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Intermediate Court of Appeals
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NO. CAAP-13-0000156

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

RODNEY Y. SATO,
Plaintiff/Counterclaim-Defendant/Appellee,
v.

WAHIAWA-CENTRAL OAHU HEALTH CENTER, INC., a Hawaii non-profit
corporation, THE WAHIAWA HOSPITAL ASSOCIATION, a Hawaii
non-profit corporation, and WAHIAWA GENERAL HOSPITAL, a
Hawaii non-profit corporation,
Defendants/Counterclaim-Plaintiffs/Appellants
and
JOHN DOES 1-10, JANE DOES 1-10, DOE ENTITIES 1-10,
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 09-1-1087)

SUMMARY DISPOSITION ORDER

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

Defendants/Counterclaim-Plaintiffs/Appellants The
Wahiawa Hospital Association (**WHA**) and Wahiawa General Hospital
(**WGH**) (together, **Wahiawa Hospitals**) appeal from the Circuit Court
of the First Circuit's¹ (**circuit court**):

(1) a February 11, 2013 post-judgment order granting
in part and denying in part Wahiawa Hospital Association and
Wahiawa General Hospital's October 25, 2012 Hawaii Rules of
Civil Procedure (**HRCPP**) Rule 54(d)(2)(B) motion for attorneys'
fees and costs (**Order Granting/Denying**), and

¹

The Honorable Rhonda A. Nishimura presided.

(2) a February 22, 2013 post-judgment order granting Plaintiff/Counterclaim-Defendant/Appellee Rodney Y. Sato's (**Sato**) October 26, 2012 HRCF Rule 54(d)(2)(B) motion for attorneys' fees and costs (**Order Granting**).

On May 8, 2009, Sato filed a complaint for breach of contract and promissory estoppel against WHA, WGH, and Wahiawa-Central Oahu Health Center (**WCOHC**).

On May 29, 2009, Sato filed a notice of voluntarily dismissal of his complaint as to WCOHC pursuant to HRCF Rule 41(a)(1).

On June 1, 2009, Wahiawa Hospitals answered Sato's complaint and asserted a counterclaim against Sato for misrepresentation and negligence.

On October 12, 2012, the circuit court

(1) entered judgment in favor of Sato and against Wahiawa Hospitals as to Sato's cause of action for breach of contract relating to Sato's services as a consultant;

(2) entered judgment in favor of Wahiawa Hospitals and against Sato as to Sato's cause of action for breach of contract relating to Sato's deferred compensation and/or incentive remuneration;

(3) entered judgment in favor of Wahiawa Hospitals and against Sato as to Sato's cause of action for breach of contract relating to Sato's unreimbursed expenses;

(4) entered judgment in favor of Wahiawa Hospitals and against Sato as to Sato's cause of action for promissory estoppel; and

(5) entered judgment in favor of Sato and against Wahiawa Hospitals as to Wahiawa Hospitals' counterclaim.

On October 25, 2012, Wahiawa Hospitals filed an HRCF Rule 54(d)(2)(B) motion for attorneys' fees and costs. The ninetieth day after October 25, 2012, was January 23, 2013, and, thus, at the end of the business day on January 23, 2013, Wahiawa Hospitals' October 25, 2012 HRCF Rule 54(d)(2)(B) motion for attorneys' fees and costs was automatically deemed denied by

operation of Hawai'i Rules of Appellate Procedure (HRAP) Rule 4(a)(3).

On October 26, 2012, Sato filed an HRCP Rule 54(d)(2)(B) motion for attorneys' fees and costs. The ninetieth day after October 26, 2012, was January 24, 2013, and, thus, at the end of the business day on January 24, 2013, Sato's October 26, 2012 HRCP Rule 54(d)(2)(B) motion for attorneys' fees and costs was automatically deemed denied by operation of HRAP Rule 4(a)(3).

On December 26, 2012, the circuit court entered an amended judgment that was substantively identical to the October 12, 2012 judgment, except that the December 26, 2012 amended judgment expressly dismissed all claims by Sato against WCOHC.

On January 23, 2013, Sato filed a notice of appeal from the December 26, 2012 amended judgment. This appeal became appellate court case no. CAAP-13-0000042.² On February 5, 2013, Wahiawa Hospitals filed a notice of cross-appeal in appellate court case no. CAAP-13-0000042 also from the December 26, 2012 amended judgment.

On February 11, 2013, the circuit court entered its Order Granting/Denying, granting in part and denying in part Wahiawa Hospitals' October 25, 2012 HRCP Rule 54(d)(2)(B) motion for attorneys' fees and costs.

On February 22, 2013, the circuit court entered its Order Granting, granting Sato's October 26, 2012 HRCP Rule 54(d)(2)(B) motion for attorneys' fees and costs.

On March 11, 2013, Wahiawa Hospitals filed a notice of appeal from the February 11, 2013 Order Granting/Denying and the February 22, 2013 Order Granting in the instant appeal, in which this court has jurisdiction. See Association of Condominium Homeowners of Tropics at Waikele ex rel Bd. of Directors v. Sakuma, 131 Hawai'i 254, 318 P.3d 94 (2013).

Upon careful review of the record and the briefs

² See Sato v. Wahiawa-Central Oahu Health Center, Inc., No. CAAP-13-0000042 (App. March 17, 2015) (mem.) (Sato, CAAP-13-0000042).

submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, as well as Sato, CAAP-13-0000042, we vacate the circuit court's February 11, 2013 Order Granting/Denying and the February 22, 2013 Order Granting.

In Sato, CAAP-13-0000042, this court held the circuit court erred in dismissing Wahiawa Hospitals' counterclaim based on its conclusion that Sato did not breach his duty of loyalty such as to warrant complete disgorgement of Sato's fees and costs as a consultant adviser. This court additionally held that the circuit court erred by dismissing Wahiawa Hospitals' counterclaim because Sato breached his duty of loyalty to Wahiawa Hospitals and remanded the case to the circuit court to determine whether Wahiawa Hospitals is entitled to damages for Sato's breach of his duty of loyalty.

Since the circuit court's Order Granting/Denying and Order Granting were based in part on the entry of judgment in favor of Sato on Wahiawa Hospitals' counterclaim, those orders must be vacated without prejudice to renewed motions for attorney fees and costs subsequent to the circuit court's resolution of Wahiawa Hospitals' claim for damages against Sato for breach of his duty of loyalty. In considering renewed motions for attorney fees and costs, the circuit court shall also reconsider Wahiawa Hospitals' request for attorney fees based on Sato's dismissed promissory estoppel claim, which was in the nature of assumpsit, contrary to the circuit court's ruling on the matter. 808 Dev., LLC v. Murakami, 111 Hawai'i 340, 366, 141 P.3d 996, 1013 (2006); Porter v. Hu, 116 Hawai'i 42, 66, 169 P.3d 994, 1018 (App. 2007).

Therefore,

IT IS HEREBY ORDERED that the February 11, 2013 "Order Granting In Part And Denying In Part 'Defendants The Wahiawa Hospital Association And Wahiawa General Hospital's Motion For Award of Attorneys' Fees And Costs' Filed October 25, 2012," and the February 22, 2013 "Order Granting Plaintiff's Non-Hearing Motion For An Award Of Attorneys' Fees As The Prevailing Party Under Final Judgment Filed October 12, 2012" both entered in the

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

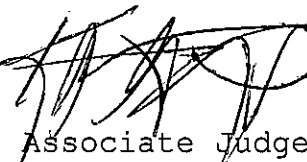
Circuit Court of the First Circuit are vacated and this case is remanded for further proceedings consistent with this Summary Disposition Order.

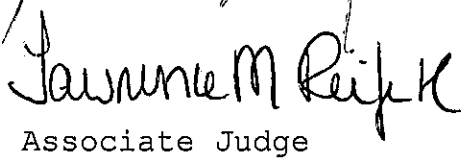
DATED: Honolulu, Hawai'i, April 13, 2015.

On the briefs:
Ronald I. Heller
Brian W. Tilker
(Torkildson, Katz, Moore,
Hetherington & Harris)
for Defendants/Counterclaim-
Plaintiffs/Appellants.

Eric A. Seitz
Della A. Belatti
Sarah R. Devine
(Eric A. Seitz, Attorney at
Law, a Law Corporation)
for Plaintiff/Counterclaim-
Defendant/Appellee.


Christie R. Foley
Presiding Judge


Associate Judge


Dawn M. Reiff
Associate Judge