

NO. 23841

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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LESLIE WAYNE HIN AU, VINCENT EDWARD AU, MAYLENE GRACE AU,  
and MARGARET LEONG LAU and OLIVIA SING PANG AU, Trustees  
for Leslie Au, Alissa Au, Vincent Au and Maylene Au, Under  
That Certain Trust Indenture Dated December 28, 1967,  
Filed in the Office of the Assistant Registrar of the Land  
Court of the State of Hawai'i as Document No. 434719,  
Petitioners-Appellants

vs.

RAINBOW REHABILITATION SERVICES, INC., Respondent-Appellee

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APPEAL FROM THE FIRST CIRCUIT COURT  
(S.P. NO. 00-1-0390)

ORDER DENYING MOTION FOR RECONSIDERATION

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

Upon consideration of the motion for reconsideration of the January 31, 2001 order dismissing appeal, the papers in support and the record, it appears that: (1) HRCP 81(a)(5) does not preclude application of HRCP 58 to the circuit court proceeding to compel arbitration under HRS § 658-3 inasmuch as HRCP 58 concerns entry of judgment at the conclusion of a circuit court proceeding and the exclusion provision of HRCP 81(a)(5) applies to proceedings "prior to judgment"; see HRCP 81(a)(5); (2) the separate judgment rule of HRCP 58 is inapplicable only to orders confirming, modifying or correcting an arbitration award under HRS §§ 658-8 and 658-10; see HRS § 658-12; Oppenheimer v. AIG Hawai'i Ins. Co., 77 Hawai'i 88, 881 P.2d 1234 (1994); and (3) in Koolau Radiology v. The Queen's Medical Center, 73 Haw.

433, 834 P.2d 1294 (1992), the order denying the petition to compel arbitration was an appealable final order inasmuch as the matter of arbitration was collateral to the main action for a declaratory judgment. Therefore,

IT IS HEREBY ORDERED that the motion for reconsideration is denied.

DATED: Honolulu, Hawai'i, February 16, 2001.

Steven K.S. Chung  
for petitioners-appellants  
on the motion