IN THE SUPREME COURT OF GUAM

ROSIE VILLAGOMEZ-PALISSON AND MARIANAS PHYSICIANS GROUP,
Petitioners,

v.

SUPERIOR COURT,
Respondent.

CARMEN ARCEO LAGUANA AND ROMY PETER LAGUANA,
Real Parties in Interest.

OPINION

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Supreme Court Case No.: WRP03-004
Superior Court Case No.: CV0557-02

Original Proceeding in the Supreme Court of Guam
Argued and submitted on January 28, 2004
Hagåtña, Guam

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BEFORE: FRANCES TYDINGCO-GATEWOOD, Chief Justice (Acting)[1]; JANET HEALY WEEKS, Justice *Pro Tempore*; RICHARD H. BENSON, Justice *Pro Tempore*.

WEEKS, J.:

[1] In this matter, the Petitioners Rosie Villagomez-Palisson and the Marianas Physician Group (collectively "MPG") challenge the Superior Court's decision declaring the Medical Malpractice Mandatory Arbitration Act ("Arbitration Act" or "Act"), 10 GCA §§ 10100 *et seq*., inorganic as violating the separation of powers doctrine. MPG argues that the Act is valid, and further argues that under the Act, claims for medical malpractice must be submitted to arbitration before a claimant may commence a court action. MPG contends that because the Real Parties in Interest Carmen and Romy Laguana ("Laguanas") did not proceed through arbitration as required under the Arbitration Act, the lower court is exceeding its jurisdiction in entertaining the Laguanas' action for medical malpractice. We hold that the Arbitration Act does not offend the separation of powers doctrine embodied in the Organic Act. We order that a peremptory writ of mandate issue directing the Superior Court to vacate its decision declaring the Act inorganic on that ground. The Laguanas also argue in this matter that the Arbitration Act is inorganic in that it violates their rights to a jury trial and free access to the courts, as well as their due process and equal protection rights. We decline to rule on these matters in the first instance, and direct the Superior Court to address these issues in the underlying proceeding.

I.

[2] On April 16, 2002, the Laguanas filed a complaint for medical malpractice in the Superior Court of Guam against MPG. MPG filed a motion to dismiss the case for lack of subject matter jurisdiction and failure to state a claim under Guam Rules of Civil Procedure 12(b)(1) and 12(b)(6), respectively. MPG requested, in the alternative, for a stay of proceedings pending arbitration.

[1] Chief Justice F. Philip Carbullido recused himself from this matter. As next senior member of the panel, Associate Justice Frances Tydingco-Gatewood serves as Acting Chief Justice in this matter.

Petition, Exhibit B, p. 2 (Decision and Order, April 4, 2003). In the motion, MPG argued that the lower court lacked jurisdiction over the case because under the Arbitration Act, the Laguanas were required to proceed through arbitration prior to bringing a court action. *See* Petition, Exhibit B, p. 2 (Decision and Order, April 4, 2003). In a Decision and Order filed on April 4, 2003, the lower court denied the motion to dismiss after holding that the Arbitration Act was inorganic because it violated the separation of powers doctrine. Petition, Exhibit B, pp. 30-31 (Decision and Order, April 4, 2003). MPG filed a motion for reconsideration of the April 4, 2003 Decision and Order, which the trial court denied in a Decision and Order filed on May 16, 2003.

[3] MPG filed the instant Petition for Writ of Prohibition in this court on June 11, 2003. MPG seeks a peremptory writ ordering the lower court to cease and desist from continuing proceedings against them and to dismiss the underlying case and any derivative arbitration proceedings with prejudice. Petition, pp. 6-7. In the Petition, MPG argues that the Arbitration Act is valid and that under the Act, the Laguanas are required to first submit its malpractice claim for arbitration. MPG further argues that because the Laguanas' claim exceeded the statutory limitations period for bringing the claim in arbitration, the Laguanas are barred by law from pursuing their malpractice claim altogether.

[4] On September 4, 2003, this court issued an Alternative Writ of Prohibition, directing the Respondent Superior Court to temporarily cease and desist from conducting further proceedings in this matter. We then heard arguments and, for the reasons set forth below, now order that the Superior Court vacate its decision declaring the Arbitration Act inorganic.

II.

[5] We have original jurisdiction over a petition for a writ of prohibition or mandamus under Title 7 GCA § 3107(b) (1994). *See also People v. Laxamana*, 2001 Guam 26, ¶ 5.

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III.

A. Standard of Review and the Lower Court's Decision.

[6] MPG specifically requests a writ of prohibition to prohibit the Superior Court from conducting further proceedings in the underlying matter. A writ of prohibition "arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person." Title 7 GCA § 31301 (1998). MPG also requests that this court issue a writ directing the Superior Court to dismiss the underlying proceedings and any derivative arbitration proceedings. By requesting that we compel the lower court to perform an affirmative act, this request implicates the remedy of mandamus. *See* Title 7 GCA § 31202 (1998); *see also State ex rel. Beirne v. Smith*, 591 S.E.2d 329, 332 (W. Va. 2003) (characterizing the request as one for mandamus because the petitioners sought to compel an affirmative act). A writ of mandamus "may be issued by any court, [except a commissioner's court or police court,] to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person." 7 GCA § 31202 (brackets in original).[2]

[7] MPG alleges that the Respondent Superior Court has no jurisdiction over the underlying proceeding because the Laguanas were required, under the Arbitration Act, to submit their claim to arbitration prior to bringing a court action. MPG argues that the Respondent erred in finding that the Arbitration Act was invalid under the Organic Act.

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[2] Although MPG filed a petition for writ of prohibition, we have the discretion to treat it as one seeking a writ of mandamus. *See State ex rel. Sandy v. Johnson*, 571 S.E.2d 333, 336 n.1 (W. Va. 2002) ("Although this case was brought and granted as a petition for a writ of prohibition, we choose to treat it as a writ of mandamus action."); *Kinder v. State*, 779 So. 2d 512, 514 (Fla. Dist. Ct. App. 2000) ("We treat the petition for writ of prohibition as a petition for writ of mandamus . . . ."); *see also State ex rel. Stewart v. Civil Service Comm'n of City of St. Louis*, 120 S.W.3d 279, 285 (Mo. Ct. App. 2003) ("As a general matter, a court has the discretion to treat a petition for a writ of mandamus as one for a writ of prohibition."); *State ex rel. Riley v. Rudloff*, 575 S.E.2d 377, 381-82 (W. Va. 2002) (treating a petition for a writ of habeas corpus and, or mandamus as a petition for writ of prohibition).

[8] Title 10 GCA § 10102 governs medical malpractice claims, and provides:

> Mandatory arbitration. Any claim that accrues or is being pursued in the territory of Guam, whether in tort, contract, or otherwise, shall be submitted to mandatory arbitration pursuant to the terms of this Chapter if it is a controversy between the patient, his relatives, his heirs-at-law or personal representative or any third party or other party, and the health professional or health care institution, or their employees or agents, and is based on malpractice, tort, contract, strict liability, or any other alleged violation of a legal duty incident to the acts of the health professional or health care institution, or incident to services rendered or to be rendered by the health professional or health care institution.

Title 10 GCA § 10102 (1994). Thus, under the Act, malpractice claimants are required to submit their claims to mandatory arbitration.

[9] If the Act survives Organic Act scrutiny, then pursuant to Title 10 GCA § 10102, the Laguanas would be required to first submit their claim to arbitration prior to bringing a court action. The lower court's decision that the Laguanas were not barred from asserting their medical malpractice claim in court without having to first submit to arbitration was grounded on its invalidation of the Arbitration Act.

[10] Essentially, we are called upon to review the lower court's decision regarding the organicity of the Arbitration Act. "The Organic Act serves the function of a constitution for Guam." *Haeuser v. Dep't of Law*, 97 F.3d 1152, 1156 (9th Cir.1996); *see also People v. Perez*, 1999 Guam 2, ¶ 15 ("Until Guam creates its own Constitution, the Organic Act of Guam is the equivalent of Guam's Constitution."). Thus, whether a law or statute violates the Organic Act is a question of law. *See Perez*, 1999 Guam 2 at ¶ 6 ("The constitutionality of a statute is a question of law reviewed *de novo*."). A determination of constitutionality must be made against the backdrop of the "general rule that legislative enactments are presumed to be constitutional." *In re Request of Governor Carl T. C. Gutierrez*, 2002 Guam 1, ¶ 41. "[H]e who alleges the unconstitutionality of an act bears the burden of proof . . . and the validity of acts is to be upheld if at all possible with all doubt resolved in favor of legality and unconstitutionality will be decreed only when no other reasonable alternative presents itself." *Id*. (brackets omitted).

[11] The lower court held that the Arbitration Act was void and therefore incapable of application because it violated the separation of powers doctrine. Specifically, the court identified two different aspects of the Act which violated the separation of powers doctrine. First, the court found that the Act prevents courts from performing their constitutional function of interpreting and applying the law in deciding the appropriate remedies in malpractice cases. On this point, the lower court emphasized that under the Act, courts are prevented from adjudicating legitimate malpractice claims because many litigants will lack the ability to first submit to arbitration due to the high initial costs of initiating arbitration. Second, the court found that the Act "impermissibly delegates judicial power to an entity other than the court to make a final and unreviewable adjudication of the parties[']rights." Petitioner's Excerpts of Record, p. 30 (Decision and Order, p. 24, April 4, 2003). With regard to this latter finding, the lower court relied on the fact that under the Arbitration Act, the arbitration panels consisted of non-judicial officers who were authorized to make judicial determinations. Further, the lower court found that unlike a quasi-judicial administrative body (such as the Civil Service Commission), whose decisions must be subject to judicial review to pass constitutional muster, there is no mechanism in the Arbitration Act which would permit meaningful review of the arbitrators' decisions. According to the lower court, the lack of meaningful review is evident because under the Act, a court is only permitted to review a decision in the limited cases where corruption or clerical errors are alleged. Further, the lower court found that the Act's provisions permitting a trial *de novo* do not permit meaningful review in light of the rigid fee-shifting provisions, in which the award of attorney's fees and costs is based on the unreviewable decision made by the arbitrators.[3]

[12] Finally, the lower court found that the Arbitration Act's severability provision could not be given effect because the remaining valid provisions of the Act could not be given effect without the

[3] Under the Act, a prevailing party is entitled to costs and attorney's fees incurred at trial. An appellant is the prevailing party if he increases (or in the case of an appealing doctor, decreases) the arbitrators' award by 40% or more. If the award is not so increased or decreased, the other party is the prevailing party. *See* Title 10 GCA §§ 10142, 10143 (1994).

severed portions. Accordingly, the lower court held that the Act was invalid and unenforceable.

[13] In this proceeding the Laguanas contend that the lower court was correct in finding the Arbitration Act to be invalid as a violation of the separation of powers doctrine. The Laguanas argue additionally that the Act violates the right of access to the courts, the right to a jury trial, and the equal protection and due process clauses. The Laguanas contend that because the Act is invalid, and because they filed their claims within the statute of limitations, the lower court properly has jurisdiction over the underlying action.

B. Whether the Arbitration Act violates the Separation of Powers Doctrine.

[14] This court has consistently held that the concept of separation of powers exists in Guam. *In re Request of Gutierrez*, 2002 Guam 1 at ¶ 32 ("[U]nder the Organic Act, the government of Guam is comprised of three separate but co-equal branches of government."); *Hamlet v. Charfauros*, 1999 Guam 18, ¶ 9; *Taisipic v. Marion*, 1996 Guam 9, ¶ 6. The applicability of the separation of powers doctrine is evident in the language of the Organic Act itself, which provides that "[t]he government of Guam shall consist of three branches, executive, legislative, and judicial . . . ." 48 U.S.C. § 1421a (1992); *see also Hamlet*, 1999 Guam 18 at ¶ 9 ("By its very language, therefore, the Organic Act requires application of the constitutional doctrine of separation of powers to government of Guam functions.") (citation omitted).

1. Scope of legislative and judicial power under the Organic Act.

[15] The Organic Act provides for both legislative and judicial powers. Under the Organic Act, the legislative power is vested in the "Legislature of Guam." 48 U.S.C. § 1423a. The Legislature's power "extend[s] to all rightful subjects of legislation not inconsistent with the provisions of . . . [the Organic Act] and the laws of the United States applicable to Guam." *Id*. Under the Organic Act, the judicial power is vested in "such local court or courts as may have been or shall hereafter be established by the laws of Guam . . . ." 48 U.S.C. § 1424(a). "[T]he essence of judicial power is the final authority to render and enforce a judgment or remedy." *Firelock Inc. v. Dist. Ct.*, 776 P.2d 1090, 1094 (Colo. 1989). Stated similarly, "the judicial power is the power to interpret and apply

the laws to actual controversies. Judicial power has also been defined as 'the power to hear and determine a cause and the rights of the parties to a controversy, and to render a binding judgment or decree based on present or past facts under existing laws.'" *Gleason v. Samaritan Home and Church Mut. Ins. Co.*, 926 P.2d 1349, 1359-60 (Kan. 1996) (citation omitted).

2. Whether the Arbitration Act improperly delegates the judicial power to a non-judicial body.

[16] The Laguanas contend that "the legislature has prevented the court from accomplishing its constitutional functions by delegating to a nonjudicial arbitration panel the power to make final and unreviewable determinations of the parties' rights and remedies." Responsive Brief of Real Parties in Interest, p. 23. We disagree.

[17] The issue before us is whether the provisions of the Arbitration Act impermissibly infringe upon the judicial power to adjudicate and decide malpractice claims. If the statute does not preclude judicial review or enforcement, the judicial power is not infringed. *See Linder v. Smith*, 629 P.2d 1187, 1194 (Mont. 1981); *Attorney Gen. v. Johnson*, 385 A.2d 57, 65 (Md. 1978), *appeal dismissed*, 439 U.S. 805, 99 S. Ct. 60 (1978), *disapproved on other grounds*, *Newell v. Richards*, 594 A.2d 1152, 1161 (Md. 1991); *Firelock Inc.*, 776 P.2d at 1094-95. We find that the provisions of the Arbitration Act do not impermissibly infringe upon the judicial power.

[18] In *Linder v. Smith*, 629 P.2d 1187, the plaintiffs challenged a state statute which required that a malpractice claimant first submit the claim to a special panel prior to going to court. Under the statute, the claimant was not bound by the panel's decision, and the panel's decision was inadmissible in any later court action. *Linder*, 629 P.2d at 1188-89. The plaintiff claimed, among other arguments, that the statute permitted an "unlawful delegation of judicial and legislative power and infringes on the doctrine of separation of powers." *Id*. at 1193. The appellate court disagreed. The court defined the judicial power as "the power of the court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision." *Id*. at 1194. The court further identified prior decisions "uph[olding] other administrative bodies against this [separation of powers] challenge, *where those bodies are unable to render enforceable*

judgments." *Id*. (emphasis added). The court found no separation of powers violation in its case because "the decision of the Montana panel is not enforceable, and unlike the panel decisions in most states, it is not even admissible at trial." *Id*.

[19] Similarly, in *Attorney General v. Johnson*, 385 A.2d 57 (Md. 1978), the claimants argued that the Maryland malpractice arbitration statute was unconstitutional because it required certain malpractice claimants to submit their claims to an arbitration panel for a determination of liability and damages prior to commencing a court action. *Id*. at 59. The claimants argued that the statute impermissibly "vests judicial power in an administrative agency contrary to the mandates of the Maryland constitution, which provides that the judicial power be vested in certain enumerated courts." *Id*. at 63. The Maryland Supreme Court disagreed, noting first that "the mere performance by a nonjudicial body of a function that would in another context be considered purely judicial e.g., the determination of facts and the application of judicial principles to those facts cannot alone suffice to support a conclusion that the separation of powers principle has been violated." *Id*. The court emphasized that "adjudicatory determinations by [administrative] agencies are not judgments or decrees, . . . [and] that such an agency ascertains questions of fact and applies the law to those facts in a particular case does not alone vest it with judicial power in the constitutional sense." *Id*. In determining the precise nature of the exercise of judicial power in the constitutional sense, the court "agree[d] with those courts which have said that the essence of judicial power is the final authority to render and enforce a judgment . . . ." *Id*. at 64. The court further clarified that "it is elementary that an entity does not exercise the sovereign power of the State constitutionally assigned to the judiciary if its decision is in no sense final, binding, or enforceable . . . ." *Id*. at 65. The court found that the malpractice statute did not improperly vest a non-judicial entity with judicial powers because under the statute, any party could reject the arbitration panel's decision and proceed to court. *Id*. Furthermore, "[e]ven if the parties accept the decision of the arbitrators, the panel which made it cannot enforce it." *Id*.; *see also Barrett*, 908 P.2d at 700 (rejecting a separation of powers challenge to a statute requiring that malpractice claims be submitted first to a screening panel whose

decision could be admitted as evidence at trial, and finding that the screening panel did not exercise judicial power because the panel's findings were not binding, and merely served as evidence at trial which could be completely rejected by the jury).

[20] Here, the Arbitration Act specifically provides that the arbitrators' decision may be confirmed by the Superior Court. Title 10 GCA § 10135 (1994). Though not explicit, this language in the statute logically requires confirmation by the court before the award may be enforced. The court must confirm the award upon request of the parties, however, the statute does provide the court with the authority to vacate, modify, or correct the award under certain circumstances. *See id.*; *see also* Title 10 GCA § 10136 (1994) (allowing the court to vacate the award where the award was procured by fraud or corruption, or the arbitrators exceeded their powers). Moreover, the Act provides for a trial *de novo*. Title 10 GCA § 10139 (1994). In light of these provisions of the Act, we hold that the judicial power to hear and adjudicate malpractice claims is neither delegated to another tribunal, nor stripped from the courts.

[21] The lower court analogized the present case with the Illinois case *Wright v. Cent. Du Page Hosp. Ass'n*, 347 N.E.2d 736 (Ill. 1976). In *Wright*, the appellants sought a declaratory judgment as to the constitutionality of provisions of the Illinois medical malpractice statute. *Id.* at 737. The Illinois court first analyzed the provision in the statute requiring that malpractice claims be submitted to a medical review panel consisting of a circuit judge, a practicing attorney, and a practicing physician, for hearing and determination. *Id.* at 738. The statute also provided that proceedings before the panel were to be "adversary, and each party may call and cross examine witnesses and introduce evidence as at a trial in the circuit court," that the circuit judge would preside over the proceedings, and that the panel was tasked with deciding liability and damages. *Id.* The court held that the statute violated the provision of the Illinois constitution providing that the judicial power resided with the courts. The court found that the "application of principles of law is inherently a judicial function . . . . [and] the Constitution vests the exclusive and entire judicial power in the courts." *Id.* at 739. The court found that because the non-judicial members of the

panel were empowered to make conclusions of law and fact over the dissent of the circuit judge who sat as a member of the panel, the statute empowers the nonjudicial members "to exercise a judicial function" in violation of the Illinois constitution. *Id*. at 740. The court then held that in light of its holding that the statutes providing for medical review panels were unconstitutional, "it follows that the procedure prescribed therein as the prerequisite to jury trial is an impermissible restriction of the right on trial by jury . . . ." *Id*. at 741.

[22] The Laguanas analogize the present case with *Wright*, arguing that similar to *Wright*, the provisions of the Guam Arbitration Act "substantially bar any appeal to the Superior Court, such that the arbitration award granted by a nonjudicial panel is, *de facto*, unreviewable and final." Response Brief of Real Parties in Interest, p. 23 (emphasis added). Their argument is essentially that because barriers exist that may deter the pursuit of an appeal, arbitration awards are rendered final adjudications of the malpractice claims.

[23] We do not find *Wright* to be persuasive in our determination of the issue before us. In *Wright*, the court found that because the statute empowered the arbitration panel to make conclusions of law and fact, it improperly delegated judicial power to a non-judicial body. This particular holding in *Wright* has been rejected by numerous courts which have instead found that so long as the decision of the arbitrators is not independently enforceable and is reviewable by a court, the arbitrators are not exercising a judicial power. *See Firelock Inc.*, 776 P.2d at 1095 n.2.[4] While the Guam Arbitration Act empowers the arbitrators to determine liability and damages, the Act specifically provides that the arbitration award may either be confirmed by a court, or appealed in a trial *de novo*. This considered, and in accordance with the holdings of most courts, the

[4] In *Firelock*, the court held that the Colorado arbitration act did not vest judicial authority in another branch because under the statute neither party was bound by the arbitrators' decision considering that either could demand a full trial de novo, and the district court, not the arbitrators, was required to enter the judgment. *Id*. at 1095. The court also rejected reliance on *Wright*, finding that because *Wright* involved an arbitration panel which consisted of one judge and two non-judges, while the Colorado statute did not, *Wright* was distinguishable. *Id*. The court also noted that "in addressing the validity of arbitration statutes, many courts in other jurisdictions have found *Wright* to be unpersuasive." *Id*. at 1095 n.2. One court rejecting *Wright* flatly stated: "[T]he court [in *Wright*] said no more than that the application of principles of law is inherently a judicial function, and that the nonjudicial members of the panel were empowered to exercise it. We find that rationale, in view of all the considerations we have discussed above, singularly unpersuasive." *Id*. (quoting *Attorney Gen. v. Johnson*, 385 A.2d at 66-67).

arbitrators do not exercise judicial powers. *Id*. Thus, while the Laguanas' validly argue that in accordance with *Wright*, the judicial power may not be vested in nonjudicial tribunals, in accordance with the majority of courts that have decided the issue, we conclude that because the arbitrator's decision is not enforceable without court action, and because the decision may be reviewed *de novo* in court, the Act does not improperly vest the arbitrators with judicial power.

3. Whether the sanction provision of the Arbitration Act, which bases the award of attorney's fees on a comparison with the arbitrators' award, deprives the court of its judicial power.

[24] The final argument pertaining to the separation of powers claim relates to the use of the arbitrators' award in determining the attorney's fees sanction after trial. Specifically, the lower court found, and the Laguanas argue, that because the attorney's fees penalty is determined by comparing the jury's award with the arbitrators' award, the arbitrators' award is in effect unreviewable and binding to that extent, thus depriving the trial court of its power of judicial review. A very similar argument was made in *Barrett v. Baird*, 908 P.2d 689 (Nev. 1995), although in the context of a due process challenge. *Barrett*, 908 P.2d at 696. Under the Nevada attorney's fees provision, NRS 41A.056(2), if a claimant loses before an arbitration panel and thereafter files an action in court and does not prevail, the defendant is entitled to reasonable attorney's fees at trial. *See id.* at 969 n.10. In *Barrett*, the amicus arguing in support of the plaintiff argued that attorney's fees provision in the malpractice law denied the malpractice claimant of due process, and "suggest[ed] that a claimant must be provided with an opportunity to appeal the panel's negative finding because that finding may ultimately provide the basis for an award of attorney fees and costs under NRS 41A.056(2)." *Id*. at 700 n.20. The court disagreed, finding that while the review panel's decision was not subject to appellate review, the screening panel statute "provides something better – a *de novo* trial." *Id*. The court further found that "[m]ore fundamentally, amici's due process claim ignores the fact that it is not the panel finding, but the final jury verdict, that triggers the fee award." *Id*.

[25] Admittedly, the attorney's fees provision at issue in the present case is more onerous than the fee-shifting provision in the *Barrett* case. However, we nonetheless apply a similar analysis in scrutinizing the local Act. Under the Arbitration Act, if an appealing party is not also a prevailing party as defined in the Act, the appealing party must pay the other party's trial attorney's fees, costs, and jury costs. *See* 10 GCA §§ 10142, 10143 (defining the prevailing party as the appealing party who improves upon the arbitration award by 40%, or who has not appealed and the other party fails to improve the award by 40%). The Laguanas essentially contend that by using the arbitration award as a basis for determining whether the appealing party is a prevailing party, the arbitration award, which itself is unreviewable, has a binding effect on the lower court's decision on whether the sanction should be imposed. In other words, this circumstance ties the hands of the judge, thereby impinging his judicial power to adjudicate the malpractice claim.

[26] While the arbitrators' award is used to determine who is the prevailing party after a trial *de novo*, the fact remains that any sanctions are fundamentally based on the jury's final award, which is made in accordance with and under the supervision of the judicial authority.[5]

[27] Furthermore, even assuming the legislature's attempt to base the fee-shifting on the arbitrators' award, rendering the award unreviewable in that particular regard, amounts to an infringement on the judicial authority to review the award, we nonetheless find no defect, of constitutional proportions, in the fee-shifting provision. *See In re Request of Gutierrez*, 2003 Guam 1, ¶ 34.

[28] In determining whether there has been a separation of powers violation, we employ a two-part inquiry. *See Perez*, 1999 Guam 2 at ¶ 17. The first question is whether the legislative enactment (i.e., statute) prevents another branch from accomplishing its constitutional functions.

[5] Note, also, that it is within the legislature's authority to provide for fee-shifting. *See Fleming v. Quigley*, 2003 Guam 4, ¶ 7 (stating that a recognized exception to the American Rule that each party pays his own attorney's fees is where fee-shifting is authorized by statute). The sanction provision in the Arbitration Act is a fee-shifting provision. It provides that the non-prevailing appellant is required to pay the attorney's fees. The fact that statutory fee shifting is a recognized exception to the American Rule indicates that there is no *per se* improper usurpation of judicial authority to mandate that fees are to be awarded to a particular party by statute. To the extent that the fee-shifting provision otherwise complies with constitutional requirements, it is a proper exercise of the legislative authority. *See id*.

In re Request of Gutierrez, 2002 Guam 1 at ¶ 34. If the answer is yes, the second question is "whether the disruptive impact is justified by any overriding constitutional need." *Id*.

[29] As the trial court correctly pointed out, the legislature did not include a statement of purpose or policy when enacting the Arbitration Act. *See* Guam Pub. L. No. 21-043. In fact, the only explanation in the current Act was that the prior medical malpractice arbitration act of 1975 was repealed and reenacted in its entirety. *Id*.[6] However, Bill 325, which was approved by a majority of the senators of the Legislature for passage, and later enacted as P.L. 21-043, contained legislative committee findings as follows:

> The Committee finds that the medical malpractice problem has reached a crisis proportion during the last two decades. This dilemma is not a private battle between health care providers and their insurers, but rather, that increased costs are inevitably passed on to the consumer in the form of higher medical fees and costs. Costs also increase as a result of "defensive medicine" practiced by physicians in an effort to avoid malpractice suits. In the end, many insurance companies currently refuse to offer malpractice coverage or have raised the cost of premiums to prohibitive levels.
>
> The Guam Legislature tried to address the issue of medical malpractice when Public Law 13-115 was enacted into law on December 23, 1975. However, this piece of legislation was struck down by the courts because it contained sections that are mutually incongruous and incompatible which makes the law inorganic and unenforceable.
>
> Bill No. 325 provides that Legislature's response to the crisis of medical malpractice claims and offers solid framework toward this end.

SB Bill No. 325, 21st Leg. (Guam 1991) (Findings).

[30] It is apparent that P.L. 21-043 was passed as a result of the perceived problem associated with the increase in the cost of malpractice insurance, and even its unavailability. The committee found that the island was faced with a dilemma due to the passing on of high medical fees and costs to the consumer, as well as the increase in costs of medical care due in part to the tendency of physicians to practice "defensive medicine" to avoid malpractice suits. The Guam Legislature apparently believed that the provisions of the Arbitration Act would remedy what it perceived as a crisis situation in the area of medical malpractice.

[6] The 1975 Act was invalidated by the Appellate Division, and the decision was affirmed by the Ninth Circuit. *See Awa v. Guam Mem. Hosp. Auth*., 726 F.2d 594 (9th Cir. 1984).

[31] It is reasonable to conclude that linking the statutory sanction to the differences between the arbitration award and the jury's award forces parties to consider the likelihood that it would significantly improve upon the award at trial, and that the legislature was likely responding to a need to keep medical insurance costs down for the jurisdiction, thereby maintaining the availability of affordable health care. We find that this qualifies as an overriding constitutional need satisfying the minimal infringement on the power of the judiciary to review the arbitrator's award.

C. Access to the Courts, Right to a Jury Trial, Due Process and Equal Protection.

[32] In this proceeding, the Laguanas also claim that the Arbitration Act deprives the Superior Court of the power to adjudicate arbitration claims thus violating the separation of powers doctrine because the provisions of the Act limit free access to the courts. A free access claim relates to individual rights, rather than the separation of governmental powers. Similarly, the Laguanas contend that the Arbitration Act infringes upon the right to a jury trial, equal protection, and due process guarantees. The Laguanas evidently raised these challenges in the trial court. However, the trial court's decision invalidating the Arbitration Act was limited to a separation of powers analysis. In its decision, the trial court did touch upon the costs associated with proceeding through arbitration; however, such discussion was related to the court's determination that the Arbitration Act violated the separation of powers doctrine. Thus, the trial court did not decide the organicity of the Arbitration Act, facially or as applied, in relation to the various rights identified by the Laguanas. We decline to address these arguments in this proceeding in the first instance. *See Brown v. United States*, 851 F.2d 615, 620 (3d Cir. 1988).

[33] We further note that addressing these issues here is inappropriate because the Laguanas apparently base many of their constitutional challenges on details involved in arbitrating under the American Arbitration Association ("AAA"). It is unclear whether the AAA may be used to litigate the dispute in the present case in light of its recent announcement that it will "no longer accept the administration of cases involving individual patients without a post-dispute agreement to arbitrate."

American Arbitration Association, Health Care Policy Statement.[7] The availability of arbitrating before the AAA may affect the additional constitutional challenges raised in this case, and may require further briefing and possible factual findings which are more appropriately left for determination by the trial court.

IV.

[34] In accordance with the foregoing, we hold that the Mandatory Medical Malpractice Arbitration Act does not violate the separation of powers doctrine. Thus, the lower court erred in finding the Arbitration Act to be inorganic on that ground. We make no determination on whether the provisions of the Act violate the Laguanas' rights to a jury trial and free access to the courts, or due process and equal protection rights. We order that a peremptory writ of mandate issue directing the Superior Court to vacate its decision denying MPG's motion to dismiss. We further direct the court to re-examine MPG's motion to dismiss. In deciding the motion to dismiss, the Superior Court shall consider the Laguanas' remaining constitutional challenges to the application of the Arbitration Act in this case.

[7] American Arbitration Association, Health Care Policy Statement, *available at* http://www.adr.org/index2.1.jsp?JSPssid=16235&JSPsrc=upload/livesite/focusArea/Healthcare/HEALTH%20CARE%20POLICY%20STATEMENT.htm