

**NOT FOR PUBLICATION**

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NO. 23807

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

CAROL KURODA; MURIEL KURODA, individually and as a  
Special Administrator of the Estate of Blanche Olson  
Chee, aka Blanche Chee, Plaintiffs-Appellees/  
Cross-Appellants, v. ROBERT CHEE and FAYE CHEE,  
Defendants-Appellants/Cross-Appellees,  
and  
JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE  
CORPORATIONS 1-10; ROE CORPORATIONS 1-10; ROE NON-PROFIT  
CORPORATIONS and ROE GOVERNMENTAL ENTITIES, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT  
(CIVIL NO. 94-3130)

SUMMARY DISPOSITION ORDER

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

Defendants-Appellants/Cross-Appellees Robert Chee  
(Robert) and Faye Chee (Faye) (collectively "the Chees") appeal  
the September 7, 2000 Final Judgment, filed in the Circuit Court  
of the First Circuit<sup>1</sup> (circuit court), awarding damages to  
Plaintiff-Appellee/Cross-Appellant Carol Kuroda (Carol) and  
Plaintiff-Appellee/Cross-Appellant Muriel Kuroda (Muriel) in her  
capacity as (1) Special Administrator of the Estate of Blanche  
Olson Chee, aka Blanche Chee (Blanche), and (2) sole beneficiary  
to the Last Will and Testament of Blanche Chee (collectively "the  
Kurodas"). Carol and Muriel cross-appeal the Order Granting  
Directed Verdict as to Various Claims, filed November 27, 1998.

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<sup>1</sup>The Honorable Dan T. Kochi presided.

On appeal, Robert contends the circuit court erred by (1) denying the Chees' motions for partial summary judgment, directed verdict, and new trial based on the statute of frauds; (2) refusing to admit the testimony of expert witness Ming Chew; (3) refusing to admit certain statements by August Kuroda; (4) refusing to allow the Chees to use deposition testimony of Elaine Hara; (5) admitting out-of-court statements by Blanche; and (6) denying the Chees' proposed jury instructions addressing part-performance and repudiation.

Faye raises the same points of error raised by Robert and additionally contends the circuit court plainly erred by giving erroneous jury instructions on conversion.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and issues raised, we hold:

(1) The circuit court correctly denied the Chees' motions for partial summary judgment, directed verdict, and new trial because there was substantial evidence to support the Kurodas' claim of partial performance on the alleged oral contract between Robert, Carol, and Blanche.

(2) Ming Chew's testimony was not relevant to the material issues in this case.

(3) August Kuroda's contested testimony was hearsay and did not come within any hearsay exception.

(4) The circuit court did not err by refusing to admit the deposition testimony of Elaine Hara's since (1) there was an insufficient showing that she was unavailable and (2) her testimony would likely have been irrelevant. Hawai'i Rules of Civil Procedure (HRCP) Rule 32(a)(3).

(5) The Chees failed to object at trial to the admission of Blanche's alleged hearsay statements and therefore waived any error by the trial court<sup>2</sup>; Lussier v. Mau-Van Dev., Inc. 1, 4 Haw. App. 359, 393, 667 P.2d 804, 826 (1983).

(6) The circuit court's jury instructions regarding part-performance were correct, and there was no evidence adduced at trial to support the Chees' claim of repudiation; see Shannon v. Waterhouse, 58 Haw. 4, 6-7, 563 P.2d 391, 393-94 (1977); Rossiter v. Rossiter, 4 Haw. App. 333, 338-39, 666 P.2d 617, 620-21 (1983).

(7) The Chees did not object to the circuit court's jury instructions on conversion, and those instructions were not "plainly erroneous." HRCP 51(f); see Roxas v. Marcos, 89 Hawai'i 91, 140 n.32, 969 P.2d 1209, 1258 n.32 (1998).

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<sup>2</sup>At a December 4, 1996 hearing, the circuit court correctly overruled the Chees' objection to one specific statement of Blanche concerning her intent in drafting her last will. Such statements are admissible under Hawai'i Rules of Evidence Rule 803(b)(3). We do not agree with the Chees' assertion that the circuit court's ruling was so sweeping as to render "futile" all future objections to testimony about Blanche's statements.

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Because the Kuroda's cross-appeal was conditioned on the Chees' prevailing on their appeals, we do not address the merits of the cross-appeal.

We therefore affirm the September 7, 2000 Final Judgment of the circuit court.

DATED: Honolulu, Hawai'i, August 28, 2003.

On the briefs:

Peter Van Name Esser for defendant-appellant/ cross-appellee Robert Chee.	Chief Judge
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Edwin Lauder Baker for defendant-appellant/ cross-appellee Faye Chee.	Associate Judge
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Gale L.F. Ching, Mitzi A. Lee, and Damien Elefante for plaintiff-appellee/cross- appellant Muriel Kuroda, individually and as Special Administrator of the Estate of Blanche Olson Chee, aka Blanche Chee.	Associate Judge
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Darwin L.D. Ching for plaintiff-appellee/ cross-appellant Carol Kuroda.	
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