NOT FOR PUBLICATION

NO. 24309

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STUART N. WILSON and IRENE WILSON,
Plaintiffs-Appellees

vs.

G.C. & K.B. INVESTMENTS, INC., a foreign corporation,
Defendant-Appellant

APPEAL FROM THE SECOND CIRCUIT COURT
(CIV. NO. 99-0674)

MEMORANDUM OPINION
By: Moon, C.J, Levinson, Nakayama, Acoba, and Duffy, JJ.

Defendant-Appellant G.C. & K.B. Investments, Inc. (Defendant) appeals from the April 30, 2001 order of the second circuit court (the court)[1] granting the motion for clarification of order filed by Plaintiffs-Appellees Stuart N. Wilson and Irene Wilson (Plaintiffs) on June 27, 2000, and finding that a Louisiana arbitration award, as described herein, is void, vacated, and of no force and effect. Based on the reasons set forth herein, we vacate the court's April 30, 2001 clarification order and remand the case for proceedings consistent with this opinion.

I.

In 1992, Plaintiffs purchased a franchise of SpeeDee Oil Change Systems, Inc. (SpeeDee Oil) from Arrowhead Oil

[1] The Honorable Rhonda I. L. Loo presided.

Corporation (AOC), a California corporation. AOC was the regional subfranchisor of the master franchisor, SpeeDee Oil, a Louisiana based company. Plaintiffs and AOC signed a franchise agreement on January 14, 1992. The franchise agreement contained the following relevant provisions relating to the "Region" at the time the agreement was executed, the right to assign the franchise agreement, and the right to arbitration:

> This Local Franchise Agreement . . . is entered . . . by and between [AOC], d.b.a. SpeeDee Oil Change & Tune-Up(R) of Southern California (the "Region") with its principal place of business at . . . Lake Arrowhead, California 92352 and [Plaintiffs] . . . who reside[] or ha[ve their] principal place of business at . . . Richardson, Texas 75082.
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> . . . .
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> 6.4 Effect of Termination
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> . . . .
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> In the event that the Region should for any reason cease operations or be terminated or otherwise no longer continue as a SpeeDee Oil Change & Tune-Up Region, [SpeeDee Oil] or its Assignee may make available services to the [Plaintiffs], may receive payments from the [Plaintiffs] and may succeed to the Region's rights with respect to the [Plaintiffs], and upon making available such services would receive the benefit of certain releases from the [Plaintiffs]. Accordingly, the [Plaintiffs] shall, upon request from [SpeeDee Oil] or its Assignee, thereafter pay directly to [SpeeDee Oil] or its designee all amounts past due, then due or to become due from the [Plaintiffs] (including but not limited to rights to receive development fees, . . . advertising contributions, . . . or otherwise) under or related to, and [SpeeDee Oil] or its designee shall thereupon succeed to all of the Region's rights in and to, any and all Local Franchise agreements[.]
>
> . . . .
>
> 7.2 Assignment by the Region. Subject to any required consent of [SpeeDee Oil], this Agreement contains, and there shall be, no limitation on the right of the Region to sell, pledge, hypothecate, transfer and/or assign, in whole or in part, any of its rights, obligations or other interests under this Agreement or any other agreement with the [Plaintiffs] and the Region shall thereupon be released from all obligations to the [Plaintiffs], all without notification to or consent by the [Plaintiffs], provided only that (a) the Transferee expressly assumes the obligation to provide to the [Plaintiffs] any and all

> further contractually required services of the Region in connection with its obligations under this Agreement, and (b) the Region has by such time performed its commitments to assist in the establishment of the franchise . . . .
> . . . .
> 9.7 Governing Law and Arbitration. . . .
> [Plaintiffs] hereby irrevocably submit[] any claim, dispute, suit, action or proceeding arising out of or relating to this Agreement or any of the transactions or documents whether contemplated by, referenced in or related to this Agreement, or otherwise, involving [SpeeDee Oil], the Region and/or [Plaintiffs] or any of their interests, to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association [(AAA)] at its office located nearest to the office of the Region, arbitration to be the **sole** method of resolving any such disputes. While in no way limiting the foregoing arbitration obligation, any litigation (for example to enforce any arbitration award) between the parties or involving the Region or its interests, shall be held in San Bernadino County, California or the Federal Court located nearest thereto.

(Emphases added.) (Boldfaced emphasis in original.) At the time of the signing of the franchise agreement between Plaintiffs and AOC, the Region was AOC, "with its principal place of business at . . . Lake Arrowhead, California."

In 1993, AOC filed for bankruptcy and SpeeDee Oil took over AOC's regional subfranchise. In 1994, in the Los Angeles Superior Court, the California Department of Corporations sued SpeeDee Oil, AOC, and Cal-Neva Corp., the northern California subfranchisor, in People vs. SpeeDee Oil Change Sys., Inc., et al., Case Number BC 109765. That same year, Plaintiffs opened their franchise in Kahului, Maui, Hawai'i. On September 18, 1997, the California trial court issued a judgment in Case Number BC 109765, granting a permanent injunction against SpeeDee Oil, AOC, and Cal-Neva, prohibiting them from engaging in activity that violated California franchise law. Specifically,

"AOC . . . , its officers, directors and successors in interest [were] permanently enjoined from offering or selling, in [California], franchises" as defined by California franchise law. SpeeDee Oil filed an appeal of this judgment that was dismissed.

On January 21, 1999, SpeeDee Oil assigned its rights and obligations under the franchise agreement to SpeeDee Express, Inc. In April 1999, Plaintiffs stopped paying their franchise fees because of SpeeDee Oil's "failure to perform as promised." On June 23, 1999, SpeeDee Express, Inc., assigned its rights and obligations under the franchise agreement to Defendant. Defendant is "a corporation organized and existing under the laws of the State of Louisiana, with its principal and registered office located at . . . Madisonville, LA."

On July 23, 1999, Defendant initiated arbitration proceedings against Plaintiffs by filing a demand for arbitration with the AAA Commercial Arbitration Tribunal. In this demand, Defendant relied on Section 9.7 of the franchise agreement, see supra, and "prior precedent of the AAA in interpreting this vanue [sic] provision in 'SpeeDee Oil Change Systems, Inc. v. Taylor,' AAA No. 69-114-00083-93 01 KLE," as authority for submitting the arbitration to the New Orleans, Louisiana AAA office. Defendant sought arbitration based on the allegations that Plaintiffs failed to pay "business development (royalty) fees" and "advertising fund contributions."

II.

On November 9, 1999, in Civil No. 99-0674, Plaintiffs filed a complaint with the court for declaratory relief and an

order to enjoin Defendant from pursuing an arbitration action against Plaintiffs. Plaintiffs requested that the court "enter a [d]eclaratory [j]udgment and [o]rder finding that the [f]ranchise [a]greement between Plaintiffs and Defendant . . . is void and unenforceable, as a matter of law, and therefore the Plaintiffs are not compelled to arbitration under [the a]greement." Plaintiffs sought to stop SpeeDee Oil, "through its assignee, [Defendant] from forcing the Plaintiffs, Hawai'i residents, to defend an arbitration action in Louisiana." Alternatively, Plaintiffs requested that the case be set for trial, "pursuant to [Hawai'i Revised Statutes (HRS)] Section 658-3, on the issue of whether the [f]ranchise [a]greement is enforceable . . . against Plaintiffs and whether the arbitration clause therein is enforceable." Plaintiffs based their complaint on the California judgment in Case Number BC 109765, alleging that they were "induced to purchase their SpeeDee franchise by the same fraudulent conduct as ha[d] been adjudicated in the California court."

Meanwhile, the arbitration proceedings continued. The arbitration hearing was set for February 9, 2000, in New Orleans, Louisiana. After receiving notification that Defendant was moving forward with arbitration, Plaintiffs contested the arbitration, notifying the AAA of their position in letters dated November 23, 1999, December 16, 1999, and February 4, 2000.

The November 23, 1999 letter "advised [the AAA] that the [Plaintiffs] have filed a declaratory relief suit in Hawaii against [Defendant]" and that "the gravamen of the suit is a

declaratory relief cause of action to quash the within arbitration being sought by [Defendant], in addition to further declaratory relief." Plaintiffs further stated that the action in Hawai'i "will determine the respective rights and obligations of the parties, and will resolve the issue of arbitration and the enforceability of [Plaintiffs'] local franchise agreement." Finally, Plaintiffs stated that they "will not be voluntarily participating in any arbitration, whether under AAA auspices, or any other arbitration forum, in Louisiana or elsewhere" and that Plaintiffs "do not recognize the jurisdiction of the AAA to hear this matter."

The December 16, 1999 letter referred to the November 23, 1999 letter and restated that Plaintiffs "have filed an action for Declaratory Relief" regarding the arbitration. Plaintiffs maintained their position that they "will not be participating in the arbitration for the reasons cited in [the November 23, 1999] letter. On December 16, 1999, the preliminary hearing[2] was conducted in the Louisiana arbitration.

III.

On January 5, 2000, prior to the arbitration hearing scheduled for February 9, 2000, Plaintiffs filed an ex parte

[2] The following schedule was set at the December 16, 1999 preliminary hearing for the Louisiana arbitration proceedings: (1) Defendant "shall file a specification of claims on or before January 5, 2000"; (2) Plaintiffs "shall file a specification of counterclaims on or before January 5, 2000"; (3) both parties "shall file a stipulation of uncontested facts on or before January 19, 2000"; (4) "[n]ot later than January 19, 2000, the parties shall exchange copies of . . . all exhibits to be offered and all schedules, summaries, diagrams and charts to be used at the hearing"; (5) "[o]n or before February 2, 2000, each party shall serve and file a pre-hearing brief on all significant disputed issues, setting forth briefly the party's position and the supporting arguments and authorities."

motion for a temporary restraining order ("TRO motion") and preliminary injunction ("first preliminary injunction motion") against Defendant in Civil No. 99-0674. Plaintiffs moved the Hawai'i court[3] to (1) "enjoin Defendant[] and the [AAA] from proceeding with any further action regarding . . . arbitration between the Plaintiffs and Defendant[], arising from the [AAA] office in Dallas, Texas," to be conducted in the "venue of . . . New Orleans, Louisiana" and (2) "enjoin[] [Defendant] from taking any further action in furtherance of said arbitration and/or holding any further proceedings in said arbitration." Defendant did not submit any responsive pleading and no hearing was conducted on the ex parte TRO motion. On that same day, the court denied the TRO motion. Thereafter, Plaintiffs on January 6, 2000, filed a second motion for preliminary injunction. On January 19, 2000, Defendant filed a memorandum in opposition to Plaintiffs' motion for preliminary injunction.

On February 3, 2000, both Plaintiffs and Defendant were present at a hearing conducted on Plaintiffs' motion for preliminary injunction. The court[4] orally denied Plaintiffs' motion for preliminary injunction because (1) "the California judgment [in Case Number BC 109765]" did not "provide [a] basis for the [c]ourt to enter a preliminary injunction against the arbitration," and (2) there was no "likelihood of prevailing" or "irreparable harm, because the parties still have a forum that they agree to in their contract."

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[3] The Honorable Shackley F. Raffetto presided.

[4] Judge Raffetto presided.

Following the court's denial of Plaintiffs' motion for preliminary injunction, Defendant requested permission to "orally move . . . the court to dismiss this case" because "[t]here are no other claims brought by [P]laintiffs in this case." Defendant based this motion on Hawai'i Rules of Civil Procedure (HRCP) Rule 12(b)(6) and on the court's denial of the motion for preliminary injunction. The court stated it was "not willing to entertain [the motion to dismiss] orally" and would "hear it, by way of paper motion." On February 25, 2000, the court issued its order (1) denying Plaintiffs' motion for preliminary injunction and (2) denying without prejudice Defendant's oral motion to dismiss.

IV.

Plaintiffs wrote a letter dated February 4, 2000, to AAA reiterating that Plaintiffs "have been attempting to obtain an injunction against your organization," the AAA, from proceeding with the Louisiana arbitration. Plaintiffs "reaffirm[ed] their objection to any arbitration taking place" and "without waiving said objection . . . enter[ed] an additional objection to the proposed venue" of the arbitration. Plaintiffs cited to paragraph 9.7 of the franchise agreement which stated that arbitration is to take place at the AAA office "nearest to the office of the Region[.]" Plaintiffs made the following objection to the choice of venue of the AAA:

> The "Region" is defined as Southern California, with its principal place of business located at, "Lake Arrowhead Village . . . Lake Arrowhead California 92352."[5] . . . [Plaintiffs] have never amended the agreement, nor have they

[5] This provision of the franchise agreement is cited at page 2, supra.

> ever been given notice that their "Region" is the State of Louisiana. Proceeding with the arbitration, as currently scheduled, is in violation of the aforementioned arbitration clause [para. 9.7] and a serious violation of my clients' right to due process under the agreement.

Nevertheless, the Louisiana arbitration was conducted on February 9, 2000. Plaintiffs did not comply with the pre-arbitration hearing order of the arbitrator and did not appear at the arbitration hearing.[6] An arbitration award against Plaintiffs was entered in the Louisiana arbitration on February 29, 2000. The arbitrator found in favor of Defendant and determined that Plaintiffs "breached their franchise agreement by failing to pay to [Defendant] the local business development fees and advertising fund contributions required to be paid and by failing to report sales and related information as required by the franchise agreement."[7] On March 14, 2000, Defendant commenced a court action in the United States District Court for the Central District of California (district court) by filing an application for an order confirming the arbitration award in Case Number EDCV 00-00148-VAP (federal district court action).[8]

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[6] The arbitration award notes that Plaintiffs "failed to appear after due notice by mail in accordance with the Commercial Dispute Resolution Procedures of the [AAA.]"

[7] The arbitrator found that Plaintiffs owed Defendant $19,592.44 and interest for advertising fund contributions, $30,987.02 and interest for royalty payments, and $19,548.65 and interest for attorney fees (including fees incurred in Hawai'i and California) and related costs.

[8] Plaintiffs contend that Defendant filed a request to confirm the Louisiana award in the district court sometime in July 2000. There is nothing in the record on appeal to indicate what Plaintiffs rely on to support this contention. Defendant contends that the federal district court action to confirm the arbitration award was initiated on March 14, 2000, in a declaration of Defendant's California counsel attached to a pleading in the record on appeal.

V.

On March 23, 2000, in Civil No. 99-0674, Plaintiffs filed with the court a motion to amend the complaint for declaratory relief and for an order to enjoin Defendant from pursuing an arbitration action against Plaintiffs ("motion to amend"). The amended complaint sought an order to stop Defendant from compelling Plaintiffs to defend the arbitration action in Louisiana, damages, rescission of the franchise agreement, reimbursement for all fees, costs and expenses incurred by Plaintiffs in reliance on the franchise agreement, and attorney's fees and court costs. On April 14, 2000, the court[9] conducted a hearing on the motion to amend. The court found that "under the rules the amendment is proper in this particular case" and granted the motion to amend. The court further stated that "because of judicial economy and the other reasons[, . . . amendment was] proper in this particular case." On April 25, 2000, the court[10] issued its order granting Plaintiffs' motion to amend. On April 28, 2000, Plaintiffs filed their amended complaint.

On May 31, 2000, Defendant filed a second motion to dismiss,[11] or in the alternative to compel arbitration and stay

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[9] Judge Loo presided.

[10] Although Judge Loo presided at the hearing on Plaintiffs' motion to amend, it appears that Judge Raffetto issued the order granting the motion to amend.

[11] Defendant's first motion to dismiss was not filed, but orally requested of the court at the February 3, 2000 hearing on Plaintiffs' motion for preliminary injunction, as indicated supra. Defendant filed a motion for summary judgment on March 3, 2000. On April 7, 2000, the court conducted a

(continued...)

proceedings in the State of Hawai'i. Defendant sought to dismiss the case based on improper venue or, in the alternative, that claims raised by Plaintiffs' amended complaint "be resolved by arbitration and/or in the appropriate Federal Court in the State of California" pursuant to paragraph 9.7 of the franchise agreement.

On June 21, 2000, the court[12] conducted a hearing on Defendant's motion to dismiss. The court found that the franchise agreement intended California to be the region where arbitration was to take place. On June 27, 2000, the court[13] issued an order denying Defendant's motion to dismiss without prejudice and granting the motion as to the request to compel arbitration. This order stated that "[a]ll of Plaintiffs' claims and allegations contained in Plaintiffs' Amended Complaint . . . and all Defendant's defenses to said Amended Complaint along with any and all of Defendant's claims and/or counterclaims against Plaintiffs . . . shall be submitted to binding arbitration in accordance with the . . . franchise agreement" and that "[t]he binding arbitration shall be pursuant to the Commercial Arbitration Rules of the [AAA] at its office located nearest to Lake Arrowhead, California." (Emphases added.) The court order

[11](...continued)
hearing on this motion and denied the motion in order to consider the "complaint after it's amended." On April 20, 2000, the motion for summary judgment was denied without prejudice.

[12] Judge Loo presided.

[13] Although Judge Loo presided at the hearing on Defendant's motion to dismiss, Judge Raffetto signed and issued the order granting in part Defendant's motion to dismiss or in the alternative to compel arbitration and stay proceedings in Civil No. 99-0674.

also stayed proceedings in Civil No. 99-0674, including the filing of Defendant's answer to Plaintiffs' amended complaint, until further order of the court.

VI.

On August 14, 2000, the district court in the federal district court action filed a judgment confirming the Louisiana arbitration award. This judgment also ordered that Plaintiffs were "jointly and severally" responsible for the "sum of $88,117.99, inclusive of sums awarded by the arbitrator, pre-judgment interest, attorney's fees and costs." On or about September 12, 2000, it appears that Plaintiffs appealed the district court's confirmation of the Louisiana arbitration award.[14]

On September 12, 2000, in Special Proceeding No. 00-1-0039 (S.P. No. 00-1-39), Defendant filed with the court the federal judgment as an exemplified foreign judgment. On September 19, 2000, in S.P. No. 00-1-39, Plaintiffs moved to

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[14] As to this, the record indicates that first, in Defendant's memorandum in opposition to Plaintiffs' motion for clarification, Defendant argued that after the federal district court entered its judgment confirming the Louisiana arbitration award, Plaintiffs' "counsel appealed said [j]udgment. [Plaintiffs] now seek relief from this court that they were unable to obtain from the United States District Court, nor the United States Court of Appeals." (Emphasis added.)

Next, in Defendant's Second Supplemental Declaration following its memorandum in opposition to the motion for clarification, Defendant's counsel declared that "[o]n September 12, 2000, [Plaintiffs] filed a Notice of Appeal to the United States Court of Appeal for the Ninth Circuit. However, the [Plaintiffs] did not file any appeal bond and the judgment was fully enforceable."

Finally, Defendant also argued at the March 2, 2001 hearing on Plaintiffs' motion for clarification in the Hawai'i state court action that Plaintiffs "fought against this foreign judgment in Federal Court and U.S.D.C. Central District of California. They lost. They filed pleadings. They had oral arguments. They lost. Then they appealed it to the Ninth Circuit Court of Appeals, and then for some mysterious reasons, they dismissed that case." (Emphasis added.)

Plaintiffs apparently do not dispute these statements.

dismiss the exemplified foreign judgment or, in the alternative, to temporarily enjoin enforcement of the exemplified foreign judgment. The court[15] heard the motion to dismiss the exemplified judgment on September 22, 2000. On October 18, 2000, the court granted Plaintiffs' motion in part by (1) temporarily enjoining Defendant from "taking any steps to enforce the [e]xemplified [f]oreign judgment" in S.P. No. 00-1-39, (2) denying Plaintiffs' motion to dismiss the exemplified foreign judgment, and (3) granting Plaintiffs' request for attorney's fees and costs.

On December 1, 2000, the court heard Defendant's motion for reconsideration of the order granting in part Plaintiffs' motion to dismiss exemplified judgment (motion for reconsideration). On December 27, 2000, the court issued its order granting in part Defendant's motion for reconsideration. The court found that "it was the intent of the previous [o]rder of [a]rbitration, filed October 18, 2000, . . . that any and all issues in dispute, from either party, be included in the [a]rbitration ordered to take place, pursuant to the [f]ranchise [a]greement, in the State of California." The court (1) denied Defendant's motion for reconsideration in part and (2) ordered that Plaintiffs "shall commence the California [a]rbitration ordered in . . . Civil No. 99-0674, by applying to the applicable [AAA] office, pursuant to the terms of the [f]ranchise [a]greement . . . no later than December 31, 2000." Sometime in

[15] The Honorable Joseph E. Cardoza presided.

December 2000, Plaintiffs apparently initiated an arbitration action in the state of California. Plaintiffs contend this was done in compliance with the June 27, 2000 order, that they paid their fees, and a file was opened by the California AAA office. Both parties do not discuss further what occurred with this arbitration.

VII.

On January 11, 2001, the district court in the federal district court action denied Plaintiffs' motion for limited remand.[16] Through this motion, Plaintiffs requested that the district court "accept a limited remand from the appellate court to rule on a Federal Rule of Civil Procedure 60(b) Motion to set aside the judgment." Plaintiffs asserted this motion "on the grounds that a Hawai'i state court invalidated the arbitration award, rendering invalid this [c]ourt's [o]rder." The federal district court further noted that Plaintiffs "assert that the arbitration award on which this [c]ourt's [o]rder was based has been voided by a state court. Specifically, [Plaintiffs] argue that a state court's stay of the enforcement of the arbitration award voids this [c]ourt's [o]rder."

First, the district court noted that "[c]ourts in both California and Louisiana have denied [Plaintiffs'] requests to enjoin the arbitration." In footnote no. 2 the district court stated, Plaintiffs "have made several unsuccessful attempts to stop the arbitration proceedings. The Los Angeles Superior Court

[16] The record on appeal is silent as to when this motion for limited remand was filed by Plaintiffs in the federal district court action.

denied its request for a preliminary injunction on September 1, 1999. A state court in Hawai'i denied its ex parte motion for a temporary restraining order on January 5, 2000, and its request for a preliminary injunction on February 24, 2000." (Emphasis added.)

Second, the district court characterized Judge Cardoza's October 18, 2000 order as follows:

> While the October 18, 2000 [o]rder enjoins [Defendant] from enforcing the arbitration award, [Plaintiffs] cite no law to support their claim that it requires this [c]ourt to set aside its earlier [o]rder. The state court does not decide that the arbitration award is either void or moot. . . . It merely temporarily enjoins [Defendant] from enforcing the award. This does not constitute grounds for setting aside this [c]ourt's previously entered [o]rder.

Based on these reasons, the district court denied Plaintiffs' motion for limited remand.

VIII.

On February 8, 2001, in Civil No. 99-0674, Plaintiffs filed a motion for clarification of the June 27, 2000 order and for a finding that the Louisiana arbitration is void, vacated and of no force (motion for clarification). One day later, on February 9, 2001,[17] Defendant filed an ex parte application seeking an injunction against Plaintiffs in the federal district court action. Defendant requested that the district court "enjoin[] and restrain[]" Plaintiffs "and all persons acting in concert with them, from any interference with enforcement of the

[17] Facts regarding these proceedings in the federal district court action are based on Defendant's "Second Supplemental Declaration of [counsel] Ray P. Wimberley" (second supplemental declaration) and the Exhibit A attached to the Declaration. Exhibit A is the Declaration of Barry R. Schlom, Defendant's California counsel of record in the federal district court action. Attached to this declaration are seven exhibits relating to these proceedings.

judgment herein, including the filing and prosecution of actions in Hawai'i state court to the extent they are used to seek state court injunctive relief against enforcement of the judgment" in the federal district court action.[18] By civil minutes dated February 13, 2001, and entered on February 14, 2001, the district court treated Defendant's ex parte application as a motion for a preliminary injunction and set the matter for hearing on March 12, 2001.

On February 23, 2001, Defendant filed an application for a temporary restraining order asking the district court to enjoin Plaintiffs' motion set for March 7, 2001 before the court. By civil minutes dated February 26, 2001, and entered on March 2, 2001, the district court granted this application for a temporary restraining order. The district court explained it had "determined it had jurisdiction to confirm the award . . . and affirmed the award in accordance with the law on review of arbitration awards." The district court found that although Plaintiffs "claim they seek a mere clarification of an earlier state court order and do not wish to disrupt the status quo," Plaintiffs' Hawai'i state court motion "clearly ask[s] the court to find that the Louisiana award, in which this [c]ourt's affirmation was based, is vacated and void." Based on this ground, the district court found that "the state court motion could present an actual conflict" between the district court's

[18] The quoted language from the application is based on a copy of the ex parte application seeking an injunction that is attached to Defendant's second supplemental declaration. The copy does not contain a court stamp indicating that it was filed with the federal court, but Defendant's counsel declares that it is a true and correct copy of the application.

"August 2000 order and the state court's March 7, 2000 order," that is the district court's order confirming the arbitration award and the court's order following the scheduled hearing on Plaintiffs' motion for clarification.

IX.

On March 2, 2001, in Civil No. 99-0674, the court conducted a hearing on Plaintiffs' motion for clarification. Counsel for both Plaintiffs and Defendant were present at this hearing. The court considered arguments from both parties on the merits of the motion. Plaintiffs reviewed the chronology of the Hawai'i state court action, the Louisiana arbitration, the federal district court action, and the Hawai'i state special proceeding, and argued that Defendant "basically . . . ignore[d] [the court's] order" by taking the Louisiana arbitration and "try[ing] to enforce that before they have a chance to do anything else in California." Plaintiffs further argued that "it is imperative for this [c]ourt to clarify its previous order and advise everyone in no uncertain terms that the Louisiana arbitration is vacated[.]"

Defendant argued the following two points: (1) the motion for clarification was procedurally barred under HRCP Rule 59 because, as a motion to reconsider or amend the previous order, it was brought "more than ten days after the order was entered" and it was "essentially relitigating the same issues that were in front of this [c]ourt before"; and (2) the June 27, 2000 order had ordered Plaintiffs' "amended complaint claims into arbitration." After listening to the argument of both parties,

the court continued the hearing on the motion for clarification until two weeks after the district court hearing on the motion for preliminary injunction "because [it] want[ed] to find out what the federal court is going to do regarding the preliminary injunction."

X.

On March 12, 2001, the district court heard Defendant's motion for preliminary injunction. Defendant declared that the district court informed the parties that "it intended to enjoin any state court action by [Plaintiffs] designed to interfere with full enforcement of the [federal] judgment" and that "it intended to enjoin the arbitration proceeding in California which has been the subject of a Hawai'i state court order."[19] The district court also distributed a tentative ruling[20] on this motion for preliminary injunction. In this tentative ruling, the district court found that "[a]s the [AAA] arbitration award was litigated in this court, res judicata bars the state court from relitigating the award."

By civil minutes dated March 12, 2001 and entered on March 14, 2001, the district court "adopt[ed] the tentative ruling" and stated, "Order to follow." On or about March 15,

[19] The facts concerning the March 12, 2001 hearing before the district court on the motion for preliminary injunction are based on exhibits attached to Defendant's second supplemental declaration in support of its request to continue the hearing on or, in the alternative, its opposition to Plaintiffs' motion for clarification. This court does not consider the March 12, 2001 district court transcript because the transcript is not a part of the trial court record.

[20] This tentative ruling is attached as an unsigned exhibit to Defendant's second supplemental declaration referred to above.

2001, Defendant's California counsel prepared an order entitled "Injunction Against Interference With Enforcement of Judgment" for the federal district judge's signature. On March 21, 2001, the district court filed this injunction, redacting the language "in the court's written tentative ruling" from the injunction. The injunction stated that "for the reasons recited from the bench," the following was ordered:

> 1. That [Plaintiffs], and all persons acting in concert with them, are hereby restrained and enjoined from any interference with enforcement of the judgment herein, including the filing and prosecution of actions in Hawai'i state court to the extent that they are used to seek state court injunctive relief against enforcement of the judgment in the within proceeding
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> 2. That, without limiting the generality of the foregoing, [Plaintiffs], and all persons acting in concert with them, shall take no action to prosecute the Hawai'i state court action . . . Civil No. 99-0674-2
>
> 3. That the [AAA] arbitration proceeding ordered by the Hawaii state court in . . . Civil No. 99-0674-2 is hereby stayed, and [Plaintiffs], and all persons acting in concert with them, shall take no action to prosecute said arbitration proceeding.
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> 4. That, without limiting the generality of the foregoing, [Plaintiffs], and all persons acting in concert with them, shall . . . take no action to oppose [Defendant's] application to enforce this [c]ourt's judgment in the Hawaii state court action . . .[, S.P.] No. 00-1-0039-2, except on the grounds, if any shall exist, that [Defendant] has failed to comply with any applicable Hawai'i state court procedures for enforcement of Federal court judgments.

(Emphases added.)

XI.

On March 28, 2001, the court conducted a further hearing on the motion for clarification after the district court hearing on the motion for preliminary injunction. Thereafter, on

April 30, 2001, the court[21] filed the clarification order, granting Plaintiffs' motion for clarification. The court made the following findings as follows:

> 1. On June 27, 2000, the [c]ourt ordered arbitration to be held in the State of California for all claims of both parties, including all of the claims under the First Amended Complaint.
> 2. The [c]ourt ordered the California arbitration to take place pursuant to the terms of the subject [f]ranchise [a]greement.
> 3. The court further ordered a stay of all proceedings in this case[, Civil No. 99-0674,] pending the completion of said California arbitration, with leave for the parties to lift said stay for purposes of filing Motions with this [c]ourt.
> 4. The [c]ourt finds that the United States District Court, Central District of California has no subject matter jurisdiction over these proceedings.

(Emphasis added.)

Based on these findings, the court ordered the following:

> A. The [c]ourt clarifies its previous [o]rder, filed June 27, 2000, and orders that the Louisiana [a]rbitration [a]ward is void and vacated, effective as of the date of the filing of this [c]ourt's previous [o]rder, June 27, 2000.
> B. Defendant . . . is ordered to take no further action to enforce the Louisiana [a]rbitration [a]ward or any [j]udgment resulting therefrom.
> C. Any action taken to enforce such [a]ward and [j]udgment will be in direct defiance of this [c]ourt's order.

(Emphases added.) On May 25, 2001, Defendant filed its notice of appeal from this April 30, 2001 clarification order.

XII.

On appeal, Defendant argues that the court improperly (1) "ordered all Defendant's claims into arbitration in California," (2) "found that the United States District Court

[21] Judge Loo presided.

. . . has no subject matter jurisdiction over the [court's] proceedings," (3) "rendered void and vacated" the Louisiana arbitration award "retroactively to June 27, 2000," and (4) "enjoined [Defendant] from taking any further action to enforce the Louisiana [arbitration a]ward or any judgment resulting therefrom[.]"

Plaintiffs argue that (1) this court has no jurisdiction because the order appealed from is not a final order or judgment, (2) the motion for clarification was timely filed, (3) the court properly ruled that the district court had no jurisdiction, and (4) the court properly ruled that the arbitration under the franchise agreement should be held in California.

Defendant requests that this court "reverse and overturn" the clarification order "or in the alternative vacate the order and/or remand for further hearing and disposition."[22]

XIII.

As an initial matter, we consider whether this court has jurisdiction to consider this appeal. Defendant argues that the order compelling them into arbitration in California, vacating the Louisiana arbitration award, and denying the jurisdiction of the district court "fall[s] within the final intermediate order exception to the final order requirement" and

[22] Although Defendant requests further hearing as an alternative remedy in this appeal, Defendant does not appear to identify the issues for further hearing.

are, therefore, collateral and final orders subject to appeal. Plaintiffs argue that this court has no jurisdiction because the order appealed from is not a final order or judgment.

In civil cases, appeals may be taken only from final judgments or final orders from certified interlocutory orders. HRS §§ 641-1(a) (1993) and 641-1(b) (1993). However, certain collateral orders are immediately appealable as final orders under HRS § 641-1(a). Chuck v. St. Paul Fire & Marine Ins. Co., 61 Haw. 552, 555, 606 P.2d 1320, 1323 (1980). "In order to fall within the narrow ambit of the collateral order doctrine, the order must (1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from a final judgment." Siangco v. Kasadate, 77 Hawai'i 157, 161, 883 P.2d 78, 82 (1994).

In the instant case, final judgment has not been entered in Civil No. 99-0674. Instead, this case was stayed pending arbitration of all claims. The April 30, 2001 clarification order voiding and vacating the Louisiana arbitration award is an appealable final order under HRS § 641-1(a) if it meets the three requirements of the collateral order doctrine. The first requirement is met inasmuch as the clarification order conclusively determines the disputed question of the validity and enforceability of the Louisiana arbitration award.

As to the second requirement, the clarification order resolves the issue of whether the Louisiana arbitration award is

invalid as having been rendered in an improper venue. This issue is completely separate from the merits of Civil No. 99-0674 to the extent that the venue for arbitration is not an issue raised in Plaintiffs' complaint. However, the validity of the Louisiana arbitration award is related to the merits of Civil No. 99-0674 to the extent that the arbitration was conducted pursuant to the franchise agreement that is the subject of Plaintiffs' complaint.

As to the third requirement, Plaintiffs argue that the clarification order can be appealed after arbitration has been completed. However, if the arbitrators determine that the franchise agreement is not invalid, the arbitration clause mandates that all further litigation on the arbitration award be conducted in a California federal court. Thus, any proceeding for entry of judgment on the arbitration award would be filed in a California federal court and not within the court action in Civil No. 99-0674 and any appeal from the judgment would be filed in a federal appellate court and not in the Hawai'i appellate courts.

Hence, the clarification order would not be reviewable by a federal appellate court in an appeal from a federal court judgment on the arbitration award. The clarification order would be reviewable on appeal from a judgment on the arbitration award only if the parties file, in Civil No. 99-0674, a motion to confirm, modify or vacate the arbitration award pursuant to HRS chapter 658.

It appears, however, that chapter 658 contemplates circuit court review of arbitration awards issued within the

Hawai'i judicial circuits and does not authorize the circuit courts to review and enter judgment on arbitration awards issued in a California arbitration. Thus, it seems that the April 30, 2001 order is effectively unreviewable on appeal from a final judgment on the arbitration award and satisfies the third requirement. Because the clarification order fulfills all the requirements of the collateral order doctrine, this court has jurisdiction to consider the appeal of the clarification order as a final order under HRS § 641-1(a).

XIV.

Defendant's second and third arguments[23] on appeal are that the court improperly found that the district court had no subject matter jurisdiction over the court's proceedings and improperly vacated the Louisiana arbitration award. In support of these arguments, Defendant contends (1) confirmation of the Louisiana arbitration award was contested by Plaintiffs before the district court, but such award was confirmed by the district court and is now a federal judgment that has yet to be overturned by Plaintiffs, (2) the relitigation exception to the Anti-Injunction Act[24] permits the federal district court "to prevent

[23] Inasmuch as resolution of these issues are dispositive of this appeal, we do not reach Defendant's first and fourth arguments to the effect that the court improperly ordered (1) all Defendant's claims into arbitration in California and (2) enjoined Defendant from taking further action to enforce the Louisiana arbitration award.

[24] Inasmuch as this appeal is resolved by application of this jurisdiction's claim preclusion laws, see discussion infra, Defendant's arguments regarding the relitigation exception of the Anti-Injunction Act are not dispositive. However, the relitigation exception and its rationale is instructive in explaining the district court's granting of Defendant's application for a temporary restraining order of the March 2001 Plaintiff's motion for clarification before the court.

(continued...)

state litigation of an issue that was previously presented to and decided by a federal court," and (3) the Federal Arbitration Act applies and "there has been a pre-emption of state law procedures . . . and the Hawai'i state court lacks a jurisdictional basis to

[24](...continued)

"The Anti-Injunction Act generally prohibits the federal courts from interfering with proceedings in state courts." Choo v. Exxon Corp., 486 U.S. 140, 145 (1988). The Anti-Injunction Act provides, in pertinent part, that "[a] court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283 (emphases added).

Federal courts have recognized the third exception, "necessary . . . to protect or effectuate [federal court] judgments," id., as the relitigation exception. See, e.g., Flanagan v. Arnaiz, 143 F.3d 540, 546 (9th Cir. 1998); Western Sys., Inc. v. Ulloa, 958 F.2d 864, 868 (9th Cir. 1992); and Amwest Mortgage Corp. v. Grady, 925 F.2d 1162, 1164 (9th Cir. 1991). This exception "allows federal courts to . . . protect the res judicata effect of their judgments and prevent the harassment of successful federal litigants through repetitious state litigation." Amwest Mortgage Corp., 925 F.2d at 1164 (emphasis added) (quotation marks omitted). See also Western Sys., 958 F.2d at 870-71 ("[T]he relitigation exception is founded in the well-recognized concepts of res judicata and collateral estoppel. . . . If the effects of a judgment are to be enforced by injunction, claim preclusion is often as good a candidate as is issue preclusion." (Quotation marks and citations omitted.)).

As previously mentioned, on March 2, 2001, after considering Defendant's February 23, 2001 application for a temporary restraining order and Plaintiffs' opposition to this application, the district court found that the motion for clarification before the court "clearly ask[s] the court to find that the Louisiana award, in which this [c]ourt's affirmation was based, is vacated and void" and that "the state court motion could present an actual conflict" with the district court's August 15, 2000 confirmation of the arbitration award. Thus, pursuant to the relitigation exception -- "to protect its judgment" confirming the Louisiana award -- the district court in this case properly exercised its right to enjoin the state court from ruling on the motion for clarification.

Plaintiffs argue that "[t]he June 27, 2000 order was entered almost two months before the [f]ederal [j]udgment was entered on August 15, 2000" and that as of June 27, 2000, "there was no Louisiana [a]rbitration to reduce to a judgment." Presumably, this argument is made in hindsight following the court's April 30, 2001 clarification order which vacated the Louisiana arbitration as of June 27, 2000. However, Plaintiffs' argument is flawed, because when the district court enjoined the court from acting on the motion for clarification on March 2, 2001, the court's June 27, 2000 order was silent as to the status of the Louisiana arbitration award. Relying on the pleadings before it and the procedural history until March 2, 2001, the federal district court properly considered the possible effect of the court's ruling on the motion for clarification and exercised its power to enjoin the court.

apply Hawai'i state law to this dispute."[25]

Plaintiffs argue that (1) Defendant "misstates" the chronology of events leading to the issuance of the Federal Judgment, (2) the Anti-Injunction Act relitigation exception is not applicable, (3) the Anti-Arbitration Act is not relevant, and (4) the Rooker-Feldman doctrine precludes the district court from interfering with the court's actions.

XV.

The procedural history in this case is complex, but the law of this jurisdiction is clear. "Claim preclusion[26] . . .

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[25] Defendant refers to the Federal Arbitration Act and section 2 of the Act as a basis for challenging the court's clarification order, but fails to identify the specific state law procedures that are pre-empted by the Act and how this Act pre-empts those procedures. Defendant also does not elaborate on how the Act strips Hawai'i courts of jurisdiction to apply Hawai'i state law in this dispute. Pursuant to Hawai'i Rules of Appellate Procedure Rule 28(b)(7), this court may "disregard [a] particular contention" if the appellant "makes no discernible argument in support of that position." Thus, we do not address Defendant's contention that the Federal Arbitration Act is applicable to the case at bar.

[26] In contrast to claim preclusion, the Hawai'i test for issue preclusion is as follows:

> Issue preclusion "applies to a subsequent suit between the parties or their privies on a different cause of action and prevents the parties or their privies from relitigating any issue that was actually litigated and finally decided in the earlier action."

Bremer v. Weeks, 104 Hawai'i 43, 54, 85 P.3d 150, 161 (2004) (quoting Dorrance v. Lee, 90 Hawai'i 143, 148, 976 P.2d 904, 910 (1999) (emphases in original)). The party asserting issue preclusion must establish that:

> (1) the issue decided in the prior adjudication is identical to the one presented in the action in question; (2) there is a final judgment on the merits; (3) the issue decided in the prior adjudication was essential to the final judgment; and (4) the party against whom [issue preclusion] is asserted was a party or in privity with a party to the prior adjudication.

Id. (quoting Dorrance, 90 Hawai'i at 149, 976 P.2d at 911). "As to the fourth requirement, it is not necessary that the party asserting issue preclusion in the second suit was a party in the first suit." Id. (citing Morneau v. Stark Enters., Ltd., 56 Haw. 420, 425, 539 P.2d 472, 476 (1975)).

'prohibits a party from relitigating a previously adjudicated cause of action.'" Bremer v. Weeks, 104 Hawai'i 43, 53, 85 P.3d 150, 160 (2004) (quoting Dorrance v. Lee, 90 Hawai'i 143, 148, 976 P.2d 904, 909 (1999)). In general,

> [t]he judgment of a court of competent jurisdiction is a bar to a new action in any court between the same parties or their privies concerning the same subject matter, and precludes the relitigation, not only of the issues which were actually litigated in the first action, but also of all grounds of claim and defense which might have been properly litigated in the first action but were not litigated or decided.

Foytik v. Chandler, 88 Hawai'i 307, 314, 966 P.2d 619, 626 (1998) (quoting Morneau v. Stark Enters., Ltd., 56 Haw. 420, 422-23, 539 P.2d 472, 474-75 (1975)). "The party asserting claim preclusion has the burden of establishing that (1) there was a final judgment on the merits, (2) both parties are the same or in privity with the parties in the original suit, and (3) the claim decided in the original suit is identical with the one presented in the action in question." Bremer, 104 Hawai'i at 54, 85 P.3d at 161.

The policies underlying claim preclusion are "well-defined." Exotics Hawai'i-Kona, Inc. v. E.I. DuPont De Nemours & Co., 104 Hawai'i 358, 365, 90 P.3d 250, 257 (2004).

> The public interest staunchly permits every litigant to have an opportunity to try his case on the merits; but it also requires that he be limited to one such opportunity. Furthermore, public reliance upon judicial pronouncements requires that what has been finally determined by competent tribunals shall be accepted as undeniable legal truth. Its legal efficacy is not to be undermined. Also, these doctrines tend to eliminate vexation and expense to the parties, wasted use of judicial machinery and the possibility of inconsistent results.

Id. (emphasis added) (quoting Ellis v. Crockett, 51 Haw. 45, 56, 451 P.2d 814, 822 (1969)). The goals of claim preclusion are to prevent inconsistent results, prevent a multiplicity of suits, and promote finality and judicial economy. Id.

In the instant case, Plaintiffs are precluded from challenging the district court's confirmation of the Louisiana arbitration award through their motion for clarification of the June 27, 2000 order. The federal district court issued its final judgment confirming the Louisiana arbitration award on August 14, 2000. That judgment encompassed the arbitrator's decision that Plaintiffs "breached their franchise agreement." Thus, the August 14, 2000 final judgment of the federal district court constituted a "final judgment on the merits" as to that issue in satisfaction of the first prong of the claim preclusion analysis. Bremer, 88 Hawai'i at 54, 85 P.3d at 161.

The second prong of the claim preclusion test requires that both parties in the instant action be "the same or in privity with the parties in the original suit." Id. This element is easily met inasmuch as Plaintiffs and Defendant in this action were also "the same" parties in the district court confirmation action, i.e., Respondents and Applicant, respectively.

Finally, we must determine whether "the claim decided in the original suit is identical with the one presented in the action in question." Id. The arbitrator concluded, inter alia, that Plaintiffs "breached their franchise agreement" and that the "franchise agreement remains in force and effect and has not been

terminated." The district court confirmed the Louisiana arbitration award, entering final judgment in favor of Defendant for the "sum of $88,117.99, inclusive of sums awarded by the arbitrator, pre-judgment interest, attorney's fees and costs."

In their motion for clarification, Plaintiffs sought an order vacating the Louisiana arbitration award. The claim adjudicated by the district court's confirmation order, i.e., the validity of the Louisiana arbitration award, was "identical" to the claim before the state court on the motion for clarification. As the district court observed, "the state court motion could present an actual conflict" with its confirmation order. The validity of the Louisiana arbitration award had been decided by "a court of competent jurisdiction," i.e. the district court and that court's final judgment acted as "a bar" to Plaintiffs' action to invalidate the award in our state courts.[27] Id.

We note that Plaintiffs have had ample "opportunity to try [their] case on the merits[.]" Exotics Hawai'i-Kona, Inc., 104 Hawai'i at 365, 90 P.3d at 257. They had the opportunity to

[27] Defendant appears willing to arbitrate the remaining claims in Plaintiffs' amended complaint. At the hearing on the motion for clarification, counsel for Defendant stated that "[w]e are more than willing and ready to proceed with arbitration on [Plaintiffs'] complaint, amended complaint claims, in California[,]" but that "we have already proven our claims, at least up to the date of the arbitration in Louisiana." Additionally, in its opening brief before this court, Defendant states,

> [Defendant's] claims were previously litigated in the Louisiana AAA arbitration. Moreover, the only claims that were then existing at the time of the court's Order of June 27, 2000 were [Plaintiffs'] claims in their Amended Complaint, as no answer, nor counterclaims or any other type of claims had been filed by [Defendant] (in response to [Plaintiffs'] Amended Complaint) at that time.

defend their position before the Louisiana arbitrator, but declined to do so. They moved for a TRO and a preliminary injunction before the court, but were unsuccessful. They also defended against confirmation of the Louisiana arbitration award before the federal district court in California and apparently withdrew a subsequent appeal to the Ninth Circuit for unknown reasons. Precluding Plaintiffs from re-litigating the breach of franchise agreement claim furthers the policies underlying the doctrine of claim preclusion. By so holding, inconsistent results between the state and federal courts are prevented, the likelihood of additional lawsuits between Plaintiffs and Defendant are offset, and the interests in finality in judgments and judicial economy are satisfied.

XVI.

Accordingly, we vacate the April 30, 2001 clarification order of the court and remand to the court for disposition consistent with this opinion. We note that no party has appealed from the June 27, 2000 order that stated that (1) "[a]ll of Plaintiffs' claims and allegations contained in Plaintiffs' Amended Complaint . . . and all Defendant's defenses to said Amended Complaint along with any and all of Defendant's claims and/or counterclaims against Plaintiffs . . . shall be submitted to binding arbitration in accordance with the . . . franchise agreement," and (2) "binding arbitration shall be pursuant to the Commercial Arbitration Rules of the [AAA] at its office located nearest to Lake Arrowhead, California." As observed earlier, see supra note 27, Defendant agreed with the court order to

arbitration in California, insofar as the order would pertain to the remaining claims in Plaintiff's amended complaint.[28]

DATED: Honolulu, Hawai'i, March 14, 2005.

On the briefs:

Ray P. Wimberly (Rush Moore Craven Sutton Morry & Beh) for defendant-appellant.

Douglas J. Sameshima for plaintiffs-appellees.

[28] In light of this agreement, the parties would have to move to modify any federal district court orders affecting the arbitration proceeding in California that was ordered by the court.