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NO. 30475

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

KA'UPULEHU LAND LLC, a Hawaii limited liability company,
Plaintiff-Appellee,
v.
HEIRS AND ASSIGNS OF PAHUKULA (k); et al.,
Defendants-Appellants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 08-1-0023K)

MEMORANDUM OPINION

(By: Nakamura, C.J., Foley and Fujise, JJ.)

Defendants-Appellants Carolyn N. Azbell, Mary Ann N. Cayetano, Thomas W. Clarke, Michael P. Correa, Myrna M. Dayondon, Robin P. Decoite, Eldora K. James, Christine P. Kakalia, Joshlynn M. Keahi, Mary I. Lovelace, Albert G. McDougall, Alberta J.P. McDougall, Estate of Daniel W. McDougall, Brandy N. McDougall, Dougal M.V. McDougall, Janelle McDougall-Shaw, Patricia W. McDougall, Scotlee K. McDougall, William P. McDougall IV, Tutabelle M. Ojeda, Mary C.P.M. Pereira and Barbara J. Von Arnswaldt (collectively, Appellants) appeal from a March 25, 2010 Final Judgment in favor of Plaintiff-Appellee Ka'upulehu Land LLC (Ka'upulehu Land), entered in the Circuit Court of the Third Circuit¹ (circuit court).

Ka'upulehu Land moved for default and/or summary

¹ The Honorable Elizabeth A. Strance presided.

judgment, and the circuit court found that no genuine issues of material fact existed regarding title to the subject real property and that Ka'upulehu Land was entitled, as a matter of law, to 100% of the property through adverse possession.

On appeal, Appellants contend the circuit court erred by granting Ka'upulehu Land's February 4, 2010 Motion for Default and/or Summary Judgment because: (1) whether David Hukai Kahoiwai (David) sold the real property at issue before his death is a question of fact to be resolved at a trial; and (2) Ka'upulehu Land was not entitled to judgment as a matter of law as it was unable to claim title to the property by adverse possession.

I. BACKGROUND

In this quiet title action brought by Ka'upulehu Land LLC, both Ka'upulehu Land LLC and Appellants claim an interest in the following property (Property):

All of that certain parcel of land (being all of the land(s) described in and covered by Royal Patent Number 6667, Land Commission Award number 8723, Apana 1 to Kahoiwai) situate, lying and being at Mahukona, District of Kohala, Island and County of Hawaii, State of Hawaii, bearing Tax Key designation (3)5-7-002-004, and containing an area of 11.746 acres, more or less[.]

Ka'upulehu Land LLC asserts that it and its predecessors-in-interest have been in sole possession of the Property since 1961.

The Property was originally granted to Kahoiwai. In 1885, David² was conveyed the Property from his father. David died intestate in 1903. David's estate was probated under Probate Number 24, filed August 24, 1904. The probate court determined David had four heirs: his two sisters, Kenoiaina and Miliama,³ his brother, Pahukula, and his niece, Pua (collectively, David's heirs).

The record undisputedly supports the fact that David's heirs received no interest to the Property through the probate process. The probate inventory, dated February 6, 1905, stated

² David was also known as Kaehuokekai.

³ Miliama was also known as Miriam Kahoiwai.

David owned no real estate at death and contained an averment by the estate's administrator confirming that to his knowledge, the Property had been sold during David's lifetime. The clerk's minutes from February 2, 1906 provided: "Sam Keanu makes an appearance as a claimant to real estate which he claims [David] owned and sold." On August 22, 1906, David's heirs executed a power of attorney with attorney H.L. Holstein⁴ that appears to contain a clerk's accounting of the probate expenses and the residue of the estate, acknowledged by David's heirs as accurate. David's purported pre-death conveyance of the Property, however, does not appear of record.

Conversely, several conveyances of interests in the Property were recorded after David's death. On January 29, 1906, just before Sam Keanu's probate appearance, Miliama and her husband deeded "all of her right, title and interest in and to the real and personal property of [David], deceased, situate at Kohala, Hawaii" to Sam Keanu. On October 15, 1907, Kenoiaina and her husband deeded "all of her right, title and interest in and to [the Property] . . . which was inherited by [Kenoiaina]" to William P. McDougall. On April 9, 1908, Pua and her husband deeded "all of her right, title and interest in and to [the Property] [acquired by [David] . . . and inherited by [Pua]" to H.L. Holstein. On February 1, 1909 H.L. Holstein and his wife deeded "all of his right, title and interest in and to portion of [the Property], [purchased by me from [Pua and her Husband]" to William P. McDougall. On August 30, 1917, the probate of David's estate was closed.

On January 25, 2008, Ka'upulehu Land filed a complaint in circuit court to adjudicate title to the Property. Ka'upulehu Land asserted four causes of action in its complaint: (1) to quiet title to real Property; (2) for adverse possession of the Property; (3) for restitution; and (4) for partition.

Defendants-Appellants Brandy McDougall, Janelle

⁴ H.L. Holstein was the attorney of record for David's heirs throughout the probate process.

McDougall-Shaw, Carolyn Azbell, and Robin McDougall Decoite (collectively, Decoite Defendants) filed their answer to the complaint on August 27, 2008, claiming title to the Property as McDougall's heirs. The remaining appellants (collectively, Cayetano Defendants) filed their answers at various times, also claiming title to the Property as McDougall's heirs.

On December 3, 2009, Ka'upulehu Land filed a Motion for Default and/or Summary Judgment (MSJ), which was heard on December 21, 2009. In its MSJ, Ka'upulehu Land contended: (1) it has title to 100% of the Property by adverse possession because David sold the Property before his death and David's heirs did not inherit any interest in the Property; and (2) in the alternative, if the circuit court finds that David did not sell the Property before his death, Ka'upulehu Land has paper title to 50% of the Property as a cotenant with Appellants. On December 11, 2009, the Decoite Defendants and Cayetano Defendants filed separate oppositions to the MSJ.

On February 4, 2010, the circuit court filed its "Order Granting [Ka'upulehu Land's] Motion for Default And/Or Summary Judgment, Filed December 3, 2009," stating:

The Court finds that there exists no genuine issues of material fact with respect to title of the Property and that Plaintiff is entitled to judgment as a matter of law. The Court further finds that Plaintiff is entitled to 100% title of the Property free of all claims and encumbrances.

On March 25, 2010, the circuit court filed a Final Judgment pursuant to Hawai'i Rules of Civil Procedure (HRCP) Rule 54(b) in favor of Ka'upulehu Land and against all other parties regarding Ka'upulehu Land's quiet title action. On April 22, 2010, Appellants timely filed a notice of appeal from the March 25, 2010⁵ judgment.

II. STANDARD OF REVIEW

We review summary judgments de novo. See Kamaka v. Goodsill Anderson Quinn & Stifel, 117 Hawai'i 92, 104, 176 P.3d

⁵ The Notice of Appeal states the Final Judgment was filed on March 24, 2010. However, the file stamp on the Final Judgment indicates that it was filed on March 25, 2010.

91, 103 (2008).

Under HRCP Rule 56(c), the circuit court must grant a motion for summary judgment when the moving party: (1) has shown that there is no genuine issue regarding any material fact, and (2) 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." Kamaka at 104, 176 P.3d at 103.

If the moving party meets its burden of production, the non-moving party must present admissible evidence showing specific facts about essential elements of each claim to avoid summary judgment. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). We view the evidence in the light most favorable to the non-moving party; factual inferences are made in favor of the non-moving party. See Kamaka at 117 Hawai'i 104, 176 P.3d 103.

Summary judgment is a drastic remedy and must be cautiously invoked to prevent the improper deprivation of a party's right to a trial on disputed factual issues. See GECC Fin. Corp. v. Jaffarian, 79 Hawai'i 516, 521, 904 P.2d 530, 535 (App. 1995) *aff'd*, 80 Hawai'i 118, 905 P.2d 624 (1995). Summary judgment should only be granted if the entire record shows a right to judgment with "such clarity as to leave no room for controversy and establishes affirmatively that the adverse party cannot prevail under any circumstances." Yamaguchi v. Queen's Med. Ctr., 65 Haw. 84, 91, 648 P.2d 689, 694 (1982) (citation and internal quotation mark omitted).

III. DISCUSSION

Quiet title plaintiffs have the initial burden to prove a title in or to the land in dispute. See Alexander & Baldwin, Inc. v. Silva, 124 Hawai'i 476, 482, 248 P.3d 1207, 1213 (App. 2011). The plaintiff's prima facie case is usually made by providing evidence of the initial land grant award and tracing ownership forward to the plaintiff through paper title or

evidence of adverse possession. Id. If the plaintiff and the defendant both provide evidence supporting their claims of title, then the court must decide, based on the evidence presented, which party has title superior to that of the other party. Id.

To prevent the plaintiff from quieting title, the defendant must prove that its title is superior to the plaintiffs. Id. However, to defeat a motion for summary judgment, the quiet title defendant does not need to prove perfect title. Alexander & Baldwin, 124 Hawai'i at 487, 248 P.3d at 1218.

In Alexander & Baldwin, the plaintiff moved for partial summary judgment against a defendant in an action to quiet title to two parcels of real property. Alexander & Baldwin, 124 Hawai'i at 481, 248 P.3d at 1212. The defendant submitted copies of deeds, probate orders and minutes, marriage licences, birth and death certificates, and other records to support his claim of title to the subject property. Id. at 487, 248 P.3d at 1218. The defendant "tacitly [admitted] that there [were] flaws and/or gaps in his chain of paper title." Id. The plaintiff contended such flaws were fatal to the defendant's claim as the defendant solely alleged record title and made no claim of adverse possession. Id. The plaintiff, without submitting evidence of its own claim of title, rested its motion for summary judgment on the defendant's lack of perfect title. Id. Because the evidentiary standard of summary judgment favors the non-moving party, this court concluded the defendants' title need not be perfect to survive summary judgment. Id. We held the broken paper chain of title, viewed in the light most favorable to the defendant, presented a genuine issue of material fact "worthy of trial concerning [the defendant's] claim to title in [the subject property]." Id.

Like the defendant in Alexander & Baldwin, the Defendants here have also provided evidence showing interests in the Property through a chain of paper title that is not perfect. But in the case at hand, the break in the chain of record title

carries an added significance: the break places the existence of a cotenancy between Ka'upulehu Land and the Defendants in dispute.

If there were no gaps in the chain of record title, the parties would be cotenants because the paper interests of all parties originate with the series of conveyances made by David's heirs. Ka'upulehu Land purchased its interest in the Property in 2004 and traces its paper title directly to Miliama, one of David's four heirs. Defendants' paper titles trace back to Kenoiana and Pua, two of David's other heirs. The break occurs between David and his heirs: David's probate records suggest the Property was sold before he died, and that no interest in the Property was distributed to David's heirs through probate. Yet, there is no recorded conveyance by David to any third party, and three of David's four heirs conveyed an interest in the Property after David's death and before probate closed. The issue then is where there is a shared break in the parties' chains of record title, does Ka'upulehu Land prevail on summary judgment by claiming superior title to the Defendants through adverse possession?

On summary judgment, "as the party who will have the burden of proof at trial to show that it has superior title, the plaintiff-movant [bears] the burden of production in showing that there is no genuine issue of material fact regarding the defendant-claimant's interest, as well as the ultimate burden of persuasion on the issue." Alexander & Baldwin, 124 Hawai'i at 485, 248 P.3d at 1216.

To establish title to real property by adverse possession a claimant must prove by clear and positive proof each element of actual, open, notorious, hostile, continuous, and exclusive possession for the statutory period. Wailuku Agribusiness Co. v. Ah Sam, 114 Hawai'i 24, 33, 155 P.3d 1125, 1134 (2007). Where a "cotenancy exists there is a special burden in proving hostile possession that requires the cotenants making

a claim of adverse possession to show that they had acted in good faith⁶ in relation to their cotenants." Id. at 34, 155 P.3d at 1135 (citation and internal quotation marks omitted). A finding of bad faith may be inferred from evidence that the cotenant in possession should have known that a cotenancy existed. Id. at 35, 155 P.3d at 1136. Breaks in chains of record title provide reason to suspect the existence of one or more cotenancies. Petran v. Allencastre, 91 Hawai'i 545, 985 P.2d 1112 (App. 1999).

Ka'upulehu Land contends the break in the chain of record title, regardless of whether it provided reason to suspect a cotenancy, eliminates any potential cotenancy between itself and Defendants. And since Ka'upulehu Land has satisfied all elements of adverse possession against a non-cotenant, they contend it is entitled to a judgment quieting title to the Property in its favor as a matter of law. The circuit court by granting summary judgment in favor of Ka'upulehu Land, concluding that a cotenancy did not exist, erroneously resolved this disputed issue of material fact in favor of Ka'upulehu Land.

We agree with Defendants that the lack of a recording from David's purported pre-death conveyance, together with the recorded conveyances of interests in the Property by David's heirs, are genuine issues of material fact regarding the existence of a cotenancy. The existence of a cotenancy is a material fact that Ka'upulehu Land must overcome to satisfy its proof of title through adverse possession. See Kamaka, 117 Hawai'i at 104, 176 P.3d at 103; Wailuku Agribusiness Co., 114 Hawai'i at 34, 155 P.3d at 1135.

The conveyances to Sam Keanu and H.L. Holstein are particularly notable from an evidentiary standpoint. At David's probate proceedings, Keanu testified the Property had been previously sold. H.L. Holstein was the attorney of record for

⁶ "The requirement of good faith will, in most cases, mandate that the tenant claiming adversely must actually notify his or her cotenants that he or she is claiming against them." Wailuku Agribusiness Co., 114 Hawai'i at 34, 155 P.3d at 1135 (citation and internal quotation marks omitted).

David's heirs during the probate proceedings. While Keanu and Holstein had knowledge of the probate proceedings that did not distribute any interest in the Property to David's heirs, both took interests in the Property from David's heirs and subsequently conveyed those interests. Any inferences from this evidence must favor the Defendants, the non-moving party.

We note that the parties do not dispute the existence of facts that support both parties' contentions. However, genuine issues of material fact may arise from conflicting interpretations of certain undisputed facts, as here, precluding summary judgment:

A judge ruling on a motion for summary judgment cannot summarily try the facts; his role is limited to applying the law to the facts that have been established by the litigants' papers. Therefore, a party moving for summary judgment is not entitled to a judgment merely because the facts he offers appear more plausible than those tendered in opposition or because it appears that the adversary is unlikely to prevail at trial. . . . Therefore, if the evidence presented on the motion is subject to conflicting interpretations, or reasonable men might differ as to its significance, summary judgment is improper.

Makila Land Co. v. Kapu, 114 Hawai'i 56, 67-68, 156 P.3d 482, 493 (App. 2006) (citing Kajiya v. Dept. of Water Supply, 2 Haw. App. 221, 224, 629 P.2d 635, 638-39 (1981)). We cannot conclude that Ka'upulehu Land has a right to judgment with such clarity as to leave no room for controversy, nor has Ka'upulehu Land established affirmatively that Defendants cannot prevail under any circumstances. See Yamaguchi, 65 Haw. at 91, 648 P.2d at 694; see also Makila Land Co., (plaintiff established prima facie case regarding title on summary judgment as it was reasonable to infer from documents presented that plaintiff's predecessor in interest received entire parcel of land from father; however, summary judgment was not proper because the defendant presented evidence that plaintiff's predecessor in interest may not have inherited title to the subject Property, thus creating a genuine issue of material fact regarding who held superior title).

IV. CONCLUSION

Accordingly, the March 25, 2010 Final Judgment entered

in the Circuit Court of the Third Circuit is vacated and this case is remanded for further proceedings consistent with this opinion.

DATED: Honolulu, Hawai'i, December 11, 2013.

On the briefs:

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Chief Judge


Associate Judge


Associate Judge