NO. 27448

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

PEARL GROVES, JOAN ELLIOTT, RICHARD ELLIOTT, STEPHANIA GIBB, and THOMAS GIBB, Plaintiffs/Appellees/Appellants

vs.

OUTRIGGER HOTELS HAWAII dba OUTRIGGER HOTELS & RESORTS, Defendant/Appellant/Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P. NO. 05-1-0202)

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

In these consolidated appeals, defendant/appellant/appellee Outrigger Hotels Hawaii dba Outrigger Hotels & Resorts (Outrigger) appeals from the first circuit court's August 24, 2005 final judgment on the court's July 13, 2005 order[1] granting plaintiffs/appellees/appellants Pearl Groves, Joan Elliott, Richard Elliott, Stephania Gibb, and Thomas Gibb's [hereinafter collectively, Plaintiffs] motion to compel arbitration of their rental agreement dispute before Dispute Prevention & Resolution, Inc. (DPR). Plaintiffs in turn appeal from the first circuit court's October 18, 2005 post-judgment order granting Outrigger's motion for stay of arbitration pending appeal.

Outrigger presents a single point of error: that the circuit court erred in concluding that the parties had a written agreement to arbitrate their dispute before DPR rather than the

[1] The Honorable Victoria S. Marks presided over this matter.

American Arbitration Association (AAA). Plaintiffs respond that an October 29, 2003 letter, sent and signed by Outrigger's counsel, stating that counsel for the parties had "agreed to engage the services of DPR instead of the [AAA] to administer the arbitration," constituted just such a written agreement.

Plaintiffs similarly present a single point of error: that the circuit court abused its discretion in staying the arbitration proceedings pending appeal because Outrigger failed to demonstrate any possible prejudice to it if arbitration were to proceed. Outrigger counters that Plaintiffs' appeal is "pointless" because once the appeal on the merits is resolved, then the stay order is moot.

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

(1) The circuit court did not err in granting Plaintiffs' motion to compel arbitration because the October 29, 2003 letter signed by Outrigger's counsel constituted a written agreement to arbitrate before the DPR claims identified in Plaintiffs' October 9, 2003 arbitration demand letter. See Alt v. Krueger, 4 Haw. App. 201, 207, 663 P.2d 1078, 1082 (1983) (stating that "the attorney-client relationship is that of principal and agent, and the client is bound by the acts of his attorney within the scope of the latter's authority") (citations omitted); Nelson v. Boone, 78 Hawai'i 76, 82, 890 P.2d 313, 319 (1995) (stating that, under the doctrine of apparent authority, a

client will be bound by the acts of his or her attorney where "the principal does something or permits the agent to do something which reasonably leads another to believe that the agent had the authority he purported to have") (internal quotation marks, emphasis, and citation omitted). Here, the letter sent by Outrigger's counsel agreeing to change the forum of arbitration from the AAA to DPR and his participation in pre-arbitration proceedings before DPR for over a year, along with the failure of Outrigger to promptly repudiate its counsel's letter, reasonably led Plaintiffs to believe that Outrigger's counsel had the authority he purported to have; and

(2) Our decision on the merits of Outrigger's appeal renders the stay order and Plaintiffs' appeal therefrom moot because the stay, by its own terms, expires upon resolution of the appeal and thus this court cannot provide an effective remedy. See In the Interest of 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) (stating that the appellate court cannot extinguish an injunction that is already extinguished); see also Department of Health and Social Services v. Alaska State Hosp. & Nursing Home Ass'n, 856 P.2d 755, 766 (Alaska 1993) (holding that an appellate decision on the merits renders moot the appeal from the trial court's stay pending

appeal); Lesnick v. Lesnick, 577 So.2d 856, 857 n.1 (Ala. 1991) (holding that "our resolution of the merits of this appeal makes moot" the appeal from the stay pending appeal); Holloman v. Circuit City Stores, Inc., 873 A.2d 1261, 1267 (Md. Ct. Spec. App. 2005) (holding that an appeal from an order staying arbitration pending appeal is rendered moot by an appellate decision on the merits of the order compelling arbitration), aff'd, 894 A.2d 547 (Md. 2006); Unisys. Corp. v. South Carolina Budget & Control Bd. Div. of Gen'l Svs. Inf. Tech. Mgmt. Office, 551 S.E.2d 263, 273-74 (S.C. 2001) ("A stay pending appeal is moot upon disposition of the appeal on the merits." (Citations omitted.)). Therefore,

IT IS HEREBY ORDERED that the circuit court's August 24, 2005 final judgment is affirmed. It is further ordered that Plaintiffs' appeal from the circuit court's October 18, 2005 order granting Outrigger's motion to stay arbitration proceedings pending appeal is dismissed as moot.

DATED: Honolulu, Hawai'i, September 8, 2006.

On the briefs:

Andrew V. Beaman and
Joshua A. Wisch (of Chun,
Kerr, Dodd, Beaman & Wong)
for defendant/appellant/
appellee

Roger S. Moseley,
Christopher J. Muzzi,
Renee M. Furuta, and
Joanna B.K. Fong for
plaintiffs/appellees/
appellants