

NO. 23380

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

REINWALD O'CONNOR & PLAYDON, Plaintiff-Appellee, v.
BURT L. SNYDER, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 99-4517)

ORDER DENYING MOTION FOR RECONSIDERATION

(By: Burns, C.J., Lim and Foley, JJ.)

Defendant-Appellant Burt L. Snyder (Snyder) presents three reasons for seeking reconsideration. None is persuasive.

First, Snyder contends that this court erred when it stated that he "does not specifically challenge any these [circuit court's] statements of fact."

Our quoted statement referred to the circuit court's "Findings of Fact" which, because the matter was decided by summary judgment, we labeled as "statements of fact." Snyder cites instances where, in the circuit court, he challenged some of the "facts" stated in some of these "statements of fact." It appears that Snyder does not understand that we were speaking of his failure to specifically challenge these "facts" on appeal, not in the circuit court.

Second, Snyder states that the reason why he objected to the circuit court's Hawai'i Rules of Civil Procedure

Rule 54(b) certification was that "[t]he confusion created by the piecemeal litigation and subsequent certification and appeal has resulted in the instant opinion which refers to unrelated documents." He does not identify those "unrelated documents." Subsequently, he states that "[c]learly there was confusion when this Court referred to a filing which was made long after the appeal and which related to a separate motion." He does not identify the "filing."

Third, we stated in our Memorandum Opinion that "[t]he recoupment defense (negligence/malpractice and breach of contract) arose from the transaction (costs and attorney fees for legal services) that gave rise to the Promissory Note." Referring to this sentence, Snyder states that "[i]t therefore appears that [Snyder's] contention was accurate." It appears Snyder erroneously interprets our statement as deciding that his recoupment defense was valid. If so, he is wrong. Our statement merely referred to the source of the asserted recoupment defense.

Snyder further states that "the issue of fact is 'Did [Snyder] knowingly release/waive his claims that Plaintiff failed to provide appropriate legal services?'" It appears that he does not understand the following language in our opinion:

Snyder's full knowledge of his alleged recoupment defense before and when he executed the Promissory Note as a compromise full payment of his disputed debt for costs and attorney fees, combined with the above-quoted language of the Promissory Note, causes us to agree with Conclusion of Law G that, as a matter of law, Snyder waived his right to assert the defense of recoupment in this case. In other words, when Snyder, knowing that he had an

alleged recoupment defense, signed a Promissory Note stating that
(a) he "is indebted to [ROP] for legal services rendered[,]"
(b) ROP claims that the amount due is \$62,456.53, and (c) Snyder
and ROP "wish to compromise the claim to a sum certain[,]" Snyder
waived his right to assert his alleged recoupment defense.

We expressly decided that no material facts are in dispute and
"that, as a matter of law, Snyder waived his right to assert the
defense of recoupment in this case."

Therefore, IT IS HEREBY ORDERED that the Motion for
Reconsideration filed on April 24, 2001, is denied.

DATED: Honolulu, Hawai'i, May 2, 2001.

On the motion:

Burt L. Snyder,
Defendant-Appellant Pro Se.

Chief Judge

Associate Judge

Associate Judge