

NO. 22925

IN THE SUPREME COURT OF THE STATE OF HAWAII

---

MARGERY SAUVE-KITAGAWA,  
Plaintiff-Appellant, Cross-Appellee,

vs.

FAT FRIDAY S, INC., dba MOOSE MCGILLICUDDY S PUB & CAFÉ,  
a Hawaii corporation, Defendant-Appellee, Cross-Appellant,

and

JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATION 1-10, DOE  
PARTNERSHIPS 1-10, ROE NON-PROFIT CORPORATIONS 1-10; AND ROE  
GOVERNMENTAL ENTITIES 1-10, Defendants.

---

APPEAL FROM THE FIRST CIRCUIT COURT<sup>1</sup>  
(CIV. NO. 97-2020)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama,  
Ramil, and Acoba, JJ.)

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 the plaintiff-appellant, cross-appellee Margery Sauve-Kitagawa s and the defendant-appellee, cross-appellant Fat Friday s, Inc., d.b.a. Moose McGillicuddy s Pub & Café s points of error as follows:

(1) Fat Friday s argues that Sauve-Kitagawa waived her objections to the circuit court s jury instructions and special verdict form by failing to raise them at trial. We hold that

---

<sup>1</sup> The Honorable Sabrina S. McKenna presided over the trial of this matter.

Sauve-Kitagawa s (a) failure to assert, at trial, the objections to the instructions she now alleges to have been defective, (b) withdrawal of her own instructions dealing with apportionment, (c) failure to object to the special verdict form proposed by the trial court, and (d) submission of a proposed special verdict form that was very similar to the special verdict form that she now alleges to have misled the jury preclude her from asserting such errors in the jury instructions and the special verdict form after trial. See Hawaii Rules of Civil Procedure (HRCPP) Rule 51(e) (1998); HRCPP Rule 49(a) (2000); Montalvo v. Lapez, 77 Hawaii 282, 299 n.17, 884 P.2d 345, 362 n.17 (1994); Chung v. Kaonohi Center Co., 62 Haw. 594, 602-03, 618 P.2d 283, 289-90 (1980).

(2) Sauve-Kitagawa asserts that the circuit court (a) erred when it prematurely instructed the jury during [her] rebuttal that [Fat Friday s] had no burden to prove its assertion that [multiple sclerosis] could not be caused by an accident and (b) abused its discretion in denying her motion for a new trial. We note that Sauve-Kitagawa does not specifically address these points of error in her argument and therefore they are deemed waived. See Hawaii Rules of Appellate Procedure Rule 28(b) (7) (2000); Hawaii Community Federal Credit Union v. Keka, 94 Hawaii 213, 226 n.10, 11 P.3d 1, 14 n.10 (2000). In any event, even if Sauve-Kitagawa did not waive these points of error, our review of the record and applicable case law reflects that the circuit court did not err, as Sauve-Kitagawa alleges, in instructing the jury and did not abuse its discretion in denying her motion for a new trial.

(3) Fat Friday s argues that the circuit court abused its discretion in awarding Sauve-Kitagawa prejudgment interest,

inasmuch as (a) the jury tailored its award to account for the passage of time, (b) Sauve-Kitagawa was responsible for delay in the litigation, and (c) the period of time necessary to complete the case was not extraordinary. The record does not support the first and second of the foregoing contentions. Cf. Roxas v. Marcos, 89 Hawaii 91, 153-54, 969 P.2d 1209, 1271-72 (1998); Page v. Domino's Pizza, Inc., 80 Hawaii 204, 209, 908 P.2d 552, 557 (App. 1995). Although we agree that the case was not

extraordinarily delayed in the circuit court, that fact alone does not preclude Sauve-Kitagawa from being awarded prejudgment interest, and the circuit court did not commit an abuse of discretion in doing so. See Page, 80 Hawaii at 209-10, 908 P.2d at 557-58.

(4) Fat Friday's argues that the circuit court abused its discretion in awarding Sauve-Kitagawa costs of (a) deposition transcripts not utilized at trial, (b) videotape deposition transcripts, (c) copying and editing of videotapes shown to the jury, (d) rental cost of videotape equipment, (e) copying costs, and (f) witnesses interstate travel expenses. We agree with Fat Friday's that the circuit court abused its discretion in allowing as taxable costs the copying costs requested by Sauve-Kitagawa, inasmuch as Sauve-Kitagawa failed to set forth with particularity what the charged copying costs included, how many copies were charged, or the charge per page and, therefore, that the circuit court had no basis for determining the reasonableness of the claimed costs. However, Fat Friday's does not contend that the amounts charged for the other items were unreasonable. We hold that the circuit court did not abuse its discretion in allowing the remainder of the foregoing cost items. See Hawaii Revised Statutes § 607-9 (1993); Wong v. Takeuchi, 88 Hawaii 46, 52-54,

961 P.2d 611, 617-19 (1998); Turner v. Willis, 59 Haw. 319, 329-31, 582 P.2d 710, 716-18 (1978).

Therefore,

IT IS HEREBY ORDERED that the amended final judgment, filed on September 17, 1999, is reversed to the extent that it awarded Sauve-Kitagawa \$5,050.17 in copying costs and is affirmed in all other respects.

DATED: Honolulu, Hawaii, July 11, 2001.

On the briefs:

Roy K.S. Chang and Harvey M.  
Demetrakopoulos (of Shim  
& Chang) for the plaintiff-  
appellant, cross-appellee  
Margery Sauve-Kitagawa

David M. Louie and Dennis  
E.W. O Connor, Jr. (of  
Roeca, Louie & Hiraoka)  
for the defendant-appellee,  
cross-appellant Fat Friday s,  
Inc., dba Moose McGillicuddy s  
Pub & Café