NOT FOR PUBLICATION

NO. 27389

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

ANTHONY T. LEIATO and LEAH M.A. LEIATO,
Plaintiffs-Appellees,
v.
NOLAN L.K. CRABBE, dba CRABBE CONSTRUCTION,
Defendant-Appellant

and

JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10,
DOE CORPORATIONS 1-10, and DOE ENTITIES 1-10,
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 03-1-2269)

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

Defendant-Appellant Nolan L.K. Crabbe (Crabbe) appeals from the Final Judgment entered in the Circuit Court of the First Circuit[1/] on June 7, 2005.

On November 12, 2003, Plaintiffs-Appellees Anthony T. Leiato and Leah M.A. Leiato (the Leiatos) filed a complaint[2/] alleging that: (1) by an August 26, 2002 contract they hired Crabbe to complete renovation work on their residence for

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1/ Judge Eden Elizabeth Hifo presided.

2/ The complaint alleged the following causes of action: breach of agreement, breach of good faith and fair dealing, fraudulent inducement, fraud and misrepresentation, violation of Hawaii Revised Statutes (HRS) Chapter 444, violation of HRS Chapter 480-2, restitution, negligence, intentional and negligent infliction of emotional distress, breach of fiduciary duty, promissory estoppel, and breach of express or implied warranty.

$188,000 by November 1, 2002; (2) they paid Crabbe $134,000; (3) in May 2003, Crabbe abandoned the project prior to completion of the work; (4) Crabbe failed to obtain all of the required construction permits; (5) Crabbe used funds received from the Leiatos for other purposes; (6) Crabbe failed to provide receipts or financial accounting; (7) Crabbe failed to have renovation plans drawn and properly approved; and (8) Crabbe violated the Honolulu Building Code and the Uniform Building Code.

On February 17, 2004, Crabbe filed an answer and a counterclaim. In the latter, he alleged that the contract was modified, amended, and supplemented on various occasions, and he asserted claims for breach of contract, detrimental reliance, and promissory estoppel.

On February 25, 2005, a jury answered special verdict questions paraphrased as follows:

> Q 1. Did Crabbe's acts or omissions result in any of the following with the Leiatos?
>
> (a) Breach of contract: NO
> (b) Breach of good faith and fair dealing: YES
> (c) Promissory estoppel: YES
>
> Q 2. Were 1(b) and 1(c), above, a legal cause of damages to the Leiatos? YES
>
> Q 3. How much in damages did the Leiatos suffer? $6,000
>
> Q 4. Was Crabbe negligent in performing the Leiatos' construction project? YES
>
> Q 5. Was Crabbe's negligence a legal cause of losses or damages to the Leiatos? YES
>
> Q 6. What is the amount of losses or damages sustained by the Leiatos? $33,500 in special damages and $20,000 in general damages.

Q 7. Did the acts or omissions of Crabbe meet the elements for any of the following?

(a) Negligent misrepresentation: NO
(b) Fraud: NO
(c) Fraudulent inducement: NO
(d) Breach of fiduciary duty: YES

Q 8. Was Crabbe's breach of fiduciary duty a legal cause of the Leiatos' losses or damages? NO

Q 10. Did Crabbe's acts or omissions violate Hawaii Revised Statutes (HRS) Chapter 444 ("Contractors") and Chapter 480 ("Monopolies; Restraints of Trade")? YES

Q 11. What is the amount of damages the Leiatos sustained as a result of Crabbe's statutory violation? None

Q 12. Have the Leiatos proven by clear and convincing evidence that they are entitled to punitive damages against Crabbe? NO

Q 14. Did the Leiatos' acts or omissions result in any of the following with Crabbe?

(a) Breach of contract: YES
(b) Breach of good faith and fair dealing: NO
(c) Promissory estoppel: NO

Q 15. Was the Leiatos' breach of contract a legal cause of losses or damages to Crabbe? YES

Q 16. How much contract damages did Crabbe suffer as a result of the Leatos' breach of contract? $16,000.

On March 9, 2005, the Leiatos filed "Plaintiffs' Motion for Judgment as a Matter of Law to Strike Defendant Crabbe's Award for Breach of Contract and to Treble the Plaintiffs' Compensatory Damages". On March 14, 2005, the Leiatos filed "Plaintiffs' Motion for Attorneys' Fees and Costs".

On June 7, 2005, in the "Order Granting in Part and Denying in Part Plaintiffs' Motion for a Judgment as a Matter of Law to Strike Defendant Crabbe's Award for Breach of Contract and to Treble the Plaintiffs' Compensatory Damages, Filed March 9, 2005", the court stated, in relevant part:

> The jury found that Defendant Crabbe violated **Hawaii Revised Statutes** Chapter 444 and Chapter 480. The $16,000 Defendant Crabbe was awarded for his breach of contract Counterclaim is void and vacated.
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> . . . .
>
> Regarding Plaintiffs' request to treble the Plaintiffs' compensatory damages, the jury determined that the actual damages for Defendant Crabbe's violation of **Hawaii Revised Statutes** Chapter 444 and Chapter 480 was zero and the Court awards Plaintiffs One Thousand Dollars ($1,000) for Defendant Crabbe's statutory violations of **Hawaii Revised Statutes** Chapter 444 and Chapter 480.

(Emphasis in the original.)

On June 7, 2005, the court entered the "Order Granting Plaintiffs' Motion for Attorneys' Fees and Costs, Filed March 14, 2005" awarding attorney fees of $46,440 and costs of $7,095.25 to the Leiatos. The court also entered a detailed Final Judgment.[3/]

On July 6, 2005, Crabbe filed a notice of appeal. This case was assigned to this court on April 27, 2006.

[3/] The June 7, 2005 Final Judgment states, in relevant part:

> 2. The Jury found in favor of the Plaintiffs Leiato and against Defendant Crabbe for Plaintiffs' Seventh Claim for Negligence and the Eighth Claim for Intentional and Negligent Infliction of Emotional Distress. The Plaintiffs Leiato were awarded Thirty-Three Thousand Five Hundred Dollars ($33,500) in Special Damages and Twenty Thousand Dollars ($20,000) for their General Damages, for these claims against Defendant Crabbe.

The record does not reveal the basis for the statement in the Final Judgment that "[t]he Jury found in favor of the Plaintiffs Leiato and against Defendant Crabbe for Plaintiffs' . . . Eighth Claim for Intentional and Negligent Infliction of Emotional Distress."

A major problem in considering this appeal is the fact that Crabbe failed to cause a transcript of the jury trial to be a part of the record on appeal.

Crabbe contends that the court erred when it declared void the $16,000 that he was awarded for his breach of contract counterclaim. In the opening brief, he contends that his "counterclaim against the LEIATOs, which was simply a contract claim, was and is a separate, distinct, and legally distinguishable claim from the claims asserted on behalf of the LEIATOs under Chapters 444 and 480."

The court acted based on the fact that Crabbe violated HRS Chapter 444 and Chapter 480. The record indicates that the only instruction the jury was given regarding HRS Chapter 444 was the following parts of HRS § 444.25.5 (Supp. 2003):

> **Disclosure; contracts.** (a) Prior to entering into a contract with a homeowner involving home construction or improvements and prior to the application for a building permit, licensed contractors shall:
>
> (1) Explain verbally in detail to the homeowner all lien rights of all parties performing under the contract including the homeowner, the contractor, any subcontractor or any materialman supplying commodities or labor on the project;
> (2) Explain verbally in detail the homeowner's option to demand bonding on the project, how the bond would protect the homeowner and the approximate expense of the bond; and
> (3) Disclose all information pertaining to the contract and its performance and any other relevant information that the board may require by rule.
>
> (b) All licensed contractors performing home construction or improvements shall provide a written contract to the homeowner. The written contract shall:
>
> (1) Contain the information provided in subsection (a) and any other relevant information that the board may require by rule;
> (2) Be signed by the contractor and the homeowner; and
> (3) Be executed prior to the performance of any home construction or improvement.

> (c) For the purpose of this section, "homeowner" means the owner or lessee of residential real property, including owners or lessees of condominium or cooperative units.
>
> (d) Any violation of this section shall be deemed an unfair or deceptive practice and shall be subject to provisions of chapter 480, as well as the provisions of this chapter.

HRS Chapter 480 (Supp. 2005) states, in relevant part:

> **§ 480-2 Unfair competition, practices, declared unlawful.** (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.
>
> . . . .
>
> **§ 480-12 Contracts void.** Any contract or agreement in violation of this chapter is void and is not enforceable at law or in equity.

It appears that Crabbe violated HRS § 444.25.5, which was a violation of HRS § 480-2, and therefore the contract was void under HRS § 480-12. But that is not the end. In Hiraga v. Baldonado, 96 Hawai'i 365, 31 P.3d 222 (App.2001), an issue was whether a licensed general contractor who violated HRS § 444-25.5 was precluded from recovering in quantum meruit for work performed according to contract. The answer was as follows:

> In light of all of the relevant considerations pro and con discussed above and the fact that "[t]he basis of recovery on quantum meruit is that a party has received a benefit from another which it is unjust for him to retain without paying therefor[,]" Maui Aggregates, Inc. v. Reeder, 50 Haw. 608, 610, 446 P.2d 174, 176 (1968), we conclude that HRS § 444-25.5(d) and HRS § 480-12 do not preclude some recovery in quantum meruit from the homeowner by the contractor who fails to comply with the requirements of HRS § 444-25.5. However, we further conclude that the total of the amount of the recovery by the contractor in quantum meruit cannot exceed the net amount calculated as follows: (a) the amount that would have been due such general contractor under the contract had the contract not been void, (b) less (i) the amount previously paid to the general contractor and (ii) the total of the amount paid and owed to all of the sub-contractors and materialmen who furnished labor or material in the improvement of the real property.

Id., at 372, 31 P.3d at 229. The $16,000 the jury awarded Crabbe may be within the limit of Crabbe's authorized quantum

meruit recovery. Unless the court determines, based on the record, that the $16,000 is not within that limit, the court is not authorized to vacate the $16,000 awarded by the jury to Crabbe.

Crabbe contends that the court erred when it awarded the Leiatos (a) $1,000 for Crabbe's statutory violations of HRS Chapter 444 and Chapter 480, and (b) attorney fees of $46,440 and costs of $7,095.25. We conclude that the award of $1,000 plus attorney fees and costs was authorized by HRS § 480-13 (Supp. 2005) which states as follows:

> **Suits by persons injured; amount of recovery, injunctions.** (a) Except as provided in subsections (b) and (c), any person who is injured in the person's business or property by reason of anything forbidden or declared unlawful by this chapter:
>
> (1) May sue for damages sustained by the person, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than $1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable attorneys fees together with the costs of suit;
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> . . . .
>
> (b) Any consumer who is injured by any unfair or deceptive act or practice forbidden or declared unlawful by section 480-2:
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> (1) May sue for damages sustained by the consumer and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than $1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable attorneys' fees together with the costs of suit[.]

The request for attorney fees was supported by a memorandum signed by Ryan G. S. Au stating that "Plaintiffs' counsel, Ryan G. S. Au, incurred a total of $46,440.00 in attorney's fees based on 206.4 hours of work at $225.00 per hour" and "Attorney Ryan G. S. Au has been practicing law since 1998[.]" Crabbe contends that the $225 per hour rate charged

"is a highly unreasonable hourly rate and is overly excessive." We conclude that the attorney fees awarded are within the limits of the trial court's discretion.

Therefore, in accordance with Hawai'i Rules of Appellate Procedure Rule 35, IT IS HEREBY ORDERED that the June 7, 2005 Final Judgment and "Order Granting in Part and Denying in Part Plaintiffs' Motion for a Judgment as a Matter of Law to Strike Defendant Crabbe's Award for Breach of Contract and to Treble the Plaintiffs' Compensatory Damages, Filed March 9, 2005" are vacated, and this matter is remanded for further action in conformity with this opinion.

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

On the briefs:

Nolan L.K. Crabbe
Defendant-Appellant Pro Se.

Ryan G.S. Au and
Gerald H. Kurashima
for Plaintiffs-Appellees.

James A. Burns
Chief Judge

Associate Judge

Associate Judge