

**NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER**

NO. 26794

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

WALTER TANI, Plaintiff-Appellant, v. ALLSTATE INSURANCE COMPANY, a foreign corporation, and DEBORAH BLACKMAN, Defendants-Appellees, and JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS CORPORATIONS and/or OTHER ENTITIES 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT (Civ. No. 02-1-2773)

CLERK OF APPELLATE COURTS  
STATE OF HAWAII  
E.M. RIMANDO

2008 JAN - 8 AM 8:00

FILED

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Foley and Fujise, JJ.)

Plaintiff-Appellant Walter Tani (Tani) appeals from the August 5, 2004 Judgment entered in favor of his former employer, Defendant-Appellee Allstate Insurance Company (Allstate) and his former supervisor, Defendant-Appellee Deborah Blackman (Blackman) (collectively, Defendants) by the Circuit Court of the First Circuit (circuit court).<sup>1</sup>

Tani raises four points of error,<sup>2</sup> claiming that summary judgment in favor of Allstate and Blackman on both causes

<sup>1</sup> The Honorable Sabrina S. McKenna presided.

<sup>2</sup> Plaintiff-Appellant Walter Tani's (Tani) points of error are in noncompliance with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(4) insofar as they fail to specify "where in the record the alleged error occurred" or "where in the record the alleged error was objected to or the manner in which the alleged error was brought to the attention of the court or agency[.]" and do not contain a "quotation of the finding or conclusion urged as error[.]"

It has long been held that failure to comply with HRAP Rule 28 may alone be a basis to affirm the judgment. Alamida v. Wilson, 53 Haw. 398, 405, 495 P.2d 585, 590 (1972) (construing the predecessor to HRAP Rule 28, Supreme Court Rule 3(b)(5)). This sentiment has been expressed more recently in Morgan v. Planning Dept., County of Kauai, 104 Hawai'i 173, 180, 86 P.3d 982, 989 (2004) and Schefke v. Reliable Collection Agency, Ltd., 96 Hawai'i 408, 420, 32 P.3d 52, 64 (2001). "Nonetheless, inasmuch as 'this court has consistently adhered to the policy of affording litigants the opportunity to have their cases heard on the merits, where possible,' we address the issues [the parties raise] on the merits." Id. (quoting Bettencourt v. Bettencourt, 80 Hawai'i 225, 230, 909 P.2d 553, 558 (1995)) (internal quotation marks omitted).

Counsel is hereby warned that future violations will result in sanctions.

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of action in his complaint was granted in error. Based on a careful review of the arguments made, authority cited and the record in this case, we disagree with Appellant's arguments and affirm.

1. Wrongful termination. Tani's wrongful termination cause of action against Allstate and Blackman was based on two theories: breach of an implied contract of employment and termination in violation of public policy.

a. *Breach of Implied Contract of Employment.* It is undisputed that Tani was hired as an "at will" employee by Allstate. However, Tani relies on the Human Resource Policy Guide For Allstate Employees (HR Guide) for the terms of the implied contract of employment. It is undisputed that the HR Guide explicitly states that employees of Allstate are employed on an at will basis, that it is not a statement of the terms and conditions of employment and that it is not intended to give rise to any right to employment or continued employment. While an employee handbook may, based on the circumstances giving rise to the handbook, modify the terms of employment, Kinoshita v. Canadian Pacific Airlines, Ltd., 68 Haw. 594, 601, 724 P.2d 110, 115-16 (1986), Tani alleged no circumstances supporting such a modification of his terms of employment. Shoppe v. Gucci America, Inc., 94 Hawai'i 368, 386, 14 P.3d 1049, 1067 (2000). Thus, Tani failed, as a matter of law, to present a valid claim based on an implied contract theory.

b. *Termination in Violation of Public Policy.* Tani based this theory on his allegation that Blackman encouraged him, in his capacity as an adjuster, to increase his challenges to insurance claims, regardless of whether those claims warranted further scrutiny or challenge. Tani refused to do so, as, in his view, to challenge claims without cause would be a violation "of good faith claims practice standards set forth in [Hawaii Revised Statutes (HRS)] § 431:13-103." Tani accused Blackman of criticizing him, in performance reviews, for this refusal and accused Allstate of firing him for his refusal.

However, even assuming Blackman's encouragement to increase his challenge rates constituted encouragement to violate HRS § 432:13-103, and that in turn was a violation of public policy, Tani presented no evidence that his refusal to do so caused, as opposed to merely preceded, his termination, which occurred nearly two years<sup>3</sup> after Blackman's encouragement undisputedly ceased. "A party opposing a motion for summary judgment cannot discharge his or her burden by alleging conclusions, 'nor is [the party] entitled to a trial on the basis of a hope that [the party] can produce some evidence at that time.'" Henderson v. Prof'l Coatings Corp., 72 Haw. 387, 401, 819 P.2d 84, 92 (1991) (quoting 10A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure: Civil 2d § 2727 (1983)).

In support of their respective motions for summary judgment, Allstate and Blackman presented evidence supporting their position that Tani was fired for reasons unrelated to his rate of claims challenged and that Blackman had no role in his firing.

Conversely, on appeal, Tani points to no evidence that supports his conclusion that he was terminated because he refused to challenge more claims. Cf. Parnar v. Americana Hotels, 65 Haw. 370, 381 n.18, 652 P.2d 625, 632 n.18 (1982) (motivation for Parnar's discharge "was seriously cast in doubt by the materials before the lower court"). As Tani has failed to point to any evidence supporting his allegation that Allstate fired him because he refused to engage in violations of good faith claims adjustment standards, he has failed to show that the circuit court erred in granting summary judgment in favor of Allstate and Blackman as to Tani's violation of public policy wrongful termination theory.

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<sup>3</sup> Tani documented in his correspondence with Allstate personnel that by July 2000, Blackman had stopped the practice of encouraging more denials of claims. Blackman rated Tani as meeting requirements in evaluations after she criticized Tani's work. Tani was terminated by Allstate on May 13, 2002.

2. Intentional Infliction of Emotional Distress (IIED). On appeal, Tani argues that it was wrong to offer him continued employment conditioned on a "Job-in-Jeopardy" status because even his supervisors did not believe an improvement notification was warranted. However, as the record supports Allstate's termination of Tani's employment, his IIED cause of action, which turns on the wrongfulness of his termination, also fails.

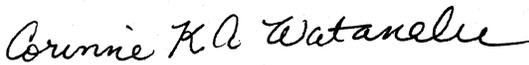
Therefore,

IT IS HEREBY ORDERED that the Circuit Court of the First Circuit's August 5, 2004 Judgment entered in this case is affirmed.

DATED: Honolulu, Hawai'i, January 8, 2008

On the briefs:

Michael R. Goodheart,  
for Plaintiff-Appellant.

  
Presiding Judge

Terry E. Thomason and  
Jessica M. Horiuchi,  
(Alston Hunt Floyd & Ing), and  
Susan Rosborough  
for Defendants-Appellees.

  
Associate Judge

  
Associate Judge