

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27024

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

GLORIA VAN SISE FERREIRO, Plaintiff-Appellant, v.
 KENT DAVENPORT, Defendant-Appellee, and JOHN DOES 1-10; JANE DOES
 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; DOE
 ASSOCIATES 1-10; DOE GOVERNMENTAL AGENCIES 1-10; and OTHER DOE
 ENTITIES 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
 (Civ. No. 99-4801)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Foley and Fujise, JJ.)

Plaintiff-Appellant Gloria Van Sise Ferreiro (Ferreiro) appeals from the August 31, 2004 Judgment for Costs and Sanctions entered by the Circuit Court of the First Circuit (circuit court)¹ in favor Defendant-Appellee Kent Davenport (Davenport). Specifically, Ferreiro challenges the circuit court's order imposing monetary sanctions totaling \$48,852.42 against her pursuant to Rules 25 and 26 of the Hawaii Arbitration Rules (HAR) subsequent to a post-arbitration trial de novo.

After a careful review of the issues raised, arguments advanced, law relied upon, and the record in the instant case, we dispose of Ferreiro's appeal as follows:

1. The circuit court did not abuse its discretion when it imposed sanctions against Ferreiro under HAR 26. Even if Ferreiro's decision to appeal the arbitration award was reasonable, it did not prevent the circuit court from imposing HAR 26 sanctions against her. The circuit court's only limitation on its discretion under HAR 26 "is that the party who has appealed the arbitration award must have failed to 'improve' upon the award by [30%] or more." Richardson v. Sport Shinko (Waikiki Corp.), 76 Hawai'i 494, 510, 880 P.2d 169, 185 (1994).

¹ The Honorable Bert I. Ayabe presided.

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Moreover, HAR 26 provides the circuit court with a mechanism to achieve the objective of encouraging arbitration to "reduce the delay and cost" of protracted litigations. Id.; see also Hawaii Revised Statutes (HRS) § 601-20(a) (1993). Ferreiro appealed the \$20,000.00 arbitration award in her favor and failed to prevail at the trial de novo. As such, Ferreiro has not shown that the circuit court abused its discretion.

Furthermore, the sanctions imposed by the circuit court did not violate any constitutional provisions. In this jurisdiction, it has been determined that "HAR 26 serves a necessary and legitimate purpose" and will not violate the right to a jury trial so long as "the amount of sanctions imposed in a given case [is not] so disproportionate to the amount in controversy so as to operate as a practical denial of the right to jury trial in civil cases." Richardson, 76 Hawai'i at 514-15, 880 P.2d at 189-90. Here, the HAR 26 sanctions totaling \$48,852.42 amount to approximately 20% of the \$250,000.00 demanded by Ferreiro in her last settlement conference. Additionally, there is no evidence in the record to support her claims of financial hardship. Given the \$15,000 in attorneys fees authorized by HAR 26 (B) (3), the \$4,374.15 in juror fees authorized by HAR 26 (B) (2), and costs under HAR 26 (B) (1) in the amount of \$29,478.27 for numerous depositions and expert witnesses, the HAR 26 sanctions against Ferreiro in this case did not place an unreasonable burden on her constitutional right to a jury trial.

2. The circuit court did not err in concluding that Ferreiro did not appear at the August 25, 2004 hearing. Not only was Mr. Jay L. Friedheim's (Mr. Friedheim) January 20, 2004 Motion to Withdraw as Ferreiro's Counsel "approved and allowed" by the Hawai'i Supreme Court, Mr. Friedheim himself clearly stated at the August 25, 2004 hearing that he was no longer counsel of record. Even though Mr. Friedheim specially appeared at the hearing on her behalf, the record clearly shows that Ferreiro did not personally appear at the August 25, 2004 hearing

and at the time, Mr. Friedheim was no longer her counsel of record.

3. Lastly, Ferreiro waived any opportunity to approve the August 31, 2004 order and judgment as to form under Hawai'i Rules of the Circuit Court (HRCC) Rule 23 when she failed to appear at the scheduled hearing and could not be reached by the circuit court or by her former counsel. Moreover, Ferreiro does not claim on appeal that she was harmed by not reviewing the order as to form, and any failure by the circuit court to provide Ferreiro with an opportunity to object to the order and judgment under HRCC Rule 23 is deemed harmless. See Hawai'i Rules of Civil Procedure Rule 61; HRS § 641-2 (Supp. 2006).

Therefore,

IT IS HEREBY ORDERED that the August 31, 2004 Order and Judgment for Costs and Sanctions of the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, November 15, 2007.

On the briefs:

Gloria Van Sise Ferreiro,
Plaintiff-Appellant pro se

Corinne K.A. Watanabe
Presiding Judge

Michael N. Tanoue and
Cary T. Tanaka,
for Defendant-Appellee.

Daniel R. Foley
Associate Judge

Alice O. In. Fujim
Associate Judge