

*** NOT FOR PUBLICATION ***

NO. 24605

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

ESTATE OF ROGER ROXAS,

and

GOLDEN BUDHA CORPORATION,
Plaintiffs-Appellants/Cross-Appellees,

vs.

IMELDA MARCOS,
Defendant-Appellee/Cross-Appellant,

and

FERDINAND MARCOS, Defendant.

E. M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Civ. No. 88-0522)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Duffy, JJ., and
Circuit Judge Alm, in place of Acoba, J., recused.)

The plaintiffs-appellants/cross-appellees the Estate of Roger Roxas and the Golden Budha Corporation (GBC) [collectively, hereinafter, "the Appellants"] appeal from, and the defendant-appellee/cross-appellant Imelda Marcos [hereinafter, "Imelda"] cross-appeals from, the fourth amended judgment, filed on September 6, 2001, of the circuit court of the first circuit, the Honorable Marie N. Milks presiding.

On appeal, the Appellants contend that the circuit court erred in: (1) its determination of the "reasonable period of time" during which the highest daily price of gold would fix the proper amount of damages [hereinafter, "reasonable period"]; and (2) denying the Appellants' motion to grant relief pursuant to Hawai'i Rules of Civil Procedure (HRCP) Rule 60(b) by

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including as defendants Imelda and Ferdinand Marcos II, as personal representatives of the Estate of Ferdinand Marcos.

Imelda alleges in her cross-appeal that the circuit court erred in: (1) "conclud[ing] that a reasonable investor with adequate funds would have waited until nearly four years after the . . . conversion to replace the converted gold"; and (2) "finding . . . that '[f]rom April 5, 1971 until November 19, 1974, there was no continuous period of 30 days that Roxas was not in fear for his safety, in custody, or in hiding.'"

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we affirm the September 6, 2001 fourth amended judgment of the circuit court for the following reasons:

(1) When calculating the reasonable period, the fact-finder should consider the hypothetical behavior of a "reasonable investor" in the context of the surrounding fact constellation. See Taylor v. Smith, Barney & Co., 358 F. Supp. 892, 895 & n.8 (D. Utah 1973).

(2) Inasmuch as the record contains substantial evidence that between May 18, 1971 and November 19, 1974 (thirty days before the end of the circuit court's reasonable period), Roxas was arrested, detained, threatened, and tortured, see Roxas v. Marcos, 89 Hawai'i 91, 103-04, 969 P.2d 1209, 1221-22 (1998) [hereinafter, "Roxas I"], the circuit court did not clearly err in finding that Roxas was "in fear for his safety, in custody, or in hiding" -- and consequently unable to cover his loss -- for

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more than thirty days after the raid.

(3) Notwithstanding the much shorter reasonable periods that other courts have applied to conversions of securities, the present matter involved a treasure that was so unique in value and appearance that such prior case law is inapplicable. Consequently, the circuit court did not clearly err in determining the endpoint of the reasonable period.

(4) Inasmuch as Roxas's inability to file suit for fifteen years is attributable, at least in part, to Ferdinand Marcos's constitutional immunity, see Roxas I, 89 Hawai'i at 129, 969 P.2d at 1247, and does not necessarily imply Roxas's inability to enter the gold market for fifteen years, the circuit court did not clearly err in establishing a reasonable period ending before 1986.

(5) Notwithstanding the Appellants' argument that certain witnesses' "opinions and probable estimates pertaining to the quantity, quality, and/or purity of the gold" would have produced a fairer measure of damages than the New York rule, the Appellants do not indicate where in the record such testimony can be found. Therefore, they have waived this point of error by failing to provide citations to the record pursuant to Hawai'i Rules of Appellate Procedure Rule 28(b)(7).

(6) Insofar as this court: (a) held in Roxas I that judgment could not properly lie against Ferdinand's Estate, nor against Ferdinand himself, 89 Hawai'i at 123, 969 P.2d at 1241; and (b) instructed the circuit court to "hold Imelda personally liable, at least to the extent of her interest in the assets of

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the . . . Estate [of Ferdinand], for the amount of the . . . judgment against Ferdinand," the circuit court's fourth amended judgment followed this court's mandate precisely. No relief pursuant to Hawai'i Rules of Civil Procedure Rule 60(b) was warranted. Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, November 29, 2005.

On the briefs:

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and
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plaintiffs-appellants/
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Estate of Roger Roxas and
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