

NO. 22950

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

JOHN A. EAGLE and PAUL K. EAGLE, Plaintiff-Appellants,  
v. JERRY E. ALLEN, Defendant-Appellee, and DOE  
DEFENDANTS 1-10, DOE ENTITIES 1-10, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT  
(CIVIL NO. 99-0744)

MEMORANDUM OPINION

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

Plaintiffs-Appellants John A. Eagle and Paul K. Eagle (collectively, the Eagles) appeal an adverse summary judgment on their verified complaint for breach of contract. The Eagles filed their complaint against Defendant-Appellee Jerry E. Allen (Allen), for monies due in connection with their investment in Allen's palm tree growing and sales project (the Palm Tree Project). We conclude that the circuit court of the first circuit, the Honorable Gail C. Nakatani, judge presiding, properly determined that the Eagles had previously assigned any and all claims and interests they may have had against Allen arising out of the Palm Tree Project to Plant Research Corporation (PRC), a Hawaii corporation not a party to the action. We hold that the court did not abuse its discretion when it rendered judgment against the Eagles. Absent a reassignment

of claims and interests by PRC back to the Eagles, or a timely ratification, substitution or joinder in the action by PRC pursuant to Hawaii Rules of Civil Procedure (HRCP) Rule 17(a) (1999), the Eagles were not the real parties in interest to maintain the action in their own names and their complaint was properly dismissed. We therefore affirm the October 14, 1999 final judgment of the first circuit court.

### **I. Background.**

On February 6, 1991, the Eagles entered into a letter agreement with Allen and David O. Gillette (Gillette), in which the Eagles agreed to loan \$100,000.00 to Allen and Gillette to partially fund the acquisition of a leasehold property located at 41-650 Waikupanaha Street, Waimanalo, Hawai'i, to be used in connection with a palm tree cultivation and sales project.

By the end of 1994, the Eagles had managed to recover the sum of \$40,000.00 from the project, and had settled for \$30,000.00 any and all claims that they had against the estate of Gillette, by then deceased.

On November 4, 1994, the Eagles, as Assignors, assigned their remaining \$30,000.00 claim against Allen to PRC, as Assignee. Entitled "Assignment of Claims and Interests" (the Assignment), the Assignment provided that "[the Eagles] hereby assign, transfer and deliver to [PRC], any and all rights, claims, interests, causes of action, legal and equitable rights

and remedies which they may have against Allen, arising from the [Palm Tree] Project, unto [PRC]."

On February 22, 1999, the Eagles filed their verified complaint against Allen. In the complaint, the Eagles alleged in five separate counts that Allen was obligated to them for monies by reason of their participation in the Palm Tree Project. They pled breach of contract, breach of fiduciary duties, wanton and willful breach of contract, unfair and deceptive trade practices, and entitlement to disgorgement of moneys from a fiduciary, in connection with the Palm Tree Project.

One of Allen's attorneys, John A. Kodachi (Kodachi), wrote a March 30, 1999 letter to the Eagles' attorney, Fred P. Benco (Benco), requesting that the Eagles demonstrate that the claims and interests they had assigned to PRC had been reassigned to them, as Benco had apparently indicated earlier to Kodachi. The March 30, 1999 letter also asked that the Eagles voluntarily dismiss the complaint with prejudice, in the event no reassignment had taken place. Kodachi added, "Naturally, my client has had to incur legal fees and costs as a result of what appears to be a frivolous lawsuit. Operating on my understanding that the claims were never reassigned, then its [(sic)] apparent that my client has already sustained damages. Any further continuation of this lawsuit would only add to his damages."

Similar letters were sent on April 12, 1999 and April 16, 1999. Kodachi received no response from Benco regarding the reassignment or the voluntary dismissal of the complaint.

On April 26, 1999, Allen filed an answer to the complaint. It included affirmative defenses based upon the Assignment, (1) that the Eagles were not the real parties in interest, and (2) that the Eagles lacked standing.

On June 2, 1999, Allen moved for summary judgment. He also moved for sanctions under HRCF Rule 11 (1999)<sup>1</sup> or, alternatively, for attorneys' fees pursuant to Hawaii Revised

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<sup>1</sup> Hawaii Rules of Civil Procedure (HRCF) Rule 11 (1999) provided, in pertinent part, that:

**Signing of pleadings, motions, and other papers; sanctions.**

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. . . . The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Statutes (HRS) § 607-14.5 (1993).<sup>2</sup> Allen supported his motion with a declaration from Kevin R. Andrews (Andrews), vice president of PRC. Andrews' declaration confirmed that PRC was possessed of all claims and interests that the Eagles had against Allen, pursuant to the Assignment, and that PRC had not reassigned its claims against Allen to anyone. Allen argued, therefore, that the Eagles "had absolutely no standing to assert any cause of action against . . . Allen."

On June 29, 1999, the Eagles filed a memorandum in opposition to Allen's motion. In their memorandum, the Eagles apparently abandoned any reliance upon a reassignment back of the claims against Allen. Instead, they grounded their opposition upon the contention that the Assignment "expressly permits this lawsuit to be brought by the Eagles, in their own names." (Emphasis in the original.) The Eagles relied for this contention upon a provision in the Assignment:

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<sup>2</sup> Hawaii Revised Statutes (HRS) § 607-14.5 (1993) provided, in pertinent part:

In any civil action in this State where a party seeks money damages or injunctive relief, or both, against another party, and the case is subsequently decided, the court may, as it deems just, assess against either party, and enter as part of its order, for which execution may issue, a reasonable sum for attorneys' fees, in an amount to be determined by the court upon a specific finding that the party's claim or defense was frivolous. . . . In determining the award of attorneys' fees and the amounts to be awarded, the court must find in writing that all claims or defenses made by the party are frivolous and are not reasonably supported by the facts and the law in the civil action.

[The Eagles] further agree to provide [PRC] any and all personal assistance for the prosecution of any claims against Allen. [The Eagles] shall permit the prosecution of said claims in the name of the [Eagles] or in the name of [PRC]. [The Eagles] shall not charge [PRC] for any assistance which they are reasonably requested to provide.

At the same time, Benco filed a supplemental declaration for a continuance of the July 7, 1999 hearing on the motion in order to obtain an opposing declaration from Andrews, pursuant to HRCF Rule 56(f) (1999).<sup>3</sup>

At the July 7, 1999 hearing on the motion, Benco argued for a HRCF Rule 56(f) continuance, stating that "I was unable to get together with the witness yesterday and so I stand here this morning without the affidavit or declaration which I thought I would get." The court denied the HRCF Rule 56(f) continuance request, heard argument on the motion and took the motion under advisement. Later, however, the court apparently changed its mind and by minute order allowed the Eagles to supplement their filings in opposition to the motion. It appears the circuit court also scheduled a further hearing on the motion for August 4, 1999.

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<sup>3</sup> HRCF Rule 56(f) (1999) provided:

*When affidavits are unavailable.* Should it appear from the affidavits of a party opposing the motion [for summary judgment] that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Accordingly, on July 27, 1999, the Eagles filed a declaration by Andrews declaring that:

1. I am the Vice-President of [PRC], a Hawaii corporation;

2. This Declaration is made upon my own personal knowledge, unless otherwise stated;

3. Pursuant to the November 4, 1994 Assignment, . . . [PRC] was the assignee of the rights and claims for monies owed against [Allen] arising from [the Palm Tree Project], of which [Allen] was one of the promoters;

4. However, the Assignment . . . further and expressly provided that the Eagles as "Assignors" would provide "personal assistance" for the prosecution of any claims against [Allen], and, further, that the Eagles as "Assignors" permitted the prosecution of all claims against [Allen] "in the name of the Assignors," i.e., in the name of the Eagles;

5. I have always interpreted this provision to permit the Eagles to bring the lawsuit against [Allen] in their own name.

6. Because [PRC] had other dealings with [Allen] separate and apart from the debt owed on the [Palm Tree Project], I encouraged and authorized the Eagles to bring the lawsuit against [Allen] in their (the Eagles') own name, as provided for in the Assignment. The Eagles agreed to do so, as provided for in and allowed by the Assignment. Subsequently, the Eagles followed my encouragement and authorization by filing this lawsuit. Should the Eagles succeed in this action, that will extinguish the Assignment document and the debt owned by [Allen];

7. In any event, because of [PRC's] separate and other dealings with [Allen], I intend to formalize an assignment back to the Eagles, of the Assignment.

When the further hearing on the motion was held on August 4, 1999, the court inquired of Benco: "We can easily resolve this problem. Did . . . Andrews reassign the interest back to [the Eagles]?" Benco conceded:

Not at this point. But in the discussion which preceded his signing of the declaration, his wife is peripherally involved in order [(sic)] their dealings

are with [Allen]. And we discussed that but he said he's not ready at this point, there has to be some accountings done, quite frankly, because monies have passed back and forth between the parties.

He would be willing to come on as a plaintiff, additional plaintiff, substitute in as a plaintiff, even said he would be a defendant since it could be interpreted an [(sic)] obligation by him.

At the end of the hearing, the court orally granted the motion, but then reconsidered and took the motion under advisement.

Before the hearing ended, Benco spoke up:

[BENCO]: Your Honor, I would . . . ask . . . for one thing, I have seen other cases but certainly not based on these kinds of facts, but if this Court's in any way inclined to grant summary judgment, then perhaps you can put on a condition that unless it's amended within two or four weeks or something, then we would file an appropriate amendment.

THE COURT: An amendment --

[BENCO]: Yeah.

THE COURT: -- of what?

[BENCO]: Including [PRC] as a plaintiff, which would clarify once and for all.

[ALLEN'S COUNSEL]: That really opens up a can or worms, Your Honor.

THE COURT: I mean, . . . that request is not before me.

[BENCO]: Okay. Thank you, Judge.

THE COURT: All right. All right. We'll stand in recess.

On September 15, 1999, the court issued its order granting in part and denying in part Allen's motion. The order granted Allen summary judgment as to all counts in the complaint, costs, and attorneys' fees pursuant to HRS § 607-14.5. The court denied Allen's request for sanctions pursuant to HRCP Rule 11.



Allen's attorneys had submitted an affidavit itemizing \$16,544.88 in attorneys' fees and costs incurred in the case. The court granted \$10,000.00 in attorneys' fees pursuant to HRS § 607-14.5, and \$15.00 in costs. Benco had opposed allowance of the fees and costs, describing them as "wholly excessive, duplicative, unnecessary and bloated."

The court entered its final judgment on October 14, 1999. On November 12, 1999, the Eagles filed their timely notice of appeal.

The order granting summary judgment made the following findings and conclusions.

1. [The Eagles] assigned any and all of the claims that they filed with their Complaint herein against [Allen], to [PRC] by [the Assignment] executed by [the Eagles] on November 4, 1994.

2. The Assignment expressly provides:

[The Eagles] further agree to provide [PRC] any and all personal assistance for the prosecution of any claims against Allen. [The Eagles] shall permit the prosecution of any claims against Allen. [The Eagles] shall permit the prosecution of said claims in the name of the [Eagles] or in the name of [PRC.]

. . . [.]

3. [Andrews], the Vice President of [PRC], confirmed by his Declaration of July 21, 1999 that [PRC] authorized and encouraged the [Eagles] to bring the instant action in their own names, however, [Andrews] also stated in that same Declaration that as of that date (July 21, 1999), he "intends" to assign the Assignment back to the [Eagles]. Counsel for [the Eagles] confirmed that the reassignment by [PRC] to [the Eagles] had not been accomplished as of August 4, 1999 because of certain accounting reasons.

4. The Assignment is unambiguous. Although [the Eagles] may "permit" [PRC] to prosecute the claims in their names, the [A]ssignment does not

permit [the Eagles] to prosecute the claims. Only [PRC] can prosecute the assigned claims.

5. Under these circumstances, therefore, all claims made by [the Eagles] in their Complaint filed herein against [Allen] are frivolous and are not reasonably supported by the facts and the law.

(Record citations omitted; emphasis and ellipsis in the original.)

## **II. Questions Presented.**

1. Whether the circuit court abused its discretion in dismissing the verified complaint for lack of standing?

2. Whether the circuit court abused its discretion in finding that "all claims made by [the Eagles] in their Complaint filed herein against [Allen] are frivolous and are not reasonably supported by the facts and the law[,]” and thereupon awarding attorneys’ fees pursuant to HRS § 607-14.5?

3. Whether the circuit court’s award of attorneys’ fees was unreasonable in amount and therefore an abuse of its discretion?

## **III. Discussion.**

### *A. Dismissal of the Eagles’ Claims.*

Both Allen and the Eagles characterized the issue below as one of "standing," and both continue to argue in that fashion on appeal. However, this court has recognized that the difference between the concept of "standing," and the concept of

the "real party in interest" under HRCF Rule 17(a),<sup>4</sup> can easily be obscured. Langondino v. Maldonado, 7 Haw. App. 591, 595, 789 P.2d 1129, 1132 (1990).

In Langondino, a general contractor sued a couple of homeowners for payment under a construction contract. The trial court granted the homeowners' motion for partial summary judgment, on the ground that the contractor lacked standing to sue for payment under the contract because the contractor had assigned all of his rights under the contract to a performance bondholder. Id. at 592-95, 789 P.2d at 1130-1131. On appeal, we acknowledged the difference between the concepts of "standing" and the "real party in interest":

We note that the [defendants] advance the concept of "standing" in their objection to [plaintiff] maintaining the action. In our view, their objection should be that [plaintiff] is not a "real party in interest" under HRCF Rule 17(a). The courts utilize standing doctrines to refrain from determining the merits of a legal claim "on the ground that even though the claim may be correct the litigant

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<sup>4</sup> HRCF Rule 17(a) (1999) provided:

*Real Party in Interest.* Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

advancing it is not properly situated to be entitled to its judicial determination." 13 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure: Jurisdiction 2d* § 3531 at 338-39 (1984). See also *Bank of Hawai'i v. Horwoth*, 71 Haw. 204, 214, 787 P.2d 674, 680 (1990); *Life of the Land v. Land Use Comm'n*, 63 Haw. 166, 172, 623 P.2d 431, 438 (1981). On the other hand, the real party in interest concept under [HRC] Rule 17(a) "is a means to identify the person who possess the right sought to be enforced." 6A C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure: Civil 2d* § 1542 at 327 (1990) (footnote omitted).

Id. at 595, 789 P.2d at 1132 (typesetting in the original).

Accordingly, we analyzed the case under HRC Rule 17(a), id. at 595, 789 P.2d at 1132, and we applied the abuse of discretion standard of review.<sup>5</sup> Id. at 597, 789 P.2d at 1133. See also State v. Furutani, 76 Hawai'i 172, 179, 873 P.2d 51, 58 (1994) ("The trial court abuses its discretion when it clearly exceeds the bounds of reason or disregards rules or principles of law or practice to the substantial detriment of a party litigant." (Citations and internal quotation marks omitted)).

Hence, our inquiry in this case is not whether the Eagles had "standing" to bring the complaint, but rather, whether the Eagles were the "real party in interest" under HRC Rule

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<sup>5</sup> In Langondino v. Maldonado, 7 Haw. App. 591, 597, 789 P.2d 1129, 1133 (1990), we held that the defendants' HRC Rule 17(a) objection, first constructively raised in their motion for partial summary judgment, was untimely and therefore waived. However, in this case, Allen's timely answer to the verified complaint interposed both standing and real party in interest affirmative defenses. It appears that in Langondino, neither such affirmative defense was interposed in the defendants' answer. Id. at 596, 789 P.2d at 1132. In addition, in this case Allen filed his motion for summary judgment less than four months after the complaint was filed against him, whereas the defendants in Langondino filed their motion for partial summary judgment almost two years and five months after the filing of the complaint. Id.

17(a). Thus, the question on appeal is whether the court abused its discretion in dismissing the complaint.

The court did not abuse its discretion in dismissing the complaint because, by the Assignment, the Eagles "assign[ed], transfer[red] and deliver[ed] to [PRC], any and all rights claims, interests, causes of actions, legal and equitable rights and remedies which they may have [had] against Allen, arising from the [Palm Tree] Project, unto [PRC]." The Eagles therefore were not the real party in interest as defined in HRCP Rule 17(a), and their complaint was subject to dismissal absent "ratification of commencement of the action by, or joinder or substitution of, the real party in interest" within "a reasonable time . . . after objection[.]" HRCP Rule 17(a).

The Eagles' first argument on appeal with respect to the court's dismissal of their claims is, that an assignment for collection of a debt creates in the assignee a legal interest in the debt, but leaves an equitable interest in the assignor, for purposes of collection of the debt. Hence, the argument goes, the equitable interest in the debt retained by the Eagles was sufficient to imbue them with standing enough to withstand a motion for summary judgment predicated upon a lack of standing. In their words, "the Lower Court erred in ruling that the Eagles had neither a legal nor an equitable interest ('standing') therein." Opening Brief at 10. The Eagles conclude, further,

that the residual equitable interest enabled them to pursue collection of the debt in their own names.

The Eagles bring this argument for the first time on appeal. They argued below, instead, that an express provision of the Assignment permitted them to bring the action in their own names, and that PRC had permitted and authorized them to do so. See discussion, infra.

The Eagles having failed to raise below their first issue enunciated on appeal, we may deem the issue waived. Kawamata Farms v. United Agri Products, 86 Hawai'i 214, 248-49, 948 P.2d 1055, 1089-90 (1997); Mauna Kea Power v. Bd. of Land & N.R., 76 Hawai'i 259, 262 n.2, 874 P.2d 1084, 1087 n.2 (1994). This rule of waiver is not a merely mechanical or technical one. As the supreme court has pointed out, it is not fair to the opposing party or to the court in its administration of justice to allow a party to forego an issue below in order to stake its fight on another issue, and having lost below, to come up on appeal in order to fight the passed issue anew:

There are sound reasons for the rule. It is unfair to the trial court to reverse on a ground that no one even suggested might be error. It is unfair to the opposing party, who might have met the argument not made below. Finally, it does not comport with the concept of an orderly and efficient method of administration of justice.

Kawamata Farms, 86 Hawai'i at 248, 948 P.2d at 1089 (citation, internal quotation marks, and internal block quote format omitted).

In any event, the alleged "standing," conferred solely by the Eagles' purported retained equitable interest, is of no consequence here. As our discussion so far has established, the issue is not one of standing, but of the real party in interest.

Furthermore, the Eagles' contention that they could sue in their own names by virtue of their purported retained equitable interest is simply wrong under the authorities they themselves cite on appeal:

An assignment for collection only leaves the beneficial or equitable ownership of the claim in the assignor, while vesting legal title in the assignee; the assignee is empowered to collect the claim, and the debtor is permitted to discharge himself or herself by paying the assignee.

An assignment of a claim for the purposes of collection gives rise to a fiduciary relationship between the assignor and the assignee, and the relationship generally is one of principal-agent. Thus, an assignee for collection holds any proceeds of the assigned claim in trust for the assignor. 6 Am Jur. 2d 257, Assignments, Sec. 174.

An assignment of a debt for collection therefore creates a "split in ownership" between the legal interest, and the equitable rights to the debt. See, e.g., DeBenedictis v. Hagen, 77 Wash. App. 284, 290, 890 P. 2d 529, 532 (1995). The assignee steps into the shores of the assignor, and has all the rights of the assignor; the assignee's cause of action is direct, and not derivative. Estate of Jordan by Jordan v. Hartford Acc. And Indemn. Co., 120 Wash. 2d 490, 844 P. 2d 403 (1995); Koudmani v. Ogle Enterprises, Inc., 47 Cal. App. 4<sup>th</sup> 1650, 55 Cal. Rptr. 2d 330 (1996).

Thus, an assignment creates legal and equitable interests in a debt; the assignee may collect the debt and hold the monies as the trustee of the assignor; and the discharge of the debt by payment to the assignee discharges the debtor from the entire debt.

Opening Brief at 9 (emphases and internal block quote format supplied; citation form in the original). Clearly, the Eagles' ultimate conclusion with respect to this issue, that "[i]n the case at bar, pursuant to the 'assignment within the assignment' of the 1994 Assignment from Eagle to PRC, the Eagles had the right to sue for collection on the debt owed by Allen[,]” Opening Brief at 9-10, is directly contradicted by the authorities they rely upon.

It is in any case clear that the Eagles mistakenly characterize the Assignment as an assignment for collection. The Assignment was an assignment of all legal and equitable rights in the debt. The Eagles retained no equitable interest therein. The Assignment stated, in pertinent part:

THIS ASSIGNMENT OF CLAIMS AND INTERESTS ("ASSIGNMENT"), effective as of the 1st day of November, 1994, by and between, PAUL K. EAGLE and JOHN A. EAGLE, both of Honolulu, Hawaii ("Assignors") and PLANT RESEARCH CORPORATION, a duly formed Hawaii Corporation ("Assignee");

W-I-T-N-E-S-S-E-T-H

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WHEREAS, Assignors loaned the sum of \$100,000.00 to Jerry E. Allen ("Allen") and David O. Gillette, deceased, as part of their investment in a Palm Tree sales project ("Project") located at 41-650 Waikupanaha Street, Waimanalo, Hawaii ("Site");

. . . .

WHEREAS, Assignors have a claim against Allen in the amount of \$30,000.00 arising from the Project ("Allen Claims");

WHEREAS, Assignors desire to assign any and all claims which they may have against Allen to Assignee;

WHEREAS, Assignee desires to accept assignment of said Allen Claims;



NOW THEREFORE, in consideration of TEN DOLLARS (\$10.00) and other valuable consideration, the adequacy of which is hereby acknowledged by the parties, Assignors hereby assign, transfer and deliver to Assignee, any and all rights, claims, interests, causes of actions, legal and equitable rights and remedies which they may have against Allen, arising from the Project, unto Assignees.

Although "assignments of contract rights are not required to utilize any special wording or to be in any particular form . . . . [they should] clearly identify the parties and the rights assigned and those reserved[.]" 2B Am. Jur. Legal Forms 2d Assignments § 25:29 (1997). According to the Assignment, the Eagles assigned away "any and all, rights, claims, interests, causes of actions, legal and equitable rights and remedies which they may have against Allen[.]" Therefore, there is no merit to the Eagles' argument that they maintained an equitable interest in the debt, since they expressly assigned that away.

"[O]nce an unqualified assignment is made, all interests and rights of the assignor are transferred to the assignee; the assignor loses [(sic)] all control over the thing assigned[.]" Only if the "assignment is invalid or incomplete, [may] the assignor . . . still maintain a suit in his or her name." 6 Am. Jur. 2d Assignments § 155 (1999) (footnote omitted). Thus, "[w]hen all the rights to a claim have been assigned, courts generally have held that the assignor no longer may sue." 6A Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 1545 (1990) (footnote omitted). See, e.g.,

Rodrigues v. Comfort Shipping Co., Ltd., 617 F.2d 955, 958 (2d Cir. 1980) ("A person, . . . to whom a claim has been assigned . . . , is the real party in interest[,]. . . the right to sue is exclusively that of the [assignee.]" (Citations omitted.)).

Because the Eagles expressly assigned away all of their legal and equitable interest in the debt to PRC, the Eagles could no longer be considered a real party in interest in this suit to collect the debt. "When the assignee is the only real party in interest within the meaning of a statute requiring actions to be prosecuted in the name of the real party in interest, the assignor is barred from maintaining an action on the assigned claim." 6 Am. Jur. 2d Assignments § 181 (1999) (footnote omitted). See, e.g., York Blouse Corp. v. Kaplowitz Bros., 97 A.2d 465, 468 (D.C. 1953) (where a statute, similar to HRS § 634-1 (1993),<sup>6</sup> allows an assignee to sue in its own name, and a rule of court, similar to HRCF Rule 17(a), requires that every action shall be prosecuted in the name of the real party in interest, action on an assigned claim must be brought by the assignee in its own name).

The Eagles' second contention on appeal on the issue of the court's dismissal of their claims is, that an express

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<sup>6</sup> HRS § 634-1 (1993) provides that "[t]he assignee of any nonnegotiable chose in action, assigned in writing, may maintain thereon in the assignee's own name any action which, but for the assignment, might be maintained by the assignor; subject, however, to all equities and setoffs existing in favor of the party liable against the assignor and which existed at the time of the assignment or at any time thereafter until notice thereof was given to the party liable, except as otherwise provided."

provision of the Assignment permitted them to bring this lawsuit in their own names, thus affording them standing sufficient to defeat a motion for summary judgment based upon a lack of standing. That provision provides:

[The Eagles] further agree to provide [PRC] any and all personal assistance for the prosecution of any claims against Allen. [The Eagles] shall permit the prosecution of said claims in the name of the [The Eagles] or in the name of the [PRC]. [The Eagles] shall not charge [PRC] for any assistance which they are reasonably requested to provide.

The Eagles maintain that

[b]oth the Eagles and PRC interpreted this provision to authorize the Eagles to file suit for collection in their own names, upon request by PRC. The term "any and all" is clearly delimiting.

Clearly, if the Eagles refused to perform upon the request of PRC, the Eagles would have been in material breach of their contract with PRC, and the Eagles would have been subject to damages for breach.

Thus, the evidence clearly shows that the Eagles had a definite "personal stake" in the debt owed by Allen. If the Eagles refused to carry out their contractual obligations to sue Allen for the debt, PRC could have sued them for breach of contract and damages. Because the overwhelming evidence shows that the Eagles clearly had a financial stake in performing under the 1994 Assignment, they certainly had "standing" to sue Allen herein. The summary judgment granted by the Lower Court ought to be reversed, and this case remanded for trial.

Opening Brief at 11-12 (case and record citations omitted; emphasis in the original).

Here again, the argument is skewed by the parties' overall misconception that this is a case of standing as opposed to a question of the real party in interest. On its face, then, the Eagles' second argument on appeal is as misplaced as their first. Given the proper distinction, the true question for us is

whether this express provision of the Assignment rendered the Eagles the real party in interest in this case.

In interpreting a contract, "contractual terms should be interpreted according to their plain, ordinary meaning and accepted use in common speech." State Farm Fire v. Pacific Rent-All, Inc., 90 Hawai'i 315, 324, 978 P.2d 753, 762 (1999) (citation omitted). Given the unambiguous language of the Assignment, the circuit court correctly concluded that, "[a]lthough [the Eagles] may 'permit' [PRC] to prosecute the claims in their names, the assignment does not permit [the Eagles] to prosecute the claims." As we have concluded, the Eagles, through the Assignment, conveyed to PRC all of their legal and equitable interest in the debt. Hence, only PRC could pursue the claims, whether in its own name or in the Eagles' names. Neither scenario appears in this case.

Because it is HRCF Rule 17(a) that governs this case, the critical inquiry is whether there was a timely ratification by PRC of the commencement of the case, or a timely substitution or joinder of PRC in the case. The last sentence of HRCF Rule 17(a) provides, in pertinent part, that "[n]o action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest[.]"

The Eagles contend that Andrews' second declaration, made on their behalf, amounted to a ratification by PRC of the commencement of the action. Although Andrews therein recites that "I am the Vice-President of [PRC]," he nowhere declares that PRC ratified the commencement of the action. He instead declares that "I encouraged and authorized the Eagles to bring the lawsuit against [Allen] in their . . . own name, as provided for in the Assignment." (Emphasis added.) Indeed, his encouragement and authorization had to be purely personal, "[b]ecause [PRC] has had other dealings with [Allen] separate and apart from the debt owed on the [Palm Tree Project.]" His declaration makes it clear that PRC wanted nothing to do with the collection action against Allen: "In any event, because of [PRC's] separate and other dealings with [Allen], I intend to formalize an assignment back to the Eagles, of the Assignment."

In contrast, Andrews' first declaration, made on Allen's behalf, declared his status as vice president of PRC, and expressly noted that his actions were "on behalf of [PRC]." That first declaration also made it clear that PRC owned, by virtue of the Assignment, "all claims [the Eagles] had against [Allen] arising from [the Palm Tree Project,]" and that "[PRC] has not reassigned its claims against [Allen] to any party."

As late as the final hearing on the motion for summary judgment, the Eagles were still unable to demonstrate that the real party in interest, PRC, was willing to either ratify their

commencement of the lawsuit, reassign the debt back to them, or participate in the lawsuit by way of substitution or joinder. HRCP Rule 17(a). Asked by the court whether "Mr. Andrews reassign[ed] the interest back[,]" counsel for the Eagles replied, "Not at this point. But in the discussion which preceded his signing of the [second] declaration, his wife is peripherally involved in order [(sic)] their dealings are with [Allen]. And we discussed that but he said he's not ready at this point, there has to be some accountings done, quite frankly, because monies have passed back and forth between the parties."

The Eagles nevertheless held out the possibility that such a resolution of the question might yet take place: "He would be willing to come on as a plaintiff, additional plaintiff, substitute in as a plaintiff, even said he would be a defendant since it could be interpreted an [(sic)] obligation by him." They therefore proposed that the court hold off on a final ruling on the motion pending such a resolution: "[B]ut if this Court's in any way inclined to grant summary judgment, then perhaps you can put on a condition that unless it's amended within two or four weeks or something, then we would file an appropriate amendment . . . [i]ncluding PRC as a plaintiff, which would clarify once and for all." Yet the record is devoid of any indication that, in the month between the final hearing on the motion and the entry of the court's order granting the motion,

the Eagles attempted to effect any ratification, reassignment, substitution or joinder.

The Eagles were certainly aware of the problem early on. Starting a little over a month after the filing of the complaint, Kodachi wrote to Benco on three separate occasions seeking clarification of the Assignment, and voluntary dismissal of the complaint absent reassignment of the debt back to the Eagles.

And the Eagles were certainly afforded "a reasonable time . . . after objection for ratification . . . , or joinder or substitution[.]" HRCP Rule 17(a). The motion for summary judgment, constituting the HRCP Rule 17(a) objection, Langondino, 7 Haw. App. at 596, 789 P.2d at 1132 ("the [defendants] raised their HRCP Rule 17(a) objection by a motion for summary judgment [based on the concept of standing]"), was filed on June 2, 1999.<sup>7</sup> The hearing on the motion was continued by stipulation from June 25, 1999 to July 7, 1999. Following the July 7, 1999 hearing, the court apparently allowed a HRCP Rule 56(f) continuance to the final hearing date of August 4, 1999, for the express purpose of affording the Eagles the chance to submit supplemental filings in opposition to the motion.

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<sup>7</sup> Not to mention Allen's April 26, 1999 answer to the complaint, that raised the affirmative defenses of lack of standing and the real party in interest.

We conclude that "a reasonable time [was] allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest[.]" Because the Eagles effected no reassignment, ratification, substitution or joinder in that time, their complaint was subject to dismissal. HRCP Rule 17(a). "[I]t has been held that when the determination of the right party to bring the action was not difficult and when no excusable mistake had been made, then the last sentence of [Federal Rules of Civil Procedure] Rule 17(a) was not applicable and the action should be dismissed." 6A Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 1555 (1990) (footnote omitted).<sup>8</sup> The circuit court therefore did not abuse its discretion in dismissing the Eagles' complaint.

*B. Frivolous Lawsuit.*

HRS § 607-14.5 provided, in pertinent part:

In any civil action in this State where a party seeks money damages or injunctive relief, or both, against another party, and the case is subsequently decided, the court may, as it deems just, assess against either party, and enter as part of its order, for which execution may issue, a reasonable sum for attorneys' fees, in an amount to be determined by the court upon a specific finding that the party's claim or defense was frivolous. . . . In determining the award of attorneys' fees and the amounts to be awarded, the court must find in writing that all claims or defenses made by the party are frivolous and

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<sup>8</sup> Cf. Hayashi v. Hayashi, 4 Haw. App. 286, 290 n.6, 666 P.2d 171, 174 n.6 (1983) ("Rule 60(b), HFCR [Hawaii Family Court Rules], is similar to Rule 60(b), Hawaii Rules of Civil Procedure (HRCP) and Rule 60(b), Federal Rules of Civil Procedure (FRCP), except for some minor variations which do not affect the provisions concerned here. Therefore, the treatises and cases interpreting HRCP, Rule 60(b) and FRCP, Rule 60(b) provide persuasive reasoning for the interpretation of HFCR, Rule 60(b).").



are not reasonably supported by the facts and the law in the civil action.

The circuit court's finding that a claim was frivolous is reviewed under the clearly erroneous standard. "A finding is clearly erroneous where the court is left with a firm and definite conviction that a mistake has been committed." Coll v. McCarthy, 72 Haw. 20, 28, 804 P.2d 881, 886-87 (1991) (citation omitted). A claim is frivolous if it is "manifestly and palpably without merit." Id. at 29, 804 P.2d at 887 (citation and internal quotations marks omitted). A circuit court's decision whether to award attorneys' fees is reviewed under the abuse of discretion standard. Id.

Here, the Eagles were informed by Allen early in the course of the action that the issue of the real party in interest was dispositive and required resolution one way or another. The court afforded them a reasonable time after objection to rectify the situation. Yet their only course of action to the last was to counsel patience. Because the Eagles clearly had no claim because they were not the real party in interest -- their apparent hope that PRC would make them such notwithstanding -- and hence their lawsuit was "manifestly and palpably without merit[,]" id. (citation and internal quotation marks omitted), we cannot say under all the circumstances of the case that the court's finding that their lawsuit was frivolous was clearly

erroneous, or that its decision thereon to award attorneys' fees was an abuse of discretion.

*C. Amount of the Attorneys' Fees Awarded.*

The Eagles contend that the attorneys' fees awarded by the circuit court are "exorbitant, and totally out of proportion to the amount of work reflected on the Record herein." They charge that "[f]our attorneys, plus one paralegal, simply 'churned' this simple and straightforward case." They argue, in addition, that "[t]he Lower Court merely and arbitrarily determined that \$10,000 would be the fees assessed for this case." Opening Brief at 18 (internal quotation marks added and record citations omitted). We find their arguments unpersuasive.

We review the amount of attorneys' fees awarded under the abuse of discretion standard. Piedvache v. Knabusch, 88 Hawai'i 115, 118, 962 P.2d 374, 377 (1998).

Allen's attorney requested a total of \$15,869.80 in attorneys' fees, exclusive of general excise tax. He submitted to the court an affidavit setting forth detailed time sheets for the four attorneys and one paralegal that had worked on the case, along with information about their respective hourly rates. The time sheets accounted for the billable hours devoted to "the evaluation and analysis of the allegations set out in [the Eagles'] Complaint, the preparation of a defense strategy, communications with [Allen], and with [Benco], and the

presentation of [Allen's motion for summary judgment and for sanctions], including the supporting and surreply Memoranda and the preparation of post-hearing Orders as directed by the Court[.]”

Based on the affidavit submitted by Allen's attorney, and our independent review of the record, we cannot say that the court abused its discretion in awarding \$10,000.00 in attorneys' fees to Allen. The substantial decrease from the amount requested more than reasonably accounts for any arguably inapplicable, duplicative or excessive fee charges itemized in the affidavit.

#### **IV. Conclusion.**

For the foregoing reasons, we affirm the circuit court's October 14, 1999 final judgment.

DATED: Honolulu, Hawaii, August 21, 2001.

On the briefs:

Fred Paul Benco, for  
plaintiff-appellants.

Chief Judge

Dale W. Lee and  
Paul S. Kawai  
(Kobayashi, Sugita & Goda),  
for defendant-appellee.

Associate Judge

Associate Judge