

SUPREME COURT OF THE STATE OF HAWAI‘I

Kutkowski v. Princeville Prince Golf Course, LLC

129 Haw. 350 (2013) · No. SCWC-28826 · Decided May 14, 2013

SUMMARY

The Supreme Court of Hawai‘i considered whether the sale of a 1,040-acre parcel triggered a lessee’s right of first refusal concerning a smaller half-acre parcel within it. The court adopted the minority rule that, under the specific circumstances, the sale of the larger parcel manifested an intent to sell the smaller parcel and triggered the right of first refusal. It reversed the Intermediate Court of Appeals’ judgment and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of the State of Hawai‘i
WRITING FOR THE COURT	Sabrina S. McKenna, J.; Paula A. Nakayama, J.; Simeon R. Acoba, Jr., J.; Sabrina S. Nakasone, Circuit Court Judge, assigned by reason of vacancy
JURISDICTION	Hawaii
DECIDED	May 14, 2013
DOCKET	SCWC-28826
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Hawai‘i Supreme Court granted certiorari from the Intermediate Court of Appeals, which had affirmed the circuit court’s summary judgment rulings concerning a lessee’s right of first refusal and denied specific performance.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Contract interpretation is also reviewed de novo as a question of law.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Robert Kutkowski v. Princeville Prince Golf Course, LLC

TOPICS

third party beneficiary

contract interpretation

specific performance real estate

landlord tenant

appellate procedure

PRACTICE AREAS

real estate law

contract law

landlord-tenant law

equitable remedies

appellate procedure

QUESTIONS PRESENTED

1. Whether the right of first refusal survived after expiration of the fixed term while Kutkowski remained as a month-to-month holdover tenant.
2. Whether the sale of an undivided larger parcel containing the leased smaller parcel triggered the lessee's right of first refusal over the smaller parcel.
3. Whether specific performance was an available remedy and whether PPGC was required to offer the property to Kutkowski on terms and conditions set by PPGC.

HOLDINGS

1. The right of first refusal survived into the month-to-month holdover period and remained enforceable against PPGC as successor to the original licensor.
2. Under the circumstances of this case, the sale of the undivided larger parcel necessarily included the smaller premises and triggered the right of first refusal.
3. PPGC could not avoid the right of first refusal by asserting that subdivision or conveyance of the half-acre was legally impossible; the agreement required the licensor to offer the premises on terms and conditions it set, which could account for subdivision, variance, condominium, or other implementation options.
4. Specific performance was appropriate because PPGC, as successor licensor, was required to offer the property to Kutkowski pursuant to the right of first refusal.

KEY QUOTATIONS

"The majority rule renders ROFR's over smaller parcels illusory upon the lessor's decision to include the smaller parcel as part of a larger property sale to a third party, which does not enforce the parties' bargain for a ROFR." (129 Haw. at 357)

"The decision to sell the whole was a decision to also sell the part; the ROFR was thus triggered." (129 Haw. at 358)

"The point is that PPGC could have, but did not, offer the half-acre, or any other parcel, to Kutkowski for sale on terms and conditions set by PPGC." (129 Haw. at 359)

FACTUAL BACKGROUND

Kutkowski leased a half-acre property with a house on Kaua'i, which was part of an undivided 1,040-acre parcel. A 1998 License Agreement granted him a right of first refusal to purchase the premises, and the agreement provided that the right continued during a month-to-month holdover tenancy. While Kutkowski remained in possession, Princeville Corporation began selling the entire 1,040-acre parcel to PPGC, sought unsuccessfully to eliminate Kutkowski's right of first refusal, and did not first offer the half-acre property to him. The sale closed on March 17, 2005, and PPGC assumed the License Agreement and Kutkowski's claim.

PROCEDURAL HISTORY

Kutkowski sued for specific performance of a right of first refusal in a license agreement after Princeville Corporation sold an undivided 1,040-acre parcel containing the leased half-acre property to PPGC. The circuit court held that the right of first refusal survived the holdover tenancy but was not triggered by the sale of the larger parcel. The ICA affirmed, adopting the majority rule concerning sales of larger parcels. The Hawai‘i Supreme Court reversed the ICA and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court must conduct further proceedings consistent with the opinion and require PPGC, as successor licensor, to offer the half-acre property to Kutkowski on terms and conditions set by PPGC. The circuit court should not establish the purchase price.

CASES CITED

- Kutkowski v. Princeville Prince Golf Course, LLC, 128 Hawai‘i 344, 289 P.3d 980 (2012)
- Wilber Lime Prods., Inc. v. Ahrndt, 673 N.W.2d 339 (Wis. Ct. App. 2003)
- Brenner v. Duncan, 27 N.W.2d 329 (Mich. 1947)
- Berry-Iverson Co. v. Johnson, 242 N.W.2d 126 (N.D. 1976)
- Pantry Pride Enters., Inc. v. Stop & Shop Cos., 806 F.2d 1227 (4th Cir. 1986)
- Aden v. Estate of Hathaway, 427 P.2d 333 (Colo. 1967)
- Guaclices v. Kruse, 170 A.2d 488 (N.J. Super. Ct. App. Div. 1961)
- Straley v. Osborne, 278 A.2d 64 (Md. 1971)
- Chapman v. Mutual Life Insurance Co., 800 P.2d 1147 (Wyo. 1990)
- Advanced Recycling Systems, LLC v. Southeast Properties L.P., 787 N.W.2d 778 (S.D. 2010)
- C & B Wholesale Stationery v. S. De Bella Dresses, Inc., 349 N.Y.S.2d 751 (N.Y. App. Div. 1973)
- Ollie v. Rainbolt, 669 P.2d 275 (Okla. 1983)
- Myers v. Lovetinsky, 189 N.W.2d 571 (Iowa 1971)
- Gyurkey v. Babler, 651 P.2d 928 (Idaho 1982)
- Saab Enterprises, Inc. v. Wunderbar, 554 N.Y.S.2d 657 (N.Y. App. Div. 1990)
- Crow-Spieker #23 v. Robert L. Helms Construction & Development Co., 731 P.2d 348 (Nev. 1987)
- Atlantic Refining Co. v. Wyoming National Bank, 51 A.2d 719 (Pa. 1947)
- Thomas & Son Transfer Line v. Kenyon, Inc., 574 P.2d 107 (Colo. App. 1977)
- Broida v. Hayashi, 51 Haw. 493, 464 P.2d 285 (1970)
- Amfac, Inc. v. Waikiki Beachcomber Investment Co., 74 Haw. 85, 839 P.2d 10 (1992)
- Stanford Carr Development Corp. v. Unity House, Inc., 111 Hawai‘i 286, 141 P.3d 459 (2006)

- Young v. Allstate Insurance Co., 119 Hawai‘i 403, 198 P.3d 666 (2008)
- Simmons v. Puu, 105 Hawai‘i 112, 94 P.3d 667 (2004)
- Robinson v. Thurston, 23 Haw. 777 (Haw. Terr. 1917), rev’d, 248 F. 420 (9th Cir. 1918)
- Calvin v. Limco, 60 Haw. 154, 587 P.2d 1216 (1978)
- Foundation International, Inc. v. E.T. Ige Construction, Inc., 102 Hawai‘i 487, 78 P.3d 23 (2003)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/hawaii-supreme-court-of-the-state-of-hawai-i/2013/kutkowski-v-princeville-prince-golf-course-llc-m31joe40>