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Supreme Court
SCAP-13-0003607
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SCAP-13-0003607

IN THE SUPREME COURT OF THE STATE OF HAWAII

KRISHNA NARAYAN; SHERRIE NARAYAN; VIRENDRA NATH; NANCY MAKOWSKI; KEITH MACDONALD, as Co-Trustee for the DKM Trust dated October 7, 2011; SIMON YOO; SUMIYO SAKAGUCHI; SUSAN RENTON; Individually and as Trustee for The Renton Family Trust dated 12/3/09; STEPHEN XIANG PANG; FAYE WU LIU; MASSY MEHDIPOUR, Individually and as Trustee for Massy Mehdi pour Trust dated June 21, 2006; G. NICHOLAS SMITH; TRISTINE SMITH; RITZ 1303 RE, LLC, a Colorado Limited Liability Company; CLIFFORD W. CHAFFEE; BRADLEY CHAFFEE, Individually and as Trustee of the Charles V. Chaffee BRC Stock Trust dated 12/1/99, and the Clifford W. Chaffee BRC Stock Trust dated 1/4/98, GARY S. ANDERSON, RONALD W. LORENZ, and RENEE Y. LORENZ, Plaintiffs-Appellees,

vs.

MARRIOTT INTERNATIONAL, INC.; THE RITZ-CARLTON DEVELOPMENT COMPANY, INC.; THE RITZ-CARLTON MANAGEMENT COMPANY, LLC; JOHN ALBERT; EDGAR GUM; THE RITZ-CARLTON HOTEL COMPANY, LLC; MARRIOTT VACATIONS WORLDWIDE CORPORATION; MARRIOTT OWNERSHIP RESORTS, INC.; MARRIOTT TWO FLAGS, LP; and MH KAPALUA VENTURE, LLC, Defendants-Appellants,

and

MAUI LAND & PINEAPPLE CO., INC.; EXCLUSIVE RESORTS, LLC;
KAPALUA BAY, LLC; ASSOCIATION OF APARTMENT OWNERS OF KAPALUA
BAY CONDOMINIUM; CAROLINE PETERS BELSOM; CATHY ROSS; ROBERT
PARSONS; RYAN CHURCHILL; MLP KB PARTNER LLC; KAPALUA BAY
HOLDINGS, LLC; ER KAPALUA INVESTORS FUND, LLC; ER KAPALUA
INVESTORS FUND HOLDINGS, LLC; EXCLUSIVE RESORTS DEVELOPMENT
COMPANY, LLC; and EXCLUSIVE RESORTS CLUB I HOLDINGS, LLC,
Defendants-Appellees.

ON REMAND FROM THE UNITED STATES SUPREME COURT
(CAAP-13-0003607; CIV. NO. 12-1-0586)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Nakayama, McKenna, and Pollack, JJ., and
Circuit Judge Nakasone, in place of Wilson, J., recused)

This appeal concerns the arbitrability of certain
“purchase-based” claims pursuant to an arbitration clause
contained in the Declaration of Condominium Property Regime of
Kapalua Bay Condominium. On June 30, 2015, we affirmed the
Circuit Court of the Second Circuit’s (circuit court) order
denying Defendants’ motion to compel arbitration pursuant to our
opinion in Narayan v. Ritz-Carlton Development Co., 135 Hawai‘i
327, 350 P.3d 995 (2015) (Narayan I).

On January 11, 2016, the Supreme Court of the United
States vacated and remanded Narayan I and this case for further
consideration in light of its decision in DIRECTV, Inc. v.
Imburgia, 136 S. Ct. 463 (2015).

The questions presented in this appeal are controlled
by our decision in Narayan v. Ritz-Carlton Development Co., No.
SCWC-12-0000819, at 3 (Haw. July 14, 2017) (pub. op.) (Narayan
II), which affirmed our decision in Narayan I and held that
“under long-standing Hawai‘i contract law, the arbitration clause
is unconscionable.”

Pursuant to our analysis in Narayan II, the circuit court's August 26, 2013 order denying Defendants' motion to compel arbitration is affirmed.

DATED: Honolulu, Hawai'i, July 14, 2017.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Karen T. Nakasone

