

NOT FOR PUBLICATION

NO. 25998

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

JASON SKAGGS, AS ASSIGNEE OF THE CLAIMS OF NEW PACIFIC, INC.,
dba VENUS NIGHT CLUB, AGAINST CLARENDON AMERICAN INSURANCE
COMPANY, Plaintiff-Appellant,

v.

CLARENDON AMERICAN INSURANCE COMPANY, Defendant-Appellee,
and DOE DEFENDANTS 1-100, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 01-1-3233)

SUMMARY DISPOSITION ORDER

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

In this action for declaratory judgment and breach of contract, Plaintiff-Appellant "Jason Skaggs, as assignee of the claims of New Pacific, Inc., dba Venus Night Club against Clarendon American [sic] Insurance Company" (Skaggs), appeals from the July 28, 2003 Judgment entered in favor of Defendant-Appellee Clarendon American Insurance Company (Clarendon)¹ by the Honorable Karen M. Radius.

After diligently reviewing the record and the briefs submitted and carefully considering the issues raised, arguments advanced, and the applicable law, we resolve Skaggs's points of error² as follows:

¹ While it appears that Defendant-Appellee's correct name is "Clarendon America Insurance Company" (Clarendon) (Record at 10; 63), neither party has moved to amend the caption.

² We note that the "Concise Statement of the Points on Which Appellant intends to Rely" is in violation of Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(4) (2000) because Jason Skaggs (Appellant) failed to specify the error allegedly committed by the trial court and to provide record

(continued...)

EUGENEL SABADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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Clarendon's duty to defend must be evaluated based on the facts presented to it upon the demand of its insured for coverage. Neither New Pacific, Inc.'s demand letter for coverage of Skaggs's claim³ nor the complaint in the underlying tort action appears in this record. Nor has Skaggs seen fit to include a transcript of the hearing on the motion for summary judgment, where the facts presented to Clarendon might have been established. According to Hawai'i Rules of Appellate Procedure (HRAP) Rule 10(a)(4) (2001), "[t]he record on appeal shall consist of . . . the transcript of any proceedings prepared pursuant to the provisions of Rule 10(b)[.]" HRAP Rule 10(b)(1)(A) (2001) places on the appellant the affirmative burden of providing the transcript of the proceedings:

When an appellant desires to raise any point on appeal that requires consideration of the oral proceedings before the court or agency appealed from, the appellant shall file with the clerk of the court appealed from, within 10 days after filing the notice of appeal, a request or requests to prepare a reporter's transcript of such parts of the proceedings as the appellant deems necessary that are not already on file.

Thus, it is well settled that "[t]he burden is upon appellant in an appeal to show error by reference to matters in the record, and he [or she] has the responsibility of providing an adequate

²(...continued)
citations for those alleged errors, and that we could disregard his points on this basis alone. Counsel is warned that sanctions will be imposed for future violation of court rules. HRAP Rule 51.

As it is, we read Appellant's points as a highly abbreviated statement of his arguments in opposition to Clarendon's motion for summary judgment.

³ Exhibit "C" attached to the Complaint filed in the instant case appears to be a second demand letter for a different claim that of "Pham and Pang et al." dated April 10, 2000 and referencing Civ. No. 99-0111-01. Record on Appeal at 49.

NOT FOR PUBLICATION

transcript.'" Bettencourt v. Bettencourt, 80 Hawai'i 225, 230, 909 P.2d 553, 558 (1995) (brackets omitted) (quoting Union Bldg. Materials Corp. v. The Kakaako Corp., 5 Haw. App. 146, 151, 682 P.2d 82, 87 (1984)). See also, Marn v. Reynolds, 44 Haw. 655, 663, 361 P.2d 383, 388 (1961) (transcript of proceedings must be provided to the appellate court unless "evidence is not necessary for the disposition of an appeal on its merits" (citation omitted)). Without the transcript, Skaggs cannot establish that the circuit court erred in its evaluation of Clarendon's decision not to defend under the policy. In the absence of a transcript of proceedings, the regularity of the proceedings must be presumed. State v. Hoang, 93 Hawai'i 333, 336, 3 P.3d 499, 502 (2000) (quoting Oriemon v. Territory of Hawaii, 13 Haw. 413, 415 (1901)).

Therefore,

IT IS HEREBY ORDERED that the circuit court's July 28, 2003 judgment is affirmed.

DATED: Honolulu, Hawai'i, September 8, 2005.

On the briefs:

Charles J. Ferrera,
for Plaintiff-Appellant.

Michael L. Freed and
Leslie C. Maharaj,
for Defendant-Appellee.



Acting Chief Judge



Associate Judge



Associate Judge