

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

NO. 27488

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

DR. GEORGE R. HARKER, Plaintiff-Appellant  
 v.  
 GERI SAMSONAS, CITY BANK, Defendants-Appellees  
 and  
 TODD Y. HIRAI, GREGORY W. KUGLE, attorneys;  
 DAMON KEY LEONG KUPCHAK HASTERT, a law firm;  
 DON G. LOYOLA, AMERICAN SAVINGS BANK,  
 and NELSON B. BEFITEL, attorney, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
 (CIVIL NO. 04-1-0133(1))

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellant Dr. George R. Harker (Harker) appeals from the Final Judgment entered on September 1, 2005 in favor of Defendants-Appellees Geraldine Samsonas<sup>1</sup> (Samsonas) and City Bank. We affirm.

On November 25, 2002, in S.P. No. MM02-0004(W), the District Court of the Second Circuit issued a Garnishee Summons naming Harker as the Judgment Debtor and City Bank as the Garnishee and stating that the current amount due was \$8,465.24. The Garnishee Summons also advised City Bank that:

You, as Garnishee(s), are ORDERED to hold and secure from the time of service of this summons, and until further ordered by the Court an amount of money which shall not exceed 120% of the amount of the judgment indicated above, including costs and interest, as provided by Hawai'i Revised Statutes §652 and §653.

On April 5, 2004, in the Circuit Court of the Second Circuit, Harker filed a complaint against City Bank and Samsonas,

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<sup>1</sup> It appears that Defendant-Appellee Geri Samsonas's name is actually Geraldine Samsonas.

K. HAMAKADO  
 CLERK, APPELLATE COURTS  
 STATE OF HAWAII

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the attorneys for City Bank (Todd Hirai, Nelson Befitel, Gregory Kugle, and Damon Key Leong Kupchak Hastert), and American Savings Bank and Don Loyola. Harker sought damages allegedly caused by the garnishment of monies in his checking accounts which were exempt from garnishment.

On July 27, 2004, City Bank and Samsonas filed a motion for dismissal or summary judgment. A memorandum accompanying the motion stated, in part:

In complying with the Garnishee Summons, [City Bank] immediately searched its database and reviewed the Master Signature Card that was prepared for [Harker's] Account . . . . The Master Signature Card indicated that on May 8, 2002, [Harker] opened the Account as a sole proprietor's business checking account. The search of the Account information also revealed that, at the time of service of the Garnishee Summons, the Account had a balance of \$1,050.83. This search result contained no information on the nature or source of the funds deposited in the Account. As instructed by the Garnishee Summons, [City Bank] immediately placed a hold on the Account and provided to Judgment Creditor a Garnishee Disclosure. [City Bank] also promptly informed [Harker] of the fact that his account was placed on hold pursuant to the Garnishee Summons.

The General Account Agreement and Disclosure, which governs the relationship between [Harker] and [City Bank] with respect to the Account, provides in part as follows:

**Miscellaneous Provisions.** If [Harker] or [Harker's] Account becomes involved in any legal proceedings, [Harker's] use of the Account may be restricted. [City Bank] shall be entitled to act upon any legal process served upon [City Bank] which [City Bank] reasonably believes to be binding, with no liability to [Harker] for doing so.

On November 29, 2003, while the Account was on hold, two (2) checks written by [Harker] in the total amount of \$854.29 were presented to [City Bank] for payment. Said checks were not honored because the funds in the Account were not available due to the hold status.

On December 20, 2002, [Harker] filed a Judgment Debtor's Motion for Return/Release of Wages Exempt from Garnishment on the ground that the garnished funds were unemployment benefits exempt from garnishment. On January 27, 2003, the Honorable Douglas H. Ige granted said Judgment Debtor's Motion . . . . An Order . . . was filed on January 30, 2003 and received by [City Bank] on February 3, 2003. Following receipt of the Release Order, [City Bank] timely released the garnishee funds on February 5, 2003, and lifted the hold on [Harker's] account.

(Record citations omitted.)

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Accompanying the motion, the July 22, 2004 affidavit of Samsonas stated, in relevant part:

10. I caused a Garnishee Disclosure to be filed . . . .
11. I also promptly informed [Harker] that his account was placed on hold pursuant to the Garnishee Summons.
12. After the Garnishee Disclosure was filed, [Harker] informed me orally that the funds in the Account were from unemployment benefits.
13. Although I had no way to verify this information, I immediately conveyed [Harker's] assertion to Defendant Todd Y. Hirai in a telephone conversation.

The Garnishee Disclosure is dated December 2, 2002, and was filed in the district court on December 4, 2002.

On December 20, 2002, in the district court, Harker filed a motion for an order releasing to him all of his garnished funds because they were "unemployment benefits exempt". Judge Ige's January 30, 2003 Order states that the January 27, 2003 hearing "was a continuation of the hearing held January 13, 2003. [Harker] had been instructed to bring further documentation of exempt wages. [Harker] brought the original check stubs of unemployment compensation checks. Unemployment benefits are exempt from garnishment under Hawaii Revised Statutes [§] 383-163."

In the circuit court case on appeal, after a hearing on August 26, 2004, the September 14, 2004 "Order Granting Defendants Geraldine Samsonas and City Bank's Motion to Dismiss, or in the Alternative, for Summary Judgment on All Claims, Filed July 27, 2004" was entered. On September 1, 2005, the circuit court entered Final Judgment in favor of Samsonas and City Bank pursuant to Hawai'i Rules of Civil Procedure Rule 54(b) (2006).

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On September 7, 2005, Harker filed a notice of appeal. This case was assigned to this court on April 10, 2006.

Harker states in the opening brief that "[n]o effort has been made to seek damages for that initial seizure. However, [i]t is a fact that [City Bank] became aware that the money was exempt within a few days and instead of returning the money they joined with [attorney Todd Hirai's] efforts to block Harker from receiving the immediate return of his funds." In light of the fact that it was not until the January 27, 2003 hearing in district court that Harker proved that the money was exempt from garnishment, it must be concluded that City Bank and Samsonas acted properly.

Therefore, in accordance with Hawai'i Rules of Appellate procedure Rule 35, IT IS HEREBY ORDERED that the Final Judgment entered on September 1, 2005, is affirmed.

DATED: Honolulu, Hawai'i, July 20, 2006.

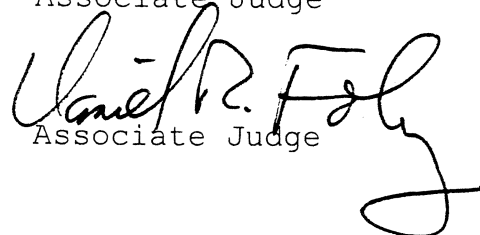
On the briefs:

Dr. George R. Harker  
Plaintiff-Appellant Pro Se.

Mitzi A. Lee  
(Hisaka Yoshida Cosgrove & Ching)  
for Defendants-Appellees  
Central Pacific Bank, Successor  
by Merger to City Bank and  
Geraldine Samsonas.

  
Chief Judge

  
Associate Judge

  
Associate Judge