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Intermediate Court of Appeals
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IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

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THE TRUSTEES OF THE ESTATE OF BERNICE PAUHI BISHOP,
ALSO KNOWN AS KAMEHAMEHA SCHOOLS,
Plaintiffs-Counterclaim Defendants/Appellees,
v.
RONALD G.S. AU,
Defendant-Counterclaimant/Appellant

NO. CAAP-15-0000466

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 13-1-0420-02)

DECEMBER 22, 2017

NAKAMURA, C.J., and FUJISE and REIFURTH, JJ.

ORDER PARTIALLY GRANTING APPELLEES' REQUEST
FOR ATTORNEYS' FEES AND COSTS BY NAKAMURA, C.J.

Plaintiffs-Counterclaim Defendants/Appellees Trustees of the Estate of Bernice Pauhi Bishop, also known as Kamehameha Schools (KS), seek attorneys' fees and costs as the prevailing party in this appeal, which was brought by Defendant-Counterclaimant/Appellant Ronald G.S. Au (Au). KS requests attorneys' fees in the amount of \$67,236.04 pursuant to Hawaii

Revised Statutes (HRS) § 607-14 (2016)^{1/} and costs in the amount of \$566.50 pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 39 (2016).^{2/} Au objects to KS's request, arguing

^{1/} HRS § 607-14 provides in relevant part:

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 judgment, 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.

Where the note or other contract in writing provides for a fee of twenty-five per cent or more, or provides for a reasonable attorney's fee, not more than twenty-five per cent shall be allowed.

Where the note or other contract in writing provides for a rate less than twenty-five per cent, not more than the specified rate shall be allowed.

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The above fees provided for by this section shall be assessed on the amount of the judgment exclusive of costs and all attorneys' fees obtained by the plaintiff, and upon the amount sued for if the defendant obtains judgment.

(Emphasis added.)

^{2/} HRAP Rule 39 provides in relevant part:

(a) Civil Costs; to whom allowed. Except in criminal cases or as otherwise provided by law, . . . if a judgment is affirmed or a petition denied, costs shall be taxed against the appellant or petitioner unless otherwise ordered;

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(c) Costs defined. Costs in the appellate courts are defined as: (1) the cost of the original and one copy of the reporter's transcripts if necessary for the determination of the appeal; (2) the premiums paid for supersedeas bonds or other bonds to preserve rights pending appeal; (3) the fee for filing the appeal; (4) the cost of printing or otherwise producing necessary copies of briefs and appendices, provided that copying costs shall not exceed 20¢ per page; (5) necessary postage, cost of facsimiles, intrastate travel, long distance telephone charges; and (6) any other costs authorized by statute or rule.

among other things that the amount of the requested attorneys' fees is unreasonable and that KS failed to properly apportion its fees between work done on assumpsit claims recoverable under HRS § 607-14 and non-assumpsit tort claims not recoverable under HRS § 607-14.

KS's request for attorneys' fees raises a question for which there is no controlling authority in Hawai'i -- whether under HRS § 607-14, a prevailing party in an assumpsit case is entitled to recover attorneys' fees incurred in litigating its fee request.^{3/} KS's request for attorneys' fees also raises questions concerning: (1) the reasonableness of the amount of fees requested by KS; (2) the appropriate apportionment of fees between work done on claims raised in KS's Complaint and Au's First Amended Counterclaim (Counterclaim); and (3) the appropriate apportionment between the work done on the assumpsit and the non-assumpsit claims raised in Au's Counterclaim.

As explained in greater detail below, we conclude that under HRS § 607-14, a prevailing party in an assumpsit case is entitled to recover attorneys' fees incurred in litigating its fee request. We further conclude that after evaluating the reasonableness of KS's fee request and performing the appropriate apportionments, KS is entitled to attorneys' fees in the reduced amount of \$22,853.39 and that it is entitled to \$566.50 in costs as requested.

BACKGROUND

I.

KS filed a Complaint against Au, alleging that Au breached the terms of a settlement agreement and a lease between the parties and seeking damages resulting from these breaches and the termination of the lease. Au filed a Counterclaim, which

^{3/} In this Order, we use the term "assumpsit" as a shorthand way of referring to cases, claims, and litigation subject to the provisions of HRS § 607-14, which applies to "all actions in the nature of assumpsit and . . . all actions on a promissory note or other contract in writing that provides for an attorney's fee[.]"

asserted eleven claims for relief: (1) "breach of lease, settlement agreement, and amendment of lease"; (2) "unreasonable withholding of consent of assignment"; (3) "settlement agreement of April 24, 2012, should be set aside and determined to be void, voidable and unenforceable"; (4) "breach of the covenant of good faith and fair dealing"; (5) "breach of promise"; (6) "intentional or negligent misrepresentation"; (7) "fraudulent inducement"; (8) "tortious interference with third-party contract"; (9) "retaliatory eviction"; (10) "tortious breach of the lease and amended lease"; and (11) "HRS 480 unfair and deceptive practices."

KS filed a motion for summary judgment on its Complaint. The Circuit Court of the First Circuit (Circuit Court)^{4/} granted KS's motion, terminated the lease, and awarded KS damages in the principal amount of \$130,735.40. KS subsequently filed a motion for summary judgment on Au's Counterclaim. The Circuit Court granted this motion and entered summary judgment in favor of KS and against Au on all claims set forth in Au's Counterclaim.

KS filed a post-judgment motion for attorneys' fees pursuant to HRS § 607-14. KS asserted that it incurred \$114,969.69 in attorneys' fees in pursuing the claims raised in the Complaint and that it incurred \$180,663.70 in attorneys' fees in defending against the claims in the Counterclaim. With respect to the attorneys' fees incurred in pursuing the Complaint, the Circuit Court, applying the "twenty-five percent of the judgment" cap on attorneys' fees set forth in HRS § 607-14, awarded KS twenty-five percent of the judgment amount of \$130,735.40 or \$32,683.85 in attorneys' fees. With respect to the attorneys' fees incurred in defending against the Counterclaim, the Circuit Court awarded KS \$85,000.00 in

^{4/} The Honorable Rhonda A. Nishimura presided.

reasonable attorneys' fees out of the \$180,663.70 sought by KS.^{5/} The Circuit Court stated that it reduced the amount sought by KS "after a careful review" and noted that "some of the legal services rendered reference only the tort claims, to wit, retaliatory eviction, Chapter 480, misrepresentation, etc.; therefore, this Court is apportioning the attorneys' fees between assumpsit and non-assumpsit claims."

II.

On appeal, Au challenged the Circuit Court's: (1) grant of summary judgment in favor of KS on KS's Complaint; (2) grant of summary judgment in favor of KS on Au's Counterclaim; (3) denial of Au's motion to vacate or for reconsideration of the Circuit Court's grant of summary judgment on the Complaint and the Counterclaim; and (4) grant in part of KS's motion for attorneys' fees. By an Amended Summary Disposition Order, we affirmed the Circuit Court's decisions challenged by Au on appeal. Therefore, KS is clearly the prevailing party in this appeal.

KS has moved for appellate attorneys' fees pursuant to HRS § 607-14 and costs pursuant to HRAP Rule 39. With respect to its request for attorneys' fees, KS asserts that it has incurred a total of \$80,042.90 in attorneys' fees for this appeal.^{6/} This consists of 256 hours at \$250 per hour for Dennis W. Chong Kee (Chong Kee) and 75.4 hours at \$165 per hour for Christopher T. Goodin (Goodin) plus general excise tax (\$64,000.00 + \$12,441.00 = \$76,441 + \$3,601.90 (4.712% general excise tax) = \$80,042.90). KS apportions its fees on appeal as 16 percent attributable to the Complaint and 84 percent attributable to the Counterclaim; it does not make any apportionment between assumpsit and non-

^{5/} The Circuit Court indicated that Au had sought recovery of approximately \$1.36 million in damages in his Counterclaim. Based on this figure, the total amount in attorneys' fees that could have been awarded to KS for defending against the Counterclaim under HRS § 607-14 was \$340,000 -- twenty-five percent of "the amount sued for[.]"

^{6/} KS initially asserted that it has incurred a total of \$81,142.38 in attorneys' fees on appeal, but later reduced that figure to \$80,042.90.

assumpsit claims in the Counterclaim and seeks recovery of all appellate fees relating to the Counterclaim. KS acknowledges that it has already been awarded the maximum permissible fees under HRS § 607-14 for the Complaint. KS requests a total of \$67,236.04 in appellate fees, or the 84 percent of its total fees it asserts were attributable to the Counterclaim ($\$80,042.90 \times .84 = \$67.236.04$).

As part of its attorneys' fees motion, KS argues that it is entitled to recover attorneys' fees it has incurred and will incur in litigating its attorneys' fees motion. Included in the total \$80,042.90 in fees KS claims it incurred on appeal is \$11,261.78 in fees that KS asserts it has incurred and will incur in litigating the attorneys' fees motion.^{2/} When KS's 84 percent apportionment is applied to this \$11,261.78 amount, KS is seeking an award of \$9,459.90 in fees attributable to KS's litigation of its fee motion.

DISCUSSION

I.

We first address the question of whether under HRS § 607-14, a prevailing party in an assumpsit case is entitled to recover attorneys' fees incurred in litigating its fee request. As noted, there is no controlling authority in this jurisdiction on this question under HRS § 607-14. The Hawai'i Supreme Court has addressed the question of entitlement to recovery of fees incurred in litigating fee requests in other contexts with conflicting results.

A.

In County of Hawai'i v. C & J Coupe Family Limited Partnership, 124 Hawai'i 281, 242 P.3d 1136 (2010), the supreme

^{2/} In its attorneys' fees motion, KS stated that it expended 38.5 hours (26.5 hours by Chong Kee and 12 hours by Goodin) for a total of \$8,605 in attorneys' fees in preparing the motion, and that it anticipated expending an additional 12 hours (2 hours by Chong Kee and 10 hours by Goodin) for a total of \$2,150 in attorneys' fees in preparing a reply to Au's expected opposition to its motion. When the general excise tax is added to these amounts, the total fees that KS claims for litigating its fee request is \$11,261.78 ($\$8,605 + \$2,150 = \$10,755 + \506.78 (4.712% general excise tax) = \$11,261.78).

court addressed whether the defendant in an eminent domain action that had been dismissed was entitled to recover fees incurred in litigating its fee request. The supreme court held that the defendant was entitled to recover such fees based on HRS § 101-27,^{3/} which authorized the defendant in an eminent domain action in which the plaintiff failed to complete the taking of the property to recover "all such damage . . . sustained . . . by reason of the bringing of the proceedings." C & J Coupe, 124 Hawai'i at 306, 242 P.3d at 1161 (ellipsis points in original). The supreme court reasoned that the County was liable for the fees incurred by the defendant to litigate its fee request because those fees would not have been incurred by the defendant if the County had not brought its unsuccessful condemnation action. Id. The supreme court, however, stated that its holding was "limited to the specific circumstances of HRS § 101-27 involved in litigating disputes as to fees and costs recoverable because of a failed condemnation." Id. at 308, 242 P.3d at 1163.

In Hawai'i Ventures, LLC v. Otaka, Inc., 116 Hawai'i 465, 468, 173 P.3d 1122, 1125 (2007), a receiver was appointed to manage a hotel pending a foreclosure sale. The supreme court addressed whether the receiver was entitled to recover from the estate the attorneys' fees incurred by the receiver in litigating the receiver's own request for fees that was challenged by a creditor of the estate. The supreme court held that the receiver was not entitled to recover attorneys' fees incurred in defending

^{3/} HRS § 101-27 (2012) provides, in relevant part:

Whenever [condemnation proceedings] are abandoned or discontinued before reaching a final judgment, or if, for any cause, the property concerned is not finally taken for public use, a defendant who would have been entitled to compensation or damages had the property been finally taken, shall be entitled, in such proceedings, to recover from the plaintiff all such damage as may have been sustained by the defendant by reason of the bringing of the proceedings and the possession by the plaintiff of the property concerned if the possession has been awarded including the defendant's costs of court, a reasonable amount to cover attorney's fees paid by the defendant in connection therewith, and other reasonable expenses

her own request for fees. Hawai'i Ventures, 116 Hawai'i at 476, 173 P.3d at 1133. In doing so, the supreme court distinguished between attorneys' fees the receiver incurred to fulfill her duties to the estate and fees incurred to advance her own personal interests. Id. The supreme court explained that "although a receiver is generally entitled to compensation from the estate for services rendered in protecting the estate, . . . receivers are not entitled to recover fees and expenses associated with litigation involving the propriety of the fees to be awarded to them" Id. (block quote format altered; citation omitted). This is because "the law imposes on a party the duty to pay her own fees and expenses in vindicating her personal interests." Id. (internal quotation marks, citation, brackets, and ellipsis points omitted).

In Wong v. Takeuchi, 88 Hawai'i 46, 961 P.2d 611 (1998), the award of attorneys' fees and costs to Ohara, one of the prevailing parties, was challenged on appeal. The supreme court held that attorneys' fees previously awarded to other prevailing parties had already used up the entire amount of attorneys' fees allowable under HRS § 607-14. Wong, 88 Hawai'i at 50-51, 961 P.2d 615-16. The supreme court vacated the award of attorneys' fees to Ohara on this basis and did not otherwise address the propriety of the attorneys' fees award. Id. at 55, 961 P.2d at 620. The supreme court, however, addressed the trial court's award of costs to Ohara under Hawai'i Rules of Civil Procedure Rule 54(d), which provides that "[e]xcept when express provision therefor is made either in a statute or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs[.]" The supreme court held that "Ohara's request for \$187.96 in costs for preparing the motion for costs is not a taxable cost." Id. The court explained: "[W]e are unable to find any authority for the proposition that costs incurred after the conclusion of the circuit court proceeding, solely for the purpose of preparing a

motion for reimbursement of costs already incurred, are themselves taxable costs. We hold that they are not." Id.

B.

C & J Coupe, Hawai'i Ventures, and Wong do not provide much useful guidance on the question at hand -- whether HRS § 607-14 authorizes a prevailing party to recover attorneys' fees incurred in litigating its fee request. C & J Coupe was based on different statutory language. Hawai'i Ventures involved dissimilar circumstances -- a receiver's attempt to recover from the estate the attorneys' fees the receiver incurred in defending against a creditor's challenge to the receiver's own request for compensation. Wong did not address whether attorneys' fees incurred in litigating a fee request were recoverable under HRS § 607-14.

C.

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.

When there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists. . . .

In construing an ambiguous statute, "[t]he meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning. Moreover, the courts may resort to extrinsic aids in determining legislative intent. One avenue is the use of legislative history as an interpretive tool."

This court may also consider "[t]he reason and spirit of the law, and the cause which induced the legislature to enact it . . . to discover its true meaning."

Lingle v. Hawai'i Gov't Emps. Ass'n, 107 Hawai'i 178, 183, 111 P.3d 587, 592 (2005) (ellipsis points and brackets in original) (quoting Guth v. Freeland, 96 Hawai'i 147, 150, 28 P.3d 982, 985 (2001)).

HRS § 607-14 does not specifically address whether a prevailing party in an assumpsit case is entitled to recover attorneys' fees incurred in litigating its fee request. HRS § 607-14 simply states that "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[,]" subject to the twenty-five percent statutory cap. HRS § 607-14's language requiring that the prevailing party's attorney submit an affidavit to the court "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 judgment" (emphasis added) indicates that the prevailing party may seek to claim attorneys' fees incurred after the court's ruling which establishes the prevailing party in the action. To the extent that an award of attorneys' fees will be included in a final judgment for which execution may issue, the emphasized language suggests that attorneys' fees incurred in litigating the fee request should be recoverable. However, this suggestion is indirect and is not sufficient to eliminate the ambiguity in the statutory language regarding whether attorneys' fees incurred in litigating the fee request are recoverable.

We turn to the purpose of the statute and the reason for its enactment by the Legislature. HRS § 607-14 is a fee-shifting statute. It countermands the presumption under the American Rule that parties bear their own attorneys' fees by requiring the losing party to pay the attorneys' fees incurred by the prevailing party in assumpsit cases. The clear purpose of HRS § 607-14 is to reimburse the prevailing party, and thereby shift the burden to the losing party, for attorneys' fees the prevailing party was required to incur in litigating an assumpsit claim -- attorneys' fees to pursue a meritorious claim as well as attorneys' fees to defend against an unmeritorious claim.

Given the fee-shifting purpose of HRS § 607-14, it would be illogical to treat attorneys' fees incurred in

litigating a fee request different from other attorneys' fees incurred by the prevailing party in the litigation. If the prevailing party is unable to obtain reimbursement for attorneys' fees it incurred in litigating its fee request, it will have to pay those fees to its lawyers. This would be inconsistent with HRS § 607-14's purpose of shifting attorneys' fees incurred by the prevailing party in assumpsit litigation to the losing party. From the prevailing party's perspective, it makes no difference whether attorneys' fees were incurred in seeking to recover fees from the losing party or in other aspects of the litigation -- attorneys' fees that are not reimbursed by the losing party will have to be paid by the prevailing party. Consistent with the fee-shifting purpose of HRS § 607-14, we conclude that the prevailing party in an assumpsit case is entitled to recover attorneys' fees incurred in litigating its fee request.

D.

Courts from other jurisdictions have agreed with our analysis. "In fee-shifting cases, the vast majority of courts that have considered the issue have held or indicated that reasonable attorneys' fees may be awarded for litigating the fee issue." 1 Robert L. Rossi, Attorneys' Fees § 6:15 (3d ed. 2016); e.g., In re S. Cal. Sunbelt Developers, Inc., 608 F.3d 456, 463 (9th Cir. 2010) (stating, in discussing a fee-shifting provision, that "[i]n statutory fee cases, federal courts, including our own, have uniformly held that time spent in establishing the entitlement to and amount of the fee is compensable" (internal quotation marks and citation omitted)); Fisher Props., Inc. v. Arden-Mayfair, Inc., 798 P.2d 799, 807 (Wash. 1990) ("The general rule is that time spent on establishing entitlement to, and amount of, a court awarded attorney fee is compensable where the fee shifts to the opponent under fee shifting statutes.").

In allowing recovery under fee-shifting statutes of attorneys' fees incurred in litigating fee requests, courts have concluded that it would be inconsistent with the policy of fee-

shifting statutes "to dilute the fee award by refusing to compensate time spent establishing the rightful claim to a fee." Blixseth v. Yellowstone Mountain Club, LLC, 854 F.3d 626, 629 (9th Cir. 2017); In re Marriage of Powers, 624 N.E.2d 390, 396 (Ill. Ct. App. 1993) ("[R]efusing to award fees for prosecuting the fee petition 'would dilute the effect of the statute by requiring successful litigants to incur additional costs to enforce their rights.'" (citation omitted)); Am. Fed'n of Gov't Emps., AFL-CIO, Local 3882 v. Fed. Labor Relations Auth., 994 F.2d 20, 22 (D.C. Cir. 1993) (concluding that precluding the recovery of fees incurred to litigate fee requests "could render fee-shifting provisions impotent, thereby reducing the effectiveness of the underlying statutes"). This rationale supports our interpretation of HRS § 607-14 as authorizing the prevailing party to recover attorneys' fees incurred in litigating its fee request.

E.

Although we conclude that HRS § 607-14 authorizes the award of attorneys' fees incurred in litigating the fee request, other standard requirements applicable to the award of attorneys' fees apply. Thus, like other attorneys' fees incurred during the course of a litigation, the attorneys' fees incurred in litigating the fee request are subject to apportionment between the assumpsit and non-assumpsit claims in the litigation. In addition, only reasonable attorneys' fees incurred in pursuing the fee request may be recovered. In this regard, we note that an attorney's billing records should be prepared and readily available independent of the fee request, and therefore, the time needed to determine the number of hours worked and tasks performed should not ordinarily be extensive.

KS's fee request embodies all the legal work performed by its attorneys in this appeal. We therefore apply the same apportionment to the attorneys' fees sought for its fee request that we apply to the other attorneys' fees sought by KS in this

appeal. With respect to the reasonableness of KS's request for attorneys' fees it has incurred and will incur in litigating its fee request, we conclude that the amounts requested were excessive. KS asserts that its attorneys will spend a total of 50.5 hours (28.5 hours by Chong Kee and 22 hours by Goodin) and that it has incurred and will incur \$10,755 in attorneys' fees plus general excise tax to prepare its pleadings relating to its appellate fee request. However, the legal authorities and arguments raised in its appellate request for fees are in substantial part duplicative of the legal authorities and arguments it asserted in its request for fees in the Circuit Court. We conclude that attorneys' fees in the reduced amount of \$3,200 plus general excise tax were reasonably incurred by KS in litigating its request for fees on appeal.

II.

We now turn to evaluating the reasonableness of the remainder of KS's fee request and apportioning the fees requested between the Complaint and Counterclaim and between the assumpsit and non-assumpsit claim in the Counterclaim. Excluding the fees attributable to its litigation of its appellate fee request, KS asserts that it incurred \$65,686 in attorneys' fees, consisting of 227.5 hours by Chong Kee and 53.4 hours by Goodin for a total of 280.9 attorney hours plus general excise tax, in defending against Au's appeal. In addition to his opening brief, Au filed several significant substantive motions on appeal: a first motion to stay enforcement of the final judgment; a second motion to stay enforcement of the final judgment, a supplement to that motion, and motion for reconsideration; and a motion to vacate an order of the trial court. The breakdown of the approximate hours spent by KS's attorneys on appellate matters is as follows:

Answering brief	115 hours
First stay motion	40 hours
Second stay motion, supplement to that motion, and reconsideration motion	65 hours
Motion to vacate	20 hours
Misc other matters	40 hours

We acknowledge that the number and extent of the motions filed by Au in this appeal exceeded that found in a typical appeal. On the other hand, a significant portion of the arguments and analysis presented by KS in its answering brief had previously been set forth in its summary judgment pleadings in the Circuit Court, and the number of attorney hours requested for the answering brief and other work performed on appeal exceeds that which is reasonable. Excluding the attorneys' fees attributable to KS's fee request, we conclude, based on our review of the record, that attorneys' fees in the reduced amount of \$55,000, plus general excise tax, was reasonably incurred by KS in defending this appeal. When this \$55,000 amount is added to the \$3,200 we concluded was reasonable for KS to litigate its request for fees, it brings the total reasonable fees incurred by KS in this appeal to \$58,200.

In apportioning the attorneys' fees requested between the Complaint and Counterclaim and between the assumpsit and non-assumpsit claims in the Counterclaim, we consider the entire record, but pay particular attention to the arguments raised by Au on appeal and the arguments presented by KS in its answering brief. We conclude that a 50/50 apportionment is reasonable as between the Complaint and Counterclaim. We further conclude that a 75/25 apportionment is reasonable as between the assumpsit and non-assumpsit claims in the Counterclaim. Accordingly, we award KS \$22,853.39 in attorneys' fees ($\$58,200 \times .5 = \$29,100 \times .75 = \$21,825.00 + \$1,028.39$ (4.712% general excise tax) = \$22,853.39).

III.

As the prevailing party in this appeal, KS is entitled to recover its appellate costs. HRAP Rule 39(a), (c); Deutsche Bank National Trust Co. v. Kozma, 140 Hawai'i 494, 499, 403 P.3d 271, 276 (2017). KS requests costs in the amount of \$566.50. We conclude that KS's request for costs is reasonable and award it \$566.50 in costs.

CONCLUSION

Based on the foregoing, it is hereby ordered that we grant, in part, KS's request for attorneys' fees and costs on appeal. Attorneys' fees in the amount of \$22,853.39 and costs in the amount of \$566.50 are awarded in favor of KS and against Au.

Craig H. Nakamura

Lawrence M. Rihl

Lawrence M. Rihl