

*****NOT FOR PUBLICATION*****

NO. 25017

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

JAMES HAGERMAN and JODIE HAGERMAN, Petitioners-Appellees

vs.

JOHN HAAG dba JONASON CONSTRUCTION,
and JONASON, INC., Respondents-Appellants

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P. NO. 02-1-0009)

SUMMARY DISPOSITION ORDER

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

Respondents-Appellants John Haag dba Jonason
Construction, and Jonason, Inc. (collectively, Appellants) appeal
from the order entered on March 21, 2002 by the first circuit
court¹ (the court), granting the January 3, 2002 petition of
Petitioners-Appellees James Hagerman and Jodie Hagerman
(Appellees) to confirm the December 19, 2001 arbitration award
pursuant to Hawai'i Revised Statutes (HRS) § 658-8 (1993) against
Appellants. On appeal, Appellants argue that (1) Jonason, Inc.
was not subject to arbitration because it did not sign the

¹ The Honorable Gary W.B. Chang presided over this matter.

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construction contract (the Contract) containing the arbitration provision, (2) consequently, Appellees were required to obtain a judicial determination as to whether Jonason, Inc. was subject to the arbitration proceeding in accordance with HRS § 658-3, and (3) the arbitration award imposing joint and several liability on Appellants was improper.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties, we affirm the order of the first circuit court on the grounds that: (1) the arbitrator found that Jonason, Inc. was the assignee of the Contract and, thus, was subject to its arbitration provision, although it did not sign the Contract, see Rainbow Chevrolet, Inc. v. Asahi Jyuken (USA), Inc., 78 Hawai'i 107, 113, 890 P.2d 694, 700 (App. 1995); (2) Appellants were represented by the same attorney in the arbitration proceeding; (3) nothing in the record indicates that Jonason, Inc. failed, neglected, or refused to arbitrate after it contested arbitration so as to require Appellees to proceed under HRS § 658-3; (4) it appears Jonason, Inc. submitted its objection to arbitrability to the arbitrator for decision; (5) in light that it did, Westin Hotel Co. v. Universal Inv., Inc., 72 Haw. 178, 811 P.2d 467,

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reconsideration denied, 72 Haw. 617, 841 P.2d 1074 (1991), is analogous; (6) In re Arbitration Between Carroll & ERA Maui Real Estate v. Travis, 81 Hawai'i 264, 915 P.2d 1365 (App. 1996), is distinguishable in that, in Travis, the existence of a valid written contract containing an agreement to arbitrate was disputed, but is not contested here; (7) moreover, Appellants failed to file a motion to vacate, modify, or correct the arbitration award under HRS §§ 658-9, 658-10, and 658-11 and failed to file or raise an objection in the circuit court to Appellees' petition to confirm the arbitration award; (8) for the same reason, Appellants' assertion that the arbitrator erred in imposing joint and several liability on them is foreclosed. See Excelsior Lodge No. One v. Eyecor, Ltd., 74 Haw. 210, 222, 847 P.2d 652, 658 (1992) ("in order to change an award under HRS [c]hapter 658, a party must timely move either to vacate the award under HRS § 658-9 or to modify or correct it under HRS § 658-10" (citing Association of Apt. Owners of Tropicana Manor v. Jeffers, 73 Haw. 201, 203, 830 P.2d 503, 510 (1992))). Therefore,

IT IS HEREBY ORDERED that the court's March 21, 2002 order granting Appellants' January 3, 2002 petition, confirming

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the December 19, 2001 arbitration award, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, March 19, 2003.

On the briefs:

Louis L.C. Chang and
Ken T. Kuniyuki for
respondents-appellants.

Roy T. Ogawa and Linda R.
Kobuke (Oliver, Lau,
Lawhn, Ogawa & Nakamura)
for petitioners-appellees.