

**NOT FOR PUBLICATION**

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NOS. 24565 and 24745

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

WP ASSOCIATES, Plaintiff-Appellant, v.  
DAVID BUSCH; HORIZON DEVELOPMENT; HORIZON  
MANAGEMENT GROUP; HORIZON AMUSEMENT GROUP, INC.;  
ESTATE OF JAMES CAMPBELL; WATERS OF KAPOLEI LLC;  
HARRINGTON INVESTMENTS, LLC; JACK HARRINGTON;  
and BROOKS CUTTER, Defendants-Appellees,  
and  
DOE DEFENDANTS 1-20, Defendants.

APPEAL FROM THE FIRST CIRCUIT COURT  
(CIVIL NO. 99-1505)

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellant WP Associates (WPA) appeals from the Hawai'i Rules of Civil Procedure Rule 58 Final Judgment entered on September 17, 2001 by the Circuit Court of the First Circuit<sup>1</sup> (circuit court) in favor of Defendants-Appellees David Busch (Busch); Horizon Development; Horizon Management Group; Horizon Amusement Group, Inc.; Waters of Kapolei LLC; Harrington Investments, LLC; Jack Harrington (Harrington); and Brooks Cutter (Cutter) (all of the above persons and entities are collectively referred to as Busch-Harrington), and Estate of James Campbell (Campbell Estate).

WPA contends the circuit court erred (1) in granting Busch-Harrington's motion for summary judgment; (2) in granting

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<sup>1</sup>The Honorable Virginia Lea Crandall presided.

Campbell Estate's joinder in Busch-Harrington's motion for summary judgment; (3) in denying WPA's motion to amend its complaint; (4) in entertaining Busch-Harrington's motion for attorneys' fees and costs because the circuit court lacked jurisdiction due to the pendency of this appeal; and (5) in awarding attorneys' fees and costs because WPA's claims were meritorious.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues as raised by the parties, we affirm the September 17, 2001 Final Judgment of the circuit court and hold that:

(1) Busch-Harrington's "Motion for Summary Judgment as to Plaintiff WP Associates' Complaint Filed April 13, 1999," filed November 24, 2000, (Motion for Summary Judgment) was properly granted as there are no disputed issues of material fact and defendants are entitled to summary judgment as a matter of law with respect to the elements of the torts claimed in the pleadings. Pancakes of Hawaii, Inc. v. Pomare Properties Corp., 85 Hawaii 286, 291, 944 P.2d 83, 88 (App. 1997); *see also* Hawaii Revised Statutes (HRS) § 641-2 (1993) (appeals shall be taken on the record, there shall be no new evidence presented, and the appellate court need not consider points not properly before the circuit court); Hawaii Rules of Civil Procedure (HRCPP) Rule 56.

(2) Campbell Estate properly joined in Busch-Harrington's Motion for Summary Judgment. The record indicates that Campbell Estate provided declarations or exhibits in support of its joinder and provided a cognizable statement under HRCF Rule 56(c) showing that it was entitled to summary judgment.

(3) The circuit court did not abuse its discretion in denying WPA's Motion for Leave to Amend Complaint, filed December 11, 2000, because a dispositive motion (the Motion for Summary Judgment) was already pending before the court and WPA had ample opportunity to amend its complaint prior to such a late date in the litigation. Fed. Home Loan Mortgage Corp. v. Transamerica Ins. Co., 89 Hawai'i 157, 162, 969 P.2d 1275, 1280 (1998).

(4) The circuit court had jurisdiction to grant Busch-Harrington's and Campbell Estate's Motions for Attorneys' Fees and Costs (filed August 14, 2001 and September 13, 2001, respectively) because WPA's filing of its appeal was premature as the fees and costs motions had not yet been resolved. TSA Int'l Ltd. v. Shimizu Corp., 92 Hawai'i 243, 265, 990 P.2d 713, 735 (1999).

(5) Busch-Harrington's and Campbell Estate's awards of attorneys' fees and costs were properly granted pursuant to HRS § 607-14.5 (Supp. 2003) because the record supports the circuit court's finding that WPA's claims were frivolous and not reasonably supported by facts and law.

Therefore,

IT IS HEREBY ORDERED that (1) the September 17, 2001 Final Judgment; (2) the November 21, 2001 "Order Granting Defendant David Busch; Horizon Development; Horizon Management Group; Horizon Amusement Group, Inc.; Waters of Kapolei LLC; Harrington Investments, LLC; Jack Harrington; and Brooks Cutter's Motion for Fees and Taxation of Costs Filed August 14, 2001"; (3) the November 21, 2001 "Order Granting Defendant David Busch; Horizon Development; Horizon Management Group; Horizon Amusement Group, Inc.; Waters of Kapolei LLC; Harrington Investments, LLC; Jack Harrington; and Brooks Cutter's Motion to Alter and Amend Judgment Filed September 17, 2001 and Defendant Estate of James Campbell's Joinder Therein"; and (4) the November 27, 2001 "Order Granting in Part and Denying in Part Defendant Estate of James Campbell's Motion for Taxation of Fees and Costs" are affirmed.

DATED: Honolulu, Hawai'i, December 23, 2003.

On the briefs:

James J. Bickerton (Bickerton  
Saunders & Dang) and Alan B.  
Burdick for plaintiff-appellant.

Chief Judge

Bert T. Kobayashi, Jr. and Joseph  
A. Stewart (Kobayashi, Sugita & Goda)  
for defendants-appellees David Busch;  
Horizon Amusement Group, Inc.; Waters  
of Kapolei LLC; Harrington Investments,  
LLC; Jack Harrington; and Brooks Cutter.

Associate Judge

Gary G. Grimmer (Carlsmith Ball)  
for defendant-appellee The Estate  
of James Campbell.

Associate Judge