

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 26642

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

JOSEPH SUGARMAN, Plaintiff/Counterclaim Defendant-Appellee/Cross-Appellant, v.  
JOHN BEWS; MAUI BUILDERS, INC., Defendants/Counterclaimants-Appellants/Cross-Appellees, and  
JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; DOE ENTITIES 1-10; and DOE AGENCIES 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(CIVIL NO. 01-1-0064(3))

SUMMARY DISPOSITION ORDER

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

2007 MAR 16 AM 9:36  
NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

FILED

In this construction litigation case, John Bews and Maui Builders, Inc. (Defendants) appeal the May 25, 2004 judgment of the Circuit Court of the Second Circuit (circuit court),<sup>1</sup> entered after a bench trial, that awarded Joseph Sugarman (Plaintiff) overpayment damages of \$34,759.83 trebled to \$104,279.49 on his claim of unfair and deceptive trade practices, together with attorney's fees of \$141,272.78 and costs of \$7,944.38. Plaintiff cross-appeals.

After a diligent review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we resolve the points of error raised on appeal and cross-appeal as follows:

<sup>1</sup> The Honorable Joseph E. Cardoza presided.

1. *Defendants' Appeal.*

We agree that Plaintiff suffered no injury from Defendants' violation of Hawaii Revised Statutes (HRS) ch. 444 (1993 & Supp. 2006), and was therefore not entitled to treble damages or attorney's fees and costs under HRS § 480-13(b) (1993). Ai v. Frank Huff Agency, Ltd., 61 Haw. 607, 618, 607 P.2d 1304, 1312 (1980) (overruled in part on other grounds by Robert's Hawaii Sch. Bus, Inc. v. Laupahoehoe Transp. Co., Inc., 91 Hawai'i 224, 250 n.26, 982 P.2d 853, 879 n.26 (1999)). However, even though Defendants could recover under *quantum meruit* -- their technical violation of HRS ch. 444 notwithstanding, Hiraga v. Baldonado, 96 Hawai'i 365, 372, 31 P.3d 222, 229 (App. 2001) -- they failed to satisfy their burden of adducing substantial evidence of their entitlement to the contractor's fee. See ARC LifeMed, Inc. v. AMC-Tennessee, Inc. 183 S.W.3d 1, 25 (Tenn.Ct.App. 2005).

2. *Plaintiff's Cross-Appeal.*

Given the trial court's prerogative to determine the weight and credibility of the evidence, Welton v. Gallagher, 65 Haw. 528, 530, 654 P.2d 1349, 1351 (1982), we conclude there was substantial evidence to support the findings of fact and conclusions of law challenged by Plaintiff in his cross-appeal. Hence, they were not clearly erroneous and Plaintiff's cross-appeal is without merit. Chun v. Bd. of Trs. of the Employees' Ret. Sys. of the State of Hawai'i, 106 Hawai'i 416, 430, 106 P.3d

339, 353 (2005).

Therefore,

IT IS HEREBY ORDERED that the May 25, 2004 judgment of the circuit court is vacated and the cause remanded for entry of a judgment against Defendants and in favor of Plaintiff in the amount of \$34,759.83.

DATED: Honolulu, Hawai'i, March 16, 2007.

On the briefs:

Peter Van Name Esser,  
Philip H. Lowenthal, and  
Christopher Martin Dunn,  
for Defendants/  
Counterclaimants-Appellants  
and Cross-Appellees.

John B. Simpson,  
(Martin & Raynor, P.C.)  
for Plaintiff/Counterclaim  
Defendant-Appellee  
and Cross-Appellant.

  
Chief Judge

  
Associate Judge

  
Associate Judge