

NO. 22795

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

Civ. No. 97-1062

FIRST HAWAIIAN BANK, Plaintiff-Appellee, v. ROBERT MELVEN  
TIMOTHY, et al., Defendants, and RALPH K. HAYASHI,  
Purchaser-Appellant

and

Civ. No. 97-2270

ASSOCIATION OF APARTMENT OWNERS OF CROSSPOINTE, by and  
through its Board of Directors, Plaintiff, v. FIRST  
HAWAIIAN BANK, Defendant-Appellee, and ROBERT MELVEN  
TIMOTHY, et al., Defendants, and RALPH K. HAYASHI,  
Purchaser-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT

ORDER AMENDING OPINION OF THE COURT

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

The opinion of the court, filed on August 9, 2001, is  
hereby amended as follows:

On page 12, in the second sentence of footnote 5, "the  
Hawai'i Supreme Court" is deleted and replaced with "this court".  
Page 12 of the original opinion is hereby deleted. In its place,  
page 12, attached to this Order, shall be substituted.

The Clerk of the Court is directed to substitute the replacement page in the original opinion and take all necessary steps to notify the publishing agencies of the change.

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

Acting Chief Judge

Associate Judge

Associate Judge

rebidding would have been obviated. Accordingly, Hayashi argued, FHB was not entitled to his deposit, which should be returned to him.

Following a hearing on FHB's Motion for Cancellation, Judge Chang orally ruled as follows:

After considering the written submissions and reviewing the file in this case, it is clear, first, that the purchaser, [Hayashi], has not closed the sale in a timely and proper manner.

The court further finds that Hayashi has failed to establish that in this case [FHB] acted in bad faith or unreasonably delayed the submission of the order confirming the sale, or acted otherwise in bad faith in this case.

As noted, the confirmation hearing was on April 16, 1998 and the order confirming was entered on May 15, 1998.

Based on [Hayashi's] failure to close within the required time, [FHB's] motion is granted. [FHB] is allowed to reopen the bidding without additional advertisements.

And further, the court finds that [Hayashi] is liable for the additional expenses. The deposit is forfeited.

The court in this case relies on Grant<sup>5</sup> vs. Devaris Development, 7 HI App. 40, 1987 and Makani Development Company vs. Saul, 4 HI App. 542, a 1983 case.

[FHB's] motion is granted in all respects.

(Footnote added.) FHB's counsel was asked to prepare the order.

A recess in the hearing was taken and bidding was reopened. The bidding resulted in a high bid of \$69,000.00, made by FHB. The case was subsequently recalled, with Ishibashi and FHB's counsel present at the recalled hearing. At the beginning

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<sup>5/</sup> The name of the case cited is actually Brent v. Staveris Dev. Corp., 7 Haw. App. 40, 741 P.2d 722 (1987). In Brent, this court held that the trial court did not abuse its discretion when, at a hearing to confirm the sale of foreclosed property, it rejected the highest auction bid for the property, entertained further bids in open court, and confirmed the sale to the highest bidder at the confirmation hearing.