

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 27650

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAIIK. HAMAKADO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2009 MAY 22 AM 7:45

FILED

JOLENE NAPUA TRENHOLM, as Successor Trutee to Seward Samuel  
Smythe, Jr. Trust, Plaintiff/Counterclaim Defendant/Appellee,

v.

JAMES SMYTHE, Defendant/Counterclaimant/Cross-Claim  
Plaintiff/Appellant,  
and

BRETT K. SMYTHE, FIRST HAWAIIAN BANK, AND COLONY  
MORTGAGE COMPANY, LIMITED, Cross-Claim Defendants/Appellees,  
and

JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10; DCE  
CORPORATIONS 1-10; DOE "NON-PROFIT" CORPORATIONS 1-10; AND DOE  
GOVERNMENTAL UNITS 1-10, Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(CIVIL NO. 03-1-0373(1))

SUMMARY DISPOSITION ORDER

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

Defendant/Counterclaimant/Cross-Claim Plaintiff/  
Appellant James K. Smythe (James) appeals from the "Amended  
Judgment by Trial" filed on November 22, 2005 in the Circuit  
Court of the Second Circuit (circuit court).<sup>1</sup>

On appeal, James asserts sixty-seven points of error.  
However, James argues only seven discernable issues in his  
Opening Brief. Pursuant to Hawai'i Rules of Appellate Procedure  
(HRAP) Rule 28, this court will consider only the following  
points of error that James actually argues:

(1) Instead of finding the Warranty Deed, dated  
February 1, 2002 and filed in the State of Hawai'i Bureau of  
Conveyances on May 5, 2003, (Warranty Deed) void for uncertainty  
and vagueness, the circuit court should have construed the

<sup>1</sup> The Honorable Joel E. August presided.

Warranty Deed to give it the force and effect of conveying a one-third interest in the Property<sup>2</sup> to James.

(2) The circuit court erred in finding the Warranty Deed void because of undue influence over the grantor by James.

(3) The circuit court erred in finding the Warranty Deed void because of a lack of consideration.

(4) The circuit court erred in finding the Warranty Deed void because of a lack of delivery.

(5) The circuit court erred in finding the Warranty Deed void because of an invalid property description.

(6) The circuit court erred in finding the Warranty Deed void because of impossibility.

(7) The circuit court erred in finding the Warranty Deed void because the deed violated the statute of frauds.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve James's points of error as follows:

James contends the circuit court should have reformed the Warranty Deed in a manner consistent with the intent of the parties instead of finding it void for uncertainty and vagueness.

To determine the intent of the parties in executing a deed, the court looks to "the language of the instrument itself." Midkiff v. Castle & Cooke, Inc., 45 Haw. 409, 415, 368 P.2d 887, 891 (1962).

The Property was owned by three parties as joint tenants with right of survivorship. The grantor (one of the three joint tenants) attempted to deed a portion of the Property

---

<sup>2</sup> The Property that is the subject of this lawsuit is situated at Pauwela Village, Makawao, County of Maui, State of Hawai'i, Tax Map Key 2-7-6-23, area 25,196 square feet. Four buildings, bearing the following addresses, occupy the Property: (a) a 3-bedroom, 2-bath house, 105 Akahai St.; (b) a 2-bedroom, 2-bath studio, 105A Akahai St.; (c) a 2-bedroom, 2-bath house, 145 Akahai St.; and a 2-bedroom, 2-bath house, 165 Akahai St.

to James by the Warranty Deed. The language of the Warranty Deed apparently intended to convey a divided interest in certain structures located on the Property along with 6,100 square feet of the land within the Property.

As a joint tenant, the grantor did not have the right to convey a specific part of the property in which he held joint tenancy. Scott v. Pilipo, 24 Haw. 277, 282-83 (1918). There is no record of an agreement with the other joint tenants to grant a divided interest to James and no record that the other joint tenants joined in signing or ratifying the Warranty Deed. The Warranty Deed was ineffective in conveying a divided interest in the Property to James, and the circuit court could not simply rewrite the Warranty Deed to give it a meaning of conveying a one-third co-tenancy interest in the Property to James when that was not the intent of the parties. Midkiff, 45 Haw. at 415, 368 P.2d at 891.

The circuit court was correct in concluding that the Warranty Deed was void. Thus, it is unnecessary to address James's remaining points of error.

Therefore,

The "Amended Judgment by Trial" filed on November 22, 2005 in the Circuit Court of the Second Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 22, 2008.

On the briefs:

Gerald Johnson  
for Defendant/Counterclaimant/  
Cross-Claim Plaintiff/Appellant.

Deborah K. Wright and  
Keith D. Kirschbraun  
(Wright & Kirschbraun)  
for Plaintiff/Counterclaim  
Defendant/Appellee.

  
Presiding Judge

  
Associate Judge

  
Associate Judge