

NO. 30376

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

HEINZ PINK, Plaintiff-Appellant, v.
TERESA CASTRO, Defendant-Appellee

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
WAIALUA DIVISION
(CIVIL NO. 1RC-09-1-2589)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Plaintiff-Appellant Heinz Pink (Pink) appeals pro se from (1) the Judgment in favor of Defendant-Appellee Teresa Castro (Castro) as to her counterclaim for breach of contract, which was entered in the District Court of the First Circuit, Waialua Division (District Court)¹ on February 17, 2010, and (2) the underlying findings of fact and conclusions of law, which were entered on November 12, 2009. He appears to argue that the District Court (1) was motivated by personal animus towards Pink; (2) erred in its findings of fact by failing to recognize that Castro had forged aspects of the contracts at issue; and (3) erred in its findings of fact by failing to find that Castro

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The Honorable Christopher P. McKenzie presided.

fraudulently induced Pink into signing a Section 8² rental agreement.

After a careful review of the issues raised and arguments made by the parties, and in consideration of the record in this case and the applicable statutory and case authorities, we resolve Pink's appeal as follows.

We are hampered in the review of this case by the briefs filed by Pink as they are in wholesale noncompliance with the Hawai'i Rules of Appellate Procedure. Our appellate courts have "consistently adhered to the policy of affording litigants the opportunity to have their cases heard on the merits, where possible," Schefke v. Reliable Collection Agency, Ltd., 96 Hawai'i 408, 420, 32 P.3d 52, 64 (2001) (internal quotation marks and citation omitted; emphasis supplied), and have in several instances addressed the merits of an appeal, the nonconformance of the appellate briefs notwithstanding. see, e.g., Housing Fin. & Dev. Corp. v. Ferguson, 91 Hawai'i 81, 85-86, 979 P.2d 1107, 1111-12 (1999); O'Connor v. Diocese of Honolulu, 77 Hawai'i 383, 386, 885 P.2d 361, 364 (1994). This is especially true where, as here, the litigant is pro se.

However, Pink's opening brief does not advance meaningfully coherent legal arguments. Fundamental amongst the defects is the fact that, although Pink appears to challenge the findings of fact and conclusions of law made by the District Court, he has failed to direct this court to the evidence presented to the District Court that supports his allegations of error. As the Hawai'i Supreme Court observed long ago,

Appellant has the burden of sustaining his allegations of error against the presumption of correctness and regularity that attend the decision of the lower court. [T]he burden of showing error is on the plaintiffs in error. We necessarily approach a case with the assumption that no error has been committed upon the trial and until this assumption has been overcome by a positive showing the prevailing party is entitled to an affirmance.

² "Section 8" refers to "Section 8 of the United States Housing Act of 1937 (42 United States Code 1437f)."

Ala Moana Boat Owners' Ass'n v. State, 50 Haw. 156, 158, 434 P.2d 516, 518 (1967) (punctuation altered).

Moreover, our review of the record finds support for the District Court's finding that the parties signed the Section 8 rental agreement. Under the applicable statutes, regulations, and contract principles this rental agreement controlled. 24 Code of Federal Regulations, §§ 982.308, 983.305, 982.451; Hawaii Administrative Rules (HAR) § 15-185-43; Rules and Regulations of the Section 8 Housing Assistance Programs City and County of Honolulu §§ 1-15, 1-16, available at <http://ww1.honolulu.gov/dcs/attachmentaadminrule12008mergedfinalforannualplan.pdf> (last visited July 10, 2013).

Based on the foregoing, the February 17, 2010 Judgment entered by the District Court of the First Circuit, Waialua Division is affirmed.

DATED: Honolulu, Hawai'i, July 26, 2013.

On the briefs:

Heinz Pink,
Plaintiff-Appellant, pro se.

Presiding Judge

M. Nalani Fujimori Kaina and
Russ S. Awakuni
for Defendant-Appellee.

Associate Judge

Associate Judge