

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27281

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

EMERSON M.F. JOU, Plaintiff-Appellant,
v.

ARGONAUT INSURANCE COMPANY, an Entity, Form Unknown;
CITY AND COUNTY OF HONOLULU, A Self-Insured Governmental
Entity; HEMIC, aka Hawaii Employers Medical Insurance
Company, An Entity, Form Unknown; and MARRIOTT CLAIM
SERVICES CORPORATION, a Corporation, Defendants-Appellees,
and

JOHN DOE 1-50, DOE ATTORNEYS 1-50,
DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10,
and DOE GOVERNMENTAL ENTITIES 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 03-1-1445)

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellant Emerson M.F. Jou, M.D. (Jou)
appeals from the Judgment filed on April 22, 2005 in the Circuit
Court of the First Circuit (circuit court)^{1/} in favor of
Defendants-Appellees Argonaut Insurance Company (Argonaut), City
and County of Honolulu (City), HEMIC aka Hawaii Employers Medical
Insurance Company (HEMIC), and Marriott Claim Services
Corporation (Marriott) (Argonaut, City, HEMIC, and Marriott are
collectively referred to as Appellees) and against Jou. On
appeal, Jou advances thirteen points of error:

(1) Judge Karen Blondin, the circuit court civil
Administrative Judge, erred by assigning this case to Judge Gary

^{1/} The Honorable Gary W.B. Chang presided.

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

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W.B. Chang when Judge Blondin knew or should have known that, prior to becoming a judge, Judge Chang had worked for an insurance defense law firm and had represented the City.

(2) The circuit court erred by denying Jou's motion to disqualify Judge Chang.

(3) The circuit court erred by "refusing to permit filing of second [Hawaii Revised Statutes (HRS)] § 601-7 [(1993)] declaration to disqualify Judge Chang and to vacate orders made by the judge, grounded on [Jou's] discovery that Judge Chang previously represented [the City], and made an ex parte contact with its counsel, for violations of [the Fourteenth Amendment to the United States Constitution and Article I, § 5 of the Hawai'i Constitution], and the possibility of future employment."

(4) The circuit court erred by denying Jou's motion to amend the complaint.

(5) The circuit court erred by denying Jou's motion for summary judgment.

(6) The circuit court erred by granting the City's motion for summary judgment, joined by Marriott.

(7) The circuit court violated Jou's rights under the petition clause of the First Amendment to the United States Constitution by ruling in favor of the City and Marriott on Jou's tort claims.

(8) The circuit court violated Jou's rights under the petition clause of the First Amendment to the United States

Constitution "by implicitly finding in favor of [the City], joined by [Marriott], that the action by the department of Labor in favor of [the City] (only) was justification for [the City] not paying [Jou]."

(9) The circuit court violated Jou's rights to due process and equal protection by refusing to grant a continuance of the summary judgment hearing to permit the deposition of a state official.

(10) The circuit court erred by granting HEMIC's motion for summary judgment.

(11) The circuit court erred and violated Jou's constitutional rights by "granting the Appellees' motions for attorneys' fees and thereby violated other constitutional provisions including the separation of powers doctrine; ad hoc rule-making violating the state and federal constitution; [the Fourteenth Amendment to the United States Constitution] and the due process clause of the state and federal constitutions." The circuit court also violated the takings clause of the Fifth Amendment to the United States Constitution, "and deprived [Jou] of meaningful remedies, in violation of [the] due process and equal protection clause[s] of the [Fourteenth Amendment to the United States Constitution and Article I § 5 of the Hawai'i Constitution]."

(12) The circuit court erred "by refusing to give its novel application of HRS § 607-14 [Supp. 2006] prospective effect

because substantial prejudice would befall [Jou]; instead, the court applied HRS § 607-14 retrospectively to [Jou]."

(13) The circuit court erred by denying Jou's motions for reconsideration of the attorneys' fee orders.

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 conclude that Jou's points of error are without merit.

Therefore,

The Judgment filed on April 22, 2005 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, April 5, 2007.

On the briefs:

Stephen M. Shaw
for Plaintiff-Appellant.

Steven J.T. Chow and
Jeffrey S. Masatsugu
(The Pacific Law Group)
for Defendant-Appellee
City and County of Honolulu.

John Reyes-Burke
(Burke McPheeters Bordner & Estes)
for Defendant-Appellee
HEMIC

Richard F. Nakamura and
Steven L. Goto
(Ayabe, Chong, Nishimoto, Sia &
Nakamura)
for Defendant-Appellee
Marriott Claim Services Corporation


Chief Judge


Associate Judge


Associate Judge