

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27009

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

Civil No. 02-1-2869

ROBINSON ACCOUNTING SERVICES, INC., a Hawaii
corporation, Plaintiff-Appellee, v.
WILLIAM FENTON SINK, Defendant-Appellant

and

Civil No. 02-1-2617

WILLIAM FENTON SINK, Plaintiff-Appellant, v.
DAWN ROBINSON, Defendant-Appellee,
and
JOHN AND MARY DOES 1-10, and DOE CORPORATIONS,
PARTNERSHIPS, or OTHER ENTITIES 1-20, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT

SUMMARY DISPOSITION ORDER

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

Appellant William Fenton Sink (Sink) appeals from the Final Judgment filed in the Circuit Court of the First Circuit (circuit court) on December 10, 2004.^{1/} The Final Judgment confirmed an arbitration award (1) in favor of Plaintiff-Appellee Robinson Accounting Services, Inc. (RAS) and against Defendant-Appellant Sink for monetary damages for unpaid fees allegedly owed by Sink to RAS in Civil No. 02-1-2869-12, and (2) in favor of Defendant-Appellee Dawn Robinson (Robinson) and against

^{1/} The Honorable Bert I. Ayabe presided.

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

Plaintiff-Appellant Sink on all contract and tort claims in Civil No. 02-1-2617-11.

On appeal, Sink contends the circuit court erred when it entered judgment against him for two reasons: first, the judgment should not have been entered because the parties had agreed that no judgment would be entered on the matter; and second, the judgment was obtained by fraud.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Sink's points of error as follows:

(1) The arbitrator's award did not violate the agreement placed on the record by the parties. As a preliminary matter, Sink never raised the matter of the settlement agreement before the circuit court in his filings related to RAS's and Robinson's Motion to Confirm Final Award of Arbitrator as Judgment (Motion to Confirm) and therefore waived this point on appeal. Ass'n of Apt. Owners of Wailea Elua v. Wailea Resort Co., Ltd., 100 Hawai'i 97, 107, 58 P.3d 608, 618 (2002). However, Sink's argument, even if properly preserved, lacks merit. Interpretation of a settlement agreement is a question of law for the court because a settlement agreement is simply a form of contract. See State Farm Fire & Cas. Co. v. Pacific Rent-All, Inc., 90 Hawai'i 315, 323-24, 978 P.2d 753, 761-62 (1999).

Furthermore, "[w]hen the terms of a contract are definite and unambiguous there is no room for interpretation." Hanagami v. China Airlines, Ltd., 67 Haw. 357, 364, 688 P.2d 1139, 1144 (1984) (quoting Hackfeld & Co. v. Grossman, 13 Haw. 725, 729 (1902)). The terms of the settlement agreement here are wholly unambiguous. The parties' agreement contemplated that no judgment would be entered against Sink once the arbitrator made his award. However, the terms of that same agreement also required that the losing party pay the prevailing party within five business days of the arbitrator's award. Sink failed to comply with that provision of the settlement agreement, and that failure to observe the terms of the settlement agreement with regard to payment was material because it went to the heart of the agreement by rendering collection by RAS and Robinson of the arbitrator's award impossible. See Aickin v. Ocean View Inv. Co., Inc., 84 Hawai'i 447, 460, 935 P.2d 992, 1005 (1997). Sink's material breach justified RAS's and Robinson's treatment of the other terms of the settlement agreement as rescinded. Bishop Trust Co., Ltd. v. Kamokila Dev. Corp., 57 Haw. 330, 333-34, 555 P.2d 1193, 1196 (1976). Sink, after committing a material breach himself, cannot then rely on a different term of the same agreement in asserting that RAS and Robinson could not seek judicial enforcement of the arbitrator's award. The

judgment entered in the circuit court did not violate the terms of the settlement agreement.

(2) The judgment against Sink was not procured by fraud. Rule 60(b)(3) of the Federal Rules of Civil Procedure allows that a judgment may be set aside on grounds of fraud provided that the party seeking relief proves by "clear and convincing evidence that the verdict was obtained through fraud, misrepresentation, or other misconduct . . . [and that] the conduct complained of prevented the losing party from fully and fairly presenting his case or defense." Jones v. Aero/Chem Corp., 921 F.2d 875, 878-79 (9th Cir. 1990) (citation omitted). Courts in the State of Hawai'i apply the same standard when interpreting the analogous Hawai'i Rules of Civil Procedure Rule 60(b)(3). Kawamata Farms, Inc. v. United Agri Products, 86 Hawai'i 214, 251-52, 948 P.2d 1055, 1092-93 (1997). In this matter, Sink fails to carry his burden of demonstrating any clear and convincing evidence that the judgment obtained by RAS and Robinson was obtained fraudulently. Moreover, the conduct Sink complains of in no way prevented him from fully and fairly presenting his case or defense. To the contrary, Sink had every opportunity to participate in the circuit court proceedings and to muster every defense available to him. The entirety of Sink's argument on this point is predicated on the notion that the settlement agreement precluded the entry of judgment. Sink

offers no evidence of any fraudulent conduct by RAS or Robinson, and completely ignores the fact that he first breached the settlement agreement by failing to pay within five business days. Sink only states that RAS and Robinson failed to point out to the circuit court the provisions of the settlement agreement precluding entry of judgment, while failing to recognize that his recalcitrance is what spurred RAS and Robinson to seek judicial remedies in the first instance. Robinson and RAS did not procure the circuit court judgment by any fraud.

Therefore,

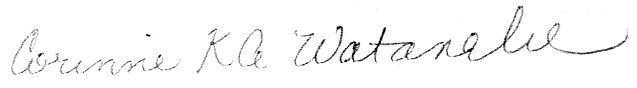
The Final Judgment filed in the Circuit Court of the First Circuit on December 10, 2004 is affirmed.

DATED: Honolulu, Hawai'i, January 26, 2007.

On the briefs:

William Fenton Sink,
Appellant pro se.

Dennis W. King
William J. Deeley
Charles R. Prather
(Deeley, King & Pang)
for Appellee.


Presiding Judge


Associate Judge


Associate Judge