

*****NOT FOR PUBLICATION*****

NO. 24233

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, in behalf of the HAWAIIAN HOMES
COMMISSION and DEPARTMENT OF HAWAIIAN HOME LANDS,
Plaintiff-Appellee

vs.

VALERIE DUKELOW, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
(CIV. NO W01-92)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.,
and Circuit Judge Sakamoto, assigned by reason of vacancy)

Defendant-Appellant Valerie Dukelow (Dukelow) appeals from (1) an April 3, 2001 order of the district court of the second circuit¹ (the court) granting the motion for summary judgment filed by Plaintiff-Appellee State of Hawai'i, in behalf of the Hawaiian Homes Commission (Commission) and Department of Hawaiian Home Lands (the DHHL), (2) the court's April 11, 2001 judgment for possession, and (3) the court's April 11, 2001 writ of possession ejecting Dukelow from the subject residential lot. The court suit was brought subsequent to a contested case hearing between Dukelow and the DHHL held before the Commission pursuant to Hawai'i Revised Statutes (HRS) chapter 91. As a result of the

¹ The Honorable Douglas H. Ige presided over this matter.

*****NOT FOR PUBLICATION*****

hearing, the Commission issued a Decision and Order directing Dukelow to surrender and vacate the residential lot (Lot No. 38) that she leased from the DHHL. Dukelow did not appeal to the circuit court as allowed under HRS chapter 91 from the Decision and Order.

Dukelow failed to vacate Lot No. 38 within the sixty days provided by the Decision and Order. Therefore, the DHHL brought an action of ejectment in the court. The court then issued the order and judgments described supra.

On appeal, Dukelow maintains that: (1) the DHHL is barred from utilizing procedures set forth in HRS chapter 91 to eject a lessee because the United States Congress never gave its consent to incorporate the Hawai'i Administrative Procedure Act into the Hawaiian Homes Commission Act; (2) her DHHL home loan in the amount of \$45,604.84 at a fixed interest rate of 8.75% was improper; and (3) her contested case hearing was invalid because it was not held before the Commission members. However, points (1), (2), and (3) could have been or were raised in the contested case hearing. Dukelow did not appeal from the Commission's Decision and Order and, therefore, the Decision and Order became final and unreviewable. Thus, Dukelow's points of error on appeal are barred by the doctrine of *res judicata*.

Res judicata applies when "(1) the issue decided in the prior adjudication is identical with the one presented in the action in question, (2) there was final judgment on the merits, and (3) the party against whom *res judicata* is asserted was a

party or in privity with a party to the prior adjudication.”
Dorrance v. Lee, 90 Hawai‘i 143, 148, 976 P.2d 904, 909 (1999).
Additionally, as noted in State v. Magoon, 75 Haw. 164, 858 P.2d
712 (1993), *res judicata* applies “not only [to] the claims that
were actually litigated in the first action, but also . . . all
grounds of claim and defenses that might have been properly
litigated in the first action but were not litigated or decided.”
Id. at 190, 858 P.2d at 725 (quoting Pele Defense Fund v. Paty,
73 Haw. 578, 599, 837 P.2d 1247, 1261 (1992) (brackets omitted).

The doctrine of *res judicata* applies to administrative
decisions. “Where a party does not appeal a final administrative
decision that decision becomes final and *res judicata*.” Hawkins
v. State, 900 P.2d 1236, 1240 (Ariz. Ct. App. 1995) (quoting
Guertin v. Pinal County, 875 P.2d 843, 845 (Ariz. Ct. App.
1994)); see also United States v. Utah Constr. & Mining Co., 384
U.S. 394, 422 (1966) (“When an administrative agency is acting in
a judicial capacity and resolved disputed issues of fact properly
before it which the parties have had an adequate opportunity to
litigate, the courts have not hesitated to apply *res judicata* to
enforce repose.” (Citations omitted)); State v. Higa, 79
Hawai‘i 1, 8, 897 P.2d 928, 935 (“The doctrines of *res judicata*
and collateral estoppel also apply to matters litigated before an
administrative agency.” (Quoting Santos v. State, 64 Haw. 648,
653, 646 P.2d 962, 966 (1982).)), reconsideration denied, 79
Hawai‘i 1, 897 P.2d 928 (1995). Moreover, as to Dukelow’s point
(2), Hawaiian Homes Commission Act § 215 states that “all unpaid

*****NOT FOR PUBLICATION*****

balances of principal shall bear an interest rate of two[-] and[-]one-half percent or higher as established by rule adopted by the department." Also, Hawai'i Administrative Rules (HAR) 10-3-47(d) provides that "[l]oan interest rates shall be determined based on the availability of funds as well as the current interest rate for such loans in the private sector." Additionally, as to Dukelow's point (3), HAR § 10-5-33(c)(1) provides that contested case hearings may be held before a hearings officer endowed with the authority "to make a recommended decision to the commission in writing to be acted upon by the commission."

Accordingly, the court's April 3, 2001 order granting summary judgment and its April 11, 2001 judgment for possession and writ of possession are affirmed.

DATED: Honolulu, Hawai'i, June 27, 2003

On the briefs:

Valerie Dukelow, defendant-appellant, pro se.

Kumu B. Vasconcellos, Deputy Attorney General, State of Hawai'i, for plaintiff-appellee.