

HISAIAH v. HAWAIIAN FLOUR MILLS

record and argue that as a matter of law this cannot be the case. Again, looking at the evidence and the law we are unable to say that this finding was clearly erroneous or an error of law.

Appellants are absolutely right when they say “total void” since there is virtually nothing to show any actions by Carmen consistent with ownership of this property until approximately 1974 or 1975.

[4] While she filed a claim for other property there is no record that she filed a claim for Lot 764. Moreover, she testified she relied on her sister to file a claim. Finally, she testified she never attended any meetings of the family regarding family lands after the death of her father. From this and other evidence the trial court found this indicated acquiescence to whatever her sister, Isabel, intended to do or in fact did with the property if, in fact, she still believed her family still owned the property. While other conclusions may be reached by the evidence, we find there is sufficient evidence and law to support the conclusions drawn by the trial court.

For the foregoing reasons, the judgment of the trial court is **AFFIRMED**.

ANDREW HISAIAH, Defendant-Appellant

v.

HAWAIIAN FLOUR MILLS, Plaintiff-Appellee

Civil Appeal No. 304

Appellate Division of the High Court

Marshall Islands District

October 3, 1980

Appeal from a judgment of the trial court awarded on an account alleged to be due and owing. The Appellate Division of the High Court, Gianotti, Associate Justice, held that there was sufficient evidence to support the judg-

ment, and that there was no abuse of discretion in trial court's denial of defendant's motion for joinder of third party, and therefore judgment was affirmed.

1. Appeal and Error—Evidence—Weight

The Appellate Court cannot reweigh evidence presented to the trial court upon which the judgment is based.

2. Appeal and Error—Evidence—Weight

Where there was sufficient evidence to support the judgment, Appellate Court would not reweigh the evidence on appeal.

3. Civil Procedure—Joinder

Whether a joinder is to be allowed is a matter resting within the sound discretion of the trial court. (Rules of Civil Proc. 14(a), 19(a))

4. Civil Procedure—Joinder

There was no abuse of discretion in trial court's denial of defendant's motion for joinder of third party, where the court did not "close the door" on defendant's right to bring suit against the third party but only disallowed a joinder at a late date in the present action.

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Before BURNETT, *Chief Justice*, NAKAMURA, *Associate Justice*, and GIANOTTI, *Associate Justice*

GIANOTTI, *Associate Justice*

This appeal rises from a judgment of the trial court awarded on an account alleged to be due and owing by appellant to appellee. In 1976 appellant placed an order with appellee for the purchase of certain "goods" to be delivered in Majuro, Marshall Islands. Upon shipment of the goods and arrival in Majuro, appellant apparently entered into certain negotiations for finance with the Bank of America, Majuro; however, the final outcome was that the goods were never picked up by appellant and subsequently this action arose.

Appellant's appeal is based upon two considerations, to wit: 1) Was the judgment supported by the evidence; and 2) whether the trial court erred in denying appellant's motion to join the Bank of America.

Appellant waived oral argument and submitted the matter on written brief. Appellee presented oral argument along with the submission of a written brief.

[1] Was the judgment supported by the evidence? The trial court made certain findings based upon the evidence which culminated in the conclusion that appellant was indebted to appellee on the account. This court has consistently ruled that the Appellate Court cannot reweigh evidence presented to the trial court upon which the judgment is based.

Reweighing of the evidence "is not a proper function of the Appellate Court." *Sato v. Bedul*, 7 T.T.R. 600, 602 (App. Div. 1978).

The *Sato* case refers to 6 TTC 355(2) stating:

The findings of fact of the Trial Division of the High Court in cases tried by it shall not be set aside by the Appellate Division of that court unless clearly erroneous, but in all other cases the appellate or reviewing court may review the facts as well as the law.

See also *Trust Territory v. Lopez*, 7 T.T.R. 449 (App. Div. 1976):

As this court has repeatedly stated, its function is not to reweigh the evidence and the Appellate Division will not set aside the findings of the trial court unless there is manifest error or the findings are clearly erroneous. *Id.* at 451.

[2] A review of the transcript and documents revealed there was more than sufficient evidence to find an indebtedness of appellant to appellee on the account and we therefore will not reweigh the evidence.

Did the trial court err in denying appellant's motion to join the Bank of America? On the second and final day of trial appellant made a statement to the court regarding

“the joinder of a necessary party.” The court treated this as a motion presented under Rule 14(a) of the Trust Territory Rules of Civil Procedure and denied the same. Appellant raised in his brief the question of joinder under Rule 14(a) and additionally raised Rule 19(a) of the Trust Territory Rules of Civil Procedure. Both rules were adopted by the Trust Territory practically in toto from the Federal Rules of Civil Procedure.

[3] Both Rules 14 and 19 contain one basic premise, that is, whether a joinder is to be allowed is a matter resting within the sound discretion of the trial court.

See 28 U.S.C.A. Rules 14, 19, citing *Kopan v. George Washington University*, 67 F.R.D. 36; *Powell v. Kull*, 53 F.R.D. 380; *Ford Motors v. Beard*, 45 F.R.D. 523.

Such discretion is wide. *Moore v. Knowles*, 482 F.2d 1089, citing *Donahue v. Board of Elections of N.Y.*, 435 F. Supp. 957.

[4] We see no reason to rule in favor of such a joinder where there has been no clear abuse of discretion. The trial court in this case did not “close the door” on appellant’s rights to bring suit against the Bank of America but only disallowed a joinder in the present action at such a late date.

Judgment is therefore AFFIRMED.