

*** NOT FOR PUBLICATION ***

NO. 25662

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

DFS GROUP L.P., a Delaware limited partnership,
dba Hawaiian King Candies, Plaintiff-Appellee,

vs.

PAIEA PROPERTIES, a Hawaii limited partnership,
Defendant-Appellant.

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2008 APR 19 AM 8:45

FILED

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 02-1-2012)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.;
and Circuit Judge Pollack, assigned by reason of vacancy)

Defendant-appellant Paiea Properties [hereinafter, Paiea] appeals from the Circuit Court of the First Circuit's¹ February 13, 2003 order confirming the appraisal report.² Paiea contends that the circuit court erred in confirming the appraisal report inasmuch as: (1) the appraiser exceeded the powers conferred upon him by the lease; (2) the appraiser was partial toward plaintiff-appellee DFS Group, L.P. dba Hawaiian King Candies [hereinafter, DFS]; and (3) the terms of the report were indefinite and uncertain and, thus, precluded confirmation

¹ The Honorable Eden Elizabeth Hifo presided over the matters pertinent to this appeal.

² We note that Paiea's notice of appeal indicates that Paiea appealed from the February 24, 2003 notice of entry of judgment. However, it is apparent from the record that Paiea actually seeks appellate review of the February 13, 2003 order confirming the appraiser's award. Indeed, "an order confirming an arbitration award is a final judgment from which an appeal may be taken." Kalawaia v. AIG Hawai'i Ins. Co., 90 Hawai'i 167, 171, 977 P.2d 175, 179 (1999) (quotation marks omitted). Nonetheless, Paiea's notice of appeal filed on February 28, 2003 was timely.

thereof. Paiea additionally requests that, "[i]n the event this [c]ourt is inclined not to reverse the judgment below," this court "issue an order clarifying the meaning of the [appraisal report.]"

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Paiea's contentions as follows:

(1) In arguing that the appraiser exceeded his powers and was partial toward DFS, Paiea essentially seeks vacation of the report under Hawai'i Revised Statutes (HRS) §§ 658-9(2) and -9(4) (repealed 2001).³ However, we note that Paiea neither moved the circuit court to vacate the report nor provided notice to DFS of its intent to vacate the report pursuant to HRS § 658-11 (repealed 2001). Arbitration of the Bd. of Directors of the Ass'n of Apartment Owners of Tropicana Manor, 73 Haw. 210, 213, 830 P.3d 503, 510 (1992) ("Chapter 658 provides that only the courts may vacate, modify, or correct an award upon the application of any party pursuant to HRS §§ 658-9 and 658-10, and that notice of such motion must be timely served upon the adverse party, pursuant to HRS § 658-11"); Gozum v. Am. Int'l Adjustment

³ We note that HRS chapter 658, entitled "Arbitration and Awards," was repealed in 2001 and replaced with the Uniform Arbitration Act, codified in HRS chapter 658A. Nevertheless, HRS chapter 658 is applicable to the instant case because the recodified chapter became effective after the parties invoked the appraisal procedure set forth in the lease. See HRS § 658A-3 (Supp. 2002) ("an agreement to arbitrate that is made before July 1, 2002, shall be governed by . . . the state law in effect on the date the arbitration began").

Co., 72 Haw. 41, 44, 805 P.2d 445, 446 (1991) ("A motion to vacate, modify, or correct an arbitration award must be served on the adverse party within ten days after the award is made and served." (Citing HRS § 658-11)). Therefore, Paiea was not entitled to a vacation of the report. Accordingly, we hold that the circuit court did not err in confirming the appraisal report rather than vacating the report.

(2) Inasmuch as the appraisal report clearly and definitely concluded that DFS' proposed prevailing rental of \$0.90 per square foot per month was more correct, the appraiser fulfilled his sole duty under the lease and no clarification of the report was necessary. Thus, we hold that the circuit court did not err in confirming the report in this regard. See Wayland Lum Constr., Inc. v. Kaneshige, 90 Hawai'i 417, 424, 978 P.2d 855, 862 (1999).

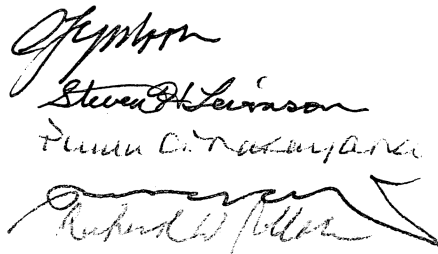
(3) Inasmuch as the appraisal report requires no clarification, we decline to enter an order clarifying the report. Therefore,

IT IS HEREBY ORDERED that the February 13, 2003 order from which this appeal was taken is affirmed.

DATED: Honolulu, Hawai'i, April 19, 2005.

On the briefs:

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