NO. 27191

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

AHI HARBOR LIMITED PARTNERSHIP,
by and through CB Richard Ellis Hawaii, Inc.,
Plaintiffs-Appellees,

v.

MR. MASSIMO FUCHS, Defendant-Appellant,

and

MR. DAVID CLAYSON and ALL OTHER OCCUPANTS,
Defendants

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CIVIL NOS. 1RC03-1-5414 and 1RC03-1-6191)

MEMORANDUM OPINION
(By: Burns, C.J., Watanabe and Lim, JJ.)

Defendant-Appellant Massimo Fuchs (Fuchs) appeals from (1) the Judgment entered on November 24, 2004 in Civil No. 1RC03-1-5414 (Case 5414), in the amount of $32,069.64, and (2) the Judgment entered on November 24, 2004 in Civil No. 1RC03-1-6191 (Case 6191), in the amount of $23,296.20. Both judgments were entered in the Honolulu Division of the District Court of the First Circuit by Judge Hilary Benson Gangnes in favor of Plaintiff-Appellee AHI Harbor Limited Partnership (AHI). We vacate both judgments and remand with instructions.

BACKGROUND

CB Richard Ellis Hawaii, Inc. (Ellis) was the resident manager of the residential apartments at Harbor Court, 66 Queen Street, Honolulu, Hawai'i 96813. AHI was the owner of apartments no. 2801 (Apt. 2801) and no. 3202 (Apt. 3202) at Harbor Court. Ellis was also the managing and rental agent for AHI's apartments. From August 20, 2001 through August 1, 2003, Ellis performed its duties through its employee, Michael Burr (Burr).

Fuchs rented Apt. 2801 from AHI by a Rental Agreement dated August 20, 2001. This agreement, which expired on February 28, 2002,[1] required Fuchs to pay rent of $2,600 per month, plus electricity. It also required Fuchs to send all rent payments by the first day of each month to the landlord at Lock Box No. 47892, P.O. Box 1300, Honolulu, Hawai'i 96807-1300708. One of the "Special Terms" of the Rental Agreement was that "RELOCATION MAY BE REQUIRED BY LANDLORD WITH 10-DAYS WRITTEN NOTICE. RELOCATION WILL BE AT LANDLORDS [sic] EXPENSE." An internal policy of Ellis prohibited its employees from accepting rent payments from tenants.

Fuchs occupied Apt. 2801 until on or about December 5, 2002, when he vacated it and moved into Apt. 3202. He occupied Apt. 3202 until September 26, 2003. Although Burr assisted Fuchs

[1] The August 20, 2001 Rental Agreement stated that "[i]f, after this Rental Agreement is terminated, you stay in the unit without our written consent, you will be a holdover TENANT liable for double rent and other penalties."

in the move, the move was not authorized by Ellis or by AHI. There is no rental agreement between AHI and Fuchs applicable to Apt. 3202. There is no evidence that Fuchs was given a written notice to relocate.

Prior to July 16, 2002, Fuchs made all his rent checks payable to AHI's predecessor in interest, "Harbor Court Developers", or to "AHI" or "AHI Harbor" to the specified lock box. After July 16, 2002, Fuchs did not make any rent payments to the lock box for Apt. 2801, and never made any rent payments to the lock box for Apt. 3202.

Until July 2003, neither AHI nor anyone at Ellis other than Burr knew that Fuchs was occupying Apt. 3202. Around August 13, 2003, AHI demanded that Fuchs pay rent and charges due for Apt. 3202. On August 21, 2003, Deborah A. Walton (Walton), an "Assistant Real Estate Manager" of Ellis, for Ellis "As Agent for [AHI]", commenced Case 5414 by filing a complaint against Fuchs and David Clayson[2] (Clayson) seeking summary possession of Apt. 3202, $2,500 for rent for August 2003, plus any other rent due, damages, court costs, interest, and reasonable attorney fees. Walton did not commence Case 5414 in the Small Claims Division of the District Court.[3] Through Fuchs's trial exhibits,

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[2] In the opening brief, Defendant-Appellant Massimo Fuchs (Fuchs) describes Defendant-Appellee David Clayson as "his sub-tenant".

[3] Hawaii Revised Statutes § 633-27 (Supp. 2005) states in part:

> **District courts; powers.** (a) All district courts, except as otherwise provided, shall exercise jurisdiction conferred by this

AHI learned Fuchs had been occupying Apt. 3202 since December 6, 2002. On September 3, 2003, through his attorney Craig Kugisaki (Kugisaki), Fuchs appeared and entered a general denial. On September 10, 2003, the law firm of Bendet, Fidell, Sakai & Lee filed an appearance as counsel for AHI. Nobody from this law firm ever signed a complaint in Case 5414. On September 17, 2003, effective September 22, 2003, after a hearing on September 8, 2003, and pursuant to the agreement of the parties, the court entered the requested Judgment for Possession and Writ of Possession.

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chapter, and while sitting in the exercise of that jurisdiction, shall be known and referred to as the small claims division of the district court; provided that the jurisdiction of the court when sitting as a small claims division of the district court shall be confined to:

(1) Cases for the recovery of money only where the amount claimed does not exceed $3,500 exclusive of interest and costs, except as provided by section 633-30;
(2) Cases involving disagreement between landlord and tenant about the security deposit in a residential landlord-tenant relationship; and
(3) Cases for the return of leased or rented personal property worth $3,500 or less where the amount claimed owed for that lease or rental does not exceed $3,500 exclusive of interest and costs.

This chapter shall not abridge or affect the jurisdiction of the district courts under paragraphs (1) and (3) to determine cases under the ordinary procedures of the court, it being optional with the plaintiff in the cases to elect the procedure of the small claims division of the district court or the ordinary procedures, as provided by rule of court. No case filed in the small claims division after December 31, 1991, shall be removed from the small claims division to be heard under the ordinary procedures of the district court unless the removal is agreed to by the plaintiff. In cases arising under paragraph (2) the jurisdiction of the small claims division of the district court shall be exclusive; provided that the district court, having jurisdiction over a civil action involving summary possession, shall have concurrent jurisdiction with the small claims division of the district court over any security deposit dispute between landlord and tenant in a residential landlord-tenant relationship. This subsection shall not abrogate nor supersede sections 604-5, 633-30, and 633-31.

On September 19, 2003, Yuriko J. Sugimura (Sugimura), of Bendet Fidell Sakai & Lee, as attorney for AHI, by and through Ellis, commenced Case 6191 alleging a breach of the August 20, 2001 Rental Agreement by failing to pay rent for Apt. 2801 from June 1, 2002 through August 31, 2002 in the total amount of $6,734.99 plus court costs, interest, and reasonable attorney fees. This complaint was served on Fuchs on September 22, 2003.

On October 3, 2003, in Case 5414, Fuchs filed a witness list for a trial that was scheduled to occur on October 23, 2003.

On October 6, 2003, in Case 6191, Fuchs entered a general denial and Judge Gangnes permitted Fuchs to file a third-party complaint no later than Wednesday, October 22, 2003. Sugimura told the court that "we're talking about less than seven thousand dollars, so I don't want to delay[.]" On Thursday, October 23, 2003, in Case 6191, Fuchs filed a Third-Party Complaint against Ellis. After a hearing on Monday, November 3, 2003, an order entered by Judge David W. Lo on November 17, 2003, granted AHI's October 29, 2003 motion to strike the Third-Party Complaint.

On October 7, 2003, in Case 5414, Clayson filed a motion to set aside the default entered against him. At a hearing on October 27, 2003, it was agreed that the default be set aside and the case against Clayson would be dismissed. A stipulated dismissal order was entered on October 30, 2003.

In Case 5414, at a hearing on Thursday, October 23, 2003, Judge Lo stated, "[b]y stipulation, the cases are gonna be consolidated. That's 5414 with 6191. Ms. Sugimura to prepare the stipulation to consolidate. A pretrial will be held on both cases, November 3rd, at 9 o'clock."

In Case 5414, on Wednesday, October 29, 2003, Fuchs filed a motion for leave to file a Third-Party Complaint against Ellis. On November 7, 2003, after a hearing on Monday, November 3, 2003, Judge Lo entered an order denying this motion.

On October 29, 2003, Fuchs filed a motion to consolidate Case 5414 and Case 6191 into one action. On November 14, 2003, after a hearing on Monday, November 3, 2003, Judge Lo entered an order stating that "Fuchs' Motion To Consolidate Civil Nos. 1RCO3-1-5414 And 1RCO3-1-6191 Into One Action is hereby GRANTED. . . . IT IS FURTHER ORDERED that Civil No. 1RCO3-1-5414 shall be the case-in-chief."

On Tuesday, November 4, 2003, Fuchs filed and served his demand for a jury trial in the consolidated case, and the request was denied by Judge Gerald H. Kibe on the basis that it was filed untimely.

On February 20, 2004, Fuchs filed a motion to dismiss Case 6191 or to transfer the consolidated Case 5414/6191 to the circuit court. The supporting memorandum, alleged in part:

> After the Agreement for [Apt. 2801] expired, [Fuchs] remained on as a month-to-month tenant.
>
> In December of 2002, Burr moved [Fuchs] to [Apt. 3202]. [Fuchs] agreed to pay a monthly rent of $1,500.00 for [Apt. 3202],

> and no written agreement was provided to [Fuchs] for signature. Just as he did under the written rental agreement for [Apt. 2801], [Fuchs] made all rent payments for [Apt. 3202] to Burr. Apparently, [Ellis] fired Burr in August 2003, and now claims that Burr was not authorized to rent [Apt. 3202] to [Fuchs], or to receive rent from [Fuchs].
>
> . . . .
>
> In its answer to interrogatories, [AHI] claims "rent and charges due under the rental agreement dated 8/20/01 for [Apt. 2801] for $20,694.43, plus utility and air-conditioning charges through December 2002". [AHI] also claims in excess of $20,000 for "the fair market rent for [Apt. 3202] at the rate of $2,300 per month, plus Hawaii GET at a rate of 4.166%, air conditioning charges for the period from January 2003 through September 26, 2003[.]"

On February 27, 2004, Fuchs filed a motion for leave to file a demand for a jury trial. After a hearing on March 15, 2004, an order entered by Judge Faye M. Koyanagi on March 18, 2004 denied this motion.

On April 16, 2004, Fuchs filed a motion for an order dismissing Case 5414 and sanctioning Walton for the unlicensed practice of law. This motion was denied on April 23, 2004, by Judge Christopher P. McKenzie.

On May 5, 2004, AHI filed a motion to modify the November 14, 2003 consolidation order

> to clarify that (a) the actions retain their separate status and have not merged; (b) motions, orders and other pleadings solely relating to one action, have no res judicata or other preclusive effect on the other action; and (c) to the extent one action cannot promptly proceed to trial, the actions will be severed so that trial on the other can proceed. Further, [AHI] requests that the Court set a trial date certain in early July 2004 so that one or both of these cases can be resolved at that time.

Judge Lo's June 8, 2004 order denied this motion. However, the following was stated at the May 17, 2004 hearing:

> MS. SUGIMURA: Your Honor, is that without prejudice?
>
> THE COURT: Without prejudice.

> MS. SUGIMURA: So that we could raise it at some other time?
>
> THE COURT: If it's necessary, you may re-raise that, okay. It will be done without prejudice.
>
> MS. SUGIMURA: Your Honor, may we raise it as an oral motion as in if we have a trial, another trial and Mr. Fuchs files something the day before, would we have leave to do it by oral motion?
>
> THE COURT: It will be allowed sua sponte.

On June 21, 2004, Fuchs filed a motion to strike the complaint filed in Case 5414 because it was not signed by an attorney and to order AHI and Walton to pay the reasonable attorney fees and costs incurred by Fuchs. On July 1, 2004, AHI responded in part as follows:

> Almost 8 months ago, on November 4, 2003, [Fuchs] made an untimely attempt to file a jury demand in [Case 5414]. As the jury demand was filed almost 2 months after the case was at issue, this court denied [Fuchs's] untimely demand. . . .
>
> Almost 4 months later, on February 27, 2004, [Fuchs] filed a Motion seeking the court's leave to again file the November 4, 2003 jury demand, arguing that he did not waive his right to a jury trial because the demand had not been untimely. . . . After a hearing, the Honorable Judge Faye M. Koyanagi . . . denied his motion. . . .
>
> Almost 8 months after the Complaint in [Case 5414] was filed, [Fuchs] filed a Motion to dismiss [Case 5414], making the exact same arguments he is making in his present motion, i.e. that the case should be dismissed because the Complaint was not signed by an attorney. . . . [Fuchs's] Motion to dismiss was nothing more than an attempt to overcome his waiver of his right to a jury trial. If he was successful, [AHI] would have to refile its Complaint and [Fuchs] would then have a second chance to file a jury demand. The Honorable Judge Christopher P. McKenzie saw through [Fuchs's] shenanigans, wholly rejected his arguments and denied his motion. . . .
>
> On April 21, 2004, at 3:09 p.m. on the afternoon of the day before trial was set to begin, [Fuchs] filed a Petition for Writ of Mandamus and Motion for Stay of Proceedings with the Hawaii Supreme Court, alleging that the District Court erred in denying his November 4, 2003 jury demand and in denying his motion to dismiss [Case 5414], ... By Order entered April 30, 2004, the Hawaii Supreme Court denied the Petition[.]

On July 13, 2004, this motion filed by Fuchs was denied by Judge McKenzie.

The bench trial did not occur until September 9 and 10, 2004. At the conclusion of the trial, the following was stated:

> THE COURT: I think it's appropriate to have two separate judgments given that there was a written lease agreement in the one case and not in the other case and that they were filed separately based on those different issues.
>
> . . . .
>
> MR. KUGISAKI: So, there would be one set of findings and conclusions.
>
> THE COURT: That would apply to both, that would lead to the both judgment [sic], that would support the two separate judgments, that each case would get its own separate judgments with its own judgment amount.

On November 24, 2004, the court entered two judgments in favor of AHI and against Fuchs in the following amounts:

In Case 5414:	$22,386.67	principal[4]
	6,872.63	attorney fee
	130.00	court costs
	70.00	Sheriff's fees
	2,610.34	other costs
	$32,069.64	total
In Case 6191:	$18,519.36	principal[5]
	4,629.84	attorney fee
	120.00	court costs
	25.00	Sheriff's fees
	2.00	Sheriff's mileage
	$23,296.20	total

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[4] Finding of Fact No. 15 states:

> Based on [AHI Harbor Limited Partnership (AHI)]'s summary of amounts due, [Fuchs] owed $22,386.67 to [AHI] for rent for the period from December 6, 2002, through September 26, 2003 for the use and occupancy of [Apt. 3202].

(Record citations omitted.)

[5] Finding of Fact No. 32 states:

> Based on [AHI'S] summary of amounts due for [Apt. 2801], as of December 5, 2002, [Fuchs] owed to [AHI] $9,038.70 for rent and electrical charges through August 31, 2002, and $9,480.66 for rent and electrical charges from September 1, 2002, through December 5, 2002, for a total of $18,519.36 for his use and occupancy of [Apt. 2801].

(Record citations omitted.)

On November 29, 2004, the court entered Findings of Fact, Conclusions of Law and Order. The findings state in part:

> 19. [Fuchs] claimed that in lieu of rent he provided personal services such as purchasing airline tickets and working on a website for [Burr]. However, none of these services, if in fact provided, benefit[t]ed [AHI] in any way. [Fuchs] also claimed that he gave a big screen television and a recliner to [Burr] as payment of rent for [Apt. 2801] and [Apt. 3202], but presented no credible evidence that he owned such items at any time, or that ownership of the items was transferred to [Burr].
>
> 20. [Fuchs] is in possession of a Jaguar convertible that he claimed was given to [Burr] as payment of rent for [Apt. 2801] and [Apt. 3202]. (Testimony of [Fuchs].)
>
> . . . .
>
> 35. It was not reasonable for [Fuchs] to believe that [Burr], employed by [Ellis] as the resident manager and as rental agent for [AHI's] unsold residential units at Harbor Court, had the authority to orally amend the terms of the rental agreement for [Apt. 2801].
>
> 36. It was not reasonable for [Fuchs] to believe that [AHI] would allow him to remain in [Apt. 3202] without a written agreement or without paying rent for the use and occupancy of the unit.
>
> 37. It was not reasonable for [Fuchs] to believe that [AHI] would accept personal goods and services benefitting only [Burr] in lieu of rent for [Fuchs's] occupancy of [Apt. 2801] and [Apt. 3202] at Harbor Court.
>
> 38. [Fuchs's] claim that he provided personal goods and services to former resident manager [Burr] in exchange for rent for [Apt. 2801] and [Apt. 3202] is neither credible nor reasonable. . . .[6]
>
> . . . .
>
> 40. There is no credible evidence that [Fuchs] made any rent payments directly to [Burr] for [Apt. 2801] or [Apt. 3202]. The Court finds that virtually none of [Fuchs's] testimony can be given credence, other than regarding the extent to which [Burr] conspired with [Fuchs] to deceive [AHI] and to deprive it of rent lawfully due.

(Footnote added.)

On December 6, 2004, Fuchs filed a motion for a new trial and/or to alter or amend the judgments. His first ground

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[6] In other words, the claim is not a fact.

was that he was denied his right "to present his defense, in fact and in law, including to present an opening statement, call his witnesses, offer his evidence and argument, and most importantly, to establish his credibility, outside of an interrogation by [AHI] as an adverse witness." His second ground was that the two judgments entered on November 24, 2004 exceeded the amounts sought in the two complaints and must, therefore, be reduced to "confirm" with the pleadings. On February 23, 2005, after a hearing on January 18, 2005, the court entered an order denying this motion and ordering:

> upon a specific finding by the Court that [Fuchs's] Motion was not well grounded in fact or supported by law and was in violation of Rule 11, District Court Rules of Civil Procedure, that sanctions in the amount of $500.00 shall be and are hereby imposed on [Fuchs] and his attorney [Kugisaki] and payment of that amount shall be made to [AHI].

On March 21, 2005, Fuchs filed a notice of appeal.[7]

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[7] The Opening Brief filed in this case cites the following in support of its allegation that certain events occurred in court:

> (ROA Minutes in Civil 6191, November 3, 2003 hearing, the Honorable Judge Hilary Benson Gangnes presiding).
>
> (ROA Minutes in Civil 5414, October 27, 2003 hearing, the Honorable Judge Faye M. Koyanagi presiding).
>
> Thus, the following precedent is applicable:
>
> > All involved in this case need to be reminded that documents, such as clerk minutes and letters to and from the court, that are in, attached to, or appended to the lower court record but which have not been "filed" in the lower court record as evidenced by the court clerk's file stamp, are not a part of the record on appeal. HRAP [Hawai'i Rules of Appellate Procedure] Rule 10(a). In other words, for purposes of the appeal, these documents do not exist and may not be cited as if they exist. HRAP Rule 28(b).

Webb v. Harvey, 103 Hawai'i 63, 66, 79 P.3d 681, 684 (App. 2003).

DISCUSSION

I.

Hawai'i District Court Rules of Civil Procedure (HDCRCP) Rule 11 (2006) states in part:

> The signature of an attorney or party constitutes a certificate by the signatory that the signatory has read the pleading, motion, or other paper; that to the best of the signatory's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Fuchs contends that (1) a signed complaint by a non-attorney on behalf of an artificial entity makes it null, and it cannot be amended, and the defect of the complaint divested the district court of its jurisdiction, Old Hickory Eng. & Mach. Co. v. Henry, 937 S.W.2d 782, 786 (Tenn. 1996), and (2) HDCRCP Rule 11 mandates the striking of such a complaint and the imposition of sanctions, especially in light of the fact that the trial court imposed sanctions against Fuchs and his counsel when they moved for a new trial. Fuchs ignores the statement by the Hawai'i Supreme Court that

> a corporation should be allowed an opportunity to secure counsel before permitting an entry of default against the corporation or, . . . , dismissing the action, recognizing a "preference for giving parties an opportunity to litigate claims or defenses on the merits[.]"

Shasteen, Inc. v. Hilton Hawaii Vill., 79 Hawai'i 103, 109, 899 P.2d 386, 392 (1995) (citing Oahu Plumbing & Sheet Metal, Ltd. v.

Kona Constr., Inc., 60 Haw. 372, 380, 590 P.2d 570, 576 (1979).

He further ignores the policy of the following comment:

> It seems desirable that the flexibility of the amended rule helps judges avoid the "death penalty" sanctions of dismissal of claims or defenses. Dismissals for frivolous actions ordinarily should be made under Rule 12(b)(6), and a Rule 11 sanction could be made in conjunction with a grant of that motion if the litigant's behavior was particularly egregious. Nonetheless, dismissal remains available directly under Rule 11 although it is reserved for the rare case involving extreme misbehavior by the offending party, such as fraud, contempt, and willful bad faith.

5A Wright & Miller, FEDERAL PRACTICE AND PROCEDURE: CIVIL 3D (2004) § 1336.3 p. 701.

II.

In Article I, Section 13, the Hawai'i State Constitution specifies that "[i]n suits at common law where the value in controversy shall exceed five thousand dollars, the right of trial by jury shall be preserved."

HDCRCP Rule 38 (2006) states in part:

> (b) **Demand.** Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the case is at issue. Such demand may be indorsed upon a pleading of a party and such demand must include the endorsement "Approved and So Ordered."
>
> . . . .
>
> (d) **Waiver.** The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by that party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

This court has stated:

> In *Lii v. Sida of Hawaii, Inc.*, 53 Haw. 353, 355-356, 53 Haw. 372, 493 P.2d 1032, 1034, *cert. denied*, 408 U.S. 930, 92 S.Ct. 2493, 33 L.Ed.2d 342, *and reh'g denied*, 409 U.S. 903, 93 S.Ct. 107, 34 L.Ed.2d 166 (1972), the Hawai'i Supreme Court interpreted HRCP Rule 38, the circuit court counterpart of DCRCP Rule 38, stating:
>
> > [T]he right to a jury trial [is] inviolate in the absence of an unequivocal and clear showing of a waiver of such right either by express or implied conduct. This court will

> indulge every reasonable presumption against the waiver of such right. . . . *However, the mechanics constituting a reasonable regulation of the manner of exercising that right must be complied with for the right to be preserved.*

(Citations omitted.) (Emphasis added.) In a footnote, the *Lii* court observed,

> it has been held that mere inadvertence or bare oversight in failing to make a demand for jury trial within the time allowed by the applicable rule for making such demand as of right are insufficient grounds upon which the court may exercise its discretion to grant a jury trial.

Id. at 356 n. 1, 493 P.2d at 1034 n. 1 (citation omitted). We apply the *Lii* standard to the similar language in DCRCP Rule 38.

Bank of Hawai'i v. Shaw, 83 Hawai'i 50, 57, 924 P.2d 544, 551 recon denied, 83 Haw. 409 (1996) (footnote omitted).

III.

Hawaii Revised Statutes § 604-5 (Supp. 2005) states in part:

> **Civil jurisdiction.** (a) Except as otherwise provided, the district courts shall have jurisdiction in all civil actions where the debt, amount, damages, or value of the property claimed does not exceed $20,000, except in civil actions involving summary possession or ejectment, in which case the district court shall have jurisdiction over any counterclaim otherwise properly brought by any defendant in the action if the counterclaim arises out of and refers to the land or premises the possession of which is being sought, regardless of the value of the debt, amount, damages, or property claim contained in the counterclaim. Attorney's commissions or fees, including those stipulated in any note or contract sued on, interest, and costs, shall not be included in computing the jurisdictional amount. Subject to subsections (b) and (c), jurisdiction under this subsection shall be exclusive when the amount in controversy, so computed, does not exceed $10,000. The district courts shall also have original jurisdiction of suits for specific performance when the fair market value of such specific performance does not exceed $20,000 and original jurisdiction to issue injunctive relief in residential landlord-tenant cases under chapter 521.
>
> (b) The district courts shall try and determine all actions without a jury, subject to appeal according to law. Whenever a civil matter is triable of right by a jury and trial by jury is demanded in the manner and within the time provided by the rules of court, the case shall be transferred to the circuit court. If the demand is made in the complaint and the matter is triable of right by a jury, the action may be commenced in the circuit court if the amount in controversy exceeds $5,000.

This court has noted that

> Hawai'i Rules of Civil Procedure Rule 42(a) is identical to Federal Rules of Civil Procedure Rule 42(a). Professors Wright and Miller have explained that
>
> > [i]n the context of legal procedure, "consolidation" is used in three different senses:
> >
> > (1) When all except one of several actions are stayed until one is tried, in which case the judgment in the one trial is conclusive as to the others. This is not actually consolidation but is sometimes referred to as such.
> >
> > (2) *When several actions are combined into one, lose their separate identity, and become a single action in which a single judgment is rendered.* An illustration of this is the situation in which several actions are pending between the same parties stating claims that might have been set out originally as separate counts in one complaint.
> >
> > (3) *When several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment.* This type of consolidation does not merge the suits into a single action, or cause the parties to one action to be parties to another.
> >
> > Rule 42(a) refers separately to the court's power to order a joint trial and to the power to order the actions consolidated. Therefore, it seems to authorize both the second and third of the procedures just described. The case law, however, is quite clearly to the contrary. The courts have read the rule as providing only for the third of these procedures. They regard as still authoritative what the Supreme Court said about consolidation before Rule 42(a) was adopted:
> >
> > > consolidation is permitted as a matter of convenience and economy in administration, but does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties to one suit parties in another.
> >
> > Thus in a substantial number of cases federal courts have held that actions do not lose their separate identity because of consolidation under Rule 42(a).
>
> 9 C. Wright & A. Miller, *Federal Practice and Procedure* § 2382, at 428-30 (1995). In its December 16, 1997 "Order Granting [AAOC's] Motion for Consolidation of Civil Nos. 97-1062-03 and 97-2270-06," the Circuit Court of the First Circuit (the circuit court) did not indicate whether the actions merged into a single cause. Accordingly, it appears that the circuit court intended that the actions be tried jointly but retain their separate character.

First Hawaiian Bank v. Timothy, 96 Hawai'i 348, 352 fn.2, 31 P.3d 205, 209, fn. 2 (App. 2001).

In this instance, Case 5414 and Case 6191 were consolidated into and tried as one action, yet two judgments were entered - one for Case 5414 and another for Case 6191. Sense "(2)" is inapplicable because, although two actions were combined into one, lost their separate identity, and became a single action, two judgments were rendered. Sense "(3)" is inapplicable because two actions were combined into one, lost their separate identity, and the two suits were merged into a single action.

Assuming (a) the pursuit of Case 5414 and Case 6191 did not violate the rule against splitting a cause of action, and (b) the district court had subject matter jurisdiction over Case 5414 and Case 6191 as separate cases before they were consolidated into and tried as Case 5414/6191, the district court did not have subject matter jurisdiction over consolidated Case 5414/6191, and the post-trial entry of two judgments - one in Case 5414 and another in Case 6191 - did not separate and un-consolidate Case 5414/6191 into Case 5414 and Case 6191.

CONCLUSION

Accordingly, we vacate (1) the Judgment entered on November 24, 2004 in Civil No. 1RC03-1-5414 in the total amount of $32,069.64 and (2) the Judgment entered on November 24, 2004 in Civil No. 1RC03-1-6191 in the total amount of $23,296.20. We remand (1) for compliance with the signature requirement of Hawai'i District Court Rules of Civil Procedure Rule 11, and (2) transferral of the consolidated case to the circuit court for a jury trial.

We also vacate the following part of the February 23, 2005 order:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon a specific finding by the Court that [Fuchs's] Motion was not well grounded in fact or supported by law and was in violation of Rule 11, District Court Rules of Civil Procedure, that sanctions in the amount of $500.00 shall be and are hereby imposed on [Fuchs] and his attorney [Kugisaki] and payment of that amount shall be made to [AHI].

DATED: Honolulu, Hawai'i, November 30, 2006.

On the briefs:

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