

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

PROPERTY RESERVE, INC., by and)	CIV. NO. 93-3280
through its authorized agent)	
ZIONS SECURITIES CORPORATION,)	
a Utah corporation,)	FIRST CIRCUIT COURT
)	
Plaintiffs/Counter-)	
claimants Defendants-)	
Appellees,)	
)	
vs.)	
)	
ANDREW VALDEZ and BRENDA LEOTA)	
VALDEZ,)	
)	
Defendants/Plaintiffs)	
Counterclaimants-)	
Appellants,)	
)	
and)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

SUMMARY DISPOSITION ORDER

Defendants-appellants Andrew and Brenda Valdez (collectively, the Valdezes) contend that the circuit court erred in granting summary judgment in favor of Plaintiffs-appellees Property Reserve, Inc. (Property Reserve) and Zions Securities Corporation (Zions) and against the Valdezes. In turn, Property

Reserve and Zions urge this court to sanction the Valdezes' counsel, Joseph Ryan, for filing a frivolous appeal in violation of Hawai'i Rules of Appellate Procedure (HRAP) Rule 38 (1999).

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we hold that the dispositive question on appeal is whether the doctrine of res judicata barred the Valdezes' counterclaims. Inasmuch as the Valdezes' claims in Valdez v. Zions Securities Corp., Civ. No. 93-00375 (D. Haw. filed May 6, 1993), and the Valdezes' counterclaims in Property Reserve, Inc. v. Valdez, Civ. No. 93-3280-08 (Haw. 1st Cir. Ct. filed August 23, 1993 and amended on December 29, 1993), (1) involve the same parties and the same issues related to the alleged discriminatory conduct by Property Reserve and Zions and (2) Valdez v. Zions Securities Corp., No. 96-1556 (mem. op.) (9th Cir. July 29, 1997), cert. denied, 523 U.S. 1008 (1998), constitutes a final judgment on the merits, see Valdez v. Fonoimoana, S.C. Nos. 19236 and 19980 (mem. op.) (Haw. August 26, 1997) at 24-28, we hold that res judicata bars the Valdezes' counterclaims against Property Reserve and Zions. See Sussel v. Civil Service Commission, 74 Haw. 599, 610-14, 851 P.2d 311, 317-19 (1993). Furthermore, in exercising our

discretion under HRAP Rule 38, we decline to deem the instant appeal frivolous.

IT IS HEREBY ORDERED that the circuit court's July 17, 1999 final judgment¹ is affirmed.

DATED: Honolulu, Hawai'i,² June 7, 2000.

On the briefs:

Joseph A. Ryan for
Defendants/Counter-
claimants-appellants

RONALD T.Y. MOON, Chief Justice

Francis P. Hogan
(Keith M. Yonamine with
him on the brief) of
Ashford & Wriston for
plaintiffs/counter-
claimants defendants-
appellees

STEVEN H. LEVINSON, Associate Justice

PAULA A. NAKAYAMA, Associate Justice

MARIO R. RAMIL, Associate Justice

SABRINA MCKENNA, Substitute Justice

¹ In their notice of appeal, the Valdezes also appeal from the circuit court's June 17, 1999 order awarding attorneys' fees and costs incurred by Property Reserve and Zions on remand. Record on Appeal (RA) v.7 at 233. The June 17, 1999 order, however, is incorporated in the June 17, 1999 final judgment. See *id.* at 229, 231.

² Substitute Justice McKenna was assigned by reason of the vacancy created by the resignation of Justice Klein, effective February 4, 2000. On May 19, 2000, Simeon R. Acoba, Jr. was sworn-in as associate justice of the Hawai'i Supreme Court. However, Substitute Justice McKenna remains on the above-captioned case, unless otherwise excused or disqualified.