

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

NO. 27553

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

TARA THOMAS, Plaintiff-Appellant,
v.
MONICA TAKABAYASHI, ET AL., Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 03-1-0200)

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 SEP 21 AM 8:20

FILED

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellant Tara Thomas (Thomas) appeals from the January 4, 2006 Judgment entered by Judge Greg K. Nakamura, which followed a summary judgment order entered in favor of Defendant-Appellee Monica Takabayashi (Takabayashi).

Thomas owns 91 Barenaba Lane, Hilo, Hawaii (Property 91). Takabayashi, who is a realtor, had submitted an offer to purchase the property located at 101 Barenaba Lane, Hilo, Hawaii (Property 101). Property 91 and Property 101 adjoin each other. Both are Land Court properties. Property 91 uses the cesspool located on Property 101.

Takabayashi did not purchase Property 101. In the July 22, 2003 Complaint and Demand for Jury Trial, Thomas alleged that while Takabayashi was seeking to purchase Property 101, Takabayashi had informed Thomas that, following her purchase of Property 101, Takabayashi "intends to disconnect" Property 91's access to the Property 101 cesspool. Thomas further alleged that even after Takabayashi no longer sought to purchase Property 101,

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Takabayashi continued to deny that Property 91 enjoyed the right to access and use the Property 101 cesspool. The Complaint sought the following:

Declaratory relief in Count 1 - declaring that Property 91 has a legal right to access and use the Property 101 cesspool;

Injunctive relief in Count 2 - enjoining Takabayashi from (a) disconnecting Property 91's connection to the Property 101 cesspool, and (b) communicating to third persons that Property 91 does not have a legal right to access and use Property 101's cesspool;

Compensation for damages in Count 3, Slander of Title,¹ caused by Takabayashi's statements that Property 91 does not have a legal right to access and use the Property 101 cesspool; and

Compensation for damages in Count 4, Trespass, caused by Takabayashi's having "threatened to physically interfere with [Thomas's] cesspool easement[.]"

On April 21, 2005, Takabayashi filed a motion for summary judgment (MFSJ). On May 19, 2005, Thomas withdrew Count 4 of the complaint. On May 27, 2005, the court heard arguments on the MFSJ.

On July 27, 2005, Thomas filed a document signed by Thomas, effective on July 14, 2004, and recorded on July 20, 2004, wherein Albert Virgil Smith, as the owner of Property 101,

¹ "To establish slander of title at common law, a plaintiff must show falsity, malice, and special damages, i.e., that the defendant maliciously published false statements that disparaged a plaintiff's right in property, causing special damages." B & B Inv. Group v. Gitler, 229 Mich. App. 1, 8, 581 N.W.2d 17, 20 (1998).

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conveyed to Thomas "and to her heirs, successors and assigns, and tenants, use of the common cesspool located at [Property 101] and waste disposal line serving [Property 91] for sewage disposal from [Property 91.]"

On September 22, 2005, the court entered an Order Granting Defendant Monica Takabayashi's Motion for Summary Judgment. On October 17, 2005, Thomas filed a notice of appeal. The January 4, 2006 Judgment followed.

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 applying the law relevant to the issues raised and arguments presented, IT IS HEREBY ORDERED that the January 4, 2006 Judgment is affirmed.

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

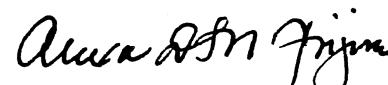
On the briefs:

Steven D. Strauss
for Plaintiff-Appellant.

William L. Goo and
Norman H. Suzuki
(Suzuki & Goo)
for Defendant-Appellee
Monica Takabayashi.


Chief Judge


Associate Judge


Associate Judge