

FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

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ESTATE OF ROGER ROXAS; and THE GOLDEN BUDHA CORPORATION,
a foreign corporation, Plaintiffs-Appellees,
v.
IMELDA MARCOS, Defendant-Appellant,
and
FERDINAND MARCOS, Defendant

NO. 28702

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 88-0522)

FEBRUARY 12, 2009

FOLEY, PRESIDING JUDGE, WITH LEONARD, J., CONCURRING
SEPARATELY; AND NAKAMURA, J., DISSENTING

OPINION OF THE COURT BY FOLEY, J.

Defendant-Appellant Imelda Marcos (Imelda) appeals from the "Order Granting (1) Plaintiffs' Motion for Extension of Fourth Amended Judgment Filed on September 6, 2001, Filed on May 8, 2007 [and] (2) Plaintiffs' Motion for Extension of Second Amended Judgment Filed on October 18, 1999, Filed on May 8, 2007" (Order) filed on July 24, 2007 in the Circuit Court of the First Circuit (circuit court).¹ The circuit court extended the expiration dates of the Second Amended Judgment until October 17, 2019 and the Fourth Amended Judgment until September 5, 2021.

On appeal, Imelda argues that the circuit court erred (1) in finding that the Second Amended Judgment and Fourth Amended Judgment (collectively, the Second and Fourth Amended

¹ The Honorable Karen S.S. Ahn presided.

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Judgments) constituted original judgments to which extensions could be granted pursuant to Hawaii Revised Statutes (HRS) § 657-5 (Supp. 2008) and (2) by granting the Motion for Extension of Second Amended Judgment and the Motion for Fourth Amended Judgment filed by Plaintiffs-Appellees The Estate of Roger Roxas (Roxas Estate) and The Golden Budha Corporation (GBC) (collectively, the Roxas Parties).

I.

On January 24, 1971, Roger Roxas (Roger), a locksmith and treasure hunter, discovered the legendary "Yamashita Treasure," which had been buried in the Philippines by Japanese troops during World War II. Roxas v. Marcos, 89 Hawai'i 91, 100-01, 969 P.2d 1209, 1218-19 (1998).² Individuals under the direction of Ferdinand Marcos (Ferdinand) stole part of the Yamashita Treasure in Roger's possession, arrested Roger on May 18, 1971, and subsequently tortured Roger. Id. at 102-03, 969 P.2d at 1220-21.

On June 3, 1986, Roger assigned all of his rights to the Yamashita Treasure to GBC, in exchange for a minority holding of non-voting shares. Id. at 107, 969 P.2d at 1225.

On February 19, 1988, Roger and GBC filed suit against Ferdinand and Imelda (collectively, the Marcos Parties). Id. at 109, 969 P.2d at 1227. Roger sued Ferdinand individually for false imprisonment and battery. Id. GBC asserted claims against the Marcos Parties for conversion, constructive trust, and fraudulent conveyance of the stolen treasure. Id. On September 29, 1989, Ferdinand died during the litigation, and the parties subsequently stipulated to substitute Imelda as his estate's personal representative. Id. at 109 & 111, 969 P.2d at 1227 & 1229. Roger also died during the litigation, and Felix Dacanay (Dacanay) as the personal representative of the Roxas

² A more detailed description of the background facts established at trial is provided in Roxas.

Estate was substituted for Roger as a party plaintiff. Id. at 107 & 109, 969 P.2d at 1225 & 1227.

Pursuant to a jury verdict, the circuit court entered a Judgment on August 28, 1996 (the August 28, 1996 Judgment) in favor of Dacanay as Personal Representative of the Roxas Estate and against Ferdinand on the false imprisonment and battery claims and in favor of GBC and against Ferdinand on the conversion claim. Id. at 114, 969 P.2d at 1232. The circuit court entered judgment in favor of Imelda and against the Roxas Parties on all claims asserted against her. Id.

On October 21, 1996, the circuit court entered an Amended Judgment in favor of Dacanay as Personal Representative of the Roxas Estate and against Imelda as Personal Representative of the Estate of Ferdinand Marcos (Ferdinand's Estate) on the false imprisonment and battery claims, awarding the Roxas Estate \$6 million in damages; in favor of GBC and against Imelda as personal representative of Ferdinand's Estate on the conversion claim, awarding GBC over \$22 billion for "one storage area" of gold bullion, \$1.4 million for a golden Buddha statue and seventeen gold bars, and \$18,517,346,893.15 in prejudgment interest; in favor of the Roxas Parties and against Imelda as personal representative of Ferdinand's estate for costs; and in favor of Imelda, in her individual capacity, and against GBC on the conversion, constructive trust, and fraudulent conveyances claims against her. Id. at 113-14 & 157, 969 P.2d at 1231-32 & 1275. Imelda appealed from the Amended Judgment, and the Roxas Parties cross-appealed. Id. at 99, 969 P.2d at 1217.

On November 17, 1998, the Hawai'i Supreme Court issued Roxas, in which it affirmed, reversed, and vacated and remanded portions of the Amended Judgment as follows:

[W]e (1) reverse that portion of the circuit court's amended judgment awarding GBC \$22,000,000,000.00 for "one storage area" of gold bullion, (2) vacate those portions of the amended judgment (a) entering judgment in favor of the plaintiffs-appellees [the Roxas Parties] and against Imelda, in her capacity as personal representative of the Marcos Estate, (b) awarding GBC \$1,400,000.00 in damages for conversion of the golden buddha statue and the seventeen

gold bars, and (c) entering judgment in favor of Imelda and against the plaintiffs-appellees on GBC's claim for constructive trust, and (3) remand the matter to the circuit court for (a) the entry of judgment against Imelda in her *personal* capacity, to the extent of her interest in the Marcos Estate, on the Roxas Estate's claims of battery and false imprisonment, and GBC's claim of conversion against Ferdinand, (b) a new trial on the value of the converted golden buddha statue and seventeen gold bars, (c) an award of prejudgment interest on the damages awarded as a consequence of the conversion of the golden buddha and seventeen gold bars, commencing from the date corresponding to the value of the gold assigned by the jury, and (d) further proceedings, to the extent necessary, on GBC's equitable claim against Imelda, in her personal capacity, for constructive trust. In all other respects, the circuit court's amended judgment is affirmed.

Id. at 157, 969 P.2d at 1275.

On remand, the circuit court entered on October 18, 1999 a Second Amended Judgment, in which the circuit court entered judgment "in favor of [Dacanay] as personal representative of the [Roxas Estate] in the amount of \$6 million in general damages for false imprisonment and battery against Imelda Marcos in her personal capacity, to the extent of her interest in the Marcos Estate." The circuit court ordered that "[t]his judgment is entered nunc pro tunc as of October 21, 1996" (the date of the Amended Judgment).

On June 26, 2000, the circuit court entered a Third Amended Judgment, in which the court awarded GBC damages and interest for conversion of the golden Buddha statue and seventeen gold bars against Imelda "in her personal capacity, to the extent of her interest in the Marcos Estate." The circuit court ordered that "[t]his Third Amended Judgment is entered nunc pro tunc as of October 21, 1996." The circuit court did not certify the judgment for appeal.

On September 6, 2001, the circuit court entered a Fourth Amended Judgment, nunc pro tunc as of October 21, 1996, amending the Second Amended Judgment. The circuit court held in favor of GBC and against Imelda "in her personal capacity, to the extent of her interest in the Marcos Estate" on the conversion claim, awarding in excess of \$13 million in damages and

prejudgment interest. The circuit court also reserved the constructive trust claim against Ferdinand for later action. The Roxas Parties appealed and Imelda cross-appealed from the Fourth Amended Judgment. On November 29, 2005, the Hawai'i Supreme Court issued a Summary Disposition Order in No. 24605, affirming the Fourth Amended Judgment.

On May 8, 2007, the Roxas Parties filed motions, pursuant to HRS § 657-5, to extend the Second and Fourth Amended Judgments for another ten years. On July 24, 2007, the circuit court filed its Order granting the motions and extending the Second and Fourth Amended Judgments. On August 22, 2007, Imelda timely appealed.

II.

Regarding statutory interpretation, the Hawai'i Supreme Court has stated:

First, the fundamental starting point for statutory interpretation is the language of the statute itself. Second, where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning. Third, implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. Fourth, when there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists. And fifth, in construing an ambiguous statute, the meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning.

Awakuni v. Awana, 115 Hawai'i 126, 133, 165 P.3d 1027, 1034 (2007) (citation omitted).

Del Monte Fresh Produce (Hawaii), Inc., v. Fireman's Fund Ins. Co., 117 Hawai'i 357, 363, 183 P.3d 734, 740 (2007).

III.

A. The circuit court erred in extending the Roxas Parties' Second and Fourth Amended Judgments.

HRS § 657-5 provides:

§657-5 Domestic judgments and decrees. Unless an extension is granted, every judgment and decree of any court of the State shall be presumed to be paid and discharged at

the expiration of ten years after the judgment or decree was rendered. No action shall be commenced after the expiration of ten years from the date a judgment or decree was rendered or extended. No extension of a judgment or decree shall be granted unless the extension is sought within ten years of the date the original judgment or decree was rendered. A court shall not extend any judgment or decree beyond twenty years from the date of the original judgment or decree. No extension shall be granted without notice and the filing of a non-hearing motion or a hearing motion to extend the life of the judgment or decree.

(Emphasis added). At issue is the statute's third sentence, which creates a limitation period that commences on the original judgment's entry date.

The term "original judgment" is not defined by statute, but its meaning is plain and unambiguous. In its ordinary use, the word "original" denotes the "beginning of something, . . . a primary form or type from which varieties are derived." Webster's Encyclopedic Unabridged Dictionary of the English Language 1015 (1989). See Gillan v. Gov't Employees Ins. Co., 119 Hawai'i 109, 115, 194 P.3d 1071, 1077 (2008) (if a term is not statutorily defined, the court may resort to legal or other well-accepted dictionaries to determine the ordinary meaning of the term).

Thus, in the context of judgments, "original judgment" logically refers to the first judgment rendered by a court. See Int'l Sav. & Loan Ass'n v. Wiig, 82 Hawai'i 197, 199, 921 P.2d 117, 119 (1996) ("[P]ursuant to the plain language of HRS § 657-5, the judgment expired on March 8, 1994 -- ten years after the original judgment [(the first judgment)] was rendered."); Bank of Hawai'i v. Shinn, 118 Hawai'i 132, 137, 185 P.3d 880, 885 (App. 2008) (emphasis added) ("[Shinn] also had notice by virtue of HRS § 657-5 that such judgments could be extended for ten additional years from their original entry."), aff'd, 2008 WL 5392305 (Haw. Sup. Ct. Dec. 29, 2008).

Where the statutory language is plain and unambiguous, "our sole duty is to give effect to its plain and obvious meaning." Del Monte, 117 Hawai'i at 363, 183 P.3d at 740. Accordingly, we hold that the August 28, 1996 Judgment is the

"original judgment" for purposes of this case and the limitation period for an extension commenced on its August 28, 1996 entry date.

That the October 21, 1996 Amended Judgment was subsequently reversed in part and vacated and remanded in part by Roxas does not affect our holding. The circuit court concluded that Roxas "extinguished" the Amended Judgment and the limitation period commenced on the entry dates of the Second and Fourth Amended Judgments, basing these conclusions on Wiig and Borer v. Chapman, 119 U.S. 587 (1887). Neither case supports the circuit court's conclusions.

Wiig addresses the narrow issue of whether a garnishment order can enforce a judgment that has expired, pursuant to the first sentence of HRS § 657-5; whereas, this case addresses the issue of when the limitation period for extending an existing judgment commences, pursuant to the third sentence of HRS § 657-5. See Wiig, 82 Hawai'i at 199, 921 P.2d at 119 ("[I]t is uncontroverted that International Savings did not renew or extend its judgment against Wiig before the ten[-]year period had run"; therefore, "all the rights and remedies appurtenant to that judgment terminate[d]."). Wiig, therefore, is inapplicable to the present case.

Nevertheless, even if Wiig were applicable to the present case, the language on which the circuit court relies fails to advance the proposition that Roxas "extinguished" the August 28, 1996 Judgment:

[T]he existence of a valid judgment is a jurisdictional prerequisite to garnishment relief. But once a judgment is extinguished by a reversal, vacation, or dismissal, garnishment proceedings pertaining to that judgment are precluded. In other words, the garnishment cannot survive in absence of a valid and existing judgment.

Wiig, 82 Hawai'i at 201, 921 P.2 at 121 (internal quotation marks, citation, and ellipsis omitted). Based on this language, an "extinguished" judgment is one that is no longer "valid and existing." Id. The Hawai'i Supreme Court in Roxas reversed in

part and vacated and remanded in part the October 21, 1996 Amended Judgment; however, the court also affirmed the judgment "in all other respects." The Amended Judgment was not extinguished by Roxas such that the judgment was no longer "valid and existing."

Borer is also distinguishable from this case. Unlike HRS § 657-5, the Minnesota statute at issue in Borer enabled the limitation period to commence "from the time the claim is allowed or established." Borer, 119 U.S. at 601. Under HRS § 657-5, the time to extend a judgment runs from the date the original judgment was rendered. Given the fundamental difference in the language of the Hawai'i and Minnesota statutes, Borer does not aid in the analysis of HRS § 657-5.

IV.

The "Order Granting (1) Plaintiffs' Motion for Extension of Fourth Amended Judgment Filed on September 6, 2001, Filed on May 8, 2007 [and] (2) Plaintiffs' Motion for Extension of Second Amended Judgment Filed on October 18, 1999, Filed on May 8, 2007" filed on July 24, 2007 in the Circuit Court of the First Circuit is reversed.

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