***** NOT FOR PUBLICATION *****

NO. 26646

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

MILILANI TOWN ASSOCIATION, a Hawai'i non-profit corporation,
Plaintiff-Appellee

vs.

RICHARD MEEK CRABBE, Defendant-Appellant

and

ASSOCIATES FINANCIAL SERVICES COMPANY OF HAWAI'I, INC.; MARY PATRICIA WATERHOUSE[1], DIRECTOR OF BUDGET AND FISCAL SERVICES, CITY AND COUNTY OF HONOLULU,
Defendants-Appellees

and

DIAL ELECTRIC COMPANY, INC.; CHILD SUPPORT ENFORCEMENT AGENCY; STATE OF HAWAI'I; JOHN DOES 1-10, JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; DOE ENTITIES 1-10; AND DOE GOVERNMENTAL UNITS 1-10,
Defendants

RICHARD MEEK CRABBE, Third-Party Plaintiff-Appellant

vs.

DONNA DAVIS GREEN, Third-Party Defendant-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 02-1-0443)

[1] Pursuant to Hawai'i Rules of Appellate Procedure Rule 43(c)(1), Mary Patricia Waterhouse, the current Director of Budget and Fiscal Services, City and County of Honolulu (the City), has been substituted for Ivan M. Lui-Kwan, the director at the time this case was decided by the first circuit court. Ivan M. Lui-Kwan succeeded Carol Takahashi, who was the director at the time the complaint was filed.

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

In this dispute between a planned community association and a homeowner over the upkeep of residential property subject to the association's restrictive covenants [hereinafter, Property], defendant-appellant and third-party plaintiff-appellant Richard Meek Crabbe appeals from the May 25, 2004 final judgment of the Circuit Court of the First Circuit[2] in favor of plaintiff-appellee Mililani Town Association [hereinafter, the MTA] and third-party defendant-appellee Donna Davis Green. On appeal, Crabbe argues that the circuit court erred by: (1) denying his motion to dismiss the MTA's complaint for failure to join an indispensable party; (2) granting Green's motion for judgment on the pleadings; (3) granting the MTA's motion for partial summary judgment on its claim for injunctive relief compelling Crabbe to maintain the Property in accord with the MTA's restrictive covenants; (4) granting the MTA's motion to voluntarily dismiss its remaining claims without prejudice; and (5) entering final judgment. The MTA responds that: (1) the appeal should be dismissed as moot; (2) the circuit court did not err in denying Crabbe's motion to dismiss for failure to join Green as an indispensable party because it allowed her to be

[2] The Honorable Gary W.B. Chang presided over this matter until November 15, 2002. The Honorable Dexter Del Rosario presided over this matter thereafter.

impleaded as a third-party defendant; (3) the circuit court did not err in granting partial summary judgment because there were no genuine issues of material fact; (4) the circuit court did not err in granting the MTA's motion to voluntarily dismiss the remaining counts because Crabbe suffered no prejudice; and (5) the circuit court did not err in entering final judgment because Crabbe's objections were untimely and dismissal of claims without prejudice does not affect the finality of a judgment for purposes of appeal. Green responds that the circuit court properly granted judgment on the pleadings in her favor because she was entitled to absolute quasi-judicial immunity in her capacity as a foreclosure commissioner appointed by order of the circuit court.[3]

Upon carefully reviewing the record and briefs submitted, we hold as follows:

(1) This court has appellate jurisdiction (i.e., the circuit court did not err in entering final judgment) because a dismissal without prejudice has the requisite finality for purposes of appellate jurisdiction. Price v. Obayashi Hawaii

[3] As nominal appellees only, Associates Financial Services Co. of Hawai'i, Inc. and the City did not file answering briefs or take a position on appeal.

Corp., 81 Hawai'i 171, 175-76, 914 P.2d 1364, 1368-69 (1996);

(2) Assuming arguendo that the circuit court erred in denying Crabbe's motion to dismiss for failure to join Green as an indispensable party pursuant to Hawai'i Rules of Civil Procedure (HRCP) Rule 19, the error was harmless because she was made a party to the action, as the rule requires, when Crabbe subsequently impleaded her as a third-party defendant. See HRCP Rule 19(a) (providing that "[i]f [a necessary party] has not been . . . joined, the court shall order that the person be made a party"); HRCP Rule 61 ("The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.");

(3) The circuit court did not err in granting Green's motion for judgment on the pleadings because a foreclosure commissioner, as a court-appointed official performing a function integral to the judicial process, is entitled absolute quasi-judicial immunity. See Seibel v. Kemble, 63 Haw. 516, 525, 631 P.2d 173, 179 (1981) (holding that

court-appointed officials acting as arms of the court and performing a function integral to the judicial process are entitled to absolute quasi-judicial immunity from civil suits); Hawaii Nat'l Bank v. Cook, 99 Hawai'i 334, 347, 55 P.3d 827, 840 (App. 2000) ("It is well settled that a commissioner is a neutral party appointed by the court and acts as an arm of the court."), rev'd and remanded on other grounds, 100 Haw. 2, 58 P.3d 60 (2002);

(4) Crabbe's appeal with respect to the circuit court's April 21, 2003 summary judgment order granting injunctive relief is moot because the injunction has already expired and Crabbe no longer owns the Property. See In re Doe Children, 105 Hawai'i 38, 56, 93 P.3d 1145, 1163 (2004) (holding that the two conditions for justiciability on appeal are adverse interest and effective remedy); In re McCabe Hamilton & Renny, Co., Ltd. v. Chung, 98 Hawai'i 107, 117, 43 P.3d 244, 254 (App. 2002) (concluding that an appellate court cannot extinguish an injunction that is already extinguished). However, a question

remains regarding the appropriate collateral consequences of the April 21, 2003 order with respect to the MTA's remaining claims, including the claim for money damages for breach of the Declaration. In McCabe, the Intermediate Court of Appeals concluded that an appeal arising out of temporary restraining order proceedings was moot because the injunctions were already extinguished, but acknowledged that:

> the imposition of issue preclusion where appellate review has been frustrated due to mootness is obviously unfair. In such cases, we have held that in order to avoid such a result, the solution lies in the adoption of the federal practice of having the appellate court vacate the judgment of the trial court and direct dismissal of the case. . . . This will prevent the orders, which are unreviewable because of mootness, from spawning any legal consequences.

McCabe, 98 Hawai'i at 121-22, 43 P.3d at 258-59 (internal citations, quotation marks, and paragraphing omitted). As in McCabe, it would be unfair here to deny Crabbe appellate review on the merits while leaving the MTA free to argue that the April 21, 2003 order has preclusive effect with respect to the disposition of its remaining claims. Accordingly, the order must be vacated; and

(5) The circuit court abused its discretion in granting the MTA's motion to voluntarily dismiss the remaining counts of its complaint without prejudice because the litigation had been proceeding for over two years with the filing of numerous pleadings and motions, trial had been scheduled for over a year and was imminent, and both the parties and the court had already invested substantial time and resources in the case. See Gump v. Wal-Mart Stores, Inc., 93 Hawai'i 417, 420, 5 P.3d 407, 410 (2000) (holding that an order granting a motion for dismissal pursuant to HRCP Rule 41(a)(2) is reviewed for abuse of discretion); Moniz v. Freitas, 79 Hawai'i 495, 500-01, 904 P.2d 509, 514-15 (1995) (holding that in exercising its discretion, a trial court must inquire "as to the amount of discovery undertaken . . . and/or the amount of time and expense in preparing for trial" and deny the motion if the defendant will be prejudiced seriously by dismissal). Therefore,

IT IS HEREBY ORDERED that the circuit court's May 25, 2004 final judgment and April 21, 2003 partial summary judgment

order are vacated, and the matter is remanded for further proceedings consistent with this opinion.

DATED: Honolulu, Hawai'i, April 28, 2006.

On the briefs:

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