OPINION BY ACOBA, J.,
CONCURRING IN PART AND DISSENTING IN PART

As set forth by the majority, counsel for Defendant/Counterclaimant-Appellant Michael J. Szymanski "[i]n response to the court's inquiry, . . . expressly stated that Szymanski had not made a demand for arbitration[,]" majority opinion at 11, counsel for Plaintiff-Intervenor-Appellee Joseph W. Hartley "countered that under the new arbitration act, Szymanski was required to make a demand for arbitration before requesting that the court compel arbitration[,]" majority opinion at 11, but "[d]espite the circuit court's . . . willingness to reconsider the stay issue if a demand for arbitration was filed, neither Syzmanski nor Hartley ever made a demand for arbitration at any time[,]" majority opinion at 22 (emphases added). In light of these facts, I do not believe questions of "(1) the applicability of [Hawai'i Revised Statutes (HRS)] § 658A-9 (entitled 'Initiation of arbitration') [and] (2) the relationship between this statute and HRS § 658A-7 (entitled 'Motion to compel or stay arbitration')[,]" majority opinion at 19, were properly preserved for appeal. On that basis I am in agreement with the affirmance of the December 27, 2000 order of the second circuit court denying the motion to stay proceedings pending arbitration filed by Szymanski.

But because the majority proceeds to assume, "arguendo, that Syzmanski's arguments are not moot," majority opinion at 19

(emphasis in original), and to decide the aforesaid questions, thus presuming that arbitration was demanded, I address the majority's position.

I must respectfully disagree as to the majority's conclusion regarding enforcement of the arbitration clause. In my view, since the controversy was already pending in court, the court could have stayed the trial and ordered arbitration to proceed under specific provisions of HRS chapter 658A. Authority for doing so is provided under HRS §§ 658A-7(e) ("If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section shall be made in that court." (Emphasis added.)); 658A-7(f) ("If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section."); and 658A-7(g) ("If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim."). By its terms, HRS § 658A-7(e) governs once the controversy is pending in court. Applying HRS § 658A-7(3), then, would not "contradict[] the legislature's clear intentions[]" but, rather, implement them. Majority opinion at 22 (emphasis added).

The situation here is one where the parties have already declined to follow the pre-litigation step of filing a notice initiating arbitration. Hence, I do not believe that once suit has been filed, that as a prerequisite to a motion to compel arbitration and stay proceedings under HRS § 658A-7, a person is required to initiate the procedure under HRS § 658A-9(a) (stating that an arbitration proceeding is initiated "by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action[]" and that "[t]he notice shall describe the nature of the controversy and the remedy sought"). Taken on its face, HRS § 658A-9(a) would appear to apply where a claim has not been filed in court as distinguished from the situation, as described in HRS § 658A-7(e), where one has been filed, i.e., "if a proceeding involving a claim referable to arbitration . . . is pending in court," then a motion "shall be made." (Emphases added.)

In my view, once a motion to compel arbitration is filed, the court should act promptly to decide the motion and to enforce the agreement -- a course consonant with "the policy reasons behind encouraging arbitration." Majority opinion at 23. A motion in court to stay litigation pending arbitration should be sufficient to notify other parties that the arbitration clause

has been invoked, of "the nature of the controversy[,] and of the remedy sought." HRS § 658A-9(a). To require the additional formalities under HRS § 658A-9(a) appears duplicative and nongermane, once the parties are engaged in court proceedings.

Consequently, I must respectfully disagree that enforcing a motion to stay pending arbitration without the prior notice described in HRS § 658A-9(a) would clash with "the strong public policy supporting Hawaii's arbitration statutes[,]" as the majority argues. Majority opinion at 22. In this case, Szymanski confirmed to the court that "Szymanski did not make [a] demand [for arbitration] because Hartley defaulted on the arbitration provisions of the Szymanski-Hartley contract when he intervened in the Szymanski-Okuno trial instead of initiating arbitration." Majority opinion at 11. As this case illustrates, parties often file suits in knowing derogation of an arbitration clause. In such a situation, a court's prompt action upon a motion to compel arbitration rather than requiring the additional pre-motion step of first filing a notice would, in my view, "encourage arbitration . . . and thereby avoid[] [further] litigation." Majority opinion at 22 (emphasis, internal quotation marks, and citations omitted). Such a course would be consistent with and supportive of the objective of "reduc[ing] the growing number of cases that crowd our courts each year." Lee v. Heftel, 81 Hawai'i 1, 4, 911 P.2d 721, 724 (1996).

Because the matter would thus be stayed, I would not reach the question of the appealability of the order granting separate trials.