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NO. CAAP-25-0000160
(Consolidated with No. CAAP-25-0000389)

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

ADAM O. MAYS, Plaintiff-Appellant/Cross-Appellee, v.
PACIFIC PERMANENTE GROUP LLC;
HAWAII PERMANENTE MEDICAL GROUP, INC.,
Defendants-Appellees/Cross-Appellants; et al.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CASE NO. 2CCV-21-0000212(2))

MEMORANDUM OPINION
(By: Nakasone, Chief Judge, Hiraoka and Wadsworth, JJ.)

Adam O. **Mays** sued **Pacific Permanente** Group, LLC and **Hawaii Permanente** Medical Group, Inc., claiming breach of his employment contract and violation of the Hawaiʻi Whistleblowers' Protection Act (**HWPA**), part of Hawaii Revised Statutes (**HRS**) Chapter 378. The Circuit Court of the Second Circuit granted Pacific Permanente and Hawaii Permanente's motion for summary judgment, and awarded them costs but not attorney fees.[1] Mays appeals, and Pacific Permanente and Hawaii Permanente cross-appeal, from the *Judgment* and *Amended Final Judgment*.

We hold: (1) summary judgment on the breach of contract claim was appropriate because Mays took an unauthorized leave of absence, which breached his employment contract; (2) summary judgment on the HWPA claim was appropriate because the evidence, viewed in the light most favorable to Mays, was not reasonably susceptible of an inference or conclusion that Mays was a

[1] The Honorable Peter T. Cahill presided.

protected whistleblower; and (3) Pacific Permanente and Hawaii Permanente were entitled to recover attorney fees. We affirm the Amended Final Judgment and remand for the circuit court to determine the amount of attorney fees to which Pacific Permanente and Hawaii Permanente are entitled.

I. BACKGROUND

The evidence submitted on Pacific Permanente and Hawaii Permanente's motion for summary judgment showed:

Mays had a *Practitioner Employment* ***Agreement*** with Pacific Permanente. His job title was *Physician Extender — Orthopedics*. A physician extender is a physician's assistant or a nurse practitioner. The Agreement stated:

> This position is responsible for providing and supporting the medical services of the Specialty Department; provides professional Specialty Services assessment and care to all inpatients and outpatients at MMMC [(Maui Memorial Medical Center)] (and elsewhere as may be assigned from time to time), participates in on-call duties as required and also assists in development and clinical management of the Specialty Department as needed and as may be requested or directed by [Pacific Permanente], including, but not limited to, training, treatment planning, program development and strategic planning.

Mays agreed to "perform such duties at such times and places and in such manner as [Pacific Permanente] may from time to time determine." He testified in deposition he was employed full-time, "which they made very clear was approximating 40 hours."

The Agreement was effective from August 5, 2020 until August 4, 2021, "unless terminated earlier pursuant to the section entitled 'TERMINATION'." The Termination section stated: "This Agreement may be terminated by either party for any reason by giving thirty (30) calendar days' written notice to the other party."

In August 2020, Mays worked in MMMC's operating room and its outpatient clinic. Assistant associate medical director Ronald Christopher **Martin** was told by the surgeons for whom Mays worked that they "did not find him to be useful in the" operating room. Mays met with Martin and director of physician practice

management Traci **Nunokawa** in early October 2020. Mays wanted to work "four ten-hour days" in the clinic. Martin pointed out that the clinic was only open eight hours a day. He told Mays, "I can't have you only work 32 hours a week and pay you full-time."

Martin and Nunokawa decided that Mays "was going to have a five-day-a-week schedule as he was a full-time employee. Anything less than five days a week is not a full-time employee." Nunokawa met with Mays in late November 2020 and told him he will need to work five days a week in the clinic. Mays did not agree. Nunokawa testified in deposition that she "tried to help him understand that there was no negotiation or anything to think about, that this was leadership's decision, but the conversation was going in circles, so we ended the meeting."

Nunokawa and Martin met with Mays on December 9, 2020. They told him their final decision was that he needed to work five days a week in the clinic. He said he needed to think about it. He did not get back to them.

Mays instead sent a lengthy email dated January 1, 2021, from his kp.org address to four persons with kp.org addresses who he described as "high ranking in the leadership that surrounds me at" Pacific Permanente. He explained: "With recent leadership changes, and the delicate information involved, I am uncertain who: Tracy [sic] Nunokawa and Dr. Ron Martin, [sic] report to directly and who to trust." The email states that "a disregard of my contributions to medicine has become evident in the effective stripping of my hospital privileges, along with a forced ultimatum to be a 5day [sic] clinic provider only or leave my job!" It concludes:

> My intention for your reading this in its entirety is to seek your influence in any way, to stave off an abject transgression Traci Nunokawa and Dr. Ron Martin are mandating. As it is unethical. It is inconsistent with the values told to me as expected and deserved within the MMMC and Kaiser workplace, for everyone.
>
> There are other related violations I could mention, but presently, if I am complicit to either direction of the given ultimatum, a certain detriment to my professional and respective personal well-being will result. With no authority for recourse.
>
> These offensive actions deconstruct my professional capacity and undermines [sic] my integrity and honor, with nothing to

replace it. I now find it unfathomable that Tracy [sic] and Dr. Martin are in leadership roles of such importance. With such little regard to my being an asset to the community. I will only hope other PA-C's are not experiencing this mal-treatment, and my situation is unique, for the sake of my colleague's [sic] well-being.

*** As such, I am removing myself from Tracy's [sic] and Dr. Martins [sic] hostile environment, influence and chain of command. Based on the entirety of these circumstances, ***I am taking an unofficial "leave of absence,"*** out of fear that submitting to it will serve an additional course of detriment as the ultimatum engages to the next working day. "I have not quit my job." As I do not choose either direction of the ultimatum, nor do I peacefully accept the unwarranted reduction, removal, or effectively similar, logistically complicated to impair utilize them. [sic] I have coordinated with [Maui Health System] to adjust the clinic schedule to accommodate my absence in anticipation of this growing crisis for me.

We are at the pinnacle of my uncertainty, attempting to remain valued within Kaiser and MMMC circles. I am hopeful you will see my concerns as legitimate, and my ***intended temporary absence*** justified as a shout to you for justice. I believe the issues are deserving of senior and executive leadership commitment to mitigate the circumstances, without me being the sacrifice, for the ease of muting these medical practice circumstances, and possibly for support of orthopedic privilege expansion.

Therefore, I mentioned previously your skills of empathy, for my complete understanding.

I believe it undeserving, but a contrary choice would advise for my termination, as a simple solution that disposes of what I've said coldly. If so, it will accept the disappointment confirming to me the complicit implications to wrong doings. Of course, I wish for everyone to get what they want. However, the manner and in which things played out, to bring me to such various measures of [sic] This ongoing situation is generating despair and compromise to me. It has created a loss of faith and trust in those meant to advocate for my success. Honestly, I am concerned about their tangents of influence and friendships throughout the remaining spectrum of my chain of command and committees they are involved.

I am heavily invested and committed to remaining with Kaiser, and being part of MMMC, practicing hospital orthopedics, and living the rest of my life on Maui. Without your support, I am left defenseless to this perceived tyranny.

It must be stated, these consequential actions against my prosperity was [sic] not generated in response to poor conduct. I might accept the loss of privileges, or even a restrictive function if surrounded by inappropriate behavior or moral turpitude as a reason. There is an active example of this in our community with another orthopedic provider who lost their privileges. I suspect the result may be the same for me, but the major difference is I'm innocent of error leading to my similar circumstances, other than seeking help from my leaders.

> On a final topic, being that hospital privileging is and was a specifically required contingency in my contract hiring, along with my high experience to fulfill the orthopedic specialty service line needs, I find the dubious reduction of my privileges, restrictions in my schedule, and blockade to work in the hospital facility to provide patient care is more than a compromise to the spirit of my contract. These questionable actions undoubtedly represent a complete contrast to all prior established expectational norms when I hired on.
> After today, depending on what will fully transpire, I may only have access to personal email and cell phone, as listed below. I thank you from the bottom of my heart for carefully reading and taking the time out of your busy and important lives.
>
> I now await fate.

(bold italics added).

When he was asked in deposition if he agreed his leave of absence was unauthorized, he answered:

> I would -- I would have to qualify it differently in -- because, black or white, saying yes is not accurate to me. I would say that it was a justified tactic to alert authority that could help the situation.
>
> Otherwise, it's almost like when one or two or two or more people strike or some -- some sort, right? It's -- it's -- it's -- you know, I'm not in a union. I'm not in any protected entity obviously. It's a void in the health care system, my profession, and I'm unprotected.
>
> And so it was -- it was a response to the environment I was being subjected to. And --
>
> **Q. Did you have preapproval before taking a leave of absence?**
>
> A. Not in the usual process, but it was under duress because all of my direct leadership I felt like were undermining me and doing it in dubious ways, duplicitous ways, and -- and smiling to me, you know, when I -- when I would see them.
>
> And so I -- I just needed to shine a light on it somehow. And I would say leave of absence without the conflict of interest letter cannot -- it can't be supported, it can't be justified.
>
> But with it preceding it and trying to assure that at least for the period of time -- because I would have gone back to work the next day if I would have had some kind of support or show of response that what they're doing is wrong -- because I know what they're doing is wrong -- and if they would have resolved it immediately, and said, You [sic] know what, we're in the wrong, come on back, I would have come back the next day, and all this would have been a much smaller issue. And I made that clear when I was talking to Bell and HR folks.

> **Q. So you were attempting to take this leave of absence and use it as leverage in order to get your way in negotiations?**
>
> A. I had no other avenue at that point. I tried. The several meetings exemplified that, the attempt to have support discussions from my sponsoring physicians. I wasn't -- with the leadership changes that had happened, I didn't even know where to go next.
>
> So I captured -- I think it was seven when I sent the letter. And part of that was to account for Traci's director or VP or whatever role that is for MHS, hospital CEO, medical staff chief, my -- the orthopedic chief. And in some ways, I felt like that -- if there was legitimate support of ethical policy, that it wouldn't have gone right to Martin and Traci as an FYI.

Laura T. **Katase**, Hawaii Permanente's executive director for human resources, emailed Mays on January 4, 2021. She acknowledged his January 1 email, and being "aware that you are not reporting in to work this week." She told Mays he had been placed on an unpaid leave of absence.

By letter dated January 19, 2021, Pacific Permanente offered Mays a release and separation agreement, with a separation date of February 18, 2021. Mays did not sign it. It appears his employment with Pacific was terminated effective February 18, 2021.

Mays sued Pacific Permanente and Hawaii Permanente on July 19, 2021. Pacific Permanente and Hawaii Permanente moved for summary judgment. The motion was granted. The Judgment was entered on February 25, 2025. Mays appealed, creating CAAP-25-0000160.

Meanwhile, Pacific Permanente and Hawaii Permanente moved for attorney fees and costs. The circuit court awarded them taxable costs, but denied attorney fees. The Amended Final Judgment, which included the cost award, was entered on April 4, 2025. Mays appealed, creating CAAP-25-0000389. Permanente cross-appealed. We consolidated the appeals.

II. POINTS OF ERROR

Mays contends the circuit court erred by granting summary judgment because there were genuine issues of material

fact about whether Pacific Permanente and Hawaii Permanente violated the HWPA.

Pacific Permanente and Hawaii Permanente contend the circuit court erred by denying their request for attorney fees.

III. STANDARDS OF REVIEW

A. Summary Judgment

We review a grant of summary judgment *de novo*. Bellamy v. City & Cnty. of Honolulu, 158 Hawaiʻi 227, 233, 590 P.3d 871, 877 (2026). Summary judgment is appropriate if the evidence shows there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Id. The evidence must be viewed, and all inferences must be drawn, in the light most favorable to the non-moving party. Id. at 233–34, 590 P.3d at 877–78.

B. Attorney Fees and Costs

We review an order granting or denying attorney fees for *abuse of discretion*. Knowles v. Haw. Pac. Univ., 158 Hawaiʻi 311, 315, 591 P.3d 984, 988 (App. 2026). "A court abuses its discretion if it clearly exceeds the bounds of reason or disregards rules or principles of law or practice." Id.

IV. DISCUSSION

When (as here) the summary judgment movant does not bear the burden of proof at trial, it has the burden to show (1) there is no genuine issue of material fact on the essential elements of the claim or defense addressed by the motion, and (2) the uncontroverted facts entitle it to judgment as a matter of law. Ralston v. Yim, 129 Hawaiʻi 46, 56, 292 P.3d 1276, 1286 (2013). Once the movant satisfies its burden, the non-moving party must "demonstrate specific facts, as opposed to general allegations, that present a genuine issue worthy of trial." Id. at 56-57, 292 P.3d at 1286-87.

A. Summary judgment on the breach of contract claim was appropriate because Mays breached the Agreement.

A plaintiff claiming breach of contract must prove "either that he has performed the contract or that during the term of the contract he was ready, willing and able to perform." Low v. Honolulu Rapid Transit Co., 50 Haw. 582, 585, 445 P.2d 372, 376 (1968). Although he tried to justify it, Mays admitted taking an unauthorized leave of absence. Having breached the Agreement himself, he cannot maintain a claim for breach of contract against Pacific Permanente.

We need not address Hawaii Permanente's argument that it was not a party to the Agreement, or Mays's argument that a parent company can be liable for the actions of a subsidiary when it actively participates in wrongdoing, because Mays could not maintain a claim for breach of contract against Hawaii Permanente, either.

B. Summary judgment on the HWPA claim was appropriate because the evidence, viewed in the light most favorable to Mays, was not reasonably susceptible of an inference or conclusion he was a protected whistleblower.

HRS § 378-62 (2015) provides, in relevant part:

> An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because:
>
> (1) The employee . . . reports or is about to report to the employer, . . . verbally or in writing, a violation or a suspected violation of:
>
> (A) A law, rule, ordinance, or regulation, adopted pursuant to law of this State, a political subdivision of this State, or the United States[ ]
>
> . . . .
>
> unless the employee knows that the report is false[.]

HRS § 378-62 "provides protection to employees who report suspected violations of law from any form of retaliation by their employers." Crosby v. Dep't of Budget & Fin., 76

Hawaiʻi 332, 341, 876 P.2d 1300, 1309 (1994) (quotation marks and italics omitted). "[T]he legislature intended that the required burden of proof be similar to that utilized in traditional labor management relations discharge cases." Id. at 342, 876 P.2d at 1310.

To prevail on an HWPA claim, the "employee has the burden of showing that his or her protected conduct was a 'substantial or motivating factor' in the decision to terminate the employee." Id. at 342, 876 P.2d at 1310. If the employee sustains that burden, "the employer can defend affirmatively by showing that the termination would have occurred regardless of the protected activity." Id. (brackets omitted). "[I]f the employer rebuts the prima facie case, the burden reverts to the plaintiff to demonstrate that the defendant's proffered reasons were 'pretextual.'" Adams v. CDM Media USA, Inc., 135 Hawaiʻi 1, 14, 346 P.3d 70, 83 (2015) (age discrimination).

Mays argues his sending the January 1, 2021 email was conduct protected under HRS § 378-62. He contends the email raised "concerns about his hospital privileges, hostile work environment, and ethical issues[.]" His email did not name, cite, or describe any law, rule, ordinance, or regulation Hawaii Permanente or Pacific Permanente was violating, or was suspected of violating.

Mays's memorandum in opposition to the motion for summary judgment argued his email reported violations of the Affordable Care Act, Clayton Act, Sherman Act, and something called a "340B drug program." But it didn't provide citations to those laws, rules, or regulations. It didn't explain what those laws, rules, or regulations covered, regulated, or prohibited. And it didn't point to any content in the email that supposedly described violations or suspected violations of those laws, rules, or regulations by Pacific Permanente or Hawaii Permanente.

Mays's opening brief contains the same deficiencies.

On a motion for summary judgment, "[a]lthough the court must draw all inferences and view the evidence in the light most favorable to the non-moving party, significantly, the court is

permitted to draw only those inferences of which the evidence is reasonably susceptible." Bellamy, 158 Hawaiʻi at 233–34, 590 P.3d at 877–78 (quotation marks omitted). Mays's January 1, 2021 email can reasonably be read only as a complaint about being assigned to work five days a week in MMMC's clinic; a plea to those he thought were "high ranking in the leadership" to change his supervisors' decision; and a threat that "a contrary choice would advise for my termination, as a simple solution that disposes of what I've said coldly."

No reasonable jury could interpret the email as a "report" of "a violation or a suspected violation of . . . [a] law, rule, ordinance, or regulation, adopted pursuant to law of this State, a political subdivision of this State, or the United States[.]" HRS § 378-62(1)(A).

Because the evidence viewed in the light most favorable to Mays was not reasonably susceptible of an inference or conclusion that would support Mays's claim of an HWPA violation, Mays failed to raise a genuine issue of material fact sufficient to defeat summary judgment. See Bellamy, 158 Hawaiʻi at 235, 590 P.3d at 879 ("Because the evidence viewed in the light most favorable to Bellamy was not 'reasonably susceptible' of an inference or conclusion that would support Bellamy's allegations, Bellamy failed to raise a genuine issue of material fact sufficient to defeat summary judgment."). The circuit court did not err by granting Pacific Permanente and Hawaii Permanente's motion for summary judgment on Mays's HWPA claim.

C. Pacific Permanente and Hawaii Permanente were entitled to recover attorney fees.

The circuit court denied Pacific Permanente and Hawaii Permanente's request for attorney fees because "the essential nature of plaintiff's claims sounded as a Whistleblower claims [sic] and . . . the relief he sought constituted damages more in the nature of tort actions and not for breach of contract." The order was entered on March 28, 2025.

On May 27, 2026, we decided Knowles. There, Knowles sued Hawaii Pacific University (**HPU**) for breach of employment contract and violation of the HWPA. After a bench trial, the trial court entered judgment in favor of HPU on all claims. HPU moved for attorney fees under HRS § 607-14 (2016) ("Attorneys' fees in actions in the nature of assumpsit, etc."). The circuit court awarded HPU attorney fees. Knowles appealed.

Knowles did not dispute that his breach of employment contract claim was in the nature of assumpsit. Id. at 315, 591 P.3d at 988. We held that Knowles's HWPA claim was statutory, did not sound in assumpsit, and noted that the HWPA allowed a prevailing plaintiff to recover attorney fees but did not contain a reciprocal provision for a prevailing defendant. Id. at 315-16, 591 P.3d at 988-89. We noted that "[i]n awarding attorneys' fees in a case involving both assumpsit and non-assumpsit claims, a court must base its award of fees, if practicable, on an apportionment of the fees claimed between assumpsit and non-assumpsit claims." Id. at 316, 591 P.3d at 989 (quoting Blair v. Ing, 96 Hawaiʻi 327, 332, 31 P.3d 184, 189 (2001) (**Blair II**)).

Blair II arose from a lawsuit for accounting malpractice and breach of implied contract. The circuit court granted the accountant's motion to dismiss the complaint. The plaintiffs appealed. The supreme court affirmed. Blair v. Ing, 95 Hawaiʻi 247, 21 P.3d 452 (2001). The accountant then moved for an award of attorney fees incurred in the appeal. The supreme court concluded:

> Because the negligence claim in this case was derived from the alleged implied contract and was inextricably linked to the implied contract claim by virtue of the malpractice suit, we hold that it is impracticable, if not impossible, to apportion the fees between the assumpsit and non-assumpsit claims.

Blair II, 96 Hawaiʻi at 333, 31 P.3d at 190.

Similarly, in Knowles we stated: "The same factual allegations underlie both of Knowles's claims and the defense to both claims. . . . Thus, it appears that this is not a case that we can divide into discrete slivers neatly matching each claim

advanced." 158 Hawaiʻi at 316, 591 P.3d at 989 (quotation marks omitted).

Here, Mays's breach-of-contract and HWPA claims were inextricably intertwined; the same factual allegations underlay both of Mays's claims and Pacific Permanente and Hawaii Permanente's defenses. Pacific Permanente and Hawaii Permanente were thus entitled to recover attorney fees under HRS § 607-14.

HRS § 607-14 (2016) imposes a limit on the amount of attorney fees to be paid by the losing party: twenty-five percent of the amount of the judgment obtained by the plaintiff, or twenty-five percent of "the amount sued for if the defendant obtains judgment." We held in Knowles:

> Here, notwithstanding that Knowles's assumpsit and non-assumpsit claims are inextricably intertwined, there is a determinable maximum that should limit the amount of attorneys' fees recoverable under HRS § 607-14. . . . Knowles's contract ran from August 16, 2014, to August 15, 2019. Thus, for his claim sounding in assumpsit, Knowles was only potentially entitled to "future pay" on his employment contract from the date of his termination on June 19, 2015, until the employment contract expired on August 15, 2019. Therefore, we conclude that the maximum possible damages Knowles could have received based on the breach of contract claim is determinable.
>
> . . . .
>
> Finally, we note that, to the extent that it did so, the Circuit Court clearly erred in determining the amount sued for in this case — and in turn determining the allowable amount of attorneys' fees — based on Knowles's interrogatory response in the USDC suit, rather than, for example, Knowles's requested damages in his proposed Findings of Fact and Conclusions of Law in this case. Upon remand, ***the proper inquiry involves the amount of damages sought in this case based on Knowles's breach of contract claim against HPU***, without regard to any additional relief that might have [been] provided under the HWPA.

158 Hawaiʻi at 317, 318, 591 P.3d at 990, 991 (cleaned up) (emphasis added) (footnote omitted).

Under these circumstances, we hold that the circuit court acted outside its discretion by denying Pacific Permanente and Hawaii Permanente's request for attorney fees. We remand this case for the circuit court to determine the amount of attorney fees to which Pacific Permanente and Hawaii Permanente are entitled from Mays.

To determine whether the HRS § 607-14 twenty-five percent limit applies, the circuit court should calculate the amount of damages Mays could have recovered had he prevailed on his breach of contract claim — that is, the pay and any other benefits to which Mays would have been entitled from January 4, 2021 (when he was placed on unpaid leave of absence) to August 4, 2021 (the Agreement's ending date).

V. CONCLUSION

The April 4, 2025 Amended Final Judgment is affirmed. This case is remanded to the circuit court for further proceedings consistent with this memorandum opinion.

Mays's motion for retention of oral argument is denied.

DATED: Honolulu, Hawaiʻi, November 20, 2026.

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/s/ Karen T. Nakasone
Chief Judge

/s/ Keith K. Hiraoka
Associate Judge

/s/ Clyde J. Wadsworth
Associate Judge