

NOT FOR PUBLICATION

NO. 25919

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

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FILED

HECTOR SABAT, Plaintiff-Appellant, v.  
THOMAS KURASHIGE, in his capacity as Principal of Aiea  
Intermediate School; STATE OF HAWAI'I, DEPARTMENT OF EDUCATION,  
Defendants-Appellees,  
and  
JOHN DOES 1-5; JANE DOES 1-5; DOE CORPORATIONS 1-5; ROE NON-  
PROFIT ORGANIZATIONS 1-5; AND ROE GOVERNMENTAL ENTITIES 1-5,  
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(Civ. No. 00-1-3429)

SUMMARY DISPOSITION ORDER

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

Plaintiff Hector Sabat (Sabat) appeals the June 17, 2003 judgment that the Circuit Court of the First Circuit (circuit court)<sup>1</sup> entered upon its June 13, 2003 order granting, *in toto*, the March 24, 2003 motion for summary judgment filed by Defendants Thomas Kurashige and the Department of Education, State of Hawai'i.

After a painstaking review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we resolve Sabat's points of error on appeal as follows:

1. The circuit court did not err in granting summary

<sup>1</sup>

The Honorable Richard W. Pollack presided.

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judgment on Count I of Sabat's complaint because either

(a) Count I was pled as a Whistleblowers' Protection Act claim, Hawaii Revised Statutes (HRS) § 378-61 et seq., but the applicable incarnation of the operative statute, HRS § 378-62 (1993), did not apply; or

(b) Count I was precluded by contractual and/or administrative remedies under the collective bargaining agreement, Santos v. State, 64 Haw. 648, 655, 646 P.2d 962, 967 (1982), and/or governing statutes, HRS ch. 89; HRS § 89-14 (1993); HRS § 386-5 (1993), at least until Sabat exhausted the applicable remedies; or

(c) Count I was a mere supernumerary restatement of Count II; or

(d) a combination thereof.

2. The circuit court erred in granting summary judgment on Count II of Sabat's complaint when it elevated the form of the caption and the return and acknowledgment of service over the substance of the complaint, Hawai'i Rules of Civil Procedure (HRCP) Rules 10(a) & 10(b) (2003); HRCP Rule 8(f) (2003); Island Holidays, Inc. v. Fitzgerald, 58 Haw. 552, 567, 574 P.2d 884, 983 (1978), and thus *sua sponte* eliminated the individual allegations integral to a claim made out under HRS § 386-8 (1993).

3. The circuit court did not err in granting summary

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judgment on Count III of Sabat's complaint because either

(a) there is no tort of harassment in Hawai'i; or

(b) Count III was a mere supernumerary restatement of Count II; or

(c) both.

4. The circuit court did not err in granting summary judgment on Count IV of Sabat's complaint because either

(a) Count IV was precluded by contractual and/or administrative remedies under the collective bargaining agreement, Santos v. State, 64 Haw. 648, 655, 646 P.2d 962, 967 (1982), and/or governing statutes, HRS ch. 89; HRS § 89-14; HRS § 386-5; HRS § 386-95 (1993), at least until Sabat exhausted the applicable remedies; or

(b) Count IV was a mere supernumerary restatement of Count II; or

(c) both.

Therefore,

IT IS HEREBY ORDERED that the circuit court's June 17, 2003 judgment and the underlying June 13, 2003 order granting summary judgment are affirmed as to Counts I, III and IV but

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vacated as to Count II, and the cause is remanded for proceedings consistent herewith.

DATED: Honolulu, Hawai'i, November 29, 2005.

On the briefs:

James E. Halvorson  
Elton K. Suzuki  
Steve K. Miyasaka and  
Sarah R. Hirakami,  
Deputy Attorneys General,  
State of Hawai'i,  
for Defendants-Appellees.

Herbert R. Takahashi  
Stanford H. Masui  
Danny J. Vasconcellos and  
Rebecca L. Covert  
for Plaintiff-Appellant.

  
Chief Judge

  
Associate Judge

  
Associate Judge