

NO. 22952

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

MICHAEL HOLBRON, Plaintiff-Appellant,

vs.

GUY HOGUE, AKAHI SERVICES, INC., Defendants-Appellees,

and

JOHN DOES 1-10, Defendants,

and

GUY HOGUE, AKAHI SERVICES, INC., Third-Party
Defendants-Appellees,

vs.

LITO ALCANTARA, Third-Party Defendant.

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 97-1967)

SUMMARY DISPOSITION ORDER

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

Plaintiff-appellant Michael Holbron appeals from the November 2, 1999 final judgment entered by the First Circuit Court, the Honorable Gail C. Nakatani presiding, in favor of defendants-appellees Akahi Services, Inc. (ASI) and Guy Hogue, ASI's president and majority stockholder [hereinafter, collectively, Defendants]. Holbron filed a four-count complaint for injuries he sustained while employed by ASI.

On appeal, Holbron claims that the First Circuit Court, the Honorable Kevin S. C. Chang presiding, erred in granting Defendants' motion to dismiss Counts I, II, and IV because there were genuine issues of material fact which precluded summary judgment.¹ Holbron also argues that the circuit court abused its discretion when it denied a request for a continuance prior to ruling on the motion to dismiss. Finally, Holbron argues that the First Circuit Court, the Honorable Gail C. Nakatani presiding, erred in granting Defendant's renewed motion to dismiss and/or for summary judgment as to Count III.

Upon carefully reviewing 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 hold that:

(1) Count I, alleging misconduct on the part of Defendants, was properly dismissed as a matter of law because Hogue -- whether deemed an employer or a co-employee -- could not be held liable for Holbron's injuries based upon a theory of negligent misconduct. See Hawai'i Revised Statutes (HRS) § 386-5

¹ Defendants' motion to dismiss was brought pursuant to Hawai'i Rules of Civil Procedure (HRCP) Rule 12(b)(6). In deciding the motion, Judge Chang considered matters outside the pleadings and, therefore, treated the motion as one for summary judgment, pursuant to HRCP Rule 56.

(workers' compensation statutes provide the exclusive remedy of an employee with a claim against his or her employer); see also HRS § 386-8 (statutory immunity provided by HRS § 386-5 extends to co-employees acting within the scope of their employment); Iddings v. Mee-Lee, 82 Hawai'i 1, 8, 919 P.2d 263, 270 (1996).

(2) Count II, alleging wilful and wanton misconduct, was properly dismissed because Holbron failed to present any evidence regarding the existence of wilful and wanton misconduct on the part of Hogue. See Iddings, 82 Hawai'i at 12, 919 P.2d at 274 (defining wilful and wanton misconduct); see also HRCP Rule 56(e) (providing that, when a motion for summary judgment is made and supported by affidavit, adverse party may not rest upon the mere allegations of his or her pleadings, but must set forth specific facts showing genuine issue for trial exists). Moreover, the circuit court did not abuse its discretion in denying Holbron's request for a continuance to conduct discovery because the requested discovery, i.e., to explore the relationship between ASI and Hogue, was not germane to the issue whether Hogue had engaged in wilful and wanton misconduct.

(3) Count III, alleging wrongful termination in violation of HRS chapter 378 and/or public policy, was properly dismissed because: (a) Holbron failed to exhaust his administrative remedies, see Puchert v. Agsalud, 67 Haw. 25, 37,

677 P.2d 449, 458 (1984) (noting that the "only means of having a cause of action [involving unlawful discharge predicated on HRS chapter 378] heard is through the administrative and judicial procedures prescribed by state statute"); (b) Holbron's reliance on Takaki v. Allied Machinery Corp., 87 Hawai'i 157, 951 P.2d 507 (App. 1998), is misplaced insofar as the plaintiff's discrimination claim in Takaki was allowed to proceed due to having obtained a right to sue letter from the Civil Rights Commission prior to filing his civil action; and (c) Holbron's public policy argument cannot prevail insofar as "the statutory provisions evidencing our public policy against discharges for compensable work injuries provide a remedy for . . . discharges" under chapter 378. Id. at 63, 951 P.2d at 513 (citing Ross v. Stouffer Hotel Co. Ltd., Inc., 76 Hawai'i 454, 464, 879 P.2d 1037, 1047 (1994)).

(4) Count IV, alleging respondeat superior, was properly dismissed insofar as Counts I and II, upon which Count IV was predicated, were also properly dismissed. See Wong-Leong v. Hawaiian Independent Refinery, 76 Hawai'i 433, 438, 879 P.2d 538, 543 (1994) (holding that, "to recover under the respondeat superior theory, a plaintiff must establish . . . a negligent act of the employee, in other words, breach of a duty that is the legal cause of plaintiff's injury"). Therefore,

IT IS HEREBY ORDERED that the First Circuit Court's November 2, 1999 final judgment dismissing all of Holbron's claims is affirmed.

DATED: Honolulu, Hawai'i, May 10, 2002.

On the briefs:

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