

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 26922

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

JUDITH A. DALTON, Plaintiff-Appellee,
v.
RICHARD A. SCHUNK and GOLDEN RULE CONSTRUCTION, INC.,
a Hawaii Corporation, Defendants-Appellants

NORMA T. YARA
CLERK, APPELLATE COURT
STATE OF HAWAII

2008 APR 25 AM 8:18

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(CV. NO. 02-1-0036)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, Chief Judge, Nakamura, and Fujise, JJ.)

Defendants-Appellants Richard A. Schunk and Golden Rule Construction, Inc. (collectively referred to as "Schunk")¹ appeal from the order confirming an arbitration award entered by the Circuit Court of the Fifth Circuit (circuit court)² on September 29, 2004. Schunk was hired by Plaintiff-Appellee Judith A. Dalton (Dalton) to construct a house on Dalton's property. Upon execution of the construction contract, Dalton paid Schunk \$61,364.00, which represented 20 percent of the contract price. Disputes arose between Dalton and Schunk over Schunk's performance of the contract, and Dalton terminated the contract.

Dalton filed suit in circuit court to recover her payment to Schunk, alleging breach of contract, implied contract, money had and received, conversion, and fraudulent conduct. During the litigation, the parties agreed to resolve the case through binding arbitration. The arbitrator rendered a final decision in favor of Dalton, finding that Schunk had breached the construction contract. Dalton moved to confirm the arbitrator's

¹ Richard A. Schunk was the president of Golden Rule Construction, Inc.

² The Honorable George M. Masuoka presided.

award and Schunk moved to vacate the award. The circuit court denied Schunk's motion and granted Dalton's motion.

I.

On appeal, Schunk asserts that the circuit court erred in: 1) confirming instead of vacating the arbitration award because the arbitrator exceeded his scope of authority; and 2) failing to issue findings of fact and conclusions of law in support of its decision to deny Schunk's motion to vacate the award. We disagree with Schunk's claims and affirm the circuit court.

After a careful review of the record and the briefs submitted by the parties, we resolve the issues raised by Schunk as follows:

1. The circuit court did not err in confirming the arbitration award. Judicial review of arbitration awards is confined to "the strictest possible limits." United Pub. Workers, AFSCME, Local 646, AFL-CIO v. Dawson Int'l, Inc., 113 Hawai'i 127, 137, 149 P.3d 495, 505 (2006). "This is because 'of the legislative policy encouraging arbitration and thereby discouraging litigation.'" Id. at 137-38, 149 P.3d at 505-06.

[A]rbitrators have broad discretion in resolving the dispute. Upon submission of an issue, the arbitrator has authority to determine the entire question, including the legal construction of terms of a contract or lease, as well as the disputed facts. In fact, where the parties agree to arbitrate, they thereby assume all the hazards of the arbitration process, including the risk that the arbitrators may make mistakes in the application of law and in their findings of fact.

. . . . Moreover, the courts have no business weighing the merits of the award.

Schmidt v. Pac. Benefit Servs., Inc., 113 Hawai'i 161, 165-66, 150 P.3d 810, 814-15 (2006).

Schunk argues that the arbitrator exceeded the scope of his authority because the arbitrator determined that Schunk had breached the contract on a ground not specifically alleged in the complaint. We disagree.

The record reflects that the parties broadly agreed to resolve the "case" or the "matter" through binding arbitration. Schunk was free to decline arbitration or to craft an arbitration agreement that imposed specific limits on the arbitrator's authority. He failed to do so. We conclude that the parties' agreement authorized the arbitrator's decision and that the arbitrator acted within his powers in issuing the award. See Hawaii Revised Statutes (HRS) § 658A-23(4) (Supp. 2007).

2. The circuit court was not required to enter findings of fact and conclusions of law in this case. The Hawai'i Rules of Civil Procedure (HRCP) do not require that findings of fact and conclusions of law be entered on motions to confirm or vacate an arbitration award. See HRCP Rule 52 (2008). In Clawson v. Habilitat, Inc., 71 Haw. 76, 79, 783 P.2d 1230, 1232, (1989), the Hawai'i Supreme Court stated that on motions to vacate arbitration awards, findings of fact and conclusions of law should be entered "when appropriate," and it held that the circuit court "should" render findings of fact and conclusions of law "whenever material facts are in dispute in determining whether an arbitration award should be vacated." Id.

Given the record before us in Schunk's case, we are able to adequately review the circuit court's decision to confirm (and not vacate) the arbitrator's award without findings of fact or conclusions of law by the circuit court. We therefore conclude that the circuit court did not err in deciding the parties' arbitration motions without issuing findings of fact and conclusions of law.

II.

The order granting Dalton's motion to confirm the arbitration award, which the circuit court entered on September 29, 2004, is affirmed.

DATED: Honoulu, Hawai'i, April 25, 2008.

On the briefs:

Brian A. Costa
James A. DeLacy
(Costa & DeLacy, LLC)
for Defendants-Appellants

Harold Bronstein
for Plaintiff-Appellee



Chief Judge



Associate Judge



Associate Judge