

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27030

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

JOHN J. MAHONEY, JR., Plaintiff-Appellant, v.
STATE OF HAWAII, Defendant-Appellee,
and

JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS,
PARTNERSHIPS, GOVERNMENTAL UNITS OR OTHER
ENTITIES 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 04-1-0049K)

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellant pro se John J. Mahoney, Jr.,
(Mahoney) appeals from the Final Judgment as to All Claims and
All Parties filed on January 28, 2005 in the Circuit Court of the
Third Circuit (circuit court).^{1/}

On appeal, Mahoney argues that (1) his claim is not
time-barred by the statute of limitations, (2) the "continuing
tort" exception is applicable to his claim, (3) his claim is
based upon an implied in law contract, and (4) the circuit court
erred when it granted on December 2, 2004 the motion for summary
judgment filed by Defendant-Appellee State of Hawai'i (State).

On April 13, 2004, Mahoney filed a Complaint for
Implied Assumpsit, alleging that he was entitled to compensation
in the amount of \$1,400 for the portion of his property that had

^{1/} The Honorable Ronald Ibarra presided.

NORMA T. YARA
CLERK APPELLATE COURTS
STATE OF HAWAII

2006 AUG 14 AM 9:04

FILED

been taken by the State. Mahoney originally purchased the property, located on Mamalahoa Highway in Haleohiu, District of North Kona, Island and County of Hawai'i, (the property) on September 8, 1989 pursuant to a Commissioner's sale for the price of \$172,000. According to Mahoney, no survey or staking report was provided with the deed. On December 18, 1990 Mahoney sold the property for \$285,000; no survey or staking report was requested by the buyers. Mahoney repurchased the property in 2001 for \$270,000. On March 28, 2002, Mahoney resold the property for \$333,000. A staking of the property and a report were conditions of the second sale. On March 21, 2002 the staking and report revealed a latent encroachment of approximately 392 sq. ft. on the north corner of the property by a public roadway. A 1954 state^{2/} highway construction project (re-routing Mamalahoa Highway to connect with Hawaii Belt Road) had inadvertently encroached on the property. The State had no knowledge of the aforementioned encroachment until Mahoney notified it on March 21, 2002. Mahoney claimed that the buyers in the second sale had deducted \$1,400 from the sale price because of the encroachment and thus he was entitled to be compensated in that amount.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to

^{2/} In 1954, Hawai'i was considered a territory, not a state.

the arguments advanced and the issues as raised by the parties, we conclude that Mahoney's claim was time-barred pursuant to Hawaii Revised Statutes (HRS) § 662-4 (1993).^{3/} Mahoney admitted in his complaint that as of March 21, 2002 he had actual knowledge of the encroachment. Mahoney sold the property on March 28, 2002. Mahoney did not file his Complaint until April 13, 2004. Therefore, the circuit court correctly concluded that Mahoney's claim was barred under HRS § 662-4. HRS § 662-4; Waugh v. University of Hawaii, 63 Haw. 117, 127, 621 P.2d 957, 966 (1980). Mahoney's other points on appeal are equally without merit.

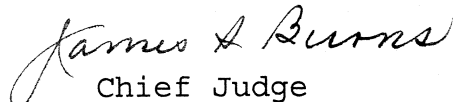
Based on the foregoing, the Final Judgment as to All Claims and All Parties filed on January 28, 2005 in the Circuit Court of the Third Circuit is affirmed.


DATED: Honolulu, Hawai'i, August 14, 2006.

On the briefs:

John J. Mahoney, Jr.,
Plaintiff-Appellant pro se.

Michael Q.Y. Lau and
Sonia Faust,
Deputy Attorneys General,
for Defendant-Appellee.


Chief Judge


Associate Judge


Associate Judge

^{3/} Hawaii Revised Statutes § 662-4 (1993) provides in relevant part:

§662-4 Statute of limitations. A tort claim against the State shall be forever barred unless action is begun within two years after the claim accrues[.]