

NOT FOR PUBLICATION

NO. 24938

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

YU BAO TSAI, aka JENNY TSAI, Plaintiff-Appellant, v.
GLORIA CHI REALTY, INC. and GLORIA CHI, Defendants-
Appellees, and JOHN DOES 1-10, DOE CORPORATIONS 1-10,
and DOE PARTNERSHIPS 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Civ. No. 00-1-3383-11)

SUMMARY DISPOSITION ORDER

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

This appeal stems from a lawsuit filed on November 1, 2000 by Plaintiff-Appellant Yu Bao Tsai, also known as Jenny Tsai (Tsai or Plaintiff), against Defendants-Appellees Gloria Chi Realty, Inc. (Realty) and Gloria Chi (Chi) (collectively, Chi Defendants) for breach of agreement, breach of promissory estoppel, fraudulent inducement, fraudulent misrepresentation, intentional and negligent misrepresentation, breach of fiduciary duty, breach of the covenant of good faith and fair dealing, intentional and negligent infliction of emotional distress, and unfair or deceptive business practices in violation of Hawaii Revised Statutes chapter 480. Tsai's claims arose from Tsai's purchase of a leasehold retail unit located in the Hawaiian King condominium project. Chi was Tsai's real estate agent for the sale, which closed on February 1, 1990.

NOT FOR PUBLICATION

On November 5, 2001, the Circuit Court of the First Circuit (the circuit court), Judge Virginia Lea Crandall (Judge Crandall) presiding, entered an "Order Granting Defendants Gloria Chi Realty, Inc. and Gloria Chi's Motion for Summary Judgment Filed on September 13, 2001" (the summary judgment order). The summary judgment order found and concluded, in relevant part, as follows:

FINDINGS OF FACT

1. Plaintiff is a resident of the City and County of Honolulu, State of Hawaii. [Realty] is a Hawaii corporation incorporated on May 6, 1994. [Chi] is a resident of the City and County of Honolulu, State of Hawaii.
2. [Chi] represented Plaintiff in Plaintiff's purchase of the apartment lease and apartment sublease for Apartment No. A of the Hawaiian King condominium project located at 417 Nohonani Street, Apt. A, Honolulu, Hawaii (hereinafter referred to as the "Apartment"), pursuant to the Deposit Receipt Offer and Acceptance with reference date of December 11, 1989, for a combined purchase price of \$125,000.00.
3. Said purchase closed on February 1, 1990.
4. The Apartment is a commercial condominium apartment which Plaintiff used as a retail store.
5. In 1991, [Chi] was contacted by Mehdi Seyed Zia (hereinafter referred to as "Zia") who was interested in purchasing the Apartment, because [Chi] had represented Plaintiff in her purchase of the Apartment.
6. [Chi] contacted Plaintiff regarding the possible sale of the Apartment. Plaintiff was interested, so [Chi] obtained a listing agreement with Plaintiff for the sale of the Apartment to protect [Chi's] right to a sales commission.
7. The sale of the Apartment to Zia, by way of an agreement of sale, did not close because Zia failed to obtain financing.
8. [Chi] entered into a second listing agreement with a listing date of September 16, 1993 (the "1993 listing agreement"), with Plaintiff for the sale of the Apartment. The 1993 listing agreement expired by its terms on September 15, 1994.

NOT FOR PUBLICATION

9. During the period of the two listing agreements, neither [Chi] nor [Realty] made or received any offers on behalf of Plaintiff for the sale or purchase of the Apartment, other than the 1991 offer by Zia.

10. Plaintiff knew or should have known of the matters giving rise to her cause of action by September 15, 1994, the expiration date of the 1993 listing agreement.

11. The Complaint herein was filed on November 1, 2000.

12. The evidence presented does not present sufficient grounds to apply the doctrine of equitable estoppel from September 15, 1994 to the date of the filing of the Complaint.

13. There is no evidence that Plaintiff suffered any physical injury.

14. This [c]ourt has jurisdiction of the parties and the subject matter of this action, and venue is proper in this [c]ircuit.

CONCLUSIONS OF LAW

Pursuant to the foregoing findings of fact, the [c]ourt concludes:

A. All the counts in the Complaint are barred by the statute of limitations.

B. Count VIII (intentional and negligent infliction of emotion [sic] distress) of the Complaint fails to state a claim because Plaintiff suffered no physical injury.

C. Count X (HRS Chapter 480) of the Complaint fails to state a claim because the instant matter is a commercial transaction, not a residential matter, and Plaintiff does not have standing as a consumer to present a claim under HRS Chapter 480. Cieri v. Leticia Query Realty, Inc., 80 [Hawai'i] 54, 905 P.2d 29 (1995).

D. This [c]ourt has jurisdiction of the parties and subject matter of this action, and venue is proper in this [c]ircuit.

E. Defendants are entitled to judgment as a matter of law on all counts of the Complaint.

On January 2, 2002, Judge Crandall entered a judgment in Chi Defendants' favor, and on February 1, 2002, Judge Crandall entered an order denying Tsai's motion for reconsideration of the summary judgment order. This appeal followed, and we affirm.

Tsai has not challenged any of the circuit court's findings of fact. These findings are thus binding on Tsai, and any conclusion of law that follows from these findings and correctly states the law is valid. Taylor-Rice v. State, 91 Hawai'i 60, 65, 979 P.2d 1086, 1091 (1999).

In light of the undisputed findings of fact, and based on our review of the record, the briefs submitted by the parties, and the applicable statutes and case law, we hold that the circuit court correctly concluded that all of Tsai's claims were barred by the applicable statute of limitations.

Because the application of the statute of limitations to Tsai's claims is dispositive, it is unnecessary for us to address the remaining issues raised by Tsai on appeal.

Accordingly, we affirm the orders of the circuit court challenged by Tsai on appeal.

DATED: Honolulu, Hawai'i, June 30, 2004.

On the briefs:

Ronald G.S. Au for
plaintiff-appellant.

Jennifer M. Yusi (Rush
Moore Craven Sutton Morry
& Beh, a limited liability
law partnership, LLP) for
defendants-appellees.