

DISSENTING OPINION BY NAKAMURA, J.

I respectfully dissent. In my view, the Hawai'i Supreme Court's decision in Roxas v. Marcos, 89 Hawai'i 91, 969 P.2d 1209 (1998) (hereinafter, "Roxas I"), effectively extinguished the prior judgments entered by the circuit court by changing the party against whom the monetary awards could be enforced. Prior to Roxas I, the judgments had awarded damages against Defendant Ferdinand Marcos (Ferdinand) or Defendant Imelda Marcos (Imelda), as Personal Representative of the Estate of Ferdinand Marcos (Marcos Estate). The Second Amended Judgment, which the circuit court entered in 1999 as directed by the supreme court in Roxas I, was the first judgment that was entered against Imelda in her personal capacity.

Consistent with the purpose of Hawaii Revised Statutes (HRS) § 657-5 (Supp. 2007)^{1/} to establish deadlines for the enforcement and extension of judgments, I would construe the term "original judgment" as used in the statute to mean the first enforceable judgment that has not been vacated or extinguished. The Second Amended Judgment was the first judgment awarding damages in favor of Plaintiff-Appellee the Estate of Roger Roxas (Roxas Estate) and against Imelda in her personal capacity. The Third Amended Judgment, entered in 2000, was the first judgment awarding damages in favor of Plaintiff-Appellee The Golden Budha

^{1/} HRS § 657-5 (Supp. 2007) provides:

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.)

Corporation (GBC) and against Imelda in her personal capacity. Both these judgments did not become enforceable until the circuit court satisfied the certification requirements of Hawai'i Rules of Civil Procedure (HRCP) Rule 54(b)^{2/} by expressly determining that there was "no just reason for delay" and directing the entry of judgment, which the circuit court accomplished by entering the Fourth Amended Judgment in 2001. I therefore conclude that the motions of the Roxas Estate and GBC (collectively, the "Plaintiffs") to extend the Second and Fourth Amended Judgments, which were filed in 2007, were timely filed within the ten-year deadline set forth in HRS § 657-5.

I.

A.

This case involves a series of judgments entered before and after the appeal in Roxas I. On August 28, 1996, the circuit court entered a Judgment pursuant to the special verdict returned by the jury on July 19, 1996. The August 28, 1996, Judgment entered judgment: 1) in favor of the Roxas Estate and "against Defendant Ferdinand Marcos" in the amount of \$6,000,000 in general damages for false imprisonment and battery; and 2) in favor of GBC and "against Defendant Ferdinand Marcos" in the amount of \$22,001,405,000 for conversion. The August 28, 1996,

^{2/} HRCP Rule 54(b) provides:

(b) **Judgment upon multiple claims or involving multiple parties.** When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(Emphases added.)

Judgment also entered judgment in favor of Imelda and against the Roxas Estate and GBC "on all claims asserted against Imelda Marcos herein."

On October 21, 1996, the circuit court entered an Amended Judgment. The Amended Judgment modified the August 28, 1996, Judgment by substituting "Defendant Imelda Marcos, as Personal Representative for the Estate of Ferdinand Marcos" in place of "Defendant Ferdinand Marcos" in the separate awards of damages in favor of the Roxas Estate and GBC. The Amended Judgment also added an award of taxable costs of \$61,074.54 against "Defendant Imelda Marcos, as Personal Representative for the Estate of Ferdinand Marcos." The Amended Judgment retained the language of the August 28, 1996, Judgment which entered judgment in favor of Imelda on all claims against Imelda. The Amended Judgment also contained the circuit court's HRCP Rule 54(b) certification that there was "no just reason for delay in the entry of final judgment on fewer than all of the claims in Plaintiffs' Complaint" and directed the entry of judgment forthwith.

B.

Imelda, "in her alleged capacity as personal representative of the Estate . . . of former Philippine President Ferdinand E. Marcos," appealed the portion of the Amended Judgment entered in favor of Plaintiffs and against the Marcos Estate. Roxas I, 89 Hawai'i at 99, 969 P.2d at 1217. Plaintiffs cross-appealed the portions of the Amended Judgment: 1) entered in favor of Imelda, in her individual capacity; and 2) ordering the Marcos Estate to pay damages for conversion, claiming that the circuit court misinstructed the jury on how to determine the value of the converted gold. Id. at 99-100, 969 P.2d at 1217-18.

In Roxas I, the Hawai'i Supreme Court held that the circuit court abused its discretion in altering the August 28, 1996, Judgment to designate Imelda as personal representative of the Marcos Estate because there was insufficient evidence to show

that Imelda had been judicially appointed to be the representative of the Marcos Estate. Id. at 117-22, 969 P.2d at 1235-40. The supreme court, however, held that the doctrine of judicial estoppel warranted entry of judgment against Imelda in her personal capacity to the extent of her interest in the Marcos Estate. Id. at 122-27, 969 P.2d at 1240-45.

The supreme court concluded that Imelda had engaged in deceptive conduct and misled the circuit court into believing that she was authorized to represent the Marcos Estate. Id. In particular, Imelda stipulated to being substituted "for the purpose of defending this litigation as the representative of Defendant Ferdinand Marcos deceased," even though she had not been judicially appointed as the personal representative of the Marcos Estate. Id. at 109, 122-27, 969 P.2d at 1227, 1240-45.^{3/} The supreme court stated:

By means of her stipulation in this case, Imelda accepted the benefit of maintaining full control over the defense of the Marcos Estate, in which she had a substantial interest. Now that the [Plaintiffs] have prevailed against the estate, Imelda argues that she was without authority to act as she did in proffering and entering into the stipulation. In other words, she now claims that because of her wrongful act of holding herself out as a proper party for substitution, the [Plaintiffs] should now be stripped entirely of their judgment.

Id. at 124, 969 P.2d at 1242.

The supreme court noted that "no matter how unfair Imelda's actions may be, she nevertheless lacked the legal authority to bind the Marcos Estate," and the supreme court therefore concluded that "the Marcos Estate was not bound by

^{3/} The supreme court also noted that Imelda acted as if she was the personal representative of the Marcos Estate during the litigation, including at trial. Roxas I, 89 Hawai'i at 122-23, 969 P.2d at 1240-42. Imelda opposed Plaintiffs' motion to substitute Irene Silverman as personal representative of the Marcos Estate after Silverman had been appointed personal representative of the Marcos Estate, with power over its California assets, by the Los Angeles County Superior Court. Id. at 111, 123, 969 P.2d at 1129, 1241. The circuit court relied on Imelda's arguments in denying the motion. Id. at 123, 969 P.2d at 1241. Imelda's counsel signed documents in the litigation characterizing Imelda as the "representative" of the Marcos Estate. Id. During trial, "Imelda's counsel made continued references to her representative capacity with regard to her deceased spouse and to Ferdinand's status as a defendant in the litigation." Id.

Imelda's stipulation." Id. at 126, 969 P.2d at 1244. However, applying the doctrine of judicial estoppel, the supreme court held that "insofar as Imelda's 'personal interests' are concerned, we hold that she has waived any question as to her own authority and is personally bound by the judgment in this case." Id.

The supreme court explained its application of judicial estoppel as follows:

Due in large part to the circuit court's reliance on Imelda's arguments regarding the propriety of her substitution as a party defendant for Ferdinand, the [Plaintiffs] have obtained a judgment that cannot be enforced against the Marcos Estate. Simply "estopping" Imelda from claiming that the estate is not bound, when in fact the [Plaintiffs] cannot collect their judgment from the estate, offers the [Plaintiffs] no relief from Imelda's wrongdoing. At the same time, it is clear that Imelda fully defended her interests in the estate by vigorously contesting the merits of the [Plaintiffs'] case against her late husband through the services of the same counsel employed by Ferdinand for the same purpose while he was alive. Therefore, in order to achieve manifest justice consistent with the doctrine of judicial estoppel, the equities of this case require us to hold Imelda personally liable, at least to the extent of her interest in the assets of the Marcos Estate, for the amount of the [Plaintiffs'] judgment against Ferdinand, as that amount has been modified according to this opinion, *see generally infra*.

Id. at 126, 969 P.2d at 1244 (emphases added).

The supreme court concluded:

Accordingly, we vacate the portion of the circuit court's amended judgment entered against "Defendant Imelda Marcos, as Personal Representative of the Estate of Ferdinand Marcos" with respect to the [Plaintiffs'] battery, false imprisonment, and conversion claims and remand for entry of judgment as to those claims against Imelda, in her personal capacity, to the extent of her interest in the Marcos Estate.

Id. at 126-27, 969 P.2d at 1244-45.

The supreme court also addressed other claims raised by the parties on appeal. It ultimately reversed, vacated, and affirmed 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] 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 [B]uddha statue and the seventeen gold bars, and (c) entering judgment in favor of Imelda and against the [Plaintiffs] 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 [B]uddha statue and seventeen gold bars, (c) an award of prejudgment interest on the damages awarded as a consequence of the conversion of the golden [B]uddha 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.

C.

Pursuant to Roxas I, the circuit court, on remand, amended the Amended Judgment by entering a Second Amended Judgment on October 18, 1999. The Second Amended Judgment, in relevant part, vacated the Amended Judgment to the extent that it entered judgment in favor of Plaintiffs and against Imelda in her capacity as personal representative of the Marcos Estate.^{4/} The Second Amended Judgment also: 1) granted judgment in favor of the Roxas Estate in the amount of \$6,000,000 on its false imprisonment and battery claims against Imelda in her *personal* capacity, to the extent of her interest in the Marcos Estate; and 2) awarded Plaintiffs taxable costs of \$61,1074.54 against Imelda in her *personal* capacity, to the extent of her interest in the Marcos Estate. Paragraph 6 of the Second Amended Judgment provided that the circuit court retained jurisdiction over GBC's conversion claims as they relate to the gold Buddha and the 17 gold bars and over GBC's cause of action for constructive trust. The Second Amended Judgment did not contain the certification required under HRCF Rule 54(b) for entry of a final judgment as to fewer than all of the claims or parties.

⁴ The Second Amended Judgment also reversed or vacated \$22,001,400,000 of the \$22,001,405,000 awarded in damages to GBC on its conversion claim in the Amended Judgment.

After a bench trial to determine the relevant price of gold for the converted gold Buddha and the 17 gold bars, the circuit court entered a Third Amended Judgment on June 26, 2000. The Third Amended Judgment amended Paragraph 6 of the Second Amended Judgment to award damages and interest totaling \$13,275,848.37 for conversion in favor of GBC and against Imelda in her personal capacity, to the extent of her interest in the Marcos Estate, for the gold Buddha and the 17 gold bars.^{5/} The Third Amended Judgment did not contain a HRCPC Rule 54(b) certification.

The parties attempted to appeal the Third Amended Judgment, but the Hawai'i Supreme Court dismissed the appeal as premature because the Third Amended Judgment did not meet the certification requirements of HRCPC Rule 54(b). The supreme court noted that the Third Amended Judgment did not resolve all of the pending claims and did not contain the express determination of "no just reason for delay" in directing entry of judgment as required for an appealable final judgment under HRCPC Rule 54(b). The supreme court also concluded that the Third Amended Judgment was not appealable on the theory that it amended the Second Amended Judgment that, in turn, amended the Amended Judgment, which did contain a HRCPC Rule 54(b) certification:

The June 26, 2000 third amended judgment is not appealable as an amendment to the October 18, 1999 second amended judgment inasmuch as the October 18, 1999 judgment also failed to meet the certification requirements of HRCPC Rule 54(b). The October 18, 1999 judgment purported to be an amendment to the October 21, 1996 certified judgment [(the Amended Judgment)], but the certification was effective only as to those claims certified as final on October 21, 1996 and not to claims subsequently decided by the October 18, 1999 and June 26, 2000 judgments, even though those judgments were entered *nunc pro tunc* to October 21, 1996.

In response to the supreme court's dismissal, GBC moved to amend the Third Amended Judgment to add the HRCPC Rule 54(b) certification. On September 6, 2001, the circuit court entered a Fourth Amended Judgment, which used the same language as the

^{5/} The Third Amended Judgment continued to provide that the circuit court retained jurisdiction over GBC's cause of action for constructive trust.

Third Amended Judgment in amending Paragraph 6 of the Second Amended Judgment to award damages for conversion. The Fourth Amended Judgment further amended the Second Amended Judgment by adding a paragraph stating, "The court expressly determines that there is no just reason for delay and expressly directs for the entry of judgment." The Second, Third, and Fourth Amended Judgments were each entered "nunc pro tunc as of October 21, 1996." On November 29, 2005, the Hawai'i Supreme Court issued a Summary Disposition Order affirming the Fourth Amended Judgment in Estate of Roxas v. Marcos, No. 24605, 2005 WL 3164686 (Hawai'i November 29, 2005) ("Roxas II").

II.

A.

We apply the following principles in interpreting statutes:

[O]ur foremost obligation is 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. And we must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose.

When there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists.

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. Moreover, the courts may resort to extrinsic aids in determining legislative intent. One avenue is the use of legislative history as an interpretive tool.

This court may also consider the reason and spirit of the law, and the cause which induced the legislature to enact it to discover its true meaning."

Lingle v. Hawaii Government Employees Ass'n, AFSCME, Local 152, AFL-CIO, 107 Hawai'i 178, 183, 111 P.3d 587, 592 (2005) (internal quotation marks, brackets and ellipses omitted) (quoting Guth v. Freeland, 96 Hawai'i 147, 149-50, 28 P.3d 982, 984-85 (2001)). In addition, "a rational, sensible and practicable interpretation of a statute is preferred to one which is unreasonable or impracticable." State v. Lobendahn, 71 Haw. 111, 112, 784 P.2d

872, 873 (1989) (internal quotation marks and brackets omitted). "[T]he legislature is presumed not to intend an absurd result, and legislation will be construed to avoid, if possible, inconsistency, contradiction, and illogicality." Keliipuleole v. Wilson, 85 Hawai'i 217, 222, 941 P.2d 300, 305 (1997) (some brackets in original omitted).

A person can appear in an action in more than one legal capacity. See Restatement (Second) of Judgments § 36, Comment a (1982). The general rule is that a person appearing in a representative capacity is not thereby affected in his or her individual capacity. See id. Thus, "[a] party appearing in one capacity, individual or representative, is not thereby bound by or entitled to the benefits of the rules of res judicata in a subsequent action in which he appears in another capacity." Id. at § 36(2).

It is well settled that "[w]here a judgment is vacated or set aside by a valid order or judgment, it is entirely destroyed and the rights of the parties are left as if no such judgment had ever been entered. No further steps can be legally taken to enforce the vacated judgment." Flieder v. Flieder, 575 S.W.2d 758, 760 (Mo. Ct. App. 1978); see People v. Eidel, 745 N.E.2d 736, 744 (Ill. App. Ct. 2001); 49 C.J.S. Judgments § 357 (2008) (cited in United States v. De La Mata, 535 F.3d 1267, 1276-77 (11th Cir. 2008)).

B.

The purpose of HRS § 657-5 is to establish deadlines for the enforcement and extensions of judgments. Construing HRS § 657-5 in a manner consistent with this purpose, I believe there must be a link between the limitations period for an extension and the entry of an enforceable judgment. It would make little sense to run the limitations period for a judgment extension under HRS § 657-5 from the date of a judgment that has been vacated on appeal and can no longer be enforced.

Here, the supreme court's decision in Roxas I effectively vacated and extinguished the August 28, 1996, Judgment and the Amended Judgment to the extent that they entered judgment in favor of Plaintiffs and against Ferdinand or the Marcos Estate. Indeed, the supreme court held that Plaintiffs' judgment against the Marcos Estate was unenforceable and uncollectible because Imelda was not the personal representative of the Marcos Estate. The supreme court vacated the portion of the Amended Judgment entered against Imelda as the personal representative of the Marcos Estate and directed the entry of judgment against Imelda in her personal capacity, to the extent of her interest in the Marcos Estate.

The Second Amended Judgment, issued by the circuit court pursuant to Roxas I, was the first judgment that authorized and permitted the Roxas Estate to enforce an award of damages against Imelda in her personal capacity. The Second Amended Judgment did not include an award of damages for conversion in favor of GBC and against Imelda in her personal capacity. After a new trial on remand to determine the proper price of gold for the gold Buddha and the 17 gold bars, the circuit court entered the Third Amended Judgment. The Third Amended Judgment was the first judgment that authorized GBC to enforce a judgment awarding damages on its conversion claim against Imelda in her personal capacity. Neither the Second Amended Judgment nor the Third Amended Judgment, however, contained the certification required by HRCF Rule 54(b) to make a judgment rendered on fewer than all of the claims or parties a final judgment.

In my view, these judgments did not become enforceable until the circuit court satisfied the HRCF Rule 54(b) certification requirements by entering the Fourth Amended Judgment, which added the express determination that there was "no just reason for delay" in directing entry of judgment. See King v. Wholesale Produce Dealers Ass'n of Hawaii, 69 Haw. 334, 335, 741 P.2d 721, 722 (1987) (stating that "[t]he [HRCF] Rule

54(b) order makes a judgment final, both for purposes of execution and appeal");^{6/} In re 2003 and 2007 Ala Wai Blvd., City and County of Honolulu, 85 Hawai'i 398, 411, 944 P.2d 1341, 1354 (App. 1997) (concluding that a stipulated judgment and order did not constitute a judgment lien on property because it was not final), overruled on other grounds by Knauer v. Foote, 101 Hawai'i 81, 63 P.3d 389 (2003). Until the HRCF Rule 54(b) certification requirements were met, the Second and Third Amended Judgments were "subject to revision at any time" by the circuit court until a judgment adjudicating all claims of the parties was entered. HRCF Rule 54(b). Other courts, under rules that are not materially different from HRCF Rule 54(b), have held that a judgment entered on fewer than all of the claims or parties is not enforceable unless the certification requirements of their rule have been satisfied. E.g., Gauthier v. Crosby Marine Serv., Inc., 590 F. Supp. 171, 176 (E.D. La 1984) ("A judgment entered in a multiple party and/or multiple claims case prior to the disposition of the entire case is not enforceable unless the requirements of [Fed. R. Civ. P.] Rule 54(b) are followed."); Fluor Enterprises, Inc. v. Walter Construction, Ltd., 172 P.3d 368, 372-73 (Wash. Ct. App. 2007) (noting the unfairness of allowing a prevailing party to execute on a non-final judgment before the losing party has the opportunity to seek appellate review); State ex rel. Electrolert Inc. v. Lindeman, 650 N.E.2d 137, 139-40 (Ohio Ct. App. 1994); see Redding & Co. v. Russwine Construction Corp., 417 F.2d 721, 727 (D.C. Cir. 1969).

The Second Amended Judgment was the "original judgment" under HRS § 657-5 with respect to the Roxas Estate. It was the first judgment (which had not been vacated or extinguished)

^{6/} In Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334 (1994), the Hawai'i Supreme Court overruled King to the extent that King indicated that an HRCF Rule 54(b) certification in an order would make the order appealable. In Jenkins, the court held that an order must be reduced to a separate judgment that contains the HRCF Rule 54(b) certification for an appeal to be taken. Id. at 119-20, 869 P.2d at 1338-39. Jenkins did not disturb the King court's comment that a HRCF Rule 54(b) certification "makes a judgment final, both for purposes of execution and appeal."

awarding damages that was enforceable by the Roxas Estate against Imelda in her personal capacity. For the same reason, the Third Amended Judgment was the "original judgment" under HRS § 657-5 with respect to GBC. Both the Second Amended Judgment and the Third Amended Judgment, however, did not become enforceable, and thus were not "rendered" under HRS § 657-5, until September 6, 2001, when the HRCF Rule 54(b) certification requirements were satisfied by virtue of the Fourth Amended Judgment. The Fourth Amended Judgment also replaced the Third Amended Judgment by incorporating all of its terms. Under my analysis, the clock started running on the ten-year period for the Roxas Estate and GBC to seek extensions on their judgments on September 6, 2001. Accordingly, Plaintiffs' motions to extend the Second and Fourth Amended Judgments, which were filed in 2007, were timely, and the circuit court properly granted the motions.

III.

The entry of the Second, Third, and Fourth Amended Judgments nunc pro tunc as of October 21, 1996, does not affect the dates they were rendered for purposes of measuring the limitations period for extensions under HRS § 657-5. These judgments were entered nunc pro tunc as of the date of the pre-Roxas I Amended Judgment to preserve Plaintiffs' right to post-judgment interest during the period of appeal in Roxas I.

In Borer v Chapman, 119 U.S. 587 (1887), the United States Supreme Court rejected the claim that the statute of limitations on a judgment ran from the judgment's nunc pro tunc date instead of the date the final judgment was actually entered. Id. at 602. The Court concluded that the nunc pro tunc date was not the effective date of the judgment for all purposes, but rather was "a fiction of law," made and considered to be the true date of the judgment only for the purpose of binding the defendant by the obligation of the judgment as of an earlier date. Id. The Court reasoned that the statute of limitations cannot "be allowed to commence to run against a right until that

right has accrued in a shape to be effectually enforced." Id. Accordingly, the Court held that the statute of limitations on the final judgment at issue did not begin to run until the enforceable judgment was actually entered. Id.

I find the reasoning of Borer persuasive. The entry of the Second, Third, and Fourth Amended Judgments nunc pro tunc as of October 21, 1996, was a "fiction of law" and did not change the date they actually became enforceable, which was September 6, 2001--the date the HRCP Rule 54(b) certification was entered. Thus, September 6, 2001, is the appropriate date to use to measure the limitations period for Plaintiffs' motions for extensions under HRS § 657-5.

IV.

Based on the foregoing analysis, I respectfully dissent.

Craig H. Nakamura