

NO. CAAP-13-0002064

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

JOHN HASIRCOGLU AND MARIA HASIRCOGLU,
Plaintiffs-Appellants,
v.
FOPCO, INC.,
Defendant-Appellees,
and
JOHN DOES 1-10, DOE PARTNERSHIPS 1-10,
DOE ASSOCIATIONS 1-10, and DOE CORPORATIONS 1-10,
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 11-1-0111(1))

MEMORANDUM OPINION

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

Plaintiffs-Appellants John Hasircoglu (**Hasircoglu**) and Maria Hasircoglu (together, **the Hasircoglus**) appeal the "Order Granting Defendant FOPCO, Inc.'s Motion for Summary Judgment Filed on May 7, 2013" entered on June 17, 2013 in the Circuit Court of the Second Circuit¹ (**circuit court**).

On appeal, the Hasircoglus contend the circuit court erred in granting summary judgment in favor of Defendant-Appellee FOPCO, Inc. (**FOPCO**).

I. BACKGROUND

Around August 27, 2008, the State of Hawaii, Agricultural Resource Management Division of the Department of Agriculture (**State**) entered into a contract (**Prime Contract**) with FOPCO for a construction project on Moloka'i (**Moloka'i Project**).

¹ The Honorable Rhonda I.L. Loo presided.

In a letter to FOPCO enclosing the Prime Contract, the State asked FOPCO to submit the name of a superintendent or qualified representative on the job site. In an undated document titled "Project Superintendent and Key Personnel," FOPCO listed its president, Dennis C. McElrath (**McElrath**), as the "Project Manager"; project manager at T&M Construction Services, Inc. (**T&M**), Donald Clark (**Clark**), as the "Project Superintendent"; and owner and president of T&M, Michael Estes (**Estes**), as the "Health and Safety Manager."

In October 2008, FOPCO executed a "Subcontract Agreement" (**Subcontract**) with T&M for the provision of electrical services for the Moloka'i Project.

Hasircoglu began working for T&M around January 1, 2009. Hasircoglu alleged that on February 26, 2009, he was injured when a large spool holding wire and weighing approximately 2,500 pounds hit him while he was riding next to the spool on a trailer pulled by another vehicle. According to Hasircoglu, Clark had instructed Hasircoglu to sit on the trailer in front of the spool holder.

On February 22, 2011, the Hasircoglus filed a complaint in the circuit court alleging, among other claims, a claim for negligence against FOPCO. On May 7, 2013, FOPCO filed a motion for summary judgment (**MSJ**). At a hearing on June 4, 2013, the circuit court granted FOPCO's MSJ. The circuit court entered its order granting FOPCO's MSJ on June 17, 2013.

The Hasircoglus filed a premature notice of appeal on July 17, 2013.² The circuit court entered its judgment in favor of FOPCO on September 9, 2013.

II. STANDARD OF REVIEW

An appellate court reviews an award of summary judgment de novo under the same standard applied by the circuit court. Fujimoto v. Au, 95 Hawai'i 116, 136, 19 P.3d 699, 719 (2001) (citing Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 104, 839 P.2d 10, 22 . . . (1992)). This court articulated the standard as follows:

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and

² Hawai'i Rules of Appellate Procedure Rule 4(a)(2) permits the filing of a notice of appeal after the announcement of a decision but before entry of the judgment or order.

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.

Id. (citations omitted). We must review the evidence in the light most favorable to the party opposing the motion for summary judgment. Id. at 137, 19 P.3d at 720 (citing State ex rel. Bronster v. Yoshina, 84 Hawai'i 179, 186, 932 P.2d 316, 323 (1997) and Maguire v. Hilton Hotels Corp., 79 Hawai'i 110, 112, 899 P.2d 393, 395 (1995)).

Thomas v. Kidani, 126 Hawai'i 125, 127-28, 267 P.3d 1230, 1232-33 (2011).

III. DISCUSSION

This appeal concerns whether FOPCO owed a duty of care to Hasircoglu, an employee of T&M. The Hasircoglus contend that Estes and Clark were agents of FOPCO, that they were responsible for safely securing a spool of wire that Hasircoglu asserts hit him in the head and back, and that there are genuine issues of material fact as to whether Estes or Clark negligently caused Hasircoglu's injuries and whether FOPCO was vicariously liable for Estes' or Clark's negligence. In response, FOPCO argues that the circuit court properly granted summary judgment because FOPCO demonstrated that there was no evidence showing that either Estes or Clark were employees or agents of FOPCO.

In support of their position that Estes and Clark acted as agents of FOPCO, the Hasircoglus cite a document listing Estes as the "Health and Safety Manager" and Clark as the "Project Superintendent."³ The Hasircoglus give no context to this document or explain how those positions create an agency relationship between Estes and FOPCO, and Clark and FOPCO. See Cho Mark Oriental Food, Ltd. v. K & K Int'l, 73 Haw. 509, 515, 836 P.2d 1057, 1061 (1992) ("An agency relationship may be created through actual or apparent authority."). On the contrary, FOPCO presented evidence, including the deposition testimony of Clark and Estes, that Clark and Estes were employees

³ The Hasircoglus also argue that the Subcontract contained an invalid delegation of FOPCO's duty to ensure a safe workplace to T&M in violation of the Prime Contract. However, the Hasircoglus do not explain how such an alleged breach of contract could support a claim that FOPCO violated a duty of care owed to Hasircoglu. Therefore, this argument does not advance their contention that the circuit court erred in granting summary judgment.

of T&M and were not subject to direction by FOPCO or any employee of FOPCO.

The document cited by the Hasircoglus is insufficient, particularly in light of the evidence that T&M was an independent contractor and that T&M, Estes, and Clark were not subject to direction by FOPCO, to raise a genuine issue of material fact as to whether Estes or Clark was in an agency relationship with FOPCP or whether FOPCO could be held vicariously liable for Estes' or Clark's negligence. The circuit court did not err in granting summary judgment for FOPCO.

IV. CONCLUSION

Therefore, the "Order Granting Defendant FOPCO, Inc.'s Motion for Summary Judgment Filed on May 7, 2013" entered on June 17, 2013 in the Circuit Court of the Second Circuit is affirmed.

DATED: Honolulu, Hawai'i, June 30, 2016.

On the briefs:

Charles H. Brower
and
Michael P. Healy
for Plaintiffs-Appellants.

Chief Judge

Jeffrey A. Griswold
(Lyons, Brandt, Cook &
Hiramatsu)
for Defendant-Appellee.

Associate Judge

Associate Judge