
NO. 24024

IN THE SUPREME COURT OF THE STATE OF HAWAII

LIFE OF THE LAND, LAURA LEE BOLLES, MERYL ANDERSEN, and
LARRY K. MCELHENY, Appellants-Appellees

vs.

JUST IN TIME FOODS, INC., dba MCDONALD'S OF HALEIWA,
Appellee-Appellant

and

ZONING BOARD OF APPEALS of the City and County of
Honolulu, DEPARTMENT OF LAND UTILIZATION of the
City and County of Honolulu, Appellees

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 97-4580)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

Appellant Just In Time Foods, Inc., dba McDonald's of Haleiwa (McDonald's), appeals from a post-judgment sanctions order filed on December 19, 2000 by the Circuit Court of the First Circuit, the Honorable Eden E. Hifo presiding, awarding sanctions of attorneys' fees and costs in the amount of \$3,594.31 against McDonald's and in favor of Appellees Life of the Land, Laura Lee Bolles, Meryl Andersen, and Larry K. McElheny (collectively, Life of the Land). On appeal, McDonald's contends that the circuit court: (1) exceeded its jurisdiction when it awarded sanctions of attorneys' fees and costs because the pending appeal deprived the circuit court of jurisdiction; (2) abused its discretion when it found bad faith on the part of

McDonald's and awarded sanctions of attorneys' fees and costs under its inherent powers; and (3) exceeded its jurisdiction and abused its discretion when it improperly amended and expanded its decision and order to include the granting of injunctive relief that was neither requested by Life of the Land in its complaint nor granted by the circuit court in its original decision and order or in the judgment.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advocated and the issues raised, we hold as follows: (1) the circuit court did not exceed its jurisdiction when it awarded sanctions of attorneys' fees and costs against McDonald's after an appeal was filed, inasmuch as the circuit court retained jurisdiction to determine matters collateral or incidental to the judgment on appeal, including jurisdiction to enforce the judgment where a stay is not obtained or a bond posted, see TSA International, Ltd. v. Shimizu Corp., 92 Hawai'i 243, 265, 990 P.2d 713, 735 (1999); (2) the circuit court did not abuse its discretion when it (a) found bad faith conduct on the part of McDonald's in continuing to operate its drive-thru facility without obtaining a stay of the court's judgment that the variance allowing the drive-thru facility was invalid and (b) awarded sanctions of attorneys' fees and costs against McDonald's under the inherent powers of the court, see HRS § 603-

21.9(6) (1993); and (3) the circuit court did not exceed its jurisdiction and abuse its discretion when it granted injunctive relief that was neither requested by Life of the Land in its complaint for appeal of the Zoning Board of Appeals of the City and County of Honolulu agency's decision nor granted by the court in its judgment, inasmuch as courts have the power to order affirmative, coercive, or ancillary equitable relief when the initial relief sought is declaratory in nature, see Costa v. Sunn, 5 Haw. App. 419, 424, 697 P.2d 43, 47 (1985). Therefore,

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

DATED: Honolulu, Hawaii, December 5, 2003.

On the briefs:

William S. Hunt and
Lea Hong for Appellants-
Appellees Life of the
Land, Laura Lee Bolles,
Meryl Andersen, and
Larry K. McElheny

James H. Hershey,
Jennifer C. Clark, and
Sheree Kon-Herrera for
Appellee-Appellant
Just In Time Foods, Inc.,
dba McDonald's of Haleiwa