

NO. 22600

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

JANLU TAKANE, Plaintiff-Appellee

v.

MONACO PHAM T. LORIEGA, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 1RC 98-3686)

MEMORANDUM OPINION

(By: Burns, C.J., Watanabe and Lim, JJ.)

Defendant-Appellant Monaco Pham T. Loriega (Loriega) appeals the district court's April 27, 1999 Judgment in favor of Plaintiff-Appellee Janlu Takane (Takane) in the principal amount of \$4,954.56 plus costs, sheriff's fees, and sheriff's mileage. We vacate and remand for reconsideration in the light of this opinion.

BACKGROUND

Takane rented a one-bedroom apartment to Loriega from March 21, 1994, to April 18, 1997.

On March 21, 1994, Takane, Loriega, and the Hawai'i Housing Authority Section 8 Existing Housing Assistance Program (HHA § 8), entered into a Rental Agreement, an Addendum to Rental Agreement, and a U.S. Department of Housing and Urban Development Section 8 Existing Housing Program Addendum to Lease.

Loriega paid a \$105.00 deposit.

From March 21, 1994, to March 31, 1995, the rent was \$715 per month plus \$60 parking. The part payable by HHA § 8 was \$653 per month and the part payable by Loriega was \$122 per month.

From April 1, 1995, to March 31, 1996, pursuant to a new lease, the rent was \$736 per month plus \$60 parking. The part payable by HHA § 8 was \$713 per month and the part payable by Loriega was \$83 per month.

From April 1, 1996, to March 31, 1997, pursuant to a new lease, the rent was \$736 per month plus \$60 parking. The part payable by HHA § 8 was \$648 per month and the part payable by Loriega was \$148 per month.

The leases authorized the following charges:

8. **SERVICE CHARGE AND INTEREST.** You must pay a service charge of 15% of rent for each payment we do not receive by 1:00 pm of the 2nd day of the month in which the payment is due. Interest at 12% per year will be charged on all rent and other sums you do not pay to us on time.

On May 6, 1998, Takane filed a complaint in district court against Loriega seeking judgment for:

Unpaid rent (1/96-4/18/97)	\$2,338.43
Late charges	71.66
Interest (12%)	18.01 ¹
Fumigation	104.17
Cleaning	364.59
Water	881.76
Damages	<u>1,425.94</u>
Total	\$5,204.56

¹ We are uncertain of the calculations that led to this amount.

The following were attached to the complaint:

First: A Hawaii Association of Realtors Standard Form Rental Agreement for the period from April 1, 1995, through March 31, 1996.

Second: A U.S. Department of Housing and Urban Development Section 8 Existing Housing Program Addendum to Lease signed by Loriega on March 10, 1995.

Third: A U.S. Department of Housing and Urban Development Section 8 Housing Assistance Payments Program, Existing Housing, Housing Assistance Payments Contract signed by Takane on March 10, 1995.

Fourth: A Section 8 Existing Housing Assistance Payments Program Claim for Payment of Security Deposit Guarantee and Compensation for Vacancy Loss signed by Takane on June 30, 1997, in which Takane claims, in relevant part, the following:

Part II: CLAIM FOR UNPAID TENANT RENT

4.	Unpaid tenant rent from 1/96 to 4/18/97:	\$ 2338.43
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. . . .

Part III: CLAIM FOR UNPAID TENANT DAMAGES

5.	Amount of tenant damages:	\$ 2881.46
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. . . .

Part IV: TOTAL UNPAID RENT AND/OR DAMAGES

6.	Total claim for unpaid rent and/or damages: . . .	\$ 5219.89
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7.	Unpaid rent and damages in excess of security deposit: . . .	\$ 5114.89
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Fifth: A chronologically itemized accounting (Running Account) of all charges and payments commencing March 17, 1994, through April 21, 1997, presented in the following columns: "CHARGES," "CREDITS," "BALANCE," and "SECURITY DEPOSIT." This Running Account reported that the balance due on April 21, 1997, was \$2,428.10.

Sixth: A copy of a letter dated September 30, 1996, from Takane to Loriega, advising Loriega that she has a balance due of \$2,153.27 and asking her to remit this amount by October 10, 1996, to avoid further charges.

Seventh: A copy of a letter dated November 30, 1996, from Takane to Loriega, advising her that she has a balance due of \$2,392.31 and asking her to remit this amount by December 15, 1996, to avoid further charges.

Eighth: A copy of a letter dated December 31, 1996, from Takane to Loriega, advising her that she has a balance due of \$2,439.71 and asking her to remit this amount by January 10, 1997, to avoid further charges.

Ninth: A copy of a letter dated February 28, 1997, from Takane to Loriega, advising her that she has a balance due of \$1,838.51 and asking her to remit this amount by March 15, 1997, to avoid further charges.

Tenth: A copy of a letter dated April 21, 1997, from Takane to Loriega, advising her of the balance due plus the

itemized post-exit charges and stating, "You have a balance due of \$5204.56. Please remit."

Eleventh: A receipt for Takane's payment of the amount of \$1,239.59 for cleaning, painting, fumigation, replacing screens, and replacing mailbox and a receipt for payment of the amount of \$260.42 for cleaning windows.

Although Takane's complaint said that it was for the period from "(1/96-4/18/97)," the \$2,338.43 amount was the sum total of the Running Account's computation of the unpaid rent, late charges, and interest from April 1, 1995, not January 1996.

Takane effected service on Loriega on February 9, 1999.

A pre-trial conference was held on April 12, 1999.²

The Pre-trial Conference Order states in relevant part:

3. Exchange of exhibit lists and exhibits: 4/15/99 via mail.

4. Other/Stipulations: [Loriega] to obtain Vietnamese interpreter if she feels it necessary. She must bear expense of that interpreter.

The trial was held on April 22, 1999.

In Hawai'i,

[t]he rule is well established that in the case of a running account with partial payments made from time to time and with debits of different classes, it is the right of the debtor to specify to what debits he wishes each payment applied; that, failing such application, it is the right of the creditor to specify the applications desired by him; and that, failing an application by both debtor and creditor, the courts may make the application, - the latter doing so according to principles of

² The confusion in this case regarding what Plaintiff-Appellee Janlu Takane (Takane) was suing for and what Defendant-Appellant Monaco Pham T. Loriega (Loriega) was disputing should have been resolved at the pre-trial conference. That is one of the main purposes of the pre-trial conference.

justice and equity, which in most cases have been long since well settled and are well recognized.

Unawahi v. First Trust Co., 30 Haw. 359, 375 (1928). In this case, there is no evidence of any specifications by Loriega.

As noted above, Takane's method of accounting was to keep a chronologically itemized Running Account of the balance due by adding her charges for rent, parking, late charge, and interest and subtracting the credits for rent payments received. Whenever Loriega made a payment in excess of the rent due for the month, Takane applied it to the amount past due.

Between March 17, 1994, and May 31, 1994, Takane charged and credited the following:

<u>DATE</u>	<u>DESCRIPTION</u>	<u>CHARGES</u>	<u>CREDITS</u>	<u>BALANCE</u>
3/17/94	Received Rent		33.00	
3/21/94	Rent Due 3/21/94-3/31/94 (239.47 + 22.77)	262.24		229.24
3/21/94	Parking Due 3/21/94-3/31/94	22.00		251.24
3/23/94	Late charge on \$11.77	1.77		253.01
3/31/94	Interest on \$11.77	.11		253.12
4/1/94	Rent Due (653 + 62)	715.00		968.12
4/1/94	Parking Due	60.00		1028.12
4/2/94	Late charge on \$122.00 ³	18.30		1046.42
4/4/94	Received Rent		11.77	1034.65
4/4/94	Received Rent		122.00	912.65
4/4/94	Interest on \$133.77	.20		912.85
4/6/94	Received Rent		892.47	20.38
4/30/94	Interest on \$20.18	.26		20.64 ⁴
5/1/94	Rent Due (653 + 62)	715.00		735.64
5/1/94	Parking Due	60.00		795.64

³ Loriega's chronologically itemized running account of the charges and payments shows that she never charged a 15% late charge on the monthly payments by the Hawai'i Housing Authority Section 8 Existing Housing Assistance Program.

⁴ The total of the late charges and interest is the same as the total of the balance due. Thus, with respect to this \$20.64 amount, the issue is whether the late charges and interest were properly imposed and calculated.

5/2/94	Late Charge on \$142.18	21.33		816.97
5/3/94	Received Rent (HHA \$ 8)		653.00	163.97
5/3/94	Received POA		62.00	101.97
5/7/94	Received POA		60.00	41.97
5/7/94	Interest on \$142.18	.45		42.42
5/31/94	Interest on \$41.97	.44		42.86

Loriega testified in relevant part as follows:

And I never owed her money for the rent except for two months at the beginning; and the worker told me if I didn't pay, I would not be able to continue on the Section 8 program. And since that day, I always paid and I never owe her anything.

As for the receipts, for the very old ones, it's been a long time. I don't have them anymore, Your Honor.

In contrast, Takane's Running Account shows that Loriega failed to pay the rent due for many of the months during her tenancy and for April 1997. It appears that the combination of the failure to pay rent and the imposition of the late charges and interest is what resulted in the \$2,338.43 amount Takane was seeking.⁵

After the tenancy ended, Takane also charged Loriega the following amounts for the following reasons:

Repair mailbox	\$	41.67
Replace door screen	\$	312.50
Replace carpet (\$499.69 minus \$250.00 wear and tear)	\$	249.69
Painting	\$	677.08
Cleaning	\$	364.59
Fumigation	\$	104.17
Excess water bills (actually was \$922.53)	\$	<u>881.76</u>
TOTAL		\$2,631.46

⁵ We have not verified all of the mathematics of Takane's running account.

The combination of \$2,428.10 plus \$2,631.46 (total \$5,059.56) minus the \$105 security deposit left a balance due of \$4,954.56.

At the trial, Takane sought to introduce the following exhibits:

Exhibit no. 41 rental agreement 3/16/94 to 3/20/94
Exhibit no. 40 rental agreement 3/21/94 to 3/31/95
Exhibit no. 1 rental agreement 4/1/95 to 3/31/96

The transcript reports the following discussion:

THE COURT: Okay, Miss Loriega . . . do you have any objections to my looking at these three lease documents that Miss Takane has presented to the Court?

THE DEFENDANT: Yes. She liar, not true.

THE COURT: Can you - (directed to the interpreter) -

MS. LORIEGA: I object.

THE COURT: What is the objection?

THE INTERPRETER: May the interpreter interpret again.

MS. LORIEGA: I don't object.

THE COURT: Very well. The Court will accept Plaintiff's "41", "40" and "1" into the record as part of the evidence. . . .

. . . .

THE COURT: Right. Okay. Mrs. Loriega, at this time what Miss Takane has shown me are amounts that she says you owe, which total \$5,204.56. Why do you say that you don't owe this amount?

MS. LORIEGA: Your Honor, it's because I didn't owe any rent money and when I moved out, the apartment was clean. I had somebody come in to clean it

. . . .

THE COURT: Here. This is what I want her to do. These are . . . all the bank deposit slips that Miss Takane says shows . . . what rents she received from Mrs. Loriega.

I want . . . you to go through these and show me where you have a receipt . . . that is not included in this list because this is all of the receipts that she says, all of the monies that she received. . . .

. . . .

THE COURT: You say that you paid everything. And so she says those are only all the payments that you made. So you should have some kind of receipt to show me where you made payments and they're not in her group. Do you understand?

. . . .

MS. LORIEGA: From what year, Your Honor?

THE COURT: It should go from March 21st . . . '94 up through the last day that she occupied, April, '97. Do you understand, Mrs. Loriega?

MS. LORIEGA: Sometimes I went to her house to pay cash and sometimes I paid cash at her office also, Your Honor.

. . . .

RECESS 10:10 A.M. - 10:35 A.M.

THE COURT: Okay. Mrs. Loriega, I've given you some time to look over the deposit slips that Miss Takane has submitted to the Court. Have you been able to find . . . any receipts that you have that she has not recorded?

MS. LORIEGA: Your Honor, I have been paying all the rent and the receipts for the period that she sued me for from January, '96, to April, '97, I have the copies of her receipts also. And also for the two months I owed her and some miscellaneous stuff, I have paid \$832 before I moved out. So that's all that I have.

The other receipts are, if they are, they will be at home. It's been two years so I didn't keep the very old ones. I didn't bring them with me. And even if I wanted to look for them, I wouldn't be able to find the very old receipts because I moved out two years ago.

. . . .

THE COURT: . . . [T]he whole purpose for me to give her some time to look at these was so that she could show me where there were some unrecorded payment [sic]. . . .

THE INTERPRETER: She said the period that she was sued for was from January, '96, to April, '97, and she has the receipts of all those months.

THE COURT: And what I'm asking her to do is show me where any of those receipts that she has is not included in this list.

That was the whole purpose of giving her 20 minutes to look at these.

The court's April 27, 1999 Judgment ordered Loriega to pay Takane:

Principal Amount	\$4,954.56
Costs of Court	25.00
Sheriff's Fees	15.00
Sheriff's Mileage	<u>3.50</u>
TOTAL	\$4,998.06

On April 29, 1999, Loriega filed a motion for reconsideration or new trial. The only issue she raised pertained to the fact that the complaint alleged nonpayment of rent from January 1996 through April of 1997 whereas the trial pertained to the nonpayment of rent commencing 1994. In a document accompanying her motion, Loriega stated in relevant part as follows:

According to this complaint, the time period during which I allegedly did not pay my rent is from January of 1996 through April of 1997.

. . . At no time, however, did I receive a complaint from [Takane] which claimed any amount of back rent owing for 1994 or 1995.

The deadline set by the judge for the exchange of exhibits was 4/15. At no time prior to the trial on 4/22/99 did I receive a copy of Plaintiff's exhibit 9, in which [Takane] alleges that she did not receive my rent payments for said months. Until the trial on 4/22/99, I was unaware of [Takane's] intent to sue me for any damages from 1994 and 1995. I was not given adequate time to gather evidence and prepare a defense to these claims. Had I known that [Takane's] claims would include back rent from 1994 and 1995, I would have brought evidence to prove that I have paid rent for those years.

Although Takane attached her Running Account to the complaint, Loriega's statement that she did not receive a copy of

the Running Account as a proposed exhibit prior to the April 15, 1999 deadline may be true.

It appears that, in preparing her opening brief, Loriega became aware of the rule that as long as issues are tried by the express or implied consent of the parties to a lawsuit, the issues "shall be treated as if raised in the pleadings." Hamm v. Merrick, 61 Haw. 470, 474, 605 P.2d 499, 502 (1980). When Loriega filed her opening brief, she also filed a motion to supplement or amend record on appeal seeking to introduce into the record the affidavit of Thuhuong Crumpton (Crumpton), the Vietnamese interpreter at the trial. In that affidavit, Crumpton addressed Loriega's failure to object to the introduction of the evidence of items relevant to time periods prior to January 1, 1996, and stated in relevant part as follows:

5. Based on the atmosphere of the court, the tone of the judge, the body language of the judge, and the sense that there was a lot of tension because the proceeding was taking so long - particularly Ms. Loriega's statements, I indicated to Ms. Loriega that I was concerned that the judge would get mad at her if she objected.

In her opening brief, Loriega asserts that "[t]he Policies for Interpreted Proceedings in the Courts of the State of [Hawai'i] expressly prohibit court interpreters from giving legal advice, or advice of any kind to a party, IPO II (A) (5), and III, Rule 9."

On August 16, 1999, the Hawai'i Supreme Court entered its order denying Loriega's motion "without prejudice to a motion for relief from judgment or order pursuant to Rule 60(b) of the

Hawai'i Rules of Civil Procedure filed after the disposition of the appeal."

POINTS ON APPEAL

Loriega asserts the following points on appeal: (1) the court abused its discretion in allowing Takane to sue her for rent owed for pre-January 1996 dates not alleged in the complaint; (2) the court should have allowed Loriega a continuance to allow her time to respond to the expansion of the complaint; (3) Loriega was denied her sixth amendment due process right to confrontation when the court interpreter misled her; and (4) in her Reply Brief, Loriega argues that

the Landlord Tenant Code requires that "[a]ll actions for the recovery of a landlords's complete or partial retention of the security deposit *shall be* instituted not later than one year after termination of the rental agreement." H.R.S. [Hawai'i Revised Statutes] Section 521-44(c). In this case, Ms. Loriega moved out of her unit on or about March 29, 1997 and [Takane] filed her complaint for assumpsit on or about May 5, 1998, more than one year after Ms. Loriega had move out of her unit. Thus the judgment for damages to the unit, like all security deposit issues, is invalid.

(Emphasis in original.)

DISCUSSION

With respect to point (1), except for its misleading limitation of the "Unpaid rent" to the period "(1/96-4/18/97)," the complaint was otherwise abundantly clear that Takane was suing for the total of the rent, late charges, and interest remaining due for the period commencing March 17, 1994, and ending on April 21, 1997. On the other hand, the Pre-Trial Conference Order failed to correct the obvious inconsistency.

With respect to point (2), Loriega never asked the court for a continuance.

With respect to point (3), there is no factual support for it in the current record.

With respect to point (4), it appears that although Loriega understands that HRS § 521-44(c) limits the time within which the tenant can sue to recover a security deposit withheld by the landlord, she fails to understand that it places no limit on the time when the landlord can sue the tenant for unpaid rent/damages.

Takane notes that Loriega's appeal is limited to the award of the \$2,428.10 balance due for the rent, late charges, and interest and does not challenge the \$2,631.46 for the other charges. We respond that Loriega's appeal challenges the April 27, 1999 Judgment, and as long as any part of the April 27, 1999 Judgment is not finally decided, none of the April 27, 1999 Judgment is final and enforceable.

We raise the following issues *sua sponte*.

A.

As noted above, the leases permitted Takane to charge "a service charge of 15% of rent for each payment we do not receive by 1:00 pm of the 2nd day of the month in which the payment is due."

The Running Account states that the \$122 due on September 2, 1994, was paid by Loriega on September 2, 1994. Nevertheless, the Running Account shows that Takane, on September 2, 1994, imposed a late charge. Possibly the payment was received after 1:00 p.m.

B.

The leases state in their "SPECIAL TERMS" section that "[i]n addition to monthly rent, if tenant should desire parking, charge will be \$60.00 per month." It is reasonable to interpret the leases as authorizing Takane to charge a 15% service charge whenever the rent and/or the parking was not paid prior to 1:00 p.m. on the second day of the month. In other words, when Loriega did not timely pay the \$122, or the \$83, or the \$148 she owed for both rent and parking for the month, Takane was authorized to charge a service charge equal to 15% of the delinquent payment.

Loriega initially owed \$122 per month until it changed to \$83 per month commencing April 1, 1995. Takane's Running Account reports that Loriega's payments were as follows:

March 1994	paid
April	paid
May	did not pay \$122
June	paid
July	paid
August	did not pay \$122
September	paid
October	did not pay \$122
November	did not pay \$122
December	paid
January	paid additional \$122

February	did not pay \$122
March	did not pay \$122
April 1995	did not pay \$60
May	did not pay \$60
June	paid
July	paid
August	paid
September	paid additional \$66
October	paid
November	paid
December	paid

Loriega owed \$83 per month for the first three months of 1996 and \$148 per month thereafter. Takane's Running Account reports that her payments were as follows:

January 1996	paid
February	paid
March	paid
April	did not pay \$60
May	did not pay \$60
June	did not pay \$60
July	did not pay \$60
August	did not pay \$48
September	did not pay \$148
October	did not pay \$148
November	paid
December	paid
January 1997	paid additional \$684
February	paid
March	paid
April 1 to 18	paid only \$20, HHA \$ 8 did not pay, and Takane charged \$441.72 rent plus \$36.00 parking

During this 1996-97 period, the balance due as reported on Takane's Running Account increased \$1,034.51 from \$1,393.59 on December 31, 1995, to \$2,428.10 on April 21, 1997. The ingredients of this \$1,034.51 increase in the alleged deficit are the \$357.72 shortage in rent/parking payments for the period and

the \$676.79 total of late charges and interest imposed during the period.

In some instances, Takane charged 15% on more than the \$122, \$83, or \$148 that was delinquent. For example, the 15% was computed on the following amounts on the following dates:

<u>DATE</u>	<u>AMOUNT</u>	<u>CHARGE</u>
May 2, 1994	\$142.18	\$ 21.33
June 2, 1994	163.97	24.60
July 2, 1994	285.97	42.90
August 2, 1994	356.16	53.43
September 2, 1994	415.89	62.39
February 2, 1995	820.47	123.08
April 2, 1997	477.72	71.66

As noted in footnote 2 above, it appears that Takane never charged a 15% late charge on the amounts payable by the HHA § 8. Except for the April 1997 late charge, the late charges noted above may be excessive. Although Takane charged a late charge on the total rent due in April 1997, it appears that HHA § 8 did not make any payment for that month.

C.

As noted above, the leases permitted Takane to charge "[i]nterest at 12% per year . . . on all rent and other sums you do not pay us on time." Takane usually computed interest twice a month during the tenancy and she computed it on a balance due. How she selected the balance due and what mathematical formula she used are not apparent. For example, Takane's entries

commencing July 5, 1994, and ending on October 31, 1994, are, in relevant part, as follows (emphases added):

<u>DATE</u>	<u>DESCRIPTION</u>	<u>CHARGES</u>	<u>CREDITS</u>	<u>BALANCE</u>
7/5/94	Received POA		122.00	356.16
8/2/94	Received Rent (HHA)		653.00	358.74
9/2/94	Received Rent (HHA)		653.00	537.89
9/2/94	Received POA		122.00	415.89
9/2/94	Interest on 356.16	.24	416.13	
9/2/94	Late Charge on 415.89	62.39		478.52
9/30/94	Interest on 415.89	4.20		482.72
10/1/94	Rent Due (653 + 62)	715.00		1,197.72
10/1/94	Parking Due	60.00		1,257.72
10/2/94	Late Charge on 122.00	18.30		1,276.02
10/5/94	Received Rent (HHA)		653.00	623.02
10/31/94	Interest on 537.89		5.58	628.60

Similarly, Takane's entries commencing December 2, 1996, are, in relevant part, as follows (emphases added):

<u>DATE</u>	<u>DESCRIPTION</u>	<u>CHARGES</u>	<u>CREDITS</u>	<u>BALANCE</u>
12/2/96	Late Charge on \$148	22.20		3,210.51
12/3/96	Received Rent (HHA \$ 8)		648.00	2,562.51
12/3/96	Received POA	148.00		2,414.51
12/3/96	Interest on 2514.48	2.52		2,417.03
12/31/96	Interest on 2414.51	22.68		2,439.71
1/1/97	Rent Due	736.00		3,175.71
1/1/97	Parking Due	60.00		3,235.71
1/2/97	Late Charge on \$145	22.20		3,257.91
1/3/97	Received Rent (HHA \$ 8)		648.00	2,609.91
1/10/97	Received POA		140.00	2,469.91
1/10/97	Received POA		100.00	2,369.91
1/10/97	Received POA		444.00	1,925.91
1/10/97	Received POA		148.00	1,777.91
1/10/97	Interest on \$2562.51	8.60		1,786.51
1/31/97	Interest on \$1777.91	12.60		1,799.11
2/1/97	Rent Due (\$648 - \$88)	736.00		2,535.11
2/1/97	Parking Due	60.00		2,595.11
2/2/97	Late Charge on \$148	22.20		2,617.31
2/3/97	Received POA		148.00	2,469.31
2/3/97	Interest on 1925.91	1.95		2,471.26
2/4/97	Received Rent (HHA \$ 8)		648.00	1,823.26
2/28/97	Interest on 1821.31		15.25	1,838.51
3/1/97	Rent Due . . .	736.00		2,574.51
3/2/97	Parking Due	60.00		2,634.51
3/2/97	Late charge on \$148	22.20		2,656.71
3/5/97	Received Rent (HHA \$ 8)		648.00	2,008.71

3/7/97	Received POA		148.00	1,860.71
3/7/97	Interest on 1969.31	4.62		1,865.33
3/31/97	Interest on 1860.71	17.01		1,882.34
4/1/97	Rent due 4/1/97-4/18/97	441.72		2,324.06
4/1/97	Parking due 4/1/97-4/18/97	36.00		2,360.06
4/2/97	Late charge on \$477.72	71.66		2,431.72
4/8/97	Received POA		20.00	2,411.72
4/8/97	Interest on 2338.43	6.24		2,417.96
4/21/97	Interest on 2338.43	10.14		2,428.10

It appears that Takane bi-monthly charged interest on a balance due which included interest previously charged. If Takane charged interest at the rate of 12% per annum and then charged interest on interest at the rate of 12% per annum, the net result would be that Takane charged interest in excess of the authorized 12% per annum.

D.

It appears that the following charges were improperly rounded up. On August 2, 1994, Takane charged Loriega a "Late Charge on \$356.16" in the amount of \$53.43, notwithstanding that 15% of \$356.16 is only \$53.424. On September 2, 1994, Takane charged Loriega a "Late Charge on \$415.89" in the amount of \$62.39, notwithstanding that 15% of \$415.89 is only \$62.3835. On February 2, 1995, Takane charged Loriega a "Late Charge on \$820.47" in the amount of \$123.08, notwithstanding that 15% of \$820.47 is only \$123.0705.

CONCLUSION

Accordingly, we vacate the April 27, 1999 Judgment and remand for reconsideration in light of this opinion. On remand, Loriega shall be given a reasonable opportunity to challenge all or part of the charges from the beginning of 1994 to the end of 1997.

DATED: Honolulu, Hawai'i, August 23, 2000.

On the briefs:

Monaco Pham T. Loriega,
Defendant-Appellant, *pro se.* Chief Judge

Janlu Takane,
Plaintiff-Appellee, *pro se.* Associate Judge

Associate Judge