NO. 24146

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

STEVEN M. ROGERS, SUSII HEARST, and RETIREMENT RESOURCES, INC., fka PRECISION PRESS, INC., Plaintiffs-Appellees, v. MANECK B. MINOO, GASPARIAN & MINOO, LTD., fka HUFFMAN & MINOO, LTD., and PALMER GRAPHICS & PRINTING, Defendants-Appellants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Civ. No. 00-1-2265-07)

MEMORANDUM OPINION
(By: Burns, C.J., Watanabe, and Lim, JJ.)

Defendants-Appellants Maneck B. Minoo (Minoo) and Gasparian & Minoo, Ltd., doing business as Precision Press, formerly known as Huffman & Minoo, Ltd., and Palmer Graphics & Printing (collectively, Defendants) appeal the "Order Denying Defendants' Motion to Vacate Order Granting in Part and Denying in Part Without Prejudice Defendants' Motion to (1) Quash Garnishee Summons Issued August 2, 2000; (2) Set Aside Consent Judgment Filed July 21, 2000; and (3) Stay Further Proceedings Pending Arbitration, Filed August 8, 2000 (Which Order Was Filed on October 10, 2000), and to Substitute Defendants' Proposed Order Therefore [Sic], Filed on October 17, 2000" (the Court

Order), entered on February 22, 2001 by the Circuit Court of the First Circuit (the circuit court).[1]

We affirm.

BACKGROUND

This case, brought by Plaintiffs-Appellees Steven M. Rogers (Rogers), Susii Hearst (Hearst), and Retirement Resources, Inc., formerly known as Precision Press, Inc. (collectively, Plaintiffs), stems from a contract in which Huffman & Minoo, Ltd., doing business as Palmer Graphics & Printing, and Minoo, as Guarantor (collectively, Buyers) agreed to purchase various assets and assume various liabilities of Precision Press, Inc., a Hawai‘i corporation of which Rogers was the president. The sale was memorialized in an Agreement to Purchase Certain Assets of Precision Press, Inc., dated June 29, 1996 (the Purchase Contract), which included, as Exhibit A, a list of assets being sold, and as Exhibit D, a list, dated June 29, 1996, of the liabilities being assumed by Defendants. Among the liabilities listed on Exhibit D were the following:

> List of Accounts Payable ageing [sic] to be updated on or before July 15, 1996 to state final balances as of the end of business, June 28, 1996. Additional values are represented as current as of May 31, 1996 and will be updated on or before July 15, 1996 to state final balances as of the end of business, June 28, 1996.
>
> Additional liabilities are as follows:

[1] The Honorable Kevin S. C. Chang (Judge Chang) presided over all the proceedings relevant to this appeal. However, the written order that is hereby challenged in this appeal was filed after Judge Chang resigned from his position, effective December 19, 2000, and the Honorable R. Mark Browning signed the order.

. . . .
Bank of Hawaii Visa [$] 5,286.14
. . . .
Man Roland 177,237.86
. . . .

Additionally, the several and diverse leases you currently have in your possession, their individual buyout amounts and including but not limited to:

	Monthly pymt	periods remaining
EKCC	$395.48	43

In March 1999, after various disputes and four lawsuits had arisen from the Purchase Contract, Plaintiffs and Defendants entered into a Settlement Agreement, Mutual Release, Joint Tortfeasor Release and Indemnity, made effective as of August 31, 1998 (the Settlement Agreement). The Settlement Agreement included the following provisions relevant to this lawsuit:

VI. CONSIDERATION AND TERMS

The consideration for this Agreement and the releases herein, the sufficiency of which is hereby acknowledged by the SETTLING PARTIES, shall be the mutual covenants and representations contained herein, together with the following terms:

1. [Defendants] shall pay [Plaintiffs] $280,000, on the terms stated below:

. . . .

2. The following security is provided by [Defendants] for payment of the above amounts:

(A) [Defendants] shall permit [Plaintiffs] to have a second lien on all present and future equipment in [Defendants'] printing business . . . ; and

(B) [Defendants] shall execute a Stipulation for Entry of Judgment prepared by Charles Hurd, Esq., in favor of [Plaintiffs] which [Plaintiffs] may file in court in the event of [Defendants'] breach of the material terms of the Agreement, to

include acceleration of all remaining payments described in paragraph 1(C) above, and to accomplish entry of a Judgment for all such unpaid amounts. The parties agree that such Stipulated Judgment shall not be filed in regards to any delay in [Plaintiffs'] receipt of payments scheduled to be due up to and including the month in which this Agreement is signed.

(C) Upon timely payment by [Defendants] of all payments described in paragraph 1, then all security rights described above shall be extinguished.

3. [Defendants] shall use [their] best efforts to accomplish, within 120 days of this Agreement, an assumption of debts payable to Man Roland and EKCC pursuant to [the Purchase Contract] and will cooperate with [Plaintiffs] in a joint effort to have those debts transferred to [Defendants'] name instead of [Plaintiffs'] name.

4. [Defendants agree] to pay and reaffirm[] that [they have] undertaken to pay the debts listed in Exhibit "D" to the parties' [Purchase Contract], pursuant to the terms and conditions set forth in Exhibit "D" and the related Agreement. [Defendants warrant and represent that they have] made timely payments upon all payments listed in Exhibit "D" to that [Purchase Contract]. To the extent any debts in Exhibit "D" remain unpaid, [Defendants agree] to pay those debts pursuant to the terms and conditions in Exhibit "D" and the related [Purchase Contract]. Except to the extent necessary for reference in this paragraph, the former [Purchase Contract] shall be superceded [sic] by this new Agreement. Exhibit "D" to the parties' [Purchase Contract] is attached hereto as Exhibit "E".

5. The general laws of indemnity in Hawaii will govern. If [Defendants do] not timely pay the amounts [they owe] to Man Roland or other of the debts listed in Exhibit "E" hereto, then [they agree] to indemnify [Plaintiffs] for any damages caused by such non-payment or late payment.

. . . .

> 8. [Plaintiffs and Defendants] shall dismiss with prejudice all pending actions against [Plaintiffs and Defendants] . . . . Attached hereto as Exhibits "A" through "D" and incorporated herein by reference are copies of said stipulated dismissals.
>
> . . . .
>
> **X. MERGER, ATTORNEYS' FEES; INTERPRETATION**
>
> This Agreement contains the entire agreement between and among [Plaintiffs and Defendants]. The terms of this Agreement are contractual and not a mere recital. [Plaintiffs and Defendants] will each bear their own costs and attorneys' fees incurred to date relative to the Litigation, the mediation and this Agreement. However, should any dispute arise between the parties as to the enforcement or validity of this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and costs incurred in such dispute. All matters at issue and all questions concerning the interpretation of this Agreement shall be decided and construed in accordance with Hawaii law, by binding arbitration before Ellen Godbey Carson [(Carson)]. The nonprevailing party shall pay all the fees and costs of any such proceedings, and the arbitrator shall have the right to award such fees and costs.

(Underscored emphases added.)

After entering into the Settlement Agreement, the parties continued to have disputes regarding the amount of the liabilities Defendants had agreed to assume. On August 28, 2000, Plaintiffs filed in the circuit court, in S.P. No. 00-1-0278 (Case 1), a Petition for Order Compelling Arbitration. The petition claimed that Defendants, despite their obligation to do so under the Settlement Agreement, had failed to assume and pay all debts owed to Bank of Hawaii Visa, Man Roland, and EKCC.[2] Furthermore, despite the mandatory arbitration clause in the

[2] The amounts owed by Defendants for assuming Plaintiffs' debts to Bank of Hawaii Visa and EKCC are not at issue in this appeal.

Settlement Agreement, Defendants were refusing to submit to binding arbitration their disputes regarding the amount of the debts they had agreed to assume under the Settlement Agreement.

In a memorandum opposing Plaintiffs' petition, Defendants argued:

> The present dispute arises because [Plaintiffs] are demanding that [Defendants] pay Man Roland (a Precision Press creditor) an amount in excess of $177,237.86 set forth in the exhibit. [Defendants] have been paying the $177,237.86 as scheduled and will pay that amount in full according to the schedule, but [Defendants] refuse to pay more than that amount of money because they did not bargain to pay more. This is the sole dispute.
>
> The question is thus presented where parties enter into a settlement agreement to settle specific issues arising from pending litigation over a prior agreement and that settlement agreement does not supercede [sic] in toto the prior agreement, may a party invoke an arbitration clause in the settlement agreement to resolve an issue that was unrelated to the issues resolved by the settlement agreement? The answer to that question depends on the terms of the settlement agreement.
>
> Paragraph X of the [Settlement] Agreement provides that:
>
> > All matters at issue and all questions concerning the interpretation of this Agreement shall be decided and construed in accordance with Hawaii law, by binding arbitration before [Carson]. The nonprevailing party shall pay all the fees and costs of any such proceedings, and the arbitrator shall have the right to award such fees and costs.
>
> [Plaintiffs] are not seeking to have any portion of the [Settlement] Agreement interpreted. [Plaintiffs] want the [Purchase Contract] interpreted and there is no arbitration provision for that agreement. At no time have [Defendants] ever agreed to arbitrate the amount of the debts assumed by the [Purchase Contract]. In fact, at the time of the [Settlement Agreement], [Plaintiffs] sought to have amounts of the debts assumed updated and incorporated into the [Settlement] Agreement, but [Defendants] refused to do anything other than reaffirm the [Purchase Contract] obligations. [Plaintiffs] are asking, in essence, for this court to enforce an agreement that was never made.

(Emphases in original.)

Defendants thus took the position that the amount of liabilities they had agreed to assume involved an interpretation of the Purchase Contract, which did not include an arbitration provision that mandated submission of disputes to an arbitrator. Defendants also claimed that the Purchase Contract had not been superseded *in toto* by the Settlement Agreement. The circuit court apparently agreed with Defendants' argument and on July 17, 2000, entered an Order Denying Verified Petition for Order Compelling Arbitration Filed May 25, 2000 (Order Denying Arbitration). In the order, the circuit court concluded, in relevant part, as follows:

> 1. Pursuant to Part X of the . . . Settlement Agreement . . . , there is an agreement to arbitrate.
>
> 2. The words of the agreement to arbitrate limit the arbitration clause "to the enforcement or validity of this Agreement".
>
> 3. The existing dispute between the parties does not involve a matter which is subject to arbitration as set forth above.

Neither party appealed this order.

The day after the circuit court issued the foregoing order, Plaintiffs filed in Civil No. 00-1-2265-07 the lawsuit underlying this appeal (Case 2). Immediately thereafter, Plaintiffs filed, as part of Case 2, a Consent Judgment, dated May 14, 1999, which was signed by Minoo but not by Plaintiffs, approved as to form and consented to by both Defendants' and

Plaintiffs' counsel, and "approved and so ordered" by the circuit court judge.

Plaintiffs' complaint in Case 2 alleged that Defendants had materially breached the Settlement Agreement by failing to pay Plaintiffs various sums owed by Defendants under the Settlement Agreement. The complaint also alleged:

> 11. Pursuant to Section VI(2)(B) of the Settlement Agreement, [D]efendants executed the parties' Consent Judgment, a true and correct copy of which is attached hereto as Exhibit "B" and incorporated herein by reference. . . .
>
> 12. Under said section of the Settlement Agreement, [P]laintiffs may file the Consent Judgment in this [c]ourt, as [D]efendants have breached the material terms of the Settlement Agreement, to include acceleration of all remaining payments described in Section VI(1)(C) and to accomplish the entry of judgment for all such unpaid amounts.

On August 2, 2000, Plaintiffs filed an Ex Parte Motion for Issuance of Garnishee Summons After Judgment, asking that garnishee summonses be issued to various financial institutions and stock and bond brokerage firms that may be in possession of goods and effects of, or debts owed to, Defendants. Defendants thereafter moved to quash the garnishee summonses, set aside the Consent Judgment, and stay the case pending arbitration (the motion to quash), arguing as follows:

> The garnishee summons were [sic] issued based on the Consent Judgment, which was filed by [Plaintiffs] in this action in breach of the parties' . . . Settlement Agreement. Pursuant to [the Settlement A]greement, Plaintiffs were entitled to file the Consent Judgment only in the event [Defendants] breached the material terms of [the Settlement A]greement. [Defendants are] not in breach of [the Settlement A]greement, nor has there been any determination that [Defendants] breached the . . . Settlement Agreement and, because such a determination concerns the enforcement

> and interpretation of the [Settlement Agreement], the issue is one referable to the arbitrator the parties have selected and designated in the [Settlement A]greement. Unless and until that determination is made, Plaintiffs are not entitled to file the Consent Judgment.

Defendants also pointed out that they had paid in full the $177,237.86 debt listed on Exhibit D to the Purchase Contract and Exhibit E to the Settlement Agreement and were not liable for the more than $60,000.00 in interest that had accrued on the debt. Defendants claimed, however, that as a practical matter, they had

> no choice but to continue making payments on [Plaintiffs'] debt to Man Roland. Had they not done so, Man Roland had the right to repossess the collateral for that debt . . . . In effect, by making their payments to Man Roland, Defendants were making payments to Plaintiffs since the debt to Man Roland is Plaintiffs' debt. By letter dated July 5, 2000, [Minoo] informed [Rogers] that, pursuant to Plaintiffs' agreement to indemnify and hold Defendants harmless against any liabilities not specifically assumed, he was continuing to make the monthly payments on Plaintiffs' debt to Man Roland and, until Man Roland was paid in full (extinguishing the lien on the printing press), he would deduct the payments from the amounts due to Plaintiffs.

(Footnote omitted.)

At a hearing on Defendants' motion to quash, defense counsel reminded the circuit court that in Case 1, Plaintiffs "sought to arbitrate who owed the [$]62,000 [in accrued interest] and this was opposed." Defense counsel argued:

> The reason we opposed is it was outside the terms of the arbitration agreement. However, in this matter, Your Honor, it's our position as to whether there's been a breach of the [Settlement A]greement comes clearly within the terms of the arbitration agreement.
>
> . . . .
>
> Our position very simply is this, Your Honor. Whether there is a breach of this agreement is governed by the arbitration clause. The appropriate remedy that [Rogers] should have sought here, with regard to the $62,000.00 if

he's going to claim that was included in the agreement even though it's not mentioned in the agreement, he should have filed an action for declaratory judgment.

As to whether or not there's been any breach of the agreement by my client, that is clearly covered by the arbitration clause and it's our position that that should go to the arbitrator for a decision. Basically, what the arbitrator should be asked to do is assuming that my client is not obligated to pay that money, is his payment directly to Man Roland a breach or not?

The [c]ourt can determine whether or not the $62,000.00, who owes that to Man Roland. But I do not believe that [Plaintiffs have] the right to make a unilateral determination there's been a breach, file a new complaint, serve a summons giving my client twenty days to answer and, in fact, [Plaintiffs] filed a [C]onsent [J]udgment immediately and then concealed from the [c]ourt the facts and circumstances surrounding the dispute and to obtain garnish- -- garnishments of more than three times the amount of [C]onsent [J]udgment against my client, effectively shutting [them] down.

In response, Plaintiffs' counsel argued:

A lawsuit was filed in '97 for breach of the [Purchase Contract] by my client. A [S]ettlement [A]greement was reached and entered into in 1998 between the parties. That [S]ettlement [A]greement provided, again, that [Defendants] would assume the Man Roland debt. It's been four years since the original agreement, two years since the [S]ettlement [A]greement, that indebtedness still has not been assumed.

[Defendants choose] to make installment payments on that debt, and when you pay over time, interest accrues, and that's the $60,000.00, the interest that's accrued on the $177,000 debt since 1996 when [Defendants were] to either assume or discharge that $177,000.00 obligation.

My client asked [defense counsel] to arbitrate this dispute regarding the Man Roland debt and [defense counsel] and [Defendants] refused to arbitrate that matter. My client filed a motion before this [c]ourt asking that the Man Roland indebtedness be arbitrated. The [c]ourt found that was outside the scope of the arbitration agreement.

[Defendants] then refused making all payments to my client pursuant to the [S]ettlement [A]greement and the 1996 [Purchase Contract], relying upon the indemnity provision of the [S]ettlement [A]greement. He wrote on July 5th saying I'm not paying you a penny anymore because of this Man

> Roland debt and I'm not paying you because of the indemnity provision of the [S]ettlement [A]greement.
>
> The indemnity provision contained in paragraph 5 of the [S]ettlement [A]greement says the general law of indemnity in Hawaii will govern if [Defendants] . . . [do] not timely pay the amount [they owe] Man Roland, then [they agree] to indemnify [Plaintiffs]. There's nothing about [Plaintiffs] indemnifying [Defendants] for [Defendants'] nonpayment of Man Roland indebtedness.
>
> So it's clear that [Defendants are] in material breach of the [S]ettlement [A]greement. When [they] breached the [S]ettlement [A]greement, my client tried to arbitrate that matter, they rejected arbitration. That left my client with one remedy, a legal remedy; [they] filed [this] lawsuit and [they] filed [the] [C]onsent [J]udgment. The [c]ourt entered that judgment.
>
> They are now seeking postjudgment relief from that judgment trying to stay execution on that judgment without following any of the procedures. There's no motion before this [c]ourt to stay execution, no motion to post a supersedeas bond to secure payment of my client's judgment if there's a stay of execution. Instead, there's a motion under Rule 60 for reconsideration.

A long colloquy then occurred between the circuit court and Plaintiffs' counsel regarding the process by which this case and the Consent Judgment had been filed and the garnishee summonses issued. Additionally, the circuit court questioned Plaintiffs' counsel about whether, in light of the integration and merger clause in the Settlement Agreement, the issue of whether Defendants were in material breach of the Settlement Agreement was required to be submitted to an arbitrator. Plaintiffs' counsel pointed out that Plaintiffs had previously tried to arbitrate the issue of the Man Roland debt and Defendants' breach of the Settlement Agreement for failure to pay the debt, but Defendants took the position that the issue was not arbitrable.

Case 2 was brought when the circuit court agreed with Defendants and entered the Order Denying Arbitration in Case 1.

At the close of the hearing, the circuit court, orally ruled, in part, as follows:

> Considering the written submissions by the parties and the more complete record presented, it appears now that there are matters at issue related to or arising from the [S]ettlement [A]greement which include, but are not limited to, whether [Defendants] are in breach of the material -- whether [D]efendants are in breach of any material covenant of the agreement and the legal effect, if any, of the merger clause on the matters at issue between [P]laintiffs and [D]efendants.
>
> Thus, now with the knowledge that [Defendants] would have opposed the filing of the [C]onsent [J]udgment and the issuance of the garnishee summonses based on the [C]onsent [J]udgment, and considering that [D]efendants have demanded arbitration as provided by the [S]ettlement [A]greement, and noting the well-recognized policy which favors arbitration and with a more complete record, the [c]ourt grants in part and denies in part [Defendants'] motion to quash, set aside [C]onsent J]udgment, and stay further proceedings pending arbitration filed on August 8th as follows:
>
> The motion is granted and the garnishee summonses issued on August 2, 2000, are vacated. . . .
>
> The motion is granted and proceedings in [Case 2] are stayed pending completion of arbitration before [Carson] as provided for in the [S]ettlement [A]greement.
>
> The motion is denied as to the [C]onsent [J]udgment filed on July 21, 2000. The denial is without prejudice.

Thereafter, upon questioning by Defendants' counsel, the circuit court judge orally clarified that he was staying all proceedings only in Case 2.

On October 10, 2000, in a written order (Order to Arbitrate), the circuit court stated, in relevant part:

> Considering the written submissions by the parties and the more complete record presented in this matter as compared to Plaintiffs' prior petition to compel arbitration, which this [c]ourt denied by an order entered

> . . . in [Case 1], it appears now to this [c]ourt that there are matters at issue related to or arising from the [S]ettlement [A]greement which include, but are not limited to, whether Defendants are in material breach of any covenant of the [S]ettlement [A]greement.
>
> . . . [U]pon reconsideration and now with the knowledge that [Defendants] would have opposed the filing of the [C]onsent [J]udgment and the issuance of the garnishee summonses based on the [C]onsent [J]udgment, and considering that Defendants have now demanded arbitration as provided for by the settlement agreement, and noting the well-recognized policy which favors arbitration and with a more complete record, the [c]ourt grants in part and denies in part [Defendants'] Motion . . . .
>
> . . . .
>
> . . . The [c]ourt grants the Motion, in order to stay further judicial proceedings in [this case], pending completion of arbitration before [Carson] as provided for in the [S]ettlement [A]greement.

Defendants thereafter filed a motion to vacate the circuit court's Order to Arbitrate on grounds that it was "both erroneous and misleading." Defendants specifically objected to the first paragraph of the circuit court's Order to Arbitrate quoted above, arguing that it was worded in such a way that Plaintiffs could argue that the circuit court's prior Order Denying Arbitration in Case 1 "has been reversed and the interest on the Man Roland debt is now subject to arbitration." Defendants also contended that the portion of the Order to Arbitrate that stayed further judicial proceedings "pending completion of arbitration" was

> ambiguous as to when the completion of arbitration occurs. Defendants could be in position of prevailing in the arbitration, but the stay would be lifted while they seek judicial confirmation of the arbitration award.

A brief hearing on Defendants' motion was held on November 28, 2000, and on February 22, 2001, the circuit court issued a written order denying the motion, which stated, in part, as follows:

> The court, having considered the written and oral arguments in support of and in opposition to the motion and good cause appearing, hereby finds that [Defendants have] failed to establish grounds warranting the relief sought and the order entered on October 10, 2000, fairly and accurately reflects the court's decision.

Defendants' timely notice of appeal was filed thereafter on March 13, 2001.

DISCUSSION

A.

Plaintiffs urge us initially to adopt the reasoning of the United States Supreme Court in Green Tree Financial Corp. v. Larketta Randolph, 531 U.S. 79, 121 S. Ct. 513 (2000), and hold that the Order to Arbitrate in this case was not final for appeal purposes.

However, the Hawai‘i Supreme Court has already decided that orders made pursuant to Hawaii Revised Statutes chapter 658,[3] directing arbitration to proceed and staying judicial proceedings pending arbitration, are final, appealable orders. Association of Owners of Kukui Plaza v. Swinerton & Walberg Co., 68 Haw. 98, 107, 705 P.2d 28, 34 (1985).

[3] Hawaii Revised Statutes chapter 658 governs arbitrations and awards.

Accordingly, we conclude that we have appellate jurisdiction to decide this case.

B.

Defendants contend that the circuit court should have vacated its Order to Arbitrate and substituted in its place an order clarifying that the Order Denying Arbitration in Case 1 was unaffected by the Order to Arbitrate in Case 2. Otherwise, Defendants maintain, Plaintiffs would be "free to argue in the arbitration that the [Order to Arbitrate] has by implication reversed or set aside the [Order Denying Arbitration]."

Defendants made the same argument to the circuit court, which found their position to be without merit and affirmed its Order to Arbitrate. Although the circuit court did not expressly state that the amount of Defendants' liability for the Man Roland debt was subject to arbitration, it is clear from the record that in entering the Order to Arbitrate, the circuit court expected that the amount of the Man Roland debt would have to be determined by the arbitrator prior to determining whether Defendants had breached the Settlement Agreement. The circuit court thus reconsidered its Order Denying Arbitration in Case 1.

Our review of the record indicates that the circuit court was justified in doing so. In Case 1, Defendants took the position that the amount of liabilities they had assumed under the Purchase Contract was not arbitrable because (1) the mandatory arbitration provision in the Settlement Agreement was

limited to disputes arising under the Settlement Agreement, and (2) the Purchase Contract included no mandatory arbitration provision. After the circuit court agreed with Defendants and entered the Order Denying Arbitration, Plaintiffs brought Case 2, in which Defendants argued, inconsistently from Case 1, that the issue of whether they had breached the Settlement Agreement was arbitrable.

The transcripts of the proceedings below indicate that the circuit court realized during arguments on Defendants' motion to submit Case 2 to arbitration that contrary to what Defendants had maintained in Case 1, the terms of the Purchase Contract were expressly integrated into the Settlement Agreement and the List of Liabilities that had been attached as Exhibit D to the Purchase Contract was now part of the Settlement Agreement as Exhibit E. Pursuant to the arbitration clause of the Settlement Agreement, therefore, the amount of Defendants' liability for the Man Roland debt was also arbitrable.

C.

The circuit court's Order to Arbitrate provided that further judicial proceedings in Case 2 would be stayed "pending completion of arbitration[.]" Defendants contend that this order is ambiguous and should have been clarified to specify that "the stay would be effective pending completion of arbitration and further order of the court[.]" Inasmuch as Plaintiffs have agreed not to enforce any arbitration award without first

returning to the circuit court to confirm the award, we make no ruling on this issue.

CONCLUSION

Based on the foregoing discussion, we affirm the Court Order entered by the circuit court on February 22, 2001.

DATED: Honolulu, Hawai‘i, November 27, 2002.

On the briefs:

Earle A. Partington
for defendants-appellants.

Charles H. Hurd (Hurd &
Luria, of counsel) for
plaintiffs-appellees.