

NO. 24433

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

SIMMONS MANUMA, Plaintiff-Appellee, v. BLUE HAWAII  
ADVENTURES, INC., a Hawai'i corporation,  
Defendant-Appellant, and STEVE MARTIN, in his capacity  
as officer and director of Blue Hawaii Adventures,  
Inc., and DOE DEFENDANTS 1-10, Defendants

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,  
HONOLULU DIVISION  
(Civ. No. 1RC01-1287)

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellee Simmons Manuma (Manuma) sued Defendant-Appellant Blue Hawaii Adventures, Inc. (Blue Hawaii) in the District Court of the First Circuit (the district court) for breach of an employment contract, claiming that he had been hired to serve as the entertainment director/musician on Blue Hawaii's daily dinner cruises for a guaranteed one-year period but had been terminated approximately eight months into the contract due to Blue Hawaii's financial difficulties. Although Blue Hawaii offered Manuma two alternative positions, one involving manual labor at an affiliate's shipyard and the other involving light maintenance and cleaning of a Blue Hawaii yacht, Manuma declined

both offers. The district court<sup>1</sup> found that Manuma's "refusal of either or both offers . . . was unreasonable" and that Manuma "should have accepted or found alternative employment for at least two of the four months for which he claims damages." The district court thereafter awarded Manuma damages for two months, offset by an uncontested debt owed to Blue Hawai'i by Manuma.

On appeal, Blue Hawaii<sup>2</sup> argues that the district court erred in awarding any damages to Manuma because the district court's determination that Manuma had unreasonably refused Blue Hawaii's offers of alternative employment precluded such an award.

In Vieira v. Robert's Hawaii Tours, Inc., 2 Haw. App. 237, 239, 630 P.2d 120, 122-23 (1981), this court held that

[t]he measure of recovery by a wrongfully discharged employee is the amount of compensation agreed upon for the remaining period of service, less the amount which the employer affirmatively proves the employee has earned or with reasonable effort might have earned from other employment. *Parker v. Twentieth Century-Fox Film Corporation*, 89 Cal. Rptr. 737, 474 P.2d 689, 44 ALR 3d 615 (1970); 22 AM. JUR. 2d *Damages* § 70 (1965); 53 AM. JUR. 2d *Master and Servant* § 62 (1970); *Malani v. Clapp*, 56 Haw. 507, 542 P.2d 1265 (1975); 44 ALR 3d *Annotation* 629, 639 (1972).

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<sup>1</sup> Judge Christopher P. McKenzie presided over the proceedings below.

<sup>2</sup> The opening brief of Defendant-Appellant Blue Hawaii Adventures, Inc. (Blue Hawaii) failed to comply with the requirement in Hawai'i Rules of Appellate Procedure (HRAP), Rule 28(b)(3) that "[t]here shall be appended to the brief a copy of the judgment, decree, findings of fact and conclusions of law, order, opinion or decision relevant to any point on appeal, unless otherwise ordered by the court." Blue Hawaii's counsel is hereby warned that future violations of HRAP Rule 28 may result in sanctions being imposed on him.

On the issue of mitigation, we quoted a California court's opinion on the general rule:

Before projected earnings from other employment opportunities not sought or accepted by the discharged employee can be applied in mitigation, the employer must show that the other employment was comparable, or substantially similar, to that of which the employee has been deprived; the employee's rejection of or failure to seek other available employment of a different or inferior kind may not be resorted to in order to mitigate damages. . . .

*Parker v. Twentieth Century-Fox Film Corporation, supra*, at 692; see 22 AM. JUR. 2d Damages § 70; 44 ALR 3d Annotation 629 (1972).

Vieira, 2 Haw. App. at 240, 630 P.2d at 123 (internal brackets omitted).

In light of Vieira, we hold that the district court erred in determining that Manuma's refusal of the alternative employment offered by Blue Hawaii was unreasonable. The jobs offered to Manuma were, as a matter of law, not "substantially similar" to Manuma's lost position as entertainment director since they involved essentially maintenance or custodial work. Inasmuch as the district court's reduction of damages to Manuma was also based on Manuma's failure to mitigate his own damages, however, we conclude that the district court's error was harmless.

Accordingly, we affirm the Findings of Fact,  
Conclusions of Law and Order entered by the district court on  
June 12, 2001.

DATED: Honolulu, Hawai'i, December 6, 2002.

On the briefs:

Michael L. Freed and  
Leslie C. Maharaj (Michael L.  
Freed & Associates) for  
defendant-appellant.

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