

*** NOT FOR PUBLICATION ***

NO. 23155

IN THE SUPREME COURT OF THE STATE OF HAWAII

VOULA PARASKEVI MARELA, trustee of the Voula Paraskevi Marela
Trust, Plaintiff-Appellant

vs.

DION G. WATTS, DOROTHY PETERSON, EDWARD L. WATTS, JOHN ANZALONE,
JUDY DADY and THE KAILANI ASSOCIATION OF APARTMENT OWNERS, an
unincorporated association, Defendants-Appellees

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 99-0384)

SUMMARY DISPOSITION ORDER

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

Plaintiff-appellant Voula Marela (Marela) appeals from the February 3, 2000 judgment of the circuit court of the first circuit, the Honorable Gail Nakatani presiding, (1) ruling in favor of Dion G. Watts, Dorothy Peterson, Edward L. Watts, John Anzalone, Judy Dady and The Kailani Association of Apartment Owners (the association) [hereinafter, collectively, "the appellees"] on Marela's claims for injunctive and declaratory relief, (2) awarding the appellees \$5,523.41 in attorneys' fees, and (3) dismissing Marela's claim for an accounting. On appeal, Marela argues that: (1) the circuit court erred in dismissing her claims for injunctive and declaratory relief, inasmuch as the association lacked authority to assess her costs incurred in purchasing the fee interests in the remaining forty-six leasehold units because she was not a "condominium unit lessee;"¹ (2) the

¹ Marela specifically contends that the circuit court erred in "concluding" in relevant part as follows:

- 2) That the Association has obtained the necessary approvals to purchase the leased fee interests to

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circuit court violated the equal protection clause when it interpreted Hawai'i Revised Statutes (HRS) chapter 514A (the Hawai'i Condominium Property Act) and HRS chapter 514C (the 1988 Condominium Leased Fee Purchase Act) to include fee owners and owners of leasehold apartments in a single class; and (3) the circuit court erred in awarding the appellees \$5,423.41 in attorneys' fees.

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the issues raised

¹(...continued)

those apartments for which the individual owners have not purchased the leased fee interests;

- 4) That [Marela] occupies two roles as an individual apartment owner and as a member of the Association;
- 5) That the two roles are separate and distinct roles;
- 6) That [Marela] is called upon to participate in the leased fee purchase as a member of the Association and not as an individual apartment owner;
- 7) That the fact that [Marela] purchased her individual interest does not abrogate her responsibilities and obligations as a member of the Association;
- 8) That the responsibilities and obligations are to contribute to the Association's purchase of the remaining leased fee interest as provided in Hawai'i revised Statutes [§] 514C-6;
- 9) That [Marela] is not "now" a condominium unit lessee as defined prior to her purchase of her leased fee interest, she was a "condominium unit lessee";
- 10) That the only reasonable interpretation of the use of the term "condominium unit lessee" is that this is the phrase and description given to all apartment owners "prior" to any purchase by an individual and/or the Association of a leased fee interest and when the lessor first offered the leased fee interests for sale; and
- 11) That there is no intent to release a "condominium unit lessee" turned "fee owner" from his/her responsibilities and obligations to the Association for the Association's purchase.

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and arguments advanced, we hold that: (1) the circuit court did not err in granting summary judgment in favor of the appellees, inasmuch as the declaration, bylaws, and plain language of HRS § 514C-6(a) (3) and 514C-1 authorized the association to use the common expense funds to cover expenses incurred in acquiring the fee interest in the forty-six leasehold units, see Hawai'i Cmty. Fed. Credit Union v. Keka, 94 Hawai'i 213, 11 P.3d 1 (2000); Bowers v. Alamo Rent-A-Car, Inc., 88 Hawai'i 274, 965 P.2d 1274 (1998); Schmidt v. Board of Dir. of Ass'n of Apartment Owners of Marco Polo Apartments, 73 Haw. 526, 836 P.2d 479 (1992); HRS §§ 514C-6(a) (3) and 514C-1; (2) the circuit court did not violate the equal protection clause by interpreting HRS §§ 514C-1 and 514C-6(a) (3) to include fee simple owners, inasmuch as the plain language of HRS §§ 514C-6(a) (3) and 514C-1 does not prevent Marela, as a member of the association, from being classified as an association member, and, therefore, the circuit court's interpretation was not so arbitrary or irrational as to violate equal protection, see State v. Peseti, 101 Hawai'i 172, 65 P.3d 119 (2003); Del Rio v. Crake, 87 Hawai'i 297, 955 P.2d 90 (1998); and (3) the circuit court did not abuse its discretion in awarding \$5,423.41 in attorneys' fees to the appellees, inasmuch as the plain language of HRS § 514A-94 expressly provides that attorneys' fees may be awarded to a condominium association, based on an unsubstantiated claim brought by an owner against a condominium association, for costs incurred in, inter alia, enforcing any provision of the declaration, bylaws, house rules, and the Condominium Property Act, see TSA Int'l Ltd. v. Shimizu Corp., 92 Hawai'i 243, 990 P.2d 713 (1999); Canalez v. Bob's Appliance Serv. Ctr., Inc., 89 Hawai'i 292, 972 P.2d 295 (1999);

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HRS § 514A-94. Therefore,

IT IS HEREBY ORDERED that the circuit court's (1) February 3, 2000 judgment, (2) November 12, 1999 order denying Marela's motion for summary judgment and granting the appellees' cross-motion for summary judgment, (3) January 13, 2000 order denying Marela's motion for reconsideration, and (4) January 13, 2000 order granting the appellees' motion for attorneys' fees, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, July 20, 2004.

On the briefs:

William F. Crockett of
Crockett Nakamura & Schmidt
for the defendant-appellant

Kevin P.H. Sumida, Milton S.
Tani, and Ward F. N. Fujimoto
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appellees