

NO. 27895

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAIIRHIANNON BATS, Plaintiff-Appellee, v.
HAROLD MELTZER and JERRY DAVIS, Defendants-AppellantsE.L. RIMANDO
CLERK, APPELLATE COURT
STATE OF HAWAII

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FILED

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 3RC05-1-0254K)SUMMARY DISPOSITION ORDER

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

In this breach of contract action, Defendants-Appellants Harold Meltzer (**Meltzer**) and Jerry Davis (**Davis**) (collectively, **Appellants**) appeal from a March 20, 2006 Judgment on a February 27, 2006 Decision and Judgment, in favor of Plaintiff-Appellee Rhiannon Bats (**Bats**), which was entered by the District Court of the Third Circuit (**District Court**).^{1/}

On appeal, Appellants contend that, after a bench trial on Bats' claims against Appellants, the District Court erred in: (1) finding that there was an agreement between the Appellants, as the sellers, and Bats, as the buyer, for the sale of certain real property; (2) finding that, as a result of Appellants' breach of the agreement to sell real property, Bats incurred \$5,000 in damages; and (3) awarding Bats \$1,452 in attorney's fees and costs.^{2/}

^{1/} The Honorable Joseph P. Florendo, Jr. presided.

^{2/} Appellants state a fourth point of error, which is a restatement of the other three points of error and is resolved on the same basis as the resolution of those other points, as stated herein.

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 Appellants' points of error as follows:

(1) & (2) We reject Appellants' argument that their agreement to sell the property was not binding on them. Under the circumstances of this case, Meltzer had apparent, if not actual, authority to sign for both sellers the subject agreement, which Davis (admittedly) had verbally agreed to - because he was out of town - prior to its transmission to Bats. In essence, the District Court found that Appellants simply had a change of heart based on a subsequent, higher, offer and then attempted to get out of the deal by refusing to (a) provide the signature when Davis returned; and (b) complete certain ministerial acts (checking a missed box and dating the agreement). We agree. The damages award of \$5,000 is supported by the evidence and applicable law. See, e.g., Burgess v. Arita, 5 Haw. App. 581, 589-90, 704 P.2d 930, 936-37 (1985).

(3) Appellants' only argument concerning the attorney's fees and costs is: "There having been no enforceable contract, there can be no award of damages for breach nor award of costs and fees on the basis that the case is in the nature of assumpsit and Appellee prevailed." As we are affirming the damages award for Appellants' breach of contract, this argument has no merit. Indeed, the attorney's fees and costs were

provided for in the agreement between the parties and are supported by HRS § 607-14 (Supp. 2007).

For these reasons, we affirm the District Court's Judgment entered on March 20, 2006.

DATED: Honolulu, Hawai'i, October 31, 2008.

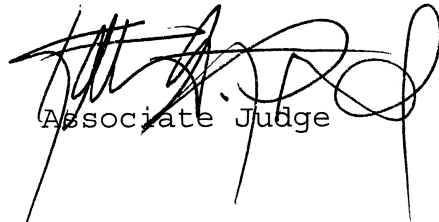
On the briefs:

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(Van Pernis - Vancil)
for Defendants-Appellants

David W. Lacy, Esq.
Leon E. Pasker, Esq.
(Lacy & Jackson, LLC)
for Plaintiff-Appellee


Presiding Judge


Associate Judge


Associate Judge