

NOT FOR PUBLICATION

NO. 26142

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

EXHIBIT AND
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 JAN 24 AM 8:15

FILED

FIRST INSURANCE COMPANY OF HAWAII, LTD., a Hawaii corporation, Plaintiff-Appellee, v. MICHAEL A. GEORGOPAPADAKOS and HARRIET A. GEORGOPAPADAKOS, husband and wife, Defendants-Appellants, and TECHNO ENGINEERING & CONSTRUCTION, LTD., a Hawaii corporation, Defendant, and MICHAEL A. GEORGOPAPADAKOS and HARRIET A. GEORGOPAPADAKOS, husband and wife, Third Party Plaintiffs-Appellants, and TECHNO ENGINEERING & CONSTRUCTION, LTD., a Hawaii corporation, Third Party Plaintiff, v. FIRST INSURANCE COMPANY OF HAWAII, LTD., a Hawaii corporation, Third Party Defendant-Appellee, and STATE OF HAWAI'I DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES; and PATRICK CHUN, THOMAS MORIOKA, ROBERT TAKUSHI, et al., and CITY AND COUNTY OF HONOLULU, Third Party Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Civil No. 95-3447)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting C.J., Foley and Fujise, JJ.)

Pro se Defendants-Appellants Michael A. Georgopapadakos (Michael) and Harriet A. Georgopapadakos (Harriet) (collectively, Appellants)¹ appeal from the Final Judgment entered on September 9, 2003 by the Circuit Court of the First Circuit

¹ Techno Engineering & Construction, Ltd. (Techno), is a company owned by Appellants, and was also a defendant in the suit. Techno has not appealed from the Final Judgment.

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(circuit court).² The Final Judgment followed: (1) an order and default judgment, entered on November 21, 2000 by the circuit court (November 21, 2000 default judgment) granting Plaintiff-Appellee First Insurance Company of Hawaii, Ltd.'s (First Insurance) motion for default judgment, ordering Appellants to pay First Insurance \$564,010.69, and dismissing Appellants' counterclaim for breach of contract; and (2) a December 31, 2002 order denying Appellants' motion to set aside or stay the November 21, 2000 default judgment.

On appeal, Appellants contend that (1) the circuit court erred in finding the Appellants in default because "newly discovered evidence" was found while pursuing their motion to stay; (2) the circuit court erred by issuing the November 21, 2000 default judgment; (3) the court clerk erred by suppressing information that should have been considered before issuing a default judgment; (4) the circuit court violated Appellants' right to due process; (5) First Insurance denied Appellants' access to information and discovery; (6) the circuit court's oral statements differ from the written order; and (7) the circuit court dismissed Appellants' counterclaims in violation of their right to due process.

After careful review of the issues raised and the arguments made by the parties, as well as the record of the

² The Honorable Richard W. Pollack presided.

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proceedings before the circuit court and the relevant case law, we resolve Appellants' points on appeal as follows:

The circuit court did not err in denying Appellants' July 1, 2002 motion to set aside. Appellants' motion was untimely as it was based on claims fairly characterized as falling under Hawai'i Rules of Civil Procedure (HRCPP) Rule 60(b)(1), (2), or (3) and was filed more than one year after the default judgment was entered. HRCPP Rule 60(b).

Moreover, the circuit court did not err in denying Appellants' motion to set aside default because 1) they did not present a meritorious defense and the default was the result of "inexcusable neglect or a wilful act," BDM, Inc. v. Sageco, Inc., 57 Haw. 73, 77, 549 P.2d 1147, 1150 (1976); 2) the facts they allege do not constitute "newly discovered evidence," Ditto v. McCurdy, 103 Hawai'i 153, 162, 80 P.3d 974, 983 (2003); 3) Appellants did not prove they attempted to file the documents that do not appear in the record nor that those documents would have compelled a different result; and 4) Appellants have failed to show they were denied due process as the record reflects they were served with all pleadings and given notice of all hearings and the court-ordered settlement conference, and to the extent they expected the court to contact them, they did so at their own peril. See Herman v. Miller, 63 F. Supp. 2d 918 (C.D. Ill. 1999)

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(a pro se party has an obligation to follow his case and contact the court regarding its status).

Therefore,

IT IS HEREBY ORDERED that the Final Judgment entered on September 9, 2003 by the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, January 24, 2006.

On the briefs:

Michael A. Georgopapadakos and
Harriet A. Georgopapadakos,
pro se Defendants-Appellants.

Corinne KA Watanabe
Acting Chief Judge

Beverly Lynne K. Hiramatsu
(Lyons, Brandt, Cook &
Hiramatsu),
for Plaintiff-Appellee.

Clare R. Foley
Associate Judge

Amya Okazaki
Associate Judge