

NOT FOR PUBLICATION

NO. 27528

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

NATIONAL MORTGAGE REAL ESTATE CORP,
Managing Agent, Plaintiff-Appellee,

v.

SAMUEL STEVENS, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CIVIL NO. 1RC05-1-621)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Nakamura and Fujise, JJ.)

Defendant-Appellant Samuel Stevens (Stevens), the dispossessed tenant of Makalapa Manor Apartments #16-A (Apartment), 99-128 Kohomua Street, Aiea, Hawai'i 96701, appeals from the Judgment for Possession and the Writ of Possession, both filed June 13, 2005, in the District Court of the First Circuit,^{1/} in favor of Plaintiff-Appellee National Mortgage Real Estate Corporation (National Mortgage), managing agent for Makalapa Manor Apartments (MMA), a Hawaii Cooperative Corporation.

The applicable Property House Rules for MMA stated, in relevant part:

^{1/} The Honorable Hilary Benson Gangnes presided.

EM. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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16. Any fist fights, threatening remarks or gestures, with or without a weapon, or any form of intimidation from any resident or guest to any security, maintenance, management personnel, resident or guest of [MMA] may be grounds for immediate eviction.

The January 21, 2005 Notice of Violation and
Termination of Tenancy and Demand to Vacate Premises stated:

I have been retained by National Mortgage Real Estate Corp., your Landlord's agent ("Landlord"), to evict you ("Tenant") from the Premises [Apartment] for violating Haw. Rev. Stat. § 521-51, Haw. Rev. Stat. § 521-52, the Rental Agreement ("Agreement") and/or House Rules. Specifically:

At about 1:00 p.m., on Wednesday, January 19, 2005, one of the maintenance workers went to the [Apartment] to repair a clothesline pole. You [(Stevens)] came out and repeatedly swore at the worker and threatened to physically beat him up. When the worker tried to leave, you tried to provoke him into fighting. You then followed him as he was trying to leave and threw a ball at him, striking him on the back of his leg and continuing to threaten him.

.

As set forth above, you have violated the Agreement, House Rules, Haw. Rev. Stat. § 521-51 and/or Haw. Rev. Stat. § 521-52 by threatening, intimidating and/or assaulting the maintenance worker. You have caused or threatened to cause irreparable damage to persons and/or property at or near the [Apartment].

Accordingly, this letter constitutes notice of violation and termination of your tenancy at the [Apartment] upon your receipt of this letter. Please vacate the [Apartment] and contact the resident manager by Friday, January 28, 2005, to return your keys and schedule a check out inspection. If you do not do so, then I [National Mortgage] expect[s] to file suit to regain possession of the [Apartment] and/or other relief.

You have ten (10) days within which to discuss the proposed termination with the Landlord [National Mortgage]. You have the right to defend the action in Court.

The February 2, 2005 Complaint sought:

- A. A judgment giving [National Mortgage] possession of the property [Apartment].
- B. A Writ of Possession direct[ing] the Sheriff or Police Officer to:
 - 1. Remove [Stevens] from the [Apartment] and all persons possessing the [Apartment] through [Stevens];
 - 2. Remove from the [Apartment] all personal belongings of [Stevens] and of any other person; and

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3. Put [National Mortgage] in possession of the [Apartment].

C. Judgment against [Stevens] for [damages] to be determined[.]

A trial was held on June 3, 2005. Findings of fact and conclusions of law were neither requested nor entered. The Judgment for Possession and Writ of Possession were filed on June 13, 2005. The order dismissing the damage claim without prejudice was entered on August 26, 2005. The notice of appeal was filed on September 26, 2005. This appeal was assigned to this court on April 12, 2006.

Although Stevens filed an order for a transcript of the June 3, 2005 trial, he did not pay for it; therefore, it is not a part of the record on appeal.

Stevens argues that he should have been given a ten-day notice of violation instead of an immediate termination notice. He fails to recognize the statement in Hawaii Revised Statutes § 521-72 (1993) that "[n]o allowance of time to remedy the breach of any rule authorized under section 521-52 shall be required when the breach by the tenant causes or threatens to cause damage to any person[.]"

Stevens argues that he is an owner and not a tenant, and therefore his eviction violated his rights under the 14th Amendment to the United States Constitution. He fails to recognize the following statement in the Agreement:

The Member expressly agrees that there exists under this Occupancy Agreement a landlord-tenant relationship and that in the event of a breach or threatened breach by the Member of any covenant or provision of this Agreement, there shall be available to the Corporation such legal remedy or remedies as are available

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to a landlord for the breach or threatened breach under the law by a tenant of any provision of a lease or rental agreement.

Stevens argues that the notice of termination is faulty because it was ambiguous because in one place it stated that "this letter constitutes notice of violation and termination of your tenancy at the [Apartment] upon your receipt of this letter" while in another it stated, "You have (10) ten days within which to discuss the **proposed** termination with [National Mortgage]." (Emphasis in original.) We disagree that the notice of termination was ambiguous.

Stevens contends that this single incident is legally insufficient "to establish irremediable material non compliance sufficient to warrant the ultimate sanction of forfeiture or termination." We disagree.

Stevens contends that evicting him "for his actions from his home of 30 years, inherited from his mother is unconscionable in light of the lack of evidence of any prior breaches by Mr. Stevens; [and] the lack of any real, as opposed to imagined, harm to Makalapa Manor Apartments[.]" We disagree.

Therefore, in accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the Judgment for Possession

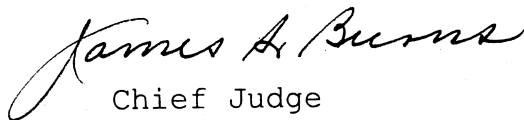
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and the Writ of Possession, both filed June 13, 2005, are affirmed.

DATED: Honolulu, Hawai'i, June 27, 2006.

On the briefs:

Stephen Laudig
(Samuel R. Stevens, *pro se*,
on the opening brief)
for Defendant-Appellant.


Chief Judge

Richard A. Yanagi
for Plaintiff-Appellee.


Associate Judge


Associate Judge