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NO. CAAP-11-0000488

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

COUNTY OF HAWAI'I, a municipal corporation
of the State of Hawai'i, Plaintiff-Appellee,
v.
ABEL SIMEONA LUI, et al., Defendants-Appellants

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
(CASE NO. 3RC11-1-131K)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Abel Simeona Lui (Lui) appeals from the "Order Granting Plaintiff's Motion For Summary Judgment" entered June 15, 2011 in the District Court of the Third Circuit¹ (district court).

Lui claims Plaintiff-Appellee County of Hawai'i (County) does not have legal title to a parcel of real property located at Kawa, Ka'u, Hawai'i (Property) and instead claims he is the rightful owner. Lui claims to have occupied the Property (consisting of two parcels) since he moved to the Island of Hawai'i in approximately 1987-1988.

In 1983, Thomas Okuna (Okuna), the owner of the Property at that time, filed a Complaint to Quiet Title of the

¹ The Honorable Joseph P. Florendo, Jr. presided.

Property. Five years later, in 1988, a Decree Quieting Title was entered. The decree determined conclusively who owned the Property and who had rights to access the Property. Lui is not an individual with any interest in the Property.

After quieting title, Okuna filed an ejectment action (Thomas M. Okuna v. Abel Lui, et al., Civil No. 01-246 KU, District Court of the Third Circuit, State of Hawai'i) against Lui and several other people who were illegally occupying the Property. The district court determined that Okuna was entitled to immediate and exclusive possession of the Property and issued a Judgment for Ejectment and Writ of Possession against Lui (and all persons holding under or through him). Okuna sold the Property in 2005 to Waihinou Dreams, LLC (Waihinou Dreams) and in 2008, the County purchased one of the parcels from Waihinou Dreams.

On February 22, 2011, the County filed a Complaint for Ejectment against Lui. On May 3, 2011, the County filed a Motion for Summary Judgment. On June 15, 2011, the district court entered the "Order Granting [County's] Motion for Summary Judgment."

The appellate court reviews "the [district] court's grant or denial of summary judgment de novo." Querubin v. Thronas, 107 Hawai'i 48, 56, 109 P.3d 689, 697 (2005) (quoting Durette v. Aloha Plastic Recycling, Inc., 105 Hawai'i 490, 501, 100 P.3d 60, 71 (2004)).

The Hawai'i Supreme Court has often articulated that 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 judgment as a matter of law. 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. The evidence must be viewed in the light most favorable to the non-moving party. In other words, we must view all of the evidence and the inferences drawn therefrom in the light most favorable to the party opposing the motion.

Querubin, 107 Hawai'i at 56, 109 P.3d at 697 (quoting Durette, 105 Hawai'i at 501, 100 P.3d at 71).

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, as well as the relevant statutory and case law, we conclude Lui's appeal is without merit.

There are no genuine issues as to any material fact, and the County was entitled to judgment as a matter of law.

Therefore,

IT IS HEREBY ORDERED that the "Order Granting Plaintiff's Motion For Summary Judgment" entered June 15, 2011 in the District Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, October 30, 2012.

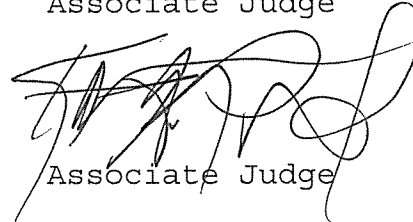
On the briefs:

Abel Simeona Lui
Defendant-Appellant pro se.

Laureen L. Martin
Joseph K. Kamelamela
Kimberly K. Angay
Deputies Corporation Counsel
County of Hawai'i
for Plaintiff-Appellee.


Presiding Judge


Associate Judge


Associate Judge