

NO. 26334

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

WHITEY'S BOAT CRUISES, INC.; et al., Plaintiffs-Appellants,

vs.

NAPALI-KAUAI BOAT CHARTERS, INC., dba HANAIEI SEA TOURS;  
et al., Defendants-Appellees.

APPEAL FROM THE FIFTH CIRCUIT COURT  
(CIV. NO. 97-0139)

ORDER OF CORRECTION

(By: Levinson, J., for the court<sup>1</sup>)

IT IS HEREBY ORDERED that the opinion of the court, filed in the above-captioned matter, on April 18, 2006, is corrected as follows:

Page 20, last sentence: Delete reference to "Tr. 11/21/00 at 8"; and

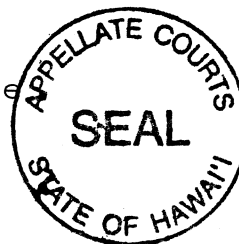
Page 21, footnote 18: Delete reference to "RA, vol. 27 at 158."

The Clerk of the Court is directed to incorporate the foregoing changes in the original opinion and take all necessary steps to notify the publishing agencies of these changes.

DATED: Honolulu, Hawai'i, April 25, 2006.

FOR THE COURT:

*Steve Levinson*  
Associate Justice



EMERMANCO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2006 APR 25 AM 9:06

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<sup>1</sup> Considered by: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.

claim." Specifically, they contended that "a claim for an accounting and unjust enrichment is a claim for damages, not the basis or justification for the claim." Thus, Swain defendants maintained that, inasmuch as Appellants' claims of common law unfair competition and interference with prospective business advantage had been dismissed, "there can be no claims for a remedy of either injunctive relief or its further remedy of an accounting and/or unjust enrichment." Moreover, Swain defendants contended that, because they had ceased all operations and promotions of tour boats in Hanalei by 1998, Appellants' "prayer for injunctive relief had actually and effectively [been satisfied] in 1998."

A hearing was held on November 21, 2000 with respect to the separate motions for partial summary judgment filed by Cliffs defendants and Swain defendants. With respect to Appellants' claim for injunctive relief, the circuit court stated:

[U]nder the law as the [c]ourt sees it, [Appellants] must show a clearly ascertainable right in order to have a standing to seek equitable -- the equitable relief of injunction. [Appellants] must also show that their claim for injunctive relief does not depend on the existence of a private remedy.

Under the circumstances, the [c]ourt does not feel that [Appellants] can do this. [Appellants'] main argument no matter what [Appellants] say[] is that [Appellants] got hurt because defendants violated [HRS c]hapter 205A and that defendants['] violations -- the violations of the wrongful conduct regardless of what [Appellants] say[], [Appellants] cannot use [HRS c]hapter 205A as the basis for injunctive relief or equitable relief under the circumstances. They do not have a private right of action under [HRS c]hapter 205A.

Under the circumstances, with reference to the injunction, the [c]ourt will grant the motion for partial summary judgment.

The circuit court took under advisement Appellants' remaining claim of unjust enrichment/accounting. Tr. 11/21/00 at 8.

On December 7, 2000, the circuit court entered its written order granting Cliffs defendants' motion for partial summary judgment with respect to Count VI (injunctive relief), dismissing Appellants' claim for injunctive relief as to all defendants. On February 21, 2001, the circuit court entered an order granting Swain defendants' motion for partial summary judgment with respect to Count V (unjust enrichment/accounting), dismissing Appellants' claim for unjust enrichment/accounting as to all defendants. The circuit court further found "that the remedy of unjust enrichment is not practical and would not serve the public good."

#### **6. Judgment and Appeal**

On November 7, 2003, the parties filed a conditional stipulation of dismissal as to all claims by Appellants and all counterclaims by defendants.<sup>18</sup> The stipulation preserved Appellants' right to appeal from any final judgment entered by the circuit court with respect to their claims against (1) Napali Appellees, (2) Sheehan Appellees, and (3) Capt. Zodiac. As part of the stipulation, Appellants could challenge only the circuit court's orders granting summary judgment with respect to the six claims set forth in Appellants' second amended complaint.

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<sup>18</sup> Clipner, Napali Appellees, Sheehan, Sr., and Capt. Zodiac had filed counterclaims against Appellants. As part of the stipulation, all counterclaims were dismissed. RA, Vol. 27 at 158.