

NO. 26479

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

MARK Y. WATASE, doing business as MARK DEVELOPMENT, INC.,
Plaintiff-Appellee, v. MAKULINO ATUMATA AND EVELYN M. PALACO
ATUMATA, Defendants-Appellants,

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
Ewa Division
(Civ. No. 1RC04-1-00364)

SUMMARY DISPOSITION ORDER

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

Defendants-Appellants Makulino Atumata (Atumata) and Evelyn M. Palaco-Atumata (collectively, Appellants) appeal from the February 26, 2004 Judgment for Possession entered by the District Court of the First Circuit Ewa Division¹ (district court) in favor of Plaintiff-Appellee Mark Y. Watase doing business as Mark Development, Inc. (MDI). After a careful review of the issues raised, arguments advanced, the law relied upon and the record in the instant case, we resolve the Appellants' points on appeal² as follows, and affirm.

1. Appellants' lease was properly terminated pursuant to their Rental Agreement. Hawaii Revised Statutes § 521-7(8)

¹ The Honorable Hilary M. Gangnes presided.

² We note that Defendants-Appellants Makulino Atumata and Evelyn M. Palaco-Atumata's (Appellants) points on appeal do not comply with Hawaii's Rules of Appellate Procedure (HRAP) Rule 28(b)(4) (2004) in that they do not specify where in the record the alleged error occurred and was objected to or otherwise brought to the attention of the court appealed from. Appellants also fail to quote the findings and or conclusions urged as error. *Id.* Counsel is reminded that nonconforming points may be disregarded and may result in other sanctions. HRAP Rules 28(b)(4) and 51.

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(1993) makes the Landlord Tenant Code inapplicable to "[o]ccupancy by the prospective purchaser after an accepted offer to purchase and prior to the actual transfer of the owner's rights[,] " as was the case here. See also, Paragraph T of Appellants' Rental Agreement ("This Agreement generally follows the Code, however chapter 521-7(8) of the Code excludes this Agreement from the application of the Code."). The Termination Notice cited to provisions in the Rental Agreement forbidding "criminal activity," including "acts of violence or threats of violence," and the Rental Agreement reserved to the landlord the right to terminate the lease for the "violation of any obligation" under the terms of the lease. MDI determined that Appellants were in breach of the Rental Agreement after an investigation and sent the Termination Notice pursuant to and in compliance with the Rental Agreement's Standard Terms Paragraph J. Although the district court's finding was based on the landlord tenant code, "where the [district] court's decision is correct, its conclusion will not be disturbed on the ground that it gave the wrong reason for its ruling." Poe v. Hawai'i Labor Relations Bd., 87 Hawai'i 191, 197, 953 P.2d 569, 575 (1998) (quoting Reyes v. Kuboyama, 76 Hawai'i 137, 140, 870 P.2d 1281, 1284 (1994)).

2. The district court did not err in finding that Atumata physically assaulted his neighbor. Appellants' argument amounts to an attack on the district court's credibility determination. "[A]n appellate court will not pass upon issues

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dependent upon credibility of witnesses and the weight of the evidence; this is the province of the trial judge." Amfac, Inc., v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 117, 839 P.2d 10, 28 (1992) (internal quotation marks and citations omitted).

Therefore,

The District Court of the First Circuit's February 26, 2004 Judgment for Possession is hereby affirmed.

DATED: Honolulu, Hawai'i, December 14, 2006.

On the briefs:

Ravinder S. Nagi,
for Defendants-Appellants.


Chief Judge

George H. Yamamoto,
for Plaintiff-Appellee.


Associate Judge


Associate Judge