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NO. 28278

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

KOGA ENGINEERING & CONSTRUCTION, INC.,
Respondent & Petitioner/Plaintiff-Appellee

vs.

STATE OF HAWAI'I,
Petitioner & Respondent/Defendant-Appellant

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII
2009 AUG 12 AM 9:36
FILED

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CIV. NO. 01-1-3636-12(VSM))

ORDER ACCEPTING APPLICATION FOR WRIT OF CERTIORARI
AND REQUESTING FURTHER BRIEFING
(By: Acoba, J., for the court[1])

The July 8, 2008 applications for writ of certiorari filed by Petitioner & Respondent/Defendant-Appellant State of Hawai'i (the State) and Respondent & Petitioner/Plaintiff-Appellee Koga Engineering & Construction, Inc. (Koga) are accepted and will be scheduled for oral argument. The parties will be notified by the appellate clerk regarding scheduling.

IT IS FURTHER ORDERED that Koga shall file a supplemental brief addressing the issue of whether the procedure set forth in Hawai'i Revised Statutes § 103D-703 is mandatory, and thus determinative of jurisdiction in the circuit court of the first circuit (the court). Supplemental briefing on this issue is necessary because it has been raised for the first time by the State in its response to Koga's Application. The issue was not raised by either party before the court or the

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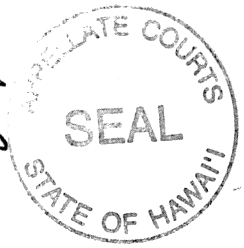
[1] Considered by: Moon, C.J., Nakayama, Acoba, and Duffy, JJ., and Circuit Judge Kim, in place of Recktenwald, J., recused.

Intermediate Court of Appeals (ICA), nor was it raised by the ICA. The supplemental brief shall not exceed 10 pages in length and shall be filed by August 27, 2009.

DATED: Honolulu, Hawai'i, August 12, 2009.

FOR THE COURT:

Associate Justice



Dorothy Sellers, Solicitor General, and Rebecca A. Copeland, Deputy Solicitor General (on the Application) and Michael Q.Y. Lau, Deputy Attorney General (on the Response) for Petitioner & Respondent/Defendant-Appellant State of Hawai'i.

Bert T. Kobayashi Jr.
Christopher T. Kobayashi
and Maria Y. Wang
for Respondent & Petitioner/
Plaintiff-Appellee Koga
Engineering & Construction,
Inc.