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NO. 28440

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

FILED
2008 OCT 29 AM 7:48

EDWARD K. MERL; PAULA MERL,
Plaintiffs/Counter-Claim Defendants/Appellees,
v.
LAMBERT KONG,
Defendant/Counter-Claimant/Cross-Claimant/Appellee,

RUBY MERRITT,
Defendant/Counter-Claimant/Appellee

KARLA JONES; JOAN BROWN,
Defendants/Cross-Claim Defendants/Appellants

JOHN DOES 1-10,
Defendants/Appellees

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CV. NO. 01-1-0198(1)) (Other Civil Action)

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

This appeal involves a dispute over interests in title to a parcel of residential real property (the Property) on Maui. The Circuit Court of the Second Circuit (circuit court)[1/] granted the "Motion for Partial Summary Judgment As To Title" filed by Plaintiffs/Counter-Claim Defendants/Appellees Edward and Paula Merl (collectively, "the Merls"). Defendants/Cross-Claim Defendants/Appellants Joan Brown (Brown) and Karla Jones (Jones) appeal from: 1) the "Final Judgment As To Title," which was filed on December 19, 2006, and 2) the "Order Denying Defendants Jones and Brown's Motion to Amend Final Judgment Entered December 19, 2006," which was filed on February 7, 2007. We affirm.

[1/] The Honorable Joel E. August presided.

I.

A.

Brown and Jones held a leasehold interest in the Property. In a prior case brought in 1997 (the prior case), the Merls sued Brown and Jones to enforce an alleged oral contract for the sale by Brown and Jones of their leasehold interest to the Merls. The prior case was settled by stipulation under which Brown and Jones agreed to assign their leasehold interest to the Merls for $40,000, payable on or before February 29, 2000. The stipulation further provided that the circuit court[2/] would retain jurisdiction to enforce the stipulation and would have the power to extend the payment deadline upon a showing of good cause.

The circuit court extended the payment deadline until June 25, 2000. On June 14, 2000, Brown and Jones transmitted a signed assignment of lease to escrow, and on June 23, 2000, the Merls submitted the required payment to escrow. The documents to complete the transaction were delivered to the Bureau of Conveyances on June 26, 2000, and would have been recorded, in the normal course of business, on June 28, 2000. However, on June 27, 2000, Brown and Jones's lawyer sent a letter to escrow directing it not to record the documents because the transaction had not closed on time. On that same day, Brown and Jones purportedly entered into a Purchase and Sale Agreement to sell their leasehold interest to Defendant/Counter-Claimant/Cross-Claimant/Appellee Lambert Kong (Kong). Kong and Defendant/Counter-Claimant/Appellee Ruby Merritt (Merritt) were residing on the Property as subtenants of Brown and Jones at that time.

On June 27, 2000, the Merls filed a motion to require closing to proceed. On June 28, 2000, the circuit court granted the motion and ordered escrow to record the necessary documents by June 30, 2000. The assignment of lease was recorded on

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[2/] The Honorable Joseph E. Cardoza presided over the prior case.

June 30, 2000, along with a deed conveying to the Merls the fee simple interest on the Property, which the Merls had separately purchased from the fee owner.

Kong and Merritt continued to occupy the property after June 30, 2000, based on a claim of right under Kong's Purchase and Sale Agreement with Brown and Jones. On October 27, 2000, the Merls filed a motion to enforce the settlement agreement, seeking judicial confirmation that Brown and Jones had assigned their leasehold interest to the Merls and that Brown and Jones's alleged sale of their leasehold interest to Kong was void.

On January 18, 2001, the circuit court entered findings of fact, conclusions of law, and an order (the January 18, 2001 decision) with respect to the Merls' motion. The court concluded that "[the Merls] are the legitimate owners of the leasehold to the subject property pursuant to the aforesaid assignment of lease that was recorded on June 30, 2000 in accordance with the Settlement Agreement and subsequent court orders." The court reasoned that Brown and Jones had not withdrawn the assignment of lease to the Merls from escrow and thus the assignment of lease, which had been recorded pursuant to the court's authorization, was valid. The court denied the Merls' request to void Brown and Jones's purported agreement of sale with Kong, not because the purported agreement of sale was valid, but because there was no credible evidence of the sale. Alternatively, the court concluded that even if the agreement of sale had been proven, the assignment of the lease to the Merls rendered Brown and Jones's agreement of sale with Kong a nullity. The court noted that Kong was "not a party to this action, and this court has no jurisdiction over him." Judgment was entered on January 25, 2001.

Brown and Jones appealed from the Judgment filed in the prior case. However, they subsequently dismissed the appeal pursuant to an appellate settlement negotiated through a mediator (retired Justice Frank Padgett). Pursuant to the appellate settlement, the parties agreed to the modification of certain

aspects of the circuit court's January 18, 2001, decision, including provisions awarding attorney's fees to the Merls and requiring Brown and Jones to turn over rent and the security deposit to the Merls. However, the appellate settlement left intact the circuit court's ruling that the assignment of lease by Brown and Jones to the Merls was valid and that the Merls were the legitimate owners of the leasehold to the Property. The circuit court's January 18, 2001, decision, as amended pursuant to the appellate settlement, provided in relevant part:

> AMENDED ORDER
>
> IT IS HEREBY ORDERED, DECREED and ADJUDGED as follows:
>
> 1. There was only one conveyance concerning the leasehold to the subject property, and that was the said assignment of lease from [Brown and Jones] to [the Merls] that was recorded on June 30, 2000. Further, when [Brown and Jones] signed the assignment of lease and deposited it with the escrow company handling the transaction on May 12, 2000 [sic],[3/] [Brown and Jones] became powerless to convey it to any party other than [the Merls]. Accordingly, as between [the Merls] and [Brown and Jones], [the Merls] are the rightful owners of the leasehold to the subject property.
>
> 2. Kong is a tenant on the subject property.
>
> 3. This court is without jurisdiction over Mr. Lambert Kong, and therefore, Mr. Kong is not subject to this order.

B.

Meanwhile, on April 18, 2001, the Merls filed a complaint in the instant case against Kong and Merritt to recover possession of the Property. In opposition to the Merls' claim for possession, Kong asserted that on June 27, 2000, he had entered into an agreement to purchase the leasehold interest in the Property from Brown and Jones. The Merls filed a second amended complaint adding Brown and Jones as defendants. Kong filed a cross-claim against Brown and Jones, alleging misrepresentation and negligence arising out of Brown and Jones's

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[3/] The record indicates the Brown and Jones signed the assignment of lease on May 12, 2000, but that the assignment of lease was transmitted to escrow on June 14, 2004.

agreement to sell Kong their leasehold interest. Kong and Merritt also filed a counterclaim against the Merls. The circuit court entered final judgment for possession in favor of the Merls. Kong and Merritt vacated the Property in January 2003 pursuant to a writ of possession. The Merls filed a third amended complaint adding claims for damages to the Property discovered after they obtained possession.

Perhaps mindful of Kong's cross-claim, Brown and Jones asserted that their agreement to sell their leasehold interest in the Property to Kong was valid because they had the right to sell the leasehold interest to Kong when they entered into the agreement. The Merls moved for partial summary judgment, seeking a declaration by the circuit court that they held title to the Property as against Brown, Jones, Kong, and Merritt. The circuit court granted the Merls' motion for partial summary judgment. The court concluded that Brown and Jones's assignment of their leasehold interest to the Merls was valid and that this leasehold interest merged with the fee interest separately acquired by the Merls to give the Merls fee simple title to the Property. The court further concluded that when Brown and Jones attempted to convey their leasehold interest to Kong, "they had no legal or equitable interest to convey at that time." The court ruled that although Kong was not a party to the prior case, and thus could not be bound by rulings in the prior case on the basis of claim or issue preclusion, the court's analysis that the assignment of the leasehold interest to the Merls was valid necessarily meant that the attempted sale of the leasehold interest by Brown and Jones to Kong was invalid.

On December 19, 2006, the circuit court entered a Final Judgment As To Title in which it entered judgment in favor of the Merls and against Brown, Jones, Kong, and Merritt. The Final Judgment As To Title declared that Brown, Jones, Kong, and Merritt did not have any rights or interest in the title to the Property. Brown and Jones filed a motion to amend the Final Judgment As To Title, which was denied. Neither Kong nor Merritt

appealed from the Final Judgment As to Title.

II.

On appeal, Brown and Jones argue that the circuit court erred in ruling that the Merls have good title to the Property and that none of the defendants (Brown, Jones, Kong, and Merritt) has any right or interest in the Property. Brown and Jones concede that as between themselves and the Merls, the doctrine of res judicata precludes Brown and Jones from contesting the circuit court's ruling in the prior case that their assignment of the leasehold interest to the Merls was valid. Brown and Jones contend, however, that because Kong was not a party to the prior case, they are free to challenge the circuit court's ruling on appeal by asserting Kong's rights. Brown and Jones's contention is without merit.

A circuit court's judgment that has been appealed becomes final for res judicata purposes once the appeal is withdrawn. Kauhane v. Acutron Co., 71 Haw. 458, 465, 795 P.2d 276, 279 (1990). Brown and Jones dismissed their appeal in the prior case leaving intact the circuit court's ruling that their assignment of their leasehold interest to the Merls was valid and that upon deposit of the signed assignment of lease into escrow, Brown and Jones lost the power to convey their leasehold interest to anyone else. We conclude, pursuant to the doctrine of res judicata, that Brown and Jones are barred from claiming that their assignment of their leasehold interest to the Merls was invalid. See id. at 462-65, 795 P.2d at 278-80. We further conclude that Brown and Jones are not entitled to assert the rights of Kong. See Warth v. Seldin, 422 U.S. 490, 499 (1975) (stating that a party generally "cannot rest his claim to relief on the legal rights or interests of third parties"); Tileston v. Ullman, 318 U.S. 44, 46 (1943).

III.

We affirm the circuit court's: 1) "Final Judgment As To Title," which was filed on December 19, 2006, and 2) the

"Order Denying Defendants Jones and Brown's Motion to Amend Final Judgment Entered December 19, 2006," which was filed on February 7, 2007.

DATED: Honolulu, Hawai'i, October 29, 2008.

On the briefs:

Joel Eser Richman
for Plaintiffs-Appellees

Lloyd A. Poelman
Sanford J. Langa
(Poelman & Langa)
for Defendants/Cross-Claim
Appellants

Presiding Judge

Associate Judge

Associate Judge