

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 27416

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAIIE.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2008 AUG -7 AM 7:57

FILED

ASSOCIATION OF APARTMENT OWNERS OF 2987 KALAKAUA, by its Board of Directors, Plaintiff/Counterclaim Defendant-Appellee, v. JOHN M. DUBOIS, and TIMOTHY M. PRINDABLE, Defendants/Counterclaimants-Appellants

and

JOHN M. DUBOIS and TIMOTHY M. PRINDABLE, Third Party Plaintiffs, v. ASSOCIATION OF APARTMENT OWNERS OF 2987 KALAKAUA, by its Board of Directors, LOIS CANE, in her capacity as a member of the Board of Directors, DIANNE NIELSEN, in her capacity as a member of the Board of Directors, SHARON MINICHIELLO, in her capacity as a member of the Board of Directors, RICHARD DIEHL, in his capacity as a member of the Board of Directors as well as in his individual capacity, BONNIE PRIOR, in her capacity as a member of the Board of Directors, TIMOTHY BARTON, in his capacity as a member of the Board of Directors, and SUZANNE MACGILL, in her capacity as a member of the Board of Directors and in her individual capacity, Third Party Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Civ. No. 00-1-2060)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Fujise and Leonard, JJ.)

Defendant/Counterclaimant-Appellant John Dubois (Dubois) appeals from the Judgment entered on June 23, 2005, in the Circuit Court of the First Circuit (circuit court).¹ The judgment was entered pursuant to the circuit court's September 27, 2004 order granting the August 6, 2004 motion for summary judgment as to Dubois's remaining counterclaims filed by

¹ The Honorable Victoria S. Marks presided.

Plaintiff/Counterclaim Defendant-Appellee Association of Apartment Owners of 2987 Kalakaua (Association).

After a careful review of the issues raised, arguments advanced, applicable law, and the record in the instant case, we resolve Dubois's appeal as follows:

The circuit court did not err by granting Association's motion for summary judgment. The circuit court correctly ruled that the intervening judgment of the United States District Court for the District of Hawai'i between, *inter alia*, the parties named in this case, on identical claims as those raised in Dubois's counterclaims, was final for *res judicata* purposes, despite the fact that the federal judgment was pending appeal. Wong v. Cayetano, 111 Hawai'i 462, 477, 143 P.3d 1, 16 (2006) (citing Robi v. Five Platters, Inc., 838 F.2d 318, 327 (9th Cir. 1988)); see also, Luben Indus., Inc. v. United States, 707 F.2d 1037, 1040 (9th Cir. 1983) (quoting Restatement (Second) of Judgments § 13 cmt. g (1982)).

Moreover, Dubois has not supported his claim on appeal that there were genuine issues of material fact involved in any of his counterclaims, and his arguments regarding what appear to be issues of law are without merit. Dubois has failed to provide authority for his position that the Association itself, as opposed to individual directors of the board, can be held responsible for a breach of fiduciary duty. See Hawaii Revised Statutes (HRS) § 514A-82.4 (1993) (repealed and reenacted with some differences in language at HRS § 514B-106 (2004)). Dubois's arguments regarding evidence pertaining to Third-Party Defendant Richard Diehl, are unintelligible and are deemed waived.

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Citicorp Mortgage, Inc. v. Bartolome, 94 Hawai'i 422, 433, 16 P.3d 827, 838 (App. 2000).

Therefore, the June 23, 2005 Judgment of the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, August 7, 2008.

On the briefs:

Shawn A. Luiz,
for Defendant/Counterclaimant-
Appellant.



Chief Judge

Lissa H. Andrews and
Tracy G. Chinen,
(Rush Moore)
for Plaintiff/Counterclaim
Defendant-Appellee.



Associate Judge



Associate Judge