

NO. 30599

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

AMERICAN EXPRESS CENTURION BANK,
Plaintiff-Appellee,
v.
SOLOMON NALUA'I,
Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HONOLULU DIVISION)
(CIVIL NO. 1RC09-1-1148)

SUMMARY DISPOSITION ORDER

(By: Nakamura, Chief Judge, and Foley and Ginoza, JJ.)

Defendant-Appellant Solomon Nalua'i (Nalua'i), appearing pro se, appeals from the May 20, 2010, Judgment entered in favor of Plaintiff-Appellee American Express Centurion Bank (American Express) by the District Court of the First Circuit (District Court).¹ American Express filed a complaint seeking to recover \$11,825.50 allegedly owed by Nalua'i on a credit card account. The District Court granted American Express's motion for summary judgment and issued the Judgment for \$12,500.50, which included principal, attorney's fees, and costs.

¹ The Honorable Hilary B. Ganges presided over the proceedings relevant to this appeal.

I.

On appeal, Nalua'i asserts the following points of error:

1. The Court erred in ignoring Defendant's Notice of Appeal In Forma Pauperis, denying Ex Parte Application For Relief From Costs and denying Motion For Leave To Proceed On Appeal In Forma Pauperis.

2. The Court erred in accepting Appellee's Notice of Submission, and Order Granting Plaintiff's Motion for Summary Judgment, as well as the Courts Notice of Entry of Judgment or Order, and Judgment filed nearly five (5) months and eight (8) months respectively past the judges decision and announcement to grant said Summary Judgment.

3. The Court erred in Dismissing Appellant's Appeal for Lack of Jurisdiction.

4. The Court erred in granting Summary Judgment in favor of Appellee, although notwithstanding, there is no contract between the parties.

5. The Court erred in the conduct of its judicial procedures and the manner in which it conducted its courts actions and reactions towards a Sui juris (Pro se) Appellant.

As discussed below, we affirm the District Court's Judgment.

II.

We resolve Nalua'i's points of error as follows:

1. Points of error (1) and (3) are primarily directed at actions taken by this Court. These points do not provide a basis for appealing the District Court's Judgment and are irrelevant to the merits of Nalua'i's appeal.

Nalua'i apparently filed on October 19, 2009, a "Defendant's Notice of Appeal in Forma Pauperis" (First Notice of Appeal), which was not included in the original record on appeal. Unaware of this First Notice of Appeal, this Court issued an "Order Dismissing Appeal for Lack of Jurisdiction" based on the untimeliness of a second notice of appeal that Nalua'i filed on June 22, 2010. We subsequently, however, granted Nalua'i's motion for reconsideration and vacated our order dismissing the appeal after Nalua'i brought the First Notice of Appeal to our attention. Thus, any error in our original dismissal of Nalua'i's appeal had been remedied.

As to Nalua'i's motion to this Court for leave to proceed on appeal in forma pauperis (In Forma Pauperis Motion), we issued an order which noted that Nalua'i had already paid the filing fee and which denied his motion without prejudice to his seeking reimbursement for costs if he prevails on appeal. Nalua'i attached to his In Forma Pauperis Motion, an "Ex Parte Application for Relief from Costs" (Ex Parte Application) that was denied by the District Court. Nalua'i filed the Ex Parte Application in the District Court on July 7, 2010, which was after the District Court's Judgment and both of Nalua'i's notices of appeal. Because the District Court's denial of the Ex Parte Application was not included in any notice of appeal filed by Nalua'i in this appeal, we lack jurisdiction to consider such denial.

2. As to point of error (2), the District Court did not err in accepting American Express's proposed order granting American Express's motion for summary judgment five months after the District Court's oral ruling on the motion was issued or in filing the Judgment eight months after the District Court's oral ruling. The delays in the preparation of the order granting American Express's motion for summary judgment and in the entry of the Judgment do not provide any basis for Nalua'i to obtain relief from the Judgment entered.

3. As to point of error (4), the District Court did not err in granting American Express's motion for summary judgement. American Express established that there was no genuine issue of material fact and that Nalua'i was obligated to pay the amounts due on his credit card account as a matter of law. See Grasso v. First USA Bank, 713 A.2d 304, 309 (Del. Sup. Ct. 1998); Jones v. Citibank (South Dakota), N.A., 235 S.W.3d 333, 338-39 (Tex. Ct. App. 2007).

4. As to point of error (5), we reject Naula'i's claim that the District Court committed error in the conduct of the proceedings. That claim is without merit.

III.

We affirm the May 20, 2010, Judgment of the District Court.

DATED: Honolulu, Hawai'i, March 31, 2011.

On the briefs:

Solomon Nalua'i
Defendant-Appellant Pro Se

Chief Judge

Marvin S.C. Dang
Jason M. Oliver
for Plaintiff-Appellee

Associate Judge

Associate Judge