

NOT FOR PUBLICATION

NO. 24672

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

GECC FINANCIAL CORPORATION, a Hawai'i corporation,
Plaintiff, and HOLIDAY DRIVE DEVELOPERS, INC.,
a Hawai'i corporation, Plaintiff Intervenor-
Appellee/Cross-Appellant, v.
VERNON K.K.C. CHANG individually and as Trustee
of the Vernon Kurt Koon Chuck Chang Revocable Living
Trust dated June 17, 1988, et al., Defendants-
Appellants/Cross-Appellees,
and BUTCH BURKE, et al., Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIVIL NO. 95-2499)

SUMMARY DISPOSITION ORDER

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

Plaintiff Intervenor-Appellee/Cross-Appellant Holiday
Drive Developers, Inc. (HDD) appeals from the Judgment filed
October 10, 2001 in the Circuit Court of the First Circuit¹
(circuit court).

Defendants-Appellants/Cross-Appellees Vernon K.K.C.
Chang, individually and as Trustee of the Vernon Kurt Koon Chuck
Chang Revocable Living Trust dated June 17, 1988, and Suzette
F.P. Chang, individually and as Trustee of the Suzette Fung Ping
Chang Revocable Living Trust dated June 17, 1988 (collectively

¹The Honorable Victoria S. Marks presided.

the Changs) appeal from: (1) the "Order Granting Plaintiff-Intervenor Holiday Drive Developers, Inc.'s Motion for Summary Judgment re: the Funds Held by the Clerk of the Court Filed July 11, 2001 and Denying Defendants Vernon K.K.C. Chang and Suzette F.P. Chang's Cross Motion for Summary Judgment Filed August 14, 2001" filed October 10, 2001; (2) the Judgment filed October 10, 2001; and (3) the "Order Denying Defendants Vernon K.K.C. Chang and Suzette F.P. Chang's Motion for Approval of Attorney's Fees and Costs Filed September 19, 2001" filed on November 8, 2001 in the circuit court.

On appeal the Changs argue that the circuit court erred by (1) concluding the Changs were not entitled to the surplus proceeds from a foreclosure sale, (2) denying the Chang's claim for restitution, (3) concluding that the purchaser of the foreclosed property had a valid claim to part of the proceeds from the foreclosure sale, and (4) denying the Chang's "Motion for Approval of Attorney's Fees and Costs" filed September 19, 2001. On cross-appeal, HDD argues that the circuit court erred by relieving the Changs of liability under an Agreement of Sale.

Upon careful review of 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 HDD's and the Changs's points of error as follows:

(1) HDD contends the circuit court erred by canceling the Agreement of Sale and relieving the Changs of liability. The Changs contend the circuit court erred by not awarding them the surplus proceeds from the foreclosure sale and by denying their claim for restitution. The circuit court did not err when it canceled the Agreement of Sale, relieved the Changs of liability, did not award the surplus proceeds from the foreclosure sale to the Changs, and denied the Changs's claim for restitution. Cal. Fed. Sav. & Loan Ass'n v. Bell, 6 Haw. App. 597, 609, 735 P.2d 499, 507 (1987).

(2) The Changs contend the circuit court erred by concluding that the purchaser of the foreclosed property had a claim to a portion of the surplus proceeds from the foreclosure sale. The circuit court did not so err. The Changs had no standing to challenge the circuit court's conclusion that the purchaser had a claim against the proceeds because the Changs had no right to the surplus proceeds.

(3) The Changs contend the circuit court erred by denying their Motion for Approval of Attorney's Fees and Costs, filed September 19, 2001. The circuit court did not err by denying the Changs's motion for attorney's fees and costs because the Changs are not clearly the prevailing party and the court has considerable discretion over the allowance of costs.

NOT FOR PUBLICATION

Wohlschlegel v. Uhlmann-Kihei, Inc., 4 Haw. App. 123, 139, 662 P.2d 505, 515-16 (1983).

Therefore,

IT IS HEREBY ORDERED that (1) the "Order Granting Plaintiff-Intervenor Holiday Drive Developers, Inc.'s Motion for Summary Judgment re: the Funds Held by the Clerk of the Court Filed July 11, 2001 and Denying Defendants Vernon K.K.C. Chang and Suzette F.P. Chang's Cross Motion for Summary Judgment Filed August 14, 2001" filed October 10, 2001; (2) the Judgment filed October 10, 2001; and (3) the "Order Denying Defendants Vernon K.K.C. Chang and Suzette F.P. Chang's Motion for Approval of Attorney's Fees and Costs Filed September 19, 2001" filed November 8, 2001 in the Circuit Court of the First Circuit are affirmed.

DATED: Honolulu, Hawai'i, February 13, 2004.

On the briefs:

Owen H. Hellekson, Jr.
for Defendants-Appellants/
Cross-Appellees Vernon K.K.C.
Chang and Suzette F.P. Chang.

Chief Judge

Alvin T. Ito
for Plaintiff Intervenor-
Appellee/Cross-Appellant
Holiday Drive Developers, Inc.

Associate Judge

Associate Judge