

*** NOT FOR PUBLICATION ***

NO. 23586

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

THE STATE OF HAWAI'I, by its Office of Consumer Protection,
Petitioner-Appellee

vs.

FAITH M. PIERSON dba PARADISE ISLE RENTALS,
aka PARADISE RENT-A-CAR, INC., aka TOYLAND RENTALS,
Respondent-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P. NO. 00-1-0270)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Respondent-appellant Faith M. Pierson, dba Paradise Isle Rentals, aka Paradise Rent-A-Car, Inc., aka Toyland Rentals, appeals from the July 14, 2000 order of the circuit court of the first circuit, the Honorable Victoria S. Marks presiding, granting in part and denying in part petitioner-appellee State of Hawai'i Office of Consumer Protection's (OCP) ex parte motion for order to show cause. On appeal, Pierson argues that the lower court erred by enforcing an administrative subpoena because the subpoena violated (1) the fourth amendment to the United States Constitution¹ and article I, section 7 of the Hawai'i Constitution,² and (2) the fifth amendment to the United States

¹ The fourth amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

² Article I, section 7 of the Hawai'i State Constitution provides:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures and invasions of privacy shall not be violated; and no warrants shall issue but upon probable cause, supported
(continued...)

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Constitution³ and article I, section 5 of the Hawai'i Constitution.⁴ OCP argues that Pierson failed to raise the constitutional issues in the proceedings below and, thus, the constitutional issues are waived. In the alternative, OCP argues that the subpoena did not violate the fourth amendment to the United States Constitution and article I, section 7 of the Hawai'i Constitution, and the fifth amendment to the United States Constitution and article I, section 5 of the Hawai'i Constitution.

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, we hold that: (1) this court has jurisdiction over the instant case, inasmuch as the circuit court's July 14, 2000 order left nothing to be further determined, see Hawai'i Revised Statutes (HRS) § 641-1(a); Ellis v. Interstate Commerce Comm'n, 237 U.S. 434 (1915);

²(...continued)

by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized or the communications sought to be intercepted.

³ The fifth amendment to the United States Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

⁴ Article I, section 5 of the Hawai'i State Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry."

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and (2) Pierson failed to raise the fourth and fifth amendment issues during the proceedings below and, thus, those issues are considered waived, see State v. Hogle, 71 Haw. 141, 785 P.2d 1311 (1990); Hill v. Inouye, 90 Hawai'i 76, 976 P.2d 390 (1998). Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, June 10, 2004.

On the briefs:

Jack F. Schweigert
for the respondent-appellant
Faith M. Pierson

Lisa Tong
for the petitioner-appellee
State of Hawai'i,
Office of Consumer Protection