

IN THE SUPREME COURT OF THE STATE OF HAWAII

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MERVYN RAPOZO,  
Petitioner/Plaintiff-Appellee

vs.

BETTER HEARING OF HAWAII, LLC,  
Respondent/Defendant-Appellant

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EMERSON  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2009 JAN 14 PM 1:51

FILED

NO. 27602

MOTION FOR RECONSIDERATION AND ORDER OF AMENDMENT  
(CIV. NO. RC-05-1-0221)

JANUARY 14, 2009

MOON, C.J, NAKAYAMA, ACOBA, AND DUFFY, JJ.<sup>1</sup>

Upon consideration of the motion for reconsideration filed on December 15, 2008 by Respondent/Defendant-Appellant Better Hearing of Hawaii, LLC, requesting that this court review its opinion filed on December 5, 2008,

IT IS HEREBY ORDERED that the motion for reconsideration is granted in part, and the aforesaid opinion shall be amended as follows (deletions are bracketed and additions are double underscored):

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<sup>1</sup> Associate Justice Levinson, who heard oral argument in this case, retired from the bench on December 31, 2008. See Hawai'i Revised Statutes § 602-10 (Supp. 2007).

Lines 1-6 from the bottom of page 30:

the "repair" is to "correct" a nonconformity. The court thus could find, under the [Act] circumstances of this case, that [the so-called] Petitioner's efforts to return for "adjustments" were [efforts to correct or, in other words,] a factor, among others, in determining whether Petitioner provided Respondent with a reasonable opportunity to "repair" [a] the nonconformity. [It appears, then, that the distinction between an adjustment and a repair, attempted to be drawn by Respondent and the ICA, is non-existent under the Act.]

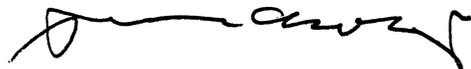
IT IS FURTHER ORDERED that the motion for reconsideration is denied in all other respects.

The Clerk of the Court is directed to incorporate the foregoing changes in the original opinion and take all necessary steps to notify the publishing agencies of these changes.

Michele-Lynn E. Luke  
(Kessner Umabayashi Bain &  
Matsunaga), on the motion  
for respondent/defendant-  
appellant.



Tamia A. Nakayama



Tamara E. Duggan