

NO. 24506

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

NEIL NGO and KOLYN MABALLO,
Claimants-Appellees,

vs.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Respondent-Appellant.

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P. NO. 01-1-0141)

SUMMARY DISPOSITION ORDER

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

Respondent-appellant State Farm Mutual Automobile Insurance Company (State Farm) appeals from the first circuit court's July 25, 2001 final judgment in favor of claimants-appellees Neil Ngo and Kolyn Maballo [hereinafter, the claimants].¹ On appeal, State Farm argues that: (1) the circuit court erred by affirming an arbitration award of \$65,095.49 to the claimants because the parties' agreement to arbitrate did not include an agreement to allow the arbitrators to decide the applicability of the covered loss deductible; (2) the circuit court erred by affirming the arbitration award because the award violated public policy by ignoring HRS § 431:10C-301.5; and (3) the circuit court erred by awarding the claimants \$3,353.00 in attorneys' fees.

¹ The Honorable Victoria Marks presided over this matter.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advocated and the issues raised, we affirm the circuit court's July 25, 2001 judgment to the extent that it affirms the arbitration award and vacate the judgment to the extent that it grants attorneys' fees to the claimants.

Specifically, we hold that:

- (1) the applicability of the covered loss deductible was within the scope of the parties' agreement to arbitrate. The arbitration clause in the instant case is clear and unambiguous: it provides that, in the event that State Farm and the claimants disagree about the amount of UM benefits to which the claimants are entitled, the arbitration panel shall determine the amount. The parties agreed that the arbitration panel would determine the amount of damages which the claimants were "entitled to collect" from State Farm. (Emphasis added.) The arbitration panel determined that the claimants were entitled to collect \$65,095.49; in reaching this determination, the arbitration panel was required to interpret HRS § 431:10C-301.5 (Supp. 1998) as it applied to the claimants' UM claim (because the panel's interpretation of HRS § 431:10C-301.5 would necessarily affect the amount which the claimants were

entitled to collect). See Daiichi Hawai'i Real Estate Corp. v. Lichter, 103 Hawai'i 325, 336, 82 P.3d 411, 422 (2003), recons. denied, 103 Hawai'i 479, 83 P.3d 742 (2004) ("Upon submission of an issue, the arbitrator has authority to determine the entire question, including the legal construction of terms of a contract or lease, as well as the disputed facts." (Citations and block quote formatting omitted.)).

Therefore, the arbitration panel's conclusion regarding the covered loss deductible was within the scope of the agreement to arbitrate;

- (2) the circuit court correctly upheld the arbitration award even though the arbitration panel incorrectly interpreted the law. Although the arbitration panel incorrectly interpreted HRS § 431:10C-301.5, see State Farm Mut. Auto. Ins. Co. v. Gepaya, 103 Hawai'i 142, 148-151, 80 P.3d 321, 327-330 (2003), this legal error is not a sufficient justification for overturning the arbitration award. See Daiichi Hawai'i Real Estate Corp., 103 Hawai'i at 336, 82 P.3d at 422 ("[W]here the parties agree to arbitrate, 'they thereby assume[] all the hazards of the arbitration process, including the risk that the arbitrators may make mistakes in the application of law and in their findings of fact.'")

(Citations and block quote formatting omitted.)

(Second set of brackets in original.)); and

- (3) the circuit court erred in awarding attorneys' fees to the claimants. HRS § 431:10C-242 (1993) provides for attorneys' fees only where (a) the insurer has contested its liability under a policy and (b) the insurer is ordered by the courts to pay benefits under the policy. The claimants are not entitled to attorneys' fees for defending against State Farm's motion to partially vacate, modify, and/or correct the arbitration award because the circuit court did not order State Farm to pay benefits under the policy. Similarly, the claimants are not entitled to attorneys' fees for moving to confirm the arbitration award because a motion to confirm an award "is not one in which the question is whether the insured must pay benefits under the terms of its insurance policy." Labrador v. Liberty Mut. Group, 103 Hawai'i 206, 211, 81 P.3d 386, 391 (2003). Consequently, the plain language of HRS § 431:10-242 does not provide for attorneys' fees in this case.

Therefore, IT IS HEREBY ORDERED that the circuit court's July 25, 2001 judgment is affirmed to the extent that it

affirms the arbitration award and vacated to the extent that it grants attorneys' fees to the claimants.

DATED: Honolulu, Hawai'i, July 22, 2004.

On the briefs:

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