SCWC-17-0000806

IN THE SUPREME COURT OF HAWAIʻI

PETER J. WINN, WESTMINSTER REALTY, INC., Plaintiffs-Appellants, vs. WADE BRADY and KATHERINE T. BRADY, individually and as trustees of the WADE K. BRADY FAMILY TRUST, CONTEMPORARY KAMAʻAINA, LLC, WESTMINSTER REALTY, INC. as trustee of the 2806 KOLEPA PLACE TRUST DATED DECEMBER 14, 2010, ERIC L. KEILLOR, ERIC S. HART, Defendants-Appellees, JAMES E. SPENCE, BEVERLY C. SPENCE, STEPHEN R. SPENCE, AND VALORIE A. SPENCE, Defendants-Appellees-Intervenors.	Civil No. 12-1-0087(1) (Contract) APPEAL FROM ORDER GRANTING INTERVENTORS JAMES E. SPENCE, BEVERLY C. SPENCE, STEPHEN R. SPENCE, AND VALORIE A. SPENCE'S MOTION FOR RECONSIDERATION OF ORDER GRANTING JUDGMENT CREDITORS PETER J. WINN AND WESTMINSTER REALTY, INC.'S EX PARTE MOTION FOR FIRST ALIAS WRIT OF EXECTUION, FILED OCTOBER 11, 2017 CIRCUIT COURT OF THE SECOND CIRCUIT, STATE OF HAWAIʻI The Honorable Rhonda Loo, Judge

RESPONDENTS-PLAINTIFFS-APPELLANTS OBJECTIONS TO THE TAXATION OF COSTS

LAW OFFICE OF LANCE D COLLINS
Lance D. Collins 8246
lawyer@maui.net
Post Office Box 782
Makawao, Hawai'i 96768
(808) 243-9292

Attorney for Plaintiffs-Appellants
PETER J. WINN and WESTMINSTER REALITY, INC.

RESPONDENTS-PLAINTIFFS-APPELLANTS
OBJECTIONS TO THE TAXATION OF COSTS

Plaintiffs-Appellants PETER J. WINN, an individual, and WESTMINISTER REALTY, INC., a domestic profit corporation (collectively, "Winn Parties") respectfully objects to PETITIONERS REQUEST FOR COSTS ON APPEAL. [JEFS] Dkt. 29 . These objections are submitted pursuant to Rule 39(d) of the Hawai'i Rules of Appellate Procedure, and is based on the following argument and the record and files in this case.

I. Petitioners Are Not the Prevailing Party

"[W]here a party prevails on the disputed main issue, even though not to the extent of his original contention, he will be deemed to be the successful party for the purpose of taxing costs[.]" *Sierra Club v. Dept. of Transp.*, 120 Haw. 181, 216, 202 P.3d 1226, 1261 (2009) (*Superferry*). The *Superferry* Case held that to determine who prevailed, a court must "identify the principle issues raised by the pleadings and proof in a particular case, and then determine, on balance, which party prevailed on the issues." *Id.* at 217, 202 P.3d at 1262.

The Opening Brief contend the Circuit Court erred by: (1) concluding that the Winn Parties were not entitled to personal or actual notice of the execution sale of the Haleakalā Highway Property, which violated their constitutional right to due process; (2) concluding that the Winn Parties' junior lien on the Haleakalā Highway Property was extinguished by the execution sale, for which the Winn Parties did not receive personal or actual notice; and (3) failing to consider that the Spences benefitted from the failure to provide the Winn Parties with proper notice of the execution sale.5 The Winn Parties' first two points of error are dispositive." Winn v. Brady, 153 Haw. 433, 435, 541 P.3d 653, 655 (Ct. App. 2023)

The Opening Brief also "assert the Circuit Court erred in not rejecting the Spences' argument that the Winn Parties were estopped from raising their due process claims. … The [ICA did] not reach this issue because the Circuit Court did not rule on estoppel grounds and the Spences do not argue estoppel in this appeal." Winn v. Brady, 153 Haw. 433, 435, 541 P.3d 653, 655 (App. 2023)

The ICA held "the Winn Parties were entitled to personal notice of the execution sale because Winn's identity was known and his personal contact information was known and/or ascertainable through reasonable diligence by the Spences" and that "the Winn Parties' junior lienholder status did not affect their entitlement to notice consistent with due process. Winn v.

Brady, 153 Haw. 433, 441-443, 541 P.3d 653, 661-663 (App. 2023)

In the Application for Writ of Certiorari, Petitioners-Appellees argued three points of grave error: (1) due process does not require notice to junior lienors beyond the posting requirements of HRS 651-43; (2) interest and justice required that the holding not apply to the parties in the case and (3) an execution sales is state action. [SCWC, Dkt. 1]

This Court found that a "writ of execution levied ... was a state action, and the creditors with interests secured by [a p]roperty were entitled to notice consistent with due process" because "recorded judgment lien pursuant to HRS § 636-3 created a constitutionally protected property interest … within the meaning of the due process clauses of the federal and state constitutions." Opinion at 3

This Court also concluded "the Spences' compliance with HRS § 651-43 alone was not sufficient to satisfy due process principles under the specific facts and circumstances of this case." Opinion at 5.

This Court did reverse the ICA as to the second point: "ICA erred in applying this rule to the instant case. Based on the Spences' reliance and the substantial prejudice reinstating the Winn parties' lien on the Property would pose to the intervenors, we hold that this decision shall apply prospectively to writs of execution filed after the date of this opinion." at 7.

The fact that the Spences were successful in arguing the equitable non-application of the decision of law rendered in the case to themselves does not constitute prevailing on the "principle issues raised" and they should therefore not be entitled to any costs.

II. Costs Not Reasonable

Alternatively, if this Court deems the Petitioners-Appellees to be prevailing parties, Respondents-Plaintiffs-Appellants object to the requests as follows:

A. Airfare for Appellate Mediation Should Not Be Taxed

[I]t would be within the court's discretion to decide that the cost of court-ordered mediation is a "reasonable" cost that may be taxed." Arquette v. State, 128 Hawai'i 423, 446, 290 P.3d 493, 516 (2012)

In this case the Appellate Mediation Program Case Report said: "The parties partially settled or narrowed issues but were unable to resolve the entire appeal (case returned to appellate docket)." [CAAP, Dkt. 14]

Rule 1(d), Hawai'i Appellate Mediation Program Rules (HAMPR) lists "take actions that may

reduce cost" as a goal of the program and the commentary indicates that mediation should offer a cost-effective alternative to litigation. Allowing cost recovery for interisland travel related to counsel attending mediation contradicts the program's goal and may discourage parties from participating in good faith.

Rule 6, HAMPR reinforces the purpose of mediation as facilitating settlement, not adjudicating rights. It is supposed to be collaborative with parties retaining control of outcomes. Taxing costs based on the outcomes of a non-adjudicative process mischaracterizes mediation as a zero-sum contest and will have the effect of discouraging full participation.

Even where the court has discretion to tax costs, it should decline to exercise its discretion and protect the appellate mediation process as a neutral, accessible and cooperative space where mediation was useful and productive.

Furthermore, Petitioners-Appellees have not provide any argument to the Court why the cost should be taxed as "reasonable."

This request should be denied.

B. Photocopies' Request Does Not Comply with Rules, Not Justified

Rule 39(c)(4) says: "the cost of printing or otherwise producing necessary copies of briefs and appendices, provided that copying costs shall not exceed 20¢ per page[.]"

Petitioners-Appellees filed their Answering Brief on August 15, 2018. [CAAP Dkt 61]

The only photocopy charges on the itemized list in Exhibit 1 are on November 2, 2017 but have not itemized how many pages and what the rate per page is.

These requests should be denied.

C. Costs for Transcript Improper

Respondent-Appellants filed a certificate of no transcript. [CAAP Dkt. 6] However, the case went into Appellate Mediation. When it returned to the court's docket having "narrowed the issues", Respondents-Appellants requested a transcript of the August 22, 2017 hearing. [CAAP Dkt. 22] The transcript was filed on February 5, 2018 and Petitioners-Appellees had access to the transcript as filed without charge. [CAAP Dkts 24-25]. Petitioners-Appellees cite Rule 39(c)(1) as authority, however, they did not comply with Rule 10(b)(4), HRAP nor they file a request for transcript or have the transcript filed as part of the record and therefore their voluntary decision to obtain a copy of the transcript of the trial court proceeding does not fall within the meaning of "necessary for the determination of the appeal[.]"

This request should be denied.

D. Postage Request Not Justified, Improper

Rule 39(c)(5), HRAP allows costs to be taxed for "necessary postage". Petitioners-Appellees provide a list of postage costs but does not explain how counsel's office pays for postage or keeps track of postage paid. The request should be denied on that basis. Alternatively, Respondents-Appellants object as follows:

Petitioners-Appellees filed their Answering Brief on August 15, 2018. [CAAP Dkt 61]

The only entry on Exhibit 1 around that date is August 16, 2018 for "$3.68."

Petitioners-Appellees filed their Application for Writ of Certiorari on March 18, 2024. [SCWC Dkt 1]

Petitioners-Appellees filed their Reply to Respondents-Appellees' Response to the Application on April 11, 2024. [SCWC Dkt 8].

The entries around those two dates are March 18, 2024 for "5.66" and April 12, 2024 for "3.26".

Petitioners-Appellees have not other provided any explanation for what any of the postage was or why it was necessary. Petitioners-Appellees object to all postage for failing to list what it was for. But to the extent the Court will consider any these requests, Petitioners-Appellees object to all postage costs other than those presumably related to the Answering Brief, Application and Reply to Response to Application as determined by the closeness in time from the filing of those documents. They should not be permitted to provide an explanation for other postage requests in the reply – depriving Petitioners-Appellees of their ability to object to those other costs.

III. Conclusion

For all the reasons, the request for costs should be denied.

DATED: Makawao, Maui, Hawai'i July 18, 2025

/s/ Lance D. Collins

LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS
Attorneys for Plaintiffs-Appellants-Respondents