

NO. 27558

IN THE SUPREME COURT OF THE STATE OF HAWAII

ASSOCIATION OF APARTMENT OWNERS OF THE CLIFFS AT PRINCEVILLE,  
Applicant-Appellee,

vs

PREMIER RESORTS INTERNATIONAL, INC., dba VILLAGE RESORTS,  
Respondent-Appellant.

APPEAL FROM THE FIFTH CIRCUIT COURT  
(S.P. NO. 04-1-0003)

SUMMARY DISPOSITION ORDER

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

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Respondent-Appellant Premier Resorts International ("Premier") appeals from the Fifth Circuit Court's<sup>1</sup> September 23, 2005 final judgment in favor of Premier and against Applicant-Appellee Association of Apartment Owners of the Cliffs at Princeville. Therein, the Fifth Circuit Court denied Premier's motion for attorneys' fees and costs and its motion for reconsideration.

On appeal, Premier argues the Fifth Circuit Court erred by (1) denying Premier's motion for fees and costs because (a) the parties' management agreement contains a fee shifting clause that makes attorneys' fees available under Hawai'i Revised

<sup>1</sup> The Honorable George M. Masuoka presided.

Statutes ("HRS") § 607-14,<sup>2</sup> and (b) Premier is entitled to costs pursuant to Hawai'i Rules of Civil Procedure ("HRCP") Rule 54(d) and HRS § 607-9;<sup>3</sup> and (2) denying Premier's motion for reconsideration because the First Circuit Court's<sup>4</sup> judgment awarding fees and costs was entitled to preclusive effect.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to

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<sup>2</sup> HRS § 607-14 (Supp. 1997) provides in pertinent part:

In all the courts, in all actions in the nature of assumpsit and in all actions on a promissory note or other contract in writing that provides for an attorney's fee, there shall be taxed as attorneys' fees, to be paid by the losing party and to be included in the sum for which execution may issue, a fee that the court determines to be reasonable . . . . The court shall then tax attorneys' fees, which the court determines to be reasonable, to be paid by the losing party; provided that this amount shall not exceed twenty-five per cent of the judgment. . . . . The above fees provided for by this section shall be assessed on the amount of the judgment exclusive of all costs and all attorneys' fees obtained by the plaintiff, and upon the amount sued for if the defendant obtains judgment.

(Emphasis added.)

<sup>3</sup> HRS § 607-9 (Supp. 1989), which is entitled, "Cost charges exclusive; disbursements," states:

No other costs of court shall be charged in any court in addition to those prescribed in this chapter in any suit, action, or other proceeding, except as otherwise provided by law.

All actual disbursements, including but not limited to intrastate travel expenses for witnesses and counsel, expenses for deposition transcript originals and copies, and other incidental expenses, including copying costs, intrastate long distance telephone charges, and postage, sworn to by an attorney or a party, and deemed reasonable by the court, may be allowed in taxation of costs. In determining whether and what costs should be taxed, the court may consider the equities of the situation.

(Emphasis added.)

<sup>4</sup> The Honorable Richard W. Pollack presided.

the arguments advanced and the issues raised, we hold that:

(1) The Fifth Circuit Court did not abuse its discretion in denying Premier's motion for fees. HRS § 607-14 is applicable to the fee shifting clause of the management agreement because the action in the fifth circuit court was "on a . . . contract in writing that provides for an attorney's fee."<sup>5</sup> When invoked in post-arbitration litigation, HRS § 607-14's twenty-five per cent cap on fee awards takes into account fees granted in the underlying arbitration.<sup>6</sup> Thus, the arbitrator's award fully exhausted the amount of fees awardable to Premier pursuant to HRS § 607-14 in post-arbitration litigation;

(2) The Fifth Circuit Court was within its discretion to deny Premier's request for costs. Because HRCP Rule 54(d)<sup>7</sup> is

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<sup>5</sup> See Gadd v. Kelly, 66 Haw. 431, 667 P.2d 251 (1983) (holding that the confirmation of an arbitration award that determined contractual rights was an expense of the enforcement of the contract); cf. DFS Group L.P. v. Paiea Props., 110 Hawai'i 217, 219, 131 P.3d 500, 502 (2006) (concluding that an appeal seeking the vacation of an arbitration award is a claim "based upon or arising out of any breach of the terms and conditions" of the lease).

<sup>6</sup> Hawai'i's courts have strictly interpreted HRS § 607-14's twenty-five per cent cap on attorneys' fees. See Wong v. Takeuchi, 88 Hawai'i 46, 50-51, 961 P.2d 611, 615-16 (1998) (holding that the statutory cap is the maximum total amount that can be awarded to all prevailing parties, not an amount that can be awarded to each prevailing party individually); Employee Mgmt. Corp. v. Aloha Group, Ltd., 87 Hawai'i 350, 352, 956 P.2d 1282, 1284 (Haw. App. 1997) (holding that the statutory cap is a "'maximum' combined total limit" on fee awards at all levels of litigation rather than an amount that each individual court may tax); see also Thornley v. Sanchez, 9 Haw. App. 606, 618, 857 P.2d 601, 608 (1993) (holding that even where the maximum awardable attorneys' fees are inadequate, a court does not have the power to increase the fees).

<sup>7</sup> When applicable, HRCP Rule 54(d) imports a strong presumption a prevailing party will recover its costs. See Wong, 88 Hawai'i at 52, 961 P.2d  
continue...

inapplicable to applications brought under HRS Chapter 658,<sup>8</sup> Premier's cost request draws support from HRS § 607-9 alone, which commends the matter to trial court discretion;<sup>9</sup>

(3) The Fifth Circuit Court did not abuse its discretion in declining to give preclusive effect to the First Circuit Court's judgment. The Fifth Circuit Court was not required to duplicate the First Circuit Court's misapplication of HRS § 607-14.<sup>10</sup> Therefore,

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<sup>7</sup>...continue  
at 617 (holding that a court may not deny costs to a prevailing party without explanation when such costs are awardable under Rule 54(d)); Abreu v. Raymond, 56 Hawai'i 613, 614, 546 P.2d 1013, 1014 (1976) (holding that absent a showing of fault on the part of a prevailing party, a trial court is "without discretion" to reduce costs to which the prevailing party is entitled under Rule 54(d)).

<sup>8</sup> See HRCF Rule 81, entitled, "Applicability," which reads:

(a) To What Proceedings Not Applicable. Except as expressly otherwise provided in this Rule 81 or another rule of court, these rules shall not apply to the following proceedings (pursuant to specific provisions of the Hawai'i Revised Statutes when cited below) in any circuit court:

(5) Applications to a circuit court under chapter 658, relating to arbitration, and proceedings thereon prior to judgment.

(Second emphasis added.)

<sup>9</sup> See Wong, 88 Hawai'i at 52, 961 P.2d at 617 ("[A]lthough the [trial] court has discretion in making an award of costs, Rule 54(d) creates a strong presumption that the prevailing party will recover costs[.]" (brackets added and omitted)); Mist v. Westin Hotels, Inc., 69 Hawai'i 192, 201, 738 P.2d 85, 92 (1987) ("The trial court is vested with discretion in allowing or disallowing costs . . . ." (quoting Smothers v. Renader, 2 Haw. App. 400, 408, 633 P.2d 556, 564 (1981) (quotation marks omitted))).

<sup>10</sup> This court has previously held that reexamination of a rule of law is appropriate in circumstances where preclusion would result in a manifestly inequitable administration of the laws. See, e.g., Marsland v. Int'l Soc'y for Krishna Consciousness, 66 Hawai'i 119, 124-25, 657 P.2d 1035, 1039 (1983)  
continue...

IT IS HEREBY ORDERED that the Fifth Circuit Court's September 23, 2005 final judgment denying any award of attorneys' fees or costs is affirmed in all respects.

DATED: Honolulu, Hawai'i, September 29, 2008.

On the briefs:

Philip J. Leas and  
Calvert G. Chipchase of  
Cades Schutte LLP for  
Respondent-Appellant  
Premier Resorts International

William C. Byrns of MacDonald  
Rudy Byrns O'Neill & Yamauchi  
for Applicant-Appellee,  
AOAO Cliffs at Princeville



Steven Levinson

Fumua A. Takemura

Samoa E. Duddy, Jr.

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<sup>10</sup>...continue  
(declining to apply collateral estoppel because the earlier judgment turned upon a misinterpretation of the law).