

IN THE SUPREME COURT OF THE STATE OF HAWAII

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STEVEN ALAN KNAUER as Trustee of and on behalf of the BETTY ROGERS UNRECORDED REVOCABLE TRUST dated November 1, 1999, for the Trust individually and as an apartment owner and member of the ASSOCIATION OF APARTMENT OWNERS OF CASTLE SURF APARTMENTS, a condominium, and derivatively on behalf of all apartment owners of the CASTLE SURF APARTMENTS, and on behalf of himself as a director of the ASSOCIATION OF APARTMENT OWNERS OF CASTLE SURF APARTMENTS, Plaintiff-Appellant

vs.

ROBERT W. FOOTE, HELEN SHEEHAN, JOSEPH L. BEAVER, and FLOYE ADAMS, individually and as members and officers and directors and as controlling the BOARD OF DIRECTORS of the ASSOCIATION OF APARTMENT OWNERS OF CASTLE SURF APARTMENTS; and WILLIAM FOOTE, Defendants-Appellees

and

JOHN DOES 1-20; JANE DOES 1-20; DOE PARTNERSHIPS 1-20; DOE CORPORATIONS 1-20; and DOE ENTITIES 1-20, Defendants

and

THE ASSOCIATION OF APARTMENT OWNERS OF CASTLE SURF APARTMENTS, a Hawaii non-profit corporation, Nominal Defendant-Appellee

THE ASSOCIATION OF APARTMENT OWNERS OF CASTLE SURF APARTMENTS, Specially-Appearing Defendant-Appellee

NO. 22916

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 99-1615)

FEBRUARY 21, 2003

MOON, C.J., LEVINSON, AND NAKAYAMA, JJ., CIRCUIT JUDGE MARKS,
ASSIGNED BY REASON OF VACANCY, AND ACOBA, J., DISSENTING

OPINION OF THE COURT BY NAKAYAMA, J.

Plaintiff-appellant Steven Knauer appeals from the judgment of the first circuit court, the Honorable Kevin S. C. Chang presiding, granting the specially-appearing defendant-appellee Association of Apartment Owners of Castle Surf Apartment's (the Association's) motion to expunge notice of pendency of action.¹ On appeal, Knauer raises two points of error: (1) that he had standing to record a lis pendens;² and (2) that the circuit court lacked jurisdiction to expunge the lis pendens.

In response, the defendants-appellees Robert Foote, Helen Sheehan, Joseph Beaver, Floye Adams, William Foote, and the Association³ contend that (1) this court lacks jurisdiction over this appeal, (2) Knauer's claims do not affect the title to real property or the use and occupation of real property, (3) case law

¹ In Hawai'i, the doctrine of lis pendens is codified in HRS § 501-151, which provides for the recording of a notice of pending action, and HRS § 634-51, which provides for the recording of a notice of pendency of action. In this opinion, we employ the term lis pendens as the equivalent of both notice of pending action and notice of pendency of action. See S. Utsunomiya Enters. v. Moomuku Country Club, 75 Haw. 480, 487 n.4, 866 P.2d 951, 957 n.4 (1994); GGG (HI), Inc. v. New York Diamond (In re 2003 Ala Wai Blvd.), 85 Hawai'i 398, 406, 944 P.2d 1341, 1349 (App. 1997).

² Knauer's first point of error asserts that he has standing to record a lis pendens. However, this point of error is irrelevant to the circuit court's order because Knauer's standing was not challenged. The circuit court found that Knauer's complaint "d[id] not constitute an action which warrants the filing and recording of a Lis Pendens against the subject property." The circuit court's order cited HRS § 501-151, Kaapu v. Aloha Tower Development, 72 Haw. 267, 814 P.2d 396 (1991), and GGG (HI), Inc. v. New York Diamond (In re 2003 Ala Wai Blvd.), 85 Hawai'i 398, 406, 944 P.2d 1341, 1349 (App. 1997). In Kaapu and GGG, none of the filed claims supported the filing of a lis pendens. Similarly, none of Knauer's claims supports the filing of a lis pendens. Thus, because standing was not challenged, it will not be addressed further.

³ The defendants will be collectively referenced as "the Association."

supports restricting the utilization of lis pendens and does not support Knauer's arguments, and (4) the circuit court has authority to expunge a lis pendens pursuant to Hawai'i Revised Statutes (HRS) chapter 507D (1998).

We hold that (1) this court has appellate jurisdiction over an appeal from a circuit court order expunging a lis pendens because such an order is a collateral order, (2) the circuit court has jurisdiction to expunge a lis pendens pursuant to HRS § 501-151 (1993), HRS § 501-152 (1993), and TSA International Ltd. v. Shimizu Corp., 92 Hawai'i 243, 990 P.2d 713 (1999), and (3) the circuit court properly expunged the lis pendens because none of Knauer's claims attempted to obtain title to or possession of the real property at issue. Therefore, we affirm the circuit court's order granting the specially-appearing defendant-appellee Association's motion to expunge notice of pendency of action because Knauer's application for lis pendens did not seek to obtain title to or possession of real property and thus was not valid.

I. BACKGROUND

On April 21, 1999, Knauer filed a complaint in the first circuit court asserting that he was an apartment owner and a member of the board of directors of the Association, a condominium. In these capacities and, derivatively, on behalf of all apartment owners at Castle Surf Apartments, Knauer alleged that the Association and various other defendants, including Robert Foote, who was a member of the board of directors, negotiated with the leasehold owner and the Association to acquire a condominium for a fee less than the Association's true

(and original) purchase price. Knauer's prayer for relief involved either equitable relief, in the form of an injunction, or money damages.⁴ On April 21, 1999, Knauer also filed a notice of pendency of action (lis pendens) in the first circuit court.

On May 24, 1999, the Association filed a motion to expunge the lis pendens. The Association argued that this court has consistently held that the lis pendens statute should be strictly construed and that a lis pendens should be expunged absent a claim of title or a right of possession of the realty involved. On September 7, 1999, the circuit court granted the Association's motion and ordered the lis pendens expunged. Knauer timely appealed.

II. STANDARD OF REVIEW

A. Lis Pendens

"Whether a lis pendens should be expunged is a question to be resolved in the exercise of the trial court's discretion; accordingly, the trial court's decision is reviewed for an abuse of that discretion." S. Utsunomiya v. Moomuku Country Club, 75 Haw. 480, 504, 866 P.2d 951, 964 (1994) (citations omitted). "In determining the validity of a lis pendens, courts have generally restricted their review to the face of the complaint." Id. at 505, 866 P.2d at 964 (citations omitted).

B. Statutory Interpretation

"The interpretation of a statute is a question of law

⁴ Count One -- Injunctive Relief Against All Defendants; Count Two -- Breach of Fiduciary Duty Against All Directors; Count Three -- Negligent and Reckless Management Against All Directors; Count Four -- Fraud and Deceit Against All Defendants; Count Five -- Punitive Damages Against All Defendants; Count Six -- HRS § 514A-94(b) Award Against All defendants; Count Seven -- Appointment of a Receiver for the Association.

that is reviewed de novo.” State v. Mara, 98 Hawai‘i 1, 10, 41 P.3d 157, 166 (2002) (citations omitted).

When construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. And we must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose.

State v. Sullivan, 97 Hawai‘i 259, 262, 36 P.3d 803, 806 (2001) (citations and internal quotations omitted).

III. DISCUSSION

We will first address the Association’s argument that this court lacks jurisdiction over this appeal because without jurisdiction this court has no authority to address Knauer’s points of error. We hold that this court has jurisdiction over collateral orders such as the circuit court’s order expunging the lis pendens. We also hold that the circuit court has jurisdiction to expunge a lis pendens pursuant to HRS § 501-151 (1993), HRS § 501-152 (1993), and TSA International Ltd. v. Shimizu Corp., 92 Hawai‘i 243, 990 P.2d 713 (1999). Finally, we hold that the circuit court properly expunged the lis pendens because none of Knauer’s claims attempted to obtain title to or possession of the real property at issue. Therefore, we affirm the circuit court’s order granting the Association’s motion to expunge the notice of pendency of action.

A. This court has appellate jurisdiction over an appeal from a circuit court order expunging a lis pendens because such an order is a collateral order.

The Association argues that this court lacks jurisdiction over the appeal sub judice because (1) the order was

interlocutory and was not certified,⁵ (2) the order was not collateral, and (3) the doctrine of Forgay v. Conrad, 47 U.S. 201 (1848)⁶ is inapplicable. Knauer asserts that this court has jurisdiction pursuant to the collateral order doctrine as set forth in International Savings and Loan Association v. Woods, 69 Haw. 11, 15, 731 P.2d 151, 154 (1987), and the irreparable injury doctrine as adopted by Penn, 2 Haw. App. at 274, 630 P.2d at 649 (quoting Forgay, 47 U.S. at 206). Because an order granting a motion to expunge a lis pendens is a collateral order and Knauer timely appealed, this court has appellate jurisdiction.

"This court has long held that jurisdiction is the base requirement for any court resolving a dispute because without jurisdiction, the court has no authority to consider the case." TSA International Ltd. v. Shimizu Corp., 92 Hawai'i at 265, 990 P.2d at 737 (internal quotation marks and citations omitted). In civil cases, this court's appellate jurisdiction arises from a circuit court's final judgment or order pursuant to HRS § 641-

⁵ A lis pendens, contrary to the Association's assertion, is not an interlocutory order. An interlocutory order is one made between the commencement and the end of a suit "that does not fully decide one or more claims or the rights and liabilities of one or more parties[.]" TBS Pac., Inc. v. Tamura, 5 Haw. App. 222, 230, 686 P.2d 37, 44 (1984); see also Dole v. Gear, 14 Haw. 554, 565 (1903). The order granting the Association's motion to expunge the lis pendens fully determined Knauer's right to record the lis pendens. See infra at 6-9 for a discussion regarding the elements of a collateral order in which it is explained that a lis pendens fully decides one issue.

⁶ The ICA, in Penn v. Transportation Lease Hawaii, Ltd., 2 Haw. App. 272, 274, 630 P.2d 646, 649 (1981), relied on Forgay v. Conrad for the proposition that it had jurisdiction to review the appellant's appeal, despite the fact that the appeal was not interlocutory and the circuit court had not certified the appeal, because the appellant would suffer irreparable injury if he had to wait for a final outcome of the litigation. Knauer does not claim that he would experience irreparable harm. The Forgay doctrine is, therefore, irrelevant to this appeal and will not be discussed further.

1(a) (1993),⁷ from a circuit court's interlocutory order pursuant to HRS § 641-1(b) (1993),⁸ or from a collateral order.

Judgments, orders, or decrees need not be final judgments to be appealable, if they are collateral orders "affecting rights which are independent of, and separable from, the rights asserted in the main action." Chuck v. St. Paul Fire & Marine Ins. Co., 61 Haw. 552, 555, 606 P.2d 1320, 1323 (1980) (quoting Cohen v. Beneficial Loan Corp., 337 U.S. 541 (1949)). The collateral order doctrine is narrowly construed; thus, to fall within its confines an order "must [1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment." Siangco v. Kasadate, 77 Hawai'i 157, 161, 883 P.2d 78, 82 (1994) (alteration in original) (quoting Coopers & Lybrand v. Livesay, 437 U.S. 463, 468, [] (1978) (footnote omitted)); see also

⁷ HRS § 641-1(a) provides:

Appeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts and the land court, to the supreme court or to the intermediate appellate court, except as otherwise provided by law and subject to the authority of the intermediate appellate court to certify reassignment of a matter directly to the supreme court and subject to the authority of the supreme court to reassign a matter to itself from the intermediate appellate court.

⁸ HRS § 641-1(b) provides:

Upon application made within the time provided by the rules of court, an appeal in a civil matter may be allowed by a circuit court in its discretion from an order denying a motion to dismiss or from any interlocutory judgment, order, or decree whenever the circuit court may think the same advisable for the speedy termination of litigation before it. The refusal of the circuit court to allow an appeal from an interlocutory judgment, order, or decree shall not be reviewable by any other court.

Association of Owners v. Swinerton & Walberg Co., 68 Haw. 98, 105, 705 P.2d 28, 34 (1985); MDG Supply, Inc. v. Diversified Invs., Inc., 51 Haw. 480, 481-82, 463 P.2d 530, 532 (1969).

An order expunging a lis pendens meets the three criteria. The order conclusively resolves whether the lis pendens should or should not be cancelled because nothing further in the suit can affect the validity of the notice. The order cancelling the lis pendens does not address the merits of the underlying claim. And if the movant had to wait until final judgment on the underlying claim, the realty could be sold before the issue was resolved, thereby rendering the order unreviewable. See Scroggins v. Edmondson, 297 S.E.2d 469, 472 (Ga. 1982); Keith v. Bratton, 738 F.2d 314, 316 (8th Cir. 1984); Chrysler Corp. v. Fedders, 670 F.2d 1316, 1318 n.2 (3d Cir. 1982); Suess v. Stapp, 407 F.2d 662, 663 (7th Cir. 1969).

In the instant case, the September 7, 1999 order expunging the lis pendens conclusively determined whether Knauer's action was one in which a lis pendens could or could not be filed. The issue of the lis pendens was completely separate from Knauer's underlying action in which he sought equitable relief and damages. Once the real property in the underlying action was sold, review of Knauer's lis pendens would serve no purpose. We hold that an order expunging a lis pendens is a collateral order, and thus this court has jurisdiction over this appeal.

B. The circuit court has jurisdiction to expunge a lis pendens.

Knauer argues that the circuit court lacked jurisdiction to expunge the lis pendens filed against land court

property. Knauer relies on an Intermediate Court of Appeals' (ICA's) holding that the "circuit court did not have jurisdiction to order that the *lis pendens*, supplemental *lis pendens*, or stipulated judgment and order be expunged." GGS (HI), Inc. v. New York Diamond (In re 2003 Ala Wai Blvd.), 85 Hawai'i 398, 406, 944 P.2d 1341, 1349 (App. 1997). We overrule the ICA's holding in GGS that only the land court can expunge a lis pendens, and thus Knauer's reliance on GGS is unavailing. Conversely, the Association argues that the circuit court had jurisdiction to expunge the lis pendens pursuant to HRS §§ 507D-2 (2001)⁹ and 507D-7 (2001)¹⁰. The Association wrongly applies HRS chapter 507D in the instant case.

First, in GGS, New York Diamond had filed a breach of contract lawsuit against GGS's predecessor in interest, ECU Hawaii, prior to GGS filing its motion to expunge the lis

⁹ HRS § 507D-2 addresses the definitions related to nonconsensual common law liens and provides in relevant part:

"Lien" means a recorded instrument that creates an encumbrance on or affects title or ownership of property.

"Lien claimant" means the person who executes or records or causes or materially assists in causing the lien to be prepared, executed, or recorded.

"Nonconsensual common law lien" means a lien that:

- (1) Is not provided for by a specific statute;
- (2) Does not depend upon, require by its terms, or call for the consent of the owner of the property affected for its existence; and
- (3) Is not a court-imposed equitable or constructive lien.

¹⁰ HRS § 507D-7(a) provides in relevant part:

If the circuit court finds the purported lien invalid, it shall order the registrar to expunge the instrument purporting to create it, and order the lien claimant to pay actual damages, costs of suit, and reasonable attorneys' fees. This order shall be presented to the registrar for recordation and shall have the effect of voiding the lien from its inception. . . .

pendens. GGG, 85 Hawai'i at 401, 944 P.2d at 1344. New York Diamond recorded a lis pendens after serving ECU Hawaii with its complaint. Id. On November 18, 1993, New York Diamond and ECU Hawaii filed a stipulation which dismissed all the claims. GGS then filed motions in the breach of contract action to vacate the lis pendens. On September 7, 1999, the circuit court granted the motion to expunge the lis pendens, stating that New York Diamond's complaint did "not constitute an action which warrants the filing and recording of a Lis Pendens." It is unclear what specific issues were appealed, but the ICA addressed whether a circuit court had jurisdiction to (1) hear the merits of a motion to expunge a lis pendens that was recorded in the land court, (2) order a lis pendens expunged, and (3) determine whether the lis pendens was valid. Id. at 403, 944 P.2d at 1346.

The ICA held that, while the circuit court had jurisdiction to hear the merits of the motion to expunge and even determine whether the lis pendens was valid, it did not have the jurisdiction to order the lis pendens expunged. Id. at 401, 944 P.2d at 1344. The ICA came to this conclusion after comparing recordation in the land court registration system with recordation in the bureau of conveyances. The ICA reasoned that, because a certificate of title issued by the land court was "conclusive and unimpeachable with regard to all matters contained therein," only the land court could amend the certificate of title. Id. at 405, 944 P.2d at 1348. As support for this conclusion, the ICA cited Iaea v. Iaea, 59 Haw. 648, 586

P.2d 1015 (1978)¹¹ and HRS § 501-196 (1993).¹² Additionally, the ICA stated that case law and statutes dictated the conclusion that, although the circuit court had jurisdiction to hear the merits of the case and determine the validity of the claims, it did not have jurisdiction to actually order the registrar to expunge the lis pendens.

Iaea stands for the narrow proposition that the circuit court had jurisdiction to hear the subject matter of the dispute, i.e., the validity of a signature on a deed, but that it did not have the jurisdiction to order the land court to expunge the deed upon a finding that the signature was forged. Iaea, 59 Haw. at 649-50, 586 P.2d at 1016. Iaea does not stand for the proposition that the circuit court lacks jurisdiction to expunge a lis pendens that acts as a burden on title as opposed to an alteration of or amendment to title. This is demonstrated by this court's statement in S. Utsunomiya that "a lis pendens does not prevent title from passing to the grantee, but operates to cause the grantee to take the property subject to any judgment

¹¹ The Iaea court held that "[t]he circuit court had jurisdiction over the subject matter, despite the fact that [the suit] concerned registered land." Iaea, 59 Haw. at 651, 586 P.2d at 1017. However, that part of the judgment ordering the registrar to expunge deeds and certificates of title issued by the land court was unenforceable. Id. at 651, 586 P.2d at 1017.

¹² HRS § 501-196 provides in relevant part:

No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon, and the approval of the same by the registrar or an assistant registrar except by order of the court recorded with the assistant registrar, provided that the registrar or assistant registrar may correct any clerical error made by personnel of the registrar's or assistant registrar's office.

The "court" referred to in this section is the land court. HRS § 501-1 (1993) provides that, "where the context requires a different construction, the word 'court' . . . means the land court[.]"

rendered in the action supporting the lis pendens.” S. Utsunomiya, 75 Haw. at 502, 866 P.2d at 963. A lis pendens cannot alter or amend a certificate of title because a certificate of title would not be transferable unless properly amended pursuant to HRS § 501-196.

HRS § 501-196 is found under the heading “amendment and alteration of certificate of title.” This section expressly details the actions necessary to erase, alter, or amend the registration book after a certificate of title has been entered. Examples provided within the text of HRS § 501-196 include registered interests that have ceased, new interests that have arisen, errors, marriage, divorce, and dissolution of a corporation. HRS § 501-196. A registered owner or person in interest may petition the land court for the erasure, alteration, or amendment of the certificate of title, the purpose of which would be to have the court order the entry of a new certificate. A lis pendens does not effect any erasure, alteration, or amendment to the certificate of title. The sole function of the lis pendens is to “notify prospective purchasers and encumbrancers that any interest acquired by them in property in litigation is subject to decision of court[.]” Black’s Law Dictionary 643 (6th ed. 1990); see also S. Utsunomiya, 75 Haw. at 511-12, 866 P.2d at 966-67; Harada, 4 Haw. App. at 443, 667 P.2d at 838. Thus, in GGs, the ICA erred when it relied on HRS § 501-196 to support its holding, which we now overrule, that only the land court can expunge a lis pendens asserted against land court-

registered real property.¹³

It is also worth noting that the ICA's opinion in GGG is perplexing because, while the ICA opines that it is permissible for the circuit court to hear the merits of the motion to expunge a lis pendens and to decide its validity, the ICA also declares that the circuit court is without authority to effectuate its decision. Based on the ICA's analysis, a litigant could have its motion to expunge heard by the circuit court and even have the lis pendens declared invalid, but would then be required to go to the land court for a hearing on whether the lis pendens should be expunged. This is neither an effective use of judicial resources nor a meaningful way in which to divide the power of the land and circuit courts. See Dorrance v. Lee, 90 Hawai'i 143, 147, 976 P.2d 904, 908 (1999), for the proposition that, "with the increase of civil litigation, escalating costs to the parties, and the strain on already scarce judicial resources, there is a dire need for prompt, equitable, and cost-efficient resolution of civil disputes before trial." Id. at 147, 976 P.2d at 908 (quoting Richardson v. Sport Shinko, 76 Hawai'i 494, 510, 880 P.2d 169, 185 (1994)).

Second, the Association argues that the circuit court has jurisdiction to expunge a lis pendens pursuant to HRS §§ 507D-2 and 507D-7. However, HRS chapter 507D is inapposite to the instant case. HRS chapter 507D is titled "Nonconsensual Common Law Liens." A nonconsensual common law lien is defined in the statute as one that "[i]s not provided for by a specific

¹³ To the extent that the issue presented is not an amendment or alteration to a certificate of title, no analysis regarding the continued validity of Iaea is provided.

statute.” HRS § 507D-2. The statute further states that “[n]othing in this chapter is intended to affect . . . [a]ny lien provided for by statute” HRS § 507D-3.

In the present case, Knauer filed the lis pendens pursuant to HRS §§ 501-151 and 634-51 (1993). HRS § 501-151 authorizes the filing or recording of a lis pendens against registered land for actions “affecting the title to real property or the use and occupation thereof or the buildings thereon.” HRS § 501-151.¹⁴ See GGs, 85 Hawai’i at 400, 944 P.2d at 1343. Similarly, HRS § 634-51¹⁵ authorizes the recording of a lis pendens in the bureau of conveyances to provide constructive notice of the pendency of the action to a future purchaser. Because Knauer filed his lis pendens pursuant to HRS §§ 501-151 and 634-51, his lis pendens is a statutory lien, not a common law

¹⁴ HRS § 501-151 provides in relevant part:

No writ of entry, action for partition, or any action affecting the title to real property or the use and occupation thereof or the buildings thereon, and no judgment, nor any appeal or other proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a full memorandum thereof, containing also a reference to the number of certificate of title of the land affected is filed or recorded and registered.

¹⁵ HRS § 634-51 provides in relevant part:

In any action concerning real property or affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and any other party at the time of filing a pleading in which affirmative relief is claimed, or at any time afterwards, may record in the bureau of conveyances a notice of the pendency of the action From and after the time of recording the notice, a person who becomes a purchaser or incumbrancer of the property affected shall be deemed to have constructive notice of the pendency of the action and be bound by any judgment entered therein if the person claims through a party of the action; provided that in the case of registered land, section 501-151 . . . shall govern.

lien. Therefore, the circuit court's jurisdiction to expunge Knauer's lis pendens is not derived from HRS chapter 507D because HRS chapter 507D does not apply to statutory liens.

Finally, the circuit court has jurisdiction to expunge Knauer's lis pendens pursuant to HRS § 501-151, HRS § 501-152, and TSA International. HRS § 501-151 (1993),¹⁶ entitled "Pending actions, judgments; recording of notice," provides that notice of pendency of an action filed in state court may be recorded. Upon resolution of an action "or any other disposition," HRS §§ 501-152 (1993)¹⁷ and 501-153 (1993)¹⁸ dictate the process by which such dispositions are registered with the land court. In this case, the defendant's motion was granted by the circuit court. Pursuant to HRS § 501-152, when construed in the context of the entire statute, the defendants were entitled to register the court's disposition, expunging the lis pendens, in the land court. This action, by the terms of the statute, expunges the earlier recorded lis pendens.

In TSA International, the plaintiff-appellant, TSA

¹⁶ HRS § 501-151 further provides in relevant part that "[n]otice of the pendency of an action in a United States District Court, as well as a court of the State of Hawaii, may be recorded."

¹⁷ HRS § 501-152 provides that "[a]t any time after final judgment in favor of the defendant, or other disposition of any case in which a memorandum has been registered as provided in section 501-151, a certificate of the clerk stating the manner of the disposal thereof shall be entitled to registration."

¹⁸ HRS § 501-153 provides in relevant part:

Whenever in any action affecting registered land, judgment is entered for the plaintiff, except in actions relating to terms of less than one year, the judgment is entitled to registration on presentation of a certificate of the entry thereof from the clerk of the court where the action is pending, to the assistant registrar, who shall enter a memorandum upon the certificate of title of the land to which the judgment relates.

International, filed a lis pendens following a failed land deal in which TSA International and the defendant-appellee, Shimizu Corporation (Shimizu), formed a partnership to develop a hotel and golf course. TSA International brought an action against Shimizu for fraud, breach of fiduciary duty, fraudulent transfer, and violation of the Racketeer Influenced and Corrupt Organizations Act. Id. at 266, 990 P.2d at 736. In conjunction with this suit, TSA International recorded a lis pendens in the land court. Shimizu filed a motion for summary judgment as to all claims. The circuit court granted Shimizu's motion. Id. at 266, 990 P.2d at 736. After TSA International filed its notice of appeal, the trial court expunged the lis pendens.

On appeal, TSA International argued that the trial court lacked jurisdiction to order the expungement because the appeal had already been filed and jurisdiction was transferred to the appellate courts. This court explained that the "trial court retains jurisdiction to determine matters collateral or incidental to the judgment, and may act in aid of the appeal." Id. at 265, 990 P.2d at 735. The trial court's order was affirmed. Inasmuch as all of the claims against Shimizu had been resolved in Shimizu's favor, there was no claim to support the lis pendens.

Although the more narrow issue, i.e., whether the circuit court had jurisdiction to expunge a lis pendens recorded in land court, was not addressed, this court did complete a jurisdictional analysis in the context of whether the circuit court retained jurisdiction to expunge a lis pendens filed in land court after the plaintiff-appellant had filed its appeal. The analysis in TSA International leads logically to our holding

in this case that the circuit court has jurisdiction to expunge a lis pendens originally recorded in the land court. In summary, the circuit court has jurisdiction to expunge a lis pendens pursuant to HRS § 501-151, HRS § 501-152, and TSA International, and thus the circuit court did not err when it asserted jurisdiction over the case.¹⁹

C. The circuit court properly granted the Association's motion to expunge the lis pendens.

The circuit court properly granted the Association's motion to expunge the lis pendens because Knauer's application for lis pendens did not seek to obtain title to or possession of real property, and thus was not valid. In TSA International, TSA International argued that the lis pendens should not have been expunged because it was valid. Id. at 265, 990 P.2d at 735. This court concluded that

a narrow construction of Hawaii's lis pendens statute was warranted due to the real potential for abuse of [a] lis pendens:

¹⁹ With respect to expunging a lis pendens, the dissent incorrectly asserts that "HRS § 501-1 unequivocally grants the forgoing powers to the land court, not the circuit court." See dissent at 4. The first paragraph of HRS § 501-1 provides that:

A court is established, called the land court, which shall have exclusive original jurisdiction of all applications for the registration of title to land and easements or rights in land held and possessed in fee simple within the State, with power to hear and determine all questions arising upon such applications, and also have jurisdiction over such other questions as may come before it under this chapter, subject to the rights of appeal under this chapter. The proceedings upon the applications shall be proceedings in rem against the land, and the decrees shall operate directly on the land and vest and establish title thereto.

HRS § 501-1 (1993) (emphasis added). The plain language of HRS § 501-1 confers on the land court "jurisdiction over such other questions as may come before it under this chapter," such as expunging a lis pendens, as opposed to "exclusive original jurisdiction." HRS § 501-1. Because HRS § 501-1 does not confer on the land court exclusive original jurisdiction to expunge a lis pendens, it does not preclude the circuit court from taking the same action.

[T]he practical effect of a recorded lis pendens is to render a defendant's property unmarketable and unsuitable as security for a loan. The financial pressure exerted on the property owner may be considerable, forcing him [or her] to settle not due to the merits of the suit but to rid himself [or herself] of the cloud upon his [or her] title. The potential for abuse is obvious.

S. Utsunomiya, 75 Haw. at 512, 866 P.2d at 967.

TSA International, 92 Hawai'i at 265, 990 P.2d at 735

(alterations in original). Consistent with this narrow construction, this court held that "the application of lis pendens should be limited to actions directly seeking to obtain title to or possession of real property." Id. at 265, 990 P.2d at 735 (quoting S. Utsunomiya, 75 Haw. at 510, 866 P.2d at 966). In the instant case, Knauer asserted seven claims for relief. He did not attempt to obtain title to or possession of the real property at issue in any of the claims. Based on the face of Knauer's complaint, Knauer's claims did not fall within the narrow confines of the lis pendens rule, and thus the circuit court properly expunged the lis pendens.

IV. CONCLUSION

In conclusion, we affirm the judgment of the first circuit court granting defendant-appellee the Association's motion to expunge the lis pendens.

On the briefs:

Gary Victor Dubin
for plaintiff-appellant

Douglas H. Knowlton
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