

NO. 25631

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,  
Plaintiff-Appellee,

vs.

CION BATTULAYAN, Defendant-Appellant.

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 02-1-0233)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Cion Battulayan [hereinafter, claimant] appeals from the first circuit court's January 14, 2003 final judgment in favor of plaintiff-appellee State Farm Mutual Automobile Insurance Company [hereinafter, State Farm].<sup>1</sup> The circuit court granted summary judgment in favor of State Farm and declared that Hawai'i Revised Statutes (HRS) § 431:10C-301.5 (Supp. 1998) applied to reduce the claimant's uninsured motorist (UM) arbitration award by \$10,000.00, reflecting the covered loss deductible. The claimant argues that the circuit court erred because: (1) the parties did not agree to reserve the question of the applicability of the covered loss deductible for disposition after the arbitration proceedings, such that State Farm should have been precluded from bringing a separate

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<sup>1</sup> The Honorable Richard W. Pollack presided over this matter.

declaratory judgment action; (2) HRS § 431:10C-301.5 does not apply to UM benefits; and (3) HRS § 431:10C-301.5 is unconstitutional.

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 grant of summary judgment in favor of State Farm. Specifically, we hold that: (1) the circuit court correctly ruled that State Farm was not precluded from bringing a declaratory judgment action. We take judicial notice of the claimant's answering brief in Supreme Court Case No. 24849, in which the claimant stated that the parties agreed to reserve the question of the applicability of HRS § 431:10C-301.5, and hold that the claimant is judicially estopped from arguing that State Farm is precluded from bringing its declaratory judgment action. Furthermore, State Farm's declaratory judgment action was not an improper collateral attack on the prior circuit court judgment affirming the arbitration award, see Gepaya v. State Farm Mut. Auto. Ins. Co., 94 Hawai'i 362, 366 n.5, 14 P.3d 1043, 1047 n.5 (2000); (2) the covered loss deductible applies to claims for UM benefits, State Farm Mut. Auto. Ins. Co. v. Gepaya, 103 Hawai'i 142, 143, 80 P.3d 321, 322 (2003); and (3) HRS § 431:10C-301.5 is not unconstitutional. HRS § 431:10C-301.5 became effective on January 1, 1998 and was amended on July 20, 1998, State Farm Mut.

Auto. Ins. Co. v. Gepaya, 103 Hawai'i at 146-148, 80 P.3d at 325-27, and thus was in full effect at the time of the claimant's automobile accident on May 3, 2000. This statute was in full effect at the time the arbitrator issued the award and at the time the circuit court affirmed the award, such that the statute pre-existed the claimant's purported property interest.

Therefore, the claimant's argument that the legislature's passage of HRS § 431:10C-301.5 constituted an unconstitutional taking is without merit. Similarly, the claimant's procedural due process rights were not violated because the claimant does not have a property interest interfered with by the State, see State v. Bani, 97 Hawai'i 285, 293, 36 P.3d 1255, 1263 (2001). Therefore,

IT IS HEREBY ORDERED that the circuit court's January 14, 2003 judgment, granting summary judgment in favor of State Farm, is affirmed.

DATED: Honolulu, Hawai'i, August 24, 2004.

On the briefs:

David L. Turk  
and Lissa Dawn Shults  
for defendant-appellant  
Cion Battulayan

Richard B. Miller  
and Mark K. Morita  
for plaintiff-appellee  
State Farm Mutual Automobile  
Insurance Company