

NOT FOR PUBLICATION

NO. 24383

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

HAWAII RESERVES, INC., a Hawaii corporation,
as managing agent for Property Reserve,
Inc., Plaintiff-Appellee, v.
RALPH T. WALTERS, Defendant-Appellant,
and
JOHN DOES 1-10 and DOE PARTNERSHIPS,
CORPORATIONS, OR OTHER ENTITIES 1-20, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIVIL NO. 00-1-1208)

MEMORANDUM OPINION

(By: Burns, C.J., Lim and Foley, JJ.)

Defendant-Appellant Ralph T. Walters (Walters) appeals from (1) the "Order Granting Plaintiff Hawaii Reserves, Inc.'s Non-Hearing Motion for Issuance of Writ of Possession" filed June 7, 2001 (the order was certified as a final judgment pursuant to Hawai'i Rules of Civil Procedure (HRCP) Rule 54(b)), and (2) the "Rule 58 Final Judgment re Order Granting Plaintiff Hawaii Reserves, Inc.'s Motion for Summary Judgment as to Its Complaint and to Dismiss Counterclaim Filed August 1, 2000" filed September 5, 2001, in the Circuit Court of the First Circuit (circuit court).¹

Walters alleges the circuit court erred by issuing the writ of possession on the ground that the court did not have subject matter jurisdiction over the claim.

¹The Honorable Eden Elizabeth Hifo presided.

We disagree with Walters's contention and affirm.

I. BACKGROUND

The landlord-tenant relationship between Walters and Plaintiff-Appellee Hawaii Reserves, Inc. (HRI), a Hawai'i corporation, was governed by a lease. On October 1, 1979, Zions Securities Corporation, as lessor, and Hildebert and Mary Jane Van Buren, as lessees, signed a lease (Lease) for Lots 5 and 6 located at 55-050 Kam Highway in Laie. Zions Securities Corporation's interest in the Lease was deeded on March 18, 1985 to Deseret Title Holding Corporation, now known as Property Reserve, Inc. (Property Reserve), a Utah Corporation. Through mesne assignments, the lessees' interest was assigned to Fred and Jolie Higgins. By Assignment of Lease filed April 7, 1992 in the Bureau of Conveyances, State of Hawai'i, as Document No. 92-050611, the Lease was assigned by the Higgins to Walters and Edward Lloyd Flood (now deceased), as joint tenants.

The term of the Lease was for forty-six years and six months (from October 1, 1979 to and including March 31, 2026), and the Lease expressly stated that the lessee "will use and allow the use of said premises only for residential purposes." Regarding assignment and mortgage rights, the Lease stated:

7. Lessee may assign this lease without approval or consent of Lessor, and the assignee shall have the same rights and obligations hereunder as the original Lessee; provided, however, that no such assignment shall be effective to transfer any interest in this lease unless Lessor shall have received either a true executed copy of such assignment or written notice thereof, and also, in any

NOT FOR PUBLICATION

case other than assignment by way of mortgage or assignment or upon foreclosure of mortgage or assignment in lieu of foreclosure, payment of a reasonable service charge . . . and the written undertaking of the assignee to perform all obligations of Lessee hereunder, which undertaking may be incorporated in such assignment.

On April 13, 2000, HRI (the managing agent for Lessor Property Reserve) filed a Complaint in the circuit court. The Complaint alleged that Walters was in default in his payment of lease rent and water charges due under the Lease and that HRI was therefore entitled to cancellation of the Lease, all amounts due and owing under the Lease, and an award for all costs and reasonable attorney's fees incurred in enforcing the Lease. As an alternative to cancellation, the Complaint asked the circuit court to treat the Lease as a mortgage, to foreclose upon the Lease, and to find a deficiency judgment against Walters. Attached to the Complaint was a copy of the Lease.

On May 3, 2000, Walters filed his answer and a counterclaim. In his answer, Walters raised the following defenses: failure to state a claim, lack of standing, failure to join necessary and/or indispensable parties, misrepresentation and reliance, compromise and release, statute of frauds, lack of full fairness and disclosure, frustration of purpose, insufficient notice, in pari delicto, lack of a priority of contract, recoupment, set-off, unclean hands, waiver, estoppel, laches, failure to mitigate damages, impossibility of

performance, applicable affirmative defenses as provided by HRCP Rule 8(c), and frivolity of the action.

Walters' counterclaim alleged that HRI had engaged in "negligent, grossly negligent and/or intentional material misrepresentations and non-disclosures" to Walters by failing to disclose (on August 9, 1991 when Walters signed the Purchase Offer Acceptance Agreement) Zions Securities Corporation's consolidation of Lots 5 and 6 with the City and County Department of Land Utilization. As a direct and proximate result of these misrepresentations and non-disclosures, Walters had "invested substantial capital, time and effort into development," "was forced to pay land rent on two lots that did not exist," and had been materially damaged. Walters further alleged that all of HRI's representations regarding the description of the leasehold properties to Walters were false and fraudulent and all of HRI's intentional and negligent acts and omissions were done with knowledge and/or reckless disregard for the severe mental and emotional distress that Walters had suffered and would suffer. Walters sought exemplary or punitive damages. On May 23, 2000, HRI filed its reply to the Counterclaim.

On August 1, 2000, HRI filed a "Motion for Summary Judgment As to Its Complaint and to Dismiss Counterclaim" (SJ Motion). Attached as exhibits were (a) the Lease, (b) a printout indicating Walters's payment history from 01/04/95 to 2/28/00 and

showing the outstanding amount due from Walters, and (c) a preliminary title report as of April 6, 2000 from Title Guaranty of Hawaii, Inc.

On September 8, 2000, Walters filed his opposition to the SJ Motion. On September 11, 2000, Walters filed a supplement to his opposition, with attached exhibits, questioning the integrity of HRI's statements as to the amounts owed by Walters.

On October 5, 2000, HRI filed its reply memorandum. Attached as an exhibit was a copy of the Assignment of Lease to Walters and Edward Lloyd Flood. HRI also filed a request that the circuit court take judicial notice of pleadings from a proceeding concluded before the United States District Court for the District of Hawaii that involved some of the same parties and issues (USDC lawsuit).

On November 21, 2000, the circuit court filed its "Order Granting Plaintiff Hawaii Reserves, Inc.'s Motion for Summary Judgment as to Its Complaint and to Dismiss Counterclaim Filed August 1, 2000." The circuit court found that there were no material facts in dispute and as a matter of law HRI was entitled to cancellation of the Lease between Property Reserve and Walters, that Walters had defaulted on payments under the Lease, and that HRI was entitled to attorney's fees and costs. The circuit court dismissed Walter's counterclaim on the basis of

res judicata as the legal issues he raised had been adjudicated in the USDC lawsuit.

On November 29, 2000, Walters filed a "Motion for Reconsideration and Clarification of Order of Hearing on October 9, 2000."² Walters stated that the circuit court had not ruled whether the Lease was to be foreclosed or canceled. Walters argued that the court should allow a foreclosure sale on the Lease rather than cancellation (which would result in an "inequitable forfeiture" for Walters). On December 6, 2000, HRI filed its opposition to the motion. On April 20, 2001, the circuit court denied the motion.

On April 20, 2001, HRI filed a non-hearing motion for issuance of a writ of possession. On April 30, 2001, Walters filed his "objections" to the motion on the grounds that the circuit court lacked jurisdiction to issue the writ and that no hearing had been held nor a judgment issued as to the lease rent payment deficiencies. On June 7, 2001, the circuit court granted HRI's motion for issuance of a writ of possession. A "Judgment for Possession" and "Writ of Possession" were filed on June 7, 2001. On July 5, 2001, Walters filed his Notice of Appeal. A "Rule 58 Final Judgment re Order Granting Plaintiff Hawaii Reserves, Inc.'s Motion for Summary Judgment as to Its Complaint

²The record before us contains no transcript of the October 9, 2000 hearing so this court cannot address what occurred at that hearing.

and to Dismiss Counterclaim Filed August 1, 2000" was filed on September 5, 2001.

II. STANDARD OF REVIEW

The question of whether a court has jurisdiction is a question of law that we review de novo under the right/wrong standard. Rivera v. Dep't of Labor and Indus. Relations, 100 Hawai'i 348, 349, 60 P.3d 298, 299 (2002); Amantiad v. Odum, 90 Hawai'i 152, 158, 977 P.2d 160, 166 (1999).

III. DISCUSSION

Walters contends the circuit court did not have jurisdiction to issue a writ of possession in view of Hawaii Revised Statutes (HRS) § 666-6.

Summary possession proceedings are defined in HRS § 666-1 (1993):

§666-1 Summary possession on termination or forfeiture of lease. Whenever any lessee or tenant of any lands or tenements, or any person holding under the lessee or tenant, holds possession of lands or tenements without right, after the termination of the tenancy, either by passage of time or by reason of any forfeiture, under the conditions or covenants in a lease, or, if a tenant by parol, by a notice to quit of at least ten days, the person entitled to the premises may be restored to the possession thereof in manner hereinafter provided.

The general rule for venue in summary possession cases is set forth in HRS § 666-6 (1993):

§666-6 Summary possession proceedings; venue. In the case of summary possession proceedings, the person entitled to the possession of the premises shall bring and prosecute the person's action in the district court of the circuit wherein the lands and premises in question are situated.

NOT FOR PUBLICATION

The jurisdiction of the circuit courts of Hawai'i in equity cases is set forth HRS §§ 603-21.5(3) (Supp. 2002) and 603-21.7(a) (3) (1993):

§603-21.5 General. The several circuit courts shall have jurisdiction, except as otherwise expressly provided by statute, of:

- (3) Civil actions and proceedings, in addition to those listed in sections 603-21.6, 603-21.7, and 603-21.8.

§603-21.7 Nonjury cases. The several circuit courts shall have jurisdiction, without the intervention of a jury except as provided by statute, as follows:

- (a) Of actions or proceedings:
 - (3) For enforcing and regulating the execution of trusts, whether the trusts relate to real or personal estate, for the foreclosure of mortgages, for the specific performance of contracts, and except when a different provision is made they shall have original and exclusive jurisdiction of all other cases in the nature of suits in equity, according to the usages and principles of courts of equity[.] [Emphasis added.]

Hawaii Revised Statutes § 604-5 (Supp. 2002), governing the jurisdiction of the district courts of Hawaii, states in relevant part:

§604-5 Civil jurisdiction. (a) Except as otherwise provided, the district courts shall have jurisdiction in all civil actions where the debt, amount, damages, or value of the property claimed does not exceed \$20,000, except in civil actions involving summary possession or ejection, in which case the district court shall have jurisdiction over any counterclaim otherwise properly brought by any defendant in the action if the counterclaim arises out of and refers to the land or premises the possession of which is being sought, regardless of the value of the debt, amount, damages, or property claim contained in the counterclaim.

(d) The district courts shall not have cognizance of real actions, nor actions in which the title to real estate comes in question, nor actions for libel, slander, defamation of character, malicious prosecution, false imprisonment, breach of promise of marriage, or seduction; nor shall they have power to appoint referees in any cause.

The Hawai'i Supreme Court described the nature of a summary possession proceeding in Queen Emma Foundation v. Tingco, 74 Haw. 294, 845 P.2d 1186 (1992):

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. 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. Furthermore, this statutory proceeding avoids the delay and expense incident to the common law remedy of ejectment.

Id. at 299-300, 845 P.2d at 1189 (citations and footnote omitted).

The Tingco court held as follows:

We hold today that long-term residential ground leases, such as those held by Appellants, cannot be cancelled or forfeited in a district court summary possession action under HRS chapter 666. In contradistinction, actions to dispossess lessees involving short-term rental agreements or other leases that grant lessees solely the right of possession may only be adjudicated in district court, pursuant to HRS § 666-6. This is because such actions cannot be characterized as involving title to property or a right of property beyond mere possession. Because HRS § 604-5(d) limits the civil jurisdiction of the district court by excluding real actions or actions involving title to real property, the only court that may take cognizance of actions seeking the cancellation or forfeiture of the Appellants' leases is the circuit court.

Id. at 305-06, 845 P.2d at 1191; compare 4000 Old Pali Road Partners v. Lone Star of Kauai, Inc., 10 Haw. App. 162, 862 P.2d 282 (1993) (holding that Tingco rule -- that lessor seeking to dispossess lessee of long-term residential lease must file complaint in circuit court -- did not apply in case of twenty-year lease of commercial property; affirmed in part and reversed in part.)

The Tingco court advanced its rationale for its holding:

HRS chapter 666, the summary possession statute, was enacted to provide an expedient remedy to restore a landlord to the possession of his premises when it is clear that the tenant holds nothing more than a possessory interest in the property. When a long-term ground lease is involved, the lessee often holds more than a possessory interest and the relationship between the landlord and tenant may be more complex. In the present case the district court remedy of summary possession is ill-suited to protect the rights and determine the obligations of all parties with an interest in these long-term leasehold estates.

74 Haw. at 304, 845 P.2d at 1190-91 (footnote omitted).

Walters speciously claims the Lease "could be defined as a medium term commercial lease." In contrast, the Lease expressly stated that it was "only for residential purposes." The stated duration of the Lease was forty-six years and six months. The Lease expressly contemplated that the lessees would assign and/or mortgage the Lease without the approval and consent of the lessor. The fact that the Lease required the lessee to "keep insured all buildings and improvements now or hereafter erected or placed on the land hereby demised" implied that the lessee was allowed to erect buildings or other improvements on the land. If the lessor did not purchase the buildings, the lessee had the right to remove all buildings the lessee had erected within fifteen days of lease termination. Like the lease at issue in the Tingco case, we find that the instant case involved a long-term residential lease that conferred ownership rights in the leasehold estate as well as the right to exclusive

possession. See Tingco, 74 Haw. at 301-02, 845 P.2d at 1189. Given that the jurisdiction of the district court excludes actions canceling or forfeiting long-term residential leases, the action to dispossess Walters, a long-term lessee, from his residential Lease was properly brought in the circuit court. See Id. at 305, 845 P.2d at 1191; HRS § 604-5(d).

IV. CONCLUSION

For the aforementioned reasons, the "Order Granting Plaintiff Hawaii Reserves, Inc.'s Non-Hearing Motion for Issuance of Writ of Possession" filed June 7, 2001, and the "Rule 58 Final Judgment re Order Granting Plaintiff Hawaii Reserves, Inc.'s Motion for Summary Judgment as to Its Complaint and to Dismiss Counterclaim Filed August 1, 2000," filed September 5, 2001, in the Circuit Court of the First Circuit are affirmed.

DATED: Honolulu, Hawai'i, June 30, 2003.

On the briefs:

Ernest Y. Yamane
for defendant-appellant.

Chief Judge

Randall Y. Kunn Char
for plaintiff-appellee.

Associate Judge

Associate Judge