

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 26570

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

DIPLOMAT TOURS AND TRAVEL, INC., Plaintiff-Appellee, v.
VERONICA B. LAZO AND DELIA ENCARNACION ALUPAY doing business as
PHIL USA TRAVEL & SERVICES, Defendants-Appellants

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
Ewa Division
(Civ. No. 1RC03-1-3438)

SUMMARY DISPOSITION ORDER

(By: Lim, Presiding Judge, Nakamura and Fujise, JJ.)

Defendant-Appellant Veronica B. Lazo (Lazo) appeals from the final judgment entered in her case on April 12, 2004, in the District Court of the First Circuit (district court).¹ Final judgment was entered following a trial held on July 25, 2003, in favor of Plaintiff-Appellee Diplomat Tours and Travel, Inc., (Diplomat). After a careful review of the issues raised, arguments advanced, law relied upon, and the record in the instant case, we conclude that the district court did not err. Consequently, we affirm.

Lazo's arguments in support of her contention that the district court was clearly erroneous in concluding that Diplomat was a holder in due course (HDC) are not supported by the record. Chun v. Bd. of Trs. of Employees' Ret. Sys. of State of Hawai'i, 106 Hawai'i 416, 430, 106 P.3d 339, 353 (2005); Leslie v. Estate of Tavares, 91 Hawai'i 394, 399, 984 P.2d 1220, 1225 (1999); State v. Okumura, 78 Hawai'i 383, 392, 894 P.2d 80, 89 (1995).

¹ The Honorable William A. Cardwell presided.

K. HAMAKADO
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The mere fact that Delia Encarnacion Alupay doing business as Phil USA Travel & Services (Alupay) proffered Lazo's endorsed check, for travel services Diplomat had provided Alupay, does not establish that Diplomat acted in bad faith. The evidence in the record does not establish that Diplomat failed to act in accord with Hawaii Revised Statutes (HRS) Chapter 468L (1993), or that Diplomat was aware of any such omission by Alupay.

That Lazo made out the endorsed check, and that Diplomat deposited the check in its client trust account, does not, in itself, establish that Diplomat dealt with Lazo, baring Diplomat's HDC status. Compare Standard Fin. Co., Ltd. v. Ellis, 3 Haw. App. 614, 616-617, 657 P.2d 1056, 1058-1059 (1983) (HDC status not conferred because party witnessed the signing of the disputed instrument and explained the terms and conditions of the instrument to executor of the instrument). According to HRS § 468L-5, because Alupay was making a payment to Diplomat for travel services, Diplomat was obliged to treat Alupay as a consumer, not Lazo.

There is nothing in the record indicating that Diplomat participated in a breach of a fiduciary duty by Alupay. Receiving payment from Alupay on a preexisting and unrelated travel expense debt in the form of Lazo's endorsed check is not proscribed by statute, irrespective of whether the check was deposited in Diplomat's client trust account. HRS § 498L-5 (1993).

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Finally, in the absence of any other evidence in the record, merely accepting an endorsed check from Alupay in payment of a preexisting and unrelated debt does not put Diplomat on notice of a violation of HRS § 468L-5 by Alupay.

Therefore,

The District Court of the First Circuit's April 12, 2004 final judgment is affirmed.

DATED: Honolulu, Hawai'i, February 23, 2007.

On the briefs:

Dan S. Ikehara,
for Defendant-Appellant.



Presiding Judge

Alfredo G. Evangelista,
(Evangelista & Quiban)
for Plaintiff-Appellee.



Associate Judge



Associate Judge