

\*\*\*NOT FOR PUBLICATION\*\*\*

NO. 24458

IN THE SUPREME COURT OF THE STATE OF HAWAII

WILLIAM K. TAKAKI, JANINA TAKAKI, BILLIE K.  
TAKAKI, Plaintiffs-Appellees

vs.

GEORGE E. CAMBRA, Defendant-Appellant

and

JOSEPH P. TAVARES, GEORGE L. CAMBRA, VIRGINIA N. CAMBRA,  
GEORGE CAMBRA'S MOVIE PRODUCTION TRUCKS, INC., SHAFTER  
PAWN, INC. and JOHN and MARY DOES 1-10, DOE CORPORATIONS,  
PARTNERSHIPS, or OTHER ENTITIES 1-10, Defendants

NURMA T. YARA  
CLERK APPELLATE COURTS  
STATE OF HAWAII

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FILED

APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 99-0-2594)

SUMMARY DISPOSITION ORDER

(By: Nakayama, Acoba, and Duffy, JJ.; With Moon, C.J.,  
Concurring Separately, and With Whom Levinson, J., Joins)

Defendant-Appellant George E. Cambra (Appellant)

appeals from the August 28, 2001 judgment of the circuit court of the first circuit<sup>1</sup> (the court). Appellant also challenges the court's (a) February 23, 2001 oral order granting in part and denying in part Appellant's motion for directed verdict, (b) July 6, 2001 "Order Granting in Part and Denying in Part [Appellant's] Motion for [Judgment Notwithstanding the Verdict (J.N.O.V.)]," and (c) July 6, 2001 "Order Denying [Appellant's] Motion for New Trial."

On appeal, Appellant argues that (1) the case of

<sup>1</sup> The Honorable R. Mark Browning presiding.

Plaintiffs-Appellees William K. Takaki, Janina Takaki (Mrs. Takaki) and Billie K. Takaki (Billie) [collectively, Appellees] is barred by the statute of limitations; (2) "the [court] erred in denying directed verdict and J.N.O.V."; (3) "the [court] issued a confusing and inadequate special verdict form"; (4) "[Appellees'] claims were based solely on destruction to corporate property and, therefore, were property of the corporation"; and (5) "there was insufficient evidence to support the jury's finding of intentional infliction of emotional distress [(IIED)]."

As to Appellant's first argument on appeal, the plain language of Hawai'i Revised Statutes (HRS) § 657-20 (1993) sustains the timeliness of Appellees' complaint inasmuch as Appellant fraudulently concealed his liability on the claim brought by Appellees, as determined by the jury.

As to his second argument, it cannot be concluded that the court erred in denying Appellant's motions for directed verdict or J.N.O.V. on the statute of limitations defense. The court instructed the jury verbatim from HRS § 657-20.<sup>2</sup> Any doubt

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<sup>2</sup> HRS § 657-20 states:

If any person who is liable to any of the actions mentioned in this part or section 663-3, fraudulently conceals the existence of the cause of action or the identity of any person who is liable for the claim from the knowledge of the person entitled to bring the action, the action may be commenced at any time within six years after the person who is entitled to bring the same discovers or should have discovered, the existence of the cause of action or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

as to the reasonableness of Appellees' conduct or any objection to the Appellees' claim of fraudulent concealment was resolved at trial. The weight of the evidence was for the jury to decide, see State v. Tamura, 63 Haw. 636, 637-38, 633 P.2d 1115, 1117 (1981) (holding that the jury, as the trier of fact, is the sole judge of the credibility of witnesses or the weight of the evidence), and whether or not Appellees reasonably relied on such concealment was decided by the jury as rendered by its verdict, see Tachibana v. State, 79 Hawai'i 226, 239, 900 P.2d 1293, 1307 (1995) (explaining that "an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence"). Because by its verdict the jury determined Appellant's statute of limitations defense had not been proven, the court was correct in denying Appellant's motion for directed verdict.

As to point three, by their award of damages, it cannot reasonably be disputed that the jurors did anything but determine that there was fraudulent concealment and that Appellant failed to prove his statute of limitations defense. See Montalvo v. Lapez, 77 Hawai'i 282, 292, 884 P.2d 345, 355, reconsideration denied, 77 Hawai'i 489, 889 P.2d 66 (1994) ("In analyzing alleged errors in special verdict forms, the instructions and the interrogatories on the verdict form are considered as a whole.")

As to point four, Appellant did not raise this defense

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in a timely manner and it is, therefore, waived. See Lagondino v. Maldonado, 7 Haw. App. 591, 596, 789 P.2d 1129, 1132 (App.), reconsideration denied, 7 Haw. App. 667, 807 P.2d 53, cert. denied, 71 Haw. 668, 833 P.2d 900 (1990).<sup>3</sup>

As to point five, at all times relevant to the instant case, the elements of IIED were that (1) the act causing the harm was intentional, (2) the act was unreasonable, and (3) the actor should have recognized the likelihood of harm. Wong v. Panis, 7 Haw. App. 414, 421, 772 P.2d 695, 700 (1989). As to the first element, Appellant admitted his involvement in the act causing the harm, i.e., the burning of the truck, and eventually pleaded guilty to conspiracy to commit arson. As to the second element, such conduct was plainly unreasonable. The third element of the test was satisfied through the testimony of Mrs. Takaki and Billie. Based on the nature of his conduct, Appellant should have recognized the likelihood of harm to which Mrs. Takaki and Billie testified. Therefore,

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<sup>3</sup> In Lagondino, the ICA opined that:

HRCP Rule 17(a) requires the prosecution of an action in the name of the party who, by the substantive law, has the right sought to be enforced. . . . Since a real party in interest objection under [Hawai'i Rules of Civil Procedure (HRCP)] Rule 17(a) is for the benefit of a defendant, [it] should be raised in a timely fashion or it may be deemed waived.

The [HRCP] specify neither the procedure to be utilized when objecting that plaintiff is not the real party in interest nor when such objection must be made. Evidently, a HRCP Rule 17(a) objection may be made in defendants' answer as an affirmative defense or by a pretrial motion. However, whatever vehicle is used to present the objection, it should be done with reasonable promptness. Otherwise, the court may conclude that the point has been waived by the delay.

(Emphases added.)

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In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the court's judgment filed on August 28, 2001, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, May 2, 2006.

On the briefs:

William C.H. Jarrett  
for defendant-appellant.



Leslie S. Fukumoto for  
plaintiffs-appellees.



Kama E. Duggan, Jr.

CONCURRING OPINION BY MOON, C.J.,  
WITH WHOM LEVINSON, J., JOINS

I concur in the result only.

