

NO. 22052

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

CHARLES L. RAPOZA, as Special Administrator of the Estate of
CHARLES L. RAPOZA, JR., Deceased; CHARLA PUA LINDSEY, as Next
Friend of CHAE-LYNN KEALAPUA LINDSEY; CHARLES RAPOZA, SR.;
THERESA HOLICEK; and CASEY SOUZA, Plaintiffs-Appellants

vs.

WILLOCKS CONSTRUCTION CORPORATION, a Hawai'i corporation,
Defendants-Appellees

and

JOHN DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10;
and DOE ENTITIES 1-10, Defendants
(CIV. NO. 96-026K)

CHARLES L. RAPOZA, as Special Administrator of the Estate of
CHARLES L. RAPOZA, JR., Deceased; CHARLA PUA LINDSEY, as Next
Friend of CHAE-LYNN KEALAPUA LINDSEY; CHARLES RAPOZA, SR.;
THERESA HOLICEK; and CASEY SOUZA, Plaintiffs-Appellants

vs.

KARL MILTON TAFT; JON GOMES; JON GOMES & ASSOCIATES, INC., a
Hawai'i corporation; ABRAHAM LEE; ABE LEE DEVELOPMENT, INC., a
Hawai'i corporation; KALAOA DEVELOPMENT, INC., a Hawai'i
corporation; KALAOA JOINT VENTURE, a Hawai'i General Partnership
in Dissolution; KALAOA PARTNERS, INC., a Hawai'i corporation;
HAWAII ELECTRIC LIGHT COMPANY, INC., a Hawai'i corporation,
Defendants-Appellees

and

JOHN DOES 1-10; DOE PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; and DOE ENTITIES 1-10, Defendants

and

JON GOMES, JON GOMES & ASSOCIATES, INC., ABRAHAM LEE,
ABE LEE DEVELOPMENT, INC., KALAOA DEVELOPMENT, INC.,
KALAOA JOINT VENTURE, DBA KALAOA PARTNERS,
Third-Party Plaintiffs-Appellees

vs.

WILLOCKS CONSTRUCTION CORPORATION, a Hawai'i corporation,
Third-Party Defendant-Appellee

and

JOHN DOES 1-10; DOE PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; and DOE ENTITIES 1-10,
Third-Party Defendants
(CIV. NO. 96-286K)

APPEAL FROM THE THIRD CIRCUIT COURT
(CIV. NOS. 96-026K & 96-286K)

ORDER

(By: Levinson, Nakayama, Acoba, Duffy, JJ.;
With Moon, C.J., Dissenting)

Upon review of Plaintiffs' Motion for Clarification and "possible Reconsideration" filed in this case on January 12, 2004, the memorandum opinion filed January 2, 2004¹ vacating the February 13, 1998 order granting Defendant-Appellee Taft's motion for summary judgment and the October 14, 1998 final judgment, and the record, and inasmuch as the orders awarding attorneys fees and costs were based on Defendants-Appellants' status as prevailing parties,

IT IS HEREBY ORDERED that the October 16, 1998 order granting Defendant Willocks Construction Corporation's motion for costs against plaintiffs, the December 23, 1998 order granting in part and denying in part defendant Gomes's motion for costs, and

¹ Plaintiffs concede that they did not "cite as error the cost orders, which were in favor of the prevailing parties below, who, under Rule 54(d)(1) Hawai'i Rules of Civil Procedure, were entitled to their costs as of course." The memorandum opinion noted that as to such orders no discernible argument was presented, and therefore, the issue was not addressed. See Memorandum Op. at 2-3.

the July 1, 1998 stipulation and order regarding the taxation of costs against plaintiffs and in favor of defendant Karl Milton Taft are vacated.

DATED: Honolulu, Hawai'i, January 29, 2004.

George W. Ashford, Jr.
(Ashford & Associates), on
the motion for plaintiffs-
appellant.

DISSENT BY MOON, C.J.

Plainly, once a judgment has been vacated on appeal, an award of fees and costs to the "prevailing party," pursuant to that judgment, cannot remain valid. Moreover, the parties in this case did not raise any discernable argument regarding the orders awarding fees and costs. Thus, I would deny the motion for clarification.