

NOT FOR PUBLICATION

No. 26095

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

EM. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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CABINET DISTRIBUTORS, INC., DBA BAYVIEW BUILDING MATERIALS
HAWAII, a Hawaii Corporation, Plaintiff-Appellant, v.
GEBCO OF HAWAII, INC., a Hawaii Corporation
RONALD G. WOLF; GORDON WOLF, Defendants-Appellees

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(Civ. No. 1RC03-1-2243)

SUMMARY DISPOSITION ORDER

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

Plaintiff Cabinet Distributors, Inc., dba Bayview Building Materials Hawaii, a Hawai'i corporation (Bayview), appeals the August 20, 2003 order of the District Court of the First Circuit¹ that granted the June 30, 2003 motion for summary judgment filed by Defendants GEBCO of Hawaii, Inc., a Hawai'i corporation (GEBCO), Ronald G. Wolf and Gordon Wolf (collectively, the Wolfs). Bayview also appeals the September 2, 2003 order that denied its motion for reconsideration of the summary judgment.

The district court's summary judgment read as follows:

Upon consideration of the Motion before this Court, and

¹ The Honorable David W. Lo presided.

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papers filed in support and opposition thereof, the entire records and files of this case,² and the argument of the parties before the Court, the Court GRANTS the motion and makes the following findings and order.

The Court finds that Plaintiff . . . delivered non-conforming goods. Defendants . . . rightfully rejected the non-conforming goods. Plaintiff . . . failed to remedy the non-conforming goods. Defendants . . . exercised their right to cover. Plaintiff . . . cannot support the claims brought in the Complaint, and therefore Defendants['] . . . motion for summary judgment is granted as to all claims in Plaintiff[']s . . . Complaint. The Court denied any requests as to the awarding of attorneys' fees and costs.

THEREFORE, IT IS HEREBY ORDERED that DEFENDANTS GEBCO OF HAWAII, INC., RONALD G. WOLF, AND GORDON WOLF'S MOTION FOR SUMMARY JUDGMENT is GRANTED.

IT IS SO ORDERED.

(Typesetting in the original; footnote supplied.)

On a motion for summary judgment, courts do not find the facts:

A judge ruling on a motion for summary judgment cannot summarily try the facts; his role is limited to applying the law to the facts that have been established by the litigants' papers. Therefore, a party moving for summary judgment is not entitled to a judgment merely because the facts he offers appear more plausible than those tendered in opposition or because it appears that the adversary is unlikely to prevail at trial. This is true even though both parties move for summary judgment. Therefore, if the evidence presented on the motion is subject to conflicting interpretations, or reasonable men might differ as to its significance, summary judgment is improper.

Kajiya v. Dep't of Water Supply, 2 Haw. App. 221, 224, 629 P.2d 635, 638-39 (1981) (internal block quote format omitted) (quoting 10 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure: Civil § 2725 (1973)). Rather, courts decide whether any "genuine issue as to any material fact" remains for the fact-

² We observe that summary judgment may be based upon many specified sources, see, e.g., District Court Rules of Civil Procedure Rules 56(c) & 56(e) (2003), but not necessarily on "the entire records and files of [the] case[.]"

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finder at trial. District Court Rules of Civil Procedure Rule 56(c) (2003). See also Iddings v. Mee-Lee, 82 Hawai'i 1, 5, 919 P.2d 263, 267 (1996).

After a meticulous review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we conclude the district court was wrong to grant summary judgment in favor of GEBCO, see id. (on appeal, "an order of summary judgment is reviewed under the same standard applied by the [trial] courts" (citation and internal block quote format omitted)), because the record before the district court on the motion was replete with genuine issues of fact material to the ultimate facts found by the district court.

We also conclude, however, that the district court was right to grant summary judgment in favor of the Wolfs. As Defendants argued below, "There is nothing anywhere in the pleadings or in the documentary evidence that supports claims as against Ron Wolf and/or Gordon Wolf." Bayview did not respond to this assertion below, and does not argue the issue on appeal.

Therefore,

IT IS HEREBY ORDERED that the district court's August 20, 2003 summary judgment is vacated insofar as it favored GEBCO, but otherwise, is affirmed. The September 2, 2003 order that denied reconsideration of the summary judgment is vacated. The cause is remanded to the district court for further proceedings

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before a different judge.

DATED: Honolulu, Hawai'i, February 24, 2006.


On the briefs:

Edward D. Magauran
for Plaintiff-Appellant.

Jess H. Griffiths
(Godbey Griffiths Reiss)
for Defendants-Appellees.


Chief Judge


Associate Judge


Associate Judge