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NO. 24522

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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ROBERT JACKSON, Individually and as Trustee Under  
the Robert Jackson Trust, Dated May 13, 1987,  
as Amended, Plaintiff/Counterclaim Defendant-  
Appellee and Cross-Appellant,

vs.

JACK H. KANE, Defendant/Counterclaimant-Appellant  
and Cross-Appellee.

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APPEAL FROM THE SECOND CIRCUIT COURT  
(CVI. NO. 99-0578(2))

SUMMARY DISPOSITION ORDER

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

Defendant/counter-claimant-appellant/cross-appellee  
Jack H. Kane and plaintiff/counterclaim-defendant-appellee/cross-  
appellant Robert Jackson<sup>1</sup> appeal from the Circuit Court of the  
Second Circuit's<sup>2</sup> July 2, 2001 judgment. On appeal, Kane argues  
that the circuit court erred in: (1) denying Kane's motion for  
recusal; (2) granting Jackson's motion for summary judgment on  
the counterclaim; and (3) granting Jackson and denying Kane  
attorneys' fees and costs. On cross-appeal, Jackson contends

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<sup>1</sup> We note that, on June 19, 2000, the circuit court of  
the second circuit substituted Steven E. Jackson, the special  
administrator of the Estate of Robert Jackson, as the plaintiff  
in this case.

<sup>2</sup> The Honorable Shackley F. Raffetto presided over the  
matters pertinent to this appeal.

that the circuit court erred in: (4) denying Jackson's original motion for summary judgment on the complaint; (5) refusing to award Jackson his one-half share of the mediator's fee; and (6) refusing to award Jackson his travel costs.

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 resolve the parties' contentions as follows:

(1) Judge Raffetto did not abuse his discretion in refusing to recuse himself from the instant case inasmuch as the circumstances did not fairly give rise to an appearance of impropriety or reasonably cast suspicion on the judge's impartiality, State v. Ross, 89 Hawai'i 371, 377, 974 P.2d 11, 17, reconsideration denied, (1999); see also TSA Int'l Ltd. v. Shimizu Corp., 92 Hawai'i 243, 254-55, 990 P.2d 713, 724-25, reconsideration denied, (1999); Code of Judicial Conduct Canon 3(E)(1)(b) (1994);

(2) we uphold the circuit court's order granting Jackson's motion for summary judgment on the counterclaim inasmuch as Kane failed to properly plead his counterclaims, Hawai'i Rules of Civil Procedure (HRCPP) Rules 8(a) and 9(b) (1999); see also In re Genesys Data Techs., Inc., 95 Hawai'i 33, 41, 18 P.3d 895, 903 (2001); Kohala Agric. v. Deloitte & Touche, 86 Hawai'i 301, 328, 949 P.2d 141, 168 (2001); Reyes v. Kuboyama, 76 Hawai'i 137, 140, 870 P.2d 1281, 1284 (1994);

(3) the circuit court did not err in concluding that Jackson was, on balance, the prevailing party and, thus, properly awarded Jackson his attorneys' fees, Hawai'i Revised Statutes (HRS) § 607-14 (Supp. 1997); Ranger Ins. Co. v. Hinshaw, 103 Hawai'i 26, 31, 79 P.3d 119, 124 (2003); Fought & Co. v. Steel Eng'g & Erection, Inc., 87 Hawai'i 37, 52-53, 951 P.2d 487, 502-03 (1998); Finley v. Home Ins. Co., 90 Hawai'i 25, 39, 975 P.2d 1145, 1159 (1998); Food Pantry, Ltd. v. Waikiki Business Plaza, Inc., 58 Haw. 606, 620, 575 P.2d 869, 879 (1978); HRCF Rule 54(d) (2000);

(4) Jackson's argument concerning the circuit court's denial of his original motion for summary judgment on the complaint is moot inasmuch as the parties stipulated to the dismissal of the complaint, McCabe Hamilton & Renny Co. v. Chung, 98 Hawai'i 107, 116-17, 43 P.3d 244, 253-54 (2004); Okada Trucking Co. v. Bd. of Water Supply, 99 Hawai'i 191, 195-96, 53 P.3d 799, 803-04 (2002); In re Application of Thomas, 73 Haw. 223, 225-26, 832 P.2d 253, 254-55 (1992);

(5) the circuit court did not abuse its discretion in refusing to award Jackson his one-half share of the mediator's fee, HRS § 607-9 (1993); Wong v. Takeuchi, 88 Hawai'i 46, 52-53, 961 P.2d 611, 617-18 (1998); and

(6) the plain language of HRS § 607-13 (1993) clearly required the circuit court to award Jackson his travel expenses relating to defending against the counterclaim. We, therefore,

hold that the circuit court abused its discretion in denying Jackson such travel expenses. Accordingly,

IT IS HEREBY ORDERED that the circuit court's July 2, 2001 judgment is affirmed in all respects, except for the denial of Jackson's request for travel costs. In that regard, we vacate that portion of the judgment relating to costs awarded to Jackson, remand with instructions to Jackson to move the circuit court for the entry of the additional travel expenses, and the entry of an amended judgment reflecting the total recalculated cost-amount.

DATED: Honolulu, Hawai'i, February 9, 2005.

On the briefs:

Joy Mademba-Sy Yanagida,  
for defendant/counter-  
claimant appellant and  
cross-appellee

Philip J. Leas and  
James H. Ashford (of  
Cades Schutte Fleming &  
Wright), for plaintiff/  
counterclaim-defendant-  
appellee and cross-  
appellant