

NOT FOR PUBLICATION

NO. 27466

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

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STATE OF HAWAI'I

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FILED

KIRSTEN KIRA JONES, fka KIRSTEN MAERLYN, Plaintiff-Appellee,
v.
MICHAEL MARLIN, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
PUNA DIVISION
(CIVIL NO. 3RC04-1-230)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Michael Marlin (Michael) appeals from the Judgment entered on July 26, 2005 in the District Court of the Third Circuit.

On January 25, 1999, a Promissory Note was signed by Michael as President of First Light Company, and payment was guaranteed by Michael, individually. First Light Company paid only a part of the balance due. On May 28, 2004, the payee of the Promissory Note, Plaintiff-Appellee Kirsten Maerlyn, nka Kirsten Kira Jones (Kirsten), filed a complaint against Michael to collect the balance due on the Promissory Note. On June 16, 2004, Michael responded with a motion to dismiss for lack of personal jurisdiction. On October 5, 2004, Judge John P. Moran entered an "Order Granting Defendant's Motion to Dismiss". However, on November 10, 2004, in conformity with his October 25, 2004 oral order, Judge Moran entered an "Order Granting Plaintiff

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Kirsten Kira Jones' Motion to Reconsider or Set Aside Dismissal of Complaint, Ordered on July 16, 2004" that set aside the October 5, 2004 order. On May 26, 2005, Judge Matthew S. K. Pyun entered an "Order Granting Plaintiff Kirsten Kira Jones' Motion for Summary Judgment" and an "Order Denying Defendant's Cross Motion for Summary Judgment". On July 26, 2005, Judge Pyun entered the Judgment against Michael and in favor of Kirsten in the amount of \$18,734.79.¹

Michael filed a notice of appeal on August 23, 2005. This case was assigned to this court on May 23, 2006.

Michael contends that Judge Moran was not authorized to enter the November 10, 2004 order setting aside the October 5, 2004 order. We disagree. Judge Moran was authorized to correct his earlier mistake.

Michael contends that Judge Pyun erred when he decided that the court had personal jurisdiction over Michael in this case. We disagree. Kirsten sent a March 4, 2003 demand letter to First Light Company and Michael. The subsequent facts stated in the following parts of Kirsten's March 23, 2005 affidavit are undisputed:

¹ The \$18,734.79 judgment is calculated as follows:

| | |
|-------------|------------------------|
| \$13,723.81 | principal amount |
| \$ 1,257.33 | interest |
| \$ 3,430.95 | attorney's fees |
| \$ 120.00 | court costs |
| \$ 120.00 | Sheriff's service fees |
| \$ 82.70 | other costs |

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11. After agreeing to pay the outstanding balance and commence paying [Kirsten] in accordance with the terms of the amended Note, the Note was reinstated and [Michael] and [First Light Company] were allowed to commence payments in lieu of the acceleration and suit on the Note.
12. On or about March 23, 2003, First Light [Company] sent a check in the sum of \$3,150.00
13. When the Note was reinstated, another lawsuit involving real property was occurring on the Island of Hawaii between [Michael] and [Kirsten]. A partition action was filed by [Kirsten] in *Kira Jones Maerlyn v. Michael Marlin*, Civil No. 03-1-0064, Circuit Court of the Third Circuit, State of Hawaii. [Michael] was represented at the time by Stephen G. Bess, Waimea counsel for Defendant Marlin. On behalf of [Michael], Mr. Bess answered the Complaint which alleged that [Michael] was at the time of the Answer, a resident of the Island of Hawaii and State of Hawaii. The answer was filed on April 4, 2003,
14. . . . [P]ayments continued to be paid to [Kirsten] until April of 2004, when [Michael] informed [Kirsten] that First Light Company did not have sufficient funds. . . .
15. As of April 3, 2004, the balance due on the Note was \$13,723.81, plus interest at the rate of eight percent (8%) per annum. . . .
16. . . . [Michael] has acknowledged that he also has a Hawaii driver's license issued to him for the period from January, 1999 to July, 2007.

The relevant law and the issues resulting therefrom are stated in Shaw v. North American Title Co., 76 Hawai'i 323, 876 P.2d 1291 (1994). Even if Michael was not a resident of Hawai'i at the relevant time, in order to decide whether the district court validly exercised personal jurisdiction over him, we first determine whether Michael's activities fell into a category specified by Hawai'i's long-arm statute, Hawaii Revised Statutes (HRS) § 634-35 (1993), which provides in relevant part:

Acts submitting to jurisdiction. (a) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person . . . to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of the acts:

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(1) The transaction of any business within this State;

.

(c) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over the defendant is based upon this section.

We next examine whether the assertion of jurisdiction over Michael under HRS § 634-35(a) comported with principles of due process of law. Due process requires that a nonresident defendant have sufficient "minimum contacts" with the forum state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945) (citation omitted). "[I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'" Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475, 105 S.Ct. 2174, 2183, 85 L.Ed.2d 528 (1985) (quoting Hanson v. Denckla, 357 U.S. 235, 253, 78 S.Ct. 1228, 1239-40, 2 L.Ed.2d 1283 (1958)). The determining inquiry is whether "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.'" Id. at 474, 105 S.Ct. at 2183 (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490 (1980)). There is no "talismanic jurisdictional formula" and the court weighs each case on its facts. Id. at 485-86, 105 S.Ct. at 2189 (citation omitted).

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In accordance with Hawai'i Rules of Appellate Procedure Rule 35, IT IS HEREBY ORDERED that the Judgment entered on July 26, 2005 is affirmed.

DATED: Honolulu, Hawai'i, July 5, 2006.

On the briefs:

Matthew K. Chung
for Defendant-Appellant.


Chief Judge

A. Peter Rausch, Jr. and
Anthony L. Ranken
for Plaintiff-Appellee.


Associate Judge


Associate Judge