

NO. 27921

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

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STATE OF HAWAII

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FILED

TYLER O. YAMASHITA, Trustee of that certain unrecorded  
Trust dated August 9, 1990, Plaintiff-Appellee,  
v.  
DAE YOUNG DEVELOPMENT CORPORATION, a Hawaii corporation,  
and SUN YONG LEE, Defendants-Appellants,  
and  
WATAMULL INVESTMENT CO., LLC., Defendant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
HONOLULU DIVISION  
(CIVIL NO. 1RC03-1-3783)

SUMMARY DISPOSITION ORDER

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

Defendants-Appellants Dae Young Development Corporation  
(Dae Young) and Sun Yong Lee (Lee)<sup>1/</sup> appeal from the Judgment  
filed on April 4, 2006 in the District Court of the First  
Circuit, Honolulu Division (district court).<sup>2/</sup> The district  
court entered a default judgment in favor of Tyler O. Yamashita  
(Yamashita), Trustee of that certain unrecorded Trust dated  
August 9, 1990, and against Dae Young and Lee, and the court  
awarded Yamashita a total of \$344,856.57.

In June 2003, Yamashita filed a complaint against Dae  
Young and Lee for Dae Young's failure to pay real property taxes,  
as required under Dae Young's Lease for premises located at 2051  
Young Street in Honolulu (the Premises) and owned by Yamashita.

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<sup>1/</sup> The complaint and some pleadings in the lower court record refer to  
"Sun Yong Lee" as a defendant. However, Sun Yong Lee is also referred to as  
"Sun Young Lee" in parts of the lower court record (most notably, the  
transcripts). As the Limited Warranty Assignment of Lease and Amendment of  
Lease were executed by "Sun Yong Lee," we will use this spelling of her name.

<sup>2/</sup> The Honorable Gerald H. Kibe issued the Judgment.

On December 22, 2003, Dae Young, Lee, and their counsel, Theodore Miyamoto (Miyamoto), failed to appear at a final disposition hearing. Yamashita moved for a default judgment against Dae Young, which the district court orally granted.

On December 30, 2003, the district court filed a Judgment for Possession and Writ of Possession. In the Judgment for Possession, the court indicated that Yamashita was entitled to possession of the Premises.

On March 25, 2004, Dae Young and Lee filed "Defendants Dae Young Corporation and Sun Yong Lee's Motion to Set Aside Default, Judgment of Possession and Writ of Possession Entered on December 22, 2003" (Motion to Set Aside Default). At the conclusion of the April 26, 2004 hearing, the district court orally denied the Motion to Set Aside Default. On May 25, 2004, the district court filed an amended order denying the Motion to Set Aside Default.<sup>3/</sup>

On May 7, 2004, Dae Young filed a "Motion for Reconsideration of Denial of Defendants Dae Young Development Corporation and Sun Yong Lee's Motion to Set Aside Default, Judgment of Possession and Writ of Possession Entered on December 22, 2003" (Motion for Reconsideration). On June 4, 2004, the district court entered its "Order Denying Motion for Reconsideration of Denial of Motion to Set Aside Default, Judgment of Possession and Writ of Possession Entered on December 22, 2003" (Order Denying Motion for Reconsideration).

On appeal, Dae Young and Lee argue the following:

(1) The district court erred when it denied the Motion to Set Aside Default because

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<sup>3/</sup> The Honorable Christopher McKenzie issued the "Amended Order Denying Defendants Dae Young Development Corporation and Sun Yong Lee's Motion to Set Aside Default, Judgment of Possession and Writ of Possession Entered on December 22, 2003, filed on March 25, 2004" and the "Order Denying Motion for Reconsideration of Denial of Motion to Set Aside Default Judgment of Possession and Writ of Possession Entered on December 22, 2003."

(a) in so doing, the court deprived Dae Young and Lee of their due process rights;

(b) in the Order Denying Motion for Reconsideration, the district court erroneously relied upon BDM, Inc. v. Sageco, Inc., 57 Haw. 73, 549 P.2d 1147 (1976) (BDM), to the exclusion of other, more applicable cases; and

(c) even if the district court correctly relied upon BDM, the court erred by finding that Dae Young and Lee did not meet the standard set forth in that case.

(2) The district court erred by denying Dae Young's Motion for Reconsideration because the motion presented new evidence that Dae Young and Lee could not have provided in their Motion to Set Aside Default.

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, as well as the relevant statutory and case law, we hold:

(1) The district court did not abuse its discretion or deprive Dae Young and Lee of their due process rights by denying the Motion to Set Aside Default.

(a) The district court correctly relied upon BDM, whereas the cases<sup>4/</sup> Dae Young and Lee argue the court should have relied upon are inapplicable to the instant case.

(b) Because Dae Young and Lee did not defend at the initial stages of the lawsuit, the district court did not abuse its discretion in denying the Motion to Set Aside Default, pursuant to District Court Rules of Civil Procedure Rule 55(a) ("When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by

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<sup>4/</sup> Stafford v. Dickison, 46 Haw. 52, 374 P.2d 665 (1962); KNG Corp. v. Kim, 107 Hawai'i 73, 110 P.3d 397 (2005); Shasteen, Inc. v. Hilton Hawaiian Village Joint Venture, 79 Hawai'i 103, 899 P.2d 386 (1995).

these rules, and the fact is made to appear by affidavit or otherwise, the clerk shall enter that party's default.").

(c) The district court correctly found that Dae Young and Lee did not meet the standard set forth in BDM. Dae Young and Lee did not present a meritorious defense because they failed to cure the lease defaults and allegedly were engaging in illegal activities on the Premises. BDM, 57 Haw. at 76, 549 P.2d at 1150.

(2) The district court did not abuse its discretion by denying Dae Young's Motion for Reconsideration because the evidence in support of the motion would not have altered the district court's result. Hawai'i Rules of Civil Procedure Rule 59(e); see e.g., Gossinger v. Assoc. of Apt. Owners of Regency of Ala Wai, 73 Haw. 412, 425-27, 835 P.2d 627, 634-35 (1992); Briggs v. Hotel Corp. of the Pacific, Inc., 73 Haw. 276, 287 n.7, 831 P.2d 1135, 1342 n.7 (1992); Kona Enters., Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000).

Therefore,

The Judgment filed April 4, 2006 in the District Court of the First Circuit, Honolulu Division, is affirmed.

DATED: Honolulu, Hawai'i, January 28, 2008.

On the briefs:

Keith M. Kiuchi  
(Kiuchi & Nakamoto)  
and Mary M.S. Shin  
for Defendants-Appellants.

Adrian W. Rosehill and  
Alan J. Ma  
(Stubenberg & Durrett)  
for Plaintiff-Appellee.

  
Presiding Judge

  
Associate Judge

  
Associate Judge