

NO. 29552

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

JOHN L. JONES, Plaintiff-Appellee,
v.
BARBARA A. VAN BALEN, Defendant-Appellant,
and
FIRST TO FIFTIETH DOES, INCLUSIVE, Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(Civil No. 06-1-0023)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Fujise, and Leonard, JJ.)

Defendant-Appellant Barbara A. Van Balen (Van Balen) appeals from the "Order Granting 'Plaintiff John L. Jones's Motion to Confirm Arbitrator's Decision and to Appoint Commissioner' Filed August 4, 2008" (Order), entered on November 26, 2008 in the Circuit Court of the Fifth Circuit (circuit court).¹

On appeal, Van Balen contends the circuit court erred by confirming the Arbitrator's Decision (Decision) dated November 11, 2007 because the Decision is not final. Van Balen argues that a Deposit, Receipt, Offer, and Acceptance (DROA), which underlies the case and controversy, required that the Decision (1) identify the prevailing party, (2) give the prevailing party the opportunity to submit declarations of attorney's fees and costs, and (3) give the non-prevailing party the opportunity to contest the prevailing party's submitted declarations of attorney's fees and costs.

¹ The Honorable Randal Valenciano presided.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Van Balen's point of error as follows:

Van Balen cannot point to where in the record she objected to confirmation of the Decision based upon the terms of the DROA. Rather, Van Balen argued below that the Decision was not final because the arbitrator exceeded his authority in deciding a partition action. Therefore, the point of error is waived. Hawai'i Rules of Appellate Procedure Rule 28(b)(4).

Therefore,

IT IS HEREBY ORDERED that the "Order Granting 'Plaintiff John L. Jones's Motion to Confirm Arbitrator's Decision and to Appoint Commissioner' Filed August 4, 2008" entered on November 26, 2008 in the Circuit Court of the Fifth Circuit is affirmed.

DATED: Honolulu, Hawai'i, November 12, 2009.

On the briefs:

Mark R. Zenger and
Donna E. Richards
(Richards & Zenger)
for Defendant-Appellant.

Presiding Judge

Patrick J. Childs
June Ikemoto (Law Office
of June Ikemoto)
for Plaintiff-Appellee.

Associate Judge

Associate Judge