

CONCURRING OPINION BY LEONARD, J.

I join in Judge Foley's opinion holding that the term "original judgment" in Hawaii Revised Statutes (HRS) § 657-5 (Supp. 2007) plainly means and refers to the first judgment rendered in a case. Any other interpretation leads to ambiguity and uncertainty in the application of a statute of limitations intended to set a deadline, a date certain, for the expiration of a judgment, unless an extension is sought before that date. The statute itself is not ambiguous and in no way states or implies that the ten-year cut-off is tolled or extended by appeals, amendments, or post-judgment relief of any kind.<sup>1/</sup> The burden of filing a motion within ten years is minimal and the filing ensures the continued viability of a judgment for an additional ten-year period.<sup>2/</sup>

I respectfully disagree with the dissent's view that the Hawai'i Supreme Court's decision in Roxas v. Marcos, 89 Hawai'i 91, 969 P.2d 1209 (1998) (Roxas I), "effectively extinguished" the original judgment in this case. In my view, the supreme court went to great lengths to avoid extinguishing the original judgment and to ensure that the judgment in favor of the Estate of Roger Roxas and the Golden Budha Corporation (Plaintiffs) remained enforceable against the assets of the

---

<sup>1/</sup> An interpretation of HRS § 657-5 allowing the limitations period to re-start with every amendment, or even certain categories of amendments, also runs afoul of the statute's mandate that "[a] court shall not extend any judgment or decree beyond twenty years from the date of the original judgment or decree."

<sup>2/</sup> Although not directly addressing this issue, prior cases have applied a plain meaning interpretation of HRS § 657-5. See, e.g., Int'l Savings & Loan Ass'n, Ltd. v. Wiig, 82 Hawai'i 197, 199, 201, 921 P.2d 117, 119, 121 (1996); Poe v. Hawai'i Labor Relations Bd., 98 Hawai'i 416, 419, 421, 49 P.3d 382, 385, 387 (2002); Brooks v. Minn., 73 Haw. 566, 576, 836 P.2d 1081, 1086 (1992). Given the lack of definitive Hawai'i case law otherwise interpreting the meaning of the term "original judgment" in HRS § 657-5, the best practice in a case such as this one would have been to file a motion for extension within ten years from the date of the first judgment, while advocating the position that the extension runs from the date of the later judgment or judgments. Appellees offer no explanation for their delay in seeking to extend the judgment or judgments in this case.

Estate of Ferdinand Marcos (Estate) to the extent that Imelda Marcos (Imelda) had an interest in those assets. Id. at 122-27, 969 P.2d at 1240-45. The supreme court used the doctrine of judicial estoppel to preclude the prejudice that might have resulted from extinguishing the original judgment. Id. The "general rule" relied on by the dissent - that a party appearing in one capacity is not bound by a judgment in his or her other capacity - was purposefully deviated from in this case. The supreme court expressly bound Imelda in her individual capacity, to the extent of her interest in the Estate, to the judgment originally entered against her in her capacity as the purported representative of the Estate.

In addition, as pointed out by the dissent, the Second, Third, and Fourth Amended Judgments "were entered *nunc pro tunc* as of the date of the pre-appeal Amended Judgment to preserve Plaintiffs' right to post-judgment interest during the period of appeal in Roxas I." In other words, Plaintiffs sought and obtained an earlier effective judgment date for the purpose of enhancing the amount of the judgment debt,<sup>3/</sup> but are now seeking relief from that date to extend the time for collecting the judgment debt. Especially in light of the supreme court's exercise of the doctrine of judicial estoppel to prevent Imelda from blowing "hot and cold" during the course of litigation, Plaintiffs should not now be allowed to take a position contrary to, or inconsistent with, their earlier position that they should be allowed to collect post-judgment interest from the earlier judgment date.<sup>4/</sup> Clearly, Imelda is prejudiced by the years of additional post-judgment interest.

---

<sup>3/</sup> Imelda states, and Plaintiffs do not deny, that no supersedeas bond was filed pending appeal and Plaintiffs commenced post-judgment collection actions on January 12, 1997.

<sup>4/</sup> Indeed, in at least two instances, Plaintiffs themselves referred to an "original judgment" as a judgment altered by an amended judgment.

In addition, this court need not look back to an 1887 decision of the U.S. Supreme Court to interpret the meaning and effect of a *nunc pro tunc* judgment under Hawai'i law. We can refer to Hawai'i precedent. Citing earlier Hawai'i cases, the Hawai'i Supreme Court has explained:

A *nunc pro tunc* order relates back to the original date of the matter it affects. The term *nunc pro tunc* signifies or means "now for then" or that a thing is done now that shall have the same legal force and effect as if done at the time it ought to have been done. The doctrine seems to apply to delays of the court and not to premature actions of the parties. Where through no fault of the complaining party some act which the court must perform is not done at the time it ought to be done, the court, in the interest of justice, may and should presently do or perform that act as of the date it should have been done.

Keahole Defense Coalition, Inc. v. Board of Land and Natural Resources, 110 Hawai'i 419, 430, 134 P.3d 585, 596 (2006) (citations and internal quotation marks omitted; format altered). In the case at bar, the *nunc pro tunc* judgments "shall have the same legal force and effect" as if done at the 1996 date specified in those judgments.

Finally, the adoption of the dissent's interpretation of HRS § 657-5 would, arguably, effectively extend the life of any final judgment that is amended before, by, or after an appeal, no matter how significant or insignificant an amendment might be. This result would completely eliminate the quality or state of originality from the term original judgment. Absent a change in the legislative mandate that all judgments be deemed extinguished after ten years unless an extension is sought within ten years of the date of the original judgment, parties and the courts are best served by the clear, plain understanding that, under HRS § 657-5, the original judgment in any case is the first judgment entered.

A handwritten signature in black ink, appearing to be "J. A. [unclear]", is written over the bottom right portion of the page.