

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28184

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

TOM SCOBLE, Plaintiff-Counterclaim Defendant-Appellant,
v.
LORRIE ZIMMERMAN and JAMES STRAIT,
Defendants-Counterclaimants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 05-1-0115K)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Foley and Nakamura, JJ.)

Plaintiff-Counterclaim Defendant-Appellant Tom Scoble (Scoble) appeals from the Final Judgment filed on August 29, 2006 in the Circuit Court of the Third Circuit (circuit court).^{1/} The Final Judgment entered judgment against Scoble and in favor of Defendants-Counterclaimants- Appellees Lorrie Zimmerman (Zimmerman) and James Strait (Strait) (Zimmerman and Strait are collectively referred to as Defendants) and provided, in relevant part:

1. [Scoble's] option to purchase Unit 3 of the Malia Kai condominium project located at 75-5855 Walua Road, Kailua-Kona, Hawaii, which property is designated on the tax maps of the Third Taxation Division of the State of Hawaii as Tax Map Key No. 7-5-009-009 CPR No. 003 (the "Property") is null and void and [Scoble] has no right or interest in the Property.

2. [Scoble] is immediately and permanently enjoined and restrained from maintaining possession and control of the Property.

3. Judgment is entered in favor of Defendants and against [Scoble] in the amount of \$16,575.00 for unpaid rental payments, late fees and interest, together with reasonable attorneys' fees in the amount of \$13,929.50 and costs in the amount of \$205.76, for a total of \$30,710.26.

^{1/} The Honorable Elizabeth A. Strance presided.

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

On appeal, Scoble argues that the circuit court erred when it denied "Plaintiff Tom Scoble's Motion for Summary Judgment" (Scoble's Motion for SJ), granted "Defendants-Counterclaimants Lorrie Zimmerman and James Strait's Motion for Summary Judgment and for Eviction for Failure to Pay Rent" (Defendants' Motion for SJ), and granted Defendants' request for attorney's fees and costs.

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 resolve Scoble's points of error as follows:

(1) Scoble did not show "that he actually obtained financing and was ready, willing, and able to close on or before May 30, 2005." Scoble is not entitled to specific performance because he has failed "to show that he [had] paid the purchase price, tendered performance, or [was] ready, willing and able to perform the contract." PR Pension Fund v. Nakada, 8 Haw. App. 480, 491, 809 P.2d 1139, 1146 (1991).

(2) The circuit court did not err when it granted Defendants' Motion for SJ. There was no question of material fact concerning whether Scoble failed to demonstrate he was ready, willing, and able to exercise the purchase option by May 30, 2005.

(3) The circuit court did not err when it granted Defendants' request for attorneys' fees and costs because the Residential Lease with Option to Purchase (Lease) provided that if either party brought a legal action to enforce the terms of the Lease or relating to the subject property, "[t]he prevailing party shall be entitled to all costs incurred, . . . including reasonable attorneys' fees," and Defendants were the prevailing party in the instant case.

Therefore,

IT IS HEREBY ORDERED that the Final Judgment filed on August 29, 2006 in the Circuit Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, February 8, 2008.

On the briefs:

David W. Lacy
Leon E. Pasker
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for Plaintiff-Counterclaim
Defendant-Appellant.

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for Defendants-
Counterclaimants-Appellees.



Chief Judge



Associate Judge



Associate Judge