

NO. 26421

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

MARGUERITE JAMITKOWSKI, aka TIFFANY JAMES, Plaintiff-Appellee, v.
HADJI ELIAS, aka OSCAR ELIAS, dba THE OSCAR COMPANY, Defendant
Appellant, and JOHN DOES 1-5, JANE DOES 1-5, DOE CORPORATION
1-5, and DOE PARTNERSHIPS 1-5, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Civ. No. 01-1-0876-03)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Nakamura and Fujise, JJ.)

Defendant-Appellant Hadji Elias, also known as Oscar Elias, doing business as The Oscar Company (Elias), brings this appeal from the December 9, 2003 Final Judgment, the January 7, 2004 Order Granting Plaintiff's Motion for Attorneys' Fees, Costs and Prejudgment Interest, the February 4, 2004 Supplemental Final Judgment, and the February 18, 2004 Order Denying Defendant's Motion to Amend Judgment all entered in the Circuit Court of the First Circuit (circuit court).¹

After careful review of the issues raised and the arguments made by the parties, as well as the record of the proceedings before the circuit court and the relevant case law, we resolve Elias's points on appeal as follows:

Elias's points on appeal are, at base, a challenge to the sufficiency of the evidence in support of the circuit court's conclusion that there was no agreement between Elias and Plaintiff-Appellee Marguerite Jamitkowski, also known as Tiffany

¹ The Honorable Virginia Lea Crandall presided.

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STATE OF HAWAII

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James (Jamitkowski), for the purchase of a diamond ring. The circuit court's decision was based, in part, on its uncontested finding that Jamitkowski's decision to buy the diamond ring was contingent upon whether Elias could sell certain jewelry at Jamitkowski's cost, and whether the \$20,000 in signed but uncompleted checks Jamitkowski gave to Elias represented a down payment on the diamond ring. While Elias contests the circuit court's finding that Jamitkowski did not initial an invoice dated August 2, 2000 for the purchase of the ring, this finding was based on Jamitkowski's testimony, deemed credible by the court, and therefore was not clearly erroneous. State v. Gabrillo, 10 Haw. App. 448, 457, 877 P.2d 891, 895 (1994) (appellate court will not attempt to reconcile conflicting evidence or interfere with a decision based on the credibility of witnesses).

Elias's argument that the parol evidence rule should have foreclosed the circuit court's consideration of Jamitkowski and her husband's testimony as to the terms of the contract for the sale of the ring is also unavailing. Elias did not make this objection to the evidence at trial. Furthermore, although this argument was the subject of Elias's motion to amend judgment, "a prerequisite to the application of the [parol evidence] rule is that there must first be a finding by the trial court that the writing was intended to be the final and, therefore, integrated expression of the parties' agreement." In re O.W. Ltd. P'ship, 4 Haw. App. 487, 491, 668 P.2d 56, 60 (1983). Here, the circuit court found there was no contract, let alone that there was an

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integrated, written agreement. The evidence presented at trial was properly admitted to allow the circuit court to determine whether an agreement to sell the ring had been reached.

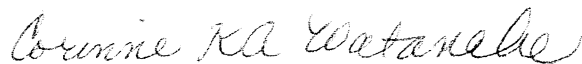
Therefore,

IT IS HEREBY ORDERED that the Circuit Court of the First Circuit's December 9, 2003 Judgment, the January 7, 2004 Order Granting Plaintiff's Motion for Attorneys' Fees, Costs and Prejudgment Interest, the February 4, 2004 Supplemental Final Judgment, and the February 18, 2004 Order Denying Defendant's Motion to Amend Judgment are affirmed.

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

On the briefs:

Samuel P. King, Jr.,
for Defendant-Appellant.



Presiding Judge

Richard E. Wilson,
for Plaintiff-Appellee.



Associate Judge



Associate Judge