

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

2013 MAY -9 PM 3: 10

STATE OF HAWAI'I

N. ANAYA

CLERK.

DIANE CERVELLI and TAEKO BUFFORD,

) CIVIL NO. 11-1-3103-12 ECN
) (Other Civil Action)

Plaintiffs,

WILLIAM D. HOSHIJO, as Executive
Director of the Hawai'i Civil Rights
Commission,

) **ORDER GRANTING THE PARTIES'
) STIPULATED APPLICATION FOR
) APPEAL FROM INTERLOCUTORY
) ORDER**

Plaintiff-Intervenor,

v.

) JUDGE: Edwin C. Nacino

ALOHA BED & BREAKFAST, a Hawai'i
sole proprietorship,
Defendant.

) Trial Date: November 4, 2013

**ORDER GRANTING THE PARTIES' STIPULATED APPLICATION
FOR APPEAL FROM INTERLOCUTORY ORDER**

The parties made application, by way of stipulation, for appeal from the interlocutory order "ORDER GRANTING PLAINTIFFS' AND PLAINTIFF-INTERVENOR'S MOTION FOR PARTIAL SUMMARY JUDGMENT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT", filed April 15, 2013.

Because Defendant contends that it is not subject to liability under HRS 489, is afforded complete immunity under HRS Chapter 515, and is entitled to a constitutional defense to liability, the granting of an interlocutory appeal may put an end to the action, rather than merely saving the litigants time and litigation expenses.

I do hereby certify that this is a full, true, and correct copy of the original on file in this office.


Clerk, Circuit Court, First Circuit

Defendant raises questions of law that could substantially affect the final result of the case. Defendant further contends that the appeal may put an end to the action.

Pursuant to HRS § 641-1(b), “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.”

Defendant made an application within the time provided by the rules of court, and an appeal in a civil matter may therefore be allowed by a circuit court in its discretion from an order granting a plaintiff’s motion for partial summary judgment and denying a defendant’s motion for summary judgment 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.

Accordingly, the Court, having reviewed and considered the Stipulated Application, HEREBY FINDS as follows:

1) that pursuant to Hawaii Revised Statutes § 641(b) it is within the Court's discretion whether or not to allow an immediate interlocutory appeal of its Order Granting Plaintiffs’ and Plaintiff-Intervenor’s Motion for Partial Summary Judgment For Declaratory and Injunctive Relief and Denying Defendant’s Motion for Summary Judgment (“Plaintiff’s Motion”), entered April 15, 2013 (“Order”);

2) that the Court has considered whether granting an appeal of its Order would be advisable for the speedy termination of this litigation;

3) that Plaintiffs' motion sought partial summary judgment in its favor because Defendant allegedly discriminated against Plaintiffs in violation of Chapter 489, Hawaii Revised Statutes;

4) that Defendant opposed Plaintiffs' Motion on the grounds that (1) Defendant is not subject to liability under Chapter 489, Hawaii Revised Statutes; (2) Defendant's conduct is protected under Chapter 515, Hawaii Revised Statutes; and (3) Defendant has a Constitutional defense to liability under Chapter 489, Hawaii Revised Statutes;

5) that the Court granted Plaintiffs Motion;

6) that the question of whether Chapter 489 or Chapter 515 of Hawaii Revised Statutes applies is a controlling question of law;

7) that the question of whether Defendant is entitled to a constitutional defense to liability under Chapter 489, Hawaii Revised Statutes is a controlling question of law;

8) that Defendant contends that there is substantial ground for difference of opinion on the issue of whether Chapter 489, Hawaii Revised Statutes or Chapter 515, Hawaii Revised Statutes applies to Defendant;

9) that Defendant contends that there is a substantial ground for difference of opinion on the issue of whether Defendant is entitled to a constitutional defense to liability under Chapter 489, Hawaii Revised Statutes;

10) that if Defendant prevails on appeal, this litigation will be terminated;

11) that, given the nature of Defendant's defenses, granting an appeal of the Order would be advisable for the speedy termination of this litigation in accordance with Hawaii Revised Statutes § 641-1(b); and

12) that the Court adopts and incorporates herein by reference all additional findings and reasons stated on the record by the Court at the Hearing.

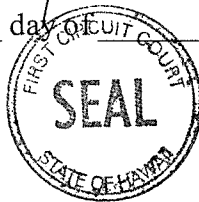
Based on the above findings, the Court HEREBY GRANTS the Stipulated Application for Appeal from Interlocutory Order in its entirety.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant may immediately appeal the Court's Order granting Plaintiffs' Motion, and IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this action shall be stayed in its entirety, including enforcement of the injunction, until conclusion of the appeal.

IT IS SO ORDERED

Certified this May 9, 2013 day of May, 2013.

EDWIN C. NACINO



Honorable Edwin C. Nacino,

2013 MAY -9 PM 3: 10

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CLERK,

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Attorneys for Defendant ALOHA BED & BREAKFAST

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

DIANE CERVELLI and TAEKO BUFFORD,) CIVIL NO. 11-1-3103-12 ECN
) (Other Civil Action)
)
) **THE PARTIES' STIPULATED**
Plaintiffs,) **(Caption Continued Next Page)**

WILLIAM D. HOSHIJO, as Executive
Director of the Hawai'i Civil Rights
Commission,

Plaintiff-Intervenor,

v.

ALOHA BED & BREAKFAST, a Hawai'i
sole proprietorship,
Defendant.

) APPLICATION FOR APPEAL FROM
) INTERLOCUTORY ORDER;
) PROPOSED ORDER GRANTING THE
) PARTIES' STIPULATED APPLICATION
) FOR APPEAL FROM
) INTERLOCUTORY ORDER

)
)
) JUDGE: Edwin C. Nacino

) Trial Date: November 4, 2013
)
)
)
)

**THE PARTIES' STIPULATED APPLICATION FOR
APPEAL FROM INTERLOCUTORY ORDER**

On April 15, 2013, this Court entered its "ORDER GRANTING PLAINTIFFS' AND PLAINTIFF-INTERVENOR'S MOTION FOR PARTIAL SUMMARY JUDGMENT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT" in this case.

Defendant contends this case involves whether it is subject to liability under HRS Chapter 489, or afforded complete immunity under HRS Chapter 515, and whether, if HRS Chapter 489 applies, it is entitled to a constitutional defense to liability.

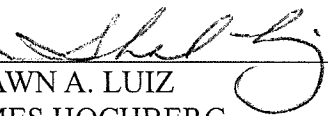
Defendant also contends that these questions of law will substantially affect the final result of the case. Defendant further contends that the granting of an interlocutory appeal may put an end to the action, rather than merely saving the litigants time and litigation expenses.

Pursuant to HRS § 641-1(b), "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.”

Accordingly, the parties, through their respective undersigned counsel, respectfully request that this Honorable Court find Defendant’s request to take an interlocutory appeal from its April 15, 2013 “ORDER GRANTING PLAINTIFFS’ AND PLAINTIFF-INTERVENOR’S MOTION FOR PARTIAL SUMMARY JUDGMENT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DENYING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT” advisable for the speedy termination of the litigation before it and therefore enter an order allowing the same and staying all further proceedings in this Court pending such appeal. Defendant also requests a stay of enforcement of the injunction pending appeal, which Plaintiffs and Plaintiff-Intervenor do not oppose.

Dated: Honolulu, Hawai‘i, May 9, 2013.

By: 
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Hawai'i Civil Rights Commission

Attorneys for Plaintiff-Intervenor
WILLIAM D. HOSHIJO, Executive Director

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

DIANE CERVELLI and TAEKO BUFFORD,) CIVIL NO. 11-1-3103-12 ECN
) (Other Civil Action)
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Plaintiffs,)
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WILLIAM D. HOSHIJO, as Executive) PROPOSED ORDER GRANTING THE
Director of the Hawai'i Civil Rights) PARTIES' STIPULATED APPLICATION
Commission,) FOR APPEAL FROM
) INTERLOCUTORY ORDER
Plaintiff-Intervenor,)
)
v.)
) JUDGE: Edwin C. Nacino
ALOHA BED & BREAKFAST, a Hawai'i)
sole proprietorship,) Trial Date: November 4, 2013
Defendant.)
)

**PROPOSED ORDER GRANTING THE PARTIES' STIPULATED APPLICATION
FOR APPEAL FROM INTERLOCUTORY ORDER**

The parties made application, by way of stipulation, for appeal from the interlocutory order "ORDER GRANTING PLAINTIFFS' AND PLAINTIFF-INTERVENOR'S MOTION FOR PARTIAL SUMMARY JUDGMENT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT", filed April 15, 2013.

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Defendant raises questions of law that could substantially affect the final result of the case. Defendant further contends that the appeal may put an end to the action.

Pursuant to HRS § 641-1(b), “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.”

Defendant made an application within the time provided by the rules of court, and an appeal in a civil matter may therefore be allowed by a circuit court in its discretion from an order granting a plaintiff’s motion for partial summary judgment and denying a defendant’s motion for summary judgment 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.

Accordingly, the Court, having reviewed and considered the Stipulated Application, HEREBY FINDS as follows:

1) that pursuant to Hawaii Revised Statutes § 641(b) it is within the Court's discretion whether or not to allow an immediate interlocutory appeal of its Order Granting Plaintiffs’ and Plaintiff-Intervenor’s Motion for Partial Summary Judgment For Declaratory and Injunctive Relief and Denying Defendant’s Motion for Summary Judgment (“Plaintiff’s Motion”), entered April 15, 2013 (“Order”);

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8) that Defendant contends that there is substantial ground for difference of opinion on the issue of whether Chapter 489, Hawaii Revised Statutes or Chapter 515, Hawaii Revised Statutes applies to Defendant;

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11) that, given the nature of Defendant's defenses, granting an appeal of the Order would be advisable for the speedy termination of this litigation in accordance with Hawaii Revised Statutes § 641-1(b); and

12) that the Court adopts and incorporates herein by reference all additional findings and reasons stated on the record by the Court at the Hearing.

Based on the above findings, the Court HEREBY GRANTS the Stipulated Application for Appeal from Interlocutory Order in its entirety.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant may immediately appeal the Court's Order granting Plaintiffs' Motion, and IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this action shall be stayed in its entirety, including enforcement of the injunction, until conclusion of the appeal.

IT IS SO ORDERED

Certified this _____ day of _____, _____.

Honorable Edwin C. Nacino,