

NO. 25871

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

MICHAEL J. SZYMANSKI, Petitioner-Appellant

vs.

AMERICORP INTERNATIONAL, LTD. and
BRUCE ROBERT TRAVIS, Respondents-Appellee

EM RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 FEB 15 PM 1:20

FILED

APPEAL FROM THE SECOND CIRCUIT COURT
(CIV NO. 02-1-0033)

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Michael J. Szymanski (Szymanski) appeals from (1) the May 7, 2003 order of the circuit court of the second circuit¹ (the court) denying Szymanski's motion to set aside purported settlement agreement, [SP 33 Record on Appeal (RA) Vol. (V) 3 at 630-31] and (2) the court's May 7, 2003 order granting the motion to enforce settlement agreement filed by Respondents-Appellees Bruce Robert Travis (Travis) and Americorp International Ltd. [collectively, Appellees].

Szymanski contends on appeal that: (1) the court erred when it declined to set aside the December 24, 2002 settlement agreement inasmuch as (a) Appellees acted in bad faith and fraudulently induced Szymanski to enter into the settlement agreement, (b) there were no genuine issues of material fact in dispute, and (c) the facts were sufficient to prove Appellees'

¹ The Honorable Shackley F. Raffetto presided.

conduct constituted bad faith and fraudulent inducement; and (2) even if the order denying Szymanski's motion to set aside the purported settlement agreement is upheld on the factual record, the order to enforce the settlement agreement, without holding an evidentiary hearing, must be reversed inasmuch as (a) motions to enforce settlement agreements may not be decided summarily if there is any question of fact as to whether a mutual, valid and enforceable agreement exists between the parties and (b) in this case, several factual disputes exist as related to (i) Travis' intent on and before December 26, 2002, (ii) the extent to which Appellees understood their plans to carry out hostile actions material to the settlement agreement, and (iii) the scope of the settlement requirement that Appellees "take no action" relating to a real estate development project at Wailea, Maui [hereinafter, One Wailea].

In response, Appellees maintain, inter alia, that "the issues raised in this appeal are moot because the appeal in [Supreme Court] No. 25504 [hereinafter, S.Ct. No. 25504] has already been dismissed." Because it is concluded that the settlement agreement between Szymanski and Appellees has been satisfied and completed, Szymanski's challenges to the court's order denying his motion to set aside the settlement agreement and to the court's order enforcing the settlement agreement are moot.

As to Count One of Szymanski's complaint in Civil No. 99-0698(3), the breach of commission claim, the court granted

Szymanski's motion to confirm the arbitration award on September 16, 2002. On November 20, 2002, the court denied Appellees' motion for reconsideration of the confirmation order. Count One was then the subject of the appeal and cross-appeal in S.Ct. No. 25504. Thereafter, on November 29, 2002, at a sheriff's execution sale, Szymanski purchased Appellees' claims in Counts Two, Three, and Four in Civil No. 99-0698(3) related to One Wailea.

On December 24, 2002, Szymanski proposed a settlement agreement to Appellees, which was accepted. The terms of the settlement agreement were that Travis would take no action in Civil No. 99-0698(3), that Szymanski would receive \$42,500 from Travis by December 27, 2002, and that Travis' appeal and Szymanski's cross-appeal in S.Ct. No. 25504 would be voluntarily dismissed with prejudice. As stated supra, Szymanski had purchased Appellees' claims in Counts Two, Three, and Four and does not argue that Appellees have taken any action on them. Szymanski received payment of \$42,500 on December 27, 2002, as required by the settlement agreement. On June 24, 2003, this court approved Szymanski's and Appellees' stipulation for dismissal of the appeal and cross-appeal. For all purposes of this appeal, the settlement agreement and its mandates are completed. Cf. Kendler v. Kendler, 816 P.2d 193, 196 (Alaska 1991) (concluding that the terms of a settlement agreement that had been incorporated into a divorce decree had been fully

complied with and that the trial court exceeded its jurisdiction in imposing additional requirements). As to this court's duty regarding moot issues, it has been stated that

[t]he duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.

Hac v. Univ. of Hawaii, 102 Hawai'i 92, 99, 73 P.3d 46, 53 (2003) (quoting In re Application of Thomas, 73 Haw. 223, 226, 832 P.2d 253, 255 (1992) (quoting Wong v. Bd. of Regents, Univ. of Hawaii, 62 Haw. 391, 395, 616 P.2d 201, 204 (1980))). Accordingly, Szymanski's first point on appeal, asserting that the court erred when it declined to set aside the settlement agreement, and his second point, that the order to enforce the settlement agreement must be reversed because an evidentiary hearing was not held, need not be decided. The question of whether Szymanski may file an independent action against Appellees for fraudulent inducement to enter the settlement agreement is not reached. See Matsuura v. E.I. du Pont De Nemours & Co., 102 Hawai'i 149, 162-66, 73 P.3d 687, 700-04 (2003) (recognizing that a party can bring an independent cause of action for fraudulent inducement to enter into a settlement agreement). Therefore,

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 appeal herein is
dismissed as moot.

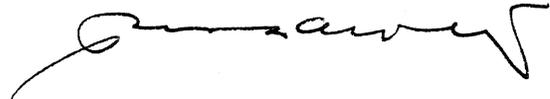
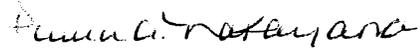
DATED: Honolulu, Hawai'i, February 15, 2006.

On the briefs:

James T. Paul, Judy A.
Tanaka, and Colin A. Yost
(Paul Johnson Park & Niles)
for petitioner-appellant.



Anthony L. Ranken
(Ranken & Drewyer)
for respondent-appellee.



James E. Duggan Jr.