

*** NOT FOR PUBLICATION ***

NO. 24586

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

PHOENIX UPVC BUILDING SUPPLY, INC., Plaintiff-Appellant

vs.

STEPHEN K. YAMADA, Defendant-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 98-2181)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Duffy, JJ.
and Circuit Judge Wilson, in place of Acoba, J., recused)

Plaintiff-appellant Phoenix UPVC Building Supply, Inc. (Phoenix) appeals from the September 13, 2001 post-judgment order of the circuit court of the first circuit, the Honorable Victoria S. Marks presiding, denying Phoenix's motion for the appointment of a receiver to assist in collecting a judgment against defendant-appellee Stephen K. Yamada (Yamada). On appeal, Phoenix argues that the circuit court erred in denying its request for the appointment of a receiver based on cost and lack of authority to grant the motion.

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the issues raised and arguments advanced, we hold that the circuit court's jurisdiction to appoint a receiver rested on Phoenix alleging and proving, by specific evidence, that Yamada's attorneys' fees were in danger of being lost, removed, or materially injured after attorney Joseph Gleason took over Yamada's cases. See Oyama v. Stuart, 22 Haw. 693, 698-699 (Hawai'i Terr. 1915). See also Cohen v. Herbert, 186 Cal. App. 2d 488, 495, 8 Cal. Rptr. 922,

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926-927 (Cal. App. 2d Dist. 1960). Inasmuch as Phoenix did not present any evidence establishing that Yamada's accrued attorneys' fees were in danger of neglect, waste or misconduct, or educate the circuit court as to its exact value, we cannot say that the circuit court "clearly exceeded the bounds of reason or disregarded rules or principles of law or practice" to the substantial detriment of Phoenix when it denied Phoenix's motion to appoint a receiver "based on the cost of using the receiver procedure and a lack of authority to grant this motion." See The California Feed Co., Ltd. v. The Club Stables Co., Ltd., 10 Haw. 209, 212 (Hawai'i Rep. 1896); Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114, 839 P.2d 10, 26 (1992). Therefore,

IT IS HEREBY ORDERED that the circuit court's September 13, 2001 post-judgment order, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, April 20, 2005.

On the briefs:

Arnold T. Phillips II
for plaintiff-appellant
Phoenix UPVC Building
Supply, Inc.

Stephen K. Yamada,
defendant-appellee,
pro se, no answering
brief filed

