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Supreme Court
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SCWC-12-0000535

IN THE SUPREME COURT OF THE STATE OF HAWAII

MATHEW S. MICKELSON,
Petitioner/Plaintiff-Appellee,

vs.

UNITED SERVICES AUTOMOBILE ASSOCIATION,
Respondent/Defendant-Appellant.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-12-0000535; CIV. NO. 99-1856-05)

ORDER ACCEPTING APPLICATION FOR WRIT OF CERTIORARI, VACATING IN
PART INTERMEDIATE COURT OF APPEALS' JUDGMENT ON APPEAL AND
REMANDING TO INTERMEDIATE COURT OF APPEALS
(By: Recktenwald, C.J., Nakayama, Acoba, McKenna, and Pollack, JJ.)

On August 20, 2013, Petitioner/Plaintiff-Appellee Mathew S. Mickelson (Mickelson) filed an application for a writ of certiorari seeking review of the June 21, 2013 judgment of the Intermediate Court of Appeals (ICA), including the ICA's June 20, 2013 Order Approving Request for Appellate Costs. Mickelson raises the following points of error: (1) the ICA erred in deciding attorneys' fees were not awardable under HRS § 431:10-242 for arbitration after a lawsuit was required to compel the insurer's participation in the arbitration; and (2) the ICA erred by awarding

costs pursuant to Rule 39 of the Hawai'i Rules of Appellate Procedure where no prevailing party was established.

On June 28, 2013, after the ICA filed its judgment, we issued an opinion in Hawaiian Ass'n of Seventh-Day Adventists v. Wong, 130 Hawai'i 36, 305 P.3d 452 (2013), which is applicable to the second issue raised by Mickelson. In light of the Seventh-Day Adventists opinion, we conclude the ICA should further consider the award of appellate costs in this matter. Therefore,

IT IS HEREBY ORDERED that the application for a writ of certiorari is accepted.

IT IS FURTHER ORDERED that the June 21, 2013 judgment as it relates to the Order Approving Request for Appellate Costs is vacated in part, and this case is remanded to the ICA to reconsider its Order Approving Request for Appellate Costs in light of the opinion issued in Seventh-Day Adventists, supra. The judgment is affirmed in all other respects.

DATED: Honolulu, Hawai'i, October 3, 2013.

Gregory W. Kugle and
Tred R. Eyerly,
for petitioner

Kevin P.H. Sumida and
Ward F.N. Fujimoto,
for respondent

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack



