NO. 27458

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

CALVIN K. CHO, HEE CHO, DAVID CHO, TENNY CHO, KAREN CHO AND SHARON CHO, Plaintiffs-Appellants,
v.
STATE OF HAWAI'I, Defendant-Appellee,
and
JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, DOE NON-PROFIT ENTITIES 1-10, AND DOE GOVERNMENTAL ENTITIES 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 97-1939)

SUMMARY DISPOSITION ORDER
(By: Burns, C.J., Foley and Nakamura, JJ.)

Plaintiffs-Appellants Calvin K. Cho, Hee Cho, David Cho, Tenny Cho, Karen Cho, and Sharon Cho (collectively, the Chos) appeal from the August 25, 2005 First Amended Judgment entered by the First Circuit Court[1] in favor of Defendant-Appellee State of Hawai'i (the State).

From April of 1985 to the end of September of 1995, Calvin, his wife, Hee, their two sons David and Tenny, and their twin daughters, Karen and Sharon, lived in a two-bedroom cottage (Cottage) located on the Washington Intermediate School[2] (School) campus grounds. The Chos alleged that "[d]uring the time they resided in the subject residence, [they] were poisoned by lead and mercury through exposure to paint and other sources in the

---

[1] Judge Eden Elizabeth Hifo presided.

[2] Washington Intermediate School is now known as Washington Middle School.

[Cottage]." This is an appeal from the jury-waived verdict in favor of the State that denied the Chos' claims seeking damages for injuries caused them by their alleged long-term exposure to mercury, lead, and arsenic during their ten year occupation of the Cottage.

The Cottage, built circa 1920, was owned by the State and made available for the School's head custodian. Calvin worked as a custodian for the State Department of Education since 1975, and became the School's head custodian in 1985. The Chos rented from the State for $50 per month.

The Chos testified that when they moved into the Cottage, it was dirty and had termites. The paint was peeling, the floors were stained, and the windows were painted over. The Chos patched the termite damage, painted the interior and exterior with paint supplied by the School, cleaned the floors, and scraped the windows.

In December 1989, the State hired private architect Gerald Inouye to inspect the condition of all its custodial cottages. Inouye reported that the Cottage was well-cared for and "[v]ery clean," despite "[s]ome termite damages." The roof was considered "very old" and had "leaks," but no repairs were done by the State because "a new roof would [have] cost more than $3,000, exceeding available funds," and "exceeded the allowable repair amount per [Department of Education] policy of twice the annual rent ($100 [sic] for the Chos [C]ottage)."

In the course of his work as head custodian during the 1990s, Calvin filed a number of workers' compensation claims for matters relating to alleged back injuries, episodes of reactions to chemicals he used in the work place, and resulting chemical sensitivity. In connection with his workers' compensation claim for chemical sensitivity, Calvin was evaluated by physician and toxicologist Ajit Arora, M.D. In his November 22, 1995 report, Dr. Arora concluded that Calvin's symptoms were the result of mercury poisoning. He suggested that the source of the mercury was in the home environment, probably due to Calvin's diet and self-medication with Asian folk remedies.

Medical records from Kaiser Permanente (Kaiser records) beginning in 1971 show that Calvin regularly sought treatment for numerous minor ailments prior to moving to the Cottage, including entries as early as the mid-1970s indicating that Calvin had fears of being poisoned. In the Kaiser records, the May 5, 1976 entry states that Calvin suspected someone had tried to poison him by contaminating his tea, and he wanted his tea tested for poison. The December 20, 1978 entry states that Calvin was convinced that some kind of poison was affecting his eyes. The January 26, 1979 entry states that Calvin was convinced a former co-worker was trying to poison him.

On May 12, 1995, during a routine inspection of the Cottage, Steven Hong, a facilities maintenance employee of the Department of Accounting and General Services (DAGS), tested the

exterior of the Cottage for lead paint. The strip test for lead paint was positive. The State determined that repair and maintenance costs would not be economically feasible and decided to demolish the Cottage. Calvin was notified by letter that the rental agreement for the Cottage would not be renewed and that the Cho family must vacate by the end of August 1995. The letter did not disclose the results of the strip test for lead. The Chos asked for more time to move for stated financial reasons. The State gave the Chos until September 30, 1995 to vacate. The Chos vacated on or about September 30, 1995 and moved into a home they owned in Kapolei. The Cottage was demolished on or about January 18, 1996.

On or about April 25, 1996, Calvin called the State inspector, who informed Calvin that the May 1995 strip test for lead was positive. Calvin immediately sought and obtained the report and began his own investigation. In early July of 1996, Calvin returned to the site of the Cottage to collect samples of debris, paint chips, and water. It is unknown whether the debris and paint chips were from the interior of the Cottage. Calvin took the samples he collected to Inalab (Inalab samples) for testing. The Inalab test of the paint chips indicated a high level of lead and a very low level of mercury. The Inalab test of the water indicated low and unremarkable levels of lead and detected no mercury.

In July 1996, when their blood, hair, and urine tests indicated the presence of lead, mercury, and arsenic in their bodies, the Chos underwent chelation therapy to remove the metals from their bodies. At various times from 1996 through 2002, each of the Chos submitted numerous samples of their blood, hair, and urine for laboratory tests to determine lead, arsenic, and mercury content.

On October 4, 1996, the State had Brewer Environmental Services collect wood, paint chips and soil samples from the site of the demolished Cottage (Brewer samples). Tests of the Brewer samples showed elevated but not hazardous levels of lead. Fifty-five gallons of debris from the former site of the Cottage were then collected in a drum and shipped to a toxic dump site in Grassy Mountain, Utah.

On May 12, 1997, proceeding *pro se*, the Chos filed a complaint alleging that "[d]uring the time they resided in the subject residence, the [Chos] were poisoned by lead and mercury through exposure to paint and other sources in the [Cottage]" and were seeking general and special damages caused them by the State's (1) negligence and (2) breach of warranty of habitability.

> A cause of action for breach of implied warranty of habitability is based upon an entirely independent legal theory and involves different legal issues from those in a cause of action for negligence. Under the law of implied warranty of habitability, the defect or unsafe condition "must be of a nature and kind which will render the premises unsafe, or unsanitary and thus unfit for living therein." *Kline v. Burns*, 111 N.H. 87, 92, 276 A.2d 248, 252 (1971). The premises must be substantially

> unsuitable for living so that the breach of the warranty would constitute a constructive eviction of the tenant. *Reste Realty Corp. v. Cooper*, 53 N.J. 444, 251 A.2d 268 (1969). Not "every transient inconvenience of living attributable to the condition of the premises will be a legitimate subject of litigation. The warranty is one of habitability and is not a warranty against all inconvenience or discomfort." *Academy Spires, Inc. v. Jones*, 108 N.J.Super. 395, 402, 261 A.2d 413, 417 (1970). A cause of action for negligence against a landlord on the other hand is based upon an injury to person or property caused by the landlord's breach of a duty to maintain the rental premises in safe condition.

Armstrong v. Cione, (App. 1987), 6 Haw.App. 652, 658-59, 736 P.2d 440, 445-46 (1987), aff'd, 69 Haw. 176, 738 P.2d 79 (1987) (footnote omitted).[3]

In June 1997, a test of the Inalab samples detected no arsenic.

In March 1999, the Chos requested production of the Brewer samples. On July 14, 1999, the State filed a "motion to quash" the request, arguing that the Brewer samples were no longer in its control and the cost of retrieval would be $15,000. In a September 20, 1999 order (September 20, 1999 Order to Produce), Judge Gail Nakatani stated, in part:

> THE COURT FURTHER FINDS that it is satisfied that the State of Hawaii had actual knowledge that the subject [C]ottage was a cause and source of toxic exposure to [the Chos]. This fact is particularly evident by the exterior testing conducted on or about May 12, 1995. Instead of testing the cottage as recommended by Dr. Arora, the State allowed the [C]ottage to be demolished and removed to a local landfill in February 1996. Subsequently, on October 25, 1996 a fifty-five gallon drum of [C]ottage debris was collected and eventually shipped to Grassy Mountain, Utah.
>
> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the [State] shall be required to produce the fifty-five gallon drum at its own expense to [the Chos] in Hawaii for testing purposes.

The State's September 28, 1999 motion for relief from this order

---

[3] Conclusion of Law no. 2 entered on April 5, 2005 cites "Lemle v. Breedan, 51 Haw. 526 (1969)[.]" The page "526" in this citation should be "426[.]"

was denied by Judge Nakatani on March 3, 2000.

On September 1, 2000, after the State failed to produce the Brewer samples, the Chos moved for the imposition of sanctions against the State. The State responded that the cost of retrieval would now be $1,000,000. On December 22, 2000, Judge Eden Elizabeth Hifo entered an order (December 22, 2000 Sanctions Order)[4] that states in part:

> 1. [The State] was negligent in that it had a custodian [C]ottage which contained toxic chemicals, namely lead, mercury and arsenic . . . .
>
> 2. [The State] is estopped from claiming that the custodian [C]ottage contained toxic chemicals, namely lead, mercury and arsenic, which were the byproducts of other substances which were the cause of the toxic chemicals in the custodian [C]ottage . . . .
>
> 3. [The State] is estopped from denying that the [Chos] have actually been exposed to a dosage within the established range for which there is an established causal relationship between exposure to the toxins namely lead, mercury and arsenic, and the occurrence of disease from April 1985 to September 1995.
>
> 4. [The State] shall not be estopped from asserting its claims as to proximate cause, comparative negligence, assumption of risk or any other affirmative defenses against any other party in this action.

It appears that Judge Hifo intended to say in paragraph "2" of the December 22, 2000 Sanctions Order that "[the State] is

---

[4] In the answering brief, Defendant-Appellee State of Hawai'i (the State) says the following about the December 22, 2000 Sanctions Order:

> On December 22, 2000, Judge Hifo granted in part and denied in part the Chos' motion for sanctions defenses against any other party in this action. The order was severe in that it held the State negligent without the Chos having to carry their burden of proof at trial. Id. The order was also internally inconsistent because although paragraph B.4. allowed the State to litigate proximate cause, Paragraph B.3. precluded the State from litigating that the Chos had not been exposed to levels of lead, arsenic or mercury which causes disease essentially without the Chos having to carry their burden of proof at trial. In addition, the order was internally inconsistent because although paragraph B.4. allowed the State to litgation [sic] comparative negligence it also precluded the State from doing so in Paragraph B.2. by precluding the State from litigating that the metals were the byproducts of other substances, e.g. food Chos ate.

(Record citation omitted.) We conclude that the State misinterprets this order.

estopped from claiming that the custodian [C]ottage did not contain toxic chemicals[.]"

On December 13, 2002, the State deposed Inalab president/lead toxicologist Mark Hagadone, Ph.D. Dr. Hagadone stated in his deposition that the laboratory tests conducted on the Inalab samples showed non-hazardous levels of lead and "insignificant levels of arsenic and mercury."

On December 31, 2002, the State filed a Motion for Reconsideration (December 31, 2002 MFR) pursuant to Hawai'i Rules of Civil Procedure (HRCP) Rule 60. Eleven months later, on November 5, 2003, without a hearing, Judge Hifo entered an order (November 5, 2003 Sanctions Order) granting in part and denying in part the State's December 31, 2002 MFR, implicitly vacating the December 22, 2000 Sanctions Order, and stating:

> (1) The Court therefore imposes the less severe sanctions which are set forth in movant State's supporting memorandum at page 12, as follows: during the trial the State is precluded from using Brewer Findings and Report; (2) only the Inalab findings are admissible; and (3) at trial the inference will be made that, if Brewer samples were tested, the results would have been similar to samples that [the Chos] obtained and that were tested by Inalab.

On January 3, 2004, pursuant to HRCP Rule 68 and Hawai'i Rules of Evidence, Rule 408, the State served on each of the Chos a $200 per person offer of settlement. All of the Chos rejected the offer.

Jury-waived trial commenced before Judge Hifo on February 17, 2004 and ended on March 5, 2004. On the last day of the trial, Judge Hifo stated:

> Okay. You know what? I am taking back my prior ruling and I am taking back the suggestion that we argue this. I am now bifurcating this trial. It will not be about damages. Damages will be taking the evidence of the economist if we find liability and legal causation and that way we won't have created any prejudice to the [Chos].

On April 5, 2005, Judge Hifo entered Findings of Fact and Conclusions of Law (FsOF and CsOL). The FsOF state, in part:

> 52. [The Chos] retained expert toxicologist Edward Massaro, Ph.D., who concluded that the family was subjected to long-term low-level exposure of lead, arsenic and mercury that they ingested, inhaled and absorbed by skin contact. He also concluded that all family members have various medical conditions some of which manifest as irritability and psychological or mental deficits as a result of the exposure.
>
> 53. At trial, Dr. Massaro and other [of the Chos'] witnesses failed to provide credible bases for their opinions including no consideration of [the Chos'] pre-[C]ottage medical records, no credible explanation of post-[C]ottage sample tests showing exposure levels, and no credible explanation of the method by which [C]ottage contact allegedly occurred. They opined that [the Chos'] inhalation, ingestion, and skin contact of termite feces containing heavy metals from the cottage paint and wood eaten by the insets was the method of exposure to lead, mercury and arsenic. Dr. Massaro was not a persuasive witness, and the court rejects his opinions.
>
> 54. In contrast, the State's expert toxicologist, Robert Tardiff, Ph.D., credibly testified within reasonable scientific probability that none of the [Chos] were exposed to lead, arsenic or mercury from the [C]ottage and any symptoms or ailments they had or claimed to have were not caused by [C]ottage exposure. Dr. [Leonard] Cupo credibly testified to the same effect. The scientific bases include inter alia the known 1/2 life of the applicable heavy metals in human hair, blood and urine, the actual sample testing results of [the Chos], and the complete medical records of [the Chos].
>
> . . . .
>
> 56. Indeed, the medical records of the [Chos] do not support their claims. For example, Hee Cho's pre-[C]ottage records contain myriad complaints of headaches, respiratory problems including emphysema, marital problems including domestic violence, conjunctivitis and body rashes. At trial she testified the pre-[C]ottage records were wrong. (They would have to be for her litigation claims to have credibility.) The Court however finds the medical records are more accurate contemporaneous written documentation by medical providers than the trial recollections of the witnesses and therefore discredits the testimony of [the Chos].
>
> . . . .

> 59. There is no credible evidence of [the Chos'] toxic exposure to arsenic, lead or mercury from [the State's] [C]ottage.
>
> 60. There is no credible evidence of any physical or psychological injury to any of [the Chos] as a result of arsenic, lead or mercury from [the State's] [C]ottage.
>
> 61. There is no credible evidence of economic injury to any of [the Chos] as a result of arsenic, lead or mercury from [the State's] [C]ottage.

The CsOL state as follows:

> 1. [The Chos] have failed to prove by a preponderance of the evidence that [the State] was negligent and/or that any such negligence was a legal cause of injury to any [of the Chos].
>
> 2. [The Chos] failed to prove their claims of breach of warranty of habitability to [sic] as set forth in Lemle v. Breeden, 51 Haw. [4]26[, 462 P.2d 470] (1969) or otherwise.
>
> 3. [The Chos] failed to prove any and all of their claims by a preponderance of the evidence. Therefore, judgment shall enter in favor of the [State] and against [the Chos].

On April 15, 2005, the State filed a Motion For Taxation of Costs of $335,958.55, $71,148.83 of which was incurred after the offer of settlement. On June 16, 2005, the court entered an order (June 16, 2005 Order) awarding the State $301,115.56 in costs. On June 27, 2005, the court entered a judgment (June 27, 2005 Judgment) that stated in part: "Judgment is further entered in favor of Defendant State of Hawaii for costs in the amount of $301,115.56[.]". On July 6, 2005, the Chos moved to alter or amend the June 27, 2005 Judgment. The Chos noted that $291,000 of the expenses requested by the State was for expert fees and argued that expert fees normally are not allowed. On August 22, 2005, Judge Hifo entered the Order Granting Plaintiffs' Motion to Alter or Amend the Judgment Filed on June 27, 2005, which reduced costs to $59,402.56 without

explanation or apportionment. On August 23, 2005, the Chos filed a notice of appeal.[5] The August 25, 2005 First Amended Judgment states in part:

> Judgment is entered in favor of Defendant STATE OF HAWAII on all counts in the Second Amended Complaint [sic].
>
> Judgment is further entered in favor of Defendant STATE OF HAWAII for costs in the amount of $59,402.56 and against [the Chos], pursuant to the Order Granting Defendant STATE OF HAWAII's Motion for Taxation of Costs filed on June 16, 2005, as amended by the Order Granting Plaintiffs' Motion to Alter or Amend Judgment filed on June 27, 2005, file [sic] August 22, 2005.

"If a notice of appeal is filed after annoucement of a decision but before entry of judgment or order, such notice shall be considered as filed immediately after the time the judgment or order becomes final for the purpose of appeal." Hawai'i Rules of Appellate Procedure Rule 4(a)(2). Consequently, the Chos' appeal is timely.

The August 25, 2005 First Amended Judgment states that "[j]udgment is entered in favor of Defendant STATE OF HAWAII on all counts in the Second Amended Complaint." In fact, the one complaint filed by the Chos never was amended. Does this mistake in the August 25, 2005 First Amended Judgment erroneously referring to the Chos' only complaint as the "Second Amended Complaint" render the August 25, 2005 First Amended Judgment non-appealable? The answer is no. Garcia v. Or. Dep't of Motor Vehicles, 195 Or.App. 604, 99 P.3d 316 (Or. Ct. App. 2004),

---

[5] Note that the appeal is not timely if applied to the June 27, 2005 judgment; however, since the June 27, 2005 judgment did not identify the claim for which it was entered, it is not an appealable judgment under Hawaii Revised Statutes (HRS) § 641-1(a) (1993), Hawai'i Rules of Civil Procedure (HRCP) 58 and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

aff'd, 201 Or.App. 299, 120 P.3d 29 (Table) (Or. Ct. App. 2005) (holding that clerical mistake did not prevent "entry" of judgment under pertinent statutes and thus judgment was enforceable and appealable). Moreover, HRCP Rule 60(a) authorizes the circuit court to correct its clerical errors.

In their opening brief, the Chos assert that the circuit court failed to make adequate findings of facts and conclusions of law when it (1) did not address duty or breach of duty with regard to negligence, or the elements of breach of warranty of habitability; (2) made no findings regarding the State's duty to inspect, repair, or maintain the Cottage during the ten years it was leased to the Chos; (3) made no findings regarding the duty to inspect for toxic chemicals, for which all other Washington Intermediate School buildings were inspected every year; (4) made no findings about the State's duty to inform the Chos of lead contamination within a reasonable time after it was discovered by DAGS inspector Stephen Hong in May 1995; (5) made no findings about the impact of this delay in informing the Cho family about lead contamination, and the loss of the 55-gallon drum on the Chos' ability to prove contamination in this cottage; (6) offered no analysis of HRS Chapter 521 and its statutory obligation for landlords to maintain leased property in a safe and healthful manner, or the habitability standards for leased property; (7) disregarded its own bifurcation ruling and found that the Chos failed to introduce credible evidence of

economic loss; and (8) concluded that the Chos did not prove negligence or a breach of warranty of habitability without the support of adequate findings. In their reply brief, the Chos insist the circuit court's finding of no causation was flawed by Judge Hifo's failure to address (1) critical elements of negligence and breach of warranty of habitability, and (2) the effect of the State's failure to inspect the Cottage, inform the Chos of the the lead paint test in a timely manner, or comply with Judge Nakatani's discovery orders. Are the Chos right that without deciding the other material elements of the two causes of action, Judge Hifo was not authorized to decide the issue of causation of damage? The answer is no. Assuming all of the other material elements of the two causes of action have been proven, one or more of the Chos must also prove that the breach of duty caused him, her, or them damage.

Are the Chos right that Judge Hifo disregarded her own bifurcation ruling and found that the Chos failed to introduce credible evidence of economic loss? The answer is no. Judge Hifo validly decided to postpone receiving evidence on the question of the amount of damage pending her decision on the question of causation of damage.

Did Judge Hifo lack jurisdiction to enter her November 5, 2003 Sanctions Order replacing her December 22, 2000 Sanctions Order. The answer is no.

We do not reach the question whether the November 5, 2003 Sanctions Order ignored the doctrine of judicial estoppel by allowing the State to contradict the positions its predecessor counsel had taking in its 2000 pleadings and argument that led to Judge Hifo's December 22, 2000 Sanctions Order.[6]

We do not reach the question whether the doctrine of the law of the case, *Querubin v. Thronas*, 107 Hawai'i 48, 60, 109 P.3d 689, 701 (2005), precluded Judge Hifo from entering her November 5, 2003 Sanctions Order in place of her December 22, 2000 Sanctions Order.

The Chos ask this court to reverse the award of $59,402.56 costs. They argue that (1) the court offered no explanation for its orders and did not distinguish between HRCP Rule 68[7] costs, which are mandatory, and HRCP Rule 54[8] costs, which are not mandatory; (2) "to the extent the court relied on

---

[6] This court has previously stated that

> judicial estoppel precludes a party from assuming inconsistent positions in the course of the same judicial proceeding. Judicial estoppel does not preclude a party from stating inconsistent claims or defenses within a single action. However, a party is precluded from subsequently repudiating a theory of action accepted and acted upon by the court.

Rosa v. CWJ Contractors, 4 Haw.App. 210, 211, 664 p.2d 745, 747 (1983). In 2000, Deputy Attorney General (DAG) Charles Fell acknowledged that Judge Gail Nakatani's September 20, 1999 Order to Produce was the law of the case, stipulated that the sanctions imposed did not violate Hawai'i Rules of Civil Procedure Rule 55(e) or sovereign immunity and admitted that the State could have recovered the Brewer samples for $15,000 if it had complied with Judge Nakatani's orders. In contrast, replacement counsel DAG Robin Kishi asserted in 2002 that Judge Nakatani's September 20, 1999 Order to Produce "was tantamount to judicial abrogation of the State's sovereign immunity[,]" and Judge Eden Elizabeth Hifo's December 22, 2000 Sanctions Order "was an abuse of discretion in imposing sanctions tantamount to default when there was an absence of evidence of intentional spoilation of evidence."

[7] HRCP Rule 68 states, in relevant part, "If the judgment finally obtained by the offeree is not more favorable than the offer [of settlement], the offeree must pay the costs incurred after the making of the offer."

[8] HRCP Rule 54(d)(1) states, in relevant part, "costs shall be allowed as of course to the prevailing party unless the court otherwise directs."

Rule 68, it awarded costs based on patently frivolous settlement offers, and documentation that offered no evidence that any of the claimed expenses were incurred after the settlement offers"; (3) costs awarded under HRCP Rule 54(d) must be "reasonable" and the requests for costs were not reasonable; (4) discretion to allow costs "should be exercised sparingly when the requested expenses are not specifically allowed by statute or precedent" and when a party requests costs not listed in HRS § 607-9, it must "demonstrate a compelling rationale for the court to grant this expense," quoting Wong v. Takeuchi, 88 Hawai'i 46, 54, 961 P.2d 611, 619 (1998); (5) "regardless of the court rule involved, Judge Hifo awarded costs for impermissible purposes, including office expenses, messenger fees, interstate travel expenses and numerous other items not authorized by court rule, statute or case law." The State concedes that $634.50 incurred by Deputy Attorney General Robin Kishi for "per diem, out of state" should not have been awarded by Judge Hifo, and acknowledges that Judge Hifo's cost award must be reduced by this amount, from $59,402 to $58,768. As to the other experts' fees, the State asserts that Judge Hifo already reduced the award by the amount of the State's experts' fees when it granted the Chos' motion to alter or amend the judgment. We conclude that the record is insufficient to determine what costs were included within the $59,402 costs awarded and, therefore, we are unable to decide the validity of the award.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs, and duly considering and applying the law relevant to the issues raised and arguments presented, we vacate the August 25, 2005 First Amended Judgment and we remand for entry of a judgment that (a) is in favor of the State on all counts in the Complaint, and (b) itemizes each cost the Chos are ordered to reimburse the State, and the relevant statute, rule or precedent supporting each such award.

DATED: Honolulu, Hawai'i, April 18, 2007.

On the briefs:

Peter Van Name Esser,
Mark S. Kawata, and
Craig T. Dela Cruz
for Plaintiffs-Appellants.

Robin M. Kishi and
Caron M. Inagaki,
Deputy Attorneys General,
for Defendant-Appellee.

Chief Judge

Associate Judge

Associate Judge