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NO. 25714

IN THE SUPREME COURT OF THE STATE OF HAWAII

K. HAMAKADO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2006 SEP 20 AM 9:21

FILED

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DUANE PREBLE, MARION EVERSON, and CHARLES K. Y. KHIM,  
Plaintiffs-Appellants,

vs.

BOARD OF TRUSTEES OF THE EMPLOYEES' RETIREMENT SYSTEM OF  
THE STATE OF HAWAI'I; DAVID SHIMABUKURO, Administrator of the  
Employees' Retirement System of the State of Hawai'i; and  
EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF HAWAI'I,  
Defendants-Appellees.

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APPEAL FROM THE FIRST CIRCUIT COURT  
(Civ. No. 02-1-1972)

SUMMARY DISPOSITION ORDER

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

The plaintiffs-appellants Duane Preble, Marion Everson,  
and Charles K. Y. Khim [hereinafter, "the Appellants"] appeal  
from the March 12, 2003 judgment of the circuit court of the  
first circuit, the Honorable Virginia Lea Crandall presiding.

On appeal, the Appellants urge that the doctrine of  
primary jurisdiction did not apply to the present matter inasmuch  
as (1) "the dispute before the [circuit c]ourt did not involve  
technical matters that called for the special expertise of the  
[defendant-appellee Board of Trustees ("the Board") of the  
defendant-appellee Employees' Retirement System of the State of  
Hawai'i (ERS)]," and (2) "the . . . Board already applied its  
special expertise to the gravamen of the contested case claim[]

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when[,] on February 8, 1999, the . . . Board determined that said contested case claim had merit." The Appellants add that the Board should have been disqualified from deciding the Appellants' entitlement to fees because it is biased or had the appearance of bias. Furthermore, the Appellants protest that to exhaust available remedies in the Board would have been futile.

Next, the Appellants argue that the circuit court misapplied the criteria for injunctive relief pendente lite set forth in Penn v. Transp. Lease Hawaii, Ltd., 2 Haw. App. 272, 276 & n.1, 630 P.2d 646, 649 & n.1, 650 (1982), inasmuch as irreparable damage favored injunction, the Appellants were likely to succeed on the merits, and the public interest would be served.

Finally, the Appellants argue that the Board improperly appointed a master to conduct a hearing. (Citing Hawai'i Revised Statutes § 92-16(a)(3) (1993).)

The present appeal arises from the Appellants' efforts to enjoin further pension disbursements without deducting attorney's fees. Our recent holding in Preble v. Bd. of Trs. of the ERS, No. 26186, slip op. at 18 (Haw. Sept. 20, 2006), that the Board lacked the authority to award fees, bars the Appellants from obtaining "effective remedy" in the present appeal, a sine qua non of justiciability. See In re Doe, 102 Hawai'i 75, 77, 73 P.3d 29, 31 (2003). Therefore,

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IT IS HEREBY ORDERED that the appeal is dismissed  
as moot.

DATED: Honolulu, Hawai'i, September 20, 2006.

On the briefs:

Charles K. Y. Khim,  
pro se and for the  
plaintiffs-appellants  
Duane Preble and  
Marion Everson

Kevin P.H. Sumida and  
Lance S. Au of Matsui  
Chung Sumida & Tsuchiyama,  
for the defendants-appellees  
ERS and David Shimabukuro

Kimberly Tsumoto,  
Deputy Attorney General,  
for the defendant-appellee  
Board of the ERS

