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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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HALEIWA TOWN CENTER,
Petitioner/Plaintiff-Appellant/Cross-Appellee,

vs.

TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP aka KAMEHAMEHA SCHOOLS, MICAH ALIKA KANE, in his capacity as Trustee, LANCE KEAWE WILHELM, in his capacity as Trustee, ROBERT K.W.H. NOBRIGA, in his capacity as Trustee, CRYSTAL K. ROSE, in her capacity as Trustee, and ELLIOTT KAWAIHO'OLANA MILLS, in his capacity as Trustee,
Respondents/Defendants-Appellees/Cross-Appellants.

SCWC-20-0000586

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-20-0000586; CASE NO. 1CCV-20-0000112)

NOVEMBER 23, 2026

McKENNA, ACTING C.J., EDDINS, AND GINOZA, JJ., AND CIRCUIT JUDGE WONG IN PLACE OF DEVENS, C.J., RECUSED, AND CIRCUIT JUDGE TO'OTO'O, ASSIGNED BY REASON OF VACANCY

OPINION OF THE COURT BY GINOZA, J.

I. Introduction

This case arises out of a dispute involving three adjacent properties located in Hale'iwa, O'ahu: (1) the Hale'iwa

Store Lots project (**HSL project**), owned and developed by Respondent/Defendant Kamehameha Schools (**KS**); (2) the Haleiwa Town Center (**HTC lot or leased property**), leased by Petitioner/Plaintiff Haleiwa Town Center, LLC (**HTC**) from KS; and (3) a land-locked kuleana parcel located behind both the HTC and HSL project lots, owned by Wilma and Ronald Ward (collectively, the **Wards**). The eastern boundary of both the HTC and HSL project lots fronts Kamehameha Highway, and the Wards' property is adjacent to the western boundary of both lots. The Wards can only access their property from Kamehameha Highway by traversing through the HTC lot or the HSL project lot.

This case is the second of two related cases filed in the Circuit Court of the First Circuit (**Circuit Court**).[1] In the first case, the Wards filed an action in 2018 against KS alleging they were being denied proper access to their property (**Ward case**). In January 2020, HTC filed the present action and claimed, among other things, that its right to quiet enjoyment of its leased property was violated and that KS improperly tried to make HTC responsible for providing access to the Wards' property.

In this case, the Circuit Court dismissed HTC's First Amended Complaint for failure to state a claim under Hawai'i

[1] The Honorable Dean E. Ochiai presided.

Rules of Civil Procedure (**HRCP**) Rule 12(b)(6) (eff. 2000). The Circuit Court also denied HTC's motion for leave to file a Second Amended Complaint and denied HTC's motion to disqualify Circuit Court Judge Dean E. Ochiai. The Circuit Court entered Final Judgment in favor of KS and against HTC but denied KS's request for attorneys' fees and costs.

The Intermediate Court of Appeals (**ICA**) affirmed the Circuit Court's Final Judgment for KS and vacated the denial of attorneys' fees and costs to KS. The ICA also awarded KS attorneys' fees and costs incurred on appeal. We accepted HTC's application for certiorari.

We hold that HTC's First Amended Complaint stated viable claims for (1) breach of contract and (2) breach of the implied covenant of good faith and fair dealing, stemming from allegations that KS improperly represented that access to the Wards' property was through the HTC lot, KS tried to push its obligations to the Wards onto HTC, and KS encroached onto HTC's leased property during construction for the HSL project, all in violation of the quiet enjoyment provision of the subject lease. The ICA erred to the extent it affirmed the Circuit Court's dismissal of these claims. However, the ICA properly affirmed the Circuit Court's dismissal of HTC's unfair competition claim.

We further hold the Circuit Court erred by ruling it did not need to consider HTC's proposed Second Amended Complaint

because it had dismissed the First Amended Complaint. The Second Amended Complaint adds factual allegations that further support HTC's two viable claims. To that extent, the Circuit Court should have allowed HTC to file it. The ICA erred by holding otherwise.

Regarding HTC's motion to disqualify Judge Ochiai and its requested remedy that this case be remanded to a different judge, we hold the motion is moot. Judge Ochiai retired in 2025 and is no longer available to preside in this matter.

Finally, given our rulings, there is no prevailing party at this juncture in the case. We thus hold the ICA erred by vacating the Circuit Court's order denying attorneys' fees and costs to KS, and by awarding KS attorneys' fees and costs incurred on appeal.

We vacate in part the ICA's Judgment on Appeal and remand the case to Circuit Court for further proceedings consistent with this opinion.[2]

II. Background

A. Alleged Factual Background

We are reviewing the dismissal of HTC's First Amended Complaint and therefore must accept the allegations therein to

[2] HTC also apparently challenges the Circuit Court's denial of HTC's motion to consolidate the Ward case with the present case but does not provide supporting arguments. We deem this issue waived.

be true. The facts recounted here are from the First Amended Complaint, which contains seventy-one paragraphs with extensive and detailed allegations. We summarize the allegations, which relate to the three properties, HTC's interactions with KS, various efforts to relocate historic **Kewalo Lane** which provided access to the Wards' property, KS's communications with the City and County of Honolulu's Department of Planning and Permitting (**DPP**) and others over permitting and subdivision approval for the HSL project, and KS's alleged misrepresentations and changing positions as to the location of Kewalo Lane.

The subject Lease was assigned to HTC in 2007. The Lease has an end date of 2033 and contains a **quiet enjoyment provision** stating that: "Lessee shall peaceably hold and enjoy said premises for the term hereby demised without hinderance or interruption by Lessors or any other person or persons lawfully claiming by, through or under them except as herein expressly provided." The Lease does not include any reference to Kewalo Lane being on the Lease premises or that the lessee is obligated to provide access to and from Kamehameha Highway for any nearby kuleana owners.

Between May 2011 and February 2012, KS submitted to HTC seven lease extension proposals (referred to as **LOIs**) to extend the Lease to 2067-68. The LOIs also proposed jointly creating a "**New Lane**," with HTC contributing its thirty-foot

wide driveway and KS contributing a ten-foot wide strip from its thirty-foot wide historic Kewalo Lane, to benefit the HSL project and kuleana owners, including the Wards, and to increase customer traffic for both HSL and HTC shopping centers. The First Amended Complaint alleges that a February 17, 2012 LOI was acceptable to HTC, except for one provision. The First Amended Complaint does not allege that KS and HTC came to any agreement on any LOIs.

In the meantime, in 2011, KS obtained a final environmental assessment (**EA**) for the HSL project from the DPP, which in certain places correctly showed historic Kewalo Lane on HSL's property and in other places wrongly depicted Kewalo Lane on HTC's property.

On May 29, 2012, KS informed HTC that KS was terminating negotiations regarding the extended Lease and the New Lane. HTC asserts it repeatedly urged KS to extend the Lease and follow through with the New Lane but KS refused. Instead, the First Amended Complaint alleges KS, in bad faith and unbeknownst to HTC, attempted to force kuleana access obligations onto HTC's property and built a building directly on top of historic Kewalo Lane located on HSL property.

Rather than the New Lane access for the HSL project, KS replaced it with a mid-block access (**Mid-Block Lane**) that did not provide proper fire apparatus access, i.e. emergency access,

to the kuleana owners behind the HSL lot. Instead of constructing the New Lane, KS obscured that it would build over historic Kewalo Lane by misrepresenting that its new Mid-Block Lane provided adequate access and by misrepresenting that Kewalo Lane was on HTC's property.

KS pursued permitting and tentative subdivision approval for the HSL project. There are extensive allegations in the First Amended Complaint regarding documents between KS representatives and DPP about the permit approval process. Some documents correctly reflect Kewalo Lane being part of the HSL project property, but other documents improperly reflect that Kewalo Lane was on HTC's property.

In 2014, as part of the HSL project, KS built a restaurant on a portion of historic Kewalo Lane, and in doing so, used large parts of HTC's driveway during its construction operations, against HTC's repeated objections. As a result:

> HTC submitted plans to KS and the City to construct a fence to prevent [KS's] HSL [project] construction activities on HTC's property and to prevent [the] HSL [project] – which has minimal parking – from using HTC's ample parking. The plans included gates for emergency access for the kuleana owners. Later, after KS and [the City] intentionally stalled the fence permit, and KS tried to push the kuleana access onto HTC property and forced HTC to hire attorneys and consultants, HTC removed the emergency access gates from the plans.

The First Amended Complaint details communications about the construction activities by KS on HTC's property and apparently related discussions about the location of Kewalo

Lane. These communications included: written confirmation from KS's attorney to HTC's lawyers that Kewalo Lane is not located on HTC's leased premises and that access for the kuleana owners "is a KS issue, not an HTC issue"; and a representation in writing from KS's land manager to DPP that Kewalo Lane is not on HTC property.

KS's efforts to obtain permitting and tentative subdivision approval for the HSL project included constructing the new Mid-Block Lane. The First Amended Complaint alleges that in seeking its tentative subdivision approval, KS misrepresented to the approving agency that the Wards and other kuleana homeowners agreed to the replacement of the historic thirty-foot-wide Kewalo Lane with the Mid-Block Lane, which was only twelve feet wide in certain areas and not wide enough for emergency access.

In December 2015, DPP issued tentative subdivision approval for the HSL project provided that (1) "[r]evised construction plans shall be submitted for installation of a street name sign for Kewalo Lane"; and (2) KS file "15 copies of the final survey map including the deletion of the 30 ft. roadway right-of-way along the southern boundary of the lots." (Formatting altered.) The First Amended Complaint alleges these terms constituted

> an unlawful attempt by KS to obtain City approval to terminate the kuleana owners' use of the 30 ft historic

> Kewalo Lane on HSL property and to push their emergency access onto HTC property without notice to HTC or the Wards, and to cover-up KS's misrepresentations [to] the City [and other community groups] that it could not reach an agreement with HTC to use its driveway and that Kewalo Lane was on HTC's property.

In September 2018, the Wards sued KS for wrongly denying their access to historic Kewalo Lane located on the HSL project property. One month later, KS moved to join HTC as a party in that suit, on the grounds that:

> [The Wards] now lack the type of access they desire because of the actions of HTC both directly and through its counsel. KS intends to assert in this action that [the Wards'] claims against KS are without merit because [the Wards'] right of access under Hawaiʻi Revised Statutes [(**HRS**)] § 7-1 is the paved roadway that runs from the [HTC] parking lot along the north boundary of the [HTC] property from Kamehameha Highway.

The First Amended Complaint alleges that after HTC became a party in the Ward case, HTC requested KS's responses to interrogatories, including "Interrogatory No. 5" which provided: "Explain where or approximately where, on April 15, 2015, you believed Kewalo Lane was located in relation to your lands that are being leased to lessee [HTC]." (Italics omitted.) The First Amended Complaint asserts that – contrary to unequivocal statements by KS's attorney (in a 12/31/14 letter to HTC) and KS's land manager (in a 4/15/15 letter to DPP) confirming that Kewalo Lane was not on HTC property – KS instead responded to the interrogatory as follows:

> Subject to and without waiving the foregoing objections, Defendants state that, to their knowledge, "Kewalo Lane" does not have the same meaning or meanings to every person or entity. Over the years, different people and/or

> entities have used the term "Kewalo Lane" in reference to at least four separate things:
>
> 1. "Kewalo Lane" has been used to refer to a roadway that exists only on paper on the parcels of land that have been at certain times identified by Tax Map Key Nos. (1) 6-6-04-19 and -13. The paper interpretation of "Kewalo Lane" does not reflect the historic presence in this paper roadway of, among other matters, one or more buildings, parking areas, one or more clothes lines, a utility easement, utility poles, overhead utility lines, a guy anchor, a water meter, a wood ramp, trees, vegetation, and a gravel driveway that connects to the parcel of land that has sometimes been identified by Tax Map Key No. (1) 6-6-04-21. This is the "Kewalo Lane" referred to in the April 15, 2015 Letter.
>
> 2. "Kewalo Lane" has been used to refer to a narrow, unpaved, and windy pathway (that no longer exists) that the Wards alleged they used at certain times prior to 1981 to access Kamehameha Highway from their property. This pathway has not existed for many years so it is unclear to **KS** precisely where the Wards claim this reference to Kewalo Lane exists. Very generally, it appears to exist in the vicinity of (i) the northern boundary of the parcel that has at certain times been identified by Tax Map Key No. (1) 6-6-04-21[], and (ii) the southern boundaries of the parcels that have at certain times been identified by Tax Map Key Nos. (1) 6-6-04-13 and -19, and currently identified by Tax Map Key Nos. (1) 6-6-04-33 and -34.
>
> 3. "Kewalo Lane" has been used to refer to the paved roadway that runs from the [HTC] parking lot along the northern side of the HTC property to and from Kamehameha Highway. This paved roadway through the Haleiwa Town Center parking lot runs alongside a northern portion of the parcel of land that has been at certain times identified by Tax Map Key No. (1) 6-6-04-21.
>
> 4. "Kewalo Lane" has been used to refer to the currently available access through the Haleiwa Store Lots parking lot traversing a portion of the parcel of land that has been at certain times identified by Tax Map Key No. (1) 6-6-[]04-13.

(Emphasis added.) The First Amended Complaint alleges that "KS's interrogatory response disclosed KS's 2012 slight-of-hand and 2015 cover-up attempt and revealed KS's bad faith and deceptiveness[.]"

The First Amended Complaint thus alleges that:

> 67. Only after receiving this response to Interrogatory 5 did HTC first discover that KS *knew* that Kewalo Lane was not on HTC property, and, despite such knowledge, in bad faith and deceptively *misrepresented* that Kewalo Lane was on HTC's property to avoid having to provide the Wards access via the historic Kewalo Lane, and to obtain an unfair competitive advantage over HTC.
>
> 68. In other words, KS could have avoided violating the Wards' kuleana access rights, breaching its obligations to HTC as a tenant and unfairly competing with HTC, by: (a) moving forward with a lease amendment with HTC along the lines of the February 17, 2012 LOI and then seeking [Reciprocal Easement and Operating Agreement (**REA**)] approval to establish the New Lane or to end the REA, (b) providing the southern access to the HSL project at historic Kewalo Lane within HSL's property, or (c) by simply not doing the HSL project.
>
> 69. This wrong was a substantial factor in causing HTC harm including but not limited to lost profits as a result of HTC not obtaining an extended lease and/or not obtaining increased income that would have resulted from increased customer traffic from the New Lane or southern access to the HSL project, and KS thereby negatively and unfairly affected competition as HTC and HSL are competing shopping centers.

B. Procedural Background

1. The Ward Case

In the first case, the Wards sued KS in the Circuit Court[3] in 2018 for allegedly "denying their access on historic Kewalo Lane located on HSL [project] property." KS successfully moved to join HTC as a co-defendant and asserted that the Wards lacked the type of access they desired due to HTC's actions, and that the Wards' right to access was through the HTC property.

[3] The Honorable Dean E. Ochiai presided. The Ward case is docketed under Civil No. 18-1-1530-09.

According to the parties' representations, the Ward case was stayed pending settlement discussions.

2. The Present Case

On January 24, 2020, after the Ward case was stayed for settlement discussions, HTC brought this second action against KS in the Circuit Court. On February 7, 2020, HTC filed its First Amended Complaint asserting claims against KS for: (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; and (3) unfair competition, pursuant to Hawaiʻi Revised Statutes (**HRS**) chapter 480 (2008).[4] The only lease provision asserted in the First Amended Complaint is the quiet enjoyment provision.

On March 2, 2020, KS filed a Motion to Dismiss HTC's First Amended Complaint pursuant to HRCP Rule 12(b)(6), asserting that HTC failed to properly state a claim. A week later, HTC filed its Motion for Leave to File Second Amended Complaint, and Motion to Consolidate. On April 13, 2020, the Circuit Court granted KS's Motion to Dismiss and issued its Findings of Fact, Conclusions of law and Order.

The Circuit Court issued fifteen findings of facts (**FOFs**). FOF 2 stated: "This dispute also involves the term

[4] The First Amended Complaint also included claims for estoppel and unjust enrichment, but HTC dropped these claims at the motion to dismiss hearing.

'Kewalo Lane.' The term 'Kewalo Lane' has, over the years, been interpreted differently by different people including, among others, the Wards, KS, HTC, and the City and County of Honolulu." HTC takes issue with FOF 2 because it fails to recognize and accept as true the allegations in the First Amended Complaint that KS made various *misrepresentations* that Kewalo Lane was located on HTC's property and tried to push kuleana access for the Ward property onto HTC. Other FOFs similarly fail to accept the allegations in the First Amended Complaint or fail to view them in the light most favorable to non-movant HTC. For instance, FOF 5 stated that the Wards used the "existing paved driveway" on the HTC lot "to access their property to and from Kamehameha Highway," which misconstrues the allegation in the First Amended Complaint that KS's agent made that representation. Further, FOF 6 misstates allegations in the First Amended Complaint about HTC plans to construct a fence on the HTC lot. FOF 6 states in part that "[o]nce KS rejected *HTC's unreasonable* demands, HTC eventually erected a chain link fence (later replaced with a vinyl fence), with boulders, poles, signs, and planters, which remain there today." (Emphasis added.) HTC's First Amended Complaint does not allege that it made unreasonable demands.

The Circuit Court also issued seventeen conclusions of law (**COLs**). In COLs 4 and 5, the Circuit Court addressed the

exhibits and a declaration of counsel attached to KS's Motion to Dismiss. The exhibits were pleadings filed in the present case and the Ward case, and an order granting KS's motion to compel joinder of HTC in the Ward case. The declaration of counsel attested to the completeness and accuracy of the exhibits, and requested the Circuit Court take judicial notice of the exhibits in the Ward case. This request was apparently granted by the Circuit Court, which stated that judicially noticed facts were not "matters outside the pleadings" that would convert a motion to dismiss into a motion for summary judgment.

In COL 7, the Circuit Court determined that "[s]ucceeding on breach of the covenant of quiet enjoyment typically requires, among other matters, expulsion from the property," citing Scott v. Pilipo, 23 Haw. 349, 353 (1916).

The Circuit Court addressed HTC's allegations regarding renewal of the Lease in COL 8. It concluded that "[a] landlord is under no obligation to renew a lease" and "[a] tenant who wants a right of renewal must reach an agreement with the landlord and whatever right the tenant has is governed by the terms of the agreement." (Citation and internal quotation marks omitted.)

As for KS's alleged breach of the implied covenant of good faith and fair dealing, the Circuit Court concluded in COL 10 that, "there can be no breach of the implied promise or

covenant of good faith and fair dealing where the contract expressly permits the actions being challenged, and the defendant acts in accordance with the express terms of the contract." (Citations and internal quotation marks omitted.)

Next, in COLs 11 through 13, the Circuit Court concluded, among other things, that in order to state a claim for unfair methods of competition under HRS § 480-13 (2008), "the nature of the competition [must be] sufficiently alleged in the complaint," and "the plaintiff must ultimately show that their injury necessarily stems from the negative effect on competition caused by the violation, as opposed to some procompetitive or neutral effect of the defendant's antitrust violation." (Alteration in original) (citations and internal quotation marks omitted.)

Ultimately, the Circuit Court ordered the following:

> The Court, having reviewed the Motion to Dismiss and having considered the supporting and opposing memoranda, declarations, exhibits, arguments of counsel, and the records and files herein, and good cause appearing therefor, rules as follows:
>
> 1. The Court finds that the **statement of facts** and citations of law **set forth by Defendants** in in [sic] the Motion to Dismiss **are factually accurate** and legally correct.
>
> 2. Accordingly, the Court adopts the factual bases set forth in the Motion to Dismiss as well as the Exhibits attached thereto.
>
> 3. The Court does not find any merit to the arguments of Plaintiff in its opposition to the Motion to Dismiss.

(Emphasis added.)

One day later, HTC filed its Motion to Disqualify Judge Ochiai, asserting that Judge Ochiai lacked impartiality in violation of the Hawaiʻi Revised Code of Judicial Conduct (**HRCJC**). A week later, HTC filed a Motion for Reconsideration of the Circuit Court's order granting KS's Motion to Dismiss.

The Circuit Court thereafter entered orders against HTC, including (1) an order denying HTC's Motion for Leave to File the Second Amended Complaint; (2) an order denying HTC's Motion to Consolidate; (3) an order denying HTC's Motion to Disqualify Judge Ochiai; and (4) an order denying HTC's Motion for Reconsideration. On August 31, 2020, the Circuit Court entered Final Judgment in favor of KS.

Subsequently, on September 11, 2020, KS filed a Motion for Attorneys' Fees and Costs pursuant to HRS § 607-9 (2016) and § 607-14 (2016). The Circuit Court denied KS's request.

On September 29, 2020, HTC appealed to the ICA, challenging the Circuit Court's order granting KS's Motion to Dismiss, the subsequent orders against HTC, and the Final Judgment. KS cross-appealed the Circuit Court's order denying fees and costs. The ICA affirmed the Circuit Court's Final Judgment, but held the Circuit Court erred in denying KS's motion for attorneys' fees and costs. On February 18, 2025, the ICA entered its Judgment on Appeal.

We accepted HTC's application for writ of certiorari.

C. Certiorari Proceedings

On certiorari, HTC contends the ICA erred by affirming the Circuit Court's Final Judgment. Specifically, HTC argues that the Circuit Court erred by: (1) granting KS's Motion to Dismiss and in determining that the statement of facts in the Motion to Dismiss were "factually accurate"; (2) denying HTC's Motion for Leave to File the Second Amended Complaint solely on the basis that the First Amended Complaint was dismissed; and (3) denying HTC's Motion to Disqualify Judge Ochiai. HTC also asserts the ICA erred in vacating the Circuit Court's denial of KS's motion for attorneys' fees and costs, because KS should not be the prevailing party.

Regarding the First Amended Complaint, HTC argues the Circuit Court failed to address most of its allegations which were sufficient to defeat HRCP Rule 12(b)(6) dismissal under Bank of Am., N.A. v. Reyes-Toledo's notice-pleading standard. See 143 Hawaiʻi 249, 428 P.3d 761 (2018), overruled on other grounds by Wilmington Sav. Fund Soc'y, FSB v. Domingo, 155 Hawaiʻi 1, 556 P.3d 347 (2024). For instance, HTC argues FOF 2 fails to address KS's alleged deception as to the location of Kewalo Lane. HTC also contends the Circuit Court improperly accepted KS's statement of facts over HTC's allegations in the First Amended Complaint. As for its unfair competition claim, HTC argues that KS's wrongdoings led to lost profits resulting

from HTC not obtaining an extended lease and/or not obtaining increased customer traffic from a New Lane or southern access to the HSL project lot.

Next, HTC asserts the Circuit Court erred in denying its motion to file the Second Amended Complaint, where the Circuit Court's order stated that in light of its order granting dismissal of the First Amended Complaint "*there is no action pending which [HTC] could use as a vehicle to file the Second Amended Complaint*" and because the Circuit Court did not provide any substantive reasons for denying the motion.

Regarding HTC's motion to disqualify Judge Ochiai, it contends the motion should have been granted because Judge Ochiai, who served as the settlement Judge in the Ward case, should not have presided over the present case as a fact finder. HTC further argues that Judge Ochiai violated "HCJC Rule 2.2" because some of his comments during proceedings in both the Ward case and the present case indicated he failed to maintain an open mind.

In response, KS asserts there is no indication the Circuit Court or the ICA applied standards different than those required by Reyes-Toledo. KS further asserts the ICA correctly determined there was no breach of contract or good faith because HTC was not contractually entitled to a lease renewal and construction of the New Lane; HTC failed to state a claim for

unfair competition; HTC failed as a matter of law in its claim for breach of the covenant of quiet enjoyment because it does not allege it did not have possession of the property or that it had been expelled from the premises; and HTC failed to address the ICA's conclusion that leave to file the Second Amended Complaint would be futile. KS also argues that the Circuit Court's FOFs were not erroneous.

KS also argues the ICA correctly upheld the Circuit Court's denial of HTC's motion to disqualify Judge Ochiai. KS contends HTC failed to raise its objection to Judge Ochiai in a timely fashion, and contrary to HTC's argument, Judge Ochiai would not have served as the fact finder in the present case where HTC had demanded a jury trial. KS further contends that Judge Ochiai's alleged comments during settlement discussions in the Ward case reflected his assessment of that case and recommendations during settlement negotiations. Finally, KS asserts that Judge Ochiai's adverse rulings against HTC do not provide a basis for disqualification.

III. Standards of Review

A. Motion to Dismiss

> A trial court's ruling on a motion to dismiss is reviewed de novo. The court must accept plaintiff's allegations as true and view them in the light most favorable to the plaintiff; dismissal is proper only if it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim that would entitle him or her to relief.

Delapinia v. Nationstar Mortg. LLC, 150 Hawai'i 91, 97-98, 497 P.3d 106, 112-13 (2021) (citation omitted).

B. Motion to Amend Complaint

"Orders denying motions for leave to amend a complaint are reviewed for an abuse of discretion." Seki ex rel. Louie v. Haw. Gov't Emps. Ass'n, AFSCME Local No. 152, AFL-CIO, 133 Hawai'i 385, 400, 328 P.3d 394, 409 (2014) (internal quotation marks omitted) (quoting Jou v. Dai-Tokyo Royal State Ins. Co., 116 Hawai'i 159, 163, 172 P.3d 471, 475 (2007)).

> In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be "freely given."

TRI-S Corp. v. W. World Ins. Co., 110 Hawai'i 473, 490, 135 P.3d 82, 99 (2006) (citation omitted).

C. Mootness

This court has expressed that:

> [a] case is moot where the question to be determined is abstract and does not rest on existing facts or rights. Thus, the mootness doctrine is properly invoked where "events . . . have so affected the relations between the parties that the two conditions for justiciability relevant on appeal—adverse interest and effective remedy—have been compromised."

In re Doe Children, 105 Hawai'i 38, 56, 93 P.3d 1145, 1163 (2004) (quoting CARL Corp. v. State, Dept. of Educ., 93 Hawai'i 155, 164, 997 P.2d 567, 576 (2000)).

IV. Discussion

A. HTC's First Amended Complaint should not have been dismissed in full.

We first note the Circuit Court took judicial notice of four exhibits attached to KS's motion to dismiss. The exhibits consisted of the First Amended Complaint in this case, the Complaint and First Amended Complaint in the Ward case, and an order in the Ward case joining HTC as an indispensable party to that action. HTC's First Amended Complaint in this case contained multiple paragraphs identifying and discussing the Ward case, including the allegations in the Ward Complaint and First Amended Complaint, and that HTC was joined as a party in that case. The Circuit Court properly took judicial notice of the pleadings and order in the Ward case. Further, its FOFs indicate the Circuit Court properly did *not* take judicial notice of the *truth* of any facts in those pleadings or order. See Uyeda v. Schermer, 144 Hawaiʻi 163, 172, 439 P.3d 115, 124 (2019) (stating "a trial court may take judicial notice of the pleadings, findings of fact and conclusions of law filed in a separate court proceeding[.]" . . . However, [a] distinction must be carefully drawn between taking judicial notice of the existence of documents in the Court file as opposed to the truth of the facts asserted in those documents" (second alteration in original) (citations and internal quotation marks omitted)).

In these circumstances, the Circuit Court's consideration of the pleadings and order from the Ward case did not convert KS's motion to dismiss into a motion for summary judgment. See Guity v. State, 153 Hawaiʻi 368, 372, 538 P.3d 780, 784 (App. 2023) (recognizing that a circuit court's proper judicial notice of an ICA memorandum opinion, a supreme court opinion, and findings of fact, conclusions of law and orders on remand in two related trial court cases did not convert a motion to dismiss into a motion for summary judgment).

Next, we agree with HTC and hold that the Circuit Court applied an incorrect standard in deciding KS's motion to dismiss. The Circuit Court's order granting the motion stated: (1) "[t]he Court finds that the statement of facts and citations of law set forth by [KS] in the Motion to Dismiss are factually accurate and legally correct" (emphasis added); and (2) "the Court adopts the factual bases set forth in the Motion to Dismiss as well as the Exhibits attached thereto" (emphasis added).

The Circuit Court was required to accept the allegations in HTC's First Amended Complaint as true. See Delapinia, 150 Hawaiʻi at 97, 497 P.3d at 112. To the contrary, the Circuit Court expressly adopted "the factual bases" in KS's motion to dismiss. Further, a review of the Circuit Court's FOFs compared to the First Amended Complaint also demonstrates

the Circuit Court failed to accept HTC's allegations as true and to view them in the light most favorable to HTC. Significantly, in FOF 2, the Circuit Court found that "[t]he term 'Kewalo Lane' has, over the years, been interpreted differently by different people including, among others, the Wards, KS, HTC, and the City and County of Honolulu." However, in its First Amended Complaint, HTC alleges that KS *misrepresented* that Kewalo Lane was located on HTC's leased property in an effort to push KS's kuleana access obligations onto HTC. The Circuit Court did not accept this crucial allegation as part of its decision. The Circuit Court's decision also fails to consider the allegations that KS used large parts of HTC's driveway to build the HSL project against HTC's repeated objections, that KS took conflicting positions about the location of Kewalo Lane, and that after KS confirmed to HTC that Kewalo Lane was not on HTC property and access for the kuleana properties was an issue for KS, KS nonetheless sought and was granted joinder of HTC in the Ward case on KS's assertion that HTC was responsible for the Ward's lack of access to their property.

Accepting HTC's allegations in the First Amended Complaint to be true and viewing them in the light most favorable to HTC, we conclude the First Amended Complaint states viable claims for: (1) breach of contract, and (2) breach of the implied covenant of good faith and fair

dealing, stemming from the allegations that KS misrepresented that Kewalo Lane was on HTC property, took conflicting positions with the City and others about the location of Kewalo Lane, improperly tried to push its kuleana access obligations onto HTC, and that KS encroached onto HTC's property and took other related actions affecting HTC's use of its property, in violation of the quiet enjoyment provision of the Lease.

However, dismissal was proper with respect to HTC's claims that it did not obtain an extended Lease and/or did not obtain increased income from a New Lane contemplated as part of an extended Lease. HTC allegations do not support a contractual entitlement to an extended Lease.

1. The First Amended Complaint asserts a viable claim for breach of contract.

"[I]n a breach of contract action, the plaintiff's complaint must cite, at a minimum, the contractual provision allegedly violated." Kohala Agric. v. Deloitte & Touche, 86 Hawai'i 301, 307 n.7, 949 P.2d 141, 147 n.7 (App. 1997) (internal quotation marks omitted) (quoting Ho v. State Farm Mut. Auto Ins. Co., 926 F. Supp. 964, 968 (D. Haw. 1996), aff'd in part, rev'd in part, No. 96-16401, 1997 WL 367957 (9th Cir. July 2,

1997) (mem.)); Ho, 926 F. Supp. at 968 ("Generalized allegations of a contractual breach are not sufficient.").

Here, the First Amended Complaint identified the quiet enjoyment provision of the Lease, which provided that: "Lessee shall peaceably hold and enjoy said premises for the term hereby demised without hinderance or interruption by Lessors or any other person or persons lawfully claiming by, through or under them except as herein expressly provided." (Emphasis added.) HTC further alleged, "the Lease did not indicate on the attached map or describe in the Lease text that Kewalo Lane was on HTC's leased property or that Lessee was responsible for providing access to nearby kuleana owners."

Related to the breach of contract claim, the First Amended Complaint alleges variously that KS had improperly sought to shift its responsibility onto HTC to provide kuleana access to the Wards, despite there being nothing in the Lease requiring HTC to provide such access. The First Amended Complaint also alleges KS encroached onto HTC property when KS constructed a restaurant on historic Kewalo Lane. These allegations can be discerned from various parts of the First Amended Complaint, including:

> 32. Instead of constructing the New Lane on the southern boundary within the HSL project: . . . KS obscured that it would build over historic Kewalo Lane by misrepresenting that its new [Mid-Block Lane] access was adequate access and by misrepresenting that Kewalo Lane was on HTC's property[.]

. . . .

> 44. During 2014, KS constructed a restaurant on historic Kewalo Lane . . . and used large parts of the HTC's driveway to build the HSL project against HTC's repeated requests, which was highly disruptive to HTC's operations.

(Emphases added.) HTC alleged it attempted to prevent KS's construction activities on HTC's leased property, but KS allegedly stalled HTC's plans and also forced kuleana access obligations onto HTC:

> 45. In July 2014, HTC submitted plans to KS and the City to construct a fence to prevent HSL construction activities on HTC's property and to prevent HSL – which has minimal parking – from using HTC's ample parking. The plans included gates for emergency access for the kuleana owners. Later, after KS and [DPP] intentionally stalled the fence permit, and KS tried to push the kuleana access onto HTC property and forced HTC to hire attorneys and consultants, HTC removed the emergency access gates from the plans.
>
> . . . .
>
> 47. On October 11, 2014, HTC's [representative] met with KS senior land manager . . . on site in response to HTC's many failed attempts to get KS to remove their HSL construction activities from HTC property. [HTC] described [KS's] comments at that meeting in an email[:]
>
> > You explained that Kewalo had been "floated" onto HTC prior to KS going through permitting for the shave ice redevelopment and that the City and Country [sic] had moved the Kewalo Street sign onto HTC leased premises. You also explained that the reason KS had shown Kewalo Lane on HTC leased premises in many of your permits was because DPP told you to because of this floating of Kewalo onto HTC. You said that DPP planned to float Kewalo into the middle of the Shave Ice project going forward. . . .

(Emphases added.)

The First Amended Complaint also alleges that KS unlawfully attempted to terminate the kuleana owners' use of historic Kewalo Lane, located on the HSL lot, and then shifted

the blame to HTC. Specifically, in the Ward case, KS alleged that the Wards lacked "the type of access they desire" because of HTC's actions and that the Wards right of access actually ran through HTC's parking lot. Among other things, the First Amended Complaint asserts:

> 62. On December 31, 2015, unbeknownst to the Wards or HTC, DPP issued tentative approval of [KS's subdivision application] that noted that final action will be subject to[, inter alia, the filing of copies of] . . . the final survey map including the deletion of the 30 ft. roadway right-of-way along the southern boundary of the lots. Emphasis added. These terms of the tentative approval is an unlawful attempt by KS to obtain City approval to terminate the kuleana owners' use of the 30 ft historic Kewalo Lane on HSL [project] property and to push their emergency access onto HTC property without notice to HTC or the Wards, and to cover-up KS's misrepresentations [to] the City, . . . and the Haleiwa community that it could not reach an agreement with HTC to use its driveway and that Kewalo Lane was on HTC's property. . . .
>
> . . . .
>
> 64. On September 27, 2018, the Wards filed Civil No. 18-1-1530-09 DEO against KS for among other things wrongly denying their access on historic Kewalo Lane located on HSL [project] property.
>
> 65. On October 31, 2018, . . . KS filed a motion to join HTC as a party in the Wards' lawsuit on the grounds that:
>
> > Plaintiffs now lack the type of access they desire because of the actions of HTC both directly and through its counsel. KS intends to assert in this action that Plaintiffs' claims against KS are without merit because Plaintiffs' right of access under [HRS] § 7-1 is the paved roadway that runs from the [HTC] parking lot along the north boundary of the [HTC] property from Kamehameha Highway.
>
> . . . .
>
> 66 . . . . However, unlike the responses that [KS's attorney] provided in his 12/31/14 letter to HTC's attorneys and those that [KS's land manager] provided in his 4/15/15 letter to [the DPP Director] . . . that both unequivocally confirmed that Kewalo Lane was not on HTC property, KS's interrogatory response disclosed KS's 2012

> slight-of-hand and 2015 cover-up attempt and revealed KS's bad faith and deceptiveness[.] . . .
>
> 67. Only after receiving [KS's] response to Interrogatory [No.] 5 did HTC first discover that KS *knew* that Kewalo Lane was not on HTC property, and, despite such knowledge, in bad faith and deceptively *misrepresented* that Kewalo Lane was on HTC's property to avoid having to provide the Wards access via the historic Kewalo Lane, and to obtain an unfair competitive advantage over HTC.

(Formatting altered) (emphases added.)

We note that the First Amended Complaint is somewhat difficult to digest and follow, due in part to its extensive detail and structure. But it clearly meets notice pleading standards and alleges grounds for a breach of contract claim based on the alleged violation of the quiet enjoyment provision in the Lease. The First Amended Complaint recites and relies on the quiet enjoyment provision of the Lease. It also contains allegations about KS attempting to shift its kuleana access obligations onto HTC, making conflicting representations about whether Kewalo Lane was on HTC's property or not, and that KS encroached on HTC's property during construction on historic Kewalo Lane. Moreover, the allegations that KS joined HTC as a defendant in the Ward case based on KS's assertion that HTC is obligated to provide kuleana access to the Wards – despite allegedly nothing in the Lease obligating HTC do so - further elucidates HTC's breach of contract claim.

In its COL 7, the Circuit Court relied on Scott v. Pilipo, 23 Haw. 349, 353 (1916), to conclude that "[s]ucceeding

on breach of the covenant of quiet enjoyment typically requires, among other matters, expulsion from the property." (Emphases added.) KS similarly argues on appeal that under Pilipo, the First Amended Complaint fails to assert a proper breach of contract for violation of the quiet enjoyment provision, because it does not allege that HTC was evicted from the leased property.

Pilipo involved an action for breach of the covenant for quiet enjoyment where a tenant was prevented from securing possession of leased property despite having paid rent for a year in advance. Id. at 350, 353. In that case, decided in 1916, this court stated that "[i]n order to sustain an action for the breach of a covenant for quiet enjoyment it is necessary for the plaintiff to show that [they have] been prevented from taking possession of the demised premises or [have] been evicted therefrom by the lessor . . . or by a person claiming under [the lessor], or by one having a superior title." Id. at 353.

We conclude that Pilipo is distinguishable because the plaintiff in that case only asserted a breach based on her inability to secure possession of property. See id. at 350. This court upheld dismissal of the plaintiff's claim in Pilipo because she did not assert she was precluded from possessing the property *by the lessor* or *by persons claiming possession through the lessor*. Id. at 353. Pilipo did not address an alleged

breach of the covenant for quiet enjoyment in a situation like the instant case. We conclude the rule stated in Pilipo – requiring lack of possession or expulsion from the leased property for a breach of the covenant of quiet enjoyment – is incomplete and outdated. We now recognize broader grounds for breach of the covenant of quiet enjoyment.

In 1929, thirteen years after Pilipo was decided, the Supreme Judicial Court of Massachusetts recognized that when a tenant can establish there has been a substantial and continued interference with their "beneficial enjoyment of the leased premises and appurtenant rights[,]" the tenant need not surrender the premises or await eviction before raising a claim for breach of the covenant of quiet enjoyment. Winchester v. O'Brien, 164 N.E. 807, 809 (Mass. 1929). In Winchester, the Massachusetts court determined that the landlords' remodeling of the property substantially interfered with the tenant's beneficial enjoyment of the leased premises and appurtenant rights. Id. That court held that

> [c]ases . . . which hold that a tenant cannot maintain an action at law for breach of covenant for quiet enjoyment so long as [they] remain[] in possession[] are not controlling . . . [in circumstances] where a tenant may remain in possession and seek relief against the landlord for wrongful interference with [their] rights as a tenant because the acts are wrongful invasions of such rights.

Id. (emphases added) (citations omitted); see also Manzaro v. McCann, 519 N.E.2d 1337, 1341 (Mass. 1988) ("A landlord will be

liable for interference with quiet enjoyment if [they] cause[] or authorize[] acts which result in substantial injury to the tenant in the peaceful enjoyment of the demised premises." (internal quotation marks omitted) (citing Winchester, 164 N.E. at 809)).

The Massachusetts cases are part of a broader conceptual framework which recognizes that, upon a lessor's breach of a lease, a tenant has a choice of remedies. See Guntert v. City of Stockton, 126 Cal. Rptr. 690, 694 (Cal. Ct. App. 1976) (citing Kulawitz v. Pac. Woodenware & Paper Co. 155 P.2d 24, 28 (Cal. 1944)). In Kulawitz, the Supreme Court of California concluded that "[a]ny interference by the landlord by which the tenant is deprived of the beneficial enjoyment of the premises amounts to a constructive eviction *if* the tenant so *elects* and surrenders possession, and the tenant will not be liable for rentals for the portion of the term following [their] eviction." 155 P.2d at 27 (emphasis added) (citations omitted). The California court further concluded that "the lessee has a choice of several remedies; [they] may rescind and become absolved from further payment of rentals; [they] may continue under the lease and sue for loss of profits; or [they] may treat the violation as putting an end to the lease for the purposes of performance and sue for damages." Id. at 28 (emphasis added) (citations omitted); see also Thompson v. R. B. Realty Co., 177

P. 769, 770 (Wash. 1919) (concluding that a tenant could not claim constructive eviction but noting that the tenant "would have had an action for . . . damages as might result to [the tenant] under the contract"); Breach of covenant for quiet enjoyment in lease, 41 A.L.R.2d 1414 § 11 (1955) (recognizing that a lessor "is bound not to do anything calculated to interrupt the free and full enjoyment in the lessee of those things which are considered to pass with the leasehold[;]" and although "it is not always clear whether such interruption of the enjoyment, and consequent breach of the covenant, can run to an act short of ouster of possession, . . . the rule which seems better adapted to the times is that which considers any substantial interruption of the enjoyment a breach of the covenant of quiet enjoyment." (emphasis added)).

Notably, a California Court of Appeal in Guntert cogently summarized that requiring ouster for claims of breaches of the covenant of quiet enjoyment "fails to recognize the tenant's choice of remedies for breach of the lease, namely, [their] option to stand upon the lease and sue for damages." 126 Cal. Rptr. at 695 (emphasis added) (citation omitted). A lessor's covenant of quiet enjoyment may be breached by something that is "less than complete ouster." Id. (citation omitted).

In Ginsberg v. Gamson, 141 Cal. Rptr. 3d 62, 81-82 (Cal. Ct. App. 2012), the court explained:

> The implied covenant of quiet enjoyment or possession may be breached in multiple ways. The claim has often been inextricably tied to breach of the covenant by eviction, which disturbs the tenant's right to undisturbed possession of the leased premises. If the landlord ousts the tenant, there is an actual eviction. If the landlord's acts or omissions affect the tenant's use of the property and compel the tenant to vacate, there is a constructive eviction. In either case, the tenant must vacate. Many courts have accordingly repeated the general premise that "the covenant of quiet enjoyment is not broken until there has been an actual or constructive eviction...."
>
> However, in [Guntert, 126 Cal. Rptr. 690], the court distinguished claims in which the landlord has actually or constructively ousted the tenant from those in which the landlord's interference with the tenant's enjoyment or use of the property does not lead to ouster. The [Guntert] court recognized that a tenant has alternative remedies to respond to the landlord's interference and, instead of vacating, may "stand upon the lease and sue for damages." In [Guntert], the plaintiff tenant had not quit the premises, despite the landlord's service of an invalid and bad faith eviction notice. The court thus concluded: "[The tenant] is not suing for a wrongful, constructive eviction but for the lessor's unjustified and unauthorized interference with [their] profitable use of the leased property. The rule requiring ouster or surrender prior to suit for wrongful eviction does not preclude the tenant from [their] election to stand upon the lease, remain in possession and sue for breach of contract damages."
>
> . . . . "While a claim for breach of the covenant of quiet enjoyment is similar to a constructive eviction claim, the critical difference is that the latter claim may not be brought until the tenant has vacated the property." Thus, breach of the implied covenant of quiet enjoyment can be understood as a title encompassing claims for wrongful eviction, and also claims in which the tenant's use of the premises is disturbed, but the tenant remains in possession.

(Emphases added) (citations and footnote omitted).

Other state appellate courts acknowledge a tenant's option to sue for damages for breach of the covenant of quiet enjoyment notwithstanding there had been no eviction and the

tenant had never surrendered possession. In Carner v. Shapiro, a Florida appeals court held that the tenant should be able to recover monetary damages, even without a showing of eviction or surrendering possession, where the record showed that lessors violated their covenant of quiet enjoyment. 106 So. 2d 87, 88-89 (Fla. Dist. Ct. App. 1958). There, a landlord leased part of the first floor of a building to lessee, who operated a retail clothing establishment, and the landlord's remodeling project of the upper stories interfered with the lessee's business. Id. The appeals court held that "[u]nder the circumstances of the present case, where plaintiff operated a retail clothing establishment, it would seem unjust to require [them] to cease operating [their] business in order to recover damages." Id. at 89. The Carner court cited to Winchester, stating "[w]e agree with the conclusions reached in [Winchester] . . . and hold that they apply here." Id.; see also Moe v. Sprankle, 221 S.W.2d 712, 715 (Tenn. Ct. App. 1948) ("It is a modern practice to lease property for business purposes for long terms and there occurs to us no reason why a lessee, after establishing [their] business on the leased premises, should be forced to await eviction by the lessor or surrender the premises, often at great loss, before claiming a breach of the covenant for interference with [their] use and possession of the premises falling short of total eviction.").

Here, the First Amended Complaint alleged KS improperly pushed its kuleana access obligations onto HTC and KS encroached onto HTC's property which was highly disruptive to HTC's use of its leased property. The First Amended Complaint did not allege that HTC surrendered or was evicted from the leased property as a result of KS's actions. To the extent the rule expressed in Pilipo would have precluded HTC from maintaining its claim for breach of the covenant of quiet enjoyment because HTC had not surrendered the premises, we hereby reject its application and we further expand on Pilipo.

We now hold that for a claimed breach of the covenant of quiet enjoyment, a lessee need not show that they have been evicted from, or dispossessed of, the premises before seeking relief against the lessor. The lessee can elect to stand upon their rights under the lease, remain in possession, and sue for breach of contract damages where the lessor or a party claiming under the lessor has interfered with the lessee's use and enjoyment of the premises. See Winchester, 164 N.E. at 809; Guntert, 126 Cal. Rptr. at 695; Ginsberg, 141 Cal. Rptr. 3d at 81-82.

Therefore, we conclude the First Amended Complaint asserts a viable breach of contract claim for violation of the quiet enjoyment provision of the Lease to the extent that it alleges KS took actions interfering with HTC's use and enjoyment

of the leased premises, including that KS: misrepresented that Kewalo Lane was on HTC property; took conflicting positions about the location of Kewalo Lane; improperly sought to push its kuleana access obligations onto HTC; and encroached on HTC's leased property during construction for the HSL project. Moreover, the breach of contract claim survives under Hawaiʻi's liberal notice pleading standards. See Reyes-Toledo, 143 Hawaiʻi at 259, 428 P.3d at 771 (reiterating that "Hawaii's rules of notice pleading require that a complaint set forth a short and plain statement of the claim that provides defendant with fair notice of what the plaintiff's claim is and the grounds upon which the claim rests" (citation omitted)).

However, to the extent that HTC's breach of contract claim is premised on the lack of a Lease extension and/or the contemplated New Lane, HTC's claims based on either of those grounds must fail. HTC's First Amended Complaint fails to allege any contract provision that entitled HTC to those things. Moreover, the First Amended Complaint does not allege that the parties' negotiations led to the formation of a contract.

Based on the foregoing, the ICA erred in part by affirming the Circuit Court's dismissal of HTC's breach of contract claim.

2. The First Amended Complaint asserts a viable claim for breach of the implied covenant of good faith and fair dealing.

Under Hawai'i law, "every contract contains an implied covenant of good faith and fair dealing that neither party will do anything that will deprive the other of the benefits of the agreement." Young v. Allstate Ins. Co., 119 Hawai'i 403, 427, 198 P.3d 666, 690 (2008) (citation omitted) (quoting Best Place, Inc. v. Penn. Am. Ins. Co., 82 Hawai'i 120, 123-24, 920 P.2d 334, 337-38 (1996)).

The Lease is the operative agreement between HTC and KS. KS had a contractual relationship with HTC and thus owed HTC a duty of good faith and fair dealing in performing its obligations under the Lease. See Best Place, Inc., 82 Hawai'i at 124, 920 P.2d at 338 (quoting Restatement (Second) Contracts § 205 (1979) which "provides that '[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.'" (alteration in original)); see also Lau v. Bautista, 61 Haw. 144, 149, 598 P.2d 161, 165 (1979) (recognizing this court has adopted "the view that a lease is essentially a contractual relationship" (citation omitted)).

Under the quiet enjoyment provision of the Lease, HTC "shall peaceably hold and enjoy said premises for the term hereby demised without hinderance or interruption by Lessors or

any other person or persons lawfully claiming by, through or under them[.]" Accordingly, taken as true, HTC's factual allegations that KS pushed its kuleana access obligations onto HTC - despite nothing in the Lease requiring HTC to provide such access - and alleged encroachment onto HTC's property during construction, constitutes a hinderance on HTC's peaceable enjoyment of the premises which would deprive HTC of the benefits of the Lease. See Young, 119 Hawai'i at 427, 198 P.3d at 690.

More specifically, the First Amended Complaint alleges that KS "in bad faith and unbeknownst to HTC, attempted to force kuleana access obligations onto HTC's property and built a building directly on top of historic Kewalo Lane located on HSL property." The First Amended Complaint further alleges "KS obscured that it would build over historic Kewalo Lane by misrepresenting that its new [Mid-Block Lane] was adequate access and by misrepresenting that Kewalo Lane was on HTC's property[.]" The First Amended Complaint contains extensive allegations about KS documents and communications with DPP and others, asserting misrepresentations about Kewalo Lane and KS's alleged attempt to force KS's kuleana access obligations onto HTC's property.

The First Amended Complaint also alleges that in 2014, "KS constructed a restaurant on historic Kewalo Lane . . . and

used large parts of [] HTC's driveway to build the HSL project against HTC's repeated requests, which was highly disruptive to HTC's operations." It is also alleged that "HTC submitted plans to KS and the City to construct a fence to prevent HSL construction activities on HTC's property and to prevent HSL – which has minimal parking – from using HTC's ample parking," and that KS and DPP's Director, who had previously worked on the HSL project on behalf of KS, intentionally stalled the fence permit.

Further, the First Amended Complaint alleges several instances where KS confirmed that Kewalo Lane was not on HTC property, but that KS thereafter joined HTC as a defendant in the Ward case. The First Amended Complaint alleges that: in December 2014, KS's attorney wrote to HTC's attorneys confirming that Kewalo Lane is not located on the property leased to HTC; in April 2015, KS's land manager wrote to the DPP Director that Kewalo Lane is not on HTC property; and in October 2015, KS's attorney wrote to HTC's attorney that he did not dispute that access for the kuleana owners "is a KS issue" and that KS rejected as unnecessary a request for a meeting between HTC, KS, and the City to resolve outstanding kuleana access issues. KS's attorney also separately wrote to HTC's attorney in October 2015, confirming that KS consented to HTC building a fence without emergency access gates for kuleana owners to use. Subsequently, however, the First Amended Complaint asserts that

KS was able to join HTC as a defendant in the Ward case. In its motion to join HTC, KS asserted that:

> [The Wards] now lack the type of access they desire because of the actions of HTC both directly and through its counsel. KS intends to assert in this action that [the Wards'] claims against KS are without merit because [the Wards'] right of access under [HRS] § 7-1 is the paved roadway that runs from the Haleiwa Town Center parking lot along the north boundary of the Haleiwa Town Center property from Kamehameha Highway.

The First Amended Complaint further asserts that KS's responses to HTC's Interrogatory No. 5 in the Ward case were contrary to the prior statements by KS's representatives that "unequivocally confirmed that Kewalo Lane was not on HTC property," and shows that "KS *knew* that Kewalo Lane was not on HTC property, and, despite such knowledge, in bad faith [it] deceptively *misrepresented* that Kewalo Lane was on HTC's property to avoid having to provide the Wards access via the historic Kewalo Lane, and to obtain an unfair competitive advantage over HTC."

Accepting HTC's allegations as true and viewing the allegations in the light most favorable to HTC, the First Amended Complaint asserts a viable claim for breach of the implied covenant of good faith and fair dealing. See e.g., Young, 119 Hawaiʻi at 427, 198 P.3d at 690; Kutkowski v. Princeville Prince Golf Course, LLC, 129 Hawaiʻi 350, 359, 300 P.3d 1009, 1018 (2013) (noting that "[e]very contract imposes upon each party a duty of good faith and fair dealing in its

performance and its enforcement." (quoting Restatement (Second) of Contracts § 205 (1981)); Hawaii Leasing v. Klein, 5 Haw. App. 450, 456, 698 P.2d 309, 313 (App. 1985) ("Good faith performance 'emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party.'" (quoting Restatement (Second) of Contracts § 205)); see also Restatement (Second) of Contracts § 205 (defining good faith performance as follows: "Subterfuges and evasions violate the obligation of good faith in performance even though the actor believes his conduct to be justified. But the obligation goes further: bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. A complete catalogue of types of bad faith is impossible, but the following types are among those which have been recognized in judicial decisions: evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance." (emphases added)). Further, HTC clearly meets the notice pleading requirements under HRCP Rule 8(a) (eff. 2000) ("A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim

showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks.").

However, to the extent that HTC's good faith and fair dealing claim is premised on KS not extending the Lease and not constructing the New Lane, the First Amended Complaint does not allege any contractual obligation for KS to undertake those actions. Thus, HTC failed to state a viable claim for breach of the implied covenant of good faith and fair dealing on those grounds.

The ICA thus erred in part by affirming the Circuit Court's dismissal of HTC's breach of the implied covenant of good faith and fair dealing claim.

3. HTC failed to state a claim for unfair competition under HRS chapter 480.

The First Amended Complaint asserts that KS is liable to HTC for "unfair competition under HRS Chapter 480." We hold the First Amended Complaint fails to state a claim for unfair competition under HRS chapter 480, such that the Circuit Court's dismissal of that claim was proper.

HRS § 480-2(a) (2008) provides that "[u]nfair methods of competition . . . are unlawful." In turn, HRS § 480-2(e) (2008) states that "[a]ny person may bring an action based on unfair methods of competition declared unlawful by this

section."[5] A practice is unfair under HRS § 480-2 if it (1) offends public policy, (2) is immoral, unethical, oppressive, or unscrupulous, or (3) substantially injures Hawai'i consumers. State ex rel. Shikada v. Bristol-Myers Squibb Co., 152 Hawai'i 418, 443-46, 526 P.3d 395, 420-23 (2023). KS's alleged conduct as asserted in the First Amended Complaint does not satisfy any of these requirements.

Here, the First Amended Complaint asserted that KS's failure to extend HTC's Lease and to construct a New Lane with HTC – neither of which KS was obligated to do – amounted to

[5] HRS § 480-13 "establishes a private right of action to seek recovery for damages flowing from a party's HRS Chapter 480 violation." Field, Tr. of Est. of Aloha Sports Inc. v. Nat'l Collegiate Athletic Ass'n, 143 Hawai'i 362, 372, 431 P.3d 735, 745 (2018). HRS § 480-13(a) provides:

> (a) Except as provided in subsections (b) and (c), any person who is injured in the person's business or property by reason of anything forbidden or declared unlawful by this chapter:
>
> (1) May sue for damages sustained by the person, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than $1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable attorney's fees together with the costs of suit; provided that indirect purchasers injured by an illegal overcharge shall recover only compensatory damages, and reasonable attorney's fees together with the costs of suit in actions not brought under section 480-14(c); and
>
> (2) May bring proceedings to enjoin the unlawful practices, and if the decree is for the plaintiff, the plaintiff shall be awarded reasonable attorney's fees together with the costs of suit.

unfair competition and resulted in injuries to HTC. In its application for certiorari, HTC points to paragraph 69 of the First Amended Complaint as setting out the injury due to unfair competition. Paragraph 69 states:

> 69. This wrong was a substantial factor in causing HTC harm including but not limited to lost profits as a result of HTC not obtaining an extended lease and/or not obtaining increased income that would have resulted from increased customer traffic from the New Lane or southern access[6] to the HSL project, and KS thereby negatively and unfairly affected competition as HTC and HSL are competing shopping centers.

(Emphases added.)

Accepting these allegations as true and viewing them in the light most favorable to HTC, KS's decision not to extend HTC's Lease or to go forward with building a New Lane with HTC does not state an unfair competition claim. As alleged in the First Amended Complaint, KS and HTC never came to any agreement on extending the lease or building a New Lane and there are no allegations that KS was obligated to take these actions. HTC does not allege that it was entitled to them. In such circumstances, KS's alleged conduct was not "unfair" under HRS § 480-2. See Shikada, 152 Hawai'i at 443-46, 526 P.3d 395 at 420-23.

The ICA properly affirmed the Circuit Court's dismissal of HTC's unfair competition claim.

[6] The First Amended Complaint at paragraph 26 states that access from the southern boundary of the HSL Lot is a reference to the New Lane.

B. HTC should have been allowed to file a Second Amended Complaint in support of its non-futile claims.

The Circuit Court denied HTC's Motion for Leave to File the Second Amended Complaint following the court's dismissal of HTC's First Amended Complaint. The Circuit Court reasoned that, given its dismissal of the First Amended Complaint, "there is no action pending which [HTC] could use as a vehicle to file the Second Amended Complaint."

On appeal, the ICA affirmed on alternative grounds that the amendments in the proposed Second Amended Complaint were futile. See Yoshimura v. Kaneshiro, 149 Hawai'i 21, 44, 481 P.3d 28, 51 (2021) ("Where proposed amendments to a complaint would not survive a motion to dismiss, this court should affirm the denial of leave to amend on futility grounds." (citation omitted)).

We hold the Circuit Court erred in its reasoning for denying leave to file the Second Amended Complaint. In the circumstances of this case, the Circuit Court's dismissal of the First Amended Complaint did not mean that there was no "vehicle," or pending action, in which to allow filing of the Second Amended Complaint. Indeed, where a complaint is deficient, a trial court has discretion to allow the complaint to be amended. HRCP Rule 15(a)(2) (eff. 2012) ("[A] party may amend the party's pleading . . . and leave shall be freely given

when justice so requires." (emphasis added)); Kealoha v. Machado, 131 Hawai'i 62, 80, 315 P.3d 213, 231 (2013) ("This court has explained that, in the absence of any apparent or declared reason — such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. — the leave sought should, as HRCP Rule 15(a) requires, be 'freely given.'" (formatting altered) (citation omitted)). The Circuit Court thus abused its discretion by not considering whether to allow filing of the proposed Second Amended Complaint.

We further conclude that HTC should have been allowed to file its proposed Second Amended Complaint related to its non-futile claims for (1) breach of contract and (2) breach of the implied covenant of good faith and fair dealing.

1. Summary of Allegations Added in the Proposed Second Amended Complaint

Paragraph 50 of the proposed Second Amended Complaint added the following paragraph that an email from HTC's attorney to a KS land manager stated:

> As you recall, HTC explicitly and repeatedly denied KS's request to move easements and access onto HTC premises, including during the construction phase. I am distressed that KS ignored HTC's rights and coordinated with DPP regarding floating Kewalo Lane onto HTC. When I pressed you on this, you said something about it being similar to the City and County moving a sign around Chun's store and

> that it did not surprise you that the City and Country [sic] was denying having moved the Kewalo sign onto HTC. However you were clear that the City and County moved the sign and that the City and County coordinated with KS on this "floating" of Kewalo.

(Ramseyer format omitted.)

Further, paragraph 51 of the proposed Second Amended Complaint added that in November 2014, HTC "requested that KS immediately inform DPP that Kewalo Lane is not on HTC property as that issue is delaying the fence permit" and KS responded that

> KS does not believe it is responsible for creating any confusion relating to the location of Kewalo Lane. Nevertheless, staff of KS will reach out to DPP to get a better understanding of any concerns they may have regarding the location of Kewalo Lane and correct any matters that KS believes are factually incorrect regarding the location of Kewalo Lane.

(Ramseyer format omitted.) Then, paragraph 62 of the proposed Second Amended Complaint added the following allegations:

> On October 19, 2015, unbeknownst to the Wards or HTC, [KS's] Planning and Development Manager wrote to [DPP] requesting "cancellation of the access easement for [historic] Kewalo Lane" in a revised SUB-134 subdivision map on the grounds that "after the adjacent Haleiwa Town Center (HTC) was constructed, Kewalo Lane fell into disuse and was eventually replaced with the newer HTC driveway".

(Ramseyer format omitted.)

Moreover, the proposed Second Amended Complaint reasserted HTC's three causes of action in separate sections and summarized each claim. For breach of the implied covenant of good faith and fair dealing, HTC also added:

> In performing its Lease obligation to not hinder or interfere with HTC's use of the premises, KS was required to act in good faith and to deal fairly with HTC, which KS

> did not do, by building a restaurant on historic Kewalo Lane and by replacing the HSL's New Lane or southern shared accesses with a less safe, and competition blocking [Mid-Block Lane]: (a) without satisfying the Wards access needs, instead pushing the Wards kuleana access obligation onto HTC even though the Lease did not impose this obligation, and (b) without having to negotiate with HTC for use of its driveway. In other words, KS "got its cake and ate it too" at the expense of the Wards, HTC and the general public. If KS had been truthful about (i) not getting the Wards approval to replace historic Kewalo Lane with the parking lot access which did not provide emergency access and that it could not push that obligation on HTC under the Lease terms, (ii) that it decided to replace the New Lane with the [Mid-Block Lane] because it did not want to grant HTC an extended term, and (iii) concede that the New Lane or southern shared accesses were safer than the [Mid-Block Lane], it is likely that the City would have denied the Special District Permit Application, which means that KS likely would have granted HTC the extended term and developed the New Lane.

(Ramseyer format omitted.) For its unfair competition claim, HTC added:

> [KS's] unfair conduct negatively affected competition because if KS had not unfairly replaced the New Lane or southern shared accesses with the [Mid-Block Lane], the New Lane or southern *shared* accesses would have increased customer traffic to HTC. Instead, the [Mid-Block Lane] allowed KS to block sharing its customers with HTC.
>
> . . . Accordingly, HTC is entitled to injury to its business or property resulting from replacement of the New Lane or southern shared accesses and other remedies allowed under HRS chapter 480.

(Ramseyer format omitted.)

2. Amendments in HTC's proposed Second Amended Complaint support non-futile claims.

We conclude the additional allegations in HTC's proposed Second Amended Complaint further support HTC's claims for breach of contract and breach of the implied covenant of good faith and fair dealing. Leave to amend HTC's First Amended Complaint should have been freely granted. See HRCP Rule 15(a)

("[L]eave [to amend a pleading] shall be freely given when justice so requires."). KS does not assert undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, or undue prejudice related to the proposed Second Amended Complaint. See TRI-S Corp., 110 Hawaiʻi at 490, 135 P.3d at 99. KS only points to the ICA's determination that the amendments in the Second Amended Complaint would be futile. However, contrary to the ICA, we concluded earlier in this opinion that the First Amended Complaint states claims for breach of contract and breach of the implied covenant of good faith and fair dealing. Consistent with that, we conclude the added allegations in the proposed Second Amended Complaint bolster those claims and are not futile.

For HTC's unfair competition claim, however, the proposed Second Amended Complaint still grounds HTC's claim on KS's alleged failure to extend the Lease and construct a New Lane or a shared access. The proposed Second Amended Complaint fails to allege that KS was obligated to take these actions and thus fails to assert a viable unfair competition claim.

The ICA thus erred in part by affirming the Circuit Court's denial of HTC's proposed Second Amended Complaint on futility grounds.

C. HTC's motion for disqualification is moot.

HTC filed its motion to disqualify Judge Ochiai the day after he granted KS's motion to dismiss the First Amended Complaint. In its briefing to this court, HTC asserts Judge Ochiai should have granted HTC's motion to disqualify because Judge Ochiai served as settlement judge in the Ward case and acted as a factfinder in this case. This argument was raised for the first time in HTC's application for certiorari to this court and thus was waived. In any event, we note there is a jury demand in this case and thus Judge Ochiai would not have sat as a fact finder in a bench trial. HTC's argument is apparently tied to its contention that Judge Ochiai improperly decided KS's motion to dismiss by accepting KS's asserted facts.

HTC further relies on comments allegedly made by Judge Ochiai during a settlement conference in the Ward case, for which there are no transcripts in the record, and comments Judge Ochiai made at the motion to dismiss hearing in this case. HTC contends Judge Ochiai's comments indicate he was not maintaining an open mind, contrary to HRCJC Rule 2.2.

HTC requests not only that we vacate certain orders, which we have addressed above, but that we also remand this case to another judge. However, HTC's requested remedy on the motion for disqualification is moot because Judge Ochiai retired in 2025. See, e.g., Poka v. Holi, 44 Haw. 483, 483, 357 P.2d 110,

111 (1960) (holding that a motion to disqualify a circuit court judge was moot because the judge who presided over the trial was no longer on the bench); State v. Chatman, No. SCWC-16-0000429, 2019 WL 912118, at *3 (Haw. Feb. 22, 2019) (SDO) ("Because the circuit court judge in this case has retired, the judge will not preside over any further proceedings involving [Appellant]. Accordingly, [Appellant's] Motion for Disqualification is moot." (citing State v. Fukusaku, 85 Hawaiʻi 462, 474-75, 946 P.2d 32, 44-45 (1997) ("[T]he mootness doctrine is properly invoked where events have so affected relations between the parties that the two conditions for justiciability relevant on appeal—adverse interest and effective remedy—have been compromised." (emphasis added)), abrogated on other grounds by Granillo v. State, 158 Hawaiʻi 385, 593 P.3d 1 (2026))).

We thus do not address the merits of HTC's motion for disqualification.

D. There is no prevailing party at this juncture for purposes of attorneys' fees or costs.

After the Circuit Court dismissed HTC's First Amended Complaint, KS requested attorneys' fees and costs pursuant to HRS § 607-14 and § 607-9. HRS § 607-14 provides that a prevailing party in an assumpsit action is entitled to attorneys' fees. See, e.g., Deutsche Bank Nat'l Tr. Co. v. Kozma, 140 Hawaiʻi 494, 498, 403 P.3d 271, 275 (2017) ("A

prevailing party is entitled to attorney's fees pursuant to HRS § 607-14."). The Circuit Court denied KS's motion for attorneys' fees and costs, but the ICA vacated that denial on grounds that HTC had asserted an assumpsit claim and the Circuit Court had not provided any basis for its denial.

Further, after the ICA issued its SDO affirming the Circuit Court's substantive rulings, KS requested an award for attorneys' fees and costs incurred on appeal as the prevailing party. The ICA awarded KS $47,799.40 in attorneys' fees and $323.19 in costs, citing HRS § 607-14 and § 607-9, and Rule 39 of the Hawaiʻi Rules of Appellate Procedure (**HRAP**) for these awards.

Because we hold the ICA erred in affirming dismissal of HTC's First Amended Complaint, and that HTC asserted two viable claims, there is no prevailing party under the present circumstances. Accordingly, KS is not entitled to attorneys' fees or costs under HRS § 607-14, HRS § 607-9, and HRAP Rule 39.

For these reasons, the Circuit Court's denial of attorneys' fees and costs to KS should not have been vacated, and the ICA erred by granting KS attorneys' fees and costs incurred on appeal. See Ass'n of Owners of Kalele Kai v. Yoshikawa, 149 Hawaiʻi 417, 418, 493 P.3d 939, 940 (2021) (holding that "when a judgment upon which attorneys' fees and costs were based has been vacated, attorneys' fees and costs

arising out of that judgment should also be vacated," even though the fees and costs award was not directly challenged); Schmidt v. Dubin, 155 Hawaiʻi 16, 20, 556 P.3d 362, 366 (2024); Kozma, 140 Hawaiʻi at 498, 403 P.3d at 275 ("[A] prevailing party cannot always be determined following the adjudication of an appeal." (citation omitted)).

V. Conclusion

Based on the foregoing, we vacate the ICA's Judgment on Appeal in part to the extent that it: affirmed in full the Circuit Court's dismissal of HTC's First Amended Complaint; affirmed in full the Circuit Court's denial of HTC's request to file a Second Amended Complaint; vacated the Circuit Court's denial of attorneys' fees and costs to KS; and awarded KS attorneys' fees and costs incurred on appeal. The ICA's Judgment on Appeal is otherwise affirmed.

This case is remanded to the Circuit Court for further proceedings consistent with this opinion.

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/s/ Todd W. Eddins

/s/ Lisa M. Ginoza

/s/ Faʻauuga Toʻotoʻo

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