

NOT FOR PUBLICATION

NO. 24284

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

ERIC WADA and MICHAEL K. ABE, Plaintiffs-Appellants, v. RANDALL M. KUBA, individually; STANLEY TAKAMINE, individually; DEXTER TERUYA, individually; HAWAII UNITED OKINAWA ASSOCIATION, a Hawaii not for profit corporation; HAWAII OKINAWA CENTER, a Hawaii not for profit corporation; PAMELA TAMASHIRO, individually; BARBARA KUBA; BETTY HIGA, BOB MAYESHIRO, Defendants-Appellees, COLLEEN HANABUSA, fka COLLEEN SAKURAI; SAKURAI & SING; LISA GINOZA; JON MIHO; MCCORRISTON, MIHO MILLER & MUKAI; GEORGE CHOY; MICHAEL NAKAMURA, former Chief of Police; POLICE DEPARTMENT, CITY & COUNTY OF HONOLULU; JOHN DOES 1-200 and MARY DOES 1-200, Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIV. NO. 97-3151)

SUMMARY DISPOSITION ORDER

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

Plaintiffs-Appellants Eric Wada (Wada) and Michael K. Abe (Abe) (collectively, Plaintiffs) appeal the April 18, 2001 judgment, certified as final pursuant to Hawaii Rules of Civil Procedure (HRCP) Rule 54(b) and entered in the circuit court of the first circuit¹ in favor of Defendants-Appellees Hawaii United Okinawa Association (HUOA), Hawaii Okinawa Center, Randall M. Kuba, Stanley Takamine, Dexter Teruya, Pamela Tamashiro, Barbara Kuba, Betty Higa and Bob Mayeshiro (collectively, the HUOA Defendants).

Upon a meticulous review of the record and the briefs

¹ The Honorable Eden Elizabeth Hifo, judge presiding.

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submitted by the parties, and giving due consideration to the arguments advanced and the issues raised by the parties, we resolve Plaintiffs' points of error as follows:

1. Plaintiffs aver the court "erred in finding that Abe, though a member of the 1996 HUOA Executive Council and Immediate Past President under the HUOA By-Laws, was not an officer in 1996 and therefore had no standing individually as an officer or derivatively under HRCF Rule 23.1." Amended Opening Brief at 8-9 (footnote omitted). We disagree. Even assuming, *arguendo*, that Hawai'i law allows a derivative action on behalf of a nonprofit corporation by persons or entities other than members or directors, but see HRCF Rule 23.1; Hawaii Revised Statutes (HRS) § 414D-90 (Supp. 2003); HRS § 414D-14 (Supp. 2003) (definition of "board" or "board of directors"), Abe could not "fairly and adequately represent the interests of the . . . [HUOA] members similarly situated in enforcing the right of the corporation[,]" HRCF Rule 23.1, because it is painfully obvious that his derivative claims were mere and dilatory filigree upon his original -- and intensely personal -- \$1.5 million defamation claims against HUOA and the other HUOA Defendants. See Fujimoto v. Au, 95 Hawai'i 116, 150-51, 19 P.3d 699, 733-34 (2001).

2. Plaintiffs also contend the court erred when it denied their motion to amend their complaint, insofar as they sought to join Keith Shimabukuro (Shimabukuro) as an additional party plaintiff. On the contrary, the court's refusal to allow

the additional party plaintiff was not an abuse of discretion, Bishop Trust Co. v. Kamokila Dev. Corp., 57 Haw. 330, 337, 555 P.2d 1193, 1198 (1976), because the amendment denied was untimely and would have been prejudicial to the HUAO Defendants, and neither Shimabukuro nor the Plaintiffs were prejudiced by the denial. Id.; Clarke v. Title Guar. Co., 44 Haw. 261, 264, 353 P.2d 1002, 1004 (1960).

3. Plaintiffs assert that, "The Court abused its discretion and significantly prejudiced Appellants-Plaintiffs['] ability to prosecute the case when the Court erred and barred deposition and discovery of [HUAO's certified public accountants] and all discovery into the financial affairs of the HUAO and related entities." Amended Opening Brief at 9-10. This point lacks merit. As Plaintiffs explain, "Plaintiffs-Appellants [sic; presumably, their claims of] breach of fiduciary duties, fraud, unjust enrichment, involving the cover up of the Hokama embezzlement were pending at the time, and therefore discovery into the financial affairs for those years could lead to admissible [sic] evidence." Amended Opening Brief at 18. Inasmuch as we have concluded the court did not err in dismissing Plaintiffs' derivative claims, the court did not abuse its discretion, Acoba v. General Tire, Inc., 92 Hawai'i 1, 9, 986 P.2d 288, 296 (1999), in denying discovery insofar as it was germane only to those claims. See HRCF Rule 26(b)(1); Lothspeich v. Sam Fong, 6 Haw. App. 118, 122-23, 711 P.2d 1310, 1314 (1985).

As for Plaintiffs' attempt to link the discovery sought to a purported element of "actual malice" in their defamation claims, we observe the court dismissed Plaintiffs' defamation claims as facially invalid, along with all other claims wholly recumbent thereon, and Plaintiffs do not target those dismissals in any way on appeal. Cf. Ling v. Yokoyama, 91 Hawai'i 131, 135, 980 P.2d 1005, 1009 (App. 1999).

4. Plaintiffs argue that the court

erred in issuing a protective order prohibiting Plaintiff Abe from going to the offices of the HUOA and contacting officers and directors of the HUOA, and prohibiting extrajudicial statements, as overbroad and in violation of Plaintiff Abe's constitutionally protected rights of freedom of speech and association, particularly in light of the Court's ruling that all financial matter discovery was irrelevant to the action.

Amended Opening Brief at 11. The protective order is material to the final judgment Plaintiffs appeal only insofar as the judgment contains a monetary sanction against Abe, for violating the protective order by contacting a director of the HUOA without the required consent or authorization. Hawai'i Rules of Professional Conduct Rule 4.2 (2000). We trust it goes without saying that the court did not abuse its discretion, Richardson v. Sport Shinko (Waikiki Corp.), 76 Hawai'i 494, 508, 880 P.2d 169, 183 (1994), in prohibiting Abe -- a *pro se* plaintiff but also an attorney representing Wada in this case -- from violating the rules defining his professional responsibilities.

5. Finally, Plaintiffs assert that the court erred in sanctioning Abe for his violation of the protective order.

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Plaintiffs include no argument on this point of error in their appellate briefs. Plaintiffs have thereby waived this point of error. Hawai'i Rules of Appellate Procedure Rule 28(b) (7) (2001); Ala Moana Boat Owners' Ass'n v. State, 50 Haw. 156, 158, 434 P.2d 516, 518 (1967).

Therefore,

IT IS HEREBY ORDERED that the April 18, 2001 final judgment of the court is affirmed.

DATED: Honolulu, Hawai'i, May 14, 2004.

On the briefs:

Michael K. Abe, for
plaintiffs-appellants.

David J. Dezzani, Derek R.
Kobayashi and Kathleen A. Kelly
(Goodsill Anderson Quinn & Stifel),
for defendants-appellees.

Chief Judge

Associate Judge

Associate Judge