

NO. 22991

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

MELVIN HAMAGUCHI, Plaintiff-Appellant,

vs.

ASSOCIATED FINANCIAL PROFILES, INC., a Hawaii corporation;
HARRY HASUIKE, in his capacity as president of Associated
Financial Profiles, Inc.; HARRY HASUIKE, in his personal
capacity, Defendants-Appellees,

and

JOHN DOES 1-20; JANE DOES 1-20; DOE CORPORATIONS 1-20; DOE
PARTNERSHIPS 1-20; DOE LIMITED PARTNERSHIPS 1-20,
Defendants.

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 96-1448)

MEMORANDUM OPINION

(Levinson, Acting C.J., Nakayama, Ramil, JJ., and
Circuit Judge McKenna, in place of Moon, C.J., recused, and
Circuit Judge Raffetto, in place of Acoba, J., recused)

The plaintiff-appellant, Melvin Hamaguchi, appeals from the judgment of the first circuit court, the Honorable Marie N. Milks presiding, filed on November 17, 1999. The circuit court entered judgment in favor of the defendants-appellees Associated Financial Profiles, Inc. (AFP) and Harry Hasuike with respect to Hamaguchi's claims of breach of contract, breach of implied covenant of good faith and fair dealing, conversion, negligent and intentional interference with contractual relationship, and punitive damages, as well as the defendants' counterclaims of breach of contract, breach of the implied covenant of good faith and fair dealing, and breach of fiduciary duty. Hamaguchi argues

on appeal that the circuit court erred in entering judgment in the defendants' favor on his breach of contract and unjust enrichment claims, which arose out of a series of tax-sheltered annuities (TSAs) that he solicited shortly before his contract with AFP was terminated. Specifically, Hamaguchi argues, inter alia, that the circuit court erred in concluding that Hamaguchi was paid all commissions to which he was entitled¹ and that there was no loss to Hamaguchi that enriched AFP.² In addition, Hamaguchi argues that the circuit court erred in entering judgment against him and in the defendants' favor as to (1) the latter's counterclaims for damages, which were based on the cancellation of certain other TSAs solicited by Hamaguchi during his tenure with AFP, and (2) the amount of damages that the circuit court awarded to the defendants on their counterclaims. Specifically, Hamaguchi contends, inter alia, that the circuit court erred in concluding that he breached his contract with AFP,³ the implied covenant of good faith,⁴ and his fiduciary duty to AFP and Hasuike,⁵ and in finding that AFP lost commissions in the amount of \$19,483.37 due to the cancellation of Leon

¹ Hamaguchi challenges the circuit court's conclusion of law (COL) No. 17, in which it concluded, "AFP and Hasuike paid to Hamaguchi all commissions to which he had proprietary rights and to which he was entitled to immediate custody and possession. AFP did not convert any of Hamaguchi's commissions."

² Hamaguchi challenges the circuit court's COL No. 19, in which it concluded, "There was no loss to Hamaguchi which enriched AFP and Hasuike. AFP and Hasuike were not unjustly enriched to the detriment of Hamaguchi."

³ Hamaguchi challenges the circuit court's COL No. 11, in which it concluded that "Hamaguchi breached the Representative Agreement."

⁴ Hamaguchi challenges the circuit court's COL No. 16, in which it concluded that "Hamaguchi breached the implied covenant of good faith and fair dealing in any contract with AFP and Hasuike."

⁵ Hamaguchi challenges the circuit court's COL No. 24, in which it concluded, "A fiduciary duty existed between Hamaguchi, AFP and Hasuike. By Hamaguchi's actions, he breached his fiduciary duty to AFP and Hasuike. Hamaguchi's breach of his fiduciary duty caused damages to AFP and Hasuike."

Richards' TSA,⁶ and \$4,156.84 in commissions due to the cancellation of Pauline Richards' TSA.⁷

We affirm the circuit court's judgment with respect to Hamaguchi's breach of contract and unjust enrichment claims and the defendants' counterclaim for breach of contract. We hold that the circuit court clearly erred, however, in its award of damages in several respects, as discussed infra in section III, and that the amount of the judgment must be reduced accordingly. We therefore affirm the circuit court's judgment in part, vacate it in part, and remand this case for further proceedings consistent with this opinion.

I. BACKGROUND

This case arises out of Hamaguchi's contract with AFP to sell TSAs. AFP is a closely held Hawai'i corporation that sells TSAs on behalf of insurance companies in exchange for commissions. Harry Hasuike, the founder and president of AFP, was responsible for managing the day-to-day operations of the company during the period relevant to this matter. From time to time, AFP employed independent contractors to solicit TSA applications in exchange for a percentage of AFP's commissions.

In 1991, Hamaguchi approached Hasuike, whom he had known since high school, seeking work as a solicitor for AFP. At the time, Hamaguchi was working for Prudential Insurance Company,

⁶ Hamaguchi challenges the circuit court's FOF No. 65, in which it found, in relevant part, "When Leon Richards canceled [his TSA], AFP returned all of the commissions already earned to College Life and lost a total of \$19,483.37 in commissions on the first-year premium and lump sum transfer."

⁷ Hamaguchi challenges the circuit court's FOF No. 66, in which it found, in relevant part, "When Pauline Richards canceled [her TSA], AFP returned all of the commissions already earned to College Life and lost a total of \$4,156.84 in commissions on the first-year premium and lump sum transfer."

by which he had been employed since 1980, training new agents in homeowners and personal liability insurance. Hasuike refused Hamaguchi a contract with AFP, but helped him to obtain his own regional agent contract with Massachusetts General Life Insurance Company. Hamaguchi was unable to sell any TSAs under the Massachusetts General contract, however, and, three months later, again approached Hasuike about working for AFP, at which point Hasuike agreed to take him on as a part-time solicitor.

Hamaguchi began working for AFP pursuant to an oral agreement with Hasuike. Under the terms of the agreement, Hamaguchi was to be an independent contractor working under the direction and supervision of AFP and was required to comply with AFP's rules and regulations. John Ohare, an AFP solicitor from April 1995 to May 1998, testified that the basic rule at AFP, which had been communicated to him orally, was always to tell the client the truth about the company's products. Hasuike and Norma Nakamura, AFP's senior solicitor, provided Hamaguchi with ongoing training as to the sale of TSAs, written materials describing TSAs and their benefits, and periodic review of his work. AFP also gave Hamaguchi eighty to ninety percent of his client "leads." Hamaguchi was responsible for arranging appointments with clients to discuss the benefits of AFP's products and to solicit their applications. Hamaguchi would then return a successfully solicited application to AFP's office, type in any additionally required information, set up a client file, and give the file to Hasuike or Nakamura. Hasuike signed each application as AFP's agent of record and transmitted it to the relevant insurance company. In consideration, AFP paid Hamaguchi sixty percent of the commissions that it received from the insurance

companies.⁸

The quality of Hamaguchi's work for AFP was unsatisfactory from the outset of the business relationship. Hamaguchi was frequently absent from the office without explanation and, when present, conducted himself inappropriately.

After approximately six months of working part-time, Hamaguchi disappeared altogether, returning only in late 1993, when he asked Hasuike whether he could work full-time as an AFP solicitor. Hasuike was initially reticent. But after receiving assurances from Hamaguchi that he would commit himself fully to the job, Hasuike relented and agreed to hire him based upon their prior oral agreement; now, however, Hamaguchi would be working full-time for AFP. Hamaguchi worked full-time for AFP until he was terminated on November 30, 1995.

In 1994, Hasuike reduced AFP's oral agreements with each of its solicitors, including Hamaguchi, to writing in the form of a "registered representative agreement" (RRA). Hasuike testified that the RRA did not change any of the terms of Hamaguchi's prior oral agreement with AFP. Nakamura tendered an RRA to Hamaguchi and instructed him to review it carefully and advise her or Hasuike if he had any questions. If the terms of the RRA were satisfactory, Hamaguchi was to sign and return it to Nakamura. Notwithstanding the foregoing, however, Hasuike testified that Hamaguchi was required to sign the RRA as a condition of continuing his working relationship with AFP. As it happened, Hamaguchi neither read nor asked any questions about the substantive provisions of the RRA; rather, he signed and

⁸ The time that passed between Hamaguchi's submission of an application and his receipt of payment, in the form of a check tendered by Hasuike, for his share of the commission varied according to a number of different circumstances.

returned it to Nakamura fifteen or twenty minutes after having received it.

In substance, the RRA was an agreement between Hamaguchi and AFP, "in consideration of [Hamaguchi] agreeing to solicit for the purchase and sale of life insurance, annuities[,] and related investments on behalf of [AFP], and [AFP] agreeing to provide [Hamaguchi] with necessary office support and other services." The RRA enumerated Hamaguchi's duties as an AFP solicitor, stating, in relevant part:

[Hamaguchi] shall be free to exercise his judgement as to the persons from whom applications are solicited and as to the time, place and manner of solicitation; however, the applicable statutes and governmental regulations pertaining to the conduct of business covered hereby as well as the regulations from time to time adopted by [AFP] or by the Life insurance company respecting methods of doing business shall be observed and conformed to by the Representative.

. . . .
In soliciting the purchase or sale of any investment, life insurance, annuities, hereunder, [Hamaguchi] shall fully disclose all material facts relating thereto (which shall include delivery of the disclosure document relating to such investment or policy to be purchased if one is then in effect), shall not make any untrue statement of a material fact and shall fully explain the terms of any contractual arrangements relating thereto to the prospective client or purchaser.

In addition, the RRA defined how Hamaguchi's commissions would be earned:

_____ [C]ommissions shall not be come [sic] earned by, or payable to [Hamaguchi] until said application is accepted by said Insurance carrier, payments for same are received from said Insurance carrier and all events which establish the right of [AFP] to receive payment of commissions respecting the subject transaction and actual receipt by [AFP] of such commissions have occurred.

. . . [AFP] reserves the right, in its sole discretion, to refund to any purchaser all or any part of payments made by him, and [Hamaguchi] agrees to reimburse [AFP] promptly for expenses in connection therewith.

Finally, paragraph 6(b) of the RRA defined the basis for and effect of termination with cause:

In the event [Hamaguchi] . . . fails to comply with any of the terms, conditions and obligations of this Agreement, conducts himself in any manner which [AFP], in

its unrestricted discretion, determines to be detrimental to its business or reputation, or in any way acquires, obtains or engages in any interest, affiliation than [sic] [AFP] or relating to any other activity that would cause a conflict of interest on the part of [Hamaguchi] with respect to [AFP], [AFP] may immediately terminate this agreement . . . and [AFP's] obligation to pay commissions to [Hamaguchi] shall immediately cease upon such termination, without notice; and such termination shall in no way affect [AFP's] right to collect any amounts which may be due it from [Hamaguchi].

In November 1994, Hasuike asked Hamaguchi to execute a producer's contract with College Life. The producer's contract allowed Hamaguchi to sell College Life products as a representative of AFP and process the entire application and policy without Hasuike's signature. In addition, Hasuike requested that Hamaguchi sign an assignment of commissions form, which was a safeguard for AFP -- requiring that all of Hamaguchi's commissions under the producer's contract be paid to AFP -- because the producer's contract with College Life was merely intended to allow Hamaguchi to sign salary assignments in Hasuike's absence. Hamaguchi's rights under the producer's contract derived from the provision that "[AFP] agree[d] that [Hamaguchi] may represent [it] as a Producer without exclusive rights of representation." Sheldon Aronson, an expert on the insurance industry, testified that the producer's contract authorized Hamaguchi to sell College Life TSAs only through AFP. Pursuant to the contract, Hamaguchi was entitled to earn sixty percent of AFP's commission realized from each College Life TSA that he solicited.

After becoming a full-time worker, Hamaguchi's performance as an AFP solicitor was deficient in a number of ways. His conduct in AFP's offices was unprofessional, he consistently made mistakes while completing client applications despite repeated counseling regarding the errors, he removed

client files from AFP's premises even though he was instructed not to do so, and he exhibited an inability to schedule times during which his client solicitations could be reviewed. Hamaguchi's mistakes necessitated costly corrective administrative effort on the part of AFP personnel. In addition, various clients complained that Hamaguchi either failed adequately to explain or actually misstated material information regarding their TSAs, including the nature and amount of surrender charges, the cost attendant to annuitizing as opposed to penalty-free withdrawals, and the legal consequences of changing the amount of contributions. In one instance, Hamaguchi modified the substance of a client's insurance policies and annuities during the pendency of her divorce, contrary to Hasuike's express instructions, and was accused by at least two clients of being rude. Finally, a few clients, who cancelled policies that Hamaguchi had solicited, simply refused to return AFP's phone calls.

AFP was damaged by certain of Hamaguchi's gaffes vis-a-vis AFP's clients. Leon and Pauline Richards purchased College Life TSAs from Hamaguchi in 1993. When the Richardses decided to cancel their policies, they learned, much to their surprise, that they were obligated to pay surrender charges on the sum that they had rolled over into their TSA from a prior investment. The misunderstanding resulted from the manner of Hamaguchi's solicitation of their applications. AFP assisted the Richardses in cancelling their policy, and the Richardses ultimately received a full refund without having to pay any penalty; nevertheless, AFP was obliged to remit all of the commissions that it had received on the Richardses' policies to College Life, including the sums that it had already paid to Hamaguchi.

According to evidence adduced at trial, AFP lost \$9,300.87 in commissions due to the cancellation of Leon's TSA and \$1,791.20 in commissions due to the cancellation of Pauline's TSA.⁹

Shirley Yanagisawa testified that she cancelled the TSA that Hamaguchi had solicited from her because she had not understood the relevant information regarding bonuses. Documentary evidence indicated that she also misunderstood the particulars relating to the attendant fifteen-year surrender charges. According to the evidence adduced at trial, AFP lost \$6,495.20 in commissions due to the cancellation of Yanagisawa's TSA.¹⁰

Heather Wilhelm testified that when she purchased a TSA from Hamaguchi, she believed that he was an employee of Prudential. She subsequently cancelled the TSA because she did not believe that she had been adequately informed of all its ramifications. Nakamura ultimately convinced Wilhelm to repurchase a TSA from AFP after spending three hours with her -- twice the usual time spent soliciting a client. According to the evidence adduced at trial, AFP lost \$360.00 in commissions due to the cancellation of Wilhelm's policy.

Finally, Carolyn Yamada testified that she cancelled her TSA because she was upset by the way that Hamaguchi had spoken to her when she wanted temporarily to suspend her payments. According to the evidence adduced at trial, AFP lost

⁹ In its proposed findings of fact and conclusions of law, however, AFP claimed to have lost \$19,483.37 in commissions due to the cancellation of Leon's TSA and \$4,156.84 due to the cancellation of Pauline's TSA. The circuit court incorporated these figures into its written findings of facts.

¹⁰ In its proposed findings of fact and conclusions of law, however, AFP claimed to have lost only \$6,260.00 in commissions due to the cancellation of Yanagisawa's TSA, which was the figure adopted by the circuit court in its written findings of fact.

\$972.00 due to the cancellation of Yamada's policy.¹¹

In addition to the foregoing problems, it came to Hasuike's attention in or about April 1995 that, as a personal venture, Hamaguchi was selling a video tape that provided directions for tourists interested in obtaining sexual services from women in Thailand, Hong Kong, Taiwan, and Korea. Hamaguchi admitted at trial that some people would find the videotape offensive, but he testified that he never attempted to sell the videotape to a client of AFP. Hasuike was concerned, however, that one of AFP's clients, who were mostly school teachers, might associate the video with AFP, thus damaging its reputation.

On November 30, 1995, Hasuike terminated Hamaguchi's contract with AFP pursuant to paragraph 6(b) of the RRA -- the "termination with cause" provision -- and ceased all payments to Hamaguchi for as yet unearned commissions relating to TSAs that he had solicited.¹² Immediately after terminating Hamaguchi, Hasuike telephoned College Life to advise it that Hamaguchi no longer represented AFP. Nevertheless, it seems that College Life did not terminate the producer's contract, even after three or four calls, until Hasuike reduced the matter to writing on January 26, 1996.

Thus, Hamaguchi continued to solicit AFP's clients after his contract was terminated. In December 1995, he met with Stanley Maebori and Dawn Takahashi and sold each a TSA. AFP received commissions on the sale of these TSAs from College Life

¹¹ In its proposed findings of fact and conclusions of law, however, AFP claimed to have lost only \$777.60 in commissions due to the cancellation of Yamada's TSA, which was the figure incorporated by the circuit court in its written findings of fact.

¹² There was some dispute at trial as to whether Hasuike terminated Hamaguchi or whether Hamaguchi quit, but Hamaguchi does not appeal the circuit court's determination that he was terminated for cause.

but did not pay Hamaguchi a percentage of the commissions.

On April 16, 1998, Hamaguchi filed an amended complaint in the first circuit court against AFP and Hasuike, asserting claims of (1) breach of contract, (2) breach of implied covenant of good faith and fair dealing, (3) negligent and intentional interference with contractual relationship, and (4) unjust enrichment, based on AFP's refusal to pay Hamaguchi commissions relating to the TSAs that he had solicited prior to November 30, 1995 but had not yet earned. On May 21, 1998, AFP and Hasuike answered Hamaguchi's complaint and counterclaimed for (1) breach of contract, (2) breach of implied covenant of good faith and fair dealing, (3) tortious breach of contract, (4) breach of fiduciary duty, and (5) interference with prospective economic advantage. A bench trial commenced in the circuit court on February 25, 1999. On November 17, 1999, the circuit court entered judgment in favor of AFP and Hasuike on all counts of Hamaguchi's amended complaint. As to counts 1, 2, and 4 of the defendants' counterclaim, the circuit court entered judgment, in the amount of \$31,037.81, in favor of AFP and Hasuike and against Hamaguchi. As to counts 3 and 5 of the counterclaim, the circuit court entered judgment in favor of Hamaguchi and against AFP and Hasuike.

II. STANDARDS OF REVIEW

A. Findings of Fact

This court reviews the circuit court's findings of fact (FOFs) under the clearly erroneous standard. Child Support Enforcement Agency v. Roe, 96 Hawai'i 1, 11, 25 P.2d P.3d 60, 70 (2001). "A finding of fact is clearly erroneous when (1) the record lacks substantial evidence to support the finding or

determination, or (2) despite substantial evidence to support of finding or determination, the appellate court is left with the definite and firm conviction that a mistake has been made.” Id. (citation, internal quotation marks, brackets, and ellipsis points omitted).

B. Conclusions of Law

_____This court reviews the circuit court’s conclusions of law (COLs) de novo under the right/wrong standard. Child Support Enforcement Agency, 96 Hawai’i at 11, 25 P.3d at 70. “Under this . . . standard, we examine the facts and answer the question without being required to give any weight to the trial court’s answer to it. . . . Thus, a [conclusion of law] is not binding upon the appellate court and is freely reviewable for its correctness.” State v. Kane, 87 Hawai’i 71, 74, 951 P.2d 934, 937 (1998).

C. Statutory Interpretation

This court reviews the circuit court’s interpretation of a statute de novo. State v. Jones, 96 Hawai’i 161, 166, 29 P.3d 351, 356 (2001). Furthermore, established rules guide our statutory construction:

When construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. And we must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose.

Gray v. Administrative Dir. of the Court, 84 Hawai’i 138, 148, 931 P.2d 580, 590 (1997).

III. DISCUSSION

A. The Circuit Court Correctly Entered Judgment In Favor Of AFP And Hasuike On Hamaguchi's Breach Of Contract Claim Because Hamaguchi Was Paid All Commissions To Which He Was Entitled Upon His Termination For Cause.

Hamaguchi argues, in essence, that the circuit court erred in entering judgment in favor of the defendants on his breach of contract claim because (1) paragraph 6(b) of the RRA -- the termination-with-cause clause -- is an unenforceable contract of adhesion and (2) Hawai'i Revised Statutes (HRS) chapter 388 (1993)¹³ bars the withholding of the commissions he seeks. Consequently, Hamaguchi contends that the circuit court wrongly concluded, inter alia, that (1) the RRA is "clear and unambiguous and . . . its provisions must be given their proper legal effect" (COL No. 5), (2) "AFP did not breach the RRA" (COL No. 7), and (3) "AFP and Hasuike fully performed all of their obligations under the RRA" (COL No. 14), including having paid Hamaguchi for "all commissions to which he was entitled" (COL No. 17). We disagree.

1. Paragraph 6(b) of the RRA is not an unenforceable contract of adhesion.

Under Hawai'i law, an adhesion contract "is a form contract[,] created by the stronger of the contracting parties," which "is offered on a 'take this or nothing' basis" to "the weaker party[.]" Brown v. KFC National Management Co., 82 Hawai'i 226, 247, 921 P.2d 146, 167 (1996) (quoting Leong v. Kaiser Found. Hosp., 71 Haw. 240, 247-48, 788 P.2d 164, 168-69

¹³ In particular, HRS § 388-6 provides in relevant part:

No employer may deduct, retain, or otherwise require to be paid, any part or portion of any compensation earned by any employee except where required by federal or state statute or by court process or when such deductions or retentions are authorized in writing by the employee. . . .

(1990)) (footnote omitted). Consequently, the weaker party is faced with the choice of either accepting the contract or "walking." Hamaguchi and AFP disagree as to whether the contract in this case was "adhesive."¹⁴ Assuming arguendo, however, that the RRA was an adhesion contract, it was nonetheless enforceable.

Adhesion contracts are enforceable under Hawai'i law unless: "(1) the contract is the result of coercive bargaining between parties of unequal bargaining strength; and (2) the contract unfairly limits the obligations and liabilities of, or otherwise unfairly advantages, the stronger party." Brown, 82 Hawai'i at 247, 921 P.2d at 167 (citations omitted). Contracts that unfairly limit the obligations or liabilities of the stronger party include those entitling the party to breach any contractual term or condition of the employment relationship or inflict tortious injury upon the weaker party. Brown, 82 Hawai'i at 247, 921 P.2d at 167. The fact that a contract reflects the relative bargaining strength of the parties, however, is not enough, in and of itself, to render the contract unenforceable. Cf. Lewis v. Lewis, 69 Haw. 497, 500, 748 P.2d 1362, 1366 (1988) (holding that "[a] merely inequitable [premarital agreement] is not unenforceable under contract law").

Thus, assuming arguendo that the RRA was the result of "coercive bargaining," the agreement is nonetheless enforceable because the contract does not unfairly limit the obligations and liabilities of, or otherwise unfairly advantage, AFP. Clearly, the RRA does not entitle AFP to breach any of its terms or

¹⁴ The defendants argue that paragraph 6(b) did not create an adhesion contract because, when Nakamura gave Hamaguchi the RRA, she told him to take his time to review it and let her or Hasuike know if he had any questions, but Hamaguchi signed the RRA without review or comment. Hamaguchi, on the other hand, urges us to consider the trial testimony of Hasuike that the RRA was a condition of continued representation of AFP.

conditions or inflict tortious injury upon Hamaguchi. Furthermore, the terms of which Hamaguchi complains do not otherwise unfairly advantage AFP. AFP had legitimate reasons for defining commissions "earned" in the way that it did and for withholding unearned commissions from solicitors who were terminated for cause. Hamaguchi's efforts in soliciting applications for College Life TSAs was only the first step in a long process culminating in the receipt of commissions by AFP. It was necessary for both AFP and College Life to process the applications and, even after College Life paid AFP a commission on a TSA, the commission was far from secure. If the policy was returned, was taken under a "free-look" provision, or other problems developed based on the manner in which the client was solicited, the insurance company could require AFP to refund part or all of any commissions already paid. Indeed, the record is replete with instances in which AFP lost commissions earned as result of Hamaguchi's work long after he had solicited the TSA. Accordingly, the termination clause in the RRA was a necessary protection for AFP, absent the ability directly to supervise the solicitation of clients. The termination clause discouraged solicitors from seeking short-term gain for themselves at AFP's long-term expense.

Accordingly, we hold that to the extent that the RRA created an adhesion contract, it, nonetheless, was enforceable.

2. AFP did not violate HRS § 388-6.

Hamaguchi next argues that AFP's withheld the commissions that he seeks in violation of HRS § 388-6, see supra note 13. Assuming arguendo that HRS chapter 388 applies to the payment of commissions to independent contractors in the

insurance industry,¹⁵ it does not assist Hamaguchi. While HRS § 388-6 prohibited AFP from wrongfully withholding commissions that Hamaguchi "earned," the questions remain as to whether Hamaguchi in fact "earned" the commissions that he seeks and whether they were "wrongfully" withheld. The answers to these questions depend on the terms of his contract with AFP -- i.e., the RRA. See Miscellaneous Service Workers v. Philco-Ford Corp., 661 F.2d 776, 783 (9th Cir. 1980) (holding that chapter 388 "prevent[s an] employer from withholding sums or benefits to which [an] employee has rights by virtue of his [or her] contract").

The RRA expressly described the point at which commissions were "earned" as follows:

[C]ommissions shall not [become] earned by, or payable to Representative until said application is accepted by said Insurance carrier, payments for same are received from said Insurance carrier and all events which establish the right of Company to receive payment of commissions respecting the subject transaction and actual receipt by Company of such commissions have occurred.

Moreover, the RRA provided that AFP's "obligation to pay commissions to [Hamaguchi] shall immediately cease upon . . . termination [for cause], without notice." There is nothing in the record suggesting that, at the time of Hamaguchi's termination, College Life had paid AFP for the TSAs in connection with which Hamaguchi seeks commissions, nor does Hamaguchi allege

¹⁵ The defendants argue that Hamaguchi was not an "employee" for the purposes of HRS § 388-6 because HRS § 383-7(13) (1993 & Supp. 2000) specifically excludes insurance agents and solicitors from the definition of "employment" under HRS chapter 383, relating to the Hawai'i Employment Security Law. HRS § 388-1, however, defines "employee" to mean "any person suffered or permitted to work[,]" and "wages" to mean "compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation." Given the broad definition of "employee" and the inclusion of "commission" among the forms of compensation covered by HRS chapter 388, there is little reason to doubt that HRS § 388-6 protects Hamaguchi from unlawful withholdings by AFP.

as much.¹⁶ Consequently, there is no evidence in the record that AFP has “wrongfully withheld” commissions that Hamaguchi “earned.”

Accordingly, we hold that AFP did not violate HRS § 388-6 by refusing to pay Hamaguchi commissions that, under the terms of the RRA, he had not earned as of November 30, 1995.

In sum, we hold that the circuit court’s COL Nos. 5, 7, 14, and 17 were “right” and that it correctly entered judgment in favor of the defendants on Hamaguchi’s breach of contract claim.

B. The Circuit Court Correctly Concluded That AFP And Hasuike Were Not Unjustly Enriched To Hamaguchi’s Detriment.

Hamaguchi argues that the circuit court’s COL No. 19 was erroneous in concluding that “[t]here was no loss to Hamaguchi which enriched AFP and Hasuike. AFP and Hasuike were not unjustly enriched to the detriment of Hamaguchi.” According to Hamaguchi, AFP received a benefit in the form of the commissions that it earned in connection with certain clients whom he solicited prior to his termination, as well as the two clients whom he solicited after his termination; Hamaguchi maintains that it would be “unjust” for AFP to retain these commissions. The defendants argue that, even if they were enriched by Hamaguchi’s solicitations in these instances, they were not unjustly enriched because, under the terms of the RRA, Hamaguchi was not entitled to receive any commissions for the solicitations inasmuch as he was terminated for cause. We hold that the circuit court correctly concluded that AFP and Hasuike were not unjustly enriched to Hamaguchi’s detriment.

¹⁶ Hamaguchi points out that AFP acknowledges that “premiums . . . were generated on these sales,” but neglects to establish when AFP was paid. The only evidence in the record concerning these TSAs merely identified the dates of the applications and the premium amounts.

"[U]njust enrichment['] is a broad and imprecise term defying definition." Small v. Badenhop, 67 Haw. 626, 636, 701 P.2d 647, 654 (1985). Nevertheless, this court has stated:

One who receives a benefit is . . . enriched, and he would be unjustly enriched if its retention would be unjust. . . . And it is axiomatic that '[a] person who has been unjustly enriched at the expense of another is required to make restitution to the other.

Id. (quoting Restatement of Restitution § 1 cmt. b (1937)).

"Enrichment is unjust, in legal contemplation, to the extent it is without adequate legal basis[.]" Restatement (Third) of Restitution & Unjust Enrichment § 1 (discussion draft) (March 31, 2000). Thus, enrichment is "unjust" if it is not justified, but not merely because it seems unfair or inequitable.

Assuming arguendo that there was a loss to Hamaguchi that enriched AFP and Hasuike -- i.e., Hamaguchi's labor soliciting these clients, which produced commissions for AFP --, the retention of any benefit can hardly be unjust under the circumstances. By signing the RRA, Hamaguchi agreed to the manner in which his commissions would be earned for the work he performed and accepted the consequences of his termination for cause with respect to any unearned commissions. It can hardly be unjust to hold Hamaguchi to the terms of his contract in the absence of evidence that AFP acted in bad faith in terminating Hamaguchi for cause. As it happens, AFP appears to have been extremely patient with Hamaguchi, despite costly and recurring problems generated by his performance. Given Hamaguchi's repeated breaches of his contract with AFP, costing the firm commissions and jeopardizing its reputation with its client base, AFP was justified in terminating Hamaguchi for cause and exercising its full rights under the contract.

Moreover, the cases that Hamaguchi cites for support do not help him. In both Small, 67 Haw. 626, 701 P.2d 647, and Maui Aggregates, Inc. v. Reeder, 50 Haw. 608, 446 P.2d 174 (1968), there was no legally adequate basis for the enrichment of one party at the expense of the other. In Small, the Smalls transferred their interest in a property to the Bandenhops in exchange for nominal consideration based on joint development plans for the property and Mr. Badenhop's assurance that the consideration was "merely a formality and by no means represents the amount I intend to pay you eventually." Small, 67 Haw. at 631, 701 P.2d at 652. Thus, the transfer was induced by unfulfilled promises made by the enriched party. In Maui Aggregates, Inc., the counterclaimant shipped paving machinery and equipment to the plaintiff based on a contract for their sale, which was contingent upon approval by the county of Maui. 50 Haw. at 608, 446 P.2d at 175. The sale was never approved, but the plaintiff made use of the machinery and equipment on other jobs while awaiting the county's approval. Id. Although the contract between the parties did not address such use of the machinery, this court approved the trial court's award of damages for the rental value of the equipment and compensation for the services rendered. Id. at 610, 446 P.2d at 176 (affirming the trial court's award based on a theory of quantum meruit).

By contrast, in the present matter, the defendants made no promises outside the terms of the RRA, and the RRA -- a valid and enforceable contract between the parties -- expressly set forth the parties' respective duties and obligations to each other. The fact that Hamaguchi may not have read the contract is irrelevant. See Leong, 71 Haw. at 245, 788 P.2d at 168 ("one who assents to a contract is bound by it and cannot complain that he

has not read it or did not know what it contained"). Insofar as the contract itself is not invalid or unenforceable, there is no reason not to enforce it under the facts of this case.

Finally, AFP was not unjustly enriched by any commissions it received due to Hamaguchi's solicitations of College Life TSAs after his contract with AFP was terminated. According to the terms of Hamaguchi's producer's contract with College Life, Hamaguchi was only authorized to solicit College Life TSAs as a representative of AFP. Once AFP terminated its relationship with Hamaguchi, his rights under the producer's contract with College Life were likewise terminated, and he had no right to solicit TSAs on behalf of either AFP or College Life. Moreover, neither AFP nor Hasuike induced Hamaguchi to continue soliciting applications for TSAs from AFP's clients. In fact, they specifically sought to prevent him from doing so because his poor performance posed a substantial risk to AFP's business. Therefore, AFP did not unjustly retain any commissions it received from the sale of the College Life TSAs.

Accordingly, we hold that the circuit court's COL No. 19 was not erroneous and that the defendants were not unjustly enriched to Hamaguchi's detriment.

C. The Circuit Court Correctly Concluded That Hamaguchi Breached His Contract With AFP But Erred In Its Findings With Respect to Yamada.

Hamaguchi argues that the circuit court erred in concluding that he breached his contract with AFP (COL No. 11), the implied covenant of good faith and fair dealing (COL No. 16), and a fiduciary duty to AFP and Hasuike (COL. No. 24). Hamaguchi challenges these conclusions by contending (1) that the record is insufficient to support the circuit court's finding that he failed to "fully disclose all material facts relating to the

insurance policies and annuities he sold, [made] untrue statements of material facts, and [failed] to fully explain the contractual arrangements to prospective clients and purchasers" (FOF No. 64), and (2) in any event, that he solicited all but one of the clients for whom the circuit court awarded damages to AFP before he signed the RRA. We hold that there was sufficient evidence for the circuit court to find that Hamaguchi breached his contract with AFP based on his dealings with the Richardses, Yanagisawa, and Wilhelm, but not Yamada.

The RRA required Hamaguchi to "fully disclose all material facts [regarding the TSAs he solicited,] not make any untrue statement of a material fact[,] and . . . fully explain the terms of any contractual arrangements relating thereto to the prospective client or purchaser." Prior to reducing an agreement to writing in the RRA, the circuit court found that Hamaguchi's oral agreement with AFP required him to operate "according to the rules and regulations of AFP" (FOF No. 18). Moreover, the circuit court found that "Hamaguchi failed to comply with the regulations of AFP, failing to fully disclose all material facts relating to insurance policies and annuities he sold, making untrue statements of a material fact, and failing to fully explain the terms of contractual arrangements to prospective clients and purchasers" (FOF No. 64). Hasuike's testimony that the RRA did not materially change any terms of AFP's oral agreement with Hamaguchi and John Ohare's testimony that telling the client the truth about the policies was the main rule at AFP, constitutes substantial evidence supporting the foregoing findings. Thus, the fact that some of Hamaguchi's relevant conduct occurred prior to the signing of the RRA is irrelevant. Under either the pre- or post-RRA contract between Hamaguchi and

AFP, Hamaguchi was required fully to disclose to prospective purchasers all material facts relating to the TSAs that he solicited.

The record contains ample evidence to support the circuit court's findings that Hamaguchi breached the foregoing contractual obligation with respect to each of the clients for whom the circuit court awarded damages, with the exception of Yamada. The Richardses, Yanagisawa, and Wilhelm all testified at trial that they had either not been given or had misunderstood material information regarding their policies by virtue of Hamaguchi's representations. In light of this testimony, the circuit court did not clearly err in finding that Hamaguchi breached his contract with AFP.

The record does not contain substantial evidence, however, that Hamaguchi's communication with Yamada constituted a breach of his contract with AFP. Yamada testified that, when she sought to suspend payments for her policy, Hamaguchi offended her by asking her questions about her reasons for suspending payments and whether she had any alternatives. While Hamaguchi's conduct may have betrayed poor business judgment, it did not constitute a breach of any term of the RRA that we can discern, nor do the defendants cite any.

In addition, Hamaguchi's conversation with Yamada did not breach the implied covenant of good faith and fair dealing. Subsumed within every contract in Hawai'i is a "duty of good faith and fair dealing in performing contractual obligations." Best Place, Inc. v. Penn America Ins. Co., 82 Hawai'i 120, 124, 920 P.2d 334, 338 (1996). But Hamaguchi's efforts to convince Yamada not to suspend her annuity payments, however awkward and unsuccessful, do not constitute an "evasion of the spirit of the

bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power as to specific terms, [or] interference with or failure to cooperate in the other party's performance." Restatement (Second) of Contracts § 205 cmt. d (1979). There was scant evidence adduced at trial regarding the manner in which solicitors were expected to conduct themselves with clients and nothing about the manner in which a solicitor was to respond to a client who wished to suspend his or her payments.

Finally, Hamaguchi's attempts to convince Yamada to continue payments on her TSA do not constitute a breach of any fiduciary duty that he might have owed to AFP or Hasuike. "[A fiduciary duty] exists and . . . relief is granted, in all cases in which influence has been acquired and abused, in which confidence has been reposed and betrayed." Meheula v. Hausten, 29 Haw. 304, 314 (1926). Assuming arguendo that Hamaguchi owed a fiduciary duty to AFP, his awkward attempts to dissuade Yamada from suspending payments on her TSA do not constitute the exercise of abusive influence.

Accordingly, we hold that the record lacks substantial evidence that Hamaguchi breached his contract, the implied covenant of good faith, or a fiduciary duty in connection with his conversation with Yamada, and, therefore, that the circuit court's award of damages must be reduced by \$777.60, the amount of commissions that the circuit court found that AFP lost due to the cancellation of Yamada's TSA (FOF No. 69). We further hold, however, that the record contains substantial evidence that Hamaguchi breached his contract with AFP in connection with his solicitations of the Richardses, Yanagisawa, and Wilhelm. Consequently, we need not address the question whether Hamaguchi

also violated the implied covenant of good faith and fair dealing or a fiduciary duty with respect to these clients.

D. The Circuit Court Clearly Erred In Its Findings Of Damages With Respect To The Richardses' TSAs.

Finally, Hamaguchi argues that, even if the circuit court correctly found that he breached his contract, the implied covenant of good faith and fair dealing, or a fiduciary duty, the circuit court erred in its findings (FOF Nos. 65 and 66) regarding the commissions lost with respect to Leon and Pauline Richards. We agree.

The circuit court found that AFP and Hasuike lost \$19,483.37 in commissions due to the cancellation of Leon's TSA and \$4,156.84 in commissions due to the cancellation of Pauline's TSA. We cannot discern, nor do the defendants cite, sufficient evidence in the record to support these findings. According to Defendants' Exhibit No. 52 -- the only evidence in the record that the defendant's cite relating to lost commissions --, AFP lost \$9,300.87 in connection with Leon's TSA and \$1,791.20 in connection with Pauline's TSA, as Hamaguchi claims. The defendants maintain that they are also entitled to damages for the surrender charges that they paid in connection with the cancellation of the Richardses' policies, but we can discover no evidence in the record that the defendants actually paid these surrender charges, nor do they cite to any.¹⁷ Thus, we hold that

¹⁷ The defendants do cite to the record for support, but their citations are unhelpful to them. Defendants' Exhibit No. 21 is a brochure that includes the applicable surrender charges for College life policyholders. Defendants' Exhibits Nos. 24 and 25 are the Richardses' original applications, but they say nothing about surrender charges. Finally, the defendants cite the trial transcript of Hasuike's testimony that AFP repaid all of the commissions it had received in connection with the Richardses' TSAs. Leon did testify elsewhere that the Richardses did not have to pay the surrender charges on their policies, but neither he nor anyone else testified that AFP paid these charges.

(continued...)

the circuit court's FOF Nos. 65 and 66 -- quantifying AFP's lost commissions by virtue of the Richardses' cancelled TSAs -- were clearly erroneous and that the damages awarded to the defendants for lost commissions should, as Hamaguchi argues, be reduced by \$12,548.14, representing the difference between the excessive damages awarded by the circuit court and the actual damages established by Defendants' Exhibit 52.¹⁸

IV. CONCLUSION

In light of the foregoing, we affirm the judgment of the circuit court with respect to Hamaguchi's breach of contract and unjust enrichment claims, as well as the defendants' counterclaim for breach of contract. However, we vacate the judgment's award of damages based on the counterclaims and remand the case for further proceedings consistent with this opinion.

DATED: Honolulu, Hawai'i, February 11, 2002.

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¹⁷(...continued)

Moreover, the amount of surrender charges that the defendants claim, \$19,433.86 with respect to Leon and \$2,896.21 with respect to Pauline, would, when added to the lost commissions in evidence, result in a significantly greater sum than that awarded by the circuit court.

¹⁸ Hamaguchi does not challenge the circuit court's findings regarding AFP's lost commissions with respect to any other clients.