

**NOT FOR PUBLICATION**

---

NO. 24825

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

MARILOU Z. JOB and GOLLEN JOB, Plaintiffs-Appellants, v.  
STANLEY PAN,<sup>1</sup> Defendant-Appellee, and JOHN DOES 1-10,  
JANE DOES 1-10, DOE PARTNERSHIPS 1-10, DOE  
CORPORATIONS 1-10, ROE "NON-PROFIT" ORGANIZATIONS 1-10,  
and ROE GOVERNMENTAL ENTITIES 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(Civ. No. 00-1-3738)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting C.J., Lim, and Foley, JJ.)

This appeal relates to the applicability of the covered loss deductible (CLD) statute, Hawaii Revised Statutes (HRS) § 431:10C-301.5 (Supp. 2003),<sup>2</sup> to reduce a court-annexed arbitration award for damages arising out of a September 10, 1999 motor vehicle accident, entered as a final judgment on August 27, 2001. The arbitrator found that the damages sustained by Plaintiffs-Appellants Marilou Z. Job (Marilou) and Gollen Job

---

<sup>1/</sup> Throughout the proceedings below, Defendant-Appellee Stanley Pan is incorrectly identified as "Stanley Lung-Pan" in the caption on court documents filed in this case, despite repeated references to the error.

<sup>2/</sup> Hawaii Revised Statutes § 431:10C-301.5 (Supp. 2003) provides as follows:

**Covered loss deductible.** Whenever a person effects a recovery for bodily injury, whether by suit, arbitration, or settlement, and it is determined that the person is entitled to recover damages, the judgment, settlement, or award shall be reduced by \$5,000 or the amount of personal injury protection benefits incurred, whichever is greater, up to the maximum limit. The covered loss deductible shall not include benefits paid or incurred under any optional additional coverage.

(collectively, the Jobs) as a result of the accident totaled \$31,485.88. However, the arbitrator awarded the Jobs only half (\$15,742.94) of their damages, after finding that fifty percent of the medical damages incurred by Marilou, the injured plaintiff, were attributable to a pre-existing condition.

Neither party appealed the arbitrator's award nor requested a trial de novo, and on August 27, 2001, the Circuit Court of the First Circuit (the circuit court), Judge Eden Elizabeth Hifo presiding, entered the arbitration award as a final judgment pursuant to Rule 21 of the Hawai'i Arbitration Rules.<sup>3</sup> On September 11, 2001, Defendant-Appellee Stanley Pan (Pan) tendered \$5,742.94 to the Jobs in satisfaction of the final judgment. Pan filed a motion for an order determining that judgment has been satisfied, contending that the CLD required under HRS § 431:10C-301.5 reduced the amount of the arbitrator's award to the Jobs by \$10,000.00, the amount of personal injury protection benefits paid to Marilou. The Jobs countered by claiming that the CLD should be reduced by one-half (\$5,000.00)

---

<sup>3/</sup> Rule 21 of the Hawai'i Arbitration Rules provides as follows:

**JUDGMENT ON AWARD.**

If, after twenty (20) days after the award is served upon the parties, no party has filed a written Notice of Appeal and Request for Trial *De Novo*, the clerk of the court shall, upon notification by the Arbitration Administrator, enter the arbitration award as a final judgment of the court. This period may be extended by written stipulation, filed with the Arbitration Administrator within twenty (20) days after service of the award upon the parties, to a period no more than forty (40) days after the award is served upon the parties. Said award shall have the same force and effect as a final judgment of the court in a civil action, but may not be appealed.

because the total award had been reduced by one-half to account for Marilou's pre-existing injuries. The circuit court disagreed with the Jobs and on December 13, 2001, entered an order determining that Pan had satisfied the final judgment. This appeal followed.

In Kim v. Reilly, \_\_\_ Hawai'i \_\_\_, \_\_\_ P.3d \_\_\_, No. 24995, slip op. (June 14, 2004), a court-annexed arbitrator had awarded plaintiffs Kim and Lee \$13,500.00 and \$12,500.00, respectively. When no appeal was filed and no trial de novo was requested, the circuit court clerk entered the arbitration awards as final judgments. Id., slip op. at 3. Instead of paying the full awards, the defendant, Reilly, deducted \$10,000.00 from each award pursuant to the CLD statute. Id. The plaintiffs disputed the deductions, refused to execute satisfactions of judgments, and thereafter moved to enforce the final judgments in full. Id., slip op. at 4. The circuit court refused to apply the CLD statute, HRS § 431:10C-301.5 (Supp. 2003), to reduce the amount of the arbitration awards, concluding that the awards were presumptively valid, uncontested, and enforceable. Id., slip op. at 4-5. The circuit court therefore entered an order granting the plaintiffs' motion to enforce the judgments and/or for writ of execution. Id., slip op. at 5.

On appeal, the supreme court held that the circuit court was precluded from modifying or vacating the arbitration awards, once they had become final judgments, because

**NOT FOR PUBLICATION**

---

Reilly failed to (1) raise the [CLD] statute during the arbitration proceedings, (2) apply to the arbitration administrator or the arbitration judge to reduce the awards, or (3) file a notice of appeal and request for trial de novo.

Id., slip op. at 8.

In this case, as in Kim v. Reilly, Pan did not (1) raise the CLD issue during the arbitration proceedings, (2) apply to the arbitration administrator or the arbitration judge to reduce the award against him, or (3) file a notice of appeal and request for trial de novo. In light of Kim v. Reilly, the circuit court was thus precluded from reducing the arbitration award, once it had been reduced to final judgment.

Accordingly, we reverse the "Order Granting Defendant Stanley Pan's, Incorrectly Identified as Stanley Lung-Pan, Motion for an Order Determining that Judgment has been Satisfied[,]" entered by the circuit court on December 13, 2001, and remand for further proceedings consistent with Kim v. Reilly and this opinion.

DATED: Honolulu, Hawai'i, July 23, 2004.

On the briefs:

Gordon Kim for  
plaintiffs-appellants.

Randall Y. S. Chung,  
Kevin P. H. Sumida, and  
Lance S. Au for  
defendant-appellee.