
NO. 23085

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

GOLD COAST INVESTMENT COMPANY, a Hawai'i
limited partnership, Plaintiff-Appellee

vs.

STRIVE ISLAND INVESTMENTS, INC.,
a Hawai'i corporation, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
(CIV. NO. 97-142)

SUMMARY DISPOSITION ORDER

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

On April 27, 1997, Plaintiff-Appellee Gold Coast Investment Company (Plaintiff) filed a complaint in the District Court of the Third Circuit (the court)¹ against Defendant-Appellant Strive Island Investments, Inc. (Defendant), seeking summary possession and damages of \$34,428 for default on a commercial lease. On May 27, 1997, Defendant filed a petition for bankruptcy under Chapter 11 in federal court. In the bankruptcy case, Defendant's debt with Plaintiff was settled by a stipulation² (bankruptcy stipulation). That stipulation, and an

¹ The Honorable Joseph P. Florendo, Jr. presided over this matter.

² The bankruptcy stipulation stated in relevant part:

IT IS THEREFORE HEREBY STIPULATED AND AGREED AS FOLLOWS:

1. [Defendant] is in default of the lease for failure
(continued...)

additional stipulation, entitled "stipulation for entry of judgment of possession" (the judgment stipulation), were filed with the court.³ On December 6, 1999, Plaintiff filed an ex

²(...continued)

to pay prepetition rent, common area maintenance fees, and attorney fees in the amount of \$35,580.81, not including abated rent.

2. [Defendant] shall cure its default by payment to [Plaintiff] as follows:

- a. \$10,000.00 on or before February 28, 1998;
- b. Beginning March 1998, payment of \$5000.00 per month for 12 consecutive months;
- c. Beginning March 1999, payment of \$1,000.00 per month for 19 consecutive months;
- d. On or before September 31, 2000, in addition to the above, payment of \$580.81.

3. If [Defendant] makes the payments as set forth in 2. above, [Plaintiff] shall waive its right to collect the \$16,620.00 in abated rent; except that this waiver shall not apply in the event of a future default by [Defendant].

4. [Defendant] shall execute a stipulated judgment for possession in [Plaintiff's] pending summary possession action against [Defendant], which [Plaintiff] may file and execute upon if [Defendant] defaults in its obligation to pay current rents or amounts set forth herein, and fails to cure such defaults within 30 days.

5. Immediately upon entry of this Stipulation; Order, [Defendant] shall give to [Plaintiff] a first priority security interest in [Defendant]'s fixtures and personal property on the premises and [Defendant] shall execute the necessary documents to effectuate this.

6. [Plaintiff] shall in good faith discuss with [Defendant] lease issues [Defendant] desires to address, with the intention of resolving these issues in a mutually satisfactory manner, provided that nothing contained herein shall require [Plaintiff] to amend the lease.

(Emphasis added.)

³ The judgment stipulation stated, in relevant part, that:

1. Defendant shall execute and consent to a Judgment for Possession for the premises described in the Complaint filed in Civil N. 97-142, which Judgment shall not be filed unless the Defendant is delinquent in the payment of current rent or other monies due under the Lease pursuant to the stipulation and order filed in the Bankruptcy matter and fails to cure the default within 30 days of notice of such default; and

2. Plaintiff shall submit the Judgment for Possession and Writ of Possession to the Court upon such breach as set forth in Paragraph 1 and the Court shall immediately, without further hearing, issue the Judgment for Possession and the court shall make the Writ of Possession effective 10

(continued...)

parte motion for entry of judgment for possession and a writ of possession (ex parte motion) purportedly pursuant to the stipulations. In its December 8, 1999 order, the court granted the ex parte motion for issuance of judgment and writ of possession "pursuant to the Stipulation of the parties." On December 6, 1999, the court filed a judgment for possession and issued a writ of possession against Defendant.⁴ Defendant appealed the judgment for possession to this court. On July 5, 2001, this court dismissed the appeal because the bankruptcy petition implemented an automatic stay of any other proceedings. On October 1, 2001, the U.S. Bankruptcy Court granted relief from the automatic stay and Defendant's appeal was reinstated.

Although Plaintiff's claim for money damages has not been resolved, the judgment for possession is immediately appealable under the Forgay doctrine, which "allows an appellant to immediately appeal a judgment for execution upon property, even if all claims . . . have not been finally resolved." Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995). Moreover, although Plaintiff contests jurisdiction on the ground that Defendant consented to entry of the judgment for possession when it voluntarily executed the stipulation for entry of

³(...continued)
days from the date of entry of the Judgment.

(Emphases added.)

⁴ The order granting the motion for issuance of judgment and writ of possession is dated December 8, 1999. The Judgment for Possession and the writ of possession were both signed December 8, but filed December 6, 1999. The parties do not claim any error on appeal regarding this matter.

judgment, this court has jurisdiction to determine whether there was consent to the entry of the Judgment of Possession. See Laupahoehoe Sugar Co. v. Lalakea, 28 Haw. 310, 327 (1925) (explaining that "in order to bar the right to appeal on the ground of acquiescence, the acts relied upon must be such as to clearly and unmistakably show acquiescence, and it must be unconditional, voluntary and absolute"). This involves an analysis as to whether the terms and conditions stated in the stipulations were met.

The stipulations were, in effect, settlement agreements and general rules of contract interpretation apply to settlement agreements. "As a general rule, the construction and legal effect to be given a contract is a question of law." Hanagami v. China Airlines, Ltd., 67 Haw. 357, 364, 688 P.2d 1139, 1144 (1984) (citations omitted). Additionally, "[t]he interpretation or construction of a judgment, decree or order 'presents a question of law for the courts.'" Wohlschlegel v. Uhlmann-Kihei, Inc., 4 Haw. App. 123, 130-31, 662 P.2d 505, 511 (1983) (quoting Cain v. Cain, 59 Haw. 32, 39, 575 P.2d 468, 474 (1978)). Thus we review the court's order under the right/wrong standard. State v. Miller, 4 Haw. App. 603, 606, 671 P.2d 1037, 1040 (1983).

Applying the plain and ordinary meaning of the stipulations, it is evident that not all of the required conditions were met. The bankruptcy stipulation required that

"[Defendant] shall execute a stipulated judgment⁵ for possession in [Plaintiff's] summary possession action . . . which [Plaintiff] may file . . . if [Defendant] defaults." (Emphasis added.) "Execute" means "to complete, to make, to sign, to perform; to do[;] . . . [t]o perform all necessary formalities, as to make and sign a contract, or sign and deliver a note." Black's Law Dictionary 567 (6th ed. 1990). "Stipulation" means "any agreement made by attorneys on opposite sides of a cause . . . regulating any matter incidental to trial" Id. at 1415. The judgment stipulation stated that "Defendant shall execute and consent to a Judgment for Possession . . . [and] Plaintiff shall submit the [stipulated] Judgment for Possession." (Emphasis added.)

The required judgment was not executed by Defendant, nor submitted by Plaintiff, as required by the stipulations. Plaintiff was only authorized to file a judgment for possession "which" was executed by Defendant and stipulated to by the parties. In the absence of a stipulated judgment, as required by the terms of the stipulations, the order granting Plaintiff's motion for issuance of judgment and writ of Possession was not "issued pursuant to the stipulation of the parties." The court therefore was wrong in issuing the order and hence the order was void. Therefore, in accordance with Hawai'i Rules of Appellate

⁵ According to Black's Law Dictionary 841-42 (6th ed. 1990), "judgment" means "the official and authentic decision of a court of justice upon the respective rights . . . of the parties. . . . [The] term "judgment" under rules practice includes "decree."

Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the Judgment and Writ of Possession, filed December 6, 1999, are vacated and the case remanded to the court for further proceedings.

DATED: Honolulu, Hawai'i, November 20, 2003.

On the briefs:

Steven A. Kornberg for
defendant-appellant.

Robert D. Triantos, Kevin E.
Moore, and Edmund W.K.
Haitsuka (Carlsmith Ball)
for plaintiff-appellee.