

NOT FOR PUBLICATION

NO. 25730

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

JOHN JORSKI and MARY JORSKI, Plaintiffs-Appellees, v. HERMAN HARVEY, AILEEN S. NII, JOHN DOES 1-10, JANE DOES 1-10, and DOE MUNICIPAL CORPORATIONS 1-10, Defendants-Appellants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT (Civ. No. 02-1-0041K)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Nakamura and Fujise, JJ.)

Defendants-Appellants Herman Harvey and Aileen S. Nii (Appellants) appeal from the Final Judgment entered on March 3, 2003 in the Circuit Court of the Third Circuit.^{1/} After a careful review of the record and the briefs submitted by the parties with due consideration to the issues raised and the applicable law, we affirm the judgment as follows:

The circuit court did not err in granting Plaintiffs-Appellees John Jorski and Mary Jorski's (Appellees) cross-motion for summary judgment and denying Appellants' motion for summary judgment. It is undisputed on appeal that 1) Appellants submitted their architect's plans, showing the garage slab would be built at a height of 108.5 feet, to the Design Committee of the Keopu Heights Neighborhood Association (Association) to obtain approval of those plans as required by the Covenants, Conditions and Restrictions applicable to Appellants' lot.

^{1/} The Honorable Ronald Ibarra presided.

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2) The Association subsequently approved Appellants' plans and specifically restricted the construction of Appellants' garage slab to no more than 108.5 feet. 3) Appellants did not challenge or seek reconsideration of this restriction and began construction of their home. 4) Appellees filed the instant suit based on their belief Appellants were building their home in violation of the restriction. 5) Surveyors hired by both Appellants and Appellees found that the garage slab was built approximately three feet higher than the 108.5-foot maximum height restriction set by the Association.

Given these undisputed facts, the circuit court's determination that Appellants' building violated the terms of the Association's approval was correct, as was its granting summary judgment in favor of Appellees.

Therefore,

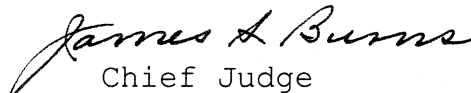
IT IS HEREBY ORDERED that the circuit court's Final Judgment entered on March 3, 2003 is affirmed.

DATED: Honolulu, Hawai'i, May 31, 2005.

On the briefs:

Geraldo W. Scatena,
for Defendants-Appellants.

Francis L. Jung and
Usha Kilpatrick Kotner,
(Jung & Vassar),
for Plaintiffs-Appellees.


Chief Judge


Associate Judge


Associate Judge