

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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LISA COURBAT and STEVEN COURBAT, Plaintiffs-Appellants,

vs.

DAHANA RANCH, Defendant-Appellee,

and

JOHN DOES 1-10, JANE DOES 1-10, DOE ASSOCIATIONS 1-10, DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10, DOE ENTITIES 1-10, and DOE GOVERNMENTAL UNITS 1-5, Defendants.

NO. 25151

APPEAL FROM THE THIRD CIRCUIT COURT  
(Civ. No. 01-1-0049)

AUGUST 3, 2006

MOTION FOR RECONSIDERATION

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

2006 AUG -3 AM 9:37

FILED

MOON, C.J., LEVINSON, NAKAYAMA, ACOBA AND DUFFY, JJ.

Upon consideration of the motion for reconsideration filed by the plaintiffs-appellants Lisa and Steven Courbat on July 20, 2006, requesting that this court review its published opinion filed on July 10, 2006,

IT IS HEREBY ORDERED that the motion is granted in part and that the opinion filed July 10, 2006 be amended as follows (deleted material is bracketed and new material is in bold):

(1) **The last sentence on page 11:** The Courbats maintain, inter alia, that the practice of withholding the waiver had "the capacity or tendency to mislead" customers, thereby satisfying this court's test for a deceptive trade practice as articulated in State ex rel. Bronster v. United States Steel Corp., 82 Hawai'i 32, 50, 919 P.2d 294, 312 (1996).

(2) **The heading for section III.B on page 18:**

B. The Consequences, On Remand, Of The Determination By The Trier Of Fact As To Whether Nondisclosure Of The Waiver Requirement Was [A] **An Unfair Or Deceptive Trade Practice**

(3) **The heading for section III.B.2 on page 20:**

2. If The Trier Of Fact Determines That The Nondisclosure Of The Waiver Was Not [A] **An Unfair Or Deceptive Trade Practice, Then The Courbats Validly Waived Their Negligence Claims.**

(4) **The last sentence of section III.B.2.a on page 25:**

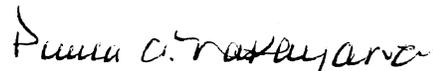
Accordingly, we hold that, if the trier of fact determines that the nondisclosure of the waiver was not [a] **an unfair or deceptive trade practice**, the Courbats' waiver was valid.

The motion for reconsideration is otherwise denied, without prejudice to filing a request for fees and costs pursuant to HRAP Rule 39 (2006).

The Clerk of the Court is directed to provide a copy of this order to the parties and notify the publishing agencies of the changes. The Clerk of the Court is further instructed to distribute copies of this order of amendment to those who received the previously filed opinion.

On the motion:

Andrew S. Iwashita  
for the plaintiffs-appellants  
Lisa and Steven Courbat



STATEMENT OF NO POSITION

For the reasons stated in our dissenting opinion, we take no position on the motion for reconsideration of the published opinion filed on July 10, 2006.



Kenneth E. Duffin, Jr.