NOT FOR PUBLICATION

NO. 25040

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

USRP (DON), LLC; USRP (JENNIFER), LLC; USRP (STEVE), LLC; USRP (SARAH), LLC; USRP (BOB), LLC; USRP (FRED), LLC, all Texas limited liability companies, Plaintiffs-Appellees

vs.

WAHBA, LLC., a Hawai'i limited corporation; AMGAD B. WAHBA; SNG, LLC, a Hawai'i limited liability company, and SERVICE STATION SUB-TENANT LOCATED AT 1701 DILLINGHAM BOULEVARD AND SERVICE STATION SUB-TENANT LOCATED AT 215 SOUTH VINEYARD BOULEVARD, Defendants-Appellants

(NOS. 25040, 25041, 25042, 25043, 25044, 25158 25159, 25160, 25161, 25162)

APPEALS FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CIV. NOS. 1RC01-5020; 1RC01-5056; 1RC01-5057; 1RC01-5136; 1RC01-5134; 1RC01-5135; 1RC01-5192; 1RC01-5020; RC01-5022; 1RC01-5021; 1RC01-5193)

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Defendants-Appellants WAHBA, LLC, Amgad B. Wahba, SNG, LLC, Service Station Sub-Tenant Located at 1701 Dillingham Boulevard, and Service Station Sub-Tenant Located at 215 South Vineyard Boulevard (collectively Defendants) appeal from the March 8, 2002, and March 11, 2002 judgments and writs of possession issued by the district court of the first circuit court (the district court or the court).[1] These judgments and writs resulted from ten summary possession actions that were consolidated and resolved by a trial before the court. These

[1] The Honorable Rhonda A. Nishimura presided over this matter.

judgments were resolved in favor of Plaintiffs-Appellees USRP (Don), LLC; USRP (Jennifer), LLC; USRP (Steve), LLC; USRP (Sarah), LLC; USRP (Bob), LLC; and USRP (Fred), LLC (collectively, Plaintiffs) and ordered that Plaintiffs were entitled to possession of the disputed premises or service stations as set forth in each summary possession action. We affirm.

On March 10, 1999, Plaintiffs, as lessors, entered into two master gasoline station convenience store leases (master leases or leases) with BC Oil Ventures LLC (BC Oil) for twenty seven service station locations in Hawai'i. US Restaurant Properties (USRP) is a real estate investment trust whose principal business is renting real estate. USRP is restricted from owning underground storage tanks and earning a certain amount of revenue from non-rental receipts, i.e. from the sale of gasoline.

Paragraph 15.1 of the master leases required BC Oil, as the tenant, to obtain Plaintiffs' written consent prior to subletting any of the subject locations to another party for use as a gasoline station. Paragraph 17.1(c) of the master leases define "default[,]" inter alia, as "[a] failure by [BC Oil] to observe and perform any other provision of this Lease to be observed or performed by [BC Oil], where such failure continues for thirty (30) days after written notice thereof by [Plaintiffs] to [BC Oil]." This failure "constitute[s] a material default and breach" of the said leases. In the event of any material breach,

the master leases provide Plaintiffs with the right to terminate the leases under paragraph 17.2. Lastly, paragraph 18.15 of the master leases include a choice of law provision that states that the leases "shall be governed by the laws of the State of Texas."

On or about July 31, 2000, BC Oil filed for Chapter 11 bankruptcy relief (bankruptcy proceedings) in the United States Bankruptcy Court for the Central District of California (bankruptcy court). Between November 2000 and January 2001, BC Oil apparently entered into retail facility leases or subleases (retail facility leases) with Defendants for nine stations covered by the master leases between BC Oil and Plaintiffs. These retail facility leases were negotiated by Hani Baskaron (Baskaron), a principal of BC Oil, Defendant Amgad B. Wahba (Wahba), and Riyad Khoury. Paragraph 1 of these retail facility leases mandate that BC Oil "shall secure the execution . . . of a Consent, Nondisturbance, and Attornment Agreement" by Plaintiffs. "Consent, Nondisturbance, and Attornment Agreement[s]" are attached to these retail facility leases, but these agreements are not signed by Plaintiffs.

On January 22, 2001, BC Oil entered into a retail sales agreement for motor fuels (fuel sales agreement) with Defendant Wahba. BC Oil and Defendant Wahba were the only parties to the fuel sales agreement as described in the agreement. By this agreement, BC Oil agreed to sell Wahba motor fuel refined by ARCO for resale by Wahba at the station located at 150 North

Kamehameha Highway in Wahiawa. The "initial term" of this agreement was "for a period of not more than five years." The fuel sales agreement also included a provision granting Defendant Wahba the right to use the ARCO brand in the retail sale of BC Oil's motor fuels.

On May 8, 2001, in the bankruptcy proceedings, Plaintiffs and BC Oil entered into a stipulation for, inter alia, BC Oil "to file a motion with the bankruptcy court to obtain an order determining that any subleases entered into post-bankruptcy without the bankruptcy court's approval was null and void." On June 26, 2001, the bankruptcy court issued its "Order Approving Stipulation Between the Debtor, the Official Committee of Unsecured Creditors and USRP Resolving Disputes and Claims as Modified." The bankruptcy court struck the parties' agreement that BC Oil would seek the bankruptcy court's approval that the subleases were "null and void," and, instead, stated that:

> [Plaintiffs] will prosecute (as a party plaintiff or movant), and pay for the prosecution of, any such action against any sublessee of [BC Oil]. [Plaintiffs] shall have the right to name the Trustee as a nominal party to any such action, and the Trustee shall have the right to request his dismissal as a nominal party from any such action.

(Emphasis added.) Additionally, the bankruptcy court approved BC Oil's rejection of its non-residential real property leases, i.e. the retail facility leases.

On or about August 3, 2001, Plaintiffs filed the ten separate summary possession actions underlying this appeal in the district court to regain possession of the stations located in Hawai'i. On August 22, 2001, the court consolidated the summary

possession actions under Civil No. 1RC01-5020 (consolidated actions). Trial was conducted on February 7, 21, and 25, 2002.

The court held in favor of Plaintiffs and made the following oral rulings: (1) a fuel sales agreement as to the station located at 150 North Kamehameha Highway was entered into, but Defendants failed to present any fuel sales agreements as to the remaining stations in dispute, (2) nondisturbance agreements pursuant to the retail facility leases were never executed, (3) with respect to Defendants' HRS chapter 486H arguments, Plaintiffs are not "large petroleum distributors" and no franchise relationships existed between the Plaintiffs and Defendants, and (4) the court had "subject-matter jurisdiction over the matter at hand and possession is proper with the district court" inasmuch as the case did not pertain to a "long-term residential lease" as was the case in Queen Emma Found. v. Tingco, 74 Haw. 294, 845 P.2d 1186 (1992). Accordingly, the court issued the judgments for possession and writs of possession in favor of Plaintiffs. On April 8, 2002, Defendants appealed from the judgments and writs in the ten cases comprising the consolidated actions.

On appeal, Defendants apparently argue that (1) the court "erred in failing to find that Plaintiffs gave its express or implied consent to the [retail facility leases] to [Defendants], and should be estopped from attempting to terminate the [retail facility leases] by asserting lack of consent or lack

of an executed attornment agreement;" (2) the court "misconstrued the effect of the rejection of a lease in Bankruptcy, such that the rejection of the Master Lease[s] in the BC Oil Bankruptcy proceeding does not automatically terminate the sublease for . . . any of the affected service stations;" (3) the court erred in "finding that a 'franchise' as the term is defined in [HRS] chapter 486H . . . did not exist, such that protections afforded to [Defendants] in [HRS] chapter 486H . . . did not apply;" (4) the court "erred in failing to find that the relationship with [Plaintiffs] and BC Oil were joint venturers, such that [Plaintiffs] assumed the obligations of BC Oil under the [retail facility leases] when [Plaintiffs] took over the service station[s];" (5) the court "erred in failing to recognize that . . . [it] did not have jurisdiction" because this case involves substantial "long-term" property "rights" in the form of franchises pursuant to HRS §§ 486H-2, 486H-3, and 486H-10.5, and must be tried before the circuit court in accordance with Tingco, 74 Haw. at 304; and (6) Plaintiffs "did not comply with notice requirements for . . . termination of franchises [pursuant to HRS § 486H-3], and thus, the terminations are . . . invalid."

As to Defendants' first argument on appeal, Defendants contend that "Plaintiffs gave its express or implied consent" to the retail facility leases to Defendants, and therefore, are "estopped" from "terminat[ing]" these leases "by asserting lack of consent or lack of an executed attornment agreement." As

subpoints to this argument, Defendants maintain that (a) attorney Richard Wilensky (Wilensky), as Plaintiffs' agent, either expressly consented to the retail facility leases or had knowledge of the retail facility leases and impliedly approved them by words or conduct; (b) "a landlord may be estopped[2] from asserting lack of consent as grounds for termination of a lease," citing Aickin v. Ocean View Inv. Co., 84 Haw. 447, 935 P.2d 992 (1997); (c) "if [Plaintiffs] are estopped from asserting lack of consent to the subleases, the failure to have an attornment agreement is not fatal to [Defendants'] tenancy," citing Aickin; (d) Plaintiffs "could not reasonably withhold consent to the [s]ubleases," citing Prestin v. Mobil Co. of California, 741 F.2d 268 (9th Cir. 1984), and Cohen v. Ratinoff, 47 Cal. App. 3d 321 (1983), and "did not have a good faith basis for refusing consent," citing Best Place, Inc. v. Penn America Ins. Co., 82 Hawai'i 120, 920 P.2d 33 (1996), in light of the special relationship of franchisor-franchisee which allegedly existed between Plaintiffs and Defendants;[3] and (e) "an absolute

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[2] As to subpoints (b) and (c) of Defendants' first argument, in Defendants' opening and reply briefs, Defendants opine as to conduct by Plaintiffs that would "estop[] [Plaintiffs] from asserting lack of consent" and "terminating the [retail facility leases]." Defendants fail to cite to the record to support these factual assertions. Insofar as Defendants do not comply with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(7) to provide "citations . . . to parts of the record relied on," Defendants do not provide discernible factual arguments in support of subpoints (b) and (c) and it is not necessary to address these arguments. See HRAP Rule 28(b)(7)("Points not argued may be deemed waived.")

[3] As to subpoint (d) of Defendants' first argument that Plaintiffs could not "reasonably" or in "good faith" "refus[e] consent" to the retail facility leases, to the extent that this subpoint relies on the existence of HRS § 486H-1 franchises between Plaintiffs and Defendants and such franchises do not exist, as discussed infra, it is not necessary to address subpoint (d).

prohibition on assignment and subletting as [Plaintiffs] urge[] in this case is an unreasonable restraint on alienation," citing Pacific Trust Co. v. Nagamori, 32 Haw. 323, 330 (1932).[4]

As to Defendants' first argument on appeal related to Defendants' subpoint (a) that Wilensky expressly consented to the retail facility leases, under the plain and unambiguous language of the master leases, BC Oil did not comply with the requirement that it obtain written consent from Plaintiffs prior to subletting the properties to Defendants. This failure to obtain prior written consent from Plaintiffs (1) constituted a "material breach" of the master leases under paragraph 17.1(c) of the master leases and (2) enabled Plaintiffs to "terminate" the master leases and "recover possession" of the disputed stations from Defendants who claimed possession "through or under BC Oil" under paragraph 17.2 of the master leases.

Additionally as to Defendants' subpoint (a), the evidence is unclear as to whether Wilensky ever orally or

[4] As to subpoint (e) of Defendants' first argument, Defendants simply assert in their opening brief that it is "well established that an absolute prohibition on assignment and subletting as [Plaintiffs] urge[] in this case is an unreasonable restraint on alienation." Defendants cite to Pacific Trust for "the rule that restrictions on transfer through requirements of written consent to certain transfers were void." Defendants quote, in relevant part, from Pacific Trust, that "[i]t was expressly provided in the instrument that its terms were binding on the heirs executors, administrators and permitted assigns of each parties. Such an attempted restraint on alienation violates the rules against perpetuities which is law in this jurisdiction, and is void." Based on this argument, it is unclear how the requirement in the master leases of written consent from Plaintiffs for subleases of the disputed stations constitutes an "absolute prohibition" or an "unreasonable restraint on alienation" and akin to a provision "binding on . . . permitted assigns" that "violates the rules against perpetuities." Where, as here, Defendants do not provide a discernible legal argument for their position, such argument need not be addressed. See HRAP Rule 28(b)(7)("Points not argued may be deemed waived.")

impliedly consented to such leases to the extent that he and Plaintiffs acknowledged and consented to the fact that Defendants were lessees pursuant to the master leases. At trial, Wilensky testified that he never consented, either orally or in writing, to the retail facility leases. In contrast to Wilensky's testimony, Hani Baskaron, a principal of BC Oil, testified on direct examination to a conversation with Wilensky in which Wilensky allegedly approved of the retail facility leases.

Wilensky's and Baskaron's statements demonstrate that the court heard conflicting testimony by different witnesses as to whether Wilensky ever orally or impliedly consented to the retail facility leases. This court has "long observed that it is within the province of the trier of fact to weigh the evidence and to assess the credibility of the witnesses, and this court will refrain from interfering in those determinations." LeMay v. Leander, 92 Hawai'i 614, 626, 994 P.2d 546, 558 (2000). Given that there was evidence from which the court could determine there was no oral or implied consent to the execution of the retail facility leases by Wilensky, acting on behalf of Plaintiffs, this court will not "interfer[e]" with the trial court's "determination." Id.

As to Defendants' second argument on appeal that the court "misconstrued the effect of the rejection of a lease," Defendants contend that "the rejection of the master lease[s] in the BC Oil bankruptcy proceeding does not automatically terminate the sublease for . . . any of the affected service stations" but

constitutes a "simple breach" of the master lease, citing In re Texas Health Enterprises, Inc., 255 B.R. 181 (Bkrtcy. E.D. Tex. 2000), In re Storage Technology Corp., 53 B.R. 471 (Bkrtcy. Colo. 1985), and Collier on Bankruptcy (Rel. 55-8/95), § 365.08 at 364-65). As subpoints to this argument, Defendants also maintain that: (a) Plaintiffs never "ma[de] any effort to terminate the [m]aster [l]ease[s]" and did "not obtain[] a termination of the [m]aster [l]ease[s] in the instant proceeding"; (b) "there is no independent basis for termination" inasmuch as "the lack of consent . . . has been shown to [be] an improper or insufficient ground for termination"; and (c) Plaintiffs are "precluded from terminating the [m]aster [l]ease[s] or subleases" because of the existence of a "special relationship" between Plaintiffs and Defendants such that Defendants have "vested franchise rights" that are protected under HRS chapter 486H. Inasmuch as the court did not render its judgment based on any construction of the bankruptcy court's alleged rejection and termination of the master leases or retail facility leases,[5] and the Defendants'

[5] On August 23, 2001, Defendants filed a motion to dismiss the complaint as to the consolidated actions. Defendants asserted in this motion that the bankruptcy court "entered an [o]rder which modified the automatic stay and rejected the [m]aster [l]eases between USRP and BC Oil for the eleven Oahu locations. . . . However, the [b]ankruptcy [c]ourt did not reject BC Oil's subleases with the Defendants nor did it declare them to be null and void." (Emphasis added.) In a memorandum in opposition to the motion to dismiss, Plaintiffs responded that "BC Oil rejected the [m]aster lease[s] upon which the rights of BC Oil to sublease the leased premises emanated" and that "under applicable bankruptcy law, Defendants' [s]ubleases terminated upon the rejection and termination of the [m]aster [l]eases." There appears to be no filed written order by the court disposing of Defendants' motion to dismiss, nor do any of the parties cite to facts or a written order disposing of this motion to dismiss.

On November 19, 2001, Defendants filed a counterclaim that alleged, inter alia, that Plaintiffs "had knowledge of the retail facility leases and approved them orally." Plaintiffs filed an answer to Defendants'

subpoints to their second argument that relate to HRS chapter 486H are addressed infra, it is not necessary to discuss this argument.

As to Defendants' third argument on appeal that the court erred in finding that "franchises" as defined by HRS chapter 486H did not exist, Defendants seemingly maintain that: (a) the court's construction of "franchise" was wrong inasmuch as the intent of the legislature was to "preserve" and "protect" "independent" gasoline dealers, i.e. Defendants;[6] (b) "valid franchises were created" between BC Oil and Defendants pursuant to HRS chapter 486H and with the alleged fuel supply agreements and the retail facility leases; (c) HRS §§ 486H-2 and 486H-3 provide an "exclusive list" of grounds for termination of Defendants' franchises and none of these statutory grounds were "alleged or proven" by Plaintiffs in the consolidated actions; (d) Plaintiffs "succeed[ed] to the interests of BC Oil" in light of HRS § 486H-10.4(a); (e) Plaintiffs are "bound by the terms of

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counterclaim on December 12, 2001, and asserted as a defense that "[t]he rejection of the [m]aster [l]eases effectively terminated any and all of Defendants' rights under the [s]ubleases." (Emphasis added.) Once again, there is no written order disposing of Defendants' counterclaim or addressing Plaintiffs' defense, nor do any of the parties cite to facts or a written order resolving Defendants' counterclaim and Plaintiffs' answer.

Additionally, the court apparently did not render its oral rulings and judgments based on any construction of the bankruptcy court's alleged rejection and termination of the master leases or retail facility leases. See supra text at 5.

[6] With regard to the contention that the legislature intended that HRS chapter 486H preserve and protect independent gasoline dealers, to the extent that (1) the language of HRS § 486H-1 plainly and unambiguously requires that a "franchise" is created, in part, when "petroleum products are supplied by the petroleum distributor" and (2) no such supply agreement between Plaintiffs and Defendants exists in the case at bar, see infra, it is not necessary to address Defendants' subpoint (a) as to the legislative intent.

the franchise[s] and [HRS] chapter 486H"; (f) the court's finding that no franchises existed between Plaintiffs and Defendants because Plaintiffs were not a "large petroleum distributor" "has no support in the legislative history" and "allow[s] . . . [Plaintiffs] to circumvent all dealer protections because it is not a 'large oil company'";[7] (g) Plaintiffs are precluded from arguing that HRS chapter 486H does not apply because Plaintiffs, in 1998, represented that they would be bound by dealer protection statutes such as HRS chapter 486H in order to convince former gasoline dealers and the State of Hawai'i to withdraw objections to the proposed sale of Equilon gas stations to USRP and BC Oil;[8] and (h) the court misconstrued the law regarding the

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[7] With regard to subpoint (f) that there is "no support in legislative history" for the court's finding that franchises did not exist between Plaintiffs and Defendants because Plaintiffs were not a "large petroleum distributor," again to the extent that (1) the language of HRS § 486H-1 plainly and unambiguously requires that "franchises" are created, in part, when "petroleum products are supplied by the petroleum distributor" and (2) no such supply agreements between Plaintiffs and Defendants exist in the case at bar, see infra, it is not necessary to address Defendants' subpoint (f) as to the legislative history.

[8] With regard to the contention that Plaintiffs previously represented that they would be bound by HRS chapter 486H, Defendants recite in their opening brief "relevant background information" with respect to Plaintiffs' purchase of numerous service station properties in Hawai'i from Equilon Enterprises, LLC, a joint venture between Texaco, Inc. and Shell Oil Company. This purchase allegedly took place after Texaco and Shell entered into an agreement and consent decree with the Federal Trade Commission and the State of Hawai'i relating to antitrust matters. Defendants refer to five trial exhibits and 140 pages of testimony elicited at trial in the instant case on February 21, 2002 to construct this "background information."

Defendants also assert in their opening brief that "[i]n response to objections and criticism of BC Oil's financial status, [Plaintiffs] represented to the then operators of Texaco service stations and the Attorney General's Office that [Plaintiffs] would stand in the shoes of BC Oil in the event that BC Oil could no longer operate and provide [Petroleum Marketing Practices Act] rights to [Defendants]." For this assertion, Defendants refer generally to one trial exhibit. Defendants rely on transcripts and trial exhibits without specific citations and with citations that also appear to be misleading. Because "[t]his court is not obligated to sift through the voluminous records to verify [Defendants'] inadequately documented citations, Lanai Co., Inv. v. Land Use Comm'n, 105 Hawai'i 296, 309 n.31, 97 P. 3d 372,

requirements of a franchise under HRS § 486H-1 by requiring that both the fuel supply agreement and the lease were necessary to establish a franchise when only one document is required.

In 1975, Act 133 added a new chapter to the Hawai'i Revised Statutes. 1975 Haw. Sess. L. Act 133, § 1, at 260. This chapter is presently designated as HRS chapter 486H and is entitled "Gasoline Dealers." Under HRS § 486H-2 (1993), "a petroleum distributor shall be liable to a gasoline dealer who sells the products of the petroleum distributor under a franchise from the distributor for damages and such equitable relief as the court deems proper resulting from the wrongful or illegal termination or cancellation of the franchise during its term[.]" Thus, to establish liability under HRS chapter 486H, a "franchise" must exist between a "petroleum distributor" and a "gasoline dealer."

HRS § 486H-1 (1993) defines "franchise" as

> (1) Any agreement or related agreements between a petroleum distributor and a gasoline dealer under which the gasoline dealer is granted the right to use a trademark, trade name, service mark, or other identifying symbol or name owned by the distributor in connection with the retail sale of petroleum products supplied by the petroleum distributor; or
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> (2) Any agreement or related agreements described in paragraph (1) and any agreement between a petroleum distributor and a gasoline dealer under which the gasoline dealer is granted the right to occupy the premises owned,

385 n.31 (2004), it is not necessary that this argument be addressed.

> leased, or controlled by the distributor, for the purpose of engaging in the retail sale of petroleum products supplied by the distributor.

(Emphases added.)

In the instant case, it is concluded that contrary to Defendants' contention that the court erred in finding that franchises as the term is defined in HRS chapter 486H did not exist, HRS chapter 486H is inapplicable because (1) there are no agreements for Plaintiffs as petroleum distributors to supply petroleum products to Defendants under HRS § 486H-1(1), (2) there are no agreements between BC Oil and Defendants for nine of the ten disputed service stations that would create "franchises" between BC Oil and Defendants under HRS § 486H-1(1) such that Plaintiffs "succeed to the interest of BC Oil," and (3) as to the one station for which a fuel sales agreement was executed between BC Oil and Defendants, nothing in that agreement establishes that Plaintiffs are liable to Defendants for an agreement entered into by BC Oil.

Pursuant to HRS §§ 486H-1(1) and (2), "franchises" are created, in part, where "petroleum products [are] supplied by the petroleum distributor." In the case at bar, however, Plaintiffs argue that (1) the evidence presented at trial established that Plaintiffs had no agreement to supply petroleum products to Defendants and (2) Plaintiffs never supplied petroleum products to Defendants. Defendants do not dispute that there were no agreements that Plaintiffs supply Defendants with petroleum

products. Therefore, as between Plaintiffs and Defendants, franchises did not exist.

Arguably, as Defendants assert, the fuel sales agreement for the station located at 150 North Kamehameha Highway (1) satisfies the requirements for a franchise under HRS § 486H-1(1) because this agreement grants Defendants "the right to use the ARCO trademark, trade name, service mark, or other identifying symbol or name owned by the distributor in connection with the retail sale of petroleum products supplied by the petroleum distributor, BC Oil," and (2) is seemingly "representative" of fuel supply agreements for all the disputed stations "because they were in the same form, the only difference being the locations and lessee's names." According to this theory asserted by Defendants, "[f]ranchises were created when BC Oil and [Defendants] entered into fuel supply agreements and leases for the various stations" and Plaintiffs "should continue to be bound by the terms of the franchise and [HRS] chapter 486H."

However, there is nothing in the fuel sales agreement that establishes a relationship between Plaintiffs and BC Oil such that Plaintiffs have "franchise relationships" with Defendants. Plaintiffs argue, inter alia, that although the fuel sales agreement "is a plain and unambiguous [f]ranchise [a]greement [as] between Defendant . . . Wahba and BC Oil for the Wahiawa Service Station, that agreement is absolutely void of any indication that [Plaintiffs are] a party in any manner[.]" As

mentioned previously, this fuel sales agreement was entered into between BC Oil and Defendant Wahba. Plaintiffs were not a party to this fuel sales agreement and no evidence was presented to establish any "successive" relationship between BC Oil and Plaintiffs under this fuel sales agreement.

Defendants' theory also lacks merit as to nine of the ten disputed stations because, as pointed out by Plaintiffs, only one fuel sales agreement was submitted into evidence for one of the disputed stations. Assuming arguendo that such an agreement created franchises between BC Oil and Defendants to which Plaintiffs succeeded BC Oil as a petroleum distributor, the remaining stations still require fuel sales agreements. It is not enough that Defendants assert, without citations to the record, that one agreement was representative of agreements as to each station. Because this court is not obligated to sift through the voluminous records to verify [Defendants'] inadequately documented citations, Lanai Co., Inv. v. Land Use Comm'n, 105 Hawai'i 296, 309 n.31, 97 P.3d 372, 385 n.31 (2004), the court was not wrong to conclude that "Defendants failed to present any fuel sales agreements as to the remaining stations in dispute."

Accordingly, no franchises existed between Plaintiffs and Defendants under HRS § 486H-1 because (1) the plain language of HRS §§ 486H-1(1) and (2) instruct that a petroleum distributor "suppl[y]" a gasoline dealer with petroleum products in order for franchises to exist and no supply agreements exist between

Plaintiffs and Defendants, and (2) the one fuel sales agreement that is a part of the record was executed between BC Oil and Defendants and did not include Plaintiffs as a party. In the absence of franchise relationships between Plaintiffs and Defendants, HRS chapter 486H protection cannot be invoked for Defendants and, to the extent that Defendants' subpoints (b), (c), (d), (e), and (h) of Defendants' third argument maintain that HRS chapter 486H governs the case at bar, these subpoints are without merit.

As to Defendants' fourth argument on appeal that Plaintiffs and BC Oil were joint venturers, with Plaintiffs assuming the obligations of BC Oil under the retail facility leases, Defendants contend a "joint venture" between Plaintiffs and BC Oil was evidenced by the contribution of monies, joint management and profit-sharing among Plaintiffs and BC Oil in the operation of the stations, and control by Plaintiffs and provision of a credit line and forgiveness of debt by Plaintiffs to BC Oil. According to Defendants, this "joint venture" "establish[ed] the liability of [Plaintiffs] for the obligations of BC Oil as a petroleum distributor under [HRS c]hapter 486H."

The record on appeal, however, lacks sufficient evidence that Plaintiffs assumed the liabilities and obligations of BC Oil as a "petroleum distributor" pursuant to HRS chapter 486H. "A joint venture is a mutual undertaking by two or more persons to carry out a single business enterprise for profit. It is closely akin to a partnership and the rules governing the

creation and existence of partnerships are generally applicable to joint ventures." Shinn v. Edwin Yee, Ltd., 57 Haw. 215, 217, 553 P.2d 733, 736 (1976). "The existence of a joint venture ageement must be shown by the preponderance of the evidence . . . , and its essential terms must be established with reasonable certainty." Id. at 218, 553 P.2d at 737 (citations omitted).

In the instant case, Defendants (1) refer extensively to testimony provided by Wilensky, Baskaron, and Timothy Hamilton, a petroleum consultant and trade association executive identified as Defendants' witness in the trial below, and (2) point generally to a 1998 letter to the Federal Trade Commission from the Acquisitions Manager of USRP to establish the existence of a joint venture between Plaintiffs and BC Oil and the terms of said joint agreement. However, Defendants do not provide specific citations to the record for either testimony by Wilensky, Baskaron, Hamilton, or to specific portions of the letter as evidence of the existence of the alleged joint venture. Because "[t]*his court is not obligated to sift through the* voluminous records to verify [Defendants'] inadequately documented citations," Lanai Co., Inc. v. Land Use Comm'n, 105 Hawai'i 296, 309 n.31, 97 P.3d 372, 385 n.31 (2004), Defendants' contention of the existence of a joint venture between Plaintiffs and BC Oil is not persuasive. Moreover, assuming arguendo that a joint venture existed between Plaintiffs and BC Oil, because no franchises existed between Plaintiffs and Defendants, Plaintiffs

are not liable to Defendants under HRS chapter 486H.

As to Defendants' fifth argument on appeal that the court lacked subject matter jurisdiction to resolve the consolidated actions, Defendants contend that the instant case (a) involves substantial property rights, i.e. franchises are a "long-term right" pursuant to HRS §§ 486H-2, 486H-3, and 486H-10.5, and (b) can only be adjudicated in circuit court in accordance with Tingco, 74 Haw. 294, 845 P.2d 1186 (1992). These contentions are unpersuasive because, as asserted by Plaintiffs, (a) there are no franchises between Plaintiffs and Defendants so as to create a "long-term" right for Defendants in the disputed service stations and (b) Tingco does not support Defendants' position.

In Tingco, the disputed lease "involve[d] ownership rights in the leasehold estate as well as the right to exclusive possession" because the lease, inter alia, (1) was a "fifty-five year, renewable ground lease[,]" (2) "enabled and required lessees to build their residences on the leased land[,]" and (3) "acknowledge[d] the possibility that [lessees] might mortgage and later sell their 'leasehold interest.'" 74 Haw. at 301-02, 845 P.2d at 1189 (emphasis added). The Tingco court held "that long-term residential ground leases . . . cannot be cancelled or forfeited in a district court summary possession action under HRS chapter 666," id. at 305, 845 P.2d at 1191 (emphasis added), because the lessee in such leases "often hold[] more than a possessory interest [in the property,]" id. at 304, 845 P.2d at

1191 (emphasis added), and "HRS § 604-5(d) limits the civil jurisdiction of the district court by excluding real actions or actions involving title to real property." Id. at 306, 845 P.2d at 1191 (emphasis added). Tingco does not apply to the instant case and deprive the court of jurisdiction because the disputed leases and fuel sale agreement, as noted by Plaintiffs, "concern[] short-term leases of no more than [five] year terms" and not "a long-term," "fifty-five year lease." Id. at 301, 305, 845 P.2d at 1189, 1191. Hence, the court properly exercised its jurisdiction in the consolidated actions in light of (1) the short-term nature of the fuel sales agreement and (2) the absence of franchises between Plaintiffs and Defendants.

As to Defendants' sixth argument on appeal that Plaintiffs did not comply with the notice requirements for termination of a gasoline dealer's franchise pursuant to HRS § 486H-3,[9] Defendants maintain that noncompliance rendered termination of the franchises invalid. Inasmuch as there are no franchises between Plaintiffs and Defendants as defined in HRS § 486H-1, Plaintiffs were not required to comply with HRS § 486H-3 notice requirements. Therefore,

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and briefs

[9] HRS § 486H-3 provides in pertinent part that "[a] petroleum distributor shall not terminate, cancel, or refuse to renew a franchise with a gasoline dealer without first giving the dealer written notice by certified mail at least ninety days in advance of the effective date of such action as set forth in the notice."

submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the district court's March 8, 2002 and March 11, 2002 judgments are affirmed.

DATED: Honolulu, Hawai'i, August 17, 2005.

On the briefs:

Mark S. Kawata for
defendants-appellants.

David J. Minkin and
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plaintiffs-appellees.