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STATE OF HAWAII

*** NOT FOR PUBLICATION ***

NO. 24711

IN THE SUPREME COURT OF THE STATE OF HAWAII

LORAIN SMITH, individually and as trustee and beneficiary under trust dated November 29, 1979, as amended July 26, 1990 and November 6, 1998, Plaintiff-Appellee,

vs.

KONA COAST SERVICES, INC., R.T. DOC HALLIDAY, and R.T. DOC HALLIDAY, LLC, Defendants-Appellants.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT (Civ. No. 98-237K)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, JJ., and Circuit Judge Raffetto, in place of Duffy, J., recused)

The defendant-appellant R.T. Doc Halliday appeals¹ from the October 23, 2001 order of the circuit court for the third circuit, the Honorable Ronald Ibarra presiding, confirming the

¹ In Halliday's notice of appeal, he further purports to represent his limited liability company (LLC), the defendant R.T. Doc Halliday, LLC, but Halliday is not a licensed attorney. Consequently, we hold that the notice of appeal is defective with respect to the LLC.

By analogy to Oahu Plumbing & Sheet Metal, Ltd. v. Kona Constr., Inc., 60 Haw. 372, 377-78, 590 P.2d 570, 574 (1979) ("[N]on-attorney agents are not allowed to represent corporations in litigation"), LLCs, too, must be represented by counsel.

Unlike lay agents of corporations, attorneys are subject to professional rules of conduct and are amenable to disciplinary action . . . for violations of ethical standards. Therefore, attorneys, being fully accountable to the courts, are properly designated to act as the representatives of corporations.

Id. at 378, 590 P.2d at 574 (citing Merco Constr. Eng'rs, Inc. v. Mun. Court, 581 P.2d 636, 641 (Cal. 1978)). "Similar considerations apply to partnerships, and have led most courts to conclude that a partnership may only appear in court through counsel." In re ICLNDS Notes Acquisition, LLC, 259 B.R. 289, 292-94 (Bankr. N.D. Ohio 2001). Inasmuch as an LLC is an artificial person and a hybrid of a corporation and a partnership -- though not precisely one or the other -- we apply the rule in Oahu Plumbing & Sheet Metal, Ltd. to the LLC in the present matter. See generally id. at 294.

Nevertheless, the defectiveness of the notice of appeal is moot inasmuch as the alleged errors were not preserved for appeal, see infra.

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arbitrator Edward C. King's March 8, 2001 final award (hereinafter, "the award").

On appeal, Halliday contends that the circuit court erred in confirming the award inasmuch as the award:

(1) "[o]rders the corporate dissolution of [the defendant-appellant Kona Coast Services, Inc. (]KCS[)] and payment and distribution of KCS funds to [the plaintiff-appellee Loraine Smith] [(a)] without requiring any accounting or audit of corporate assets and liabilities" and (b) "prior to the payment of any corporate liabilities to corporate creditors"; and (2) "requires [Halliday] to file tax returns misrepresenting the identity of shareholders and the amount of KCS corporate distributions between 1998 and 2001."

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 affirm the circuit court's October 23, 2001 order for the following reasons:

Notwithstanding Halliday's argument that his points of error fall within the "public policy" grounds for vacatur recognized in Gepaya v. State Farm Mut. Auto. Ins. Co., 94 Hawai'i 362, 365, 14 P.3d 1043, 1046 (2000), and Inlandboatmen's Union of the Pac. v. Sause Bros., Inc., 77 Hawai'i 187, 193, 881 P.2d 1255, 1291 (App. 1994), he waived his points of error by not filing his motion to vacate within the time accorded him by Hawai'i Revised Statutes (HRS) § 658-11 (1993). Halliday did not extend the deadline for his objections merely by (1) describing his motion to vacate as a "memorandum in opposition to [Smith]'s motion to confirm . . . and motion to vacate"; and/or (2) arguing for vacatur on "public policy" grounds rather than on grounds

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enumerated by HRS §§ 658-9 and 658-10 (1993).

Moreover, Halliday does not attempt to demonstrate to this court "where in the record," if at all, he "brought [the alleged errors] to the attention of the [circuit] court," as required by Hawai'i Rule of Appellate Procedure 28(b)(4)(iii).

Inasmuch as Halliday failed to preserve the errors he alleges, we need not address them on the merits. See Bitney v. Honolulu Police Dept., 96 Hawai'i 243, 251, 30 P.3d 257, 265 (2001) ("'[A]ppellate courts[] will not consider an issue not raised below unless justice so requires.'" (quoting Hill v. Inouye, 90 Hawai'i 76, 82, 976 P.2d 390, 396 (1998) (brackets altered)). Moreover, we decline to exercise our discretion under the plain error doctrine; the parties voluntarily submitted to "all the hazards of the arbitration process, including the risk that the arbitrator[] may make mistakes,'" see Daiichi Hawai'i Real Estate Corp. v. Lichter, 103 Hawai'i 325, 336, 82 P.3d 411, 422 (2003) (brackets in original) (quoting Mars Constr'rs, Inc. v. Tropical Enters., 51 Haw. 332, 336, 460 P.2d 317, 319 (1969)). Therefore,

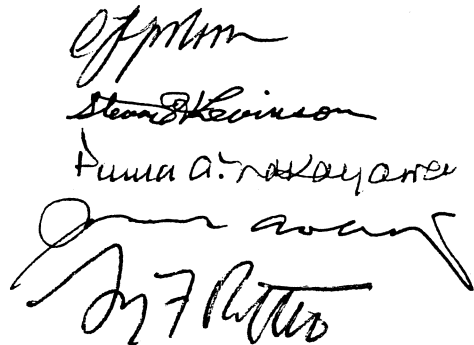
IT IS HEREBY ORDERED that the order from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, February 28, 2006.

On the briefs:

Francis L. Jung, of
Jung & Vassar, P.C.,
for the defendants-appellants
R.T. Doc Halliday and
R.T. Doc Halliday, LLC

Lary D. Ratliff,
for the plaintiff-appellee
Lorraine Smith



The block contains three handwritten signatures. The top signature is in cursive and appears to be 'Francis L. Jung'. The middle signature is also in cursive and appears to be 'Lary D. Ratliff'. The bottom signature is in cursive and appears to be 'Lorraine Smith'.