

NO. 23336

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

BANK OF HAWAII, Plaintiff-Appellee, v.  
JAMES J. BROWN, Defendant-Appellant, and  
PACIFIC ISLAND ADVENTURE, a Hawai'i corporation,  
and RICHARD W. LEWIS, Defendants-Appellees

APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 93-5027)

ORDER DENYING MOTION FOR RECONSIDERATION

(By: Burns, C.J., Lim and Foley, JJ.)

Plaintiff-Appellee Bank of Hawaii (BOH) filed its complaint on December 29, 1993, for the principal sum of \$6,209.99. The March 10, 2000 judgment included an award of \$6,413.91 interest. In an opinion filed on March 15, 2001, this court decided that the circuit court did not abuse its discretion in awarding the prejudgment interest.

In Defendant-Appellant's Motion for Reconsideration filed on March 23, 2001, Defendant-Appellant James J. Brown (Brown) alleges that in the related circuit court case, Civil No. 93-5028, Bank of Hawaii v. Villas of Hawaii, Inc., Richard W. Lewis and James J. Brown (the appeal of which in No. 23217 was dismissed on July 7, 2000, for lack of appellate jurisdiction),

[w]hile [BOH] was granted judgment in the principal amount of \$4,356.37, interest was reduced from \$4,759.50 (calculated at the annual rate of 16.5% from February 4, 1993 through September 29, 1999) to \$1,428.25 (calculated at the rate of 16.5% for the period

from February 4, 1993 through February 10, 1995).<sup>1</sup>

(Footnote added.)

Brown argues that

[b]y affirming the circuit court's March 10, 2000 judgment in favor of [BOH] and the award of prejudgment interest contained therein, the parties have an inconsistent result in cases which for all practical purposes are identical, with the only substantive difference being the existence of an additional named defendant in the related case. There is no factual or legal basis to have the result in this case, where prejudgment interest of \$6,413.91 was allowed, and a different result in . . . Civil No. 93-5028, where interest was reduced to \$1,428.25, pursuant to HRS Section 636-16.

For the following reasons, Brown's argument is without merit. First, we have only his word that "for all practical purposes [the two cases] are identical, with the only substantive difference being the existence of an additional named defendant in the related case." Second, the fact that both cases were decided by the same circuit court judge suggests that the two cases were not identical. Third, assuming the two cases were for all practical purposes identical, in matters involving the court's discretion, it is the appellant's burden to show an abuse, and the mere showing of different results in cases that are for all practical purposes identical does not satisfy that burden.

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<sup>1</sup> Hawaii Revised Statutes § 636-16 (1993) states, in relevant part, that "[i]n awarding interest in civil cases, the judge is authorized to designate the commencement date to conform with the circumstances of each case[.]" It does not authorize the judge to designate the termination date.

Accordingly, Defendant-Appellant's Motion for Reconsideration filed on March 23, 2001, is denied.

DATED: Honolulu, Hawai'i, March 30, 2001.

On the motion:

Steven Guttman and  
Adrian W. Rosehill  
for Defendant-Appellant.

Chief Judge

Associate Judge

Associate Judge