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NO. CAAP-22-0000121

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

THOMAS PEREZ NARVAEZ, Plaintiff-Appellant,
v.
SIMON B. ROJAS AND KATHY ROJAS, Defendants-Appellees

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
KO'OLAUPOKO DIVISION
(CASE NO. 1DRC-20-0004686)

SUMMARY DISPOSITION ORDER

(By: Ginoza, Chief Judge, Nakasone and Guidry, JJ.)

Plaintiff-Appellant Thomas Perez Narvaez (**Narvaez**) appeals from the March 7, 2022 Final Judgment (**Judgment**), and March 29, 2022 Order Awarding Attorney's Fees (**Attorney's Fees Order**), entered by the District Court of the First Circuit.¹ As explained below, we affirm the district court's Judgment, and vacate the Attorney's Fees Order.

¹ The Honorable Karin L. Holma presided.

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Alii Kawa Corp. presently leases a parcel of Kahuku Agricultural Park land from the State of Hawai'i (**State**), pursuant to General Lease No. S-6010 (**Lot 10**).² Narvaez is the president of Alii Kawa Corp.

In December 2016, Narvaez and Defendant-Appellee Simeon B. Rojas (**Rojas**)³ entered into a sublease agreement (**Sublease**), whereby Narvaez would sublease to Rojas a portion of Lot 10.⁴

In August 2020, Narvaez filed a complaint against Rojas and his wife, Defendant-Appellee Kathy Rojas,⁵ for summary possession of the subleased land. Narvaez contended that the Sublease was unenforceable because the Rojas defendants failed to qualify and be eligible for a lease under the terms of the Kahuku Agricultural Park program.

In May 2021, the Rojas defendants moved to dismiss and/or for summary judgment. The district court granted summary

² General Lease No. S-6010 was entered into, on March 15, 1999, by and between the State, Board of Agriculture, and Pau'la Manupule. On July 18, 2001, original lessee Pau'la Manupule assigned, with the lessor's consent, his interest in Lot 10 to Alii Kawa Corp.

³ The Sublease identifies the sublessee as "Simeon B. Rojas." Rojas is identified as "Simon B. Rojas" in the caption of this appeal.

⁴ Although the Sublease references Narvaez as the "Original Land Lease holder", and Narvaez signed the Sublease, it is Alii Kawa Corp. that is the lessee of General Lease No. S-6010. Alii Kawa Corp. is not named or referenced in the Sublease.

⁵ Kathy Rojas, although named as a defendant, did not enter into the Sublease between Narvaez and Rojas. Rojas and Kathy Rojas will be collectively referred to as "the Rojas defendants."

judgment in the Rojas defendants' favor, by an order dated September 27, 2021, ruling as a matter of law that the Sublease was not void, unenforceable, or rescindable. The district court entered the Judgment on March 7, 2022, and subsequently granted attorney's fees to the Rojas defendants.

On appeal, Narvaez contends that the district court erred in granting summary judgment to the Rojas defendants because: (1) the Sublease is unenforceable; and (2) Narvaez is entitled to summary possession of the subleased parcel because the Rojas defendants failed to obtain the State's approval for the Sublease, thereby violating the terms of the Sublease and the statutes and regulations governing the Kahuku Agricultural Park program. Narvaez further contends that the district court lacked jurisdiction to award attorney's fees to the Rojas defendants because the filing of Narvaez's notice of appeal divested the district court of jurisdiction over the Rojas defendants' motion for fees.

Upon careful review of the record and the briefs submitted by the parties,⁶ and having given due consideration to

⁶ The Rojas defendants' answering brief does not include any record citations or citations to legal authority, and also appends two unauthenticated documents (appendices 1 and 3) that are outside the record on appeal, in contravention of Hawai'i Rules of Appellate Procedure (**HRAP**) 28(b)(7) and (10). We note also that the points of error section of Narvaez's opening brief fails to comply with HRAP 28(b)(4). Counsel for both parties are cautioned to comply with HRAP Rule 28, and are reminded that failure to comply with the HRAP could result in sanctions.

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the arguments advanced and the issues raised by the parties, we resolve Narvaez's points of error as follows:

(1) Narvaez first contends that the Sublease is unenforceable,⁷ and that the district court thus erred in granting the Rojas defendants' motion for summary judgment.

This is an action brought by Narvaez for summary possession. "Summary possession is a statutory proceeding that enables a landlord to regain possession of his property and remove any tenant who is wrongfully in possession of the land in question." Queen Emma Found. v. Tingco, 74 Haw. 294, 299-300, 845 P.2d 1186, 1189 (1992) (citing Kimball v. Lincoln, 72 Haw. 117, 124, 809 P.2d 1130, 1134 (1991), and HRS § 666-1 (1985)). In order to state a claim for summary possession, a landlord must allege: (1) that a relation of landlord and tenant exists or has existed; (2) how such tenancy was created, whether by lease or parol; (3) when and how the tenancy was terminated; and (4) that required notice to quit was given. Coney v. Manele, 4 Haw. 154, 157 (Haw. Kingdom 1879); Haw. Land Co. v. Scott, 13 Haw. 385, 386 (Haw. Terr. 1901); Ahulii v. Yip Lan, 22 Haw. 739, 740-41 (Haw. Terr. 1915).

⁷ Narvaez's contentions that the Sublease is "contrary to" Hawaii Revised Statutes (HRS) Chapter 166 and Hawaii Administrative Rules (HAR) Chapter 4-153 are raised for the first time on appeal and therefore waived. Cnty. of Haw. v. C&J Coupe Fam. Ltd. P'ship, 119 Hawai'i 352, 373, 198 P.3d 615, 636 (2008) (quoting State v. Moses, 102 Hawai'i 449, 456, 77 P.3d 940, 947 (2003)); HRAP 28(b). HRS Chapter 166, and HAR Chapter 4-153, set forth, among other things, limitations on the transfer, assignment, and sublease of Kahuku Agricultural Park program lands.

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"The purpose of a summary possession proceeding is to provide a prompt remedy for landlords against tenants who have violated a material condition of their lease or have wrongfully withheld possession after expiration of the lease." Queen Emma Found., 74 Haw. at 300, 845 P.2d at 1189.

We conclude that the district court properly granted the Rojas defendants' motion for summary judgment. The district court was not wrong in its conclusion that,

In this case, despite numerous opportunities to present evidence in support of the allegation in his Complaint, Landlord has failed to do so. Landlord alleges that Tenant breached the Sublease, but has not submitted any evidence in support of this allegation.

The only argument Landlord makes in support of his claims is that the Sublease is void because he, Landlord, did not have the right to sublease the Property to Tenant in the first place, and therefore, Tenant has "no enforceable right to occupy or have any interest" in the Property. See Plaintiff's Response to Defendants' Motion at p. 2.

This is a specious argument. Landlord does not provide any authority for his argument that the Sublease is void because Landlord breached his own lease with the State of Hawai'i by not obtaining prior approval of the Sublease. If this was the case, the Sublease would be voidable at the election of the Tenant, not at the election of the Landlord. In addition, Tenant has been in possession of the Property for more than four years and there is no evidence that the State of Hawai'i has any objection to the Sublease. Landlord has presented no evidence that the State has raised an issue about the Sublease.

Because there is no genuine issue of material fact, and Defendants are entitled to judgment as a matter of law, the Court concludes that summary judgment against Landlord on the Complaint is appropriate.

"On appeal, the grant or denial of summary judgment is reviewed de novo." Ralston v. Yim, 129 Hawai'i 46, 55, 292 P.3d

1276, 1285 (2013) (citations omitted). The court applies the following standard,

[S]ummary 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 inferences drawn therefrom in the light most favorable to the party opposing the motion.

Id. at 55-56, 292 P.3d at 1285-86 (citation omitted).

The record reflects that the Rojas defendants satisfied their initial burden of production through Kathy Rojas' declaration and the attached Sublease. Ralston, 129 Hawai'i at 60, 292 P.3d at 1290 ("[A] summary judgment movant may satisfy his or her initial burden of production by either (1) presenting evidence negating an element of the non-movant's claim, or (2) demonstrating that the nonmovant will be unable to carry his or her burden of proof at trial" (citations omitted)). The burden then shifted to Narvaez, and Narvaez did not meet his burden of establishing that there is a genuine question of material fact for trial. Narvaez does not allege when and how the Sublease was terminated, and given that the legal lessor - Alii Kawa Corp. - is not a party to this matter (see supra n. 4), the undisputed facts establish that Narvaez is not entitled to summary possession of the subleased land.

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According to Narvaez, the Sublease is "unenforceable" because any sublessee of Kahuku Agricultural Park land is required by law to meet certain tenancy requirements. The Sublease contains no reference, however, to the State's Kahuku Agricultural Park tenancy requirements. Indeed, aside from a description of the subleased land as consisting of "3 acres of Kahuku Agricultural Park lot #10," and a provision that "[t]he landlord agrees that this agreement includes the access to water at the rate Kahuku Agricultural Park/Board of Water Supply is charging the landlord," the Sublease contains no reference to the Kahuku Agricultural Park program. The Sublease is thus devoid of any language that would require sublessee Rojas to comply with the Kahuku Agricultural Park tenancy requirements, as set forth in General Lease No. S-6010.

Narvaez has not alleged how the Rojas defendants' "failure" to comply with terms and conditions that are not part of the Sublease caused the termination of the Sublease. The record reflects that he did not submit any legal authority below to support that the Sublease was unenforceable. The district court did not err in granting summary judgment. Narvaez did not raise a genuine issue of material fact, and the Rojas defendants are entitled to summary judgment as a matter of law.

(2) Narvaez contends, in the alternative, that "even if the Sublease is somehow enforceable, Defendants failed to obtain the approval of the Department [of Agriculture] since

they entered in the Sublease in 2015, thereby violating the terms of the Sublease and the [Kahuku Agricultural Park] Program's statutes and regulations." As explained supra, Narvaez does not allege that the Sublease itself contains language requiring the sublessee to take any action to obtain the State's approval of the Rojas defendants' compliance with Kahuku Agricultural Park program requirements.⁸

Narvaez's contention that the Sublease was violated due to the Rojas defendants' "failure" to obtain the State's consent to the Sublease does not raise a genuine question of material fact as to whether the Sublease was terminated, and the district court did not err on this basis in granting the Rojas defendants' summary judgment motion.

(3) Narvaez argues, for the first time on appeal, that the District Court lacked jurisdiction to award attorney's fees to the Rojas defendants after Narvaez had filed a notice of appeal. Narvaez does not challenge the district court's order granting attorney's fees on the merits. Narvaez challenges only the district court's jurisdiction to dispose of the Rojas

⁸ The separate issue of whether the Sublease violated the terms of General Lease No. S-6010, and/or the State law provisions governing the lease of Kahuku Agricultural Park land, is not before this Court. The Lessor of General Lease No. S-6010, the State, is not a party to the present summary possession litigation, and has not challenged the legality or enforceability of the Sublease within the scope of this litigation.

defendant's attorney's fees motion after Narvaez filed his notice of appeal.⁹

With regard to jurisdiction,

The general rule is that courts are divested of jurisdiction upon the filing of a notice of appeal. . . . However, in Busher v. Boning, 114 Hawai'i 202, 221, 159 P.3d 814, 833 (2007), this court held that the 1999 version of HRAP Rule 4(a)(3) "supersedes the line of cases standing for the proposition that the circuit court lacks jurisdiction to award costs after a notice of appeal is filed" and "provides that the court has 90 days to dispose of a post-judgment motion to reconsider, vacate, or alter the judgement, or seeks attorney's fees or costs, regardless of when the notice of appeal was filed." Although HRAP Rule 4(a)(3) has since been amended, the language providing that a court has 90 days to dispose of a timely post-judgment motion has not changed substantively.

DL v. CL, 146 Hawai'i 415, 421-22, 463 P.3d 1072, 1078-79 (2020) (cleaned up).

The dispositive question is whether the Rojas defendants' fees motion was timely filed pursuant to a court rule that specifies the time for filing the post-judgment fees motion. "Under HRAP Rule 4(a)(3), only the filing of a timely motion for [fees or] costs, where court rules specify the time by which the motion must be filed: (1) tolls the time for filing a notice of appeal, and (2) extends the time the trial court retains jurisdiction to resolve the motion." Nakaoka v. Shizuru, 151 Hawai'i 510, 514, 517 P.3d 793, 797 (App. 2022)

⁹ Although raised for the first time during appellate briefing, this court will consider the question of the district court's jurisdiction to award fees while this matter was pending on appeal. Lingle v. Hawaii Government Employees Association, AFSCME, Local 152, 107 Hawai'i 178, 182, 111 P.3d 587, 591 (2005) ("Questions regarding subject matter jurisdiction may be raised at any stage of a cause of action.").

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(cleaned up), aff'd, SCWC-20-0000320, 2023 WL 4399999 (Haw. July 7, 2023) (SDO) (emphasis added).

Here, the record reflects that the Rojas defendants filed their attorney's fees motion on March 9, 2022, two days after the district court entered its Judgment on March 7, 2022, but prior to Narvaez's filing of the notice of appeal on March 13, 2022.¹⁰ The district court entered its Attorney's Fees Order on March 29, 2022, sixteen days after Narvaez filed his notice of appeal.

There is, however, no district court rule that specifies the time in which a post-judgment motion for attorney's fees may be filed. The district court rules of civil procedure, unlike the circuit court rules of civil procedure, are silent as to the time requirements for filing post-judgment motions for attorney's fees. In the absence of such a rule, we conclude that the district court lacked jurisdiction to dispose of the Rojas defendants' attorney's fees motion once Narvaez filed the notice of appeal. The attorney's fees motion remains pending in the district court and may be addressed on remand.

For the foregoing reasons, the district court's Judgment, entered on March 7, 2022, is affirmed. The district court's Attorney's Fees Order, dated March 29, 2022, is vacated,

¹⁰ The Rojas defendants originally filed their motion for attorney's fees on March 9. That motion was stricken with instructions by the district court to "[p]lease file non-hearing motion form #1DC39 for judicial approval." The Rojas defendants refiled their request for attorney's fees, using form #1DC39, on March 11.

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and this case is remanded to the district court for further proceedings consistent with this summary disposition order.

DATED: Honolulu, Hawai'i, September 22, 2023.

On the briefs:

Mateo Caballero,
for Plaintiff-Appellant.

/s/ Lisa M. Ginoza
Chief Judge

Bosko Petricevic,
for Defendants-Appellees.

/s/ Karen T. Nakasone
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge