

* * * NOT FOR PUBLICATION * * *

NO. 25968

IN THE SUPREME COURT OF THE STATE OF HAWAII

DOMINGO P. RICASA, Plaintiff-Appellant,

vs.

HILTON HOTELS CORPORATION, a Delaware Corporation, and HILTON HAWAIIAN VILLAGE, LLC, a Hawai'i Limited Liability Corporation, Defendants-Appellees,

and

JOHN AND JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; and OTHER DOE ENTITIES 1-10, Defendants.

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 01-1-2639)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

Plaintiff-appellant Domingo P. Ricasa appeals from the first circuit court's June 16, 2003 final judgment in favor of defendants-appellees Hilton Hotels Corporation and Hilton Hawaiian Village, LLC [hereinafter collectively, Hilton].¹ Ricasa's single point of error is that the circuit court erred in granting Hilton's second motion for summary judgment.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advocated and the issues raised, we conclude that the circuit court erred in granting summary judgment in favor of

¹ The Honorable Dexter D. Del Rosario presided over this matter.

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

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Hilton. Specifically, we hold that there are genuine issues of material fact as to Ricasa's claims for breach of implied contract and retaliation. In Gonsalves v. Nissan Motor Corp. in Hawaii, Ltd., 100 Hawai'i 149, 58 P.3d 1196 (2002), we dealt with the issue of disclaimers and implied contracts and held that a disclaimer is valid if it is: "(1) . . . clear, conspicuous, and understandable; (2) [does not] contradict language in the [employee] manual; [and] (3) [does not] contradict subsequent oral or written statements by the employer." (emphasis added.) 100 Hawai'i at 167-68, 58 P.3d at 1214-15. In this case, there appears to be a contradiction between the disclaimer affirming the "at will" status of Ricasa's employment, and the Hilton "Harassment-Free Workplace Policy" which provided that "[a]ny employee who reports unlawful harassment or cooperates in the investigation of a complaint will be protected from retaliatory action" and that "[a]ll reports that you make will be fully investigated." The record shows that Ricasa reported alleged unlawful harassment, and that there are genuine issues of material fact as to whether Hilton fully investigated Ricasa's report, and whether Hilton's termination of Ricasa was retaliatory action. Summary judgment against Ricasa on this record was thus inappropriate.

IT IS HEREBY ORDERED that the circuit court's June 16, 2003 final judgment is vacated and this case is remanded to the

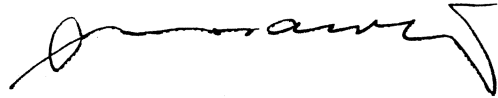
first circuit court for further proceedings consistent with this order.

DATED: Honolulu, Hawai'i, July 25, 2005.

On the briefs:

Shawn A. Luiz
for plaintiff-appellant
Domingo P. Ricasa

Robert S. Katz
and Paul M. Saito
for defendants-appellees
Hilton Hotels Corporation and
Hilton Hawaiian Village, LLC



Kenneth E. Duddy, Jr.