

NO. 25796

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

YEE HOP REALTY, LTD., a Hawai'i corporation, Plaintiff-Appellee,
v. LEE LAU SAM MOI aka LAU SAM MOI LEE, and HERMAN B.K. LEE,
Defendants-Appellants, and TING YIN CHOP SUEY, INC., Defendant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CIVIL NO. 1RC02-1-6462)

SUMMARY DISPOSITION ORDER

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

Defendants-Appellants Herman B.K. Lee and Sam Moi Lau Lee (Herman Lee and Sam Moi respectively, or collectively, Appellants) appeal the March 18, 2003 Judgment by the District Court of the First Circuit (district court)¹ in favor of Yee Hop Realty, Ltd. (Yee Hop) in this summary possession and breach of contract action. Upon review of the record and briefs submitted by the parties and serious consideration of the issues raised, the arguments of the parties, and the applicable law, we resolve the issues raised as follows:

1. The district court had jurisdiction to decide this case. Hawaii Revised Statutes (HRS) § 666-7 (1993) provides an exception to the dollar limit on claims before the district court

¹ The Honorable Gerald H. Kibe presided.

contained in HRS § 604-5 (Supp. 2004) and allows, without limit, claims for, inter alia, rents and damages arising out of an action for summary possession. The plain language of the statute provides for joinder of claims arising out of the land or premises without limiting claims to those against the tenant.

2. The district court was not clearly erroneous in finding Herman Lee benefitted from the continued lease of the instant property and was therefore correct in ruling Yee Hop's claim for damages against Herman Lee was not barred by the Statute of Frauds, HRS § 656-1(2) (1993). Herman Lee signed the October 1999 "Stipulation for Entry of Judgment Against Defendants Ting Yin Chop Suey, Inc., Herman B. K. Lee and Lee Lau Sam Moi, aka Lau Sam Moi Lee, Jointly and Severally" not only in his capacity as President of Ting Yin Chop Suey, Inc., but in his individual capacity. The subsequent oral extensions of this agreement, requested by Herman Lee, were therefore not "to answer for the debt . . . of another" and consequently, were outside the statute of frauds.

3. The district court correctly denied Sam Moi's request for costs and attorneys fees under HRS § 607-14 (Supp. 2004). That provision allows for attorney's fees only where the contract "provides for an attorney's fee." The October 1999 stipulation has no such provision. As to costs under HRS § 607-9 (1993), the court did not abuse its discretion in refusing to award costs under the circumstances of this case.

NOT FOR PUBLICATION

Therefore,

IT IS HEREBY ORDERED that the March 18, 2003 judgment is affirmed.

DATED: Honolulu, Hawai'i, September 22, 2005.

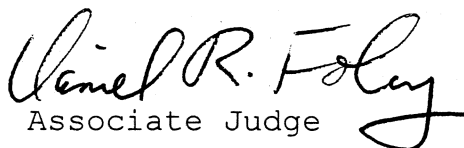
On the briefs:

Philip J. Leas,
(Cades Schutte)
for Defendants-Appellants.



Acting Chief Judge

Bruce B. Kim,
for Plaintiff-Appellee.



Associate Judge



Associate Judge