

NO. 22873

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

CARL FOYTIK, Plaintiff-Appellant,

vs.

SUSAN M. CHANDLER, Director of the Department
of Human Services, a duly organized and
recognized agency of the State of Hawai'i,
Defendant-Appellee.

APPEAL FROM THE THIRD CIRCUIT COURT
(CIV. NO. 96-486)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Plaintiff-appellant Carl Foytik, appearing pro se, appeals from the third circuit court's final judgment, entered on September 20, 1999, by the Honorable Riki May Amano, presiding. On appeal, Foytik challenges the circuit court's denial of his motion for leave to file second amended complaint (motion to amend), filed April 23, 1999.

Upon carefully reviewing 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, we hold that the circuit court did not abuse its discretion in denying the motion to amend. Here, the circuit court

specifically ruled that allowing the proposed complaint would unduly prejudice the defendant. Hawai'i case law governing Hawai'i Rules of Civil Procedure (HRCP) Rule 15(a) has laid down the general standard that prejudice to the non-moving party is the touchstone for the denial of an amendment. Hirasa v. Butler, 68 Haw. 22, 26, 702 P.2d 772, 775 (1985); Bishop Trust Co., Ltd. v. Kamokila Development Corp., 57 Haw. 330, 337, 555 P.2d 1193, 1198 (1976).

The record indicates that Foytik's proposed second amended complaint was formally and substantively different from the document it sought to supercede. Although Foytik argues that inclusion of the proposed class action allegations, standing alone, would not have unduly prejudiced the defendant, it cannot be said that the court "clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant" in ruling that the proposed second amended complaint, as a whole, would cause undue prejudice. Molinar v. Schweizer, 95 Hawai'i 331, 335, 22 P.3d 978, 982 (2001) (citing Canalez v. Bob's Appliance, 89 Hawai'i 292, 300, 972 P.2d 295, 303 (1999)). We hold that the circuit court did not err in evaluating the cumulative impact of the proposed amended complaint as presented and was under no obligation to edit out those aspects it deemed prejudicial. Therefore,

IT IS HEREBY ORDERED that the circuit court's April 23, 1999 order denying motion for leave to file second amended complaint is affirmed.

DATED: Honolulu, Hawai'i, April 18, 2002.

On the briefs:

Eric A. Seitz and
Lawrence I. Kawasaki,
for plaintiff-appellant.

Heidi M. Rian and
Wendy J. Utsumi,
Deputy Attorneys General,
for defendant-appellee.