

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

**Electronically Filed
Intermediate Court of Appeals
CAAP-21-0000536
19-JAN-2024
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NO. CAAP-21-0000536
(Consolidated with NO. CAAP-21-0000545)

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

CAAP-21-0000536

STUART B. GLAUBERMAN, by his Managing Agent, KFG PROPERTIES,
INC., Plaintiff-Appellee,

v.

CELESTE M. GONSALVES, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
KO'OLAUPOKO DIVISION
(CIVIL NO. 1DRC-21-0002121)

and

CAAP-21-0000545

STUART B. GLAUBERMAN and VICKY RAMIL, Plaintiffs-Appellees,

v.

CELESTE M. GONSALVES, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
KO'OLAUPOKO DIVISION
(CIVIL NO. 1DRC-21-0001879)

Appendix A

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

SUMMARY DISPOSITION ORDER

(By: Leonard, Acting Chief Judge, Hiraoka and Guidry, JJ.)

In these consolidated appeals, self-represented Defendant-Appellant Celeste M. Gonsalves (**Gonsalves**) appeals from the September 29, 2021 Order Granting Plaintiff's Motion for Summary Judgment Filed on September 7, 2021, in favor of self-represented Plaintiff-Appellee Stuart B. Glauberman (**Glauberman**), by his Managing Agent, KFG Properties, Inc. (**KFG Properties**), and the October 4, 2021 Judgment for Possession in favor of Glauberman and Plaintiff-Appellee Vicky Ramil (**Ramil**), entered by the District Court of the First Circuit Ko'olaupoko Division (**District Court**),¹ in Civil Nos. 1DRC-21-0002121 and 1DRC-21-0001879 respectively.

Glauberman and Ramil rented an accessory dwelling unit to Gonsalves, and self-managed the rental unit until December 2020, when they hired KFG Properties as their property manager. On February 21, 2021, Glauberman and Ramil filed a Complaint (Assumpsit, Summary Possession/Landlord - Tenant Damages) against Gonsalves in Civil No. 1DRC-21-0001879, alleging Gonsalves caused electrical and plumbing damage to the premises, failed to properly dispose of garbage and refused their requests

¹ The Honorable Karin L. Holma presided.

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for an inspection, and that they had given Gonsalves a 10-day non-monetary default notice on February 9, 2021.

On March 3, 2021, Glauberman, through KFG Properties, filed a Complaint (Assumpsit, Summary Possession/Landlord - Tenant Damages) against Gonsalves in Civil No. 1DRC-21-0002121, alleging Gonsalves refused to vacate after a 45-day notice that the owners' son was moving in.

Gonsalves filed counterclaims in both cases, alleging that Glauberman and Ramil were retaliating against her because she started withholding rent in October 2020, after complaining to them about the neighbor's yardman smoking while operating machinery to trim a hedge in close proximity to her rental unit. Gonsalves deemed that to be a fire hazard, and complained that the secondhand smoke from the neighbor's yardman smoking often came into her unit. Gonsalves stated that because Glauberman and Ramil did not resolve the issue, she reported it to her Section 8 Housing Assistance officer and withheld her portion of the rent.

The district court heard Civil Nos. 1DRC-21-0001879 and 1DRC-21-0002121 together for trial on the issue of possession. Gonsalves failed to appear twice in person for trial on the issue of possession, first on July 30, 2021, when she did not appear at all, and again on August 6, 2021, when she

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appeared by Zoom even though trial was scheduled to be in person. Both times Gonsalves submitted notes from her doctor, and requested continuances due to medical reasons. The first time Gonsalves failed to appear, the district court rescheduled the trial to August 6, 2021. When Gonsalves failed to appear in person again on August 6, 2021, the district court instructed Glauberman and Ramil to file motions for summary judgment, and the district court ultimately granted motions for summary judgment filed by them, leading Gonsalves to file these appeals.

Gonsalves contends the district court committed the following errors in Civil No. 1DRC-21-0002121: (1) denying her July 8, 2021 non-hearing motion for continuance of the August 6, 2021 trial; (2) instructing Glauberman, at the August 6, 2021 hearing, to file a motion for summary judgment; (3) informing Glauberman, at an August 27, 2021 hearing, that the court would deny his motion for summary judgment but allowing him to withdraw the motion rather than ruling on the motion; (4) denying Gonsalves's motion for reconsideration or new trial on September 24, 2021; (5) granting Glauberman summary judgment on possession on September 24, 2021; and (6) engaging in ex parte communications with Glauberman's counsel on September 10, 2021, when she was not present in the courtroom.

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Gonsalves contends the district court committed the following errors in Civil No. 1DRC-21-0001879: (1) denying her request for continuance made at the hearing on August 6, 2021; (2) instructing Glauberman and Ramil to file a motion for summary judgment at the August 6, 2021 hearing; (3) denying her request to continue the August 27, 2021 hearing on Glauberman and Ramil's motion for summary judgment; (4) granting Glauberman and Ramil's motion for summary judgment at the August 27, 2021 hearing; (5) basing the August 27, 2021 grant of summary judgment on testimony given by Gonsalves in other cases; (6) notifying Glauberman and Ramil at the hearing held on September 10, 2021 that they attached the wrong copy of the rental agreement to their motion for summary judgment and had not given proper notice of their motion; (7) not bringing Gonsalves into the courtroom for the September 10, 2021 hearing; (8) granting Glauberman and Ramil summary judgment on September 24, 2021; and (9) denying Gonsalves's motion to dismiss at the September 24, 2021 hearing.

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Gonsalves's points of error as follows.

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We review the grant or denial of a continuance for an abuse of discretion. Sapp v. Wong, 62 Haw. 34, 41, 609 P.2d 137, 142 (1980) (citations omitted). Generally, to constitute an abuse of discretion it must appear that the court clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant. Schmidt v. Bd. of Directors of Ass'n of Apartment Owners of Marco Polo Apartments, 73 Haw. 526, 533, 836 P.2d 479, 483 (1992).

We review the grant or denial of summary judgment *de novo* using the same standard applied by the district court. Nozawa v. Operating Engineers Loc. Union No. 3, 142 Hawai'i 331, 338, 418 P.3d 1187, 1194 (2018) (citations omitted). Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Id. at 342, 418 P.3d at 1198. A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. Id. The evidence must be viewed in the light most favorable to the non-moving parties. Id.

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We review a ruling on a motion to dismiss *de novo*.

Young v. Allstate Ins. Co., 119 Hawai'i 403, 411, 198 P.3d 666, 674 (2008). "A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim that would entitle him or her to relief." Flores v. Logan, 151 Haw. 357, 366, 513 P.3d 423, 432 (2022) (citations omitted).

We review the denial of a motion for new trial for abuse of discretion. Kato v. Funari, 118 Hawai'i 375, 381, 191 P.3d 1052, 1058 (2008) (citation omitted).

Gonsalves has not shown the district court abused its discretion in denying her requests for continuance of the August 6, 2021 hearing, and hearing the cases together. While we agree that the district court erred when it proceeded with the hearing and granted summary judgment on August 27, 2021, the error was harmless because the district court subsequently granted Gonsalves's motion to set aside the summary judgment.²

The district court did not err when it granted summary judgment to Glauberman and Ramil on September 24, 2021 and

² The district court set aside its August 27, 2021 grant of summary judgment to Glauberman and Ramil because Glauberman and Ramil's motion for summary judgment was not filed and served at least ten days prior to the hearing, as required by District Court Rules of Civil Procedure Rule 56(c), and Glauberman and Ramil attached an incomplete copy of their rental agreement with Gonsalves, which was missing the Section 8 Housing and Urban Development (HUD) tenancy addendum.

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denied Gonsalves's September 22, 2021 motion to dismiss their complaint. Gonsalves alleged that Glauberman and Ramil were retaliating against her because she began withholding rent due to the neighbor's yardman smoking near her unit. Retaliatory eviction was not a valid defense for Gonsalves, however, because she admitted to withholding her portion of the rent starting in October 2020. Ryan v. Herzog, 142 Hawai'i 278, 284, 418 P.3d 619, 625 (2018) ("Once one of those three triggering [eviction under Hawaii Revised Statutes (**HRS**) § 521-74(a)] events occurs *and the tenant continues to pay rent*, the landlord is prohibited from retaliating by evicting the tenant, raising the rent, or decreasing services.") (emphasis added) (citing HRS § 521-74(a) (2018) (a "good faith" complaint to a "governmental agency concerned with landlord-tenant disputes of conditions in or affecting the tenant's dwelling unit" is a defense to a summary possession action provided that "the tenant continues to tender the usual rent to the landlord.")).

The Section 8 HUD tenancy addendum, which was part of Gonsalves's rental agreement, allows the landlord to terminate the tenancy for good cause, during the initial term of the lease, and to the extent permitted by state law thereafter. The record reflects that Gonsalves's tenancy was terminated after the initial term of the lease had ended. Gonsalves admitted

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that she had put a lock on the front water faucet, did not place her garbage in the trash bins, removed then glued back a light switch faceplate, and refused their request for an inspection, which were the reasons given by Glauberman and Ramil for issuing her a 10-day notice of termination of tenancy on February 9, 2021. Gonsalves submitted a photograph of the glued light switch faceplate, taken on September 19, 2021 with her notation, "[f]aceplate can be changed in 48 hours by licensed electrician." Even assuming *arguendo* that those acts were not material breaches that would provide grounds for termination of the tenancy, HRS § 521-71(a) (2018) separately allows a month-to-month tenancy to be terminated on a 45-day written notice. HRS § 521-71(1) (2018) ("When the tenancy is month-to-month, the landlord may terminate the rental agreement by notifying the tenant, in writing, at least forty-five days in advance of the anticipated termination."). That requirement was met. Gonsalves does not dispute that she received a 45-day notice of termination of tenancy, and the writ of possession and judgment for possession were issued by the district court after Hawai'i's COVID-19 eviction moratorium had expired.³

³ Hawai'i's COVID-19 eviction moratorium went into effect on April 17, 2020, with the issuance of Governor David Ige's Fifth Supplementary Proclamation on COVID-19, and was extended through August 6, 2021 with

(continued . . .)

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Finally, there is no dispute that the district court should not have conducted the September 10, 2021 hearing while Gonsalves was left outside in a waiting room. However, there was no prejudice to Gonsalves by the district court proceeding with the hearing, with Gonsalves being absent, as the district court granted her motions and set aside the judgment. We also find that the district court did not err by directing Glauberman and Ramil to file a motion for summary judgment during the earlier August 6, 2021 hearing, and that the district court did not improperly give legal advice to Glauberman and Ramil. In directing Glauberman and Ramil to file motions for summary judgment, the district court balanced Gonsalves's request that trial on possession be postponed with Glauberman and Ramil's interest in having an expeditious resolution of their claim to recover possession.

For the foregoing reasons, we affirm the district court's September 29, 2021 Order Granting Plaintiff's Motion for

(. . . continued)

Governor Ige's Twenty-First Supplementary Proclamation. Hawai'i Emergency Proclamations are posted on the County of Hawai'i website:

<https://coronavirus-response-county-of-hawaii-hawaiicountygis.hub.arcgis.com/documents/hawaiicountygis::5th-proclamation/explore>

<https://coronavirus-response-county-of-hawaii-hawaiicountygis.hub.arcgis.com/documents/hawaiicountygis::21st-proclamation/explore>

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Summary Judgment Filed on September 7, 2021, in favor of Glauberman in Civil No. 1DRC-21-0002121, and the October 4, 2021 Judgment for Possession, in favor of Glauberman and Ramil in Civil No. 1DRC-21-0001879, and reject all points of error raised by Gonsalves in these appeals.

DATED: Honolulu, Hawai'i, January 19, 2024.

On the briefs:

Celeste M. Gonsalves,
Self-represented
Defendant-Appellant.

/s/ Katherine G. Leonard
Acting Chief Judge

/s/ Keith K. Hiraoka
Associate Judge

Jean Malia Orque,
for Plaintiffs-Appellees
Stuart B. Glauberman and
Vicky Ramil
in CAAP-21-0000545.

/s/ Kimberly T. Guidry
Associate Judge

Stuart B. Glauberman,
by his Managing Agent,
KFG Properties, Inc.,
Self-represented
Plaintiff-Appellee
in CAAP-21-0000536.

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Attorney for Plaintiff

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IN THE DISTRICT COURT OF THE FIRST CIRCUIT

KOOLAUPOKO DIVISION

STATE OF HAWAII

STUART B. GLAUBERMAN, by his)
Managing Agent, KFG PROPER-)
TIES, INC.,)

Plaintiff,)

vs.)

CELESTE M. GONSALVES,)

Defendant.)

Civil No. 1DRC-21-2121

(Summary Possession)

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
FILED ON SEPTEMBER 7, 2021

Hearing: 9/24/2021
9:30 a.m.

Judge Karin L. Holma

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
FILED ON SEPTEMBER 7, 2021

Plaintiff's Motion for Summary Judgment filed on September 7, 2021 having been heard on Friday, September 24, 2021, before the Honorable KARIN L. HOLMA, and KENNETH K.S. LAU, attorney for Plaintiff, and Defendant CELESTE M. GONSALVES, both appearing via video conference, and after hearing argument and taking into consideration the pleadings filed in this matter,

JUDGMENT FOR POSSESSION

IN THE DISTRICT COURT OF THE FIRST CIRCUIT
KO 'OLAUPOKA DIVISION
STATE OF HAWAII

Plaintiff(s)
STUART B. GLAUBERMAN and VICKY RAMIL

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Reserved for Court Use

Civil No 1DRC-21-001879 Dkt. 166 JP

Defendant(s)
CELESTE M. GONSALVES

Filing Party/Attorney Name, Attorney Name (if applicable),
Address, Telephone and Fax Numbers
Jean Malia Orque (4583)
G. Todd Withy (5975)
810 Richards Street, Suite 960
Honolulu, HI 96813
Tel: (808) 599-8700
Attorneys for Plaintiffs

Premises Address:
530A PAULELE STREET
KAILUA, HAWAII 96734

Court Date Writ Was Ordered:

September 24, 2021

Effective Date of Writ of Possession:

September 30, 2021

JUDGMENT FOR POSSESSION

This cause having come before the Court on the Court Date above and proof having been shown to the satisfaction of the Court that Defendant continues to occupy the subject premises, Plaintiff is entitled to the possession of the subject premises;

IT IS ORDERED, ADJUDGED, AND DECREED that Judgment for Possession for Plaintiff is entered as follows:

- 1 Plaintiff is entitled to possession of the premises listed above
- 2 A **WRIT OF POSSESSION** against Defendant shall be issued upon presentation by Plaintiff to the Court in accordance with Hawai'i Revised Statutes § 666-11, and said Writ shall be effective as of the Effective Date for Writ of Possession specified above.

Date: OCT 04 2021

Judge *SKO / KB*

In accordance with state and federal disability laws, if you require an accommodation for a disability, when working with a court program, service, or activity please contact the District Court Administration Office at PHONE NO. 538-5121, FAX 538-5233, or TTY 539-4853 at least ten (10) working days before your proceeding, hearing, or appointment date

For all Civil related matters, please call 538-5151 or visit the District Court Service Center at 1111 Alakea Street, Third (3rd) Floor.

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

Clerk, District Court of the above Circuit, State of Hawai'i

Appendix C

SCWC-21-0000536

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SCWC-21-0000536
24-MAY-2024

IN THE SUPREME COURT OF THE STATE OF HAWAII

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(CAAP-21-0000536; CIVIL NO. 1DRC-21-0002121 (consolidated))

STUART B. GLAUBERMAN,
by his Managing Agent KFG Properties, Inc.,
Respondent/Plaintiff-Appellee,
vs.
CELESTE M. GONSALVES,
Petitioner/Defendant-Appellant.

(CAAP-21-0000545; CIVIL NO. 1DRC-21-0001879 (consolidated))

STUART B. GLAUBERMAN and VICKY RAMIL,
Respondents/Plaintiffs-Appellees,
vs.
CELESTE M. GONSALVES,
Petitioner/Defendant-Appellant.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS

ORDER REJECTING APPLICATION FOR WRIT OF CERTIORARI

(By: Recktenwald, C.J., McKenna, Eddins, Ginoza, and Devens, JJ.)

The application for writ of certiorari filed on April 18, 2024, by Petitioner/Defendant-Appellant Celeste M. Gonsalves is hereby rejected.

DATED: Honolulu, Hawai'i, May 24, 2024.

/s/ Mark E. Recktenwald

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

/s/ Lisa M. Ginoza

/s/ Vladimir P. Devens



Appendix D

TENANCY ADDENDUM
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program
(To be attached to Tenant Lease)

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
exp. 7/31/2022

The Tenancy Addendum is part of the HAP contract and lease. Public reporting burden for this collection of information is estimated to average 0.5 hours. This includes the time for collection, reviewing and reporting the data. The information is being collected as required by 24 CFR 982.451 which in part states the PHA must pay the housing assistance payment promptly. This agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless there is a valid OMB number. Assurances of confidentiality are not provided under this section.

HUD is committed to protecting the privacy of an individual's information stored electronically or in paper form in accordance with federal privacy laws, guidance and best practices. HUD expects its third-party business partners including Public Housing Authorities who collect, use, maintain, or disseminate HUD information to protect the privacy of that information in accordance with applicable law.

1. Section 8 Voucher Program

- a. The owner is leasing the contract unit to the tenant for occupancy by the tenant's family with assistance for a tenancy under the Section 8 housing choice voucher program (voucher program) of the United States Department of Housing and Urban Development (HUD).
- b. The owner has entered into a Housing Assistance Payments Contract (HAP contract) with the PHA under the voucher program. Under the HAP contract, the PHA will make housing assistance payments to the owner to assist the tenant in leasing the unit from the owner.

2. Lease

- a. The owner has given the PHA a copy of the lease, including any revisions agreed by the owner and the tenant. The owner certifies that the terms of the lease are in accordance with all provisions of the HAP contract and that the lease includes the tenancy addendum.
- b. The tenant shall have the right to enforce the tenancy addendum against the owner. If there is any conflict between the tenancy addendum and any other provisions of the lease, the language of the tenancy addendum shall control.

3. Use of Contract Unit

- a. During the lease term, the family will reside in the contract unit with assistance under the voucher program.
- b. The composition of the household must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. Other persons may not be added to the household without prior written approval of the owner and the PHA.
- c. The contract unit may only be used for residence by the PHA-approved household members. The unit must be the family's only residence. Members of the household may engage in legal profit making activities incidental to primary use of the unit for residence by members of the family.
- d. The tenant may not sublease or let the unit.
- e. The tenant may not assign the lease or transfer the unit.

4. Rent to Owner

- a. The initial rent to owner may not exceed the amount approved by the PHA in accordance with HUD requirements.
- b. Changes in the rent to owner shall be determined by the provisions of the lease. However, the owner may not raise the rent during the initial term of the lease.
- c. During the term of the lease (including the initial term of the lease and any extension term), the rent to owner may at no time exceed:

- (1) The reasonable rent for the unit as most recently determined or redetermined by the PHA in accordance with HUD requirements, or
- (2) Rent charged by the owner for comparable unassisted units in the premises.

5. Family Payment to Owner

- a. The family is responsible for paying the owner any portion of the rent to owner that is not covered by the PHA housing assistance payment.
- b. Each month, the PHA will make a housing assistance payment to the owner on behalf of the family in accordance with the HAP contract. The amount of the monthly housing assistance payment will be determined by the PHA in accordance with HUD requirements for a tenancy under the Section 8 voucher program.
- c. The monthly housing assistance payment shall be credited against the monthly rent to owner for the contract unit.
- d. The tenant is not responsible for paying the portion of rent to owner covered by the PHA housing assistance payment under the HAP contract between the owner and the PHA. A PHA failure to pay the housing assistance payment to the owner is not a violation of the lease. The owner may not terminate the tenancy for nonpayment of the PHA housing assistance payment.
- e. The owner may not charge or accept, from the family or from any other source, any payment for rent of the unit in addition to the rent to owner. Rent to owner includes all housing services, maintenance, utilities and appliances to be provided and paid by the owner in accordance with the lease.
- f. The owner must immediately return any excess rent payment to the tenant.

6. Other Fees and Charges

- a. Rent to owner does not include cost of any meals or supportive services or furniture which may be provided by the owner.
- b. The owner may not require the tenant or family members to pay charges for any meals or supportive services or furniture which may be provided by the owner. Nonpayment of any such charges is not grounds for termination of tenancy.
- c. The owner may not charge the tenant extra amounts for items customarily included in rent to owner in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

Appendix E

7. Maintenance, Utilities, and Other Services

a. Maintenance

- (1) The owner must maintain the unit and premises in accordance with the HQS.
- (2) Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

b. Utilities and appliances

- (1) The owner must provide all utilities needed to comply with the HQS.
- (2) The owner is not responsible for a breach of the HQS caused by the tenant's failure to:
 - (a) Pay for any utilities that are to be paid by the tenant.
 - (b) Provide and maintain any appliances that are to be provided by the tenant.

c. **Family damage.** The owner is not responsible for a breach of the HQS because of damages beyond normal wear and tear caused by any member of the household or by a guest.

d. **Housing services.** The owner must provide all housing services as agreed to in the lease.

8. Termination of Tenancy by Owner

a. **Requirements.** The owner may only terminate the tenancy in accordance with the lease and HUD requirements.

b. **Grounds.** During the term of the lease (the initial term of the lease or any extension term), the owner may only terminate the tenancy because of:

- (1) Serious or repeated violation of the lease;
- (2) Violation of Federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the unit and the premises;
- (3) Criminal activity or alcohol abuse (as provided in paragraph c); or
- (4) Other good cause (as provided in paragraph d).

c. Criminal activity or alcohol abuse

- (1) The owner may terminate the tenancy during the term of the lease if any member of the household, a guest or another person under a resident's control commits any of the following types of criminal activity:
 - (a) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);
 - (b) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
 - (c) Any violent criminal activity on or near the premises; or
 - (d) Any drug-related criminal activity on or near the premises.
- (2) The owner may terminate the tenancy during the term of the lease if any member of the household is:

(a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(b) Violating a condition of probation or parole under Federal or State law.

(3) The owner may terminate the tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

(4) The owner may terminate the tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety or right to peaceful enjoyment of the premises by other residents.

d. Other good cause for termination of tenancy

(1) During the initial lease term, other good cause for termination of tenancy must be something the family did or failed to do.

(2) During the initial lease term or during any extension term, other good cause may include:

- (a) Disturbance of neighbors,
- (b) Destruction of property, or
- (c) Living or housekeeping habits that cause damage to the unit or premises.

(3) After the initial lease term, such good cause may include:

- (a) The tenant's failure to accept the owner's offer of a new lease or revision;
- (b) The owner's desire to use the unit for personal or family use or for a purpose other than use as a residential rental unit; or
- (c) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, the owner's desire to rent the unit for a higher rent).

(4) The examples of other good cause in this paragraph do not preempt any State or local laws to the contrary.

9. Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

a. **Purpose:** This section incorporates the protections for victims of domestic violence, dating violence, sexual assault, or stalking in accordance with subtitle N of the Violence Against Women Act of 1994, as amended (codified as amended at 42 U.S.C. 14043e et seq.) (VAWA) and implementing regulations at 24 CFR part 5, subpart L.

b. **Conflict with other Provisions:** In the event of any conflict between this provision and any other provisions included in Part C of the HAP contract, this provision shall prevail.

c. **Effect on Other Protections:** Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, sexual assault, or stalking.

d. **Definition:** As used in this Section, the terms "actual and imminent threat," "affiliated individual," "bifurcate," "dating violence," "domestic violence," "sexual assault," and "stalking" are defined in HUD's regulations at 24 CFR part 5, subpart L. The terms "Household" and "Other Person Under the Tenant's Control" are defined at 24 CFR part 5, subpart A.

e. **VAWA Notice and Certification Form:** The PHA shall provide the tenant with the "Notice of Occupancy Rights under VAWA and the certification form described under 24 CFR 5.2005(a)(1) and (2).

f. **Protection for victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking:**

(1) The landlord or the PHA will not deny admission to, deny assistance under, terminate from participation in, or evict the Tenant on the basis of or as a direct result of the fact that the Tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the Tenant otherwise qualifies for admission, assistance, participation, or occupancy. 24 CFR 5.2005(b)(1).

(2) The tenant shall not be denied tenancy or occupancy rights solely on the basis of criminal activity engaged in by a member of the Tenant's Household or any guest or Other Person Under the Tenant's Control, if the criminal activity is directly related to domestic violence, dating violence, sexual assault, or stalking, and the Tenant or an Affiliated Individual of the Tenant is the victim or the threatened victim of domestic violence, dating violence, sexual assault, or stalking. 24 CFR 5.2005(b)(2).

(3) An incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking will not be construed as serious or repeated violations of the lease by the victim or threatened victim of the incident. Nor shall it not be construed as other "good cause" for termination of the lease, tenancy, or occupancy rights of such a victim or threatened victim. 24 CFR 5.2005(c)(1) and (c)(2).

g. **Compliance with Court Orders:** Nothing in this Addendum will limit the authority of the landlord, when notified by a court order, to comply with the court order with respect to the rights of access or control of property (including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking) or with respect to the distribution or possession of property among members of the Tenant's Household. 24 CFR 5.2005(d)(1).

h. **Violations Not Premised on Domestic Violence, Dating Violence, Sexual Assault, or Stalking:** Nothing in this section shall be construed to limit any otherwise available authority of the Landlord to evict or the public housing authority to terminate the assistance of a Tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the Tenant or an Affiliated Individual of the Tenant. However, the Landlord or the PHA will not subject the tenant, who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, to a more demanding standard than other tenants in determining whether to evict or terminate assistance. 24 CFR 5.2005(d)(2).

i. **Actual and Imminent Threats:**

(1) Nothing in this section will be construed to limit the authority of the Landlord to evict the Tenant if the Landlord can demonstrate that an "actual and imminent threat" to other tenants or those employed at or providing service to the property would be present if the Tenant or lawful occupant is not evicted. In this context, words, gestures, actions, or other indicators will be construed as an actual and imminent threat if they meet the following standards for an actual and imminent threat: "Actual and imminent threat" refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur. 24 CFR 5.2005(d)(3).

(2) If an actual and imminent threat is demonstrated, eviction should be used only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence, developing other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents. 24 CFR 5.2005(d)(4).

j. **Emergency Transfer:** A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking may request an emergency transfer in accordance with the PHA's emergency transfer plan. 24 CFR 5.2005(e). The PHA's emergency transfer plan must be made available upon request, and incorporate strict confidentiality measures to ensure that the PHA does not disclose a tenant's dwelling unit location to a person who committed or threatened to commit an act of domestic violence, dating violence, sexual assault, or stalking against the tenant;

For transfers in which the tenant would not be considered a new applicant, the PHA must ensure that a request for an emergency transfer receives, at a minimum, any applicable additional priority that is already provided to other types of emergency transfer requests. For transfers in which the tenant would be considered a new applicant, the plan must include policies for assisting a tenant with this transfer.

k. **Bifurcation:** Subject to any lease termination requirements or procedures prescribed by Federal, State, or local law, if any member of the Tenant's Household engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking, the Landlord may "bifurcate" the Lease, or remove that Household member from the Lease, without regard to whether that Household member is a signatory to the Lease, in order to evict, remove, or terminate the occupancy rights of that Household member without evicting, removing, or otherwise penalizing the victim of the criminal activity who is also a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the housing choice voucher program. 24 CFR 5.2009(a).

If the Landlord bifurcates the Lease to evict, remove, or terminate assistance to a household member, and that household member is the sole tenant eligible to receive assistance, the landlord shall provide any remaining tenants or residents a period of 30 calendar days from the date of bifurcation of the lease to:

- (1) Establish eligibility for the same covered housing program under which the evicted or terminated tenant was the recipient of assistance at the time of bifurcation of the lease;
 - (2) Establish eligibility under another covered housing program; or
 - (3) Find alternative housing.
- l. Family Break-up:** If the family break-up results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, the PHA must ensure that the victim retains assistance. 24 CFR 982.315.
- m. Move with Continued Assistance:** The public housing agency may not terminate assistance to a family or member of the family that moves out of a unit in violation of the lease, with or without prior notification to the public housing agency if such a move occurred to protect the health or safety of a family member who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking; and who reasonably believed they were imminently threatened by harm from further violence if they remained in the dwelling unit, or if any family member has been the victim of sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.
- (1) The move is needed to protect the health or safety of the family or family member who is or has been a victim of domestic violence dating violence, sexual assault or stalking; and
 - (2) The family or member of the family reasonably believes that he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit. However, any family member that has been the victim of a sexual assault that occurred on the premises during the 90-calendar day period preceding the family's move or request to move is not required to believe that he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit. 24 CFR 982.354.
- ii. Confidentiality.**
- (1) The Landlord shall maintain in strict confidence any information the Tenant (or someone acting on behalf of the Tenant) submits to the Landlord concerning incidents of domestic violence, dating violence, sexual assault or stalking, including the fact that the tenant is a victim of domestic violence, dating violence, sexual assault, or stalking.
 - (2) The Landlord shall not allow any individual administering assistance on its behalf, or any persons within its employ, to have access to confidential information unless explicitly authorized by the Landlord for reasons that specifically call for these individuals to have access to the information pursuant to applicable Federal, State, or local law.
 - (3) The Landlord shall not enter confidential information into any shared database or disclose such information to any other entity or individual, except to the extent that the disclosure is requested or consented to in writing by the individual in a time-limited release; required for use in an eviction proceeding; or is required by applicable law.

10. Eviction by court action

The owner may only evict the tenant by a court action.

11. Owner notice of grounds

- a. At or before the beginning of a court action to evict the tenant, the owner must give the tenant a notice that specifies the grounds for termination of tenancy. The notice may be included in or combined with any owner eviction notice.
- b. The owner must give the PHA a copy of any owner eviction notice at the same time the owner notifies the tenant.
- c. Eviction notice means a notice to vacate, or a complaint or other initial pleading used to begin an eviction action under State or local law.

12. Lease: Relation to HAP Contract

If the HAP contract terminates for any reason, the lease terminates automatically.

13. PHA Termination of Assistance

The PHA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the PHA terminates program assistance for the family, the lease terminates automatically.

14. Family Move Out

The tenant must notify the PHA and the owner before the family moves out of the unit.

15. Security Deposit

- a. The owner may collect a security deposit from the tenant. (However, the PHA may prohibit the owner from collecting a security deposit in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. Any such PHA-required restriction must be specified in the HAP contract.)
- b. When the family moves out of the contract unit, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, as reimbursement for any unpaid rent payable by the tenant, any damages to the unit or any other amounts that the tenant owes under the lease.
- c. The owner must give the tenant a list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must promptly refund the full amount of the unused balance to the tenant.
- d. If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may collect the balance from the tenant.

16. Prohibition of Discrimination

In accordance with applicable equal opportunity statutes, Executive Orders, and regulations, the owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status or disability in connection with the lease. Eligibility for HUD's programs must be made without regard to actual or perceived sexual orientation, gender identity, or marital status.

17. Conflict with Other Provisions of Lease

- a. The terms of the tenancy addendum are prescribed by HUD in accordance with Federal law and regulation, as a condition for Federal assistance to the tenant and tenant's family under the Section 8 voucher program.
- b. In case of any conflict between the provisions of the tenancy addendum as required by HUD, and any other provisions of the lease or any other agreement between the owner and the tenant, the requirements of the HUD-required tenancy addendum shall control.

NOT FOR PUBLICATION IN WEST'S HAWAII'S REPORTS AND PACIFIC REPORTER

ORDER DENYING MOTION FOR RECONSIDERATION

(By: Leonard, Acting Chief Judge, Hiraoka and Guidry, JJ.)

Defendant-Appellant Celeste M. Gonsalves' Motion for Reconsideration of Summary Disposition Order Filed on January 19, 2024, filed on January 31, 2024, is denied.

DATED: Honolulu, Hawai'i, February 5, 2024.

/s/ Katherine G. Leonard
Acting Chief Judge

/s/ Keith K. Hiraoka
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge