

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

CAROL STEIN,)	CIV. NO. 97-098K
)	
Plaintiff-Appellant,)	THIRD CIRCUIT COURT
)	
vs.)	
)	
RICHARD J. LeMAY and KAREN P.)	
LeMAY,)	
)	
Defendants-Appellees.)	
_____)	

SUMMARY DISPOSITION ORDER

Plaintiff-appellant Carol Stein (Stein) appeals from the order and judgment of the circuit court of the third circuit against Stein and in favor of defendants-appellees Richard J. LeMay and Karen P. LeMay (collectively, the LeMays) in an action seeking to enforce residential height restrictions against the LeMays. Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments made and the issues raised by the parties,

IT IS HEREBY ORDERED that the order and judgment from which the appeal is taken is affirmed. Based on the language of the instant height restrictions, Stein could not prove that the LeMays' residence was in violation without, inter alia, further information as to the location of the "benchmark elevation pin" and the direction of the "natural grade" in relation to the structures. Thus, contrary to Stein's argument that the circuit court required proof of the exact degree of violation, the court properly found that Stein failed to prove, directly or indirectly, that any violation occurred. The circuit court, therefore, did not abuse its discretion in granting the LeMays'

motion for reconsideration of the court's original decision. The circuit court also did not abuse its discretion in denying Stein's motion for a new trial, where the additional evidence proffered was previously available to Stein.

DATED: Honolulu, Hawai'i, June 15, 2000.

On the briefs:

Mark Van Pernis and Gary W.
Vancil for plaintiff-
appellant

Robert D. Triantos and
Edmund W.K. Haitzuka of
Carlsmith Ball for
defendants-appellees

Signed by:

RONALD T. Y. MOON
Chief Justice

STEVEN H. LEVINSON
Associate Justice

PAULA A. NAKAYAMA
Associate Justice

MARIO R. RAMIL
Associate Justice

SIMEON R. ACOBA, JR.
Associate Justice