FOR PUBLICATION

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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ASSOCIATION OF APARTMENT OWNERS OF MAALAEA KAI, INC.,
Plaintiff/Counterclaim Defendant-Appellant

vs.

THOMAS HAYDEN STILLSON; PHYLLIS ANN PAYNE-STILLSON,
fka PHYLLIS ANN PAYNE, Defendants/Counterclaimants-Appellees

and

PIONEER FEDERAL SAVINGS BANK; JOHN DOES 1-50;
JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE
CORPORATIONS 1-50; DOE ENTITIES 1-50 and DOE
GOVERNMENTAL UNITS 1-50, Defendants
(NOS. 23932 & 24257)

NO. 23932

APPEAL FROM THE SECOND CIRCUIT COURT
(CIV. NO. 96-0782)

JULY 22, 2005

LEVINSON, ACOBA, AND DUFFY, JJ.; AND
NAKAYAMA, J., DISSENTING, WITH WHOM MOON, C.J., JOINS

OPINION OF THE COURT BY ACOBA, J.

We hold (1) Hawai'i Revised Statutes (HRS) § 514C-6(a) requires lessees of condominium units to which 75% of the common interests are appurtenant to approve of a leased fee purchase, (2) because HRS § 514C-6(a) is silent on the method of calculating the votes of multi-owner units, the bylaws of an association of apartment owners may govern on how the votes are to be calculated so long as not violative of any law, (3) if any defects affected the approval process, the 75% requirement was

satisfied by the lessees' subsequent ratification of the previous vote when they executed deeds necessary for conversion, and (4) pursuant to HRS § 514C-6(a)(3), an association of apartment owners may assess a "conversion" surcharge in "a fair and equitable manner" against lessees who oppose the fee purchase.

Because the November 29, 2000 order of the Circuit Court of the Second Circuit[1] (the court) granting partial summary judgment to Defendants/Counterclaimants-Appellees Thomas Hayden Stillson and Phyllis Ann Payne-Stillson (collectively, the Stillsons), who opposed the leased fee purchase of the Maalaea Kai condominium, did not comport with the representative-vote-per-unit method set forth in the bylaws of Plaintiff/Counterclaim Defendant-Appellant Association of Apartment Owners of Maalaea Kai, Inc. (the Association), the order and the court's December 27, 2000 judgment and its May 2, 2001 amended final judgment are vacated, and this case is remanded for the court to enter an order (1) denying the Stillsons' motion for partial summary judgment and (2) granting the Association's cross-motion for summary judgment as to the 75% requirement. Also, consistent with such vacation of the November 29, 2000 order and because the court found the conversion surcharge levied on the Stillsons was inequitable without setting forth the grounds for its findings, the case is remanded to the court to decide whether the

[1] The Honorable Shackley F. Raffetto presided.

Association assessed the surcharge against the Stillsons in "a fair and equitable manner."

I.

This is the second appeal in a case that began as a foreclosure action brought by the Association against the Stillsons. On September 25, 1996, the Association filed a complaint to foreclose on the Stillsons' Maalaea Kai condominium apartment for failure to pay a monthly conversion surcharge relating to the Association's purchase of the leased fee interest of the Maalaea Kai condominium project. On February 28, 2000, this court issued a memorandum opinion vacating the circuit court's judgment in favor of the Stillsons. AOAO Maalaea Kai, Inc. v. Stillson, No. 22310 (Feb. 28, 2000) (mem.) [hereinafter, "Memo op."]. The memorandum opinion set forth the following pertinent facts:

> On October 7, 1974, the Stillsons acquired fee simple title to apartment 209 at the Maalaea Kai condominium project (the "Project") and an appurtenant undivided 1.4306% interest in the Project's common elements. The Stillsons were granted a leasehold estate in the land appurtenant to their apartment. The leasehold estate, created by the lease, was one of seventy-nine such leasehold estates, representing each of the Project's seventy-nine condominium apartments.
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> . . . .
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> . . . On December 28, 1994, the Association's bylaws were amended to allow the Association to purchase the leased fee interest "subject to the approval of the Apartment Owners . . . constituting 70%[2] of the common interest in the Project."
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> On July 17, 1995, the Board [of Directors of the Association] sent a second letter to the apartment owners, noting that "the lessor has now taken the position that it is unwilling to consider an offer contingent upon 70% of the owners agreeing to purchase their share of the leased fee

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2 The basis for the 70% figure is unclear.

> interest from the Association." The Association issued a "written consent ballot" to the apartment owners, asking the owners to indicate whether they were "in favor of" or "against" an "[a]mendment of . . . the By-laws to allow the Association to make an offer to purchase the lessor's interest in the Project without requiring 70% of the owners to execute contracts for the purchase of their leased fee interest." The Stillsons voted "against" the amendment. On August 11, 1995, the Association's bylaws were amended to remove the seventy percent participation requirement. On February 23, 1996, the Association acquired the leased fee interest.
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> On January 31, 1996, the Stillsons were notified that their monthly payment of maintenance fees would increase due to "the Association's purchase of the fee." The increase included a $276.00 monthly "conversion surcharge," which was equal to the Stillson's proportionate 1.4306% interest in the Project's common elements. The Stillsons did not pay the conversion surcharge.
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> . . . .
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> On September 25, 1996, the Association filed a complaint against the Stillsons . . . [seeking] foreclosure on the Stillsons' apartment.
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> . . . .
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> On November 13, 1996, the Stillsons filed their answer and counterclaim. In their counterclaim, the Stillsons alleged, in Count I, that the Association had violated HRS § 514C-6 . . . by requiring them to pay fee conversion surcharges and to service the Association's fee conversion debt.
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> . . . .
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> On July 31, 1997, the Stillsons filed a motion for summary judgment on Count I of their counterclaim. . . . On October 8, 1997, the circuit court entered an order denying the Stillson[s'] motion[.]
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> . . . .
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> On December 1, 1997, the Stillsons filed a motion for summary judgment on Count III of their counterclaim. The Stillsons' central argument was that, inasmuch as "purchase of the fee interest altered the common element[s], the Association was required to obtain the consent of all condominium owners" prior to purchasing the interest, pursuant to HRS § 514A-13[.] . . . On January 15, 1998, the circuit court entered an order granting the Stillsons' motion. . . .

Memo op. at 3-7 (brackets in original, brackets added) (emphasis added).

In the first appeal, this court vacated "the circuit court's final amended judgment of January 14, 1999" and remanded the case "for a determination of whether the Association met the

requirements of HRS § 514C-6(a)[,]" memo op. at 21, "and . . . whether the fee conversion surcharge . . . was assessed in a 'fair and equitable manner' pursuant to HRS § 514C-6(a)(3)," memo op. at 17 n.10.

II.

On remand, the Stillsons filed a motion on July 20, 2000, for partial summary judgment on the first of the two remanded issues. On September 18, 2000, the Association filed a cross-motion for summary judgment, praying for judgment "in its favor as to all remaining issues[,]" which apparently included a determination that the 75% approval requirement was met, or, alternatively, that the savings clauses in HRS §§ 514C-4 and 514C-6(b) upheld the purchase, and that the conversion surcharge was assessed in a "fair and equitable manner." On October 4, 2000, the court granted the Stillsons' motion for partial summary judgment, concluding that the Association did not satisfy the 75% approval requirement of HRS § 514C-6(a). On November 28, 2000, the court denied the Association's cross-motion for summary judgment. The court's November 29, 2000 findings of fact, conclusions of law, and order granting the Stillsons' motion for partial summary judgment stated, inter alia,

FINDINGS OF FACT

. . . .

4. Fewer than 75% of the unit lessees actually signed the 1995 Written Consent.

5. The 1995 Written Consent was signed by unit lessees representing 66.9518% of the common interest.

. . . .

CONCLUSIONS OF LAW

. . . .

2. Section 514C-6(a) is unambiguous.

3. [Section 514C-6(a)] may be read as requiring the affirmative vote of seventy-five percent (75%) of the condominium unit lessees, as weighted to reflect the percentage common interest appurtenant to each such unit, without creating a result that is absurd or inconsistent with the purposes of the statute.

4. The Association failed to meet the 75% lessee approval requirement of Section 514-C(6)(a) in purchasing the leased fee interest.

5. The Association's conveyance of the fee interest appurtenant to certain condominium units to their respective owners after acquiring the fee interest did not validate the original purchase by "ratification."

6. The savings clauses found in H.R.S. §§ 514C-4 and 514C-6(b), to the extent either provision could be read as validating a purchase without 75% lessee approval, may not be read as allowing the Association to assess the costs of acquiring the leased fee interest. To read the "savings" clause more broadly would vitiate the requirement of 75% lessee approval.

7. While the Legislature may have intended Act 241 to be retroactive, application of the "savings" clause to permit assessment of the Stillsons for a share of fee conversion costs, under the circumstances of this case, would violate the Contracts Clause of the United States Constitution.

(Emphases added.) At the hearing on the motion, the court apparently accepted the Stillsons' method for calculating the votes of multiple-owner units. According to the Stillsons' method, in an apartment with two owners and an appurtenant share of common interest (expressed in percentage as "PCI") of 1.4306, both owners had to vote in favor of the purchase for the entire 1.4306 interest to be attributed to the 75% requirement. If only one owner voted in favor of the purchase, only one-half of the 1.4306, or .7153 interest, was counted toward the 75% requirement. Employing this method of counting "votes," the court determined, as indicated above, that the 75% requirement

had not been satisfied. The court granted the Stillsons' motion for partial summary judgment on Count I of the counterclaim, and entered judgment in favor of the Stillsons and against the Association. The court entered final judgment resolving all claims on December 27, 2000.

On January 8, 2001, the Stillsons filed a motion to amend the judgment and on January 9, 2001, they filed a motion for attorney's fees, costs, and expenses. On February 27, 2001, the court granted the Stillsons' motion to amend the findings, conclusions, and order. The order was amended to state:

> 3. That the Association be and the same is hereby permanently enjoined from collecting or attempting to collect from the Stillsons, or either of them, any fee, charge or assessment in connection with the Association's purchase of the fee interest, including without limitation the billing of fee conversion expenses as an element of the common area maintenance expenses.

By order dated April 10, 2001, the court also awarded the Stillsons attorney's fees and court costs, and reimburseable expenses. The court entered an amended final judgment on May 2, 2001.

III.

The Association appeals from the December 27, 2000 judgment and May 2, 2001 amended final judgment of the court. The Association raises fourteen points on appeal. Pertinent here, the Association argues that the court erred in (1) finding and concluding that "[t]he Association failed to meet the 75% lessee approval requirement of [HRS § 514C(6)(a)] in purchasing

the leased fee interest[]"[3]; (2) concluding that "[t]he Association's conveyance of the fee interest appurtenant to certain condominium units to their respective owners after acquiring the fee interest did not validate the original purchase by 'ratification'"[4]; (3) concluding that "[t]he savings clauses found in HRS §§ 514C-4 and 514C-6(b), to the extent either provision could be read as validating a purchase without 75% lease approval, may not be read as allowing the Association to assess the costs of acquiring the leased fee interest"[5]; and (4) ruling that "the [Association's] fee expense assessment was not assessed in a 'fair and equitable manner' pursuant to HRS § 514C-6(a)(3)."[6]

In response, the Stillsons argue that (1) the Association "failed to meet the seventy-five percent requirement of HRS § 514C-6(a) before purchasing the leased fee interest"; (2) "HRS § 514C-6(a) did not allow the [Association] to count the approval of one lessee of a given unit as the approval of the co-lessees of that unit"; and (3) "nothing in HRS §§ 514C-4 or 514C-6(b) (1993) 'saves' the power to assess if the fee purchase was

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[3] This argument represents the Association's first, second, and sixth points on appeal.

[4] This is the Association's third point on appeal.

[5] This argument represents the Association's fourth and fifth points on appeal.

[6] This is the Association's seventh point on appeal.

not approved by 75% of the lessees as required by HRS § 514C-6(a)."

IV.

Summary judgment decisions are reviewed de novo. Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 104, 839 P.2d 10, 22, recon. denied, 74 Haw. 650, 843 P.2d 144 (1992). "Unlike other appellate matters, in reviewing summary judgment decisions an appellate court steps into the shoes of the trial court and applies the same legal standard as the trial court applied." Beamer v. Nishiki, 66 Haw. 572, 577, 670 P.2d 1264, 1270 (1983) (citation omitted). Summary judgment will be upheld "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law." Heatherly v. Hilton Hawaiian Vill. Joint Venture, 78 Hawai'i 351, 353, 893 P.2d 779, 781 (1995) (citations omitted).

V.

In its first argument, the Association contends that HRS § 514C-6(a) is "silent both as to [the] method of calculating the [75%] vote, and the timing of the required 'approval.'" It argues that the court erred by applying a "fractionalized method for calculating the vote" and that the court should have instead employed the "one unit, one vote" method required in the Association's bylaws.

At the hearing on the Stillsons' motion for partial summary judgment, the court was "convinced" that "under the plain reading of the statute, the [Stillsons'] view . . . that it must be 75 percent of the lessees, 75 [sic] who hold 75 percent of the common interest [a]ppurtenant is the common view." In conclusion of law no. 3 of the November 29, 2000 findings of fact, conclusions of law, and order granting the Stillsons' motion, the court decided that HRS § 514C-6(a) "may be read as requiring the affirmative vote of seventy-five percent (75%) of the condominium unit lessees, as weighted to reflect the percentage common interest appurtenant to each such unit[.]"

VI.

A.

We note, initially, that the court's interpretation of HRS § 514C-6(a), which we construe as requiring approval by lessees owning units to which at least 75% of the common interests are appurtenant, was correct. HRS § 514C-6(a) (1993) states, in relevant part, as follows:

> (a) The association of apartment owners or cooperative housing corporation may purchase the leased fee interest in the land; provided that at least seventy-five per cent of the condominium unit lessees or cooperative unit lessees approve of the purchase. . . . As used herein, seventy-five per cent of the condominium unit lessees means the lessees of units to which seventy-five per cent of the common interests are appurtenant[.]

(Emphases added.)

When construing a statute, "the fundamental starting point is the language of the statute itself . . . [and] where the

statutory language is plain and unambiguous, [the appellate courts'] sole duty is to give effect to its plain and obvious meaning." State v. Kalama, 94 Hawai'i 60, 64, 8 P.3d 1224, 1228 (2000). A plain reading of HRS § 514C-6(a) does not indicate that 75% of the lessees or 75% of the units must approve of the purchase.[7] Rather, the touchstone is "seventy-five per cent of the common interests . . . appurtenant" to the units. Hence, approval under HRS § 514C-6(a) is effective so long as the lessees of units to which that percentage of common interests is appurtenant approve of the purchase.

The legislature provided an express definition for the entire phrase, "seventy-five per cent of the condominium unit lessees." In construing HRS § 514C-6(a), then, the phrase should be evaluated and applied as a whole so as not to render the definition superfluous or insignificant. See In re City & County of Honolulu Corp. Counsel, 54 Haw. 356, 373, 507 P.2d 169, 178 (1973) (applying the "cardinal rule of statutory construction that a statute ought upon the whole be so construed that, if it can be prevented, no clause, sentence or word shall be superfluous, void, or insignificant") (emphasis added). According to the language of the statute, the subject phrase means "the lessees of units to which seventy-five per cent of the common interests are appurtenant." Thus, by reading the

[7] Neither party appears to object to the court's weighing adjustment to reflect the common interest appurtenant to each such unit.

definition into the phrase, the statute reads that "[t]he association of apartment owners . . . may purchase the leased fee interest in the land; provided that [the lessees of units to which seventy-five per cent of the common interests are appurtenant] approve of the purchase."[8]

We were faced with a similar situation in Coon v. City & County of Honolulu, 98 Hawai'i 233, 47 P.3d 348 (2002). There, this court refused to apply an external definition of "condominium owners" in construing Honolulu's lease-to-fee conversion law, Revised Ordinances of Honolulu (ROH) chapter 38. Id. at 248, 47 P.3d at 363. ROH § 38-2.2 required, inter alia, that "[a]t least 25 of all the condominium owners within the development or at least owners of 50 percent of the condominium units, whichever number is less, apply to the [City's] Department [of Housing and Community Development (Department)] to purchase the leased fee interest." Id. at 238 n.3, 47 P.3d at 353 n.3 (emphasis added). The Department's rules § 2-3, however, conflicted with ROH § 38-2.2 in that it required only "25 condominium owners by number, or 50% of the condominium owners of

[8] The dissent interprets the statute by isolating the subject phrase into individual parts, employing separate definitions of "common interests" and "condominium unit lessees" from outside of § 514C-6. See Dissenting opinion at 25-26. It uses the definitions of "common interests" from HRS § 514A-3 and "condominium unit lessees" from § 514C-1. By this process, it arrives at the conclusion that "the units in which all of its lessees voted in the affirmative, as weighted to reflect each unit's percentage of common interest, must collectively amount to seventy-five percent." Dissenting opinion at 27 (emphasis added). This approach, however, is a piecemeal reconstruction of HRS § 514C-6 and, with all due respect, seemingly disregards the legislature's express definition. Thus, the dissent's importing of definitions from outside the governing statute, HRS § 514C-6, would not produce a correct result.

a development, whichever shall be the lesser number," id. at 246, 47 P.3d at 361 (emphasis in original), "impermissibly reduc[ing] the number of applicants required to trigger ROH ch. 38 proceedings below that prescribed by ROH 38-2.2(a)(1)[,]" id. at 247, 47 P.3d at 362. This court adhered to the plain reading of the ordinance and construed "50 percent of the condominium units" to mean "fifty percent of all the units in the condominium development" as opposed to "50 percent of the condominium owners" or "50 percent of the owner-occupied condominium units." Id. at 248, 47 P.3d at 363.

B.

It would appear evident that if the legislature desired that every lessee holding an interest in a single apartment vote in the affirmative before the PCI in the apartment would be attributed to the 75% threshold, it could have easily required the "unanimous" consent of all owners of a condominium. The legislature, however, designated only the ultimate condition in HRS § 514C-6(a), the requirement of an affirmative vote from 75% of the common interests appurtenant to the units, and not 75% of the common interests appurtenant to the units in which every individual lessee votes in the affirmative.

The statute is clear, then, that an affirmative vote of 75% of the common interest is required, but does not limit the method for calculating the threshold percentage. In that regard, HRS § 514A-81 (1993) provides that "[t]he operation of the

property shall be governed by bylaws, a true copy of which shall be recorded in the same manner as the declaration." The Stillsons argue that "voting rights of owner/lessees with respect to the acquisition of the fee interest[is] not 'operation of the property.'" (Emphasis in original.)

However, HRS § 514A-3 (1993) provides that "'[o]peration of the property' means and includes the administration, fiscal management, and operation of the property and the maintenance, repair, and replacement of, and the making of any additions and improvements to, the common elements." (Emphasis added.) Based upon this definition, the term "operation of the property" is broad in scope inasmuch as it "includ[es]" and thus is not limited to the objects enumerated in HRS § 514A-3. The term "operation" itself is defined as "[e]xertion of power; the process of operating or mode of action; an effect brought about in accordance with a definite plan; action; activity." Black's Law Dictionary 1092 (6th ed. 1990). Hence, the bylaws may pertain to any "action" or "activity" with respect to the property.

It would also appear that voting on the leased fee purchase is implicated in the "administration" of the property. "Administration" is defined as "the principles, practices, and rationalized techniques employed in achieving the objectives or aims of an organization[,] . . . administrative management[,] the

phase of business management that plans, organizes, and controls the activities of an organization for the accomplishment of its objectives in the long run often as distinguished from operative management." Webster's Third New Int'l Dictionary 28 (1961) (emphases added). Applying this definition, voting procedures would constitute "practices" and "rationalized techniques" that associations "employ[] in achieving the objectives or aims of an organization," in this case, the purchase of the leased fee.[9] Thus, contrary to the dissent's assertions, the bylaws govern more than mere "daily operations of the condominium property." Dissenting Opinion at 21.

Indeed, bylaws generally establish the rules governing the condominium. See Raines v. Palm Beach Leisureville Cmty. Ass'n, 413 So. 2d 30, 32 (Fla. 1982) ("[A] condominium association derives its powers, duties, and responsibilities from [Florida Statutes] chapter 718 and from the association's declaration of restrictions and bylaws."); Bradford Square Condo. Ass'n v. Miller, 573 S.E.2d 405, 409 (Ga. Ct. App. 2002) ("The condominium instruments, including the bylaws and the sales agreement, are a contract that governs the legal rights between the [a]ssociation and unit owners."); Chapman Place Ass'n, Inc. v. Prokasky, 507 N.W.2d 858, 863 (Minn. Ct. App. 1993) ("[T]he

[9] The dissent asserts that voting on the fee purchase "does not fall within . . . 'administration[,]'" dissenting opinion at 22, without discussion of the definitions of "operation" or "administration."

condominium act, in conjunction with the [d]eclaration and the [a]ssociation's by-laws, governs the rights of the [a]ssociation and condominium unit owners."); Lion Square Phase II & III Condo. Ass'n v. Hask, 700 P.2d 932, 934 (Colo. Ct. App. 1985) ("A condominium association may exercise its powers only within the constraints of its condominium declaration and bylaws.").

That associations may implement various voting methods through their bylaws does not alter the application of HRS § 514C-6(a). The voting method may vary across associations, but the application of HRS § 514C-6(a) does not change. Associations must still obtain the requisite 75% approval for a purchase to be valid and as to that mandate, each association's bylaws is subject to examination for compliance with the statute in the event of a dispute. Hence, any fear to the contrary would be unmerited.

VII.

A.

Therefore, in this case, the Association's bylaws, which govern the condominium property pursuant to HRS § 514A-81, and are not otherwise violative of the law, control on the question of how the votes are to be calculated. The bylaws indicate that a designated person chosen by the owners "shall" vote on behalf of all owners of a unit. The bylaws state in part as follows:

> 2. Voting Owners. There shall be one "Voting Owner" of each apartment. The voting owner who need not be an owner

> shall be designated by the owner or owners of each apartment by written notice delivered to the Board of Directors. . . . In the absence of any such designation, the owner or owners of an apartment shall be deemed to be the voting owners of such apartment, and, if any apartment be owned by more than one owner (and whether such owner shall hold such apartment jointly, commonly, or by the entireties), any one of such owners present in person at any meeting of the Association shall be deemed to be the voting owner of such apartment, and if there be more than one of such owners present at any meeting, and if there be any dispute among them as to which of them shall be deemed to be the voting owner of such apartment, then the majority of them then present shall select a voting owner.

(Emphasis in original and emphases added.)[10] The bylaws, then, do not provide for fractional votes to be cast by the separate owners of a multi-owner unit as the court determined. Each unit, even if having more than one owner, is entitled to, and can cast, but one vote. The court's method of calculating the "approval" contravened the bylaws, which do not contemplate fractionalization of a "vote," but, rather, mandate one vote per apartment.

The "voting owner" provision in the bylaws is consistent with the Condominium Property Act, chapter 514A.[11] HRS § 514A-11(6) (1993) mandates that condominium association

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[10] The dissent maintains that the bylaws are "tangential" because the Association's "bylaws dictate the 'one vote per unit' voting method expressly in terms of voting at board meetings -- not for fee purchases[.]" Dissenting opinion at 22-23. However, the "Voting Owners" provision plainly applies to voting in general and does not expressly limit its applicability to "board meetings." Indeed, as noted, there was no challenge to the use of ballots for voting purposes. See infra note 18.

[11] The Condominium Property Act, HRS chapter 514A, was formerly known as the Horizontal Property Act, HRS chapter 514. 1988 Haw. Sess. L. Act 65, §§ 1-2 at 98. The Association's declaration and bylaws were recorded simultaneously on April 9, 1974 pursuant to the Horizontal Property Act, HRS chapter 514.

declarations "shall express . . . [t]he percentage of undivided interest in the common elements[12] appertaining to each apartment and its owner for all purposes, including voting[.]" Thus, the Association's bylaws,[13] requiring multi-owner apartments to designate a representative "voting owner" for purposes of casting a vote, comports with HRS § 514A-11(6), which mandates an "owner" for the purpose of "voting" be identified in the declaration.[14]

Moreover, the Association's voting procedure effectuates legislative intent. In the first appeal, this court looked to the subsequent 1999 amendments to HRS chapter 514C and accompanying legislative history "to confirm its interpretation" of § 514C-6(a).[15] See Memo op. at 14-15. It was noted that, "in 1999, the legislature expressly stated that it was 'clarifying' its original intent regarding the powers of association of

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[12] The definition of "common elements" encompasses "[t]he land included in the condominium property regime, whether leased or in fee simple[.]" HRS § 514A-3(1) (1993).

[13] The bylaws are recorded in the same manner as the declaration. See Ass'n of Owners of Kukui Plaza v. City & County of Honolulu, 7 Haw. App. 60, 66 n.6, 742 P.2d 974, 978 n.6 (1987) (citing HRS § 514A-81).

[14] The requirement under HRS § 514A-11(6) that declarations designate the "owner" of each apartment for the "purposes" of "voting" applies to the Association's declaration even though the declaration pre-dates the statute. The bylaws state that the horizontal property regime was "established under and pursuant to Haw. Rev. Stat., Chapter 514" and that if "the said statute be amended or reenacted, any such amendment or reenactment shall govern and regulate this horizontal property regime, without amendment to or of the" declaration and bylaws. (Emphasis added.)

[15] The subsequent legislative history supported the court's view "that the legislature did not intend HRS § 514C-6 to apply solely to cases regarding the right of first refusal." Memo op. at 15 (emphasis in original).

apartment owners involved in lease-to-fee conversions in the case of voluntary conversions by associations of apartment owners." Id. (emphasis in original). The preamble section of the 1999 amendment to chapter 514C, Act 241, provided that

> [t]he legislature further finds that it is necessary to clarify the powers of the boards of directors of associations of apartment owners to enter into purchase agreements with lessors to facilitate and encourage voluntary lease to fee conversions of condominium projects in an efficient and economical manner."

1999 Haw. Sess. L. Act 241, § 1 at 743 (emphases added). The Association's apparent justification for the designation of a representative voting owner is in consonance with the legislature's intent to "facilitate and encourage" lease-to-fee conversions in an "efficient and economical manner" as explained below.

B.

For under chapter 514A, "[a]ny apartment may be jointly or commonly owned by more than one person." HRS § 514A-5 (1993). A "person" is defined as "an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof." HRS § 514A-3. Thus, the legislature plainly contemplated that (1) an apartment could be owned in various estates, including joint tenancy, tenancy in common, and tenancy by the entirety, and (2) legal entities -- firms, corporations, partnerships, associations, trusts, or otherwise -- and combinations of legal entities could own a single apartment.

Under this framework, condominium property regimes produce complex forms of ownership involving a multitude of "persons." Indeed, the Association apparently adopted the designated "voting owner" requirement to address the perceived difficulty with respect to voting by multiple-owner apartments, inasmuch as the voting provision in the Association's bylaws references apartments held "jointly, commonly or by the entireties[.]" Hence, the representative "voting owner" procedure dictated by the Association's bylaws efficiently and economically addresses the complexities that arise in multiple-owner apartments. In other words, the Association's voting procedure effectuates the legislature's aim of efficient and economical lease-to-fee conversions and could hardly be more rational and consistent with the statute. In light of the legislature's recognition of various ownership statuses, the "rational, sensible and practicable interpretation" of the statutes, Southern Foods Group L.P. v. Dep't of Educ., 89 Hawai'i 443, 453-54, 974 P.2d 1033, 1043-44 (1999), authorizes the Association's designated owner voting procedure.

C.

Assuming, arguendo, some ambiguity in HRS § 514C-6(a), construing the statute to require the affirmative vote of every joint or common owner or every individual comprising a legal entity would defeat the legislature's objective of facilitating and encouraging lease-to-fee conversions in an efficient and

economical manner. This court has rejected an analogous argument in interpreting Honolulu's lease-to-fee conversion law.

In Coon, this court was faced with an "internally inconsistent" ordinance that "restrict[ed] the definition of a 'lessee' to an 'owner-occupant' who must be 'an individual,' while at the same time extending 'lessee' status to trusts and other legal entities." 98 Hawai'i at 259, 47 P.3d at 374 (emphasis added). The appellants in that case argued that, "where a condominium leasehold is held in trust, the only lessees qualified to purchase the fee interest pursuant to [the ordinance]" are, inter alia, "trustees (because only trustees hold legal title to property)" and "natural persons[.]" Id. at 258, 47 P.3d at 373 (emphasis in original and emphases added).

This court rejected the appellants' interpretation and held that "the benefits of ROH ch. 38 extend[ed] to owner-occupants of condominiums who have elected to structure the title to their assets in a trust, subject to the proviso that it is the trustee who is eligible to purchase the leased fee interest." Id. at 260, 47 P.3d at 375. It was reasoned that

> allowing the occupants of condominiums, who qualify to purchase their leased fee interests pursuant to [the ordinance] in all respects except that legal title to the condominium unit is technically held in trust for their benefit, to convert their leased fee interests in their condominium unit into fee simple interests furthers the ordinance's goal of protecting those condominium owners most at risk.

Id. Consequently, in Coon, this court adopted the interpretation that furthered the goal of ROH chapter 38, rejecting a literal

interpretation of the ordinance that would contravene legislative intent.

Insofar as HRS § 514C-6(a) could be viewed as ambiguous, implementing the Association's bylaws, as opposed to requiring unanimous approval by each owner in multi-owned apartments, would be preferable because, as in Coon, this "furthers" the legislature's "goal" of "facilitating" conversions in an "efficient" manner. To do otherwise would be inconsistent with established statutory construction principles and the approach taken in Coon.[16]

VIII.

It must be further noted that the Association's bylaws do not prohibit a unanimous vote as to "persons" owning a condominium as the dissent implies, dissenting opinion at 21-24, but only require the owners to designate a person to cast a vote on behalf of the apartment. Prescribing that "if a unit is owned by three lessees and one lessee votes against the fee purchase, that unit's percentage of common interest, in its entirety, will not count towards the requisite seventy-five percent, notwithstanding the affirmative votes of the other two lessees[,]" dissenting opinion at 27, would exceed the statutory

[16] The dissent's position effectively places the association members in this case in a position like that rejected by this court in Coon.

boundaries of HRS § 514C-6(a). For on its face the statute focuses not upon how the vote of the several lessees (in the event there is more than one) are to be counted. Rather, HRS § 514C-6(a) expressly defines and states that "seventy five per cent of the condominium lessees means the lessees of units to which seventy five per cent of the common interests are appurtenant" (emphases added), thus making the condominium apartment itself and not the several "lessees" the voting unit to be counted.

Additionally, a unanimity mandate would run counter to the direction of legislative intent as described above and as subsequently indicated by HRS § 514C-22. The legislature now permits associations an alternative route to purchasing the fee interest by allowing the board of directors to do so without obtaining the 75% approval vote. See HRS § 514C-22 (Supp. 2004) (authorizing associations to "purchase the lessor's interest in the condominium project provided[] that the declaration of condominium property regime shall either contain or be amended to include a provision authorizing the board of directors to effectuate such a purchase").

Nevertheless, if we were to adopt the dissent's position, associations which prefer that a vote of the owners be had would otherwise be constrained in their method of voting and only an amendment to the statute by the legislature would obviate

the requirement of having every individual and entity comprising an owner cast an affirmative vote. In the absence of any apparent conflict with HRS § 514C-6(a), the dissent's approach would also unduly interfere with any arrangements multiple owners may choose to make or have made among themselves as to voting with respect to a fee purchase. Additional cost and expense for owners would be incurred if, for example, devices such as powers of attorney were needed to be employed, assuming that the use of such devices would be permissible under the dissent's approach. For the foregoing considerations, the representative voting owner by-law should be confirmed as consistent with the requirements of HRS § 514C-6(a).

IX.

Although the Association is correct that the court erred in applying a fractional vote count, the Association's own calculation may not have complied with the procedural requirements of its bylaws. To determine if the 75% requirement was satisfied, the court tabulated the 1995 written consents to amend the bylaws.[17] By employing the Stillsons' fractional vote

[17] The amendment proposal would "allow the Association to make an offer to purchase the lessor's interest in the Project without requiring 70% of the owners to execute contracts for the purchase of their leased fee interest." (It is unclear why the 70% figure was used.) In addition to the 1995 consents, the Association points to "four separate occasions" in which it obtained the requisite 75% approval: (1) 1994 ballots seeking approval for acquisition of the leased fee interest; (2) 1995 written consents; (3) 1995 leased fee interest sales contracts to the apartment owners; and (4) limited warranty deeds to the purchasing owners. The court, however, found "that the 1995 ballot is the act in issue that requires the 75 percent vote, which is required by [HRS §] 514C-6(a), which it refers to in the remand from the Supreme Court in this case" and did not consider the other forms of approval.

method, the court found, as stated supra, that the 1995 consents were "signed by unit lessees representing 66.9518% of the common interest[,]" falling short of the requisite 75%. The Association, on the other hand, by employing the "one unit, one vote" method, arrived at a 75.7836% approval rate.

According to section 2 of the bylaws, quoted above, in multiple-owner apartments, a vote is valid if the co-owners designate a representative "voting owner" by providing the Board of Directors with written notice.[18] In tabulating the 1995 consents, the Association "accept[ed] the signature of a single co-owner as exercising the vote of all co-owners unless one or more of the co-owners dispute[d the] right to vote."[19]

At his deposition, Richard Ekimoto (Ekimoto),[20] the attorney who represented the Association in acquiring the leased fee interest, testified that "if there was one co-owner who signed the written consent form, we counted that as the vote of the owner -- for that apartment unless we got a conflicting statement or an objection. And it was based on industry practice and the by-law provision." Based on Ekimoto's testimony, the

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[18] The Stillsons "do not challenge the [Association's] use of ballots in attempting to attain the 75% lessee approval threshold" rather than a vote at a meeting.

[19] Richard Ekimoto, the attorney for the Association, made this statement in a July 25, 1995 faxed memorandum to Ray Simon, co-owner of unit 418.

[20] Ekimoto withdrew as counsel on January 16, 1997, so that he could serve as a witness.

Association did not confirm that the owner who signed the consent was the designated "voting owner" before applying the apartment's PCI to the 75% threshold.[21] The validity of the procedure followed, however, is not dispositive inasmuch as the subsequent deeds ratified the consents.

X.

A.

This jurisdiction has long recognized the doctrine of ratification. See Gold v. Harrison, 88 Hawai'i 94, 105-06, 962 P.2d 353, 364 (1998) (concluding that an attorney who did not sign a complaint was nevertheless subject to Hawai'i Rules of Civil Procedure Rule 11 sanctions because he "ratified and adopted the complaint . . . as his own" by asserting "that everything in the case was done with his full knowledge and approval"); Sharples v. State, 71 Haw. 404, 407, 793 P.2d 175, 177 (1990) (acknowledging the rule that an "employer's liability under a ratification theory requires that the act complained of be done on behalf of or under the authority of the employer, and there must be clear evidence of the employer's approval of the wrongful conduct" (citation omitted)); Maui Fin. Co. v. Han, 34

[21] Ekimoto admitted to this method in the following exchange during his deposition:

> Q. And so in your mind, all that was necessary was to count the number of consents that you had received, add up the PCI represented by those consents to determine whether or not the 75 percent threshold was met?
> A. Yes.

Haw. 226, 230-31 (1937) (recognizing the "principle of the law of agency that an affirmance of an unauthorized transaction may be inferred from a failure to repudiate it" and therefore holding that the defendant ratified his wife's signature on his behalf by not objecting to it) (internal quotation marks and citation omitted); Cook v. Surety Life Ins. Co., 79 Hawai'i 403, 411, 903 P.2d 708, 716 (App. 1995) ("Any failure on the part of the client to object to an unauthorized act [by counsel in settlement negotiations] within a reasonable time after becoming aware of it will be construed as a ratification of it.").

In Maui Finance, this court adopted the Restatement of the Law of Agency's definitions for "ratification" and "affirmance." Accordingly, in Hawai'i, "ratification" is defined as "the affirmance by a person of a prior act which did not bind him but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him." 34 Haw. at 230 (quoting Restatement of the Law of Agency § 82). "Affirmance" is defined as "a manifestation of an election by the one on whose account an unauthorized act has been performed to treat the act as authorized, or conduct by him justifiable only if there is such an election." Id. (quoting Restatement of the Law of Agency § 83).

B.

Eventually, 84.9669% of the owners, based on their weighted percentage ownership of the common elements, approved of the purchase by executing limited warranty deeds. In the warranty deeds, the Association, as "Grantor," conveyed legal ownership of the property upon which the condominium is located to the apartment owners or "Grantees." Section 8 of the deeds provided:

> Upon release of any and all such mortgages, liens or encumbrances, and provided that the owners of Grantee's Leasehold Interest and the Property are identical, it is the intent of the parties to this Deed that there be a merger of Grantee's Leasehold Interest into the Property.

(Emphases added.) Seventy out of seventy-nine apartments have purchased the fee interest in the property. All title holders in each of the seventy units signed their respective deeds. By signing the deeds, any purportedly non-consenting owners "manifest[ed]" an "election" to "treat the act [of the signing owner] as authorized," thereby constituting affirmance of the 1995 consents. This affirmance, in turn, gave "effect [to any questionable consents] as if originally authorized" by the purportedly non-consenting owner and resulted in ratification. Hence, even if the consents may have been marred by procedural error - i.e., authorized by non-"voting owners" - more than 75% of the owners, as weighted by the common interests, eventually affirmed the 1995 consents.

XI.

Thus, contrary to the dissent's contention that the "[e]xecution of these deeds alone does not contemplate that the condominium unit lessees who previously voted against the fee purchase intended to thereafter ratify the 1995 written consents and ultimately approve the purchase[,]" dissenting opinion at 30 (emphasis in original), the deeds themselves expressly state that it was the "intent" of the lessees to concur in, and, thus, to ratify the purchase of the fee. The evidence in the record thus clearly and plainly manifests the lessees' assent to treat any negative votes as affirmative, inasmuch as the deeds are a plain manifestation of the fact that the lessees authorized and, thus, ratified the fee purchase.

The dissent "do[es] not believe execution of the . . . deeds constituted 'ratification' so as to affirm the 1995 written consents and approve the fee purchase," dissenting opinion at 32 n.15, because "[t]o do otherwise would circumvent the fee purchase process statutorily required" in "contraven[tion of] HRS § 514C-6(a) and the principles of ratification[,]" dissenting opinion at 30. But no one contends that the Association in this case sought to "circumvent" the process. All title holders in seventy out of seventy-nine apartments have signed their deeds, even when they had the option of not doing so. Their acceptance of the fee interest cannot demonstrate anything other than approval of the original fee purchase.

Signing the deeds manifests consent to the purchase. Rather than a "contraven[tion]" of "the principles of ratification," dissenting opinion at 30, the execution of the deeds is the "sine qua non" of the act of ratification. These acts of ratification -- an overwhelming acceptance of the deeds at 84.9669% weighted approval -- plainly meet the statutory threshold. To reiterate, seventy out of seventy-nine units have purchased their respective fee interests. Accordingly, the Association satisfied the statutory requirement. To ignore the ratification and nullify the ratified transactions will have an unwarranted chaotic effect on the Association and its members. See infra Part XIII.

XII.

The doctrine of ratification also resolves the dispute regarding whether the Association was required to obtain 75% approval before the purchase.[22] To reiterate, HRS § 514C-6(a) permits the Association to purchase the fee interest "provided that at least seventy-five per cent of the condominium unit lessees . . . approve of the purchase." The Stillsons contend that "the plain import of [HRS § 514C-6(a)] is that the approval must precede the purchase." (Emphasis in original.) However, "when ratified, the prior unauthorized act has the same legal effect and results in the same contractual relations between the

[22] As noted previously, the Association contended that HRS § 514C-6(a) was "silent . . . as to . . . the timing of the required 'approval.'"

principal and the person with whom the agent has dealt as though the act of the agent originally had the prior authorization of the principal." Maui Fin., 34 Haw. at 230 (emphases added). Ratification has the effect of validating any original allegedly unauthorized act. Inasmuch as any purportedly unauthorized consents was later ratified, the "prior unauthorized" consents had "the same legal effect" as if the signing owner "originally had the prior authorization" of his or her co-owners and/or the official "voting owner." Thus, the required 75% approval secured by the deeds dated back to the 1995 consents. No timing conflict results because the 1995 consents occurred before the purchase.

Therefore, the court erred in granting the Stillsons' motion for partial summary judgment and in denying the Association's cross-motion for summary judgment insofar as the Association met the 75% requirement as a matter of law. Accordingly, the court should have granted the Association's cross-motion for summary judgment as to the first remanded issue.[23]

XIII.

The court's findings, conclusions, and order granting the Stillsons' motion, as well as its amended findings, conclusions, and order, did not address the second remand issue

[23] In light of the foregoing analysis, it is not necessary to reach the question raised by the Association of whether HRS § 514C-4 or HRS § 514C-6(b) "saves" the fee purchase in a situation where the association has purchased the fee "without capacity or power to do" so. HRS § 514C-6(b).

of whether the conversion surcharge was assessed in a "fair and equitable manner" pursuant to HRS 514C-6(a)(3). In their reply brief, the Association maintains that "[t]he Stillsons all but concede that public policy weighs . . . in favor of allowing the fee conversion to take place[]" because "[t]he consequences would be staggering: the apartment owners who purchased the fee interests from the AOAO would have to return the fee interests and somehow reverse the mortgages taken out to effectuate the purchases. At the least, there would be a cloud upon the titles of all owners." (Emphasis added.) Because "[t]he Stillsons' argument would effectively void the purchase by 70 of the 79 apartments at the . . . condominium[,]" the Association maintains that "the Stillsons attempt to . . . [focus on] a much more limited question: . . . 'simply whether . . . the AOAO possesses the power to assess the Stillsons[.]'"

At the October 4, 2000 hearing on the Stillsons' motion, the court stated that "the conver[sion] surcharge was not fairly and equitably imposed[,]" but the basis for its decision remains unclear. The court seems to have rested its decision on its determination that the Stillsons should not be subjected to the surcharge in any case. This question, however, as stated above, was decided in the first appeal. As indicated in HRS § 514C-6(a)(3), the Association may subject the Stillsons to the surcharge. Inasmuch as the court did not provide a discernible basis for its holding other than that the surcharge is

inapplicable to the Stillsons, this case is remanded on the discrete question of whether the surcharge was "assessed in a fair and equitable manner."

XIV.

The Association argues that the court erred by denying its motion for repayment of the judgment awarded to the Stillsons following the memorandum opinion, which vacated the judgment. In its motion for repayment of judgment, the Association relied on HRS § 636-16,[24] relating to prejudgment interest, but did not provide any relevant authority on the issue of whether the Stillsons were required to repay the judgment. The Stillsons, on the other hand, argued that the court, "sitting in equity[,]" had the "sound discretion" to maintain the status quo pending decision on the merits and reminded the court that the Association originally failed to "avail itself of the opportunity to post a supersedeas bond within the period of time allowed" to stay enforcement of the judgment.

Inasmuch as we have held that the Association's cross-motion for summary judgment must be granted insofar as it

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[24] HRS § 636-16 (1993) provides:

> In awarding interest in civil cases, the judge is authorized to designate the commencement date to conform with the circumstances of each case, provided that the earliest commencement date in cases arising in tort, may be the date when the injury first occurred and in cases arising by breach of contract, it may be the date when the breach first occurred.

pertained to the required 75% vote, the Stillsons are not entitled to any judgment amounts awarded them as a result of the court's contrary ruling. The Association requested "repayment of the garnished amounts . . . plus prejudgment interest." On appeal the Association does not challenge the court's denial of prejudgement interest. Thus, we need not address the issue.

XV.

Next, the Association contends that "[b]ecause the Stillsons undisputedly sought only *partial* summary judgment, and did not with 'particularity' seek specific relief, the [court] did not have the authority to award a *complete* summary judgment, or grant relief not specifically sought in the motion." (Emphases in original.) This argument need not be addressed inasmuch as we have already determined that summary judgment in favor of the Stillsons was inappropriate.

XVI.

Finally, the Association argues that the court erred by awarding the Stillsons attorney's fees, costs, and expenses. Having determined that the Stillsons did not prevail, the court's award of attorney's fees, costs, and expenses is vacated.

XVII.

Based on the foregoing, (1) the December 27, 2000 judgment and May 2, 2001 amended final judgment are vacated and (2) this case is remanded (a) with instructions to the court to

enter an order denying the Stillsons' motion for partial summary judgment and to enter an order partially granting the Association's cross-motion for summary judgment as to the 75% requirement and as to the Association's authority to render a surcharge and (b) for the court to determine whether the conversion surcharge was assessed against the Stillsons "in a fair and equitable manner."

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