* * * NOT FOR PUBLICATION * * *

NO. 26934

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

MOFIZ HAQUE, M.D., Plaintiff-Appellant

vs.

HAWAII RESIDENCY PROGRAM, INC.; RICHARD I. FRANKEL, M.D.; and PATRICK J. SOUSA, M.D., Defendants-Appellees

and

DOE DEFENDANTS 1-100, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 00-1-1795)

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

Plaintiff-Appellant Mofiz Haque, M.D., appeals from the October 8, 2004 final judgment of the Circuit Court of the First Circuit[1] in favor of Defendants-Appellees Hawaii Residency Program, Inc. (HRP), Richard I. Frankel, M.D., and Patrick J. Sousa, M.D. [hereinafter, collectively, Defendants]. Dr. Haque contends that the circuit court erred in entering its "Order Granting Defendants' Motion to Enforce Settlement Agreement" because: (1) the written settlement agreement enforced by the court [hereinafter, Draft #2] contained provisions to which he never agreed; and (2) "The restrictions imposed upon Dr. Haque by

[1] The Honorable Eden Elizabeth Hifo presided over this matter beginning June 21, 2004. The Honorable Bert I. Ayabe presided over this matter from June 4, 2003 to June 21, 2004. The Honorable Dexter Del Rosario presided over this matter from May 10, 2002 to June 4, 2003. The Honorable Dan T. Kochi initially presided over this matter until May 10, 2002.

the circuit court should be void as against public policy." Defendants counter that: (1) Dr. Haque's counsel specifically agreed to the inclusion of the provision of which Dr. Haque now complains; (2) Draft #2 accurately reflects the agreement placed on the record; (3) Draft #2 does not preclude Dr. Haque from bringing concerns about patient care to the attention of proper authorities; and (4) Dr. Haque's assertion that he has complaints against Defendants that are improperly precluded by the settlement agreement is purely speculative.

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 hold as follows:

(1) The circuit court did not err in enforcing Draft #2. See Assocs. Fin. Servs. Co. of Hawai'i, Inc. v. Mijo, 87 Hawai'i 19, 28, 950 P.2d 1219, 1228 (1998) (quoting Sylvester v. Animal Emergency Clinic of Oahu, 72 Haw. 560, 565, 825 P.2d 1053, 1056 (1992)) ("A trial court's determination regarding the enforceability of a settlement agreement is a conclusion of law reviewable de novo."); see also Amantiad v. Odum, 90 Hawai'i 152, 162, 977 P.2d 160, 170 (1999) (quoting Haller v. Wallis, 89 Wash.2d 539, 544, 573 P.2d 1302, 1305 (1978)) ("The law favors settlements and consequently it must favor their finality."). Dr. Haque admitted in his Opening Brief that a settlement among

all parties was reached in a private mediation following extensive discovery and motion practice and that the terms of the settlement were placed upon the circuit court record. Draft #2 substantially conforms to the agreement placed upon the record inasmuch as Dr. Haque agreed to release all of his claims; he did not indicate that he intended only to release claims filed in certain forums. See Matsuura v. E.I. Du Pont De Nemours & Co., 102 Hawai'i 149, 174, 73 P.3d 687, 712 (2003) ("[S]ettlement agreements in Hawai'i are viewed as contracts." (Citations omitted.)); Shimabuku v. Montgomery Elevator Co., 79 Hawai'i 352, 358, 903 P.2d 48, 53-54 (1995) ("A release is an 'abandonment of claim to party against whom it exists and is a surrender of a cause of action and may be gratuitous or for consideration' and occurs when a party gives up or abandons a claim or right." (Citations and brackets omitted.)); Earl M. Jorgensen Co. v. Mark Constr., Inc., 56 Haw. 466, 470-71, 540 P.2d 978, 982 (1975) ("Unexpressed intentions are nugatory when the problem is to ascertain the legal relations, if any, between two parties."); Standard Mgmt., Inc. v. Kekona, 99 Hawai'i 125, 134, 53 P.3d 264, 273 (App. 2001) ("[T]he purely subjective, or secret, intent of a party in assenting is irrelevant in an inquiry into the contractual intent of the parties."). Therefore, Draft #2 is not rendered unenforceable merely because it specified certain forums in which Dr. Haque could not bring his released claims;

(2) Draft #2 does not violate public policy because the written settlement agreement does not preclude Dr. Haque from reporting concerns over patient care. First, Dr. Haque has only released claims that he has or may have. As Defendants concede, this does not prohibit him from raising concerns regarding patients. Second, Dr. Haque is not restricted from filing complaints with private organizations such as the Accreditation Council for Graduate Medical Education, which Draft #2 expressly allows him to do;

(3) The circuit court did not err in enforcing Draft #2 because Dr. Haque's alleged reservation of his right to file complaints in public agencies was not part of the settlement in that there is no evidence that his intent to make such a reservation was ever raised during settlement negotiations. See Mijo, 87 Hawai'i at 32, 950 P.2d at 1232 (stating that, where "[t]he record is devoid of any evidence that tax considerations were ever raised during [settlement] negotiations[,]" tax considerations were not part of the settlement and the circuit court did not err in enforcing the agreement).[2] Therefore,

[2] Defendants also assert that Dr. Haque, through his counsel at the June 22, 2004 hearing, did in fact agree to the language of paragraph 2(c) in Draft #2 and also agreed that if Dr. Haque did not execute the settlement agreement by July 19, 2004 and did not submit the contemplated stipulation for dismissal by July 13, 2004, then the Defendants could submit, and the court could enter, an order enforcing the settlement agreement. Dr. Haque counters that "Defendants nowhere cite to any evidence in the record reflecting that Dr. Haque's counsel had the written authority required by [Hawai'i Revised Statutes (HRS)] § 605-7 [(1993)] to agree to terms other than those placed on

(continued...)

IT IS HEREBY ORDERED that the circuit court's October 8, 2004 final judgment is affirmed.

DATED: Honolulu, Hawai'i, June 21, 2006.

On the briefs:

Frederick W. Rohlfing, III,
for plaintiff-appellant
Mofiz Haque, M.D.

A. Richard Philpott,
Carolyn K. Gugelyk,
and Liann Y. Ebesugawa
(of Goodsill Anderson
Quinn & Stifel) for
defendants-appellees
Hawaii Residency Program,
Inc.; Richard I. Frankel,
M.D.; and Patrick J.
Sousa, M.D.

[2](...continued)
the record at the November 4, 2003 hearing." This court need not determine whether Dr. Haque's counsel had authority to agree to the language of Draft #2 at the June 22, 2004 hearing, however, because even assuming, arguendo, that Dr. Haque's counsel did not have written authority, for the reasons discussed herein, the circuit court did not err in enforcing Draft #2.