

CONCURRING OPINION BY ACOBA, J.

I concur in the result. The first circuit court (the court) ruled on the motion for directed verdict by Plaintiff/Counterclaim Defendant-Appellee Aluminum Shake Roofing, Inc. (ASR) with respect to Hawai'i Revised Statutes (HRS) chapter 481C after all the evidence had been presented to the jury. Its ruling was based on a plain reading of the statute and the evidence adduced in the case. As it stated:

The issue is whether the transaction between the counter[]claim plaintiff[s Roy K. and Frances N. Hirayasu (the Hirayasus)] and counter[]claim defendant [ASR] constituted a door to door sale as defined by HRS [c]hapter 481C.

When construing a statute, the court is bound by the plain, clear and unambiguous language of the statute, unless literal construction would produce an absurd, unjust result, and would be clearly inconsistent with the purpose and policy of the statute.

Thereafter the court concluded that a plain reading of the statute indicated the sale must be solicited in person by the seller.

According to 481C-1(1)(A), "door to door sale" means: "A sale of goods or services solicited in person and signed by the buyer at a place other than the seller's business address shown on the contract." Therefore, the plain language of this subsection requires the sale to be "solicited in person" by the seller in order for it to fall within the definition of door to door sale.

(Emphasis added.) The court recounted there was a failure of proof as to the seller's solicitation under the facts of the case:

In this case, it is undisputed that [Defendant/Counterclaimant-Appellant Roy K. Hirayasu (Mr. Hirayasu)] approached [ASR] at a "home show" in February 2000 and expressed his specific interest in a copper roof. It is further undisputed that Mr. Hirayasu initiated the second contact with ASR in order to discuss specifically the possible installation of a copper roof on his home. It is

at Mr. Hirayasu's request that ASR visited the Hirayasu's residence and inspect[ed] the premises in order to obtain an estimate for the job.

Based on the facts, the court determined the statute did not apply because ASR did not solicit the sale.

Therefore, the court finds that, on this basis, the underlying transaction between the Hirayasus and ASR does not fall within the purview of HRS [c]hapter 481C because ASR did not solicit the sale as required by this statute.

(Emphasis added.)

When construing a statute, "the fundamental starting point is the language of the statute itself[and] where the statutory language is plain and unambiguous, [the court's] sole duty is to give effect to its plain and obvious meaning." State v. Kalama, 94 Hawai'i 60, 64, 8 P.3d 1224, 1228 (2000) (internal quotation marks and citations omitted). Under HRS § 481C-1(5), "[s]ale' means and includes any sale . . . of goods to a buyer pursuant to a contract." (Emphasis added.) Under HRS § 481C-1(1)(A), the term "sale" is employed in the definition of door-to-door sale. As mentioned before, a "[d]oor-to-door sale' means (i) a sale of goods or services solicited in person[.]" "Solicitation" is not defined in the statute. When a term is not defined in a statute, we may resort to a dictionary to determine its meaning. Leslie v. Bd. of Appeals of County of Hawai'i, 109 Hawai'i 384, 393, 126 P.3d 1071, 1080 (2006) (noting that "[w]e may resort to legal or other well accepted dictionaries as one way to determine the ordinary meaning of certain terms not statutorily defined") (internal quotation marks and citation omitted). "Solicitation" is defined as "asking; enticing; urgent

request." Black's Law Dictionary 1392 (6th ed. 1990). Because "sale" means a sale to a buyer, the solicitation contemplated in HRS chapter 481C must be one made by the seller. Hence, under the facts recounted I believe the court was correct in determining that the seller did not solicit the sale, and, thus, it was incumbent upon the Hirayasus to overcome the threshold requirement in HRS chapter 481C of a seller's solicitation.

Therefore, I do not agree with the majority that "the [court] erred to the extent that it relied on the fact that the buyer initiated the transaction to determine that no solicitation had occurred." Majority opinion at 13. Rather, this is the gravamen of an initial determination under HRS chapter 481C. That being the case, there is no need for the majority to go beyond the foregoing analysis. The court did note as an alternative basis, relying on Cooper v. Crow, 574 So. 2d 438 (La. Ct. App. 1991), that chapter 481C did not apply if the seller was not engaged in going door to door to make sales. Its decision however, in the main and in the first instance, rested on the application of HRS § 481C-1(1)(A), (4) and (5), and on that ground I believe the court's ruling must be affirmed.

