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STATE OF HAWAII

*** NOT FOR PUBLICATION ***

NO. 24603

IN THE SUPREME COURT OF THE STATE OF HAWAII

GRAY QUARTER HORSE, LLC, Plaintiff-Appellant,

vs.

RON C. WATSON, BRUCE COLCLASURE, SKIP SCHUMAN, Defendants-Appellees,

and

DOES 1-10, Defendants.
(CIV. NO. 00-1-0098)

RON C. WATSON, Lienor-Appellee,

vs.

RALPH GRAY, Respondent-Appellant.
(S.P. NO. 99-0656)

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P. NO. 99-0656 AND CIV. NO. 00-1-0098)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, JJ., and Circuit Judge Chang, in place of Duffy, J., recused.)

The respondent-appellant Ralph Gray and the plaintiff-appellant Gray Quarter Horse, LLC (GQH) [collectively, hereinafter, "the Appellants"] appeal from the September 12, 2001 order of the circuit court of the first circuit, the Honorable Sabrina S. McKenna presiding, granting the defendant-appellee Skip Schuman's April 16, 2001 motion for confirmation of the March 14, 2001 final award by the arbitrator [hereinafter, "the award"], retired circuit court judge Patrick K.S.L. Yim [hereinafter, "the arbitrator"], and for entry of judgment. On

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appeal, the Appellants contend that the circuit court erred in failing to modify, correct, or vacate the award pursuant to Hawai'i Revised Statutes (HRS) §§ 658-9(3) (1993), 658-9(4) (1993), and 658-10(2) (1993), insofar as: (1) the arbitrator rendered a decision against Gray without having in personam jurisdiction over Gray; (2) the award taxed Gray with attorneys' fees, in contravention of HRS §§ 607-14 (Supp. 1997) and 607-14.5 (Supp. 1999); (3) the arbitrator awarded a lien that included amounts not permitted by HRS § 507-1 (1993); (4) the award permitted a private lien sale without providing for the return of surplus proceeds to the Appellants, in contravention of HRS §§ 507-2 (1993) and 507-3 (1993); and (5) the arbitrator "secretly solicit[ed] factual information directly from . . . [the defendant-appellee/lienor-appellee Ron] Watson's former attorneys, ex parte, after the passing of the [a]rbitrator's deadline for submission of evidence regarding attorneys' fees and costs," and "render[ed] a decision that violates and ignores [the arbitrator's] legal and contractual requirements to remain neutral, unbiased and to provide arbitration services on an impartial basis."

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we affirm the September 12, 2001 order of the circuit court for the following reasons:

(1) Inasmuch as (a) the documents Gray submitted throughout the arbitration and litigation processes manifested no meaningful distinction between Gray and GQH, and (b) the record

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contains no evidence that the Appellants intended an assignment from Gray to GQH, the circuit court did not clearly err in finding that Gray had consented to arbitration in his individual capacity.

(2) Gray consented to arbitration in his individual capacity, and therefore he consented to whatever factual findings and legal conclusions the arbitrator rendered. Because the record shows none of the rare circumstances enumerated in HRS §§ 658A-23(a) and 658A-24(a) (Supp. 2001), we will not disturb the award of the arbitrator.

(3) Ex parte communications, standing alone, do not give rise to a presumption of partiality. The record reflects no prejudice to the Appellants caused by the delay in the submission of invoices. The arbitrator neither "conduct[ed] the hearing contrary to [HRS §] 658A-15 [(Supp. 2001)] so as to prejudice substantially the rights of" the Appellants nor "exceeded [his] powers," HRS §§ 658A-23(a)(3) and -23(a)(4).

(4) The arbitrator did not evince intentional and manifest "disregard" of the law, see Tatibouet v. Ellsworth, 99 Hawai'i 226, 239, 54 P.3d 397, 410 (2002), and in light of the applicable and highly deferential standard of review, and public policy encouraging arbitration, we will not disturb the award of a lien and an optional lien sale. Therefore,

IT IS HEREBY ORDERED that the order from which the appeal is taken is affirmed.

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DATED: Honolulu, Hawai'i, September 30, 2005.

On the briefs:

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Gray Quarter Horse, LLC,
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