NO. 23182

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

PETER C. JONES, Plaintiff/Counterclaim Defendant-Appellee/Cross-Appellant, v. MAUI CLASSIC CHARTERS, INC., a Hawaii corporation, Defendant/Counterclaimant-Appellee/Cross-Appellee, CHRISTOPHER F. CARROLL, Defendant-Appellant/Cross-Appellee, SAMUEL DAKIN, Defendant

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 96-0834(3))

MEMORANDUM OPINION
(By: Burns, C.J., Lim, and Foley, JJ.)

This action centers around three agreements affecting, among others, a corporation, its current and former presidents, and members of its board of directors. The events leading to litigation occurred in 1996, when Plaintiff/Counterclaim Defendant-Appellee/Cross-Appellant Peter C. Jones (Jones), the former president of Defendant/Counterclaimant-Appellee/Cross-Appellee Maui Classic Charters, Inc. (MCC), a charter boat business operating out of Maʻalaea Harbor on Maui, attempted to sell fifteen shares of his MCC stock to his mother. MCC issued Jones's stock certificate with a restrictive endorsement that had the purported effect of limiting the valuation of the shares to less than fair market value ("book value"), in accordance with a 1983 stock redemption agreement (the 1983 Stock Agreement) to which Jones was a party.

Jones objected to MCC's reliance on the 1983 Stock Agreement and brought this action for a declaratory judgment that it was no longer valid, against, among other signatories, MCC and Defendant-Appellant/Cross-Appellee Christopher F. Carroll (Carroll), an attorney and a member of MCC's board of directors. In his complaint, Jones included a second claim against MCC alone, alleging that MCC's reliance on the 1983 Stock Agreement violated its express covenant to act in good faith contained in a 1994 agreement among Jones, MCC, another shareholder and two of MCC's directors (the 1994 Addendum); and by "extension" breached a 1993 agreement between Jones and MCC (the 1993 Agreement), entitling him to damages, liquidated damages and attorneys' fees and costs from MCC.

In response to Jones's complaint, MCC counterclaimed, alleging that Jones breached release language found in the 1993 Agreement that allegedly barred Jones from thereafter suing MCC, likewise entitling MCC to damages, liquidated damages and attorneys' fees and costs from Jones.

Upon cross-motions for summary judgment on the foregoing claims, the circuit court of the second circuit issued orders granting and denying summary judgment on all three claims. It entered judgment as a matter of law in favor of Jones on his first claim for a declaratory judgment and in favor of MCC on both Jones's second claim for breach of contract and MCC's counterclaim. It denied converse motions for summary judgment on

all three claims. The court later awarded attorneys' fees and costs to MCC and denied a request by Carroll, *pro se*, for attorneys' fees.

Following an abortive first appeal of a final judgment entered in the case, the court entered an amended final judgment. Carroll filed a notice of appeal of the amended final judgment. Jones cross-appealed. MCC did not appeal the amended final judgment.

On appeal, Carroll contends the court erred in granting summary declaratory judgment to Jones and in denying his cross-motion for summary declaratory judgment. Carroll also contends the court erred in denying his request for attorneys' fees "based on the 1993 Agreement." In his cross-appeal, Jones essentially avers that the court should have granted his motions for summary judgment on his second claim against MCC for breach of contract and on MCC's counterclaim. Conversely, Jones argues that the court erred in granting MCC's motion for summary judgment on his second claim and its counterclaim. Accordingly, Jones contends the court's award of attorneys' fees and costs to MCC must be vacated.

Boiled down, the primary issues on appeal are:

> (1) Whether the court erred in concluding, as a matter of law, that the 1983 Stock Agreement terminated according to its terms and was not binding on the parties.

(2) Whether the court erred in concluding, as a matter of law, that MCC did not breach its express covenant of good faith contained in the 1994 Addendum.

(3) Whether the court erred in concluding, as a matter of law, that Jones violated the release provision contained in the 1993 Agreement.

(4) Whether the court erred in awarding attorneys' fees and costs to MCC.

(5) Whether the court erred in denying Carroll's request for attorneys' fees.

We agree with the court that Jones was entitled, as a matter of law, to summary declaratory judgment invalidating the 1983 Stock Agreement. *Ipso facto*, the court was correct in denying the cross-motion for summary judgment brought by MCC and Carroll.

However, we hold that the court erred in granting MCC summary judgment on Jones's breach-of-contract claim and on its counterclaim, as issues of material fact exist which rendered summary judgment inappropriate as to those claims. Accordingly, we vacate the award of attorneys' fees and costs to MCC. By the same token, we affirm the court's denial of Jones's cross-motions for summary judgment.

Finally, we agree with the court that Carroll is not entitled to attorneys' fees.

Accordingly, we (1) affirm the court's April 6, 1998 order that granted summary declaratory judgment to Jones and

denied the cross-motion for summary judgment brought by MCC and Carroll, (2) vacate the court's November 23, 1998 order that granted summary judgment to MCC on Jones's second claim and on its counterclaim and affirm the November 16, 1998 order that denied Jones's cross-motions for summary judgment, (3) vacate the court's October 21, 1998 order awarding attorney's fees and costs to MCC, (4) affirm the court's December 10, 1998 order denying Carroll's request for attorneys' fees, and (5) remand the case for further proceedings consistent with this opinion.

I. BACKGROUND.

Jones was a founder and original shareholder of MCC. From 1983 to 1992, he was a director of MCC and its president. In August 1983, MCC, Jones, Carroll, and MCC's other shareholders executed the 1983 Stock Agreement. The 1983 Stock Agreement provided, in relevant part, as follows:

> MAUI CLASSIC CHARTERS, INC.
>
> STOCK REDEMPTION AGREEMENT
>
> AGREEMENT, made August [1st], 1983, among [Jones], John Scott Nugent, Kenneth Gingerich, [Carroll] and Samuel Dakin (hereinafter called the "Stockholders"), and [MCC], a Hawaii Corporation (hereinafter called the "Corporation")[.]
>
> WHEREAS, the Stockholders own all of the capital stock of the Corporation[.]
>
> . . . .
>
> WHEREAS, the Stockholders and the Corporation believe it to be in the best interests of all parties that the stock of a deceased stockholder be acquired by the Corporation, and

WHEREAS the Corporation has arranged to provide the funds necessary to acquire the stock of a deceased Stockholder through life insurance policies on the lives of the Stockholders,

It is therefore agreed:

1. INSURANCE. The Corporation shall obtain insurance on the life of each Stockholder for $100,000, naming itself as beneficiary of the policies. All policies shall be listed in Schedule A attached hereto, and the policies and any proceeds received thereunder shall be held by the Corporation in trust for the purposes of this Agreement. The Corporation shall have the right to take out additional insurance on the life of any Stockholder whenever, in the opinion of the Corporation, additional insurance may be required to carry out its obligations under this Agreement. The additional policies shall be listed in Schedule A and subject to the terms of the Agreement. The Corporation shall pay all premiums on the insurance policies and shall give proof of payment to the Stockholders within 30 days after the due date of each premium.

2. RIGHTS OF OWNERSHIP. The Corporation shall be the sole owner of the insurance policies and may apply to the payment of premiums any dividends declared and paid on the policies.

3. PURCHASE OF STOCK ON DEATH. Upon the death of any Stockholder, the Corporation shall purchase and the the [sic] estate of the decedent shall sell all the decedent’s stock in the Corporation now owned or hereafter acquired by him. The purchase price of the stock shall be its value computed in accordance with the provisions of the following paragraph.

4. PURCHASE PRICE. The purchase price of each share of stock shall be its book value at the end of the month in which the death of the Stockholder occurs. Book value shall include the cash surrender values of life insurance policies taken out by the Corporation pursuant to the Agreement, and the proceeds of policies insuring the life of the deceased Stockholder in excess of their cash surrender values. The determination of book value shall be made by the accountant then servicing the Corporation, and such determination shall be conclusive on all parties.

5. PAYMENT OF PURCHASE PRICE. The purchase price shall be paid in cash to the estate of the decedent within 30 days after the qualification of a legal representative of such estate.

6. INSUFFICIENT SURPLUS. If at the time the Corporation is required to pay the purchase price its

surplus is insufficient for such purpose, then (a) the entire available surplus shall be used to purchase part of the stock of the deceased Stockholder, and (b) the Corporation and the Stockholders shall promptly take all required action to reduce the capital stock of the Corporation to the extent necessary, or shall take all other action as may be necessary, for the redemption of the unpurchased stock. Payment for the stock so redeemed shall be made at its book value as determined under paragraph 4.

7. DELIVERY OF STOCK. Upon the payment to the estate of the deceased Stockholder of the purchase or redemption price, the legal representative shall assign and deliver the shares of the deceased Stockholder to the Corporation.

8. LIFETIME OPTION TO PURCHASE STOCK. In the event that any Stockholder desires to dispose of his stock during his lifetime, he shall first offer all his stock for sale to the Corporation, and the Corporation shall have the option to purchase all, but not less than all, of his stock. If the Corporation does not purchase all of his stock within 15 days after the receipt of such offer, all of such stock shall be offered to the other Stockholders who shall have the option, among themselves, to purchase all, but not less than all, of such stock. Each of the other Stockholders shall have the right to purchase such portion of the stock offered for sale as the number of shares owned by him at such date shall bear to the total number of shares owned by all the other Stockholders, provided, however, that if any Stockholder does not purchase his full proportionate share of the stock, the unaccepted stock may be purchased by the others proportionately. The purchase price for such shares of stock and the terms of payment shall be the same as fixed by paragraphs 4 and 5, except that the payment shall be made within 30 days after the date of the offer. Simultaneously with the receipt of payment in cash, the selling Stockholder shall take all necessary steps to transfer his shares of stock to the pruchaser [sic]. Any Stockholder whose stock is purchased in accordance with provisions of this paragraph shall cease to be a party to this Agreement, and shall have no further rights hereunder.

9. PURCHASE OF INSURANCE POLICIES ON WITHDRAWAL OF PARTY. In the event that any Stockholder ceases to be a party to the Agreement, pursuant to the provisions of paragraph 8, he shall have the right to purchase from the Corporation the insurance policies on his life listed in Schedule A for a price equal to the cash surrender value of the polices at the date of the offer of sale. The right to purchase shall be exercised and the price paid contemporaneously with

the payment of the price for the stock purchased from such Stockholder. The Corporation shall deliver the policies to the Stockholder and shall execute any necessary instruments of transfer. In the event any of such policies are not so purchased, they shall be released from the terms of the Agreement.

10. ENDORSEMENT ON STOCK CERTIFICATES. Upon the execution of the Agreement, the certificates of stock subject hereto shall be surrendered to the Corporation and endorsed as follows:

"This certificate is transferable only upon compliance with the provision [sic] of an agreement dated August 1, 1983, among Maui Classic Charters, Inc. and its Stockholders, a copy of which is on file in the office of the Secretary of the Corporation."

After endorsement the certificates shall be returned to the Stockholders, who shall be entitled to exercise all rights of ownership of such stock, subject to the terms of this Agreement. All stock hereafter issued to the Stockholders shall bear the same endorsement.

11. TERM. This Agreement shall terminate upon the occurrence of any of the following events:

(a) Cessation of the Corporation's business.
(b) Bankruptcy, receivership, or dissolution of the Corporation.
(c) Withdrawal, under the provisions of paragraph 8, of more than one party.
(d) Whenever there are only two surviving Stockholders bound by the terms hereof.
(e) The termination of the policies on the lives of all of the Stockholders.

Upon the termination of the Agreement, each Stockholder shall surrender to the Corporation the certificates for his stock and the Corporation shall issue to him in lieu thereof new certificates for an equal number of shares without the endorsement set forth in paragraph 10.

12. PURCHASE OF INSURANCE POLICIES ON TERMINATION. Each Stockholder shall have the right, within 30 days after termination of the Agreement, to purchase from the Corporation the policies of insurance on his life at a price equal to the cash surrender value of the policies on the date of termination. Upon receipt of the purchase price, the Corporation shall deliver the policies to the respective purchasers and shall execute any necessary instruments of transfer. The insured shall have no further rights in any policies not purchased within the above 30-day period.

> 13. BENEFIT. This Agreement shall be binding upon the parties, their heirs, legal representatives, successors, and assigns. Each Stockholder in furtherance therof [sic] shall execute a will directing his executor to perform the Agreement and to execute all documents necessary to effectuate the purposes of this Agreement, but the failure to execute such will shall not affect the rights of any Stockholder or the obligations of any estate, as provided in the Agreement.

In late 1992, Mary Jane Caldwell, Jones's sister, and Charles Caldwell, her husband, acquired a substantial number of MCC shares and became the majority stockholders in the corporation. Shortly thereafter, the board of directors in effect removed Jones as an officer and director of MCC and elected Charles Caldwell as the new president, effective January 1, 1993. Mary Jane Caldwell had already been installed as vice-president of MCC at that point.

On February 2, 1993, Jones and MCC entered into the 1993 Agreement. In support of his motion for summary judgment on MCC's counterclaim, Jones declared that "[i]t was the Caldwells' rise to power, and my ouster, that led to the 1993 Agreement." In a deposition, Charles Caldwell described its purpose as follows:

> Q. Who drafted this document [(the 1993 Agreement)]?
>
> A. I think [Carroll] drafted the document.
>
> Q. Is that your signature on it?
>
> A. Yeah.
>
> Q. What was the purpose of this document?
>
> A. The purpose was to fairly end the relationship of [Jones] and [MCC].

Q. Which relationship?

A. As a manager of [MCC].

Q. Was it intended to end his relationship with [MCC] as a shareholder?

A. No.

Q. So that relationship as contemplated would continue?

A. Yeah.

The 1993 Agreement reads, in pertinent part, as follows:

ARTICLE I
BACKGROUND

1. WHEREAS JONES has been employed as the Chief Executive Officer and President of [MCC] since the incorporation of [MCC]; and

2. WHEREAS various claims, demands, disputes and differences have arisen between the parties concerning the employment performance of JONES; the business and transactions involving property sold to [MCC] by JONES; violations of the Hawaii corporation code involving the management of [MCC]; violations of the JONES employment contract with [MCC]; financial irregularities existing between the parties; and the monetary claims and counterclaims now existing between the parties; and

3. WHEREAS the parties desire to avoid the time, expense, aggravation, and litigation which is now eminent [sic] between the parties, and to settle all of the legal issues and disputes now existing between them; and

. . . .

NOW THEREFORE, in consideration of the covenants and mutual promises herein contained, it is hereby agreed as follows:

ARTICLE II
SPECIFIC PROVISIONS

[(Discussing various matters of settlement including, *inter alia*, disposition of property as between Jones and MCC, transfers of various rights between the parties arising out of the employment relationship,

and settlement of Jones's rights under his employment contract.)]

ARTICLE IV
RELEASES

1. In consideration of the terms and conditions hereof and of the mutual covenants of the parties hereto, JONES hereby releases and discharges [MCC], its officers, directors, shareholders, agents, and employees, and each of them, from and against any and all claims, demands, actions, causes of action, liabilities, damages at law and in equity which JONES has or may hereafter have, either now known or not, resulting from or connected with the claims and matters arising out of JONES' employment at [MCC], and all other business dealings, contracts, arrangements, disputes and dealings between JONES and any of the parties mentioned above.

2. In consideration of the terms and conditions hereof and the mutual covenants of the parties hereto, [MCC], its officers, directors, shareholders, agents, and employees hereby release and forever discharge JONES from and against any and all claims, demands, actions, causes of action, liabilities, damages at law and equity which [MCC], its officers, directors, shareholders, agents, or employees have or may hereafter have, whether now known or not, resulting from or connected with JONES' employment, business and personal relationships set forth in the terms of this Agreement and from any liability arising from the January 10, 1993 accident involving the vessel TERAGRAM.

3. This settlement is a compromise of disputed claims. It is not an admission of liability by any party. No party to this Release has made or received a promise, agreement, or a representation to induce this compromise, which is made with full knowledge of the facts and advice of counsel. This settlement agreement shall be a contractual instrument and not a mere recital. It is understood and agreed to by the parties that this instrument is a full and final release between the parties of all claims of every nature and kind whatsoever at law and equity, known or unknown, past, present or future, excepting only those obligations and covenants contained in or resulting from this Agreement.

ARTICLE V
SURVIVAL OF OBLIGATIONS

1. The parties mutually covenant and agree that the rights and obligations under the terms of this Agreement shall survive and continue and that on default of any obligation by any party, the other

> party may bring an action for specific performance, for damages, or for any other remedy available under applicable law. This Agreement is intended to be a binding contract of full legal force and effect.
>
> 2. The parties further agree that any violation of this covenant not to sue, or take [sic] other action as set forth in this Article and this Agreement shall result in the enforceable obligation by the breaching party to pay the aggrieved party a sum equal to amount of the underlying claim, all court costs, and attorneys [sic] fees incurred by the aggrieved party together with the sum of FIFTEEN THOUSAND DOLLARS ($15,000.00) as liquidated damages for breech [(sic)] of contract.
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> . . . .
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> ARTICLE VII
> GENERAL PROVISIONS
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> . . . .
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> 3. In the event any party hereto shall commence any action or proceeding against the other by reason of any breach or claimed breach in the performance of any of the terms or conditions of this Agreement, or to seek a judicial determination of rights hereunder, the prevailing party in such action or proceeding shall be entitled to reasonable attorney's fees in an amount to be fixed by the trial court. . . .

(Bold typesetting omitted.)

Discord arose in July 1993 when Jones wrote a letter to all of MCC's shareholders, encouraging them to form a hui, or investment group, in order to pool their MCC shares for sale as a block. Jones enclosed a proposed agreement for the block stock sale. On August 7, 1993, Jones sent a letter to MCC's board of directors and shareholders informing them that five shareholders had pooled eighty-nine shares and were planning to sell the block to the highest bidder. The letter also stated, verbatim, "We are asking $3,000.00 per share and will place any Bona fide offer in a [sic] escrow account where per the Articles and By Laws of the

corporation you and other non-participating shareholders will have 10 days to exercise your First Right of Refusal."

MCC's board of directors responded to the hui's actions by holding a special meeting on December 1, 1993.[1] The board passed a motion that authorized the issuance of an additional fifty capital shares priced at "book value[.]" Further, the Caldwells took an option to purchase up to twenty-five of the shares. Any remaining shares would be offered first to the stockholders on a pro rata basis, based on their proportionate shares of the stock outstanding prior to the new issue, then to the stockholders without restriction.

Jones sent a December 2, 1993 letter to the board of directors protesting the proposed stock issue.

At a December 6, 1993 board of directors meeting,[2] Carroll opined that there was no legal problem with the proposed stock issue and that the 1983 Stock Agreement was binding as to its signatories and still in effect. Carroll informed the board that it needed to change some of the wording of its previous motion authorizing the stock issue, whereupon the board again

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[1/] Present at the December 1, 1993 MCC board of directors meeting were Charles Caldwell, Mary Jane Caldwell, Thomas Araki, and Lynse Frank, serving as temporary secretary.

[2/] Present at the December 6, 1993 MCC board of directors meeting were Charles Caldwell, Mary Jane Caldwell, Thomas Araki, [Carroll], Scott Nugent, and Lynse Frank, serving as temporary secretary.

authorized issuance of the stock.[3] The next day, Charles Caldwell sent a letter to the MCC stockholders informing them of the new stock issue, the price at "book value" ($1,135.98) and the options provisions.

Carroll, the attorney retained by MCC to render an opinion as to the legality of the stock issue and the validity of the 1983 Stock Agreement, sent a December 10, 1993 facsimile to MCC expressing his wish to purchase his proportionate share of the stock issue and any remaining shares.

Jones sent another letter of protest to Charles Caldwell and MCC's shareholders on December 10, 1993. He claimed the directors at the meeting acted out of self-interest and in derogation of the rights of the other stockholders in authorizing the stock issue. He also objected to the low sale price. He expressed his feeling that a change in MCC's board of directors was due.

On December 20, 1993, a financial advisor of Samuel Dakin, one of the minority shareholders, sent a letter to Charles Caldwell opposing both the "method and magnitude" of the stock issue. The letter claimed that the option improperly transferred voting control to the Caldwells and that the valuation of the shares was unacceptable.

[3/] Scott Nugent later objected to the minutes of the December 6, 1993 meeting, protesting the stock issue, "its upset price" and the first option to purchase given to the Caldwells.

On December 21, 1993, Mary Jane Caldwell sent a letter to all MCC shareholders, discussing the 1983 Stock Agreement and enclosing a copy. The letter noted that it was "unfortunate" the stockholders "were not recently privileged to this information before placing [their] stock for sale under the Aug. 1993 agreement [(the hui's block sale agreement)] with Peter Jones as sales agent."

Jones and other hui members then retained counsel, Judith L. Neustadter nka Judith Neustadter Fuqua, who sent a February 7, 1994 letter to Charles Caldwell. The letter demanded that MCC immediately rescind the stock issue. The letter alleged, *inter alia*, an impermissible conflict of interest on the part of the board of directors, rendering the transaction voidable by the shareholders; violation of Hawai‘i law pertaining to stock options; violation of shareholder preemptive rights; breach of fiduciary duty by the directors; and federal securities fraud. The letter expressed, however, the clients' desire to settle the claims and not "embark on lengthy and expensive litigation." It also noted that

> the Stock Redemption Agreement, made on August 1, 1983, has long been terminated. Pursuant to §11, the agreement terminates upon the termination of the policies on the lives of all of the stockholders. Within the first year or so of business, there was no life insurance for the stockholders. Hence, my clients are not bound by the terms of the Stock Redemption Agreement.

In March 1994, the disputants, in an effort to settle their imbroglio, executed an agreement entitled, "Addendum

Agreement Between [Jones], and Scott Nugent and [MCC] Present Management Charles and Mary Jane Caldwell" (the 1994 Addendum). Purportedly, no counsel assisted them in the drafting. The terms of the 1994 Addendum, as written, are as follows:

> This agreement is made on this 1st day of March, 1994, by and between [Jones], Scott Nugent and [MCC] [herein referred to as The Hui] present management President Charles Caldwell and Vice-President Mary Jane Caldwell [herein referred to as M.C.C. Mang.], in consideration of the mutual covenants and obligations set forth below, agree as follows.
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> Article I
> Background
>
> 1. Whereas, The Hui has raised and objected to certain issues and obligations as the 1983 Aug. 1 Stock holders [sic] agreement along with the protested issue of a [sic] additional 50 shares of capital stock supposedly issued in December of 1993 by M.C.C. Mang., and
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> 2. Whereas, various claims, demands and disputes have arisen between the parties concerning both the past relied on 1983 Agreement and the legal proper and ethical procedure in the issuance of Corporate capital stock, and
>
> 3. Whereas, the parties wish to avoid the time, expense, aggravation, and litigation which is now eminent between the parties, and to settle all of the legal issues and disputes now existing between them as out lined [sic] in the February 7 letter to [MCC] from Judy Neustadter and
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> 4. Whereas, the obligations and considerations regarding that certain purchase agreement by and between [MCC] and Roy A. Cleghorn for the purchase of the vessel Four Winds are due to be completed and discharged on January 1, 1996. [sic] or 22 months from the date of this agreement. [sic] and
>
> 5. Whereas, the July 31, 1993 joint stock holders [sic] agreement between [Jones], Jack and Scott Nugent, Katherine Jones, and Sam Dakin may be terminated according to Section 4.4 by 50% of the aggregate shares committed to sale.
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> Now Therefore, in consideration of the mutual covenants, mutual promises, loans, and consultant fees herein contained, it is hereby agreed as follows.

Article II
Specific Provisions

1. M.C.C. Mang. agrees to effectively satisfy the claim of Hui members expenditure of $5,000.00 (five thousand dollars) in legal fees via the payment of a consultant fee to [Jones], which he may disburse to Hui members as are due. Consultant fee to be paid at time of signature.

2. M.C.C. Mang. agrees to immediately rescind the 1993 December issue of 50 shares of capital stock and transfer the sum paid into loans from stockholders per terms similar to past interest rates paid other stockholder loans to the company, which have not exceeded 12.5% or been less than 10% simple interest per year.

3. M.C.C. Mang. agrees to Issue [sic] no further stock of any kind, nor purchase or attempt to purchase via options any portions or blocks of 89 legal shares presently held by Hui members [Jones], Katherine Jones, Scott Nugent, Jack nugent [sic] and Sam Dakin until after the termination of purchase agreement for vessel Four Winds Jan. 1st, 1996.

4. M.C.C. Mang. agrees to loan [Jones] the sum of $10,000.00 (ten thousand dollars) at a simple interest rate of 5% per year. The principal shall be due and payable no later than January 1, 1996. M.C.C. Mang. or board [sic] of Directors will have the exclusive right to 5 shares of [Jones] [MCC] stock as collateral for said loan and may take control of those 5 shares presently filed in trust with [Carroll] if [Jones] fails to pay back principal of $10,000.00 by or before January 1, 1996.

5. M.C.C. Mang. agrees to loan Scott Nugent the sum of $8,000.00 (eight thousand dollars) at a simple interest rate of 5% per year. The principal shall be due and payable no later than January 1, 1996. M.C.C. Mang. or Board of Directors will have the exclusive right to 4 shares of Scott Nugent's [MCC] stock as collateral for said loan and may take control of those 4 shares presently filed in trust with [Carroll] if Scott Nugent fails to pay back the principal sum of $8,000.00 by January 1, 1996.

6. M.C.C. Mang. agrees to recognize the legitimate right of the share holders [sic] to issue stock according to State law and the legitimate right of the board of directors in overseeing company business including salary raises to officers. In all business it promises to act in good faith too [sic] the best of their legal and ethical capability, and that any future stock transactions or stock issues shall be first offered to the board of directors via

terms of first right of refusal, then offered to the other stockholders on a [sic] equal pro rata basis with shareholders having at least a term of 15 days to respond.

7. M.C.C. Mang. agrees to pay [Jones] and Scott Nugent a consultants fee for advice received equal to the amount of interest due on above stated loans. It further agrees that this new agreement is a [sic] extension of the February 1, 1993 agreement between [Jones] and [MCC] and both are binding. It recognizes that neither agreement denies any stockholder participation in future corporate business other than agreed in this addendum agreement.

8. The Hui agrees to rescind the July 31, 1993 joint stock holders [sic] agreement per Section 4.4 of agreement and to hold the M.C.C. Mang. harmless for any past or future damage suffered as a result of actions taken by Hui members as a result of agreement.

9. The Hui agrees not to enter into any other similar agreements, to sell or attempt to sell a portion or block of their stock until January 1, 1996.

10. The Hui agrees to give M.C.C. Mang. 53 shares voting rights represented and hereby established as a shareholders proxy for any future shareholders meetings.

11. The Hui agress to assist M.C.C. Mang. in what ever [sic] way necessary to officially ratify the past new issue of 100 shares of stock that make a legitimate total of 200 shares.

12. The Hui agrees to place 9 of its shares in trust with [Carroll] as collateral under the terms established above.

13. The Hui agrees that this agreement is a [sic] extension of the February 1, 1993 agreement between [Jones] and [MCC] and both are still binding. It is also duly recognized that neither agreement denies any stockholder his legal rights of participation in future corporate business other than agreed in this addendum agreement.

(Bold typesetting and underlining omitted, brackets in the original and brackets added.)

Jones declared that prior to the negotiation and drafting of the 1994 Addendum, Charles Caldwell "assured" him

that he "need not worry about any assertions that the [1983 Stock Agreement] was valid because he, Charles Caldwell, would take care of [Carroll's] concerns." He also claimed that Scott Nugent, who was also a party to the 1994 Addendum, was in the room at the time of the alleged conversation.[4]

The drift towards litigation commenced a couple of years later, on January 28, 1996, when Jones sent a letter to MCC's board of directors, informing them that he had entered into a sales agreement to sell fifteen of his shares to his mother, Katherine Jones, for the price of $5,000.00 per share. He notified them in order to honor a right of first refusal.[5]

Mary Jane Caldwell responded to Jones in a February 13, 1996 letter, informing him that the 1983 Stock Agreement applied to the sale of Jones's shares, thereby limiting the sale price of the shares to "book value."

[4/] Scott Nugent has not verified or denied Jones's claim regarding Charles Caldwell's assurance, in an affidavit or declaration. Jones's counsel declared that Nugent was prepared to corroborate Jones's allegation, until he was allegedly instructed by Mary Jane Caldwell not to assist Jones.

[5/] In his January 28, 1996 letter, Jones wrote:

> According to our agreement the board of directors has the first right of refusal to match the offer as stated in the enclosed agreeement dated January 1996. Per past stock purchase agreements between the original owners of [MCC] and the newer owners of [MCC] stock, plus the agreement and addendum between [Jones], Scott Nugent and [MCC] dated Feb. 1993 and March 1994, you are hereby notified of this intended 15 share transfer.

On July 18, 1996, Jones's counsel, in a letter to Charles Caldwell, objected to MCC's reliance on the 1983 Stock Agreement, maintaining that the 1983 Stock Agreement was unenforceable because (1) it terminated via its own terms pursuant to paragraph 11(e), and (2) the 1994 Addendum addressed the issues raised in the February 7, 1994 letter written by Jones's attorney, including the express issue of the invalidity of the 1983 Stock Agreement.

MCC nevertheless proceeded to endorse Jones's stock certificate with a restriction that had the purported effect of preventing Jones from selling his shares at other than book value.[6]

On October 15, 1996, Jones filed a complaint against MCC and Carroll.[7] Jones's first claim for relief, against MCC and Carroll, alleged that the 1983 Stock Agreement terminated by its own terms -- specifically, paragraph 11(e) -- for failure of MCC to maintain insurance on the life of each stockholder signatory pursuant to paragraph 1. On this first claim, Jones prayed for a declaratory judgment that

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[6/] In accordance with paragraph 10 of the 1983 Stock Agreement, the endorsement read as follows: "This certificate is transferrable only upon compliance with the provisions of an agreement dated August 1, 1983 among [MCC] and its stockholders, a copy of which is on file in the office of the secretary of the corporation."

[7/] Jones originally included Samuel Dakin as a defendant in his complaint, but the court later dismissed Samuel Dakin as a defendant due to lack of service.

> (a) The [1983 Stock Agreement] terminated by its own terms;
>
> (b) [Jones] is not bound by the terms of the [1983 Stock Agreement]; and,
>
> (c) [Jones] may sell some or all of his shares at any time for fair market value[.]

Jones's second claim for relief, against MCC alone, alleged that MCC acted in bad faith when it attempted to enforce the 1983 Stock Agreement and restrict the sale price of his shares to their "book value," thereby breaching its express covenant of good faith in the 1994 Addendum; and by extension breaching the 1993 Agreement, thereby entitling Jones to damages. For this second claim, Jones prayed as follows:

> 2. Damages in an amount to be determined at trial;
>
> 3. Liquidated damages in the amount of $15,000.00;
>
> 4. Interest, attorney's fees, and costs; and,
>
> 5. Such other and further relief as the Court deems just and proper.

On December 2, 1996, MCC filed its answer to the complaint, along with a counterclaim alleging that Jones, by filing his complaint, breached the general release (covenant not to sue) contained in the 1993 Agreement. MCC requested actual damages, liquidated damages and attorneys' fees and costs, as provided for in the 1993 Agreement.

On February 13, 1998, MCC and Carroll filed a motion for summary judgment on Jones's first claim for a declaratory judgment. They sought a converse declaratory judgment that "a

right of first refusal applies to certain shares of [MCC] stock issued in [Jones's] name, and said right of first refusal restricts his ability to sell some or all of such shares at any time for fair market value." On the same day, Jones filed a dueling motion for partial summary judgment, praying on his first claim as detailed above.

The circuit court heard the cross-motions for summary judgment on March 9, 1998, and orally granted Jones's motion for partial summary judgement and denied the converse motion of MCC and Carroll. In its April 6, 1998 written order, the court declared that "(a) the [1983 Stock Agreement] regarding shares of stock of [MCC], terminated by its own terms; (b) [Jones] is not bound by the terms of the [1983 Stock Agreement]."

On May 7, 1998, Jones filed a motion for summary judgment against MCC's counterclaim. The next day, Jones filed a motion for summary judgment on his second claim, for breach of contract, against MCC. MCC and Carroll responded by filing a May 8, 1998 motion for summary judgment on Jones's second claim and MCC's counterclaim.[8]

The court heard the three dueling motions on August 26, 1998, and orally granted MCC's motion and denied both of Jones's

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[8/] We observe that Jones's second claim, for breach of contract, was asserted against MCC alone, and not against Carroll. In addition, MCC, and not Carroll, asserted the counterclaim. Hence, Carroll had no standing to bring the May 8, 1998 motion for summary judgment, even though he was denominated movant therein along with MCC.

motions. Later, on November 16, 1998, the court filed its written order denying Jones's motions. And on November 23, 1998, the court filed its written order granting MCC's motion.

Meanwhile, on September 8, 1998, MCC filed a "motion for summary judgment" for attorney's fees, costs and liquidated damages. Carroll filed a similar motion for attorneys' fees on October 13, 1998. On October 21, 1998, the court granted MCC's motion in part and denied it in part. It awarded MCC $18,384.01 in attorneys' fees and $3,725.38 in costs, but denied MCC's request for $15,000.00 in liquidated damages, concluding "that such damages are in the nature of a penalty." On December 10, 1998, the court issued an order denying Carroll's motion for attorneys' fees.

On February 10, 1999, the court entered its final judgment. On March 12, 1999, Carroll filed a notice of appeal of the judgment. Jones followed suit on March 23, 1999. MCC did not appeal. On August 30, 1999, the Hawai‘i Supreme Court dismissed the appeals for lack of jurisdiction, because the February 10, 1999 final judgment failed to dismiss the claim against Samuel Dakin.

On January 28, 2000, the court entered an amended final judgment. Carroll filed a notice of appeal of the amended final judgment on February 22, 2000, as did Jones on March 7, 2000. Again, MCC did not appeal.

II. STANDARDS OF REVIEW.

A. Summary Judgment.

Appellate courts review an award of summary judgment *de novo* under the same standard the circuit court applied. State Farm Fire and Casualty Co. v. Pacific Rent-All, Inc., 90 Hawai'i 315, 322, 978 P.2d 753, 760 (1999). It is well-established that

> summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Id. (citations, brackets and internal block quote format omitted). See also Hawai'i Rules of Civil Procedure (HRCP) Rule 56(c) (1999).[9] Further, "[a] fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties." State Farm, 90 Hawai'i at 322, 978 P.2d at 760 (citations and internal quotation marks and block quote format omitted). In applying the foregoing principles, we must "view all of the evidence and the inferences drawn therefrom in the light most favorable to the party opposing the motion." Id.

[9/] Hawai'i Rules of Civil Procedure (HRCP) Rule 56(c) (1999) provides, in relevant part, that

> [t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

(citations, brackets and internal quotation marks and block quote format omitted).

B. Attorneys' Fees.

Appellate courts review the trial court's grant or denial of attorneys' fees under the abuse of discretion standard. Eastman v. McGowan, 86 Hawai'i 21, 27, 946 P.2d 1317, 1323 (1997) (citation omitted). See also State v. Furutani, 76 Hawai'i 172, 179, 873 P.2d 51, 58 (1994) ("The trial court abuses its discretion when it clearly exceeds the bounds of reason or disregards rules or principles of law or practice to the substantial detriment of a party litigant." (Citations and internal quotation marks omitted.)).

III. DISCUSSION.

A. Summary Declaratory Judgment.

Carroll contends on appeal that Jones remained bound by the 1983 Stock Agreement and that the court therefore erred when it granted Jones's motion for summary judgment.

We examine anew whether any genuine issue of material fact existed concerning the validity of the 1983 Stock Agreement. State Farm, 90 Hawai'i at 322, 978 P.2d at 760. We agree with the court that the 1983 Stock Agreement terminated according to its terms, leaving no genuine issue of material fact remaining.

Courts should interpret the terms of a contract "according to their plain, ordinary meaning and accepted use in

common speech." State Farm, 90 Hawai'i at 324, 978 P.2d at 762 (citation omitted). "The court should look no further than the four corners of the document to determine whether an ambiguity exists. Consequently, the parties' disagreement as to the meaning of a contract or its terms does not render clear language ambiguous." Id. (citations omitted). "It is well settled that courts should not draw inferences from a contract regarding the parties' intent when the contract is definite and unambiguous." Id. (citation omitted).

The terms of the 1983 Stock Agreement are unambiguous, and the intentions of the parties patent. The 1983 Stock Agreement was a mechanism for preserving the closely held and managed nature of MCC by setting forth the procedures for purchase by the corporation and its shareholders of the stock of deceased and departing shareholders.

Carroll essentially argues that given this objective, the life insurance maintenance provision, keyed as it was to the deceased shareholder stock redemption provision, was severable from the lifetime stock redemption provision. Therefore, he reasons, the failure of the corporation to maintain insurance on the lives of the signatory shareholders did not terminate or invalidate the lifetime stock redemption provision.

The court apparently disagreed with Carroll's exclusive emphasis on the ownership and control objective of the 1983 Stock Agreement, and it had good and valid reason to do so:

> The original agreement was a stock redemption agreement. As I note in the numerous paragraphs, there is reference to the death of the stockholders. In paragraphs 3 and 4 and 5 and 6 and 7, all refer in some way or other to decedents or dead -- or death of the stockholders. Indeed, in the whereas clauses, as cited by [Jones], the -- two of the three whereas clauses refer to deceased stockholders.
>
> In addition to that, in paragraphs 2 and 8 and 9, 11 and 12 and 13, further information is given regarding insurance policies and the -- the continuation of the whereas clause's purpose. Therefore, the Court has to conclude that the purpose of this entire stock redemption agreement, although entitled redemption agreement, is primarily to provide for insurance for a deceased stockholder in order that the corporation could carry on and purchase the stocks from the deceased.
>
> Paragraph 1 of the agreement requires, mandates that insurance is to be obtained. There is no dispute as to any material fact in this case that insurance was not obtained by the corporation for the stockholders. Whether it was on the part of [Jones] individually or in his capacity as president, that's -- doesn't seem to really matter in this particular case because insurance was not obtained.
>
> Paragraph 8 requires and is inextricably connected to paragraphs 4 and 5. [MCC and Carroll argue] that paragraph 8 is separate from the -- from paragraph -- well, from the remainder of the paragraphs as regards insurance. The Court does not agree for the reason that the purchase price has to be in terms of the payment fixed in paragraphs 4 and 5. Therefore, there cannot be any determination as to book value without reference to paragraphs 4 and 5. And that shall be made at the end of the month in which the death of the stockholder occurs.
>
> The fact that the accountant has to make a determination is a logical step after the death of a stockholder. I don't find that that is a separate provision which only applies to paragraph 8 in order to effect paragraph 8 option to purchase stock by a living person or sell it.
>
> Therefore, based upon the Court's review of this contract as well as the arguments of counsel submitted in memos, I'm going to, let's see, deny the motion of [MCC and Carroll] for summary judgment, grant the motion of [Jones] for partial summary judgment[.]

We take a slightly different tack towards the same result. The objective we initially set out above was not the

only primary objective of the 1983 Stock Agreement. As stated by the court, the insurance objective was also important. We do not agree with the court that it was paramount, but it was equally central. "It is a fundamental rule of construction that an agreement should be interpreted as a whole and its meaning governed from the entire context and not from any particular word, phrase or clause." Territory v. Arneson, 44 Haw. 343, 348, 354 P.2d 981, 985 (1960) (citations omitted).

The insurance maintenance provision was vital assurance to all signatories that MCC would have the funds to undertake the mandatory purchase of a deceased shareholder's stock (¶ 3). No such assurance was necessary for the optional purchase of a departing shareholder's stock (¶ 8), but that does not *ipso facto* render the lifetime stock redemption provision severable. The objective first set out above would not be served by a lifetime stock redemption provision set adrift, so to speak, from the anchor of the mandatory deceased shareholder stock redemption provision. And in order to preserve that mooring, the life insurance maintenance provision was essential. The objectives and enabling provisions we speak of here were all of one piece, and not in any way severable. We observe, in passing, that the lifetime stock redemption provision was also inextricably linked to the insurance provision by the option afforded a departing

shareholder to purchase the insurance policies that MCC was to have maintained on his life (¶ 9).

Even if we assume, *arguendo*, that the lifetime stock redemption provision was severable from the rest of the 1983 Stock Agreement, we question whether it was definite enough to be enforceable. "To be enforceable a contract must be certain and definite as to its essential terms." Boteilho v. Boteilho, 58 Haw. 40, 42, 564 P.2d 144, 146 (1977) (citation omitted).

Per paragraph 8, the purchase price for the shares of a departing shareholder "shall be the same as fixed by paragraphs 4 and 5[.]" Paragraph 5, dealing with the form and time of payment, is impertinent in this respect. Paragraph 4 provides that "[t]he purchase price of each share of stock shall be its book value at the end of the month in which the death of the Stockholder occurs." Obviously geared to the deceased shareholder stock redemption provision, paragraph 4 ill suits the lifetime stock redemption provision. Although it specifies "book value" as the purchase price, the provision determining book value "at the end of the month in which the death of the Stockholder occurs" makes little sense in the case of a departing shareholder. But in many foreseeable circumstances, the date of valuation would have a significant, if not outsized, effect upon the ultimate price.

It has been said that "a definite and agreed price" is one of the desiderata for a sufficiently definite and hence enforceable contract. Francone v. McClay, 41 Haw. 72, 78 (1955). It has also been said that poring over a list of such desiderata is less useful than the general inquiry whether, in any particular case, the parties had "no expectation of further provisions to be negotiated later," at the time the contract was entered into. Id. (emphasis omitted). See also In Re Sing Chong Co., Ltd., 1 Haw. App. 236, 239, 617 P.2d 578, 581 (1980).

Although there is no indication in the record that the parties to the 1983 Stock Agreement expected further negotiations on the contract at the time it was entered into, the fact remains that the indefiniteness in question is not so much a matter of intentional omission but of poor draftsmanship. Had the parties known of the resulting lacuna, we surmise they would have negotiated to fill it. We are cognizant of our general policy "against the destruction of contracts for uncertainty." Id. In this case, however, we retain serious doubts as to the validity of the lifetime stock redemption provision, severable or not.

Carroll also argues that Jones cannot be heard on the absence of the required life insurance where he, as "chief executive of MCC was the responsible [sic] for purchasing the life insurance policies[.]" Carroll's Opening Brief at 22 (emphasis omitted). We point out that the 1983 Stock Agreement imposed that responsibility upon MCC, not Jones. We also observe

that Carroll himself was a signatory shareholder of MCC at the time of the 1983 Stock Agreement, and continued on as an active shareholder, officer and director of MCC throughout the events leading up to the litigation. Pointing fingers in this respect profits no one.

Carroll also contends that Jones "waived any right to assert the termination of life insurance policies . . . [because] [h]e repeatedly signed (and even drafted) documents relating to MCC stock transactions that referred to the 1983 [Stock] Agreement's stock purchase option as a subsisting contractual obligation." Carroll's Opening Brief at 23 (footnote omitted). But the most that can be said of those occasions is that Jones, and on some of those occasions Carroll, acknowledged or waived provisions of the 1983 Stock Agreement to facilitate stock transactions and other agreements relating to MCC. Nowhere in those documents or in the record does Jones waive its insurance provisions, in particular.

As the court noted in making its ruling, "[t]here is no dispute as to any material fact in this case that insurance was not obtained by the corporation for the stockholders." Paragraph 11 of the 1983 Stock Agreement provided that "[t]his Agreement shall terminate upon the occurrence of any of the following events: . . . (e) The termination of the policies on the lives of all of the Stockholders." It is evident from its express language that the 1983 Stock Agreement terminated when MCC failed

to maintain insurance on the lives of the stockholders. The court was correct in concluding, as a matter of law, that the 1983 Stock Agreement terminated by its own terms. Hence, we hold that the court correctly granted summary declaratory judgment in favor of Jones and against MCC and Carroll.

B. Summary Judgment on Jones's Second Claim, For Breach of Contract, Against MCC.

Jones argues on appeal that the court should not have granted MCC summary judgment on his second claim, and instead should have granted him summary judgment, because MCC breached the good faith provision contained in paragraph 6 of the 1994 Addendum -- verbatim, "[i]n all business it promises to act in good faith too [sic] the best of their legal and ethical capability" -- when it sought to enforce the 1983 Stock Agreement. We agree with Jones that the court erred when it granted summary judgment to MCC, as genuine issues of material fact exist concerning the provisions of the 1994 Addendum. For the same reason, we disagree with Jones that the court erred when it denied him summary judgment on his second claim.

First, we recognize that it is questionable whether a party can bring an action in Hawai‘i for tortious breach of an implied contractual covenant of good faith and fair dealing, except in the first-party insurance context. Francis v. Lee Enterprises, Inc., 89 Hawai‘i 234, 237-38, 971 P.2d 707, 710-11 (1999). However, Jones's second claim was for breach of an

express contractual covenant of good faith. Cf. id. at 244, 971 P.2d at 717 (emotional distress damages for a tortious breach of contract (as opposed to a tortious breach of the implied contractual covenant of good faith and fair dealing) may be recoverable "where the parties specifically provide for them in the contract"). Its specific prayers were for only those damages expressly provided for upon breach in article V, paragraph 2 of the 1993 Agreement.

Moreover, the allegations in Jones's second claim extended beyond the mere breach of the express covenant of good faith. Jones's complaint alleged, not only that MCC breached its express covenant of good faith, but that MCC breached other obligations under the 1994 Addendum, when it endorsed his stock certificate with the restriction mandated by the 1983 Stock Agreement.[10]

[10/] Jones's complaint alleged, in pertinent part:

> 43. The [1994] Addendum provided that [MCC] was to act in good faith.
>
> 44. The [1994] Addendum expressly stated that the 1993 Agreement remained in full force and effect.
>
> 45. The [1994] Addendum did not state that the [1983 Stock Agreement] remained in full force and effect.
>
> 46. The [1994] Addendum expressly stated that it resolved all issues in [Jones's] counsel's February 7, 1994, letter.
>
> 47. [Jones's] counsel's February 7, 1994, letter included allegations that the [1983 Stock Agreement] had terminated due to the lack of life insurance policies on the lives of [MCC's] shareholders.

(continued...)

It is "well established that, generally, pleadings must be construed liberally and not technically." Island Holidays, Inc. v. Fitzgerald, 58 Haw. 552, 567, 574 P.2d 884, 893 (1978) (citations omitted). See also HRCP Rule 8(f) (1999) ("All pleadings shall be so construed as to do substantial

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[10/](...continued)

> 48. By resolving all issues in the February 7, 1994, letter, and by not expressly stating that the [1983 Stock Agreement] remained in effect, pursuant to the terms of the [1994] Addendum, the parties acknowledged that the [1983 Stock Agreement] terminated by its own terms.
>
> 49. [MCC] breached the terms of the [1994] Addendum and therefore, by extension, the 1993 Agreement, by failing to act in good faith when it refused to allow [Jones] to sell shares of stock of MCC at fair market value.
>
> 50. [Jones] has been damaged, in an amount to be determined at trial, by his inability to reach the substantial capital he has invested in [MCC].
>
> 51. [Jones] is entitled to recover his damages, together with attorney's fees and costs and liquidated damages in the amount of $15,000.00.

In his motion for summary judgment on his second claim for relief, Jones construed that claim as follows:

> By his Second Claim for Relief, [Jones] seeks monetary damages for [MCC's] complete, absolute, and utter lack of good faith when [MCC] accepted, without question, [Carroll's] assertion that the [1983 Stock Agreement] was still valid and enforceable.
>
> . . . .
>
> As is evident from the attached Memorandum (and supporting Declarations), and based on the records and files herein, [MCC], acting through Charles and Mary Jane Caldwell (its "management"), breached the 1994 Addendum when it wrongfully supported the validity of the [1983 Stock Agreement].

(Footnotes omitted.)

justice.").[11] In addition, "'the substance of the pleading controls, not the nomenclature given to the pleading[.]'" Naki v. Hawaiian Elec. Co., Ltd., 50 Haw. 85, 86, 431 P.2d 943, 944 (1967) (quoting Madden v. Madden, 43 Haw. 148, 149-50 (1959)). Although Jones pleaded and argued the alleged breach of MCC's covenant of good faith, the broader claim, that MCC breached its obligations under the 1994 Addendum, is easily ascertainable from the complaint and Jones's subsequent pleadings. To characterize his second claim as premised solely on a breach of the covenant of good faith would be overly restrictive and exalt form over substance.

Whether MCC did breach its obligations under the 1994 Addendum is a question the court failed to address. In its oral ruling, the court stated only that "it seems it's a matter of

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[11/] We believe that the mandate of [HRCP] Rule 8(f) that "all pleadings shall be so construed as to do substantial justice" epitomizes the general principle underlying all rules of [HRCP] governing pleadings, and by the adoption of [HRCP] we have rejected "the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome" and in turn accepted "the principle that the purpose of pleading is to facilitate a proper decision on the merits."

Accordingly, under [HRCP] Rule 8(a)(1) "a complaint is sufficient if it sets forth 'a short and plain statement of the claim showing that the pleader is entitled to relief.' . . . The rule is satisfied if the statement gives the defendant fair notice of the claim and the ground upon which it rests. . . . It is not necessary to plead under what particular law the recovery is sought."

Hall v. Kim, 53 Haw. 215, 221, 491 P.2d 541, 545 (1971) (citations omitted, ellipses in the original).

interpretation and not a matter of fact." Its written orders simply grant or deny the respective motions for summary judgment. We recognize that the interpretation of a contract is a question of law. However, "[w]here the language of the contract is ambiguous, so that there is some doubt as to the intent of the parties, that intent is a question of fact." Bishop Trust Co., Ltd. v. Central Union Church of Honolulu, 3 Haw. App. 624, 628, 656 P.2d 1353, 1356 (1983) (citation omitted).

In this case, the 1994 Addendum contains unclear and ambiguous language with respect to manifold genuine issues of material fact. We mention just a few of them. First, there is no clear threshold understanding as to what issues the 1994 Addendum resolved and what relationship it had to the parties' obligations under the 1993 Agreement. With respect to the central issue in this case, there is an ambiguity as to what relationship, if any, the stock redemption option in paragraph 6 of the 1994 Addendum, which contains no price provision, had to similar provisions in the 1983 Stock Agreement, which do. Indeed, MCC questions whether it was even a party to the 1994 Addendum.[12]

[12/] The 1994 Addendum is titled as follows:

> Addendum
>
> Agreement between [Jones], and Scott Nugent and [MCC] present management Charles and Mary Jane Caldwell

However, its recital as to parties reads as follows:

(continued...)

Within its four corners, the 1994 Addendum is largely incomprehensible without speculation as what the parties intended in entering into the agreement. The appellate briefs of the parties consist largely of conflicting explanations of their intentions. Hence, genuine issues of material fact abound concerning those intentions. This being so, we cannot discern the meaning of the 1994 Addendum with sufficient clarity to decide, as a matter of law, whether its provisions were breached. Accordingly, we hold that the court erred in granting summary judgment to MCC on Jones's second claim for breach of contract. By the same token, we affirm the court's denial of Jones's cross-motion for summary judgment.

C. Summary Judgment on MCC's Counterclaim.

MCC's counterclaim alleged that Jones breached the 1993 Agreement's release provision when he sued MCC. Jones argues on appeal that the court erred in granting MCC summary judgment on its counterclaim and in denying his cross-motion for summary

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[12/](...continued)

> This agreement is made on this 1st day of March, 1994, by and between [Jones], Scott Nugent and [MCC] [herein referred to as The Hui] present management President Charles Caldwell and Vice-President Mary Jane Caldwell [herein referred to as M.C.C. Mang.], in consideration of the mutual covenants and obligations set forth below, agree as follows.

(Bold typesetting omitted, brackets in the original and brackets added.)

Jones argued below that the parties to the 1994 Addendum intended that MCC, through its top management, Charles and Mary Jane Caldwell, be a party to and bound by the 1994 Addendum.

judgment, because the release found in the 1993 Agreement did not bar him from suit to assert his shareholder rights.

As we noted previously, courts should interpret the terms of a contract "according to their plain, ordinary meaning and accepted use in common speech." State Farm, 90 Hawai'i at 324, 978 P.2d at 762 (citation omitted). "The court should look no further than the four corners of the document to determine whether an ambiguity exists. Consequently, the parties' disagreement as to the meaning of a contract or its terms does not render clear language ambiguous." Id. (citations omitted). "It is well settled that courts should not draw inferences from a contract regarding the parties' intent when the contract is definite and unambiguous." Id. (citation omitted).

However, "[a] compromise and settlement should be construed to include only those matters the parties intended to include; it should not be construed to extend to other matters." Wiginton v. Pacific Credit Corp., 2 Haw. App. 435, 443, 634 P.2d 111, 117 (1981) (citation and internal quotation marks omitted). Accord State Farm, 90 Hawai'i at 323, 978 P.2d at 761 ("A compromise or settlement agreement disposes of all issues the parties intended to settle." (Citations and internal block quote format omitted.)).

Here, the issue raises two questions. Did Jones release the right to bring this suit when he entered into the settlement embodied in the 1993 Agreement? Did the 1994

Addendum, which settled further issues among the parties, and which purports to be "an extension" of the 1993 Agreement, affect the parameters of the covenant not to sue contained in the 1993 Agreement?

As previously discussed, the 1994 Addendum is patently ambiguous, if not incomprehensible, without resolution of factual issues concerning the intentions of the parties not susceptible to resolution within the four corners of the document.[13] "Where the language of the contract is ambiguous, so that there is some doubt as to the intent of the parties, that intent is a question of fact. Inasmuch as the determination of someone's state of mind usually entails the drawing of factual inferences as to which reasonable men might differ, summary judgment often will be an inappropriate means of resolving an issue of that character." Bishop Trust, 3 Haw. App. at 628-29, 656 P.2d at 1356 (citations omitted.

There being myriad genuine issues of material fact left unresolved in this respect, we conclude the court incorrectly granted summary judgment to MCC on its counterclaim. For the same reason, we affirm the court's denial of Jones's converse motion.

[13/] Purportedly, the parties did not enlist the assistance of attorneys in the drafting the 1994 Addendum. Mary Jane Caldwell did not even read the Addendum before signing it.

D. Attorneys' Fees and Costs.

Jones appeals the court's award of $18,384.01 in attorneys fees and $3,725.38 in costs to MCC.[14] In its October 21, 1998 written award, the court found that "[MCC] was the prevailing party in this action, and, as such, is entitled to attorney s' fees and costs[.]" At the hearing on MCC's motion for fees and costs, the court, basing its decision on the 1993 Agreement,[15] reasoned as follows:

[14/] On appeal, MCC argues at length that Jones's appeal of the attorneys' fees and costs award is moot because the money judgment thereon was satisfied. MCC had garnisheed the judgment amount and Jones did not post a supersedeas bond to stay the judgment pending appeal. MCC cites a number of cases from other jurisdictions in support of its contention. See, e.g., Blodgett v. Blodgett, 551 N.E.2d 1249, 1250 (Ohio 1990) ("It is a well-established principle of law that a satisfaction of judgment renders an appeal from that judgment moot. Where the court rendering judgment has jurisdiction of the subject-matter of the action and of the parties, and fraud has not intervened, and the judgment is voluntarily paid and satisfied, such payment puts an end to the controversy, and takes away from the defendant the right to appeal or prosecute error or even to move for vacation of judgment." (Citations and internal quotation marks omitted)). Jones calls this argument "novel and Draconian[.]" We discern no current support in Hawai'i law for the principle MCC espouses, and we choose not to endorse it now; especially here, where MCC garnisheed itself of funds it held on Jones's account, and on an *ex parte* basis until after Carroll filed the first notice of appeal in this case.

[15/] With respect to attorneys's fees and costs, the 1993 Agreement provided:

> The parties further agree that any violation of this covenant not to sue, or take other action as set forth in this Article and this Agreement shall result in the enforceable obligation by the breaching party to pay the aggrieved party a sum equal to amount of the underlying claim, all court costs, and attorneys [sic] fees incurred by the aggrieved party together with the sum of FIFTEEN THOUSAND DOLLARS ($15,000.00) as liquidated damages for breech [sic] of contract.
>
> . . . .
>
> In the event any party hereto shall commence any action or proceeding against the other by reason of any breach or claimed breach in the performance of any

(continued...)

> But let me just say this. As to prevailing party. Seems to me that this Court needs to make that crystal clear that the Defendants [sic] are the prevailing parties. I'm not splitting case issues or case hairs to try to say they [sic] prevailed on this and they [sic] didn't prevail on this and this and so forth. Very simple to me.
>
> Although [Jones] did receive a summary judgment in [his] favor on one issue, that does not mean [he's] the prevailing party. The prevailing party, as far as I can see, is the Defendants [sic]. So I'm going to award attorney's fees as -- and costs, I guess, as requested.
>
> But I'm not allowing the alleged liquidated damages. I'm not going to agree that that (inaudible) liquidated damages. I'm more of the opinion that's a penaly clause.

(Enumeration omitted.)

We vacate the court's October 21, 1998 order awarding attorneys' fees and costs to MCC, as our disposition of this appeal renders it unclear which party will ultimately prevail. In remanding, we note for guidance several pertinent principles.

"Attorney's fees and costs are generally awarded only when provided by statute, stipulation, or agreement." Pancakes of Hawaii v. Pomare Properties, 85 Hawai'i 286, 298, 944 P.2d 83, 95 (App. 1997) (citation omitted).

We have recognized that

> in Hawai'i, our supreme court has pronounced as a general rule that "where a party prevails on the disputed main issue in a case, even though not to the extent of his original contention, he will be deemed

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[15/](...continued)

> of the terms or conditions of this Agreement, or to seek a judicial determination of rights hereunder, the prevailing party in such action or proceeding shall be entitled to reasonable attorney's fees in an amount to be fixed by the trial court.

> to be the successful party for the purpose of taxing costs and attorney's fees." Food Pantry, Ltd. [v. Waikiki Business Plaza, Inc.], 58 Haw. [606,] 620, 575 P.2d [869,] 879 [(1978)]. The trial court is required to first identify the principal issues raised by the pleadings and proof in a particular case, and then determine, on balance, which party prevailed on the issues. Id.

MFD Partners v. Murphy, 9 Haw. App. 509, 515, 850 P.2d 713, 716 (1992) (brackets in the original omitted) (involving a lease provision providing for an award of attorneys' fees to the successful litigant). Accord Fought & Co., Inc. v. Steel Engineering, 87 Hawai'i 37, 52-53, 951 P.2d 487, 502-3 (1998).

We also recognized in MFD Partners that an award of reasonable attorneys's fees to a prevailing party may be premised upon statute. MFD Partners, 9 Haw. App. at 513, 850 P.2d at 715. For example, Hawaii Revised Statutes (HRS) § 607-14 (Supp. 2000), in relevant part, provides:

> In all the courts, in all actions in the nature of assumpsit and in all actions on a promissory note or other contract in writing that provides for an attorney's fee, there shall be taxed as attorneys' fees, to be paid by the losing party and to be included in the sum for which execution may issue, a fee that the court determines to be reasonable; provided that the attorney representing the prevailing party shall submit to the court an affidavit stating the amount of time the attorney spent on the action and the amount of time the attorney is likely to spend to obtain a final written judgement, or, if the fee is not based on an hourly rate, the amount of the agreed upon fee. The court shall then tax attorneys' fees, which the court determines to be reasonable, to be paid by the losing party; provided that this amount shall not exceed twenty-five per cent of the judgment.

It should also be remembered that the prevailing party in a declaratory judgment action may be awarded reasonable attorney's fees:

> In Food Pantry, Ltd. v. Waikiki Business Plaza, Inc., 58 Haw. 606, 575 P.2d 869 (1978), this court recognized the inequity of enforcing the twenty-five percent statutory ceiling [(contained in HRS § 607-17 (1985), the predecessor statute to HRS § 607-14)] against the prevailing party on an award of nominal damages and held that, in cases where no monetary judgment has been sought, the prevailing party is entitled to attorney's fees "reasonably and necessarily incurred" in the action. 58 Haw. at 621, 575 P.2d at 880. The rationale of the Food Pantry rule is that if no money damages are sought or awarded, as in a complaint for declaratory judgment, there is no monetary amount on the basis of which to calculate the twenty-five percent statutory ceiling for attorney's fees.

AMFAC, Inc. v. Waikiki Beachcomber Investment Co., 74 Haw. 85, 134-35, 839 P.2d 10, 35 (1992) (holding that the prevailing party in a declaratory judgment action "was entitled to recover attorney's fees 'reasonably and necessarily incurred'"). Accord Piedvache v. Knabusch, 88 Hawai'i 115, 119, 962 P.2d 374, 378 (1998).

And obviously, although "[a] detailed explanation of the rationale underlying the [award of attorneys' fees] is not necessary[,]" the attorneys' fees awarded must be reasonable. Finley v. Home Ins. Co., 90 Haw. 25, 39, 975 P.2d 1145, 1159 (1998).

As a final matter on appeal, we turn to Carroll's contention that the court erred in denying his request for attorneys' fees. Carroll premises his entitlement upon Article V, paragraph 2 of the 1993 Agreement, that provides for an award of, *inter alia*, attorneys' fees, to the "party" aggrieved by a

violation of the covenant not to sue contained in Article IV, paragraph 1.

The court did not err in denying Carroll's request. We so conclude regardless of our remand of Jones's second claim and MCC's counterclaim -- and regardless of their ultimate outcomes. Quite simply, Carroll was not a party to the 1993 Agreement. Carroll argues, however, that he was an "intended beneficiary" of the covenant not to sue, because in that provision Jones released not only MCC, but also its "officers, directors, shareholders, agents, and employees[.]" We agree that Carroll was protected by the covenant not to sue. He was not, however, a "party" entitled to attorneys' fees upon violation of that covenant. Only MCC was. Whatever recourse Carroll might have in that direction is beyond the scope of this appeal. Nor, we might add, was Carroll a prevailing party entitled to attorneys' fees by contract, statute or case law. Indeed, Carroll lost on the declaratory judgment cause of action, the only claim to which he was a party. The outcome of our remand of the other two claims cannot change that status.

IV. CONCLUSION.

For the foregoing reasons, we (1) affirm the court's April 6, 1998 order that granted summary declaratory judgment to Jones and denied the cross-motion for summary judgment brought by MCC and Carroll, (2) vacate the court's November 23, 1998 order

that granted summary judgment to MCC on Jones's second claim and on its counterclaim and affirm the November 16, 1998 order that denied Jones's cross-motions for summary judgment, (3) vacate the court's October 21, 1998 order awarding attorney's fees and costs to MCC, (4) affirm the court's December 10, 1998 order denying Carroll's request for attorneys' fees, and (5) remand the case for further proceedings consistent with this opinion. Pursuant to our discussion, supra note 14, the court on remand shall order MCC to reinstate the $22,109.39 and any interest thereon it garnisheed from Jones's account, to his account.

DATED: Honolulu, Hawai'i, January 29, 2002.

On the briefs:

Judith Neustadter Fuqua,
for plaintiff/counterclaim
defendant-appellee/
cross-appellant Peter C. Jones.

Chief Judge

Mary Blaine Johnston, for
defendant/counterclaimant-
appellee/cross-appellee
Maui Classic Charters, Inc.
Inc.

Associate Judge

Christopher F. Carroll,
defendant-appellant/
cross-appellee, pro se.

Associate Judge