC's other arguments are utterly devoid of merit.

The Planning Commission's decision to "close and/or terminate" the Permit correctly applied the Title Guaranty decision and SMA Rules § 12-202-12(c)(2)(A) to the uncontroverted facts. The circuit court was right to affirm the Decision and Order.

(2) LLC's opening brief identifies the circuit court's order granting the Planning Commission's motion for HRCP Rule 11 sanctions as a point of error, but does not argue the point. It is waived. HRAP Rule 28(b)(7).

The circuit court's June 6, 2024 *Final Judgment* is affirmed. The Maui County Planning Commission's February 14, 2023 *Findings of Fact, Conclusions of Law, Decision and Order Closing Subject SMA Permit SM1 1999/0010* is affirmed.

DATED: Honolulu, Hawaiʻi, November 24, 2026.

On the briefs:

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One Wailea Development LLC.

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Appellee Wailea SF-S
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Maui Planning Commission.

/s/ Katherine G. Leonard
Presiding Judge

/s/ Keith K. Hiraoka
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge