

Electronically Filed
Supreme Court
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SCWC-14-0000387

IN THE SUPREME COURT OF THE STATE OF HAWAII

EARL C. CHARLES and PATRICIA A. CHARLES, in their individual capacities and as co-trustees of the Earl C. Charles and Patricia A. Charles Revocable Living Trust Dated December 12, 1990; PETER COAD JR. and JUDY E. COAD, in their individual capacities and as co-trustees of the Coad Family Trust Dated April 14, 2006; JOHN E. CORK; SUSAN M. CORK; AL P. BRENDE; DOUGLAS M. DROESE and RENEE S. DROESE, in their individual capacities and as co-trustees of the 1995 Droese Family Trust 08/02/95; MARTIN GIUFFRE; PATRICIA GIUFFRE; MATTHEW GIUFFRE; WILLIAM G. GLENNON and CAROLYN N. GLENNON, in their individual capacities and as co-trustees of the Glennon Living Trust dated 01/16/97; BRIAN HOYLE, in his individual capacity and as trustee of The Brian H. Hoyle Trust; WILLARD S. JOHNSTON, in his individual capacity and as trustee of The Willard Spencer Johnston Jr. Trust Dated 4-27-92; MICHAEL M. KEMPS, in his individual capacity and as co-trustee of the Kemps Family Trust Dated October 23, 2003; GEMMA KEMPS, in her individual capacity and as co-trustee of The Kemps Family Trust Dated October 23, 2003; DOCTOR ROHIT KHANNA; THERESA KHANNA; TERRY G. NEGENDANK and PAULA T. NEGENDANK, in their individual capacities and as co-trustees of The Terry G. Negendank and Paula T. Negendank 2000 Revocable Living Trust; JULIA NEGENDANK; HEIDI NEGENDANK; STEPHEN E. PENFOLD; BARBARA A. PENFOLD; DONALD RECCHIO; MARIE WEBER; MARLON A. REYES; PATRICIA Y. SIGUENZA; THOMAS D. ROSINSKI; JANET S. ROSINSKI; CHARLES P. SCHULMAN; RICHARD J. STUART, in his individual capacity and as trustee of The Richard J. Stuart Trust Under Agreement Dated June 27, 2005; RICHARD VICKERS; NICOLE VITULLO; ANDREW H.W. BRANION; JOYCE L. ZIEBELL; WILLIAM BENDUSH and SOPHIA BENDUSH, in their individual capacities and as

co-trustees of The Bendush Family Trust Dated March 25, 1987; DOCTOR THOMAS M. PROSE; RONALD A. ABELMANN; JERYL J. ABELMANN; ABELMANN INVESTMENTS, LP; FRANCIS R. ZAMBON, in his individual capacity and as trustee of The Francis R. Zambon Living Trust Dated April 21, 2000, and as co-trustee of The Francis R. Zambon and Karen E. Zambon Living Trust Dated May 13, 2011; KAREN E. ZAMBON, in her individual capacity and as co-trustee of The Francis R. Zambon and Karen E. Zambon Living Trust Dated May 13, 2011; JOHN R. HENKEL; SUSAN A. HENKEL; CAROLINE GAUTHIER; MARC LEFEBVRE; DOUGLAS C. MCCORD; TRACEY A. MCCORD; KEVIN R. DUNCAN; GREG H. GIESLER and ANN L. GIESLER, in their individual capacities and as co-trustees of the Giesler Family Trust; LEE J. CHIMERAKIS; THERESA A. CHIMERAKIS; JOHN FITZPATRICK; BARBARA FITZPATRICK; DAVID APLIN, in his individual capacity and as a trustee of The Aplin Kapalua Trust; RICHARD GIARAMITA; LISA GIARAMITA; DOCTOR ROBERT M. JACKSON and JUDITH JACKSON, in their individual capacities and as co-trustees of The Robert M. Jackson and Judith Jackson Revocable Trust; CRAIG L. CAPRETTA; ARLINDA CAPRETTA; ALEX WERNBERG; JANE WERNBERG; JEFFREY L. ROTHENBERGER and STACY L. ROTHENBERGER, in their individual capacities and as co-trustees of The Jeff Lynn Rothenberger and Stacy Leah Rothenberger Revocable Living Trust; WILLIAM C. GABRIELSON, in his individual capacity and as trustee of The William C. Gabrielson Trust; GLENNA ANTHONY; KEITH DELLER; AL A. KASHANI; TRI M. LA; JOHN W. HARKINS; RENEE LA FORCE HARKINS, Petitioners/Plaintiffs-Appellants,

vs.

KAPALUA BAY, LLC, MAUI LAND & PINEAPPLE CO., INC.; THE RITZ-CARLTON HOTEL COMPANY, LLC; THE RITZ-CARLTON DEVELOPMENT CO., INC.; MARRIOTT INTERNATIONAL, INC.; EXCLUSIVE RESORTS, LLC; MARRIOTT VACATIONS WORLDWIDE CORPORATION; THE RITZ-CARLTON MANAGEMENT COMPANY, LLC; MARRIOTT TWO FLAGS, LP; MH KAPALUA VENTURE, LLC; MLP KB PARTNER, LLC; EXCLUSIVE RESORTS CLUB I HOLDINGS, LLC; EXCLUSIVE RESORTS DEVELOPMENT COMPANY, LLC; ER KAPALUA INVESTORS FUND HOLDINGS, LLC; ER KAPALUA INVESTORS FUND, LLC; KAPALUA BAY HOLDINGS, LLC, Respondents/Defendants-Appellees.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-14-0000387; CIV. NO. 13-1-0640)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson JJ.)

Petitioners/Plaintiffs-Appellants (Petitioners) seek review of the September 9, 2015 Order Granting in Part and Denying in Part Without Prejudice Motion for an Award of Attorneys' Fees and Costs, in which the Intermediate Court of Appeals (ICA) granted Petitioners' request for appellate costs and denied Petitioners' request for appellate attorney's fees "without prejudice to Plaintiffs-Appellants submitting a request for attorneys' fees to the Circuit Court of the Second Circuit (circuit court), including the fees incurred on this appeal, at the conclusion of this case in the circuit court."

On certiorari, Petitioners contend that the ICA erred in not awarding attorney's fees by failing to recognize that an arbitrability dispute is a separate action under Hawai'i Revised Statutes (HRS) § 607-14, and that in prevailing in the arbitrability dispute, Petitioners were entitled to attorneys' fees.

With respect to appellate attorneys' fees, we conclude that, for the purposes of HRS § 607-14, the appeal of the arbitrability issue is a separate action from the underlying dispute on the merits. We determine that Petitioners prevailed in the arbitrability action and are entitled to reasonable attorneys' fees under HRS § 607-14 and the fee-shifting provision in the Purchase Agreement. We award Petitioners \$54,974.00 in attorneys' fees incurred on appeal before the ICA, to be taxed jointly and severally among Respondents/Defendants-Appellees.

With respect to Petitioners' request for an order

stating that they are entitled to attorneys' fees and costs incurred in proceedings before the circuit court and in arbitration, we affirm the ICA's denial without prejudice to Petitioners' right to request fees and costs from the circuit court.

We also affirm the ICA's award of \$474.60 in appellate costs.

Accordingly, we reverse the portion of the ICA's September 9, 2015 order denying Petitioners' request for appellate attorneys' fees, and affirm the portions of the ICA's September 9, 2015 order granting Petitioners' request for appellate costs and denying Petitioners' request for fees and costs incurred in the circuit court without prejudice to Petitioners' right to request fees and costs in the circuit court.

DATED: Honolulu, Hawai'i, September 18, 2017.

Mark J. Bennett and
Andrew J. Lautenbach
for petitioners

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

Bert T. Kobayashi, Jr.,
Lex R. Smith, Maria Y.
Wang, and Aaron R. Mun
for respondents The
Ritz-Carlton Hotel
Company, LLC, The Ritz-
Carlton Development
Co., Inc., Marriott
International, Inc.,
Marriott Vacations
Worldwide Corporation;
The Ritz-Carlton Management
Company, LLC; Marriott Two
Flags, LP; and MH Kapalua
Venture, LLC

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

