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NO. CAAP-12-0001012

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

KALAKAUA RELIEF LINE, LLC,
Plaintiff/Counterclaim Defendant-Appellee,
v.
1830 KAPIOLANI, LLC, a Hawaii Limited Liability Company,
Defendant/Cross-claim Defendant-Appellee, and
DONG YANG ENTERPRISES, INC.,
Defendant/Counterclaimant/Cross-claimant-Appellant
APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 11-1-0615)

MEMORANDUM OPINION

(By: Nakamura, C.J., and Fujise and Reifurth, JJ.)

This appeal arises out of an interpleader action in which Plaintiff/Counterclaim-Defendant/Appellee Kalakaua Relief Line, LLC ("Kalakaua") filed a complaint ("Complaint") against Defendant/Cross-Claim-Defendant/Appellee 1830 Kapiolani, LLC ("1830 Kapiolani") and Defendant/Counterclaimant/Cross-claimant/Appellant Dong Yang Enterprise Inc. ("Dong Yang") in the Circuit Court of the First Circuit ("Circuit Court"). The Complaint asked that the Circuit Court determine whether 1830 Kapiolani or Dong Yang was entitled to certain wastewater-system facility-charge credits ("Sewer Credits") and a \$14,178.18 refund ("Refund") related to a sewer line designed, constructed, and dedicated to the City and County of Honolulu ("City") by Kalakaua in the Ala Moana/Fort DeRussy area for the benefit of, among others, the real property at 1830 Kapiolani Boulevard, Honolulu (the "Property").

Dong Yang answered the Complaint and filed a counterclaim for declaratory judgment, damages, and other relief against Kalakaua ("Counterclaim"). The Counterclaim alleged that Kalakaua breached its duty to disclose material facts, asked the court to place the interpleaded credits and funds in a constructive equitable and/or resulting trust, and asserted other various equitable claims including assumpsit, quantum meruit, restitution, and unjust enrichment. The Counterclaim further asked that the Circuit Court find that Dong Yang was the owner of the Sewer Credits and the Refund, and award special and general damages, attorneys' fees, and costs. Kalakaua responded by filing a motion for summary judgment on the Counterclaim, which the Circuit Court granted.^{1/}

At the same time that it filed its answer and Counterclaim, Dong Yang filed a cross-claim against 1830 Kapiolani alleging nearly identical counts and seeking nearly identical relief in addition to requesting punitive damages ("Cross-claim"). Like Kalakaua, 1830 Kapiolani responded with a motion for summary judgment on the Cross-claim, which the Circuit Court also granted.

Dong Yang appeals from the Final Judgment filed October 26, 2012 ("Judgment"), two orders granting summary judgment, and the order granting in part 1830 Kapiolani's fees and costs from Dong Yang.^{2/}

On appeal, Dong Yang contends that the Circuit Court erred when it: (1) granted summary judgment in favor of Kalakaua, thereby dismissing the Counterclaim, because genuine issues of disputed material facts exist with respect to the Counterclaim;

^{1/} The Honorable Virginia Lea Crandall presided.

^{2/} Specifically, Dong Yang appeals from: (1) the Judgment; (2) the Order Granting Plaintiff Kalakaua Relief Line, LLC's Motion: (A) To Deposit in Court; (B) For Summary Judgment on Counterclaim Filed May 16, 2011 by Dong Yang Enterprises, Inc.; and (C) For Attorneys' Fees and Costs, filed May 24, 2012 ("Kalakaua Order"); (3) the Order Granting in Part 1830 Kapiolani, LLC's Motion for Taxation of Attorney Fees and Costs Against Defendant Dong Yang Enterprises, Inc., Filed April 27, 2012, filed June 12, 2012 ("1830 Kapiolani Fees and Costs Order"); and (4) the Order Granting Defendant 1830 Kapiolani LLC's Motion for Summary Judgment on Defendant Dong Yang Enterprises Inc.'s Cross-Claim Against Defendant 1830 Kapiolani LLC, Filed March 16, 2012, filed August 21, 2012 ("1830 Kapiolani Summary Judgment Order")

and (2) dismissed the Counterclaim on the basis that Kalakaua was a nominal party with no interest in the litigation. In addition, Dong Yang raises (3) other errors related to the court's resolution of the Complaint and the Cross-Claim, including the award of attorneys' fees and costs to Kalakaua and 1830 Kapiolani on their respective motions for summary judgment.

Upon careful review of the record and the briefs submitted by the parties, we vacate both the Kalakaua Order and the Judgment, and remand the case to the Circuit Court for further proceedings.

I. Standards of Review

We review the trial court's grant of summary judgment de novo. See *Querubin v. Thronas*, 107 Hawai'i 48, 56, 109 P.3d 689, 697 (2005) (quoting *Durette v. Aloha Plastic Recycling, Inc.*, 105 Hawai'i 490, 501, 100 P.3d 60, 71 (2004)). Conversely, we review the denial or granting of attorneys' fees for abuse of discretion. See *Chun v. Bd. of Trs. of Emp.'s Ret. Sys. of State of Hawai'i*, 106 Hawai'i 416, 431, 106 P.3d 339, 354 (2005). The trial court abuses its discretion "if [it] has clearly exceeded the bounds of reason or has disregarded rules or principles of law or practice to the substantial detriment of a party litigant." *Id.* (quoting *Chun v. Bd. of Trs. of Emp.'s Ret. Sys. of State of Hawai'i*, 92 Hawai'i 432, 439, 992 P.2d 127, 134 (2000)).

II. Background Facts

Dong Yang entered into a Commercial Real Property Purchase and Sale Agreement ("PSA"), which provided that Dong Yang was to purchase the Property from 1830 Kapiolani for \$7,388,000. As part of the transaction, Dong Yang would acquire 1830 Kapiolani's percentage membership interest in Kalakaua Relief Line and the Sewer Credits would be transferred to Dong Yang.

Although the transaction was scheduled to close on April 16, 2008, Dong Yang was unable to transfer funds in time, so the parties extended the closing date to May 9, 2008. On

May 9, 2008, Dong Yang again was unable to transfer the requisite funds, and on May 23, 2008, the parties amended the PSA to extend the closing date to August 29, 2008. In exchange, the purchase price was increased to \$7,500,000; \$270,000 in escrow funds were immediately released to 1830 Kapiolani; and Dong Yang agreed to make two additional \$500,000 non-refundable deposits subject to early release to 1830 Kapiolani on May 30 and June 30, 2008.

Dong Yang was unable to close on the sale by August 29, 2008. On September 2, 2008, the parties agreed to further extend the closing date to October 9, 2008, in exchange for: Dong Yang making an additional \$200,000 non-refundable deposit which would immediately be released to 1830 Kapiolani; an increased purchase price of \$7,700,000; and an agreement that the sewer payment, previously "refundable" under the PSA, was now "non-refundable" if Dong Yang failed to close and was to be released immediately to Kalakaua. When Dong Yang failed to make the payments as required under the September 2, 2008 amended agreement, 1830 Kapiolani submitted cancellation instructions to escrow, thereby effectively terminating the transaction.

Thereafter, both Dong Yang and 1830 Kapiolani each contended that they were entitled to allocation of the Property-related Sewer Credits. To address that issue, Kalakaua asked the City to issue the Property-related Sewer Credits in Kalakaua's name pending resolution of the dispute between Dong Yang and 1830 Kapiolani. Kalakaua filed its Complaint for interpleader on March 29, 2011. In it, Kalakaua asked the Circuit Court to determine whether Dong Yang or 1830 Kapiolani was entitled to the Sewer Credits and Refund. The Complaint also asked that the Circuit Court direct Kalakaua to attribute the Sewer Credits and issue the Refund to the rightful owner or owners.

III. Discussion

A. Jurisdiction

As a threshold matter, we find that, while this court has jurisdiction over the Circuit Court's disposition of the Counterclaim, we do not have jurisdiction over those portions of the Judgment that refer to the Complaint or the Cross-claim.

Although the Circuit Court may have intended to resolve all claims in this multi-party, multi-claim case, the Judgment only resolves some of them. That is, the Judgment clearly and expressly dismisses the entire Counterclaim, thereby resolving it in Kalakaua's favor and allowing this court to exercise appellate jurisdiction over those portions of the Judgment that involve the Counterclaim.^{3/} The remainder of the Judgment, however, does not clearly dispose of or resolve the Complaint or the Cross-claim. For example, the Judgment expressly awards attorneys' fees and costs in favor of Kalakaua and against Dong Yang, but it does not expressly enter judgment in favor of Kalakaua as to the Complaint. In addition, the Judgment expressly awards attorneys' fees and costs in favor of 1830 Kapiolani and against Dong Yang, but it does not expressly enter judgment on the Cross-claim in favor of 1830 Kapiolani.

Because the language within the judgment must clearly resolve each claim, *Jenkins v. Cades Schutte Fleming & Wright*, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994), the Judgment's references to the 1830 Kapiolani Fees and Costs Order and the 1830 Kapiolani Summary Judgment Order do not provide us with jurisdiction over those orders. See *Carlisle v. One (1) Boat*, 119 Hawai'i 245, 253-54, 195 P.3d 1177, 1185-86 (2008).

Although this court has no jurisdiction over the claims raised in the Complaint or the Cross-claim, the Judgment contains an express finding of no just reason for delay in the entry of judgment as to one or more but fewer than all claims pursuant to Hawai'i Rules of Civil Procedure ("HRCP") Rule 54(b). Accordingly, pursuant to Hawaii Revised Statutes ("HRS") § 641-

^{3/} The Judgment provides in relevant part:

A. Pursuant to the Order Granting Plaintiff Kalakaua Relief Line, LLC's Motion: (A) to Deposit in Court; (B) for Summary Judgment on Counterclaim Filed May 16, 2011 by Dong Yang Enterprises, Inc.; and (C) for Attorneys' Fees and Costs, filed May 24, 2012:

1. The claims asserted by Dong Yang Enterprises, Inc. in its Counterclaim filed herein on May 16, 2011 are dismissed[.]

(Emphasis added).

1(a), we have jurisdiction over the instant appeal to the limited extent that the Judgment dismisses the Counterclaim, including the related award of attorneys' fees and costs to Kalakaua. The remaining orders and the claims they address will become eligible for appellate review only after the Circuit Court reduces the orders to a separate judgment or judgments.

We proceed then to address the merits of the appeal as to the Counterclaim, including its related fees and costs.

B. The Counterclaim

The Circuit Court granted summary judgment and held that the claims raised in the Counterclaim were not material to any issues that needed to be resolved in the case:

[W]ith respect to the [C]ounterclaim[,] those issues are not material to any issues that need to be resolved in this litigation as the Plaintiff has set forth repeatedly that they are not seeking to retain the [Sewer C]redits and/or the [R]efund and that [the] dispute is between Dong Yang Enterprises and 1830 [Kapiolani] LLC as to which party is entitled to the credits [and] the refund.

The Circuit Court's decision is consistent with current California case law stating that interpleader defendants may not bring counterclaims. *Conner v. Bank of Bakersfield*, 163 P. 353, 355 (Cal. 1917) ("The defendants cannot litigate in the interpleader suit any other claim against the plaintiff. . . . [; t]he only relief which a defendant can have against the plaintiff in such a suit is to have the action dismissed." (citations and internal quotation marks omitted)); see also *State Farm Fire & Cas. Co. v. Pietak*, 109 Cal. Rptr. 2d 256, 264 (Cal. Ct. App. 2001) [hereinafter *2001 Pietak*] (recognizing the continued viability of *Conner, supra*, and holding that "claimants may raise only matters which go to whether . . . the elements of an interpleader action are present.").

Although a handful of other states follow California's interpleader-only approach,^{4/} most federal courts, including the

^{4/} See, e.g., *C.F. Duke Storage Warehouse, Inc. v. Keller*, 53 A.2d 354, 355-56 (N.J. Ch. 1947) ("The proper practice . . . for an objecting defendant [is] to answer [a] bill [of interpleader by] denying its allegations or setting up distinct facts in bar of complainant's alleged cause of action," and "[o]n final hearing[,] the only proper decree will be that the defendants interplead, or that the bill be dismissed."); *Milton Warehouse Co. v. Basche Sage Hardware Co.*, 34 P.2d 338, 343 (Or. 1934) ("[A]s a general rule, the only

Ninth Circuit and federal district courts in California, hold otherwise,^{5/} at least to the extent that such a practice would conflict with compulsory cross-complaint rules.^{6/} In other words,

[I]nterpleader protection generally does not extend to counterclaims that are not claims to the interpleaded funds. "Certainly when the stakeholder is an interested party and when one of the claimants asserts that the stakeholder is independently liable to him, the interposition of a counterclaim is appropriate. Indeed, in most instances of this type, the counterclaim will be compulsory and the court will exercise supplemental jurisdiction over it."

Lee v. West Coast Life Ins. Co., 688 F.3d 1004, 1009-10 (9th Cir. 2012) (quoting Wright, Miller & Kane, Federal Practice and Procedure § 1715 (1986)).

In Hawai'i, HRCP Rule 13 requires that a counterclaim must be pled "if it arises out of the transaction or occurrence

thing that can be tried out in an interpleader suit, in so far as plaintiff is concerned, is whether the stakeholder is entitled to a decree requiring the defendants to interplead, yet, [the inquiry may include questions that are] naturally incident thereto."). *Cf. Wight v. Ferrell*, 3 S.E. 2d 736, 738 (Ga. 1939) (holding that, when a plaintiff holds the certificate to which multiple defendants assert claims of ownership, that plaintiff cannot bring a proper action for interpleader "if one of [the claimants] has a valid legal demand against him at all events"); *Bisson v. Gosselin*, 6 A.2d 766, 767 (N.H. 1939) ("The only personal interest [a] plaintiff has [in an interpleader action for defendants to settle a controversy between themselves] is for the decree [of interpleader] to be a valid judgment." (emphasis added) (citing *United Life & Accident Ins. Co. v. N. Atl. Sec. Corp.*, 133 A. 447, 447 (N.H. 1926) ("[T]he plaintiff in a bill of interpleader has no interest beyond obtaining a decree that the bill has been properly filed" (citation omitted))).

^{5/} See, e.g., *Americo Fin. Life & Annuity Ins. Co. v. Kelly*, No. CV-F-04-5997 LJO, 2005 WL 2604196, *3-4 (E.D. Cal. Oct. 13, 2005) (comparing California state law, under which "defendants in an interpleader action may cross-complain against each other, but no cross-complaint lies against the stakeholder[u]nless the stakeholder waives this limitation . . . , [and if there is no waiver] the only relief available to a defendant against a stakeholder is to have the interpleader action dismissed[,]" *2001 Pietak*, 109 Cal. Rptr. 2d at 265-66 (emphasis added), with federal law, under which "a stakeholder may face compulsory counterclaims," *Minn. Mut. Life Ins. Co. v. Ensley*, 174 F.3d 977, 981 (9th Cir. 1999)); *Doublevision Enter., LLC v. Navigators Specialty Ins. Co.*, No. C 14-02848 WHA, 2015 WL 5821414, *8 (N.D. Cal. Oct. 6, 2015) (comparing California's interpleader case law with federal law in a suit arising under diversity jurisdiction).

^{6/} See *Cheiker v. Prudential Ins. Co. of America*, 820 F.2d 334, 336-37 (9th Cir. 1987) (determining that California's compulsory cross-complaint rule, Cal. Civ. Proc. Code § 426.30, requires interpleader-defendants to raise "related" causes of action during the interpleader action); see also *Pietak v. State Farm Fire and Cas. Co.*, No. 98-15089, 1999 WL 599478, *1 (9th Cir. Aug. 10, 1999) [hereinafter "*1999 Pietak*"] (noting that interpleader actions are not exempt from the compulsory cross-complaint rule); *Doublevision*, 2015 WL 5821414, at *9, (emphasizing that *2001 Pietak* "expressly avoided addressing *Cheiker* head on" when it reaffirmed the *Conner* approach).

that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction." Haw. R. Civ. P. 13(a). Moreover, Hawai'i's rule provides that a counterclaim is not required if:

- (1) at the time the action was commenced the claim was the subject of another pending action or (2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

Id. To determine that a counterclaim is compulsory generally requires an affirmative answer to at least one of the following questions:

- 1) Are the issues of fact and law raised by the claim and counterclaim largely the same?
- 2) Would *res judicata* bar a subsequent suit on defendant's claim absent the compulsory counterclaim rule?
- 3) Will substantially the same evidence support or refute plaintiff's claim as well as defendant's counterclaim?
- 4) Is there any logical relation between the claim and the counterclaim?

Booth v. Lewis, 8 Haw. App. 249, 252-53, 798 P.2d 447, 449 (App. 1990) (citing 6 Charles Alan Wright et al., Federal Practice and Procedure § 1410, 52-55 (1990)) (determining whether HRCF Rule 13(a) required plaintiff to plead the complaint as a compulsory counterclaim in a prior separate action). We hold that each of the Counterclaim's four counts satisfies at least the logical relation question.

Here, Kalakaua's interpleader action is focused on determining who is entitled to the Sewer Credits and Refund. In its response, Dong Yang contends that Kalakaua is independently liable, irrespective of the result of the interpleader action, and therefore a compulsory counterclaim is appropriate. See *Lee*, 688 F.3d at 1009-10. Dong Yang's four counts each "arise[] out of the transaction or occurrence that is the subject matter of the opposing party's claim[,] by alleging an entitlement to the Sewer Credits and Refund based on the actions of Kalakaua. Haw. R. Civ. P. 13. See *Cheiker*, 820 F.2d at 337 ("[T]he term 'transaction' . . . is not confined to a single, isolated act or

occurrence . . . but may embrace a series of acts or occurrences logically interrelated[.]" (quoting *Saunders v. New Capital for Small Bus., Inc.*, 41 Cal. Rptr. 703, 711 (Cal. Dist. Ct. App. 1964))). Furthermore, the Counterclaim and the Complaint will involve overlapping evidence and issues. Thus, there is a "logical relation" between the Counterclaim's four counts and the issues raised in the Complaint. *Booth*, 8 Haw. App. at 252, 798 P.2d at 449 ("[T]he most widely accepted standard is the logical relationship test."). Therefore, Dong Yang's claims are required to be asserted in a counterclaim and are not resolved on summary judgment on the basis that they are unnecessary to resolution of the Complaint.

Based on Hawai'i's compulsory counterclaim rule, the logic of the Ninth Circuit's compulsory counterclaim analysis in *Cheiker*, and the fact that Dong Yang's claims in its Counterclaim are logically related to Kalakaua's Complaint, we conclude that the Circuit Court erred in dismissing the Counterclaim as "not material to any issues that need to be resolved" in the interpleader action.

- C. The Circuit Court's award of Counterclaim-related attorneys' fees and costs to Kalakaua must be vacated.

Kalakaua contends that attorneys' fees were properly granted pursuant to HRS § 607-14, which requires the losing party to pay attorneys' fees "in all actions in the nature of assumpsit." Haw. Rev. Stat. § 607-14; see *Blair v. Ing*, 96 Hawai'i 327, 329, 31 P.3d 184, 186 (2001) (citing *Leslie v. Estate of Tavares*, 93 Hawai'i 1, 4, 994 P.2d 1047, 1050 (2000)). Because Kalakaua has not prevailed on the Counterclaim to this point, the Counterclaim-related fee award to Kalakaua is vacated. For the same reason, the award of costs is vacated. See Haw. R. Civ. P. 54(d) (awarding costs to the prevailing party); see also Haw. Rev. Stat. § 607-14 (same).

IV. Conclusion

Therefore, we vacate the (1) Order Granting Plaintiff Kalakaua Relief Line, LLC's Motion: (A) To Deposit in Court; (B)

For Summary Judgment on Counterclaim Filed May 16, 2011 by Dong Yang Enterprises, Inc.; and (C) For Attorneys' Fees and Costs, filed May 24, 2012; and the (2) Final Judgment, filed October 26, 2012, as it pertains to the Counterclaim and related attorneys' fees and costs. The case is remanded to the Circuit Court for proceedings consistent with this decision.

DATED: Honolulu, Hawai'i, May 23, 2016.

On the briefs:

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