

NO. 23338

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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EMPRESS RESTAURANT & NIGHTCLUB, INC. and  
GEORGE V. V. DANG, Plaintiffs-Appellants,

vs.

LONGEVITY INTERNATIONAL ENTERPRISES CORPORATION,  
a Hawai'i corporation, dba CHINESE CULTURAL PLAZA,  
CULTURAL PLAZA ASSOCIATES, former in existence  
doing business, Defendant-Appellee,

and

JOHN DOE 1-50, JANE DOE 1-50, DOE CORPORATIONS  
1-50, DOE PARTNERSHIPS 1-50, DOE ENTITIES 1-50,  
and DOE GOVERNMENTAL UNITS 1-50, Defendants.

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 98-3503))

SUMMARY DISPOSTION ORDER

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

On August 5, 1998, plaintiffs-appellants Empress  
Restaurant and Nightclub, Inc. and George V.V. Dang [hereinafter,  
collectively, Empress] filed a verified complaint in the First  
Circuit Court against defendant-appellee Longevity International  
Enterprises Corporation [hereinafter, Longevity] alleging:

- (1) breach of contract; (2) tortious interference with contract;
- (3) promissory estoppel; (4) constructive eviction; and
- (5) defamation. Empress appeals the circuit court's July 20,

1999 order granting summary judgment in favor of Longevity on all claims and awarding attorneys' fees and costs pursuant to Hawai'i Revised Statutes (HRS) § 607-14.5 (1993), and the March 10, 2000 final judgment entered thereon.<sup>1</sup> On appeal, Empress argues that the circuit court erred by: (1) ruling that all of Empress's claims were barred by the statute of limitations;<sup>2</sup> (2) finding that Empress's evidence was not "credible and competent"; and (3) finding that all of Empress's claims were frivolous.

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 resolve Empress's contentions as follows:

First, Empress contends that the circuit court erred in ruling that all of its claims were barred by the statute of limitations because Longevity should be equitably estopped from claiming such a defense inasmuch as Empress "reasonably" and "detrimentally" relied upon continuing negotiations with Longevity after Empress discovered its cause of action in July 1990. See Doherty v. Hartford Ins. Group, 58 Haw. 5770, 573, 574 P.2d 132, 135 (1978). The burden of demonstrating reliance rests

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<sup>1</sup> The Honorable Gail C. Nakatani entered the final judgment.

<sup>2</sup> The statute of limitations is six years for a breach of contract claim and two years for property damage and defamation claims. See HRS §§ 657-1(1), 657-7, and 657-4 (1993).

with the party invoking estoppel.<sup>3</sup> See Federal Home Loan Mortgage Corp. v. Transamerica Ins. Co., 89 Hawai'i 157, 166, 969 P.2d 1275, 1284 (1999). Assuming arguendo that Empress discovered its causes of action in July 1990 and that it engaged in negotiations with Longevity to address its concerns, such facts do not, without more, demonstrate that it was "reasonable" for Empress to wait over eight years before filing a complaint. See Waugh v. University of Hawai'i, 63 Haw. 117, 130, 621 P.2d 957, 967 (1980). Therefore, the circuit court did not err in ruling that Longevity was not estopped from asserting a statute of limitations defense and in granting Longevity's motion for summary judgment.

Second, Empress contends that the circuit court erred in finding that its evidence was not "competent and credible." In light of the foregoing, we need not address this contention.

Third, Empress contends that the circuit court erred in awarding fees and costs because its claim was not frivolous. Empress puts forth two arguments in support of this contention.

(a) Empress asserts that Longevity establishes the validity of Empress's claims by acknowledging that Longevity shut down an air conditioning cooling tower at 10:00 p.m. nightly.

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<sup>3</sup> Empress also contends that this court should "extend" the doctrine of equitable estoppel because "public policy encourages the disposition of cases on their merits." Empress did not raise this contention in the circuit court, and it is therefore waived. See Molinar v. Schweizer, 95 Hawai'i 331, 339, 22 P.3d 978, 986 (2001).

The fact that Longevity acknowledged shutting down the cooling tower does not address the question whether Empress acted frivolously in filing a complaint over eight years after it allegedly discovered that the shutdown occurred.

(b) Empress relies upon Nielson v. Ono, 750 F. Supp. 439 (D. Haw. 1990), as support for the fact that its claims were not frivolous. In Nielson, the court declined to award attorneys' fees against a plaintiff who unsuccessfully sought an extension of existing law by arguing that a car rental company could be liable for the tort of negligent entrustment for renting a vehicle to a foreign tourist who spoke little or no English. Nielson is inapposite to this case because, unlike the plaintiff in Nielson, Empress did not seek an extension of existing law before the circuit court. Therefore, the circuit court did not err in awarding attorneys' fees and costs. Accordingly,

IT IS HEREBY ORDERED that the judgment from which this appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, June 24, 2002.

On the briefs:

Grant K. Kidani and  
Alan L. Wong, for  
plaintiffs-appellants

James C. McWhinnie and  
Michelle M. Shin (of Damon  
Key Leong Kupchak Hastert),  
for defendant-appellee