IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

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WAYNE C. METCALF, III in his capacity as Liquidator and Trustee of the PGMA Liquidating Trust, Plaintiff-Appellee/ Cross-Appellant,

vs.

VOLUNTARY EMPLOYEES' BENEFIT ASSOCIATION OF HAWAII, Defendant-Appellant/ Cross-Appellee.

NO. 23084

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 98-0464-02)

AUGUST 22, 2002

MOON, C.J., LEVINSON, NAKAYAMA, AND RAMIL, JJ.;
ACOBA, J., DISSENTING

OPINION OF THE COURT BY MOON, C.J.

Defendant-appellant/cross-appellee Voluntary Employees' Benefit Association of Hawai‘i (VEBAH) and plaintiff-appellee/cross-appellant State Insurance Commissioner Wayne C. Metcalf, III, [hereinafter, the Commissioner] appeal from the December 27, 1999 amended judgment of the Circuit Court of the First Circuit, the Honorable Kevin S.C. Chang presiding. VEBAH

argues that the circuit court erred in: (1) dismissing VEBAH's counterclaims based upon provisions of Article 15 of the Insurance Code; and (2) concluding that VEBAH is liable for post-judgment interest. The Commissioner claims that the circuit court erred in: (1) refusing to consider his request for pre-judgment interest and (2) denying his request for attorneys' fees. We affirm in part and vacate in part the amended judgment of the circuit court and remand this case for further proceedings.

I. BACKGROUND

VEBAH entered into an agreement with Pacific Group Medical Association (PGMA), a mutual benefit society organized and licensed under Hawai'i Revised Statutes (HRS) chapter 432[1]

[1] Under HRS § 432:1-104(2) (Supp. 2001), a mutual benefit society is any corporation, unincorporated association, society, or entity:

> (A) Organized and carried on for the primary benefit of its members and their beneficiaries and not for pro
> (i) Making provision for the payment of benefits in case of sickness, disability, or death of its members, or disability, or death of its members' spouses or reciprocal beneficiaries or children, or fit, and:
> (ii) Making provision for the payment of any other benefits to or for its members,
> whether or not the amount of the benefits is fixed or rests in the discretion of the society, its officers, or any other person or persons; and the fund from which the payment of the benefits shall be defrayed is derived from assessments or dues collected from its members, and the payment of death benefits is made to the families including reciprocal beneficiaries, heirs, blood relatives, or persons named by its members as their beneficiaries; or
> (B) Organized and carried on for any purpose, which:
> (i) Regularly requires money to be paid to it by its members, whether the money be in the form of

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that was engaged in the business of insurance. Under the "Pacific Group Medical Association Voluntary Employees' Benefit Association of Hawai'i Master Agreement" [hereinafter, the PGMA/VEBAH Master Agreement] PGMA agreed to provide health benefits to VEBAH members in exchange for specified premiums. The agreement was effective from July 1, 1995, and VEBAH paid monthly premiums under the agreement from July 1995 through December 1996. For the months of January and February 1997, VEBAH paid only $500,000.00 of the premiums owed and withheld a total of $874,437.11,[2] allegedly due to complaints from VEBAH members over delayed payments of benefits. Effective March 1, 1997, VEBAH withdrew its members from PGMA and enrolled them in substitute plans.

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[1](...continued)

dues, subscriptions, receipts, contributions, assessments or otherwise, and

(ii) Provides for the payment of any benefit or benefits or the payment of any money or the delivery of anything of value to its members or their relatives including reciprocal beneficiaries, or to any person or persons named by its members as their beneficiaries, or to any class of persons which includes or may include its members,

whether or not the amount or value of the benefit, benefits, money, or thing of value is fixed, or rests in the discretion of the society, its officers, or any other person or persons; or

(C) Organized and carried on for any purpose, whose requirements and provisions although not identical with, are determined by the commissioner to be substantially similar to, those enumerated in subparagraphs (A) and (B).

[2] VEBAH does not dispute the amount of withheld premiums.

A. The Special Proceeding Against PGMA

On March 11, 1997, the Commissioner initiated Special Proceeding No. 97-0135 in circuit court [hereinafter, Special Proceeding] to rehabilitate PGMA pursuant to Article 15 of the Insurance Code [hereinafter, Article 15], governing the supervision, rehabilitation, and liquidation of insurers.[3] On March 12, 1997, the court appointed the Commissioner to serve as the rehabilitator of PGMA.

During the Special Proceeding, VEBAH argued[4] that Article 15 did not apply to PGMA because it was a mutual benefit society. On September 26, 1997, the Commissioner filed a motion seeking a declaratory judgment that Article 15 applied to the proceedings against PGMA. VEBAH filed a memorandum in opposition to the Commissioner's motion and appeared at the October 15, 1997 hearing on the motion. The circuit court ruled that Article 15 applied to the Special Proceeding and ordered the liquidation of PGMA pursuant to HRS §§ 431:15-305[5] and 431:15-307[6] (1993). The

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[3] HRS § 431:15-301 (1993) provides that the Commissioner may petition the circuit court for an order authorizing him to rehabilitate a domestic insurer because, inter alia, the insurer is insolvent. On August 18, 1997, the circuit court declared that PGMA was insolvent at the time the rehabilitation order was entered.

[4] It is not clear from the record how or in what capacity VEBAH appeared in the Special Proceeding.

[5] HRS § 431:15-305 provides in relevant part:

> (a) Whenever the commissioner believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders or the public, or would be futile, the commissioner may petition

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court appointed the Commissioner to serve as the liquidator of PGMA. A final order in the Special Proceeding was not filed until January 23, 2002, and a notice of appeal was filed by VEBAH on February 22, 2002.

C. The Commissioner's Suit Against VEBAH

On February 2, 1998, the Commissioner, in his capacity as the liquidator of PGMA, filed a complaint to compel VEBAH to turn over to him the premiums from January and February 1997 that were withheld. Count I of the complaint was based on HRS § 431:15-323 (1993), which provides that any person, "other than

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[5](...continued)

> the circuit court of the first judicial circuit for an order of liquidation. A petition under this subsection shall have the same effect as a petition under section 431:15-306 [(setting forth the grounds for liquidation)]. The court shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require.

[6] HRS § 431:15-307 provides in relevant part:

> (a) An order to liquidate the business of a domestic insurer shall appoint the commissioner and the commissioner's successors in office liquidator, and shall direct the liquidator forthwith to take possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator shall be vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the circuit court of the first judicial circuit and at the bureau of conveyances shall impart the same notice as evidence of title.

the insured, responsible for the payment of a premium shall be obligated to pay any unpaid collected premium held by such person at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer." Count II was based upon an alleged breach of the PGMA/VEBAH Master Agreement.

On March 17, 1998, VEBAH filed an answer to the complaint and counterclaims against PGMA and the Commissioner, alleging: (1) breach of contract by PGMA; (2) breach of contract by the Commissioner; (3) misrepresentation by PGMA; (4) rescission; (5) setoff and recoupment; (6) negligence by the Commissioner; (7) aiding and abetting of PGMA's negligence, misrepresentation, and breach of contract by the Commissioner; and (8) a right to indemnity by and contribution from the Commissioner.

On July 8, 1998, upon motion by the Commissioner, the circuit court dismissed VEBAH's counterclaims. The court deferred to the determination from the Special Proceeding that Article 15 applied to PGMA based upon the principle of judicial comity and ruled that HRS § 431:15-319(b) (1993)[7] barred VEBAH's

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[7] HRS § 431:15-319(b) provides:

> (b) No setoff or counterclaim shall be allowed in favor of any person where:
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> (1) The obligation of the insurer to the person would not at the date of the filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer;
>
> (2) The obligation of the insurer to the person was

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counterclaims. VEBAH appealed from the dismissal order; however, on October 22, 1998, this court dismissed VEBAH's appeal for lack of appellate jurisdiction.

On January 29, 1999, the Commissioner filed a motion for summary judgment on count I (his claim based on HRS § 431:15-323). On June 9, 1999, an order granting in part and denying in part the Commissioner's motion for summary judgment was filed. The order included: (1) judgment in favor of the Commissioner and against VEBAH in the amount of $874,437.11 plus post-judgment interest pursuant to HRS § 478-3 (1993) (discussed infra); (2) an order for VEBAH to pay any and all PGMA premium money in VEBAH's possession and control; and (3) denial of the Commissioner's requests for pre-judgment interest and attorneys' fees on the ground that Article 15 does not provide for either. Thereafter, a final judgment as to count I was filed on August 27, 1999. The same day, count II, the breach of contract claim, was dismissed without prejudice by stipulation.

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[7](...continued)

purchased by or transferred to the person with a view to its being used as a setoff;

(3) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or

(4) The obligation of the person is to pay premiums whether earned or unearned, to the insurer.

On September 1, 1999, VEBAH filed a motion requesting to deposit funds with the court, to otherwise stay enforcement of the judgment, and to alter or amend the judgment, or, in the alternative, to set the amount of a supersedeas bond. VEBAH's motion was granted in part, and, on October 4, 1999, the circuit court filed an order allowing VEBAH to deposit the funds with the court in lieu of a bond, but ruled that VEBAH remained liable for post-judgment interest until the funds were paid to the Commissioner.

An amended final judgment was filed on December 27, 1999. VEBAH filed its notice of appeal on January 11, 2000, and the Commissioner filed his notice of cross-appeal on January 25, 2000.

II. STANDARDS OF REVIEW

A. Conclusions of Law

> We review the trial court's conclusions of law de novo under the right/wrong standard. Under this standard, we examine the facts and answer the question without being required to give any weight to the trial court's answer to it. Thus, a conclusion of law is not binding upon the appellate court and is freely reviewable for its correctness.

Fujimoto v. Au, 95 Hawai'i 116, 137, 19 P.3d 699, 720 (2001) (citations omitted) (internal quotation marks, brackets, and ellipsis points omitted).

B. Statutory Interpretation

"'The interpretation of a statute is a question of law reviewable de novo.'" Beneficial Hawai'i, Inc. v. Kida, 96 Hawai'i 289, 305, 30 P.3d 895, 911 (2001) (citations omitted).

C. Awards of Interest

This court reviews rulings on interest pursuant to HRS §§ 478-3 and 636-16 (1993) for abuse of discretion. See Sussel v. Civil Serv. Comm'n., 74 Haw. 599, 619, 851 P.2d 311, 321 (1993).

> The trial court abuses its discretion if it bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. Stated differently, an abuse of discretion occurs where the trial court has clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant.

Molinar v. Schweizer, 95 Hawai'i 331, 335, 22 P.3d 978, 982 (2001) (quoting Canalez v. Bob's Appliance, 89 Hawai'i 292, 299, 972 P.2d 295, 302 (1999)).

III. DISCUSSION

A. VEBAH's Claims on Appeal

VEBAH argues that the circuit court erred in dismissing its counterclaims based upon HRS § 431:15-319(b) because: (1) it improperly applied the principle of judicial comity; and (2) Article 15 did not apply to PGMA insofar as it was a mutual benefit society. Thus, in effect, VEBAH directly attacks the circuit court's determination in this case and collaterally attacks the court's determination in the Special Proceeding that

Article 15 applied to PGMA. VEBAH also argues that the award of post-judgment interest was improper because: (1) HRS § 478-3 was inapplicable to the monetary award of $874,437.11; and (2) the award of interest amounted to an illegal and excessive penalty.

1. Denial of VEBAH's Counterclaims Based on Article 15

a. judicial comity

VEBAH argues that the circuit court erred in ruling that Article 15 applied to PGMA based on the principle of judicial comity. Comity is "'not a rule of law, but one of practice, convenience, and expediency.' It does not of its own force compel a particular course of action. Rather, it is an expression of one state's entirely voluntarily decision to defer to the policy of another." Columbia Falls Aluminum Co. v. Hindin/Owne/Engelke, Inc., 728 P.2d 1342, 1345 (Mont. 1986), reh'g denied, 728 P.2d 1342 (Mont. 1987) (quoting Simmons v. State, 670 P.2d 1372, 1385 (Mont. 1983) (citations omitted)). This court has explained that, "[i]n the legal realm, comity is more commonly defined 'as the principle that courts of one state or jurisdiction will give effect to the laws and judicial decisions of another state or jurisdiction out of deference and mutual respect.'" Chun v. Board of Trustees of the Employees' Retirement Sys., 92 Hawai'i 432, 446, 992 P.2d 127, 141 (2000) (quoting Teague v. Bad River Band of the Lake Superior Tribe of Chippewa Indians, 599 N.W.2d 911, 917 n.3 (Wis. Ct. App. 1999))

(brackets omitted). In Chun, the plaintiffs argued that the circuit court violated the principle of comity when it refused to apply the percentage method of determining attorneys' fees in a class action lawsuit used by another circuit court in an unrelated proceeding. Chun, 92 Hawai'i at 446, 992 P.2d at 141. This court disagreed, noting that the plaintiffs "fail[ed] to provide, and we have been unable to unearth, any support for their contention that the principle of comity necessarily applies to the decisions of trial courts within the same state regarding entirely different matters." Id. at 446 n.9, 992 P.2d at 141 n.9 (emphasis in original).

In the present case, the Special Proceeding and the Commissioner's suit against VEBAH were both circuit court proceedings within the same state, and neither had precedential value over the other. Thus, as in Chun, the principle of comity is inapplicable. Additionally, as VEBAH points out, the related doctrines of law of the case and collateral estoppel also do not apply because: (1) the Special Proceeding and the Commissioner's suit against VEBAH were separate cases; and (2) no final judgment had been entered in the Special Proceeding when the court in the Commissioner's suit applied the determination that Article 15 applied to VEBAH. Therefore, we agree with VEBAH's first point of error and hold that the circuit court erred in applying the determination from the Special Proceeding that Article 15 applied

to PGMA based upon the principle of judicial comity. Consequently, we turn to VEBAH's second point of error, that is, whether Article 15 applies to mutual benefit societies.

b. application of Article 15 to mutual benefit societies

VEBAH argues that provisions within the Insurance Code (HRS chapter 431) and the chapter governing mutual benefit societies (HRS chapter 432) indicate that Article 15 did not apply to PGMA, a mutual benefit society. The Commissioner, however, also cites to statutory authority specifically allowing the application of Article 15 to mutual benefit societies. We, therefore, address the apparent discrepancies within the Insurance Code, as well as discrepancies between the Code and HRS chapter 432.

> The starting point in statutory construction is to determine the legislative intent from the language of the statute itself. . . . And we must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose.
>
> When there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists.
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> In construing an ambiguous statute, the meaning of the ambiguous words may be sought by examining the context, with which ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning. Moreover, the courts may resort to extrinsic aids in determining legislative intent. One avenue is the use of legislative history as an interpretive tool. This court may also consider the reason and the spirit of the law, and the cause which induced the legislature to enact it to discover its true meaning. Laws in pari materia, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called upon in aid to explain what is doubtful in another.

> . . . A rational, sensible and practicable interpretation of a statute is preferred to one which is unreasonable or impracticable. The legislature is presumed not to intend an absurd result, and legislation will be construed to avoid, if possible, inconsistency, contradiction, and illogicality.

Southern Foods Group, L.P. v. State, Dept. of Educ., 89 Hawai‘i 443, 453-54, 974 P.2d 1033, 1043-44 (1999) (citations, internal quotation marks, brackets, and ellipsis points omitted).

HRS § 431:1-101 (1993) defines the scope of the Insurance Code and states:

> No person shall transact a business of insurance in this State without complying with the applicable provisions of this code. Any person transacting a business of insurance under Chapter 432 [pertaining to mutual benefit societies] **shall be subject to this code only to the extent provided in chapter 432**.

(Emphases added).

HRS § 432:1-101 (1993) states in pertinent part:

> The provisions of this article shall apply to mutual benefit societies as defined herein. Except as expressly provided in this article, **mutual benefit societies shall be exempt from the provisions of the insurance code**. No law enacted after July 1, 1988, shall apply to mutual benefit societies unless such societies are expressly designated therein.

(Emphases added). Based on the aforementioned statutes, VEBAH maintains that PGMA, as a mutual benefit society, is exempt from the provisions of the insurance code and that, therefore, Article 15 does not apply to PGMA. However, HRS § 431:15-102 (1993), defining the scope of Article 15, specifically states that "[t]he proceedings authorized by [Article 15] may be applied to . . . all fraternal benefit societies and beneficial societies subject

to chapter 432, Benefit Societies." Thus, there is an apparent conflict between HRS §§ 431:1-101 and 431:15-102.

We resolve the apparent conflict by examining HRS § 431:1-104 (1993), which directs that "[p]rovisions of this code relating to a particular class of insurance or a particular type of insurer or to a particular matter prevail over provisions relating to insurance in general or insurers in general or to such matter in general." Because HRS § 431:1-101 governs the applicability of the Insurance Code in general and HRS § 431:15-102 relates specifically to the applicability of Article 15, we, thus, apply HRS § 431:15-102, a statute governing the supervision, rehabilitation, and liquidation of insurers, over HRS § 431:1-101. Consequently, we resolve the apparent conflict in favor of applying the Insurance Code to mutual benefit societies.

However, as indicated supra, HRS § 432:1-101 appears to indicate that Article 15 is not applicable to mutual benefit societies. This court has noted that, "[w]here there is a 'plainly irreconcilable' conflict between a general and a specific statute concerning the same subject matter, the specific will be favored. . . . [W]here the statutes simply overlap in their application, effect will be given to both if possible, as repeal by implication is disfavored." Wong v. Takeuchi, 88 Hawai'i 46, 53, 961 P.2d 611, 618 (quoting State v. Vallesteros,

84 Hawai‘i 295, 303, 933 P.2d 632, 640 (1997)), reconsideration denied, 88 Hawai‘i 46, 961 P.2d 611 (1998).

In the present case, both HRS § 432:1-101 and HRS § 431:15-102 concern the applicability of the Insurance Code to mutual benefit societies. As previously indicated, HRS § 432:1-101 governs the applicability of the Code generally, while HRS § 431:15-102 deals specifically with the application of Article 15. Thus, HRS § 431:15-102, the more specific statute, is favored over HRS § 432:1-101, the more general one.

Additionally, "[a] rational, sensible, and practicable interpretation of a statute is preferred to one which is unreasonable or impracticable." Southern Foods Group, 89 Hawai‘i at 453-54, 974 P.2d at 1043-44 (brackets omitted). A rational interpretation of the foregoing statutes is that HRS § 431:15-102 creates an exception to the general rule established by HRS § 432:1-101 that mutual benefit societies are typically exempt from provisions of the Insurance Code. Accepting VEBAH's contention that Article 15 does not apply to mutual benefit societies (e.g., PGMA) would necessarily require us to conclude that, by adopting HRS § 431:15-102, the legislature drafted language explicitly permitting Article 15 to be applied to mutual benefit societies while, at the same time, intending exactly the opposite result by adopting HRS § 432:1-101. Such an interpretation is neither rational nor sensible.

Moreover, as noted supra, HRS § 431:15-102 expressly states that the provisions of Article 15 may be applied to mutual benefits societies. HRS § 431:15-101(c) (1993) instructs that the provisions of Article 15 "shall be liberally construed" to effect its purpose, which is

> the protection of the interests of insureds, claimants, creditors, and the public generally, with minimum interference with the normal prerogatives of the owners and managers of insurers, through:
> (1) Early detection of any potentially dangerous condition in an insurer, and prompt application of appropriate corrective measures;
> (2) Improved methods for rehabilitating insurers, involving the cooperation and management expertise of the insurance industry;
> (3) Enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation; [and]
> (4) Equitable apportionment of any unavoidable loss[.]

HRS § 431:15-101(d) (1993). The Commissioner's interpretation of HRS § 431:15-102 provides the insureds, claimants, and creditors of mutual benefit societies with the same protections as those of insurance companies and is consistent with the liberal construction required by HRS § 431:15-101(c).

Based on the foregoing reasons, we hold that, when the Special Proceeding was initiated, Article 15 applied to mutual benefit societies and that the circuit court did not err in dismissing VEBAH's counterclaims based on its ruling that Article 15 applied to the liquidation of PGMA.[8]

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[8] VEBAH notes that HRS § 432:1-502 (1993) allows for the appointment of a receiver upon the request of the Commissioner. However, HRS § 432:1-502 does not indicate that it was intended to be an exclusive remedy and does not limit the applicability of Article 15 to mutual benefit societies. Thus, there is no conflict between the application of HRS § 432:1-502 and Article

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2. Award of Post-Judgment Interest

VEBAH claims that the circuit court erroneously awarded interest because: (1) HRS § 431:15-323 allows for only "an injunctive, turnover order[] type of relief, not damages"; and (2) the court's award of post-judgment interest constituted an illegal and excessive penalty.

Initially, VEBAH's first argument is premised upon its unsupported proposition that "[i]t is incorrect and improper to attach an interest charge to an injunction." In the absence of express statutory authority governing the payment of interest in a specific type of claim, HRS § 478-3, governing the payment of interest in civil judgments generally, applies. Sussel, 74 Haw. at 618, 851 P.2d at 320. HRS § 478-3 provides that "[i]nterest at the rate of ten per cent a year, and no more, shall be allowed on any judgment recovered before any court in the State, in any civil suit." The court's June 9, 1999 order, which is the basis for its December 27, 1999 final judgment, includes a judgment awarding the Commissioner $874,437.11. Nothing in the language of HRS § 478-3 precludes an award of interest upon this judgment, even if it resulted from an "injunctive" type of relief. Moreover, the reasoning for allowing post-judgment relief on a damages award applies with equal force to the type of relief proposed by VEBAH. As VEBAH itself notes:

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[8](...continued)
15, and effect may be given to both. See Wong, 88 at 53, 961 P.2d at 618.

> There is a well-established economic value for a "delay in spending": it is called "interest". If one foregoes the benefit of immediately spending a dollar, and simply delays spending that dollar until some future time, that delay is compensated by the payment of interest. In short, the interest on the deposited funds is, by definition, complete and total compensation for the "lost opportunity" of being able to spend the money sooner.

Where a judgment results in an award of money, the prevailing party is ordinarily entitled to "total" compensation. Under these circumstances, HRS § 478-3 is applicable.

Regarding its second claim that the award of interest amounted to an illegal and excessive penalty, VEBAH argues that, even if interest was appropriate, the statutory rate of ten per cent was unwarranted in the present case. However, VEBAH points to no evidence and cites no authority indicating that the circuit court abused its discretion by awarding post-judgment interest at the statutory rate of ten per cent. Therefore, we hold that the circuit court did not err in awarding post-judgment interest pursuant to HRS § 478-3.

B. The Commissioner's Cross-Claims on Appeal

The Commissioner presents two claims in his cross-appeal: (1) the circuit court erred in denying his request for pre-judgment interest; and (2) the court erred in denying his request for attorneys' fees.

1. Denial of Pre-Judgment Interest

The Commissioner claims that the circuit erred in denying pre-judgment interest on the basis that it is not

provided for by Article 15. Specifically, the circuit court ruled, "The [Commissioner's] requests for [pre-judgment] interest and attorneys' fees are DENIED on the ground that Article 15 of the Insurance Code does not provide for the allowance of pre-judgment interest or for attorneys' fees."

Pre-judgment interest is designed "to allow the court to designate the commencement date of interest in order to correct injustice when a judgment is delayed for a long period of time for any reason, including litigation delays." Schmidt v. Board of Directors of Ass'n of Apartment Owners of Marco Polo Apartments, 73 Haw. 526, 534, 836 P.2d 479, 483 (1992) (quoting Leibert v. Finance Factors, Ltd., 71 Haw. 285, 293, 788 P.2d 833 838 (1990)) (internal quotation marks omitted). "[T]he purpose of prejudgment interest is to discourage 'recalcitrance and unwarranted delays in cases which should be more speedily resolved.'" Calleon v. Miyagi, 76 Hawai'i 310, 322, 876 P.2d 1278, 1290 (1994) (citation omitted). However,

> it is clearly within the discretion of the circuit court to deny prejudgment interest where appropriate, for example, where: (1) the defendant's conduct did not cause any delay in the proceedings, see Amfac, Inc. [v. Waikiki Beachcomber Investment Co.], 74 Haw. [85], 137, 839 P.2d [10,] 36 [(1992)]; (2) the plaintiff himself has caused or contributed to the delay in bringing the action to trial, see Schmidt v. Board of Directors of the Ass'n of Apartment Owners of the Marco Polo Apartments, 73 Haw. 526, 534-35, 836 P.2d 479, 484 (1992); or (3) an extraordinary damage award has already adequately compensated the plaintiff, see Leibert v. Finance Factors, Ltd., 71 Haw. 285, 293, 788 P.2d 833, 838 (holding that it was an abuse of discretion for the circuit court to award prejudgment interest to a treble damages award), reconsideration denied, 71 Haw. 664, 833 P.2d 899 (1990).

Roxas v. Marcos, 89 Hawai‘i 91, 153, 969 P.2d 1209, 1271 (1998), reconsideration denied, 89 Hawai‘i 91, 969 P.2d 1209 (1999). The statutory basis for pre-judgment interest is HRS § 636-16 (1993), which provides that,

> [i]n awarding interest in civil cases, the judge is authorized to designate the commencement date to conform with the circumstances of each case, provided that the earliest commencement date in cases arising in tort, may be the date when the injury first occurred and in cases arising by breach of contract, it may be the date when the breach first occurred.

Under HRS § 636-16, courts in all civil cases have the discretion to award pre-judgment interest. Sussel, 74 Hawai‘i at 618, 851 P.2d at 320 (citing McKeague v. Talbert, 3 Haw. App. 646, 658 P.2d 898 (1983)). As the Commissioner's suit against VEBAH was a civil case, nothing in the statute prohibits awarding pre-judgment interest. Accordingly, the circuit court based its ruling on an "erroneous view of the law" and, therefore, abused its discretion by failing to consider the Commissioner's request for pre-judgment interest. Accordingly, we vacate the circuit court's denial of pre-judgment interest and remand this case for a determination whether an award of pre-judgment interest is appropriate. We express no opinion regarding the propriety of such an award.

2. Denial of Attorneys' Fees

The Commissioner claims that the circuit court erred in denying his request for attorneys' fees. "Ordinarily, attorneys' fees cannot be awarded as damages or costs unless so provided by

statute, stipulation, or agreement." Shanghai Inv. Co. v. Alteka Co., Ltd., 92 Hawai'i 482, 501, 993 P.2d 516, 535 (2000) (citations and internal quotation marks omitted). The Commissioner argues that count I of his complaint was "in the nature of assumpsit" because it was brought to obtain premium money collected by VEBAH pursuant to the PGMA/VEBAH Master Agreement. Therefore, the Commissioner argues that the circuit court should have awarded attorneys' fees pursuant to HRS § 604-14 (Supp. 1998), which provides in pertinent part:

> In all the courts, in all actions in the nature of assumpsit . . . there shall be taxed as attorneys' fees, to be paid by the losing party and to be included in the sum for which execution may issue, a fee that the court determines to be reasonable[.]

This court has noted that "'assumpsit' is 'a common law form of action which allows for the recovery of damages for non-performance of a contract, either express or implied, written or verbal, as well as quasi contractual obligations.'" Blair v. Ing, 96 Hawai'i 327, 332, 31 P.2d 184, 189 (2001) (quoting TSA Int'l. Ltd. v. Shimizu Corp., 92 Hawai'i 243, 264, 990 P.2d 713, 734 (1999)). Additionally,

> [i]n ascertaining the nature of the proceeding on appeal, this court has looked to the essential character of the underlying action in the trial court. The character of the action should be determined from the facts and issues raised in the complaint, the nature of the entire grievance, and the relief sought. Where there is doubt as to whether an action is in assumpsit or in tort, there is a presumption that the suit is in assumpsit.

Blair, 96 Hawai'i at 332, 31 P.2d at 189 (citations, internal quotation marks, and footnote omitted).

In the present case, the essential character of the suit against VEBAH was not in the nature of assumptsit. The basis of the Commissioner's action was HRS § 431:15-323. Under the facts and issues raised in the complaint, possession of premiums collected alone is determinative of the obligation to pay. Thus, contractual rights and obligations were not at issue in the case, and the typical contractual defenses were not available. The fact that there was an underlying contractual relationship between PGMA and VEBAH is not dispositive of this case. Therefore, we hold that proceedings under HRS § 431:15-323 are not in the nature of assumpsit and that the circuit court did not err in denying the Commissioner his attorneys' fees.

IV. CONCLUSION

Based upon the foregoing, we hold that the circuit court did not err in: (1) dismissing VEBAH's counterclaims based on its ruling that Article 15 applied to the liquidation of VEBAH; (2) awarding post-judgment interest pursuant to HRS § 478-3; and (3) denying the Commissioner's request for attorneys' fees. However, we hold that the circuit court erred in denying pre-judgment on the ground that Article 15 does not allow such an award. We, therefore, vacate this portion of the judgment and remand this case for further proceedings. On remand, we direct the circuit court to consider the Commissioner's request for pre-judgment interest in accordance

with the principles outlined in Roxas v. Marcos, 89 Hawai‘i 91, 153, 969 P.2d 1209, 1271 (1998).

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