

NO. 23813

IN THE SUPREME COURT OF THE STATE OF HAWAII

RICHARD B. LEANDER, JR. and SUSAN JANE HOYEZ,
Plaintiffs/Counterclaim Defendants-Appellees,

vs.

RAYMOND L. LEMAY, JR. and CYNTHIA J. LEMAY,
Defendants/Counterclaimants-Appellants.

APPEAL FROM THE THIRD CIRCUIT COURT
(CIV. NO. 97-192K)

SUMMARY DISPOSITION ORDER

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

Defendants/counterclaimants-appellants Raymond L. LeMay, Jr. and Cynthia J. LeMay [hereinafter, collectively, the defendants] appeal from the third circuit court's¹ July 10, 2000 final judgment. On appeal, the defendants challenge the following rulings made by the circuit court: (1) the June 29, 1999 order denying defendants' motion for directed verdict and/or to dismiss, wherein the court ruled that plaintiffs/counterclaim defendants-appellees Richard B. Leander and Susan J. Hoyez [hereinafter, collectively, the plaintiffs] had standing to enforce the Covenants, Conditions and Restrictions of the Komohana Kai I Subdivision [hereinafter, the subdivision

¹ The Honorable Ronald Ibarra presided over these matters.

covenants]; (2) the June 30, 1999 order granting the plaintiffs' motion for directed verdict as to defendants' punitive damages counterclaim; (3) the August 26, 1999 order granting in part plaintiffs' motion for judgment notwithstanding the verdict and/or for new trial with respect to the defendants' counterclaim of intentional infliction of emotional distress; and (4) the October 26, 1999 order granting plaintiffs' motion to modify attorneys' fees and costs and the November 30, 1999 order granting defendants' motion for reconsideration of attorneys' fees and costs.

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 resolve the defendants' contentions as follows:

(1) With respect to the defendants' first point of error, "appellate jurisdiction of this court can only be invoked by a party aggrieved by the decision, judgment, order or decree of the court below." Castle v. Irwin, 25 Haw. 807, 810 (1921). In this case, the plaintiffs claimed that the defendants violated the subdivision covenants in the construction of their house and driveway, and the defendants moved for directed verdict and/or to dismiss these claims for lack of standing. However, judgment was subsequently entered in favor of the defendants on these claims, and the plaintiffs did not appeal therefrom. As such, with respect to these claims, the defendants were not prejudiced by this portion of the judgment and, therefore, were not "aggrieved

parties.” See Kepo’o v. Watson, 87 Hawai’i 91, 95, 952 P.2d 379, 383 (1998). Therefore, the defendants did not have standing to appeal this issue. Id.

(2) With respect to the defendants’ contention that the circuit court erred in granting the plaintiffs’ motion for JNOV, we hold that, based on evidence in the record, the circuit court’s finding that the defendants’ IIED counterclaim was based on the filing of the instant lawsuit was not clearly erroneous. See Ass’n of Apartment Owners of Wailea Elua v. Wailea Resort Co., 100 Hawai’i 97, 112, 58 P.3d 608, 623 (2002). Furthermore, it is well settled that “[a]n allegation of improper filing of a lawsuit or the use of legal process against an individual is not redressable by a cause of action for intentional infliction of emotional distress.” Bennet v. Jones, Waldo, Holbrook & McDonough, 70 P.3d 17, 32, reh’g denied, (Utah 2003); see also FDIC v. S. Praver & Co., 829 F. Supp. 439, 449 (D. Me. 1993); Nottingham Co. v. Res. Materials Corp., 435 S.E.2d 447, 448 reconsideration denied, cert. denied, (Ga. Ct. App. 1993); Davis v. Currier, 704 A.2d 1207, 1209 (Me. 1997). Accordingly, we hold that the court did not err in granting the plaintiffs’ motion for JNOV.

(3) With respect to the defendants’ argument regarding their counterclaim for punitive damages, we note that the underlying claim of intentional infliction of emotional distress, for which the defendants sought punitive damages, was properly adjudicated by the circuit court’s judgment notwithstanding the

verdict. As such, the circuit court should have granted a directed verdict as to this claim, see Shishido v. State, 4 Haw. App. 321, 325, 666 P.2d 608, 612 (1983), leaving no underlying claim upon which to seek punitive damages. In other words, without any underlying claims, the defendants could not have pursued punitive damages. See Kang v. Harrington, 59 Haw. 652, 660, 587 P.2d 285, 291 (1978) ("An award of punitive damages is purely incidental to the cause of action."); see also Bisel v. Matco Tools, 715 F. Supp. 316 (D. Kan. 1989); Palmer v. Ted Stevens Honda, Inc., 238 Cal. Rptr. 363, 366 (Cal. 1987); Rocanova v. Equitable Life Assurance of the United States, 634 N.E.2d 940, 945 (N.Y. 1994); Schlueter v. Schlueter, 975 S.W.2d 584, 589, reh'g denied, (Tex. 1998). Accordingly, we hold that the circuit court correctly granted the motion for a directed verdict as to the punitive damages claim.

(4) Finally, with respect to the defendants' contention that the circuit court erred in awarding attorneys' fees and costs, we note that, because the this case involved both assumpsit and non-assumpsit claims, the circuit court was required to "base its award of fees, if practicable, on an apportionment of the fees claimed between assumpsit and non-assumpsit claims." Blair v. Inq, 96 Hawai'i 327, 332, 31 P.3d 184, 189 (2001) (emphasis omitted). In this case, the non-assumpsit counterclaims were not "inextricably linked" to the plaintiffs' assumpsit claims and were not "derived from" the subdivision covenants. Thus, it was not impracticable for the

court to apportion fees and costs. See id. at 189-90, 31 P.3d at 332-33. Moreover, the defendants have failed to point to evidence indicating that the court's apportionment was erroneous. Thus, we hold that the court did not abuse its discretion in apportioning attorneys' fees and costs as it did. Therefore,

IT IS HEREBY ORDERED that the circuit court's July 10, 2000 judgment is affirmed.

DATED: Honolulu, Hawai'i, August 31, 2004.

On the briefs:

Mark Van Pernis and
Gary W. Vancil,
for defendants/counter-
claimants-appellants

Francis L. Jung (of
Jung & Vassar), for
plaintiffs/counterclaim
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