

DISSENTING OPINION BY LEONARD, J.

I respectfully dissent. A fundamental tenet of civil law is that a person may recover damages from another only if the latter breaches a legal duty to the former. Corollarily, one cannot be held liable for damages for an action or inaction that one has a legal right to undertake. See, e.g., 1 Am. Jur. 2d Actions § 48 (2005):

The proper exercise of a lawful right cannot constitute a legal wrong for which an action will lie, although the act may result in damage to another, for no legal right has been invaded. One may use any lawful means to accomplish a lawful purpose and though the means adopted may cause damage to another, no cause of action arises in the latter's favor. Any injury or damage of this sort is damage without a wrong, for which no recovery can be had. A legally permissible act does not give rise to an actionable injury[.]

(Footnotes, including citations, omitted.)

In this case, it is undisputed that a Judgment for Possession and a Writ of Possession were entered by the District Court of the Second Circuit, Wailuku Division (**District Court**), in favor of Yoshimi Hata and Sanae Hata (the **Hatas**) and against Connie and Pete Muñoz (the **Muñozes**), for the possession of the premises at issue in this case, located at 525 Peahi Road in Haiku, Hawai'i (the **Premises**), with an effective date for the Writ of Possession being December 11, 2006. It is undisputed that the Muñozes filed a motion for a stay of the summary possession, which was denied after a hearing on the Muñozes' motion was held on December 11, 2006 (a hearing which the Muñozes did not attend), with a written order denying the stay entered thereafter. The Writ of Possession, which was served on Connie

Muñoz at the Premises, and thereby executed, on December 11, 2006, by serving officer Richard Alcomindras, stated as follows:

NOW, YOU ARE COMMANDED TO REMOVE [the Muñozes] and all persons holding under or through him/her/them from the premises above-mentioned, including his/her/their personal belongings and properties, and to put [the Hatas] in full possession thereof; and make due return of the writ within 180 days from the date of this Writ unless extended by order of this Court.

Finally, it is undisputed that the above-referenced Writ of Possession and Judgment for Possession were later affirmed on appeal to this court.

In short, in light of the foregoing, the Hatas had a lawful right to take possession of the Premises. The Hatas' proper exercise of this lawful right cannot constitute a legal wrong for which an action will lie. The Muñozes have not alleged an actionable injury. Accordingly, on these grounds, I would affirm the Circuit Court's July 28, 2009 Amended Final Judgment.