

NOT FOR PUBLICATION

NO. 27428

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

MEGHAN R.K. CEDILLOS, PHILIP H. CEDILLOS DBA
HAWAIIAN WINDOW, Plaintiffs-Appellants,

v.

STATE OF HAWAI'I, BRIAN MINAAI as Director of the State
Department of Transportation; TOM BUSIC, individually
and official capacity; LANCE TAKAYAMA, individually
and official capacity; RAYMOND KAPUNIAI, individually
and official capacity, Defendants-Appellees,

and

JOHN DOES 1-5; JANE DOES 1-5; DOE CORPORATIONS 1-5;
DOE PARTNERSHIPS 1-5; DOE GOVERNMENTAL ENTITIES 1-5,
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIV. NO. 02-1-0577(2))

SUMMARY DISPOSITION ORDER

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

On December 22, 2000, Plaintiff-Appellant Meghan R.K. Cedillos (Meghan), d.b.a. Hawaiian Window, entered into a fixed-price contract (Contract) with the State of Hawai'i, Department of Transportation (State), to perform window cleaning services at the Kahului Airport in the County of Maui. Kazu Hayashida, who then was the Director of Transportation for the State of Hawai'i, represented the State. The Contract was for one year commencing February 19, 2001. It allowed extensions for "two (2) additional one (1) year periods upon mutual agreement . . . , provided the State notifies the Contractor no later than three (3) months

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prior to the end of the one-year contract period."

On December 4, 2002, Meghan and Plaintiff-Appellant Philip H. Cedillos (Philip) filed a twenty-five page Complaint for Declaratory and Injunctive Relief (Complaint) against the State, Brian Minaai, as director for the State Department of Transportation, and Tom Busic, Lance Takayama, and Raymond Kapuniai (Kapuniai), individually and in their official capacities as employees of the State.^{1/} The Complaint alleged, *inter alia*, that "[o]n October 12, 2001, December 19 or 20, 2001 and January 16, 2002, [Meghan and Philip] were informed by the designated State Project Manager, [Kapuniai], that the Contract would be extended for another one (1) year period." In a Declaration accompanying the Complaint, Meghan and Philip stated, in relevant part, that they "entered into the second year of contract performance on February 20, 2002 and were told to cease contract performance on March 1, 2002."

The State responded that (1) Kapuniai did not have actual authority to enter into contracts on behalf of the State; (2) the State did not agree to an extension and the contract expired on February 18, 2002; and (3) no triable issue of fact existed for the elements of an implied-in-fact contract extension.

^{1/} Pursuant to a stipulation, the court on February 5, 2003, ordered the dismissal of the case against Defendants Tom Busic, Lance Takayama, and Raymond Kapuniai in their official capacities and against Defendant Raymond Kapuniai in his individual capacity.

On June 25, 2003, the court ordered the dismissal of the case against Defendants Lance Takayama and Tom Busic in their individual capacities.

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On February 7, 2003, Meghan and Philip filed Plaintiffs' Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment. An order denying this motion was filed on March 20, 2003.

On June 25, 2003, Philip, who was not a party to the Contract, was dismissed from the action with prejudice.

On October 2, 2003, the State filed Defendant State of Hawaii's Motion for Summary Judgment. The Order Granting Defendant State of Hawaii's Motion for Summary Judgment was entered on December 4, 2003. The Final Judgment in Favor of all Defendants and Against Plaintiffs Phillip H. Cedillos and Meghan R.K. Cedillos (Final Judgment) was entered on March 5, 2004. It awarded the State \$15,232.86 for costs and attorneys' fees.

On May 10, 2004, the circuit court filed a Garnishee Order ordering Oceanic Time Warner Cable of Hawaii to withhold amounts from Meghan's disposable earnings and to pay those withheld amounts to the State until the \$15,232.86 is fully paid.

On May 20, 2004, Meghan and Philip untimely filed a notice of appeal from the circuit court's Final Judgment. On September 24, 2004, the Hawai'i Supreme Court filed an Order Granting Defendant-Appellees' Motion to Dismiss Appeal for Lack of Jurisdiction.

On March 4, 2005, Meghan and Philip filed a Hawai'i Rules of Civil Procedure Rule 60(b) (Supp. 2006) motion for relief from the Final Judgment on the basis that "the judgment

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was obtained by fraud and/or misrepresentation of the law and misrepresentation of contract provisions by the defendants, their counsel, and employees of the State of Hawai'i." On April 28, 2005, Meghan and Philip filed Plaintiffs' Motion to Vacate Garnishee Order Filed on May 10, 2004 and for Return of Garnished Funds.

On July 1, 2005, the Circuit Court of the Second Circuit^{2/} entered (1) an Order Denying Plaintiffs' Motion for Relief from Final Judgment Filed March 5, 2003 and (2) an Order Denying Plaintiffs' Motion to Vacate Garnishee Order Filed on May 10, 2004 and Return of Garnished Funds, Filed April 28, 2005.

Meghan and Philip filed their notice of appeal on July 29, 2005. This appeal was assigned to this court on March 22, 2006.

Meghan and Philip contend that the circuit court abused its discretion when it entered the July 1, 2005 orders. Specifically, they contend that (1) their reliance upon their attorney's erroneous advice was excusable neglect, (2) the employees of the State deliberately misrepresented to the circuit court both the law and the Contract provisions concerning retainage, (3) Philip should not have been dismissed from the case because Meghan and Philip were business partners, and (4) the State erroneously advised the court that "it cannot be

^{2/} The Honorable Reinetta W. Cooper presided; the Honorable Shackley F. Raffetto presided over proceedings prior to May 18, 2005.

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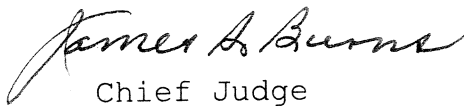
disputed that this is an action based on contract and assumpsit" and the court erroneously relied on this erroneous advice when it awarded attorney fees. We conclude that none of these contentions have any merit. Therefore, in accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments advanced and issues raised,

IT IS HEREBY ORDERED that the July 1, 2005 (1) Order Denying Plaintiffs' Motion for Relief from Final Judgment Filed March 5, 2003 and (2) Order Denying Plaintiffs' Motion to Vacate Garnishee Order Filed on May 10, 2004 and Return of Garnisheed Funds, Filed April 28, 2005, are hereby affirmed.

DATED: Honolulu, Hawai'i, June 21, 2006.

On the briefs:

Meghan R.K. Cedillos and
Philip H. Cedillos, dba
Hawaiian Windows,
pro se Plaintiffs-Appellants.


Chief Judge

Sonia Faust and Stella M.L. Kam,
Deputy Attorneys General,
for Defendants-Appellees.


Associate Judge


Associate Judge