CONTRACTS

A seaman's contract claim against the owner of the vessel upon which he served would be regarded as falling within the FSM Supreme Court's exclusive admiralty and maritime jurisdiction. Lonno v. Trust Territory (I), 1 FSM R. 53, 68-71 (Kos. 1982).

The Federated States of Micronesia Income Tax Law confirms that it is the nature of the services performed and the person performing the services, rather than the stated identity of the contracting party, which determines the tax treatment for the compensation under the contract. It is of no import that the "contractor" was identified as a corporation rather than as an individual when the contract makes clear that the primary services to be rendered were those of an individual and the corporation was merely a name under which the individual conducted business. Heston v. FSM, 2 FSM R. 61, 64 (Pon. 1985).

Common law decisions of the United States are an appropriate source of guidance for this court for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the Federated States of Micronesia. Review of decisions of courts of the United States, and any other jurisdictions, must proceed however against the background of pertinent aspects of Micronesian society and culture. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 142 (Pon. 1985).

A message of the judicial guidance clause is that a court, when interpreting a contract, may not simply assume that reasonably intelligent Micronesians will perceive the same meaning as would reasonably intelligent Americans. Courts may not blind themselves to the pertinent aspects of Micronesian society, such as less facility in the English language, less exposure to business concepts, and paucity of legal resources, which might cause a reasonably intelligent Micronesian to perceive a meaning differently than would a person from some other nation. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 149 (Pon. 1985).

A telephone conversation between parties, in which the defendant related his desire to hire plaintiff's rental vehicle, coupled with plaintiff driving the vehicle from his place of business to defendant's place of employment, and defendant, after signing the rental agreement and returning the plaintiff to his business office, driving the vehicle away, satisfied the elements of a binding agreement. Phillip v. Aldis, 3 FSM R. 33, 36 (Pon. S. Ct. Tr. 1987).

Common law decisions of the United States are an appropriate source of guidance for the FSM Supreme Court for contract issues unresolved by statutes, decisions of constitutional courts or custom and tradition within the Federated States of Micronesia. FSM v. Ocean Pearl, 3 FSM R. 87, 90-91 (Pon. 1987).

In determining whether the terms of a contract should be enforced, the court will consider the parties' justified expectations, any forfeiture that would result if enforcement were denied, and any special public interest in the enforcement of the particular term. Falcam v. FSM, 3 FSM R. 194, 197-98 (Pon. 1987).

Although the FSM Supreme Court has often decided matters of tort law without stating explicitly that state rather than national law controls, there has been acknowledgment that state law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. Edwards v. Pohnpei, 3 FSM R. 350, 360 n.22 (Pon.

1988).

Since general contract law falls within powers of the state, state law will be used to resolve contract disputes. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 9 (Pon. 1989).

A statement that one party to a contract has a rental obligation to a nonparty does not constitute a promise to the other party to the contract that the specific rental will be paid to that nonparty. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 11-12 (Pon. 1989).

It is especially important for the court to scrutinize carefully and strictly construe contractual provisions which relate to the payment of attorney's fees. Bank of the FSM v. Bartolome, 4 FSM R. 182, 185 (Pon. 1990).

Where an agreement between two parties is so vague and uncertain that the court cannot determine who is the breaching party, or cannot fashion a remedy to enforce the agreement, there is no contract. Jim v. Alik, 4 FSM R. 198, 200 (Kos. S. Ct. Tr. 1989).

Restitution is a remedy which returns the benefits already received by a party to the party who gave them where the court can find no contract. Jim v. Alik, 4 FSM R. 198, 201 (Kos. S. Ct. Tr. 1989).

Generally, in cases requiring the interpretation or construction of contracts, the national courts would be called on to apply state law. Bank of Hawaii v. Jack, 4 FSM R. 216, 218 (Pon. 1990).

Where attorney's fees claimed pursuant to a contractual provision are excessive or otherwise unreasonable, it is within the equitable and discretionary power of the court to reduce or even deny the award, despite the contractual provision. Bank of Hawaii v. Jack, 4 FSM R. 216, 220 (Pon. 1990).

Where time of delivery was not of the essence of the contract and the contract was flexible in the agreed arrangements for delivery, a delivery of a bad container should not be seen as a failure of a condition to further obligations under the contract. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 127 (Pon. 1991).

Prior representation of another party to contractual negotiations is not in and off itself sufficient to create a conflict of interest which would invalidate the negotiated contract unless it can be shown such representation was directly adverse to the other client or materially limited the interests of the present client. Billimon v. Chuuk, 5 FSM R. 130, 135 (Chk. S. Ct. Tr. 1991).

Lease agreement executed by the Chuuk state government is void insofar as it purports to "incur public indebtedness" without legislative authority by way of an appropriation or statute. Billimon v. Chuuk, 5 FSM R. 130, 135-36 (Chk. S. Ct. Tr. 1991).

Where the plaintiffs were performing their contractual obligations, neither the defendant's wishes to accommodate a municipality's environmental concerns nor the defendant's reliance upon a subsequently passed state law making the subject matter of the contract illegal but which exempts existing contracts, will prevent the defendant from being held liable for

termination of the contract. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 124-25 (Pon. 1993).

Where a part of a contract provided that the state give a landowner leftover construction materials a trial court is fully warranted to believe that, by giving the landowner the opportunity to take whatever leftover materials he wanted, the state gave him the materials. Kinere v. Kosrae, 6 FSM R. 307, 309 (App. 1993).

Problems regarding the timing of performance, or the existence of vague terms will not necessarily interfere with the enforceability of a contract. Iriarte v. Micronesian Developers, Inc., 6 FSM R. 332, 335 (Pon. 1994).

Where a stipulated preliminary injunction is void because of the judge's disqualification and because of the stipulated dismissal of the court case in which it was issued, factual questions must be resolved before deciding whether it is enforceable as an independent contract. Etscheit v. Adams, 6 FSM R. 365, 391-92 (Pon. 1994).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and requires a party to either return what has been received under the contract or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another. Etscheit v. Adams, 6 FSM R. 365, 392 (Pon. 1994).

Common law decisions of the United States are an appropriate source of guidance for the FSM Supreme Court for contract issues unresolved by statutes, decisions of the constitutional courts here, or custom and tradition within the Federated States of Micronesia, but review of decisions of courts of the United States or other jurisdictions, must proceed against the background of pertinent aspects of Micronesian society and culture. Black Micro Corp. v. Santos, 7 FSM R. 311, 314 (Pon. 1995).

A state as a party to a contract has the same rights as any party to a contract and may exercise all the rights that the parties have agreed upon in the contract itself. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 342 (Chk. S. Ct. Tr. 1995).

Since freedom of will is essential to the validity of a contract, an agreement obtained by duress, coercion, or intimidation is invalid. Nahnken of Nett v. United States, 7 FSM R. 581, 588 (App. 1996).

Where the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. The standard of review for findings of fact is whether the trial court's findings are clearly erroneous. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 620 (App. 1996).

State law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. When no existing case law is found the FSM Supreme Court must decide issues of tort law by applying the law as it believes the state court would. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 294-95 (Pon. 1998).

Principles of contract are inapplicable to employment cases when the proper issue is whether plaintiff has shown a legal entitlement to permanent employment under the Truk State Public Service System Act. Hauk v. Terravecchia, 8 FSM R. 394, 396 (Chk. 1998).

An officer's authority to contract for a corporation may be actual or apparent, and may result from the officer's conduct and the acquiescence thereto by the directors. The corporation may be estopped to deny the officer's authority by having accepted the benefit of the contract. Generally, an officer's authority to act for his corporation with reference to contracts is a question of fact to be determined by the trier of fact. Asher v. Kosrae, 8 FSM R. 443, 452 (Kos. S. Ct. Tr. 1998).

When the parties did not reach a full understanding of what would be provided in exchange for the right to build an access road across the plaintiffs' land, but the defendant did agree to compensate the plaintiffs in some way, and when the defendant represented to the plaintiffs that the access road, once constructed, would be usable by the plaintiffs' vehicle, the defendant is liable to make the road passable by car or truck. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 539-40 (Pon. 1998).

An open account is not self-proving. An account must be supported by an evidentiary foundation to demonstrate the accuracy of the account. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 15 (Yap 1999).

Problems regarding the timing of performance will not necessarily interfere with the enforceability of a contract. O'Byrne v. George, 9 FSM R. 62, 64 (Kos. S. Ct. Tr. 1999).

An open account is an account based upon running or concurrent dealing between the parties which has not been closed, settled, or stated, and which is kept unclosed with the expectation of further transactions. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos. 1999).

In an action brought to recover the balance due upon a mutual and open account, or upon a cause of action on which partial payments have been made, the cause of action shall be considered to have accrued at the time of the last item proved in the account. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos. 1999).

The statute of limitations for an action to collect the balance due on an open account is six years from the accrual date of the cause of action. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos. 1999).

When a plaintiff's interest and attorney's fee claim rests on a paragraph on the bottom left portion of each invoice and none of the invoices bears the defendant's signature, an issue of fact exists as to whether this pre-judgment interest and fee clause ever formed a material part of the open account agreement between the parties. Summary judgment is therefore denied on the issue. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 79 (Kos. 1999).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

Lessors are entitled to the unpaid rent from time lessees stopped paying rent until the time lessors terminated the lease, pursuant to the lease's terms, for lessees' failure to pay rent. Ueda v. Stephen, 9 FSM R. 195, 196 (Chk. S. Ct. Tr. 1999).

In determining whether the terms of a contract should be enforced, the court will consider

the parties' justified expectations, any forfeiture that would result if enforcement were denied, and any special public interest in the enforcement of the particular term. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

When matters outside the pleadings are presented to and not excluded by the court, the motion will be treated as one for summary judgment and disposed of as provided in Rule 56. Such consideration of extra-pleading material causes the "conversion" of the motion to dismiss to one for summary judgment, but parties have been allowed to go beyond the question of the complaint's formal sufficiency and introduce affidavits and other matters in conjunction with the Rule 12(b)(6) motion to ascertain whether there is any merit, to the claim, when the extra-pleading material offered by the plaintiffs, as respondents to the motion, tends merely to buttress the complaint's allegations. If the court finds that the complaint's allegations are sufficient to state a cause of action, it will not consider the extra-pleading material, and will treat the motion as titled, i.e., as a motion to dismiss, and not one for summary judgment, and denies the motion to dismiss. Adams v. Island Homes Constr., Inc., 9 FSM R. 530a, 530b-30c (Pon. 2000).

A plaintiff's claim for payment arises at the time that the payment became due because a cause of action arises when the right to bring suit on a claim is complete: the true test in determining when a claim arose is based upon when the plaintiff first could have maintained the action. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 556-57 (Pon. 2000).

When under the parties' contract, the defendant was to pay plaintiff within one year from the time that the defendant accepted the plaintiff's Master Plan and the Master Plan was accepted on October 3, 1994, the plaintiff's claim against defendant arose one year later on October 4, 1995. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 557 (Pon. 2000).

As a general proposition, an express contract and an implied contract for the same thing cannot exist at the same time. Where an express contract is in force, the law does not recognize an implied one. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

As a matter of law, the presence of an express written contract, which clearly sets forth the obligations of the parties, precludes a party from bringing a claim under quantum meruit. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

An agreement and promissory note that does not set out the exact amount of payments needed to make a debt current, would not make performance of that agreement impossible when the party assuming the payments could easily have calculated the amount of the payments he would have to make to bring the loan current. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 76 (Pon. 2001).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 194 (Kos. S. Ct. Tr. 2001).

Where no contract exists, the court may use its inherent equity power to fashion a remedy under equitable doctrines. The doctrine of promissory estoppel allows enforcement of promises that induce reliance. The doctrine of promissory estoppel, also referred to as detrimental reliance, is summarized as: A promise which the promisor should reasonably expect to induce

action on the part of the promisee, and which does induce such action, is binding if justice requires enforcement of the promise. The remedy for breach may be limited as justice requires. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

Under the doctrine of promissory estoppel, a person's reliance upon a promise may create rights and duties. The finding of detrimental reliance does not depend upon finding any agreement or consideration. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

Where no contract existed, a court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract. It requires a party to either return what has been received or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

A breach of contract and warranty claim that all defendants had warranted that the construction project would be a reasonably safe workplace will be dismissed when the contract does not contain such a warranty, and no other evidence supports the allegation that such an express warranty was made. Amayo v. MJ Co., 10 FSM R. 244, 249 (Pon. 2001).

A parol agreement inconsistent with a written agreement made contemporaneously therewith is void and unenforceable, unless it was omitted from the written contract by fraud, accident, or mistake. FSM Dev. Bank v. Arthur, 10 FSM R. 479, 480 (Pon. 2001).

Neither the FSM nor Kosrae have yet adopted a Uniform Commercial Code (UCC) to govern sales of goods, although the UCC has been adopted in virtually every U.S. jurisdiction as state law. Edwin v. True Value Store, 10 FSM R. 481, 485 (Kos. S. Ct. Tr. 2001).

When the attorney-client contract is at an end without liability for breach on either side, the attorney remains entitled to compensation according to the contract terms for the services performed to date. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 497 (Chk. 2002).

Contract provisions for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. In debt collection cases, the amount awarded for attorney's fees should not exceed 15 percent of the outstanding principal and interest. Jackson v. George, 10 FSM R. 523, 526 (Kos. S. Ct. Tr. 2002).

When there was no legal requirement for the lessor to offer insurance to the lessee in a car rental agreement, the lessor's failure to offer insurance to the lessee in a rental agreement does not serve as a defense to the damages assessed against the lessee for an accident. Jackson v. George, 10 FSM R. 523, 527 (Kos. S. Ct. Tr. 2002).

An attorney's fee must be reasonable, and the court must make such a finding. Therefore, contract provisions for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. In debt collection cases, the amount awarded for attorney's fees should not exceed 15 percent of the outstanding principal and interest. Jackson v. George, 10 FSM R. 531, 532-33 (Kos. S. Ct. Tr. 2002).

The Chuuk State Supreme Court is a court of general jurisdiction and has concurrent original jurisdiction to try all civil cases. As such, it may exercise, subject to the principle of forum non conveniens, jurisdiction over contract cases generally, regardless of where the contract was formed, unless exclusive jurisdiction for that particular contract resides in some other court. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 537 (Chk. S. Ct. Tr. 2002).

That a contract was formed in another jurisdiction does not deprive a court of jurisdiction over a dispute over or enforcement of that contract. It may, however, involve a choice of law problem – contract questions may need to be resolved by resort to the substantive law of the jurisdiction in which the contract was formed, but not necessarily by resort to that jurisdiction's courts. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 537-38 (Chk. S. Ct. Tr. 2002).

Neither Rule 68, nor any principle of contract law, requires an acceptance to be on a different piece of paper from the offer of judgment in order for it to be valid. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

When a settlement contract for landfill of Muraka was formed between the parties that was not dependent on the case's active status, the contract is still enforceable because the case's status (pending or dismissed) was not part of the agreement. Therefore, the defendant is still liable to the plaintiff because the case's dismissal did not affect the parties' contract or the court's order when the court's order was based upon the parties' agreement and not upon any trial on damages. James v. Lelu Town, 11 FSM R. 337, 339-40 (Kos. S. Ct. Tr. 2003).

When a construction contract did not require the plaintiff contractor to perform or pay for any landfilling equipment or landfill materials or to be responsible for payment to any sub-contractor for landfilling equipment or landfill materials and when there was no written Contract Change Order, executed by the parties, as required by General Condition # 1 of the construction contract regarding payment for landfilling equipment or landfill materials, the plaintiff contractor, pursuant of the construction contract's terms, is not responsible for payment of the landfilling equipment costs or the landfill material costs. Youngstrom v. Mongkeya, 11 FSM R. 550, 553 (Kos. S. Ct. Tr. 2003).

An experienced, certified trial counselor admitted to practice law in Kosrae is held to a higher standard regarding knowledge of contract requirements. He should have known that a valid, enforceable contract requires the material term of the cost. Youngstrom v. Mongkeya, 11 FSM R. 550, 554 (Kos. S. Ct. Tr. 2003).

The creation of laws relating to contracts is not identified in the Constitution as falling within the national government's powers. Rather, it is generally presumed to be a power of the state. Accordingly, state law determines the statute of limitations in a contract case. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

Pohnpei state law specifies limitation periods of two and twenty years for certain delineated causes of action and provides that all other actions – including contracts – must be commenced within six years after the cause of action accrues. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

Given that a cause of action accrues when a suit can be successfully maintained thereon, it

is indisputable that if the construction was in fact defective, a suit could have been maintained from the date that construction was completed. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

Under the Pohnpei statute of limitations, if anyone who is liable to any action fraudulently conceals the cause of action from the knowledge of the person entitled to bring it, the action may be commenced at any time within the times limited within the statute after the person who is entitled to bring the same shall discover or shall have had reasonable opportunity to discover that he has such cause of action, and not afterwards. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

If a plaintiff fraudulently conceals allegedly defective construction methods, the six-year limitations period does not begin to run until the date on which the defendant discovered or had a reasonable opportunity to discover the alleged defect. It is not appropriate for the court, at the juncture of a motion to dismiss, to rule on an essentially factual matter. The trial's purpose will be to determine whether the construction methods that are alleged were, in fact, utilized; whether those methods were improper; and if they were, at what point the defendant knew or should have known of them. Youngstrom v. NIH Corp., 12 FSM R. 75, 77-78 (Pon. 2003).

A promissory note and a security agreement are enforceable contractual agreements between the parties. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

When the argument that the defendants should not be bound in their personal capacities but that only a corporation should be bound by the agreement, contradicts the promissory note's plain meaning, as it is worded, and when the individuals, in their depositions, acknowledged that they read and signed the agreement, they should not be permitted to claim that they did not understand the clear terms. And when at the same time the individuals clearly intended to encumber their personal property and assets, not merely those of the corporation, based upon the promissory note's plain, unambiguous language, the plaintiff is entitled to summary judgment as to the affirmative defense of lack of capacity. Goyo Corp. v. Christian, 12 FSM R. 140, 148 (Pon. 2003).

An MOU that contains promises between two parties for the performance of mutual obligations is a legally binding, enforceable contract. Esau v. Malem Mun. Gov't, 12 FSM R. 433, 435 (Kos. S. Ct. Tr. 2004).

When the parties entered into an oral agreement, which was later reduced to writing, whereby the plaintiff leased his property to the defendant for a monthly rent and for repairs to be completed by defendant, it is an enforceable contract. Lonno v. Talley, 12 FSM R. 484, 486 (Kos. S. Ct. Tr. 2004).

Repeated, intentional instances of failure of a state to pay a judgment does not constitute a separate, constitutional claim for deprivation of property without due process where the original underlying claim is not constitutional in character, but is based on common law contract and when there is no constitutional claim that supports the judgment itself, nor a national statute applicable that implicates a "clear and substantial" national interest. Barrett v. Chuuk, 12 FSM R. 558, 561-62 (Chk. 2004).

When the plaintiffs allege two separate claims for the same damages in this suit and one sounds in contract and alleges a breach of a purchase agreement since part of the plaintiffs'

agreed share of the purchase price was not paid to them and the other claim sounds in tort and alleges that the defendant was negligent in wrongfully releasing the remaining balance to someone else without taking such precautionary measures that a reasonably prudent person would be expected to take as a holder of funds that plaintiffs were entitled to, the court will analyze the contract claim first and finding a breach of the purchase agreement, need not address the plaintiffs' negligence tort claims. Edgar v. Truk Trading Corp., 13 FSM R. 112, 117 (Chk. 2005).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. Livaie v. Weilbacher, 13 FSM R. 139, 143 (App. 2005).

The Pohnpei Development Leasehold Act says that every development lease must contain a covenant stating that the lessor shall have the rights of future benefit to the improvements placed on the land by or on behalf of the lessee and that, upon the lease's termination, existing improvements thereon shall become the property of the lessor thereof or his successor in interest without further cost or condition to be met by the lessor, the property's title holder or any successor in interest to said property. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 225 n.1 (Pon. 2005).

The term "charter party" is used in maritime law to designate the specialized form of contract for the hire of an entire ship, specified by name. "Charter party" is used synonymously with "charter." Three principal types are recognized: 1) under a time charter, the charterer engages for a fixed period of time a vessel, which remains manned and navigated by the vessel owner, to carry cargo wherever the charter instructs; 2) under a voyage charter, the charterer engages the vessel to carry goods only for a single voyage; and 3) under a demise, or bareboat charter, the charterer takes complete control of the vessel, mans it with his own crew, and is treated by law as its legal owner. Yap v. M/V Cecilia I, 13 FSM R. 403, 408 (Yap 2005).

A stipulated judgment is not a judicial determination or holding. Stipulated judgments, while they are judicial acts, also have the attributes of voluntarily-undertaken contracts. A stipulated judgment (also called a consent decree) although enforceable like any other judicial decree, is not a judicial determination of any litigated right. It may be defined as a contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction. Mailo v. Chuuk, 13 FSM R. 462, 467-68 (Chk. 2005).

A stipulated judgment is not a judicial determination, but is a contract between the parties entering into the stipulation. A consent decree or stipulated judgment does not constitute a resolution of parties' rights but is a mere recordation of their private agreement. Once a consent decree has been entered it is generally considered to be binding on the parties and it cannot be amended or varied without each party's consent. Mailo v. Chuuk, 13 FSM R. 462, 468 (Chk. 2005).

When it is necessary to construe a stipulated judgment or consent decree, courts resort to ordinary principles of contract interpretation. Mailo v. Chuuk, 13 FSM R. 462, 468 (Chk. 2005).

To say that a plaintiff's only remedy was to sue a defendant it had contracted with on a contract theory misses the point that it was the other defendant that was unjustly enriched, and to accept that the plaintiff's only remedy would be against long defunct enterprise defendant would confer upon the plaintiff an illusory remedy, and would confound its efforts to call to account the other defendant which actually received the money the plaintiff paid to the first

defendant. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 516 (App. 2005).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. DJ Store v. Joe, 14 FSM R. 83, 85 (Kos. S. Ct. Tr. 2006).

When a lot was leased for the purpose of supporting air transportation and a fence's construction supported that purpose and the Lease Agreement permitted removal of soil and rock as allowed by Articles 6 through 19 of a 1984 Lease (incorporated by reference in the 1999 lease agreement), but the plaintiff neglected to submit that into evidence although by 1999 Lease Agreement's terms, Articles 6 through 19 were to be attached to it, the plaintiff has not proven that the security fence's construction, needed for airport purposes, was barred by the 1999 Lease Agreement without further compensation. Uehara v. Chuuk, 14 FSM R. 221, 226 (Chk. 2006).

In deciding contract cases, the Chuuk State Supreme Court has generally followed common law contract principles except when a Chuuk statute or constitutional provision is applicable. Hartman v. Krum, 14 FSM R. 526, 530 (Chk. 2007).

When the plaintiff claims ownership of the parcels based on a contract with him as grantee to exchange land for building materials and money, but the evidence supports only that the plaintiff was to receive ownership of a portion of the land, not to the full parcels, and when the defendants' witness agreed that the plaintiff bought a portion of land that formerly belonged to them and had an agreement to extend the boundary of that land to a specific location, the plaintiff failed to prove that he had an enforceable contract to transfer ownership of both parcels to him. The evidence only shows he received the portion of the land and had an agreement to extend the boundary of that portion. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

When there is no enforceable contract, a court may use its inherent equity power to fashion a remedy under doctrines such as unjust enrichment or detrimental reliance. The doctrine of unjust enrichment is based on the idea that one person should not be unjustly enriched at the expense of another. It usually applies when a party has partly performed under a contract that is later void for mistake, fraud, illegality, impossibility, or some other reason, or where there is an implied contract. Generally, the person must either return what has been received under the contract or pay for it. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

When the court concludes that there was a contract between the plaintiff and the defendant, it will not address the plaintiff's alternative claims under unjust enrichment and promissory estoppel. George v. George, 15 FSM R. 270, 273 (Kos. S. Ct. Tr. 2007).

When the court concludes that there was a contract between the plaintiff and the defendant, it will do not address the plaintiff's alternative claims under unjust enrichment and promissory estoppel. George v. Albert, 15 FSM R. 323, 326 (Kos. S. Ct. Tr. 2007).

Where liability was conceded when the defendants listed as an undisputed fact in their pretrial briefs that they each had an "open/mutual account" with the plaintiff, but the extent of those liabilities were not conceded, trials on damages only, that is, only on the issue of each business ledger's accuracy, must be held. Albert v. George, 15 FSM R. 574, 581 (App. 2008).

Although fee suits appear from a distance to be basically suits to recover on a breach of

contract or, in some instances, to recover for the reasonable value of personal services, on closer inspection, the law is clear that lawyers suing clients are not treated as are merchants suing former trading partners. The procedural landscape is much narrower and more tightly regulated. The burden is on the lawyer to present detailed evidence of services actually rendered. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

There are two principal ways in which attorney-fee suits differ from other kinds of collection suits between commercial strangers. One is that the court, exercising its supervisory powers over lawyers, can reduce the amount charged, and the other is that the defenses available to clients are expanded. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

A sales contract provision that the buyer "agrees to pay all attorney's collection and court fees and an additional 33% of the principal amount and accrued interest in the event this invoice is referred to an attorney or collection agency for collection" appears, since it is included in the same sentence as "all attorney's collection and court fees," to not only constitute "double-dipping" or double recovery of attorney's fees, but it would also award attorney's fees greatly in excess of the 15% maximum usually allowed in collection cases, and will therefore not be awarded. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

Attorney's fees and costs are not recoverable when the plaintiff has not prevailed on any of his other claims since recovery of fees and costs is dependent upon the plaintiff successfully prevailing on some other claim. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 367 (Yap 2009).

Subject to proof at trial, a breach of an implied covenant of good faith claim may sound, at least in part, in contract rather than in tort. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009).

When the first question is whether there is a valid contract, the plaintiff has the burden of proving each element of that claim by a preponderance of evidence. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 645 (Kos. S. Ct. Tr. 2009).

When Shigeto's contracted with Piisemwar municipality for the purchase of motors and the state was not a party to that contract and when Shigeto's Store has not raised any other basis for liability other than set-off between the contracts it had with Ruo and Piisemwar municipalities, judgment will enter for Shigeto's Store and against only Piisemwar municipality. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197-98 (Chk. S. Ct. Tr. 2010).

U.S. common law decisions are an appropriate source of guidance for contract issues unresolved by statutes, FSM court decisions, or FSM custom and tradition. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 570 n.1 (Pon. 2011).

A subcontractor is one who is awarded a portion of an existing contract by a contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

An independent contractor is one who is entrusted to undertake a specific project but who is left free to do the assigned work and to choose the method for accomplishing it. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

The two terms – subcontractor and independent contractor – are not mutually exclusive. A subcontractor may or may not have an agency relationship with the contractor and that relationship does not control whether or not a subcontract has been struck. A party might be both an independent contractor and a subcontractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

A subcontractor's status, when compared to that of an employee, is ordinarily that of an independent contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

Subcontracting is merely "farming out" to others all or part of work contracted to be performed by the original contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 (Pon. 2011).

When an Hawaii-based architect undertook to perform part of the contractor's existing contract but his initial designs were never used and his later conceptual design work was not actually used since the final designs were prepared by an employee of the contractor and not by an independent contractor or other subcontractor, this transaction might better be described as an unsuccessful attempt to subcontract part of the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

Common law decisions from U.S. sources are an appropriate source of guidance for the FSM Supreme Court for contract and tort issues unresolved by statutes or decisions of constitutional courts within the FSM. Ihara v. Vitt, 18 FSM R. 516, 526 (Pon. 2013).

A plaintiff has a good chance of success on the merits when its contract with the State provided for "the first right to negotiate," and "mandatory and binding arbitration," since these clauses would be meaningless if they were not enforceable after the contract's expiration date. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

When the salvage contract between the salvor and the vessel owner did not require that an invoice be presented in order that the salvor be paid, but the contract between the salvor and the insurer, the party that everyone expected would make the actual payment, did require that an invoice be presented, payment was due after an invoice was presented. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

A bona fide purchaser for value is someone who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims. Mori v. Hasiguchi, 19 FSM R. 16, 21-22 (Chk. 2013).

As a general rule, in the absence of an agreement or stipulation to the contrary, a debt is payable at the place where the creditor resides, or at his place of business, if he has one, or wherever else he may be found; and ordinarily it is the duty of the debtor to seek the creditor for the purpose of making payment, provided the creditor is within the state of his residence when the payment is due. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 145 (App. 2013).

Where the obligor on a promissory note is to make his payments does not relate to a matter of vital importance or go to the contract's essence since the note provides a number of options

for place of payment, and since the obligor was not deprived of the benefits he expected to receive under the contract – his use of the bank's money (the loan) for a specified period of time. He knew he had an obligation to pay the bank and he knew (or should have known) where to pay and if he did not know it was his duty to find out where. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 145 (App. 2013).

As a matter of law, the presence of an express written contract, which clearly sets forth the parties' obligations, precludes a party from bringing a claim in equity under quantum meruit. Smith v. Nimea, 19 FSM R. 163, 172 (App. 2013).

A court will enforce a contract's unambiguous terms. Smith v. Nimea, 19 FSM R. 163, 172 (App. 2013).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. Harden v. Inek, 19 FSM R. 244, 249 (Pon. 2014).

A defendant's inability to pay does not eliminate the defendant's liability to pay. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

The duty of good faith and fair dealing is implied in the performance and enforcement of all contracts. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362 (Pon. 2014).

The court will consider United States decisions as an appropriate source of guidance in considering unresolved questions arising in the area of contracts, and, under 1 F.S.M.C. 203, the Restatements may be used when applying common law rules in the absence of written law. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476 (Pon. 2014).

A party is ordinarily entitled to rely on the notarized signature on an agreement when it sues on that agreement, but if the party knows before filing suit that the defendant claims not to have signed the agreement or to know anything about the agreement, the plaintiff cannot base his suit on the presumption arising from the notarized signature. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

A contract is a promise or set of promises for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 17 (Pon. 2016).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be an enforceable contract, there must be an offer, acceptance, consideration, and definite terms. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 17 (Pon. 2016).

Generally, an oral agreement is as enforceable as a written one. Reducing an agreement to writing, however, can assist the parties in assuring that all the necessary terms have been agreed to and are definite, or later assist a court in ascertaining what those terms were. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 n.3 (Pon. 2016).

A loan application is not a contract. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 169 (Pon. 2017).

Contracting parties are presumed to act for themselves. Therefore an intent to benefit a third person must be clearly expressed in the contract. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 175 (Pon. 2017).

A contract is a promise or set of promises for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 190 (Pon. 2017).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable, there must be an offer, acceptance, consideration and definite terms. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 191 (Pon. 2017).

A contract is a promise or set of promises for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. Hartman v. Henry, 22 FSM R. 292, 296 (Pon. 2019).

A contract is a promise between two parties for the future performance of mutual obligations. Hartman v. Henry, 22 FSM R. 292, 296 (Pon. 2019).

The obligation of contracts is generally limited to the parties making them. Hartman v. Henry, 22 FSM R. 292, 296 (Pon. 2019).

– Accord and Satisfaction

For there to be an accord and satisfaction, there must be an offer in full satisfaction of a debt accompanied by acts and declarations that amount to a condition that if the offer is accepted, it is in full satisfaction of the obligation. The condition must be such that the party to whom the offer is made is bound to understand that if it accepts the offer in full satisfaction, it does so subject to the condition imposed. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (I), 7 FSM R. 387, 389 (Pon. 1996).

An affirmative defense of accord and satisfaction negotiations being underway fails when no accord and satisfaction has been agreed to, in other words, when the negotiations were not successful. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 338 (Chk. 2009).

The necessary elements to establish accord and satisfaction are 1) a claim about whose amount there exists a good faith dispute between the parties; 2) an agreement between the parties that the payment is in full satisfaction of the (contested) obligation and 3) acceptance of the payment by creditor. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 276 (Pon. 2014).

Accord and satisfaction between the parties bars any further attempt to enforce claims on the obligations that had been satisfied. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 277 (Pon. 2014).

For there to be an accord and satisfaction, there must be an offer in full satisfaction of a debt, accompanied by acts and declarations that amount to a condition that if the offer is accepted, it is in full satisfaction of the obligation. Hairens v. Federated Shipping Co., 20 FSM R. 404, 409 (Pon. 2016).

Although release and accord and satisfaction are both defenses that are available against an action on a judgment, when they were mentioned as affirmative defenses in a defendant's answer, but were neither raised nor mentioned in her opposition to the plaintiff's summary judgment motion, these defenses are deemed waived or abandoned. FSM Dev. Bank v. Carl, 22 FSM R. 365, 376 (Pon. 2019).

– Account Stated

As a general rule a creditor may rely on its running account, produced in the normal course of it business, to establish a prima facie case, but in the face of contrary credible evidence, it is insufficient to sustain the creditor's burden of proof and each item, or each item not given credit for, must be proven. But the rule does not apply when to support its running account, the plaintiff introduced copies of the accounts sent to the defendant, its internal records of the account, the record of the calls that the defendant said made sense made during the first seven-month period, the testimony of its Yap accountant and of the chief of its division of collections, and when the defendant's own testimony contradicted the record she had prepared in advance of trial showing the calls she admitted making. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 464 (App. 2000).

An account stated is a species of contract action, in which the plaintiff must prove that the defendant agreed to pay a specific amount to the plaintiff. It is an agreement, based on prior transactions between the parties, that all terms of the account are true and that the balance struck is due and owing from one party to the other. An account stated is an agreement, expressed or implied, that an examination of the account between the parties has occurred, a statement of that account has been asserted, and accepted as correct. Saimon v. Wainit, 16 FSM R. 143, 146-47 (Chk. 2008).

The existence of an account stated need not be express and frequently is implied from the circumstances. For example, where a creditor renders a statement and the debtor fails to object in a reasonable time, the open account may be superseded by an account stated. Saimon v. Wainit, 16 FSM R. 143, 147 n.1 (Chk. 2008).

An attorney seeking to recover unpaid attorney fees on the theory of account stated must prove the reasonable value of the services rendered if the fee agreement was entered into during the course of the attorney-client relationship. This is because when the account stated is for legal services, there is a presumption of undue influence when entered between an attorney and client during their fiduciary relationship. The attorney has the burden of showing that the transaction was fair and regular and entered voluntarily by the client with full knowledge of the facts. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

By Pohnpei statute, in an action brought to recover the balance due upon a mutual and open account, or upon a cause of action upon which partial payments have been made, the cause of action is considered to have accrued at the time of the last item proved in the account. Bank of Hawaii v. Susaia, 19 FSM R. 66, 70 n.3 (Pon. 2013).

An account stated is a species of contract action, in which the plaintiff must prove that the defendant agreed to pay a specific amount to the plaintiff. It is an agreement, based on prior transactions between the parties, that all terms of the account are true and that the balance

struck is due and owing from one party to the other. An account stated is an agreement, expressed or implied, that an examination of the account between the parties has occurred, a statement of that account has been asserted, and accepted as correct. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 190 (Pon. 2017).

When there was no evidence produced by the plaintiff, other than the defendant's check to the plaintiff that was clearly for the defendant's loan to the plaintiff and not a partial payment to the plaintiff for the destruction of the plaintiff's vehicles, the plaintiff's claim for account stated is unsupported. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 190 (Pon. 2017).

– Assignment and Delegation

Liabilities arising from a contract are not assignable without the consent of the creditor, and the mere assumption of the debt by a third party is not sufficient to establish a novation of the original contract unless there is a clear assent by the creditor to the substitution of a new obligor. Black Micro Corp. v. Santos, 7 FSM R. 311, 314-15 (Pon. 1995).

When a person is liable for a business's debts because he is the sole proprietor of a business, the sale of the business to another who has agreed to assume the business's liabilities will not relieve him of liability if the creditor has not agreed to the assignment. Black Micro Corp. v. Santos, 7 FSM R. 311, 315 (Pon. 1995).

A party to a contract cannot relieve himself of the obligations which a contract imposed upon him merely by assigning the contract to a third person. Unless the obligee agrees otherwise, neither delegation of performance nor a contract to assume the duty made with the obligor by the person delegated discharges any duty or liability of the delegating obligor. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 74 (Pon. 2001).

Liabilities arising from a contract are not assignable without the consent of the creditor, and a third party's mere assumption of the debt is not sufficient to establish a novation of the original contract unless there is a clear assent by the creditor to the substitution of a new obligor. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 74 (Pon. 2001).

When a person is liable for a business' debts because he is the sole proprietor of a business, the sale of the business to another who has agreed to assume the business' liabilities will not relieve him of liability if the creditor has not agreed to the assignment. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 74 (Pon. 2001).

When a bank agreed to allow another to take on the obligations under a promissory note, but did not agree to allow the borrowers to be free from liability on that note once they had assigned their rights, and when the language of the assignment agreement and promissory note indicates that the parties (assignors and assignee) intended that the assignors would remain liable on the promissory note, the assignors remain liable, and if the assignors are in default on the note, the bank is entitled to summary judgment against the assignors based on their breach of the duty to pay as required. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 74 (Pon. 2001).

While the fact that as part of an assignment another agreed to assume all of a debtor's liabilities under a stipulated judgment may provide the debtor with recourse against the other, it does not affect the debtor's obligation to the creditor under the judgment and payment order.

Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

– Breach

A breach of contract which is material justifies a halt in performance under the contract by the injured party. Whether a breach is material is a question of fact depending on several factors, particularly where the breach deprives the injured party of the benefits of the contract. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 128 (Pon. 1991).

A breach of contract which is material justifies a halt in performance under the contract by the injured party. Whether a breach is material is a question of fact depending on several factors, particularly when the breach deprives the injured party of the benefits of the contract. O'Byrne v. George, 9 FSM R. 62, 65 (Kos. S. Ct. Tr. 1999).

When the defendant's estimate of the construction materials' cost was a material term in the parties' agreement and the plaintiff paid the defendant the total amount due for materials, the plaintiff's refusal to provide more funds for materials does not constitute a breach of the contract because the plaintiff did not have any obligation to pay defendant any additional sums for construction materials. Therefore the defendant breached his promise to provide all necessary construction materials for the sum the plaintiff paid him. O'Byrne v. George, 9 FSM R. 62, 65 (Kos. S. Ct. Tr. 1999).

A defendant who has completed substantial performance in constructing the plaintiff's house is entitled to payment for the second of three installments for labor and the plaintiff's failure to pay is a breach of her promise to pay the defendant the agreed amount for labor costs. O'Byrne v. George, 9 FSM R. 62, 65 (Kos. S. Ct. Tr. 1999).

When both parties have fulfilled their obligations under the contract, there is no breach of the contract by either party. Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

When one party fails to perform their promise, there is a breach of contract. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

Breach of contract claims against Pohnpei state have a two year statute of limitations. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 557 (Pon. 2000).

When estoppel serves as the basis for a plaintiff to file a breach of contract claim and that contract claim has been time barred, the plaintiff's estoppel claim is also barred. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 559 (Pon. 2000).

When the undisputed facts show that a party clearly entered into a legally binding agreement whereby he agreed and promised to make payments to the bank in exchange for purchasing a taxi service and when he breached it by failing to make the required payments, the court will grant summary judgment to the taxi service seller. The fact that the taxi service was losing money does not excuse the buyer from his responsibility. Nor does the fact that it might have been a bad investment. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 78 (Pon. 2001).

At trial, the plaintiff has the burden of proving each element of his breach of contract claim by a preponderance of the evidence. If he fails to do so, it is appropriate for the trial court to enter judgment against him. Tulensru v. Wakuk, 10 FSM R. 128, 132 (App. 2001).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a due process violation. Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001).

When the plaintiff paid the defendant $475 as consideration for the purchase of a washing machine and the defendant promised to sell a new, working washing machine to the plaintiff, who was not able to inspect the washing machine's working condition at the store because the washer was packaged in its original cardboard container, and when the plaintiff discovered that the washing machine did not work properly only after it was installed, the defendant breached the contract by failing to provide to the plaintiff a new, working washing machine because a new washing machine is expected to work properly to wash clothes. Edwin v. True Value Store, 10 FSM R. 481, 484-85 (Kos. S. Ct. Tr. 2001).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

When a plaintiff has a judgment based on a common law contract, and there is no FSM statute that affects ordinary contracts in a way that shows a substantial national interest in such matters, the law of contracts is generally one in which state law controls. A governmental entity's breach of a contract, without more, does not constitute a due process violation. Barrett v. Chuuk, 12 FSM R. 558, 561 (Chk. 2004).

When one party fails to perform his promise, there is a breach of contract. A breach of contract which is material justifies a halt in performance under the contract by the injured party. George v. Alik, 13 FSM R. 12, 15 (Kos. S. Ct. Tr. 2004).

When there was a binding purchase agreement between a land buyer and a clan land seller and the plaintiffs were intended beneficiaries of that contract and when that contract could only be modified by a consensus decision by the seller's clan members evidenced by the agreement of five or more of the six designated clan members but the purported modification did not contain five genuine signatures of the designated committee representatives, there was a breach of the purchase agreement entitling plaintiffs to damages. Edgar v. Truk Trading Corp., 13 FSM R. 112, 117-18 (Chk. 2005).

When one party fails to perform his promise, there is a breach of contract. Thus, when the plaintiff performed his promise to pay the defendant the amount of $10,000, but the defendant failed to perform her promise to transfer her right, title and interest in two parcels to the plaintiff, the defendant breached the contract with the plaintiff by her failure to perform. The defendant is liable to the plaintiff for breach of contract and the plaintiff is entitled to summary judgment on the issue of defendant's liability for breach of contract. Isaac v. Palik, 13 FSM R. 396, 400 (Kos. S. Ct. Tr. 2005).

Since, upon the execution of a valid and legal substituted agreement the original agreement merges into and is extinguished, and since failure to perform the substituted agreement will not revive the old agreement, a 1999 lease agreement that was extinguished by a 2001 land purchase agreement will not be revived by the state's breach of the land purchase agreement.

Uehara v. Chuuk, 14 FSM R. 221, 226 (Chk. 2006).

A land seller cannot claim a forfeiture and at the same time receive the purchase money. Accordingly, there can be no doubt that a vendor by receiving money when past due is precluded from availing himself of any right of forfeiture which has arisen because of the failure to pay on time. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

When an insurance agent's contract with the insurer contains language regarding the agent's duty to make certain that the premium checks were sent to the insurer, the agent is liable to the insurer for breach of contract when the agent failed to fulfill the contractual obligation to send the premium checks to the insurer's office in Kansas City. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 437-38 (Pon. 2009).

When the facts establish only two defendants had contracts with the plaintiff, the plaintiff's complaint alleging that all defendants breached a contract with the plaintiff will be dismissed with respect to all defendants except the two. Yoruw v. Ira, 16 FSM R. 464, 466 (Yap 2009).

A government's breach of a contract, without more, does not violate due process rights. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

When the plaintiffs suing their appellate attorney are seeking to recover damages in the amount they paid their attorney to handle their appeal and are not seeking to recover the amount of the land that was at issue in the appeal, the plaintiffs' claim is one for breach of contract and not legal malpractice. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

When the court is not looking at negligence in handling the case or the manner in which the brief was written as there was no brief written or submitted to the FSM Supreme Court appellate division and when the attorney did not guarantee a specific result, promise, warrant or specify an outcome in the appeals case, the case is a "do nothing" case where the promisor-attorney had promised to perform a certain activity, to represent the plaintiffs in handling of an appeal, and the failure to complete that action exposed the promisor-attorney to liability for breach of contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644-45 (Kos. S. Ct. Tr. 2009).

If a party fails to perform, then the contract is breached and damages may be awarded. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

A breach of contract which is material justifies a halt in performance under the contract by the injured party. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

When an attorney had promised to handle an appeal case for the plaintiffs and when the attorney failed to file a brief in the case resulting in the appeal's dismissal, the attorney, by his failure to file a brief, breached his contract with the plaintiffs. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

To succeed on a breach of contract claim, a plaintiff must show that the defendant breached the contract and that the breach was material. The elements of a breach of contract claim are: 1) a valid contract, 2) a material breach, and 3) resulting damages. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 570 (Pon. 2011).

The material breach of a contract justifies the injured party's halt of performance under the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 570 (Pon. 2011).

Not every departure from a contract's literal terms is sufficient to be deemed a material breach of a contract requirement, thereby allowing the non-breaching party to cease its performance and seek appropriate remedy. The standard of materiality for the purposes of deciding whether a contract was breached is necessarily imprecise and flexible. A breach is material when it relates to a matter of vital importance, or goes to the essence of the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 570 (Pon. 2011).

Whether a breach is material may be a question of fact depending on several factors, particularly when the breach deprives the injured party of the contract's benefits. In some cases, the determination of whether the breach is material is a mixed question of law and fact, but when the facts are undisputed, the determination of whether there has been a material non-compliance with a contract's terms is necessarily reduced to a question of law. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 570 (Pon. 2011).

At the summary judgment stage, the nonmovant plaintiff must show that it has admissible evidence of damages that were proximately caused by the contract breach. It does not need to prove the exact amount of damages or the extent of the damages. But it must show that it has admissible evidence that can. The time to do that is now, or never. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 (Pon. 2011).

Causation is an essential element of damages in a breach of contract action; and, as in tort, a plaintiff must prove that a defendant's breach directly and proximately caused his or her damages. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

Even if a contract breach causes no loss or if the amount of loss is not proved with sufficient certainty, the injured party can recover as nominal damages a small sum, commonly six cents or a dollar, fixed without regard to the amount of loss. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

When a subcontracting prohibition was deemed an important public policy and when, to avoid the risk of proving actual damages or being awarded nominal damages, the FSM could have included in the contract a liquidated damages provision for a breach of that prohibition but did not, the contractor's breach of the subcontracting ban could, even if there were no direct monetary damages, entitle the FSM to terminate the contract and to nominal damages and could stand as a possible defense to a breach-of-contract counterclaim. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

A claim that a design contractor used the wrong coordinate system for a road survey work seems more like, or as much a professional malpractice claim as a breach of contract claim. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 577 n.9 (Pon. 2011).

Ordinarily in a design contract or in a construction contract, it is expected that from time to time the contractor may be asked to re-do work that has not met the contract's specifications, that is, to cure any defects, especially when a contract paragraph provides that the FSM is not obligated to pay until an assigned task has been satisfactorily completed, that is, the FSM was expected to tell the contractor to do the work over until the FSM was satisfied. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 578 n.10 (Pon. 2011).

It is difficult to see how the actions of a non-party, albeit a contract beneficiary, can be construed as a material breach of the contract by one of the two contracting parties. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 578 (Pon. 2011).

Being put in a politically awkward situation does not constitute a breach of contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 578 (Pon. 2011).

When a contract provision unequivocally authorizes a party's involvement in Asian Development Bank development projects since the ADB is a foreign donor organization and when there is no contractual provision requiring the party to contact foreign donor organizations only through the FSM diplomatic channels or requiring any particular procedure at all, the party's direct contact with the ADB may have caused puzzlement and delay by the ADB and become politically awkward for the FSM, but it was not a breach of the contract between the party and the FSM. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 579 (Pon. 2011).

When the parties' contract creates the deadlines, the tardy submission of reports, except in the most egregious cases, may be less professional malpractice than a contract breach, although even then the breach might not be material. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 582 n.16 (Pon. 2011).

When the court has nothing before it from which it can determine whether any delayed payment was made within a reasonable time, it must deny summary judgment on the claim that the contract was breached by untimely payments. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 588 (Pon. 2011).

When the court has granted the movant summary judgment on only some of the seven grounds that the nonmovant asserted were grounds for termination of the contract for cause but that the movant asserted were pretextual, the court must deny the movant summary judgment on its counterclaim that the termination was a breach of contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 590 (Pon. 2011).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a civil rights or due process violation. Stephen v. Chuuk, 18 FSM R. 22, 25 (Chk. 2011).

When the contract clearly contemplates that the insurer's Pohnpei agents might, even in the absence of an administrative agreement, receive premium payments other than the first policy payment and when the agents' contractual obligation is clearly spelled out that the agents must immediately remit to the insurer, all money received or collected on its behalf, and that such money will be considered as the insurer's funds held in trust by the agents, the agents obviously breached this contract provision by cashing the insurer's premium checks on Pohnpei instead of immediately remitting to the insurer's home office those checks that they had received on its behalf. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 354 (App. 2012).

When a breach of contract cause of action arose on Pohnpei, Pohnpei's statute of limitations should be used. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 354 (App. 2012).

When the petitioners' breach-of-contract liability is based solely on the breach of their

contractual obligation to immediately remit to the appellee all money received or collected on its behalf and when it is undisputed that they did not immediately remit to the appellee all money received on its behalf, the petitioners would still be liable to the appellee on its breach-of-contract cause of action and the judgment would remain unaltered. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

To succeed on a breach of contract claim, a plaintiff must show: 1) an express, valid contract; 2) a material breach of that contract; and 3) resulting damages. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

The standard of materiality for the purposes of deciding whether a contract was breached is necessarily imprecise and flexible. A breach is material when it relates to a matter of vital importance, or goes to the contract's essence. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

The salvor's failure to obtain an oil/water separator and to use it to process the slops was a material breach of the salvage contract when the acquisition of an oil/water separator and its use to separate the oil from the slops and return it to the vessel was a matter of vital importance the went to the salvage contract's essence; when an essential element of any modern salvage contract is the protection of the marine environment; and when the largest component of the contract price was for processing the slops. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

When the only component of a salvage contract that the salvor did not satisfactorily complete was the slops processing, the salvor's material breach of failing to obtain and use an oil/water separator does not excuse performance – payment – for the rest of the salvage contract components. Nor does it excuse performance (payment) for the work that the salvor was asked to do, and which it agreed to do, that was outside the salvage contract's scope of work, but it does excuse payment for the storage of the slops since that storage would have been unnecessary if the salvor had obtained and used an oil/water separator. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

Only a breach which is material, justifies a halt in performance by the injured party. A material breach is a question of fact which relies on several factors, but most particularly on whether the breach deprives the injured party of the contract's benefits. Bank of Hawaii v. Susaia, 19 FSM R. 66, 71 (Pon. 2013).

Since the making payments at the Pohnpei branch bank office was not a material part of loan agreement and since the bank provided a means so that loan payments and other services might still be made locally, the bank did not deprive the borrower of any benefit under the promissory note and, since the borrower provided no evidence showing that he did not know where or how to continue to make the required loan payments, he did not show that the bank's conduct rendered his performance under the contract difficult or impossible. Bank of Hawaii v. Susaia, 19 FSM R. 66, 71-72 (Pon. 2013).

A bank did not breach a material provision of the contract when the bank notified the borrower of the bank branch's closure and the borrower knew of alternative agents and locations of making payments due on the loan. Bank of Hawaii v. Susaia, 19 FSM R. 66, 72 (Pon. 2013).

Issues of whether an act was a material breach of a contract can be a mixed question of law and fact. An appellate court will review questions of law de novo and will review a trial court's factual determinations under a clearly erroneous standard. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

Not every departure from a contract's literal terms can be deemed a material breach of the contract thereby allowing the non-breaching party to cease its performance and seek an appropriate remedy. The standard of materiality for the purposes of deciding whether a contract was breached is necessarily imprecise and flexible. A breach is material when it relates to a matter of vital importance or goes to the contract's essence. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

Whether a breach is material may be a question of fact depending on several factors, particularly when the breach deprives the injured party of the contract's benefits. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

When a promissory note, by its express terms, did not require the obligor to pay at the Pohnpei branch office but stated that payments were to be made "to our branch address above, or at any of our other branches" and the "branch address above" was "PO BOX 280, KOLONIA, POHNPEI FM 96941," under the note's terms, payment at any branch office will do. When it is undisputed that the bank still had an office on Pohnpei, the bank cannot have breached its contract by moving its office to another location on Pohnpei. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

A bank does not breach its agreement with a borrower by closing its retail branch office on Pohnpei, and if it did it was not a material breach excusing performance. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 146 (App. 2013).

The statute of limitations period for a breach of contract claim against the State of Chuuk is six years. Eot Municipality v. Elimo, 19 FSM R. 290, 294 (Chk. 2014).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

The insurer did not breach an insurance policy's terms when it denied coverage because the dependent was not a covered family member since, although she was under 25, she had not been enrolled as a full time student in a post-secondary institution of higher learning for five calendar months or more. Johnny v. Occidental Life Ins., 19 FSM R. 350, 358 (Pon. 2014).

Summary judgment cannot be granted on a breach of contract claim when whether the plaintiff's termination was "reasonable" is a material issue of fact in dispute since the employment contract required the plaintiff to perform to the government's reasonable satisfaction. Zacchini v. Hainrick, 19 FSM R. 403, 410-11 (Pon. 2014).

The defendant did not breach the contracts when it is clear that the parties' contracts required only that the defendant undertake reasonable efforts to repair the plaintiff's vehicle, but

did not require the defendant to guarantee success. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476 (Pon. 2014).

The defendant did not breach the contracts since the repairs performed by the defendant were completed within a reasonable time and since the price charged by the defendant was a reasonable price. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476-77 (Pon. 2014).

When the $250 additional labor charge constituted the reasonable charge demanded by the defendant as compensation for work performed under valid contracts with the plaintiff, the plaintiff's claim for breach of contract must fail. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 477 (Pon. 2014).

Whether a breach of contract has occurred is generally not a question of law but is rather a factual question, but when the facts are undisputed, the determination of whether there has been a material non-compliance with a contract's terms is necessarily reduced to a question of law. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

When an owner has clearly breached a construction contract by not paying for the change orders within a reasonable time, that breach excuses the builder's breach of not completing the further change orders requested by the owner. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 181 (Pon. 2017).

For a breach of contract action, the claimant must identify the contractual obligations of each party. Fuji Enterprises v. Jacob, 21 FSM R. 355, 365 (App. 2017).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For a promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for), and when one party fails to perform their promise, there is a breach of contract. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 597 (Pon. 2018).

A material breach of contract justifies the injured party's halt of performance under the contract. Whether a breach is material is a question of fact depending on several factors, particularly where the breach deprives the injured party of the contract's benefits. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 597 (Pon. 2018).

When the insurer's denial of insurance benefits was lawful, the insured does not have a breach of contract claim. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 598 (Pon. 2018).

When the FSM did not (and, because of separation of powers issues, probably could not) promise a defendant that all record of the matter would be completely expunged (presumably ordered sealed), but promised to support the defendant's expungement petition, and when the FSM did not breach that plea agreement promise, the defendant is not entitled to an expungement as specific performance (or to any other remedy) for his breach of contract claim. FSM v. Iriarte, 22 FSM R. 271, 275 (Pon. 2019).

A corporation is an artificial, juridical person separate from its owners and is thus a separate party. Thus, when a corporation enters into a contract under its name, and the contract is

executed for the corporation "by" an individual, that individual, members of the corporate board, and employees of the corporation are not liable for any breach, absent unjust or fraudulent behavior. Hartman v. Henry, 22 FSM R. 292, 296 (Pon. 2019).

A breach of contract claim (or an alternative quantum meruit and quantum valebant claim) does not involve the deprivation of preexisting property or the deprivation of statutorily vested property rights, and most certainly does not involve physical injury or deprivation of liberty. Sonden v. Pohnpei, 22 FSM R. 465, 467 (Pon. 2020).

Pohnpei's nonpayment on a contract claim did not deprive the plaintiff of preexisting property or of statutorily vested property rights because his right to payment has not yet been determined and certainly was not protected and had not vested, and not only does the plaintiff not have a protected right, but he also does not allege that Pohnpei government officials had acted to deprive him of the right, and that these officials acted pursuant to governmental policy or custom, or were responsible for final policy making. Sonden v. Pohnpei, 22 FSM R. 465, 467 (Pon. 2020).

Previous court decisions have uniformly held that a governmental entity's breach of contract, without more, does not constitute a due process or a civil rights violation. Sonden v. Pohnpei, 22 FSM R. 465, 467 (Pon. 2020).

– Breach – Waiver

When, six months after the deadline for the state to either pay the plaintiff the balance of the purchase price or to deed the land back to the plaintiff, the state, having done neither, tendered to the plaintiff, and she accepted, a further payment of $24,787.50, by accepting this payment, the plaintiff is estopped from asserting that the land be deeded back to her because she has waived the breach and thus her right to enforce the land purchase agreement's "deed back" clause. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

The general rule is that when the contracting party, with knowledge of the breach of the other party, receives money in the performance of the contract, he will be held to have waived the breach. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

If the land vendor receives a partial payment of an amount past due, he is precluded from immediately asserting a forfeiture of the contract for default in payment, and a land seller, who long after all purchase payments have become due accepts a payment, that seller has waived his right to declare a forfeiture as of the time of payment. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

When a fuel retailer seeks to be reimbursed for the value of gasoline from a leaky tank and to have its supplier perform or to bear the cost for all the environmental remediation work required by the Yap EPA before his service station can reopen and when these are claims that, under the supply contract's terms, the retailer waived by his admitted failure to perform the duties – to inspect the tanks daily for water accumulation, to record the volume of fuel in each tank, to keep a daily log of fuel inventory, and to reconcile daily the measured inventory with the meter readings – contractually required of him, the supplier is entitled to summary judgment on the claims for environmental remediation and for lost product. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 366 (Yap 2009).

Although the written contract required the plaintiffs to give the defendant a non-refundable retainer fee of $5,000, the defendant waived this requirement when he only required $500, altering the contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 647 (Kos. S. Ct. Tr. 2009).

When the contract itself permitted waivers of the subcontracting prohibition only by the FSM's "prior written consent" and then only within the FSM's discretion and "only in exceptional cases," the prohibition was of vital importance to the contract and went to the contract's essence so that a breach of this prohibition is likely a material breach. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 (Pon. 2011).

When the FSM could have terminated GMP by written notice to GMP if, after notice and a hearing, the contracting officer found that GMP or its agent or representative had offered or given gratuities to any FSM officer or employee, but when the FSM never invoked this contractual procedure or gave notice or held a hearing, the FSM has waived any claim that it can use this alleged breach of contract to lawfully terminate the contract. Since the FSM failed to follow the contractual administrative procedure for termination when a gratuity allegation is made, GMP is entitled to summary judgment on the FSM's breach of contract claim based on allegations that GMP offered gratuities. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 574-75 (Pon. 2011).

Where, under a construction contract, work is accepted with knowledge that it has not been done according to the contract, or under such circumstances that knowledge of its imperfect performance may be imputed, the acceptance will generally be deemed a waiver of the defective performance. But this rule does not apply to latent defects. The rule is not any different under a construction design contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 577 (Pon. 2011).

Since the FSM did not have to accept the 35% design and could have withheld payment and insisted that GMP first conduct soil tests on the actual sites but did not, it cannot contend that, by its actions, it did not intend to waive the soil testing requirements that one time and for the Utwe and Lelu school projects when the FSM waived in writing the pre-35% design soil testing requirements for just those projects. It thus cannot claim damages for breach because the pre-design soil tests were not done. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 577 (Pon. 2011).

Although the argument that acceptance of the 100% design and payment for it is waiver of any claims that the wastewater plant design was defective and that any alleged "defects" were not latent but were obvious and patent and known beforehand could prevail on a breach of contract claim, when this is a professional malpractice tort claim, the question is not whether the contractor breached the contract's terms but whether it violated its duty of reasonable care towards its client. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 581 (Pon. 2011).

A subordinate and separable part of the contract may be waived or modified by the parties without a cancellation of the whole contract. Harden v. Inek, 19 FSM R. 244, 250 (Pon. 2014).

Strict and full performance of a contract by one party may be waived by the other party. Harden v. Inek, 19 FSM R. 244, 251 (Pon. 2014).

Waiver must be made intentionally and with knowledge of the circumstances, and can be made expressly or may be implied from the acts of the parties. Harden v. Inek, 19 FSM R. 244,

251 (Pon. 2014).

Waiver is sometimes proved by a party's express declaration or by his undisputed acts or language so inconsistent with a purpose to stand on the contract provisions as to leave no opportunity for a reasonable inference to the contrary, in which case the waiver is established as a matter of law; but more often it is sought to be proved by various species of acts and conduct permitting different inferences and not directly, unmistakably or unequivocally establishing it, in which case it is a question for the finder of fact. Harden v. Inek, 19 FSM R. 244, 251 (Pon. 2014).

A party that has waived enforcement of a certain provision may renew the obligation by giving the other party notice of its intention to subsequently enforce the provision. Since a waiver is not based on consideration, it can be recalled at any time, subject to estoppel limitations. A plaintiff would be estopped from reinstating a contract provision if the defendants could show detrimental reliance on the waiver. Harden v. Inek, 19 FSM R. 244, 251 (Pon. 2014).

When the defendants did not present any evidence of detrimental reliance on the plaintiffs' waiver, the court must conclude that the plaintiffs had the right to reinstate the provisions of section 3 of the lease upon notice to the defendants, and when such notice was provided to the defendants in the form of a letter, the defendants, on receipt of that letter, were obligated to comply with the requirements of section 3 of the lease within a reasonable time. As the defendants have failed to comply with those provisions, they have breached that contract and the plaintiffs are entitled to relief from the court. Harden v. Inek, 19 FSM R. 244, 251 (Pon. 2014).

Since a waiver is not based on consideration, it can be recalled at any time, subject to estoppel limitations. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

When the defendants must show detrimental reliance on the plaintiffs' waiver of exclusive possession of a town lot in order to establish the affirmative defense of equitable estoppel, the defendants' argument that burying a family member on the property in 2002 constituted detrimental reliance must fail because burying the family member on the property did not change the defendants' position to their detriment, and they fail to demonstrate that they buried him in reliance on the waiver from the plaintiffs. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

Injury, detriment, or prejudice to the party claiming the estoppel is one of the essential elements of an equitable estoppel. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

The defendants' decision to have additional children did not constitute detrimental reliance on the plaintiffs' waiver when no evidence was presented at trial that would allow the court to conclude that the defendants' family planning decisions were influenced in the slightest degree by reliance on the plaintiffs' waiver. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

– Conditions

A "conditional sale" is one in which the vendee receives possession of and the right to use the goods sold, but transfer of the title depends upon the performance of a condition or the occurrence of a contingency, which is usually full payment of the purchase price. Phillip v.

Aldis, 3 FSM R. 33, 37 (Pon. S. Ct. Tr. 1987).

The FSM Supreme Court will not recognize conditions to a contract where they are not created by its express terms or by clear or necessary implication, and where no reasonable construction of the agreement when considered in light of circumstances surrounding its execution points to any intention of the parties to create conditions. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 10-11 (Pon. 1989).

In a contract for installment shipments of goods where the parties' agreement was not in writing and there was no oral agreement or other manifestation of intent that the buyer's obligation to accept shipments was to be conditioned upon each prior shipment having arrived in timely fashion and in good condition, a nonoccurrence of the event or act is a breach of promise which gives rise to a claim for damages, rather than a failure of a condition to performance, which frees the other party from any further duty to perform the promised acts. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 127 (Pon. 1991).

Where time of delivery was not of the essence of the contract and the contract was flexible in the agreed arrangements for delivery, a delivery of a bad container should not be seen as a failure of a condition to further obligations under the contract. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 127 (Pon. 1991).

Requisite clarity to establish a reference in a contract as a condition precedent may be created through plain and unambiguous language or necessary implication manifested by the contract itself. Kihara v. Nanpei, 5 FSM R. 342, 344 (Pon. 1992).

Conditions to contractual obligations are not favored in the law because they tend to have the effect of creating forfeitures. Kihara v. Nanpei, 5 FSM R. 342, 344 (Pon. 1992).

Where the parties to a proposed contract have agreed that the contract is not to be effective or binding until certain conditions are performed or occur, no binding contract will arise until the conditions specified have occurred or been performed. Etscheit v. Adams, 6 FSM R. 365, 388 (Pon. 1994).

Although conditions to contractual obligations are not favored in the law because they tend to have the effect of creating forfeitures, parties may create a condition to a contract through plain and unambiguous language, through necessary implication manifested by the contract itself, or in some other way that makes their intent to create a condition clear. In the absence of some such showing, courts find promises, not conditions to further performances. Adams v. Etscheit, 6 FSM R. 580, 582-83 (App. 1994).

Conditions precedent to a contract are not favored and the courts will not construe stipulations to be such unless required to do so by plain, unambiguous language or by necessary implication. Adams v. Etscheit, 6 FSM R. 580, 583 (App. 1994).

Because conditions precedent are disfavored at law and require plain and unambiguous language to establish, when differing inferences create an issue of fact, summary judgment that a condition precedent exists is inappropriate. Adams v. Etscheit, 6 FSM R. 580, 584 (App. 1994).

A contention that a contract provision is ambiguous defeats a contention that it creates a

condition precedent. Conditions precedent to contractual obligations are not favored in the law and courts will not construe terms to be such unless required to do so by plain and unambiguous language or by necessary implication. Nanpei v. Kihara, 7 FSM R. 319, 324 (App. 1995).

When faced with an allegation that an ambiguous contract provision creates a condition, courts prefer either an interpretation that imposes on a party a duty to see that an event occurs, rather than one that makes the other party's duty conditional on the occurrence of the event, or an interpretation that will reduce an obligee's risk of forfeiture if the event does not occur. Nanpei v. Kihara, 7 FSM R. 319, 324 (App. 1995).

Contractual terms that provide that payment is due "when" or "not until" a stated event occurs are generally not considered to be conditions, but merely a means of measuring time, and if the stated event does not occur then the payment is nevertheless due after a reasonable time. Nanpei v. Kihara, 7 FSM R. 319, 324 (App. 1995).

The existence of quitclaim deeds is evidence that the parties had fulfilled their respective agreed conditions precedent to the transfer of land. Nahnken of Nett v. United States, 7 FSM R. 581, 588-89 (App. 1996).

The time for completion of a house is not a material term of the parties' agreement when nothing in the parties' oral agreement indicated that the "time was of the essence" for completion of the house within two months and when the plaintiff pointed out no particular day of completion as being crucial. Therefore, late completion of the house should not be seen as a failure of a condition to further obligations under the contract. O'Byrne v. George, 9 FSM R. 62, 64 (Kos. S. Ct. Tr. 1999).

The filing of the appeal over land was not a breach of the defendant's condition and was not a breach of a customary settlement when the appeal was filed before the customary settlement and condition were made; and when the appeal was not decided in the defendant's favor, the defendant's condition regarding his promised grant of a portion of land was satisfied and the customary settlement and the defendant's promise were therefore enforceable. Robert v. Semuda, 11 FSM R. 165, 168 (Kos. S. Ct. Tr. 2002).

Although conditions to contractual obligations are not favored in the law because they tend to have the effect of creating forfeitures, parties may create a condition to a contract through plain and unambiguous language, through necessary implication manifested by the contract itself, or in some other way that makes their intent to create a condition clear. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 555 (Chk. 2005).

Forfeitures are abhorrent to the law, and are construed strictly. Because the law abhors a forfeiture, the language effecting defeasance in a deed must clearly spell that fact out. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

When the land purchase agreement's forfeiture clause clearly states that title was to be returned to the seller if she was not paid in full by November 30, 2002, but that clause does not state that both the title and possession of the land were to be returned to the original land owner in the event of non-payment, the court cannot order the state to give possession of the lot to the original land owner, because contracts involving a forfeiture cannot be extended beyond the strict and literal meaning of the words used. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk.

2006).

A land seller cannot claim a forfeiture and at the same time receive the purchase money. Accordingly, there can be no doubt that a vendor by receiving money when past due is precluded from availing himself of any right of forfeiture which has arisen because of the failure to pay on time. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

If the land vendor receives a partial payment of an amount past due, he is precluded from immediately asserting a forfeiture of the contract for default in payment, and a land seller, who long after all purchase payments have become due accepts a payment, that seller has waived his right to declare a forfeiture as of the time of payment. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

When the plaintiff is not entitled to the state's forfeiture of the lot, she is entitled to damages. Her damages for the state's breach of the land purchase agreement are the unpaid balance of the purchase price, and if this is not paid within a reasonable time, her right to claim forfeiture of title, which was suspended by her acceptance of a late partial payment, may be revived. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

Contractual terms that provide that payment is due upon the occurrence of a stated event are generally not considered to be conditions indicating a forfeiture or a breach of contract but are merely a means of measuring time, and, if time is not of the essence of the contract, then the payment is due after a reasonable time, and what constitutes a reasonable time depends on the attendant circumstances in each case and is often based on factual determinations. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 587-88 (Pon. 2011).

Contractual terms that provide that payment is due upon the occurrence of a stated event are generally not considered to be conditions indicating a forfeiture or a material breach of contract but are merely a means of measuring time, and, if time is not of the essence of the contract, then the payment is due after a reasonable time, and what constitutes a reasonable time depends on the attendant circumstances in each case and is often based on factual determinations. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

When the parties to a proposed contract have agreed that the contract is not to be effective or binding until certain conditions are performed or occur, no binding contract will arise until the conditions specified have occurred or been performed. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 224 (Pon. 2015).

– Consideration

No obligation may arise from an agreement that lacks consideration, since consideration is required for a valid contract to exist. Therefore, the termination of a contract that lacks consideration does not violate the prohibition against impairment of the obligations of contracts. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 341 (Chk. S. Ct. Tr. 1995).

The contract law pre-existing duty rule is that a promise to perform an act which is already required supplies no consideration for the return promise or performance. On that basis, a contract may fail for lack of consideration. But a contract provision cannot be examined in isolation to determine the sufficiency of consideration as a whole. Therefore the rule does not

apply where there is sufficient other consideration flowing between the parties to support an agreement and all of its provisions. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 175 (Pon. 1997).

When there was nothing of value exchanged for a promise to allow a parcel of land to be used to build a house, there was no consideration for the promise. Since consideration for a promise is required for a promise to be enforceable as a contract, when there was no consideration given in exchange for the promise, the parties did not have an enforceable contract. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 194 (Kos. S. Ct. Tr. 2001).

Under the doctrine of promissory estoppel, a person's reliance upon a promise may create rights and duties. The finding of detrimental reliance does not depend upon finding any agreement or consideration. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

A pre-existing debt establishes sufficient consideration to support the formation of a contract. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

Courts do not generally inquire into the sufficiency of consideration offered pursuant to a promissory note – parties to an agreement are free to attach value to whatever is exchanged. Goyo Corp. v. Christian, 12 FSM R. 140, 148 (Pon. 2003).

When the plaintiff had a legal right to initiate a lawsuit against a corporate defendant for its unpaid debts at the time that the promissory note was executed in 1994, but instead of initiating a lawsuit, it agreed to certain terms of payment, and required individuals to personally guarantee that payment would be made, each of the parties gained something in the execution of the promissory note and security agreement. There was thus consideration exchanged by the parties when they entered into these agreements. Goyo Corp. v. Christian, 12 FSM R. 140, 149 (Pon. 2003).

Like other contracts, contracts of guaranty must be supported by consideration, and a guaranty will not be enforced unless the promise is supported by consideration. However, if the promise of the guarantor is shown to have been given as part of a transaction or arrangement which created the guaranteed debt or obligation, the promise is supported by the same consideration which supports the principal transaction. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

When a guaranty was given as a part of the same transaction by which the debt to the bank was created, no independent consideration was necessary. The guaranty was supported by the same consideration that supported the transaction between the debtor and the bank. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

To be enforceable, a guaranty, like other contracts, must be supported by consideration. However, if a guaranty is made as part of a transaction or arrangement which created the guaranteed debt or obligation, it is not essential to a recovery on the promise of guaranty that the promise shall have been supported by a consideration other than that of the principal debt. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 397 (App. 2006).

Courts generally do not inquire into the sufficiency of consideration. Mori v. Hasiguchi, 19

FSM R. 16, 22 n.4 (Chk. 2013).

Good and valuable consideration is an element in proving that a buyer was a bona fide purchaser for value. Good and valuable consideration is not the equivalent of fair market value; nor is it the equivalent of book value. Good and valuable consideration is often much lower than either of these values. Mori v. Hasiguchi, 19 FSM R. 222, 226 (Chk. 2013).

If a guaranty is made as part of a transaction or arrangement which created the guaranteed debt or obligation, it is not essential to a recovery on the promise of guaranty that the promise was supported by a consideration other than that of the principal debt. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

When security, such as a guaranty, is given as part of the same transaction that created the debt to the bank, no further or independent consideration is needed. The loan itself is sufficient consideration. This principle holds true when a mortgage is the security given for a loan to a third party. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

The consideration for a mortgage may consist of a loan to a third person. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

It is not essential to a mortgage's validity that the mortgagor should have received the consideration. It is sufficient that the mortgagee parted with consideration. The consideration need not go directly from the mortgagee to the mortgagor. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

– Damages

When a car rental agreement provides that the lessee shall pay to the lessor all costs and expenses incurred as a result of loss or damage to the rented vehicle regardless of fault, then the lessor has a duty to accept the damaged vehicle and simply charge the repair costs to the lessee. Phillip v. Aldis, 3 FSM R. 33, 36 (Pon. S. Ct. Tr. 1987).

The measure of damages is the difference between the agreed price buyer was to have paid and the general market price at which seller could sell to another buyer. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 128 (Pon. 1991).

The equitable remedy of specific performance is one where the court orders a breaching party to do that which he has agreed to do, thereby rendering the non-breaching party the exact benefit which he expected. The remedy is available when money damages are inadequate compensation for the plaintiff – when damages cannot be computed or when a substitute cannot be purchased. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 126 (Pon. 1993).

Where a plaintiff makes damage claims in tort as well damage claims based on contract, contract clauses limiting the contract damages do not apply. McGillivray v. Bank of the FSM (I), 6 FSM R. 404, 409 (Pon. 1994).

The trial court has wide discretion in determining the amount of damages in a contract case. In a breach of contract case the non-breaching party is entitled to damages that will put the party in the position he or she would have been in if not for the breach. The plaintiff may be

compensated for the injuries flowing from the breach either by awarding compensation for lost profits, or by awarding compensation for the expenditures made in reliance on the contract. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM R. 502, 505 (Pon. 1994).

The plaintiff has the burden of proving the damages, but once a prima facie showing of damages has been made it is the defendant's burden to prove that the injuries did not result from his omission. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM R. 502, 505 (Pon. 1994).

The right to recover expenditures made in reliance on the contract has limitations. If the plaintiff would have suffered the same losses even if the defendant had performed under the contract, then the plaintiff cannot recover them, since recovery would put the plaintiff in a better position than he would have been in had the defendant performed. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM R. 502, 505 (Pon. 1994).

In order to be recoverable, contract damages must be a proximate consequence of the defendant's breach. A proximate consequence is one that flows from the act complained of, unbroken by any independent cause. Thus, where the loss would have occurred even if the defendant had not breached the contract reliance damages are not recoverable. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM R. 502, 506 (Pon. 1994).

The measure of damages for the breach of an agreement to procure insurance is the amount of loss that would have been subject to indemnification by the insurer had the insurance been properly obtained. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

If a plaintiff cannot be compensated for the value it expected from a breached contract, it might then be compensated for its reliance expenditures and placed in as good a position as it would have been if it had not entered into the contract. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 623 (App. 1996).

Generally, interest is usually included as an element of damages as a matter of right when a debtor knows precisely what he is to pay and when he is to pay it. The complaining party has been deprived of funds to which he was entitled by virtue of the contract, the defaulting party knew the exact amount and terms of the debt, and the goal of compensation requires that the complainant be compensated for the loss of use of those funds. This compensation is made in the form of interest. In the absence of statute, an award of prejudgment interest is in the discretion of the court. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392-93 (Kos. 1998).

Pre-judgment interest at the statutory, judgment rate of 9% is appropriate when the defendant wrote the insufficient funds checks to plaintiff because the defendant knew precisely the amount to which he was obligating himself, and the effective date of that commitment. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 393 (Kos. 1998).

The trial court has wide discretion in determining the amount of damages in a contract case. O'Byrne v. George, 9 FSM R. 62, 65 (Kos. S. Ct. Tr. 1999).

When the plaintiff has paid the defendant in full the entire sum due for construction materials and when because of the defendant's breach the plaintiff has hired a second contractor to finish her house and was required to buy certain materials necessary to complete

her house, the plaintiff has suffered damages in the amount of the materials purchased by the second contractor. O'Byrne v. George, 9 FSM R. 62, 65 (Kos. S. Ct. Tr. 1999).

A defendant who has completed substantial performance in constructing the plaintiff's house is entitled to payment for the second of three installments for labor and the plaintiff's failure to pay is a breach of her promise to pay the defendant the agreed amount for labor costs. O'Byrne v. George, 9 FSM R. 62, 65 (Kos. S. Ct. Tr. 1999).

When the defendant has breached its contract with the plaintiff, the plaintiff, who has completed the contract, is entitled to recover the difference between the contract amount and the amount the defendant has already paid. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

Prejudgment interest is also recoverable in cases where the plaintiff is entitled to recover a liquidated sum of money. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

When the amount awarded for prejudgment interest is more than the amount designated as usurious, it is excessive and must be reduced. Malem v. Kosrae, 9 FSM R. 233, 237 (Kos. S. Ct. Tr. 1999).

When there is no statutory rate for prejudgment interest and when there is no contract provision or limitation for the award of prejudgment interest, the court may use its discretion to determine the prejudgment interest rate and may accept as reasonable the statutory 9% post-judgment interest rate. Malem v. Kosrae, 9 FSM R. 233, 237 (Kos. S. Ct. Tr. 1999).

Once a claimant's entitlement to damages is established, the amount of damages is an issue of fact for the finder of fact. Kosrae v. Langu, 9 FSM R. 243, 250 (App. 1999).

The trial court has wide discretion in determining the amount of damages in contract and quasi-contract cases involving equitable doctrines, such as promissory estoppel and restitution. The plaintiff may be compensated for the injuries by awarding compensation for the expenditures made in reliance on the promise. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

Claimed expenditures for food and beverages will not be awarded when the purchase and consumption of these items was not dependent upon the defendant's promise, and labor costs will not be allowed as damages when there was no evidence presented at trial that the plaintiff paid any person a specific sum for labor. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

Generally, pre-judgment interest is only included as an element of damages as a matter of right when a debtor knows precisely what he is to pay and when he is to pay it. This occurs when a party has been deprived of funds to which he was entitled by virtue of the contract, and the defaulting party knew the exact amount and terms of the debt. In those types of cases, the goal of compensation requires that the complaining party be compensated for the loss of use of those funds. This compensation is made in the form of interest. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

The court has wide discretion in the determination of the damages in a contract case. Edwin v. True Value Store, 10 FSM R. 481, 485 (Kos. S. Ct. Tr. 2001).

When the court finds the remedies provided by the UCC, Article 2, for sales of goods to be persuasive, and appropriate to provide substantial justice in a case, the court may adopt and apply its remedy principles to that case. Edwin v. True Value Store, 10 FSM R. 481, 485 (Kos. S. Ct. Tr. 2001).

A buyer has the right to revoke his acceptance of a unit where the unit is non-conforming and the unit's value is substantially impaired. The revocation must occur within a reasonable time. Revocation of acceptance by the buyer requires the buyer to return the non-conforming goods to the seller, and substantial justice requires that the goods be returned in the same substantial condition as when accepted by the buyer. Edwin v. True Value Store, 10 FSM R. 481, 485 (Kos. S. Ct. Tr. 2001).

The buyer's measure of damages for breach in regard to accepted goods is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted. Edwin v. True Value Store, 10 FSM R. 481, 485 (Kos. S. Ct. Tr. 2001).

When a car rental agreement provides that the lessee shall pay to the lessor all costs and expenses incurred as a result of loss or damage to the rental vehicle, then the lessor has a duty to accept the damaged vehicle and simply charge the repair costs to the lessee. Jackson v. George, 10 FSM R. 523, 525 (Kos. S. Ct. Tr. 2002).

When the police accident report and testimony at the trial shows that the left front fender was not damaged in the accident, repair costs for the left front fender cannot be charged to the defendant. Jackson v. George, 10 FSM R. 523, 525 (Kos. S. Ct. Tr. 2002).

Generally, lost profits may be recovered in breach of contract cases, provided that certain evidentiary requirements are satisfied. Jackson v. George, 10 FSM R. 523, 526 (Kos. S. Ct. Tr. 2002).

The terms "lost profits" and "revenues" are not interchangeable as they have entirely different meanings. "Revenues" are the gross receipts of the business. The term "profits" means the gross proceeds of a business transaction less the costs of the transaction. In other words, profits equal the revenues minus the costs. Jackson v. George, 10 FSM R. 523, 526 (Kos. S. Ct. Tr. 2002).

Lost profits may be presumed to a natural result of a breach of contract, but a plaintiff's claim for lost profits must be clearly established. First, the plaintiff must show that there would have been a profit. The plaintiff must also prove costs of the business because it is impossible to prove profits without first proving costs. Jackson v. George, 10 FSM R. 523, 526 (Kos. S. Ct. Tr. 2002).

If the plaintiff fails to produce satisfactory evidence of costs, then the plaintiff's claim to lost profits must fail, because the trier of fact has no basis to compute profits. Jackson v. George, 10 FSM R. 523, 526 (Kos. S. Ct. Tr. 2002).

When the plaintiff breached a construction contract by not paying the defendant for the change order amount of $1,369 and when the defendant breached the contract by not paying a third party $1,000 for the design plan as agreed, the plaintiff is liable to the defendant for $1,369

for the change order and the defendant is liable to plaintiff for $1,000 for the design fee. In the final calculation, the plaintiff is liable to the defendant for $369 and the plaintiff is also liable to pay the third party directly for the $1,000 design fee. Mongkeya v. RV Constr., 11 FSM R. 234, 235-36 (Kos. S. Ct. Tr. 2002).

When a terminated employee was contractually entitled to sixty days notice of termination and he would have received $3,575 in gross salary during that period and when this sum must be reduced by the $2,000 the employee diverted, the employee is entitled to $1,575 damages from his employer arising from its breach of his employment contract. Hauk v. Board of Dirs., 11 FSM R. 236, 242 (Chk. S. Ct. Tr. 2002).

Generally, damages for breach by either party to a contract may be liquidated in the agreement, but only in an amount that is reasonable in light of the anticipated or actual loss caused by the breach and of the difficulties of proof of loss. A term fixing unreasonably large liquidated damages may be unenforceable on grounds of public policy as a penalty. Island Homes Constr. Corp. v. Falcam, 11 FSM R. 414, 416 (Pon. 2003).

When in discovery responses the amount of the plaintiffs' damages was stated as slightly more than the amount actually proven at trial, the invoices offered and received into evidence at trial establish by a preponderance of the evidence the amount of plaintiffs' damages. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 241-42 (Pon. 2003).

An assignment agreement that sets forth the full amount of the open accounts due, does not preclude further liability for any goods and services purchased after the date of the assignment agreement. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 242 (Pon. 2003).

The court's pretrial order did not prevent the bank from adequately defending on the question of damages when all witnesses specified in the bank's pretrial statement whose testimony summaries indicated that they had testimony to offer relevant to the question of damages were permitted to testify. Further, when the bank did not object before trial to the court's limitation of its damages witnesses, it waived any objection in this regard. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 242 (Pon. 2003).

Since the only prejudgment interest recognized so far in breach of contract cases is where the contract itself specifically provides for such a remedy, the part of a foreign judgment containing such prejudgment interest may thus be unenforceable in the FSM as against public policy. Northern Marianas Housing Corp. v. Finik, 12 FSM R. 441, 447 (Chk. 2004).

Since a plaintiff is entitled to recover the difference between the contract amount and the amount that the defendant has already paid, the plaintiff is entitled to recover the $100 per month difference between the contract monthly rental amount of $250 and the monthly $150 payment made and the plaintiff is also entitled to recover the amount necessary to complete the repairs to the ceiling and the floor that the defendant had agreed to do. Lonno v. Talley, 12 FSM R. 484, 486 (Kos. S. Ct. Tr. 2004).

The trial court has wide discretion in determining the amount of damages in a contract case. In a breach of contract case, the non-breaching party is entitled to damages that will put the party in the position he would have been in if not for the breach. George v. Alik, 13 FSM R. 12, 15 (Kos. S. Ct. Tr. 2004).

When the defendant's obligation under the contract was to pay the plaintiff the amount of $2,400 in return for the damaged vehicle and the damages were mitigated by the plaintiff's sale of the vehicle for $800, the damages are reduced by $800 to $1,600, and judgment will be entered in the plaintiff's favor and against the defendant in the amount of $1,600. George v. Alik, 13 FSM R. 12, 15 (Kos. S. Ct. Tr. 2004).

When there is no authorization for compound interest in the settlement agreement and when it is apparent that the parties, in settling their prior lawsuit, intended to apply the legal or judgment rate of interest to any unpaid settlement balances, the plaintiff's damages must therefore be calculated on a simple interest basis. Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004).

When there has been a breach of a purchase agreement entitling the plaintiffs to damages, the plaintiffs are entitled to what they expected to receive if the purchase agreement had not been breached. Edgar v. Truk Trading Corp., 13 FSM R. 112, 118 (Chk. 2005).

In a breach of contract case, the non-breaching party is entitled to damages that will put the party in the position he would have been in if not for the breach. Once a party's entitlement to damages is established, the amount of damages is an issue of fact for the finder of fact. Isaac v. Palik, 13 FSM R. 396, 402 (Kos. S. Ct. Tr. 2005).

When the contract provision for repatriation costs is not an entitlement to be paid the amount it would cost to return to the point of hire, but an obligation for the employer to pay the actual repatriation costs to the point of hire or to some other chosen less costlier place, the plaintiff will be awarded as damages the cost of shipping his household goods to Saipan, and the travel costs for him and his family from Chuuk to Saipan instead of what it would have cost to send them to Florida. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 555 (Chk. 2005).

The court may take judicial notice that the airport departure fee from Chuuk is $15 per person and that this is included in the contractual repatriation travel costs. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 555 (Chk. 2005).

On an award for unpaid salary, the defendant employer shall deduct the applicable wage and salary taxes before remitting the balance of this sum to the plaintiff employee and pay those deductions to the proper authorities. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 556 (Chk. 2005).

When the plaintiff is not entitled to the state's forfeiture of the lot, she is entitled to damages. Her damages for the state's breach of the land purchase agreement are the unpaid balance of the purchase price, and if this is not paid within a reasonable time, her right to claim forfeiture of title, which was suspended by her acceptance of a late partial payment, may be revived. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

Fifteen percent is the usual maximum allowed for attorney's fees in a collection case under FSM Supreme Court caselaw. FSM Dev. Bank v. Adams, 14 FSM R. 234, 244 n.4 (App. 2006).

When the trial court awarded attorney's fees against a defendant based on 15% of the judgment against him and a co-defendant was jointly and severally liable for only part of that judgment, if the co-defendant were liable for attorney's fees, its liability would be limited to 15% of the part of the judgment it was liable for. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 n.8 (App. 2006).

Attorney's fees are awarded to the prevailing party only if authorized by contract or by statute. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 (App. 2006).

When the personnel manual provides for an employee's involuntary dismissal two weeks after the director has recommended it, and when the employee was not afforded the two weeks of pay that he should have received had the procedure been followed, in this regard, the contract has been breached and the plaintiff is due his expectation damages under the contract, the amount he would have been paid for those two weeks. Reg v. Falan, 14 FSM R. 426, 435 (Yap 2006).

The court has the discretion to award pre-judgment interest, but it is not a matter of right unless the debtor knows precisely what he is to pay and when payment is due. The purpose of awarding interest is to compensate the complaining party for losing use of the funds. George v. George, 15 FSM R. 270, 275 (Kos. S. Ct. Tr. 2007).

When the parties have a written agreement stating that interest would be added to the unpaid balance, an award of pre-judgment interest has been upheld. George v. George, 15 FSM R. 270, 275 (Kos. S. Ct. Tr. 2007).

When the parties have a written agreement stating that interest would be added to the unpaid balance, an award of pre-judgment interest will be upheld. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

When the defendant agreed to make regular payments but there was no written agreement to pay interest on the defendant's open account; when the ledger page showing payments contains a 25-cent charge at the time of each payment but this does not correspond to an interest calculation; and when there is no evidence to show interest was discussed or agreed to by the defendant, the plaintiff is not entitled to pre-judgment interest. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

Damages for an insurer's claim for breach of fiduciary duty are the same as those for its contract claim, since the breach of fiduciary duty claim is also based on the breach of the agency contracts that the insurer had with its agents. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 446 (Pon. 2009).

In a contract case, the trial court has a wide discretion in determining the amount of damages since the non-breaching party is entitled to damages that will put the party in the position he would have been if not for the breach. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

When an attorney failed to perform his duties as the plaintiffs' appellate lawyer, he breached the contract because he did not complete what he stated he would do which was to provide legal representation, the "handling of an appeal," since he never filed a brief and because of this, the FSM appeal case was dismissed. The attorney thus breached his contract. The services promised were not performed and because no brief was filed, the attorney cannot bill the plaintiffs for hours he worked on the brief as there was no brief filed or evidence of work. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

When an attorney cannot provide any proof of his hours of work, he cannot prove his fees

and his client should not have been charged for these and since the court cannot find evidence to prove the attorney's breach of contract counterclaim based on a preponderance of the evidence, his counterclaim for attorney's fees will be dismissed. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

When the plaintiffs had a contract with the defendant attorney and their appeal case was dismissed without the plaintiffs getting their day on court due to the attorney's failure to file required materials with the appellate court, the plaintiffs are entitled to a refund of the $500 retainer that they paid the attorney in the case and to the $10 filing fee because $510 is the amount to put the non-breaching party, the plaintiffs, in a position they would have been in but for the attorney's breach. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646-47 (Kos. S. Ct. Tr. 2009).

While it may be true that funds which are not timely obligated are returned to the General Fund, when Ruo municipality paid the funds before they lapsed but did not receive the goods owed for that obligation, the damage is to the municipality, not the state, and the damages to the municipality can be paid into the municipality's separate account. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197 (Chk. S. Ct. Tr. 2010).

Even if a contract breach causes no loss or if the amount of loss is not proved with sufficient certainty, the injured party can recover as nominal damages a small sum, commonly six cents or a dollar, fixed without regard to the amount of loss. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

The function of a liquidated damages provision is for the parties to agree in advance to a damages amount that will be assessed in the event of a certain contract breach where, for both parties, it may ease the calculation of risks and reduce the cost of proof; where it might be the only compensation possible to the injured party for a loss that cannot be proven with sufficient certainty; and where it would save litigation time and expense. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 n.5 (Pon. 2011).

The economic waste principle of contract law states that although a party has the right to insist on performance in strict compliance with the contract's specifications and can require a contractor to correct non-conforming work, the party should not be permitted to direct the replacement of work in situations where the cost of correction is economically wasteful and the work is otherwise adequate for its intended purpose. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 576 n.7 (Pon. 2011).

When GMP used the wrong coordinate system for the Chuuk road survey work, it was a breach of the contract and when there was expert testimony that the survey could have been corrected by converting it to the proper coordinate system with the right computer software and some fieldwork, the court cannot presume that this would have been successful or that it could have been accomplished at no direct cost to the FSM, and GMP will thus be denied summary judgment on this claim and the FSM granted summary judgment that the contract was breached but not for its claim because whether the breach was material is a factual dispute – whether the measure of damages should be the cost of the new survey or what the cost would have been to convert the GMP survey to the Truk-Neoch Coordinate System or whether any damages, other than nominal, are due at all. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 577-78 (Pon. 2011).

An injured party may be compensated for the injuries flowing from a contract breach either by awarding compensation for lost profits (expectancy damages), or by awarding compensation for the expenditures made in reliance on the contract (reliance damages). That is, if an injured party cannot be compensated for the value it had expected to receive from a breached contract, it might then be compensated for its reliance expenditures and placed in as good a position as it would have been if it had not entered into the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

Damages are contractual in nature when they arose either from the various lease agreements between the plaintiff and the state or from the settlement agreement between them even though the settlement agreement included a claim for a state court partial (and thus probably not final and enforceable) judgment for some of the unpaid periods of the leases because this court used the parties' memorandum of understanding for its determination of damages. Thus the damages judgment in this case was not based on a state court "judgment" but on the parties' contractual stipulation about the amount the state owed the plaintiff as of March 9, 2006. Stephen v. Chuuk, 18 FSM R. 22, 25 & n.1 (Chk. 2011).

When the contract term that prorates compensation based on proportions of time applies to the plaintiff's breach of contract claim and absent complete figures for individual hours worked on each phase of the revenue subject to apportionment and absent an independent basis for determining the relative values of the actual hours worked by both the plaintiff and another, a comparison of the amount of rework the other had to perform is an equitable basis upon which to determine the appropriate proportions of hours the plaintiff and the other worked and therefore the amount due the plaintiff. Smith v. Nimea, 18 FSM R. 36, 43-44 (Pon. 2011).

When the plaintiffs did not present any evidence at trial of damages sustained as a result of the defendants' breach, the court will not award monetary damages against the defendants. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

When, in general, the witnesses' emotional attachment to the lot is irrelevant to the plaintiff's actual damages from the Board's violation of its civil right to due process, and when, without knowing what the witnesses' testimony will be, it is unknown whether testimony about the lot's necessary background history will unavoidably include some mention of emotional attachment, the court cannot make a blanket ruling barring all mention of a witness's emotional attachment to the lot. During trial, the defendant may object to any irrelevant questions and move to strike any irrelevant matter in a witness's answer to a relevant question. That should be sufficient protection. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377-78 (Pon. 2014).

A plaintiff has the burden to persuade the court, with competent evidence, as to the amount of his damages. Parties have the responsibility to put forward the evidence to support their case. This is not the court's responsibility. George v. Palsis, 20 FSM R. 111, 117 (Kos. 2015).

A plaintiff must introduce his evidence during his case-in-chief so the defendants will have an opportunity to address it, or to stipulate to it, or to challenge it and to cross-examine witnesses about it, and where, if the defendants feel the need, they can introduce evidence to counter it when it their turn comes. George v. Palsis, 20 FSM R. 111, 117 (Kos. 2015).

A court cannot award damages when there was no evidence at trial that would make those amounts sufficiently certain for a court to award those damages and when the plaintiff's post-trial affidavit outlining damages cannot be considered evidence properly introduced at trial or

properly before the court. Helgenberger v. Chung, 21 FSM R. 404, 406 (Pon. 2017).

A trial court has wide discretion in determining damages in contract and quasi-contract cases involving equitable doctrines. The goal is to try to put the injured party in as good a position as he would have been were it not for the breach of contract. Helgenberger v. Chung, 21 FSM R. 404, 407 (Pon. 2017).

Actual damages are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 534 (App. 2018).

A monetary award is envisioned to compensate for actual losses which can be readily proved and the commensurate amount is to be based on the proven harm, loss or injury suffered by the plaintiff. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 534-35 (App. 2018).

When a money award for actual damages should suffice and the amount is capable of being ascertained, specific performance is, by implication, an unsuitable remedy. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 536 (App. 2018).

A bank expects to be paid the amount the bank would be owed (and paid) if all installment payments were made precisely on time and in full. The bank, of course, expects to be paid more (and the note provides for it) if any of the installment payments were late or short. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 606 (Pon. 2020).

– Damages – Consequential

Consequential damages can only be awarded if the loss was such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract as the probable result of the breach of it. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 (App. 2006).

When a contract provides that in no event shall one party be liable for prospective profits or special, indirect, or consequential damages of the other and that that provision will survive any contract termination however arising, the parties have agreed that, regardless of the cause, one party would never be liable to the other for any claim for lost profits or other consequential damages. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 365-66 (Yap 2009).

Consequential damages can only be awarded if the loss was such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

In the absence of a contractual or statutory right of renewal, consequential damages for the failure to renew cannot have been in the contemplation of both parties. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

It cannot be said that consequential damages were contemplated for the termination of a lease five months early when the leased land had remained undeveloped for a long while and

when it is difficult to see what development could have taken place in those five months that would have earned the plaintiff a profit during those five months, that is, whether there would be any consequential damages because the plaintiff was deprived of the use of an undeveloped lot for the last five months of its lease. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

Consequential damages are losses that do not flow directly and immediately from an injurious act but that result indirectly from the act. Helgenberger v. Chung, 21 FSM R. 404, 406 n.1 (Pon. 2017).

Consequential damages can only be awarded if the loss was such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it. Helgenberger v. Chung, 21 FSM R. 404, 407 (Pon. 2017).

When there is no evidence that both sides contemplated that if the defendants did not repair the plaintiff's vehicle, the defendants would then be liable for all the plaintiff's transportation expenses, the plaintiff cannot be awarded those consequential damages. Helgenberger v. Chung, 21 FSM R. 404, 407 (Pon. 2017).

– Damages – Mitigation of

A court will not compensate an injured party for a loss that he could have avoided by making efforts appropriate, in the eyes of the court, to the circumstances. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 129 (Pon. 1991).

In a breach of contract case, the injured party is expected to take appropriate actions to mitigate, or lessen, his damages. George v. Alik, 13 FSM R. 12, 15 (Kos. S. Ct. Tr. 2004).

When the defendant failed to buy, as agreed, for the plaintiff's damaged car, the plaintiff was expected to, and did, mitigate his damages by selling the car to someone else. The car's sale price was its fair market value at the time of the sale and the value of the plaintiff's mitigation. George v. Alik, 13 FSM R. 12, 15 (Kos. S. Ct. Tr. 2004).

In a breach of contract case, the injured party is expected to take appropriate actions to mitigate, or lessen, his damages. A court will not compensate an injured party for a loss that he could have avoided by making efforts appropriate, in the eyes of the court, to the circumstances. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 556 (Chk. 2005).

A court will not compensate an injured party for a loss that he could have avoided by making efforts appropriate, in the eyes of the court, to the circumstances. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 365 (Yap 2009).

When a buyer converted the remaining gasoline and diesel to his own personal use, he, in effect, sold himself the gasoline and diesel and thus mitigated his damages. When more stored kerosene remains available for the buyer to sell or convert to his own personal use, the seller is entitled to summary judgment that it will not be liable for the fuel the buyer converted to his own personal use or for the fuel he still retains since that would be a double recovery. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 365 (Yap 2009).

That a plaintiff has a duty to mitigate his damages is clear. He must take reasonable steps to minimize those damages. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 445 (Pon. 2009).

One sound reason for the mitigation principle is that it makes commercial sense to discourage a plaintiff from sitting back and letting damages get larger instead of stemming further losses. But an innocent party cannot be expected to take steps to mitigate damages before it was aware of the breach. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 361 (App. 2012).

Any inaction before the date the plaintiff became aware of the breach cannot be a failure to mitigate damages because the plaintiff did not know it had any to mitigate. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 361 (App. 2012).

Choosing to remain idle in Pohnpei for nearly three years while forgoing suitable work in the Philippines, is manifestly unreasonable under the circumstances. A court will not compensate an injured party for a loss that he could have avoided by making efforts appropriate in the eyes of the court to the circumstances. The rationale behind this rule is to encourage the injured party to make reasonable efforts to avoid loss. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 275-76 (Pon. 2014).

Even when the plaintiffs failed to make reasonable efforts to secure alternative employment, the burden of proof falls on the former employer to show that the former employees could have found alternative employment in their chosen field. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 276 (Pon. 2014).

When the former employer has demonstrated that suitable alternative employment was available and that the former employees failed to make reasonable efforts to secure alternative employment, the court must conclude that plaintiffs could not recover for breach of contract due to their failure to mitigate damages. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 276 (Pon. 2014).

Since the defendants pled the plaintiff's failure to mitigate damages as an affirmative defense, if the plaintiff had put on evidence of his damages, the burden would have shifted to the defendants to prove that the plaintiff failed to mitigate his damages or to prove to what extent he did mitigate his damages. But since the plaintiff put on no evidence about the amount of his damages, the burden of proof about damages never shifted to the defendants. George v. Palsis, 20 FSM R. 111, 116 (Kos. 2015).

– Damages – Punitive

Punitive damages are not a contract remedy, since only compensatory damages are allowed for breach. Amayo v. MJ Co., 10 FSM R. 244, 249 (Pon. 2001).

Generally, punitive damages are not a contract remedy, because only compensatory damages are usually allowed for breach of contract. Kelly v. Lee, 11 FSM R. 116, 117 (Chk. 2002).

Punitive damages will be denied when the plaintiffs' complaint makes no allegations that the defendants' actions were willful, wanton, or malicious or alleges facts that could constitute

willfulness, wantonness, or malice, and when the cause of action is contract. Punitive damages are not a contract remedy since only compensatory damages are allowed for breach. Zion v. Nakayama, 13 FSM R. 310, 313 (Chk. 2005).

A plaintiff may not as a matter of law recover punitive damages from the State of Chuuk. This principle has been modified somewhat by the enactment section 6 of the Chuuk State Sovereign Immunity Act of 2000, but that Act did not become law until January 25, 2001, and it does not apply to damage claims before that time. Zion v. Nakayama, 13 FSM R. 310, 314 (Chk. 2005).

Generally, punitive damages are not a contract remedy, because only compensatory damages are usually allowed for breach of contract. Isaac v. Palik, 13 FSM R. 396, 401 (Kos. S. Ct. Tr. 2005).

Generally, punitive damages are not a contract remedy, because only compensatory damages are allowed for breach of contract. Nor can punitive damages be awarded under non-contract (i.e., tort) causes of action unless the defendant's actions were alleged and proven to be willful, wanton, and malicious or with deliberate violence. Hartman v. Krum, 14 FSM R. 526, 532 (Chk. 2007).

Punitive damages are derivative, in the sense that they derive from and depend on a separate and independent cause of action. They may be awarded when the acts complained of are wanton, reckless, malicious, and oppressive, but punitive damages are not awardable for breach of contract, since only compensatory damages are allowed in contract cases. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441 (Pon. 2009).

– Definite Terms

Where no contract existed for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Jim v. Alik, 4 FSM R. 198, 200 (Kos. S. Ct. Tr. 1989).

In order for an agreement to be binding an agreement must be definite and certain as to its terms and requirements, and it must identify the subject matter and spell out the essential commitments and agreements with respect thereto. Etscheit v. Adams, 6 FSM R. 365, 388 (Pon. 1994).

The court will not enforce a written settlement agreement as a verbal contract against a defendant who has not signed it when because of conflicting affidavits the court finds that the settlement terms were not sufficiently definite to constitute an enforceable contract and when there are questions as to whether the settlement was freely and fairly negotiated by the parties thereto. Bank of Hawaii v. Helgenberger, 9 FSM R. 260, 262 (Pon. 1999).

In order to be binding, an agreement must be definite and certain as to its terms and requirements; it must identify the subject matter and spell out the essential commitment and agreements with respect thereto. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 562 (Pon. 2003).

Where no contract existed for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Youngstrom v. Mongkeya, 11 FSM

R. 550, 554 (Kos. S. Ct. Tr. 2003).

When the parties have failed to make an enforceable contract due to the lack of definite terms, the court may use its equity power to grant a remedy under the doctrine of restitution. Restitution is a remedy which returns the benefits already received to the party who gave those benefits. Livaie v. Weilbacher, 11 FSM R. 644, 648 (Kos. S. Ct. Tr. 2003).

Issues regarding the timing of performance will not necessarily interfere with the enforceability of a contract. George v. Alik, 13 FSM R. 12, 14 (Kos. S. Ct. Tr. 2004).

When an agreement does not specify when the payment was to be made by the defendant to the plaintiff, it suggests that the parties did not regard any specific point in time as essential. Accordingly, the court will adopt a "reasonable time" as the time for performance of the contract. George v. Alik, 13 FSM R. 12, 14-15 (Kos. S. Ct. Tr. 2004).

When no contract exists for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Restitution is the proper remedy when no enforceable contract exists. It requires the benefitted party to return what was received or to pay the other party for it. Livaie v. Weilbacher, 13 FSM R. 139, 143 (App. 2005).

In order for an agreement to be binding, an agreement must be definite and certain as to its terms and requirements, and it must identify the subject matter and spell out each party's essential commitments. DJ Store v. Joe, 14 FSM R. 83, 85 (Kos. S. Ct. Tr. 2006).

When the parties' discussion did not reach an agreement on the cement mixer's sale price and the cement mixer's sale price is a required definite term of the contract, as it would spell out the defendant's essential commitment to pay the plaintiff a certain amount, the agreement is unenforceable and not binding because the parties did not agree to a sales price. DJ Store v. Joe, 14 FSM R. 83, 85 (Kos. S. Ct. Tr. 2006).

When no contract exists for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution and where no contract exists for lack of an agreed sale price, restitution is applicable. The doctrine of unjust enrichment generally applies when there is an unenforceable contract. It is based on the idea that one person should not be permitted unjustly to enrich himself at the expense of another. DJ Store v. Joe, 14 FSM R. 83, 85 (Kos. S. Ct. Tr. 2006).

Whether contractual terms are sufficiently certain to support contract formation is a field of inquiry rounded in the common law of contracts. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 475 (Pon. 2014).

The terms of a contract are sufficiently certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476 (Pon. 2014).

Absent a negotiated time of performance, when the contract calls for a single performance such as the rendering of a service or the delivery of goods, the time for performance is a "reasonable time." Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476 (Pon. 2014).

When the parties intend to conclude a contract for the sale of goods and the price is not

settled, the price is a reasonable price at the time of delivery if nothing is said as to price. Similar principles apply to contracts for the rendition of service where, if the parties manifest an intent to be bound, the price is a reasonable price at the time for doing the work. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476 (Pon. 2014).

Because the defendant contacted the plaintiff before starting each additional repair so that the plaintiff's agreement to pay for the work could be secured and the plaintiff then agreed to each additional repair, knowing and intending to compensate the defendant for the work and the defendant then proceeded to undertake reasonable efforts to perform the repair, there was a series of valid contracts since the parties' behavior manifested their intent to be bound by such a contract, and for each contract, the parties agreed to perform within a reasonable time, and the price was set as a reasonable price at the time for doing the work. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476 (Pon. 2014).

For an agreement to be binding, it must spell out the essential commitments and agreements with respect thereto. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

An agreement may lack definite terms when there is no indication as to a schedule of payment that would detail the amount to be paid and a duration or timeline for which payments are to be made. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

When no valid contract exists between the parties because of a lack of definite terms, a party may recover for the benefit conferred upon another pursuant to other legal remedies under the law of contracts. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

When no contract exists for lack of definite terms, the court may use its equity power to fashion a remedy under the restitution doctrine. The unjust enrichment doctrine also applies when there is an unenforceable contract. It is based upon the idea that one person should not be permitted unjustly to enrich himself at the expense of another. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

– Executory

When the sale of a barge was conditional upon inspection and was canceled after the inspection occurred, the agreement, prior to cancellation, remained an executory contract. Kosrae v. Worswick, 10 FSM R. 288, 291 (Kos. 2001).

When it is contemplated that something be done to complete the sale, such as weighing, selecting, delivery, or some other act, the contract is "executory," and title does not pass until the specific goods are ascertained and appropriated in the mode agreed on. Kosrae v. Worswick, 10 FSM R. 288, 291 (Kos. 2001).

An assignment executed between a bank and a borrower that provides that, in the event of a default, the bank is the sole and exclusive party entitled to possession of the subject property/premises and to operate the subject business and to receive all income therefrom is a right to possession and operation that, although a security interest, is not a security interest that can be, or was, perfected under Title 33, chapter 10, because it involves real property – the factory building – and the incorporeal right to operate the business from that building. On its

face, this is an executory contract for which there was an offer, acceptance, definite terms, and consideration. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

– Formation

A contract is a promise between two parties for the future performance of mutual obligations which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 123 (Pon. 1993).

A valid and enforceable contract was formed when the state offered to permit plaintiffs to dredge if they would repair the causeway, the plaintiffs accepted the offer by starting repairs, and the material dredged formed the consideration and the terms were sufficiently definite as to the time length of contract because it was limited by the expiration of the U.S. Army Corps of Engineers dredging permit. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 620-21 (App. 1996).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. O'Byrne v. George, 9 FSM R. 62, 64 (Kos. S. Ct. Tr. 1999).

A contract is a promise between two parties for the future performance of mutual obligations which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

A contract is a promise between two parties for the future performance of mutual obligations which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

An enforceable contract requires an offer, an acceptance, definite terms, and consideration. Bank of Hawaii v. Helgenberger, 9 FSM R. 260, 262 (Pon. 1999).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise. For an agreement to be binding it must be definite and certain as to its terms and requirements, and it must identify the subject matter and spell out the essential commitments and agreements with respect thereto. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 194 (Kos. S. Ct. Tr. 2001).

An agreement to waive a contractual provision is itself a contract, and the same offer and acceptance are required. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 407 (Pon. 2001).

When the defendant never accepted the plaintiff's offer to waive arbitration, no binding

agreement to waive arbitration was ever entered into by the parties. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 407 (Pon. 2001).

When the parties settled rather than go to trial on damages a contract was formed between the parties – the defendant offered specific performance to fill land and in exchange, the plaintiff accepted the offer and agreed to not go to trial on the issue of damages. There was thus an offer and acceptance, consideration, and mutual assent by both parties. James v. Lelu Town, 11 FSM R. 337, 339 (Kos. S. Ct. Tr. 2003).

A contract is a promise between two parties for the future performance of mutual obligations which the law will enforce in some way. For a promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise. Youngstrom v. Mongkeya, 11 FSM R. 550, 554 (Kos. S. Ct. Tr. 2003).

When in the parties' verbal promises, a critical definite terms was missing: the cost for the landfilling equipment and landfill materials were unknown, the parties did not form an enforceable contract with respect to the obligation to pay for the landfilling equipment and the landfill materials. Youngstrom v. Mongkeya, 11 FSM R. 550, 554 (Kos. S. Ct. Tr. 2003).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable, there must be an offer, acceptance, consideration and definite terms. Livaie v. Weilbacher, 11 FSM R. 644, 647 (Kos. S. Ct. Tr. 2003).

When the parties did not agree upon the amount, location, scope, timing or deadline to complete the land filling and were aware of the missing elements as they agreed to meet again to work out the details, but the parties did not meet again to finalize the details, one of the four elements necessary for an enforceable contract, definite terms, remained missing from the parties' understanding. Livaie v. Weilbacher, 11 FSM R. 644, 647-48 (Kos. S. Ct. Tr. 2003).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable, there must be an offer, acceptance, consideration and definite terms. George v. Alik, 13 FSM R. 12, 14 (Kos. S. Ct. Tr. 2004).

When the plaintiff had accepted the defendant's condition that the jeep could not be returned to its original condition and continued to request that defendant work on the jeep, the plaintiff had accepted the defendant's condition regarding workmanship on the jeep and the defendant's inability to return the jeep to its original condition and the plaintiff is thus not entitled to recover his claim for additional work completed later by another. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance,

consideration, and definite terms. Livaie v. Weilbacher, 13 FSM R. 139, 143 (App. 2005).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration, and definite terms. Livaie v. Weilbacher, 13 FSM R. 139, 143 (App. 2005).

When a review of the record confirms that the parties did not discuss and there was no agreement about the amount, location, scope, timing or deadline to complete the fill and that the agreement was never reduced to writing (although no Kosrae law would require that it be reduced to writing), the record supports the trial court's finding that the parties failed to agree on definite terms and that therefore no contract was formed. Livaie v. Weilbacher, 13 FSM R. 139, 143 & n.1 (App. 2005).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration, and definite terms, and for the agreement to be binding it must be definite and certain as to its terms and requirements, and it must identify the subject matter and spell out the essential commitments and agreements with respect thereto. Isaac v. Palik, 13 FSM R. 396, 399 (Kos. S. Ct. Tr. 2005).

When the plaintiff promised to pay the defendant the amount of $10,000 and the defendant promised to sell to the plaintiff certain parcels and convey all her rights therein and certified that she was the "legal title holder" of the subject parcels through certificates of title and as the legal basis for her promise to transfer her ownership rights in the two parcels, the subject matter, the essential commitments and the agreement were all definite and certain as to its terms and requirements. And since the "Quitclaim Deed" is evidence of the parties' agreement for the sale and transfer of title to the subject parcels, the Quitclaim Deed is an enforceable contract. Isaac v. Palik, 13 FSM R. 396, 399-400 (Kos. S. Ct. Tr. 2005).

An enforceable contract requires an offer, an acceptance, consideration and definite terms. For the agreement to be binding, it must spell out the essential commitments and agreements with respect thereto. Heirs of Nena v. Sigrah, 14 FSM R. 283, 285 (Kos. S. Ct. Tr. 2006).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable, there must be an offer, acceptance, consideration, and definite terms. Hartman v. Krum, 14 FSM R. 526, 530 (Chk. 2007).

No contract was created when the plaintiff's offer was not communicated to the defendant, thus no offer was ever made to the defendant, and there never was an acceptance of an offer by the defendant. Hartman v. Krum, 14 FSM R. 526, 530 (Chk. 2007).

A principal is bound by, and liable for his agent's acts if done with or within the actual or apparent authority from the principal and within the scope of the agent's employment, but when agreeing to pay rent for a cement mixer was not within the scope of the agent's "employment" as the principal's agent, no contract was formed between the principal and the plaintiffs through agency. Hartman v. Krum, 14 FSM R. 526, 530-31 (Chk. 2007).

The elements of an enforceable contract are an offer and acceptance, definite terms, and consideration between the parties. If a party fails to perform, then the contract is breached and damages may be awarded. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

When the plaintiff exchanged goods with the defendant in exchange for the defendant agreeing to make payments on the account, the defendant indicated her acceptance of this exchange by making payments. These actions created an enforceable contract. George v. George, 15 FSM R. 270, 273 (Kos. S. Ct. Tr. 2007).

When the plaintiff exchanged goods with the defendant in exchange for the defendant agreeing to make payments on the account and the defendant indicated her acceptance of this exchange by making payments, their actions created an enforceable contract. George v. Albert, 15 FSM R. 323, 326 (Kos. S. Ct. Tr. 2007).

An insurance contract, like all contracts, requires an offer and acceptance to be effective, and, like any contract, an insurance contract is formed when an unrevoked offer by one person is accepted by another, thus satisfying the two prerequisites of mutual assent. Sigrah v. Micro Life Plus, 16 FSM R. 253, 257 (Kos. 2009).

An application for insurance standing alone does not constitute a contract upon which judgment can be recovered. It is merely an offer or request for insurance which may either be accepted or rejected by the insurer. An insurer is at liberty to choose its own risks and is not bound to accept an insurance application for insurance. Sigrah v. Micro Life Plus, 16 FSM R. 253, 258 (Kos. 2009).

An insurance contract may be established when one of the parties to the contract proposes to be insured and the other party agrees to insure, and the subject, the amount, and the rate of insurance are ascertained or understood and the premium is paid if demanded. Sigrah v. Micro Life Plus, 16 FSM R. 253, 258 (Kos. 2009).

A contract is a promise between two parties for the future performance of mutual obligations which the law will enforce in some way. For the promise to be enforceable there must be an offer, acceptance, consideration, and definite terms. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 645 (Kos. S. Ct. Tr. 2009).

When the contract is for an attorney to provide legal assistance for the plaintiffs' appeal case and when the terms are that the attorney will represent the plaintiffs and the plaintiffs will pay the attorney a $100 per hour, there is a promise between the two parties with an offer of performing legal services and the acceptance on the plaintiffs' behalf and there was mutual assent when the parties reached a meeting of the minds with the attorney making the offer and the plaintiffs accepting the offer. The consideration present for the promise was that the attorney offered his legal services to the plaintiffs in exchange for the plaintiffs' money. There was a bargained-for exchange between the parties and what was bargained for was considered of legal value. The contract terms were definite and therefore there was a valid written contract between the parties for the performance of legal services for a fee. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 645 (Kos. S. Ct. Tr. 2009).

When the previously agreed percentages for completed work should be sufficient for a court to determine a contract price for any work done during the contract's last three years; when there is no indication that these same percentages were not intended for use throughout the contract's remaining three years and the overall grant award from the U.S. had a set figure; and when, if the parties thought that the payment terms for the contract's last three years were uncertain, the contract could be amended at any time with or without additional consideration,

the court cannot conclude that there was no contract beyond the first two years because no prices had been set for the last three years or that there was no consideration for the last three years. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 589 (Pon. 2011).

Duress takes two forms: physical and economic. Physical duress negates assent *ab initio*; economic duress makes a formed contract voidable. A contract is voidable for economic duress if: 1) a party's manifestation of assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative; or 2) a party's manifestation of assent is induced by one who is not a party to the transaction, unless the other party to the transaction in good faith and without reason to know of the duress either gives value or relies materially on the transaction. Smith v. Nimea, 18 FSM R. 36, 41-42 (Pon. 2011).

When no evidence suggests that the defendant was responsible for any physical duress against the plaintiff; when the evidence shows that the plaintiff was desperate to get the work, but suggests that the situation is one largely of his own creation, or at least not the defendant's creation; when the plaintiff has not shown that the defendant made any threat, proper or improper, or did any act that left the plaintiff with no reasonable alternative, none of this evidence gives rise to the sort of improper threat and absence of reasonable alternatives upon which the court can find economic duress. Smith v. Nimea, 18 FSM R. 36, 42 (Pon. 2011).

A contract was formed by a salvor's June 16, 2007 e-mail offer and the insurer's June 19, 2007 letter acceptance with offer of additional term of an invoice, with the salvor's acceptance of the additional term by performance. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration and definite terms. Harden v. Inek, 19 FSM R. 244, 249 (Pon. 2014).

A lease agreement entered into by the parties was a valid contract because the promise to pay rent in exchange for exclusive use of the property constituted an offer, acceptance, and consideration and the agreement's terms were definite and enforceable. Harden v. Inek, 19 FSM R. 244, 249 (Pon. 2014).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 276 (Pon. 2014).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

An insurance contract was formed when there was an invitation made by the insurer to provide life and cancer insurance coverage to the plaintiff and the plaintiff offered to enroll under the policy and the insurer accepted the offer by issuing life and cancer insurance policies and accepting premiums that the plaintiff paid through bi-weekly allotments. The parties' reasonable expectations were that the plaintiff would make timely payments on the policy, and that the insurer would provide coverage subject to the policy's terms. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise. Zacchini v. Hainrick, 19 FSM R. 403, 410 (Pon. 2014).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration and definite terms. When a contract's existence is at issue, the trier of fact determines whether the contract did in fact exist. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 475 (Pon. 2014).

A series of verbal agreements entered into by the parties may constitute a series of valid contracts. The terms of the agreements were the parties' intentions at the time they entered into the contracts. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 475 (Pon. 2014).

Agreements that lack price and duration terms may be found to be sufficiently certain to form a valid contract. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 475 (Pon. 2014).

Personnel handbook provisions can be enforceable as an employment contract if they meet the requirements for the formation of a unilateral contract, which are: the offer must be definite in form and must be communicated to the offeree. An employer's general statements of policy are no more than that and do not meet the contractual requirements for an offer. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

When a personnel policies manual is detailed and the court finds that it was intended to set the terms of employment; when a review of the employee handbook makes it clear that the employer intended its employees to be bound by the manual's terms and that it intended to bind itself to these terms, the personnel policies manual was meant to be an offer for a unilateral employment contract and an employee has accepted the offer through his continued employment. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

The general rule is that a party who signs an instrument manifests assent to it and may not later complain about not reading or not understanding it. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 (Chk. 2017).

Generally, one having the capacity to understand a written document who reads it, or one who, without reading it or having it read to him, signs it, is bound by his signature. Otherwise, no one could rely on a signed document if the other party could avoid the transaction by not reading or not understanding the document. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 (Chk. 2017).

A signatory to a contract has a duty to read it, or have it read to him, or a duty to understand what he is signing. The duty to read even involves a person who is blind, illiterate, or unfamiliar with the language in which the contract is written and who has signed the document without having anyone read it aloud or explaining it. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 (Chk. 2017).

Except possibly in the case of an emergency, a party must employ self-protection by procuring someone to read aloud, explain, or translate the contract before he signs it. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 n.2 (Chk. 2017).

The "duty to read" a contract before signing it applies especially when the lease was the result of long negotiations during which the signer was represented by capable counsel, fluent in his native language, who he could ask for an explanation. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 (Chk. 2017).

A loan application is an invitation by the applicant for the bank to make an offer to lend the applicant money. The bank may then decline to make an offer (deny the application) or it may make an offer (propose to lend money on certain terms), which the loan applicant may then accept (forming a contract) or reject. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 169 (Pon. 2017).

A person, who did not sign the loan application but who accepted the bank's loan offer when he agreed to the offer by signing the promissory note and the mortgage, is a party to the promissory note and the mortgage contracts. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 169 (Pon. 2017).

The court can give no effect to a claim that a former employee did not read the contract or understand that it contained an at-will employment provision before he signed it. The general rule is that a party who signs an instrument manifests assent to it and may not later complain about not reading or not understanding it. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 176 (Pon. 2017).

Generally, one having the capacity to understand a written document who reads it, or, without reading it or having it read to him, signs it, is bound by his signature. Otherwise, no one could rely on a signed document if the other party could avoid the transaction by not reading or not understanding the document. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 176 (Pon. 2017).

A signatory to a contract has a duty to read, or have it read to him, or a duty to understand what he is signing. This "duty to read" even involves a person who is blind, illiterate or unfamiliar with the language in which the contract is written and who has signed a document without having anyone read it aloud or explaining it. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 176 n.7 (Pon. 2017).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration, and definite terms. Fuji Enterprises v. Jacob, 21 FSM R. 355, 365 (App. 2017).

Since the Pohnpei Visitors Bureau is a non-governmental organization with duly enacted articles of incorporation and bylaws, whose funding is provided for under the Compact of Free Association, the Pohnpei state government had a ministerial duty to certify the plaintiff's employment contract after the Board's approval, because the discretion of whether to hire the plaintiff was with the PVB Board. "Ministerial" means of or relating to an act that involves obedience to instructions or laws instead of discretion, judgment, or skill. Santos v. Pohnpei, 21 FSM R. 495, 500 & n.4 (Pon. 2018).

– Forum Selection Clause

A motion to dismiss because the forum selection clause in the agreement selects a different court to hear the dispute is properly seen as a motion to dismiss for improper forum. National

Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 125 (Pon. 1999).

Parties may by contract designate a forum in which any litigation is to take place. Forum selection clauses are presumed valid, and enforcement will be ordered absent a strong showing that it should be set aside, and unless it clearly would be unreasonable and unjust, or that the clause is invalid for such reasons as fraud or overreaching. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 125 (Pon. 1999).

A forum selection clause may be subject to judicial scrutiny for fundamental fairness. In determining fundamental fairness, courts should consider such factors as: 1) whether the forum was selected by one party as a bad faith tactic to discourage pursuit of legitimate claims by the other; 2) whether consent to the forum selection clause was obtained by fraud or overreaching; or 3) whether the contesting party had no notice of the forum provision. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 126 (Pon. 1999).

A forum selection clause is not unfair and rendered unenforceable because the court selected is a neutral forum with no relation to the parties or their dispute. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 126 & n.1 (Pon. 1999).

A forum selection clause unaffected by fraud, undue influence, or overweening bargaining power should be given full effect. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 126 (Pon. 1999).

When parties engaged in an international business transaction unambiguously select a forum in a third country, they are to be credited with knowledge of the jurisdictional requirements of the chosen court. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 126 (Pon. 1999).

Once a forum selection clause is determined to be binding, its scope and effect should be determined under a contract law analysis. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 127 (Pon. 1999).

When the forum selection clause language uses "exclusive jurisdiction" in conjunction with the mandatory language, "hereby irrevocably consent," it establishes an intent to have any dispute resolved only by the other forum and it leaves no room for dispute over the clause's meaning in this respect. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 127 (Pon. 1999).

When contracts between the parties provide that any legal proceedings instituted by either party must be filed and heard in the FSM Supreme Court with no other court having jurisdiction and that should the FSM Supreme Court not accept jurisdiction must the parties' dispute be resolved by arbitration, the FSM Supreme Court, not having declined jurisdiction, will not dismiss or stay the case pending arbitration because arbitration is mandated in a dispute arising from the agreements only when the FSM Supreme Court has declined jurisdiction. Mobil Oil Micronesia, Inc. v. Helgenberger, 9 FSM R. 295, 296 (Pon. 1999).

Parties can designate by contract a forum in which any litigation is to take place, and such forum selection clauses are presumed valid and will be enforced unless there is a strong showing that it would be unreasonable or unjust or fraud or overreaching is involved. The clause must unambiguously name another forum. FSM Dev. Bank v. Gouland, 9 FSM R. 605,

607-08 (Chk. 2000).

When a forum selection clause names a court that no longer exists, but another court is in all respects its successor, it is expected that the case is meant to proceed in that court absent some valid reason it should not. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 608 (Chk. 2000).

Parties can designate by contract a forum in which any litigation is to take place, and such forum selection clauses are presumed valid and will be enforced unless there is a strong showing that it would be unreasonable or unjust, or fraud or overreaching is involved. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5 (Chk. 2001).

A forum selection clause must unambiguously name a forum. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5 (Chk. 2001).

When a court by the name Truk State Court no longer exists, and had not existed for several years at the time the mortgage with a forum selection clause naming the Truk State Court was executed and the Chuuk State Supreme Court was, and is, in all respects the Truk State Court's successor, a court must conclude that when they executed the mortgage the parties understood the phrase "Truk State Court" to mean the Chuuk State Supreme Court. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5 (Chk. 2001).

When the mortgagors have not expressly waived their right to require the FSM Development Bank to abide by the forum selection it made when it drafted the mortgage they signed and absent some other valid reason, the foreclosure must proceed in the Chuuk State Supreme Court, even though the FSM Supreme Court will determine the amount, if any, of the mortgagors' indebtedness on the promissory note. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5-6 (Chk. 2001).

Forum selection clauses are presumed valid and will be enforced unless there is a strong showing that it would be unreasonable or unjust, or fraud or overreaching is involved. The clause must unambiguously name another forum. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 109 (Chk. 2001).

Because a court by the name Truk State Court had not existed for several years at the time the mortgage was executed and because the Chuuk State Supreme Court was, and is, in all respects its successor, the parties, when they executed the mortgage, understood the phrase "Truk State Court" to mean the Chuuk State Supreme Court. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 109 (Chk. 2001).

There are two types of forum selection clauses – permissive and mandatory. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 109 (Chk. 2001).

A mandatory forum selection clause requires that all litigation between the parties be conducted in the named forum and nowhere else. To be mandatory, a clause must contain language that clearly designates a forum as the exclusive one. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 109 (Chk. 2001).

Forum selection clauses which give a court jurisdiction without clearly making that jurisdiction exclusive are permissive rather than mandatory. A permissive forum selection

clause merely allows a chosen forum to exercise personal jurisdiction over the parties but does not bar litigation in another forum and will not alter the presumption in favor of the plaintiff's choice of forum. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

A forum selection clause cannot be interpreted so as to make it meaningless. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

Because only two courts can exercise jurisdiction over land in Chuuk, the only meaningful reason for the inclusion of a forum selection clause in a mortgage would be to make one court's jurisdiction exclusive. Such a forum selection clause can therefore only be interpreted as mandatory; otherwise it would be meaningless. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

When a forum selection clause in a mortgage was not the result of an arm's length transaction, but the bank dictated all the mortgage's terms, which it prepared in a pre-printed form with blanks in which to insert the borrowers' names and addresses, the amount borrowed and at what interest rate, the number and amount of monthly installment payments and their starting date, and the property mortgaged, it would be inequitable to allow the bank to now interpret the forum selection clause so as to make it meaningless. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110-11 (Chk. 2001).

Ambiguity in a forum selection clause may be construed against its drafter. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 111 (Chk. 2001).

A forum selection clause is an agreement that disputes relating to the parties' contract will be heard by a designated court and unambiguously names a forum. A threshold question is whether contractual language at issue is a forum selection clause. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 561 (Pon. 2003).

The FSM Supreme Court does not look kindly upon contractual provisions that can only be understood by individuals who possess an advanced degree in insurance law. Clear, understandable, precise language is a condition to a finding that an insured must bear the cost of litigating in a remote forum. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 562 n.3 (Pon. 2003).

A properly drafted forum selection clause's purpose is to eliminate uncertainty as to where disputes between the parties will be litigated. Such clauses can further eliminate uncertainty by specifying the law that will be applied. When a clause accomplishes neither purpose, and when it would be fundamentally unfair to conclude that the contract provision's ambiguous language constitutes an agreement that claims may be litigated only in a certain place, it does not constitute a forum selection clause. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 562 (Pon. 2003).

To the extent that a purported forum selection clause could be interpreted to require suit in a foreign country, it must be struck down as void as against public policy unless it is a freely negotiated, arms-length agreement between parties with relatively equal bargaining power. An insurance contract that seeks to oust the FSM Supreme Court's jurisdiction will not be upheld when the insured is an FSM citizen and resident, the insurance policy is obtained in the FSM from an FSM-based agent, the premiums are paid in the FSM to cover vehicles operating in the FSM, and the incident giving rise to a claim occurred in the FSM. The clause is against public policy because it impedes the administration of justice relating to insurance claims, and would

undermine the public's confidence in business dealings if upheld. To require such lawsuits to be filed in a foreign country would not only be onerous, but would essentially render insurance companies immune from suit. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 562-63 (Pon. 2003).

A forum selection clause will be stricken from a contract when it is unenforceably vague and ambiguous, and void as against public policy. The court will not make this decision lightly, as judicial restraint requires the exercise of extreme caution in striking down a portion of any contract that is entered into freely. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 563 (Pon. 2003).

Parties may by contract designate a forum in which any litigation is to take place, and forum selection clauses are presumed valid, and enforcement will be ordered absent a strong showing that it should be set aside, and unless it clearly would be unreasonable and unjust, or that the clause is invalid for such reasons as fraud or overreaching. Lee v. Han, 13 FSM R. 571, 578 (Chk. 2005).

A forum selection clause would usually be given full effect, although a forum selection clause may be subject to judicial scrutiny for fundamental fairness. In determining fundamental fairness, courts consider such factors as: 1) whether the forum was selected by one party as a bad faith tactic to discourage pursuit of legitimate claims by the other; 2) whether consent to the forum selection clause was obtained by fraud or overreaching; or 3) whether the contesting party had no notice of the forum provision. Lee v. Han, 13 FSM R. 571, 579 (Chk. 2005).

When the plaintiff has actively pursued litigation in a Korean court, both before and during the time the litigation was pending here, and the defendant actively defended that action, it would be unreasonable and unjust to require the Korean defendants to litigate this case twice, with the second time in a forum where, although it (Chuuk) was convenient when it was chosen and all the parties had business interests here, is no longer convenient, reasonable, or just. Under the circumstances, the plaintiff has waived enforcement of the forum selection clause. Limited to this case's particular facts and circumstances, the forum selection clause will not bar dismissal of this case without prejudice under the forum non conveniens doctrine. Lee v. Han, 13 FSM R. 571, 579 (Chk. 2005).

The court will enforce a forum selection clause when the bank drafted the real estate mortgage and the bank chose to include the forum selection clause as one of the terms it insisted upon in the preprinted mortgage form it used to execute the mortgage; when a mortgagor not only does not expressly waive the bank's forum selection but he affirmatively insists upon the forum selection clause's enforcement; and when no other valid reason is apparent or has been asserted by the bank that would allow the clause's waiver. The bank may thus assert its real estate mortgage foreclosure remedy in the Yap State Court, the forum it chose, and the mortgagor may raise his defenses to the mortgage's validity there and the FSM Supreme Court will adjudicate the bank's action on the promissory note and on the chattel mortgage. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 94 (Yap 2011).

A motion to dismiss because of a contract's forum selection clause is properly made under Rule 12(b)(3) – improper venue – and (usually) also Rule 12(b)(6) for failure to state a claim upon which relief can be granted, and the common law doctrine of forum non conveniens. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 195 (Pon. 2019).

A motion to dismiss because an agreement's forum selection clause names a different court to hear the dispute is a motion to dismiss for improper forum – improper venue. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 195 (Pon. 2019).

Parties may designate by contract a forum in which any litigation is to take place, and such forum selection clauses are presumed valid and will be enforced absent a strong showing that it would be unreasonable or unjust, or fraud or overreaching is involved. But a forum selection clause will be stricken when it is unenforceably vague and ambiguous or void as against public policy. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 196 (Pon. 2019).

There are two types of forum-selection clauses – mandatory and permissive. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 196 (Pon. 2019).

A mandatory forum selection clause requires that all litigation between the parties be conducted in the named forum and nowhere else – it must contain language that clearly designates a forum as the exclusive one. Mandatory forum selection clauses contain clear language that litigation will proceed exclusively in the designated forum. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 196 (Pon. 2019).

A permissive forum selection clause merely allows a chosen forum to exercise personal jurisdiction over the parties but does not bar litigation in another forum and will not alter the presumption in favor of the plaintiff's choice of forum. Forum selection clauses which give a court jurisdiction without clearly making that jurisdiction exclusive are permissive rather than mandatory. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 196 (Pon. 2019).

The forum selection clause must unambiguously name a forum. If it does not, then it is permissive, not mandatory. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 196 (Pon. 2019).

Mandatory forum selection clauses contain clear language showing that jurisdiction is appropriate only in the designated forum. In contrast, permissive forum selection clauses authorize jurisdiction in a designated forum but do not prohibit litigation elsewhere. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 196 (Pon. 2019).

A forum selection clause which states that "[t]he jurisdiction for . . . this contract shall be the Commonwealth of Australia" and that "all parties agree to submit to the jurisdiction of the Australian courts," does not unambiguously name a forum since it does not name any forum at all, or specify any venue, and does not prohibit any litigation elsewhere. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 197 (Pon. 2019).

The law is clear: when venue is specified in a forum selection clause with mandatory or obligatory language, the clause will be enforced; when only jurisdiction is specified the clause will generally not be enforced unless there is some further language indicating the parties' intent to make venue exclusive. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 197 (Pon. 2019).

A forum selection clause is permissive when the clause refers only to jurisdiction and does so in non-exclusive terms (e.g., there is no use of the terms "exclusive," "sole," or "only"). Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 197 (Pon. 2019).

When the parties agreed "to submit to the jurisdiction of the Australian courts," but did not make that submission exclusive or choose a venue, and, although "shall" is a mandatory term, the term "jurisdiction for . . . this contract shall be the Commonwealth of Australia," cannot mandate anything more than that (if suit was brought there) Australia has jurisdiction and the plaintiff could not object to litigating there, but it does not mean that the same subject matter cannot be litigated in any other court. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 197-98 (Pon. 2019).

A forum selection clause is clearly permissive when it does not unambiguously name a forum, or contain any clear, unequivocal mandatory language naming a forum (or even naming any forum at all) and making that venue exclusive, but mandates only that Australian courts could have jurisdiction if suit were filed there. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 198 (Pon. 2019).

Any ambiguity in a forum selection clause must be construed against its drafter. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 198 (Pon. 2019).

Even when a dismissal is not proper under a forum selection clause, a court may still dismiss a case under the forum non conveniens doctrine. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 198 (Pon. 2019).

A permissive forum selection clause may be enforced when a dismissal under the forum non conveniens doctrine is also appropriate. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 198 n.6 (Pon. 2019).

– Guaranty

When the allegations are sufficient to allege an independent, primary, and unconditional promise among the plaintiffs and the defendant bank that the bank would act to bring another's account with the plaintiffs current, and that it would make future disbursements directly to the plaintiffs, it is not a contract of guaranty. If the obligation sought to be enforced is a primary or unconditional promise so that the promisor is primarily liable regardless of the failure of some other party to perform his contractual duty, the conclusion is that the obligation is not a contract of guaranty. Adams v. Island Homes Constr., Inc., 9 FSM R. 530a, 530c (Pon. 2000).

A guaranty is an enforceable undertaking or promise on the part of one person which is collateral to a primary or principal obligation on the part of another, and which binds the obligor to performance in the event of nonperformance by such other, the latter being bound to perform primarily. Adams v. Island Homes Constr., Inc., 9 FSM R. 530a, 530c-30d (Pon. 2000).

When the leading object of a party promising to pay the debt of another is to promote his own interests, and not to become surety or guarantor, and the promise is made on sufficient consideration, it will be valid, although not in writing. Adams v. Island Homes Constr., Inc., 9 FSM R. 530a, 530d (Pon. 2000).

When the plaintiff had a legal right to initiate a lawsuit against a corporate defendant for its unpaid debts at the time that the promissory note was executed in 1994, but instead of initiating a lawsuit, it agreed to certain terms of payment, and required individuals to personally

guarantee that payment would be made, each of the parties gained something in the execution of the promissory note and security agreement. There was thus consideration exchanged by the parties when they entered into these agreements. Goyo Corp. v. Christian, 12 FSM R. 140, 149 (Pon. 2003).

In a broad sense a guarantor or surety is one who promises to answer for the debt or default of another. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

Like other contracts, contracts of guaranty must be supported by consideration, and a guaranty will not be enforced unless the promise is supported by consideration. However, if the promise of the guarantor is shown to have been given as part of a transaction or arrangement which created the guaranteed debt or obligation, the promise is supported by the same consideration which supports the principal transaction. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

When a guaranty was given as a part of the same transaction by which the debt to the bank was created, no independent consideration was necessary. The guaranty was supported by the same consideration that supported the transaction between the debtor and the bank. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

The main distinction between a contract of surety and one of guaranty has been expressed by stating that a surety is primarily and jointly liable with the principal debtor, while a guarantor's liability is collateral and secondary and is fixed only by the inability of the principal debtor to discharge the primary obligation. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

The trial court did not err in finding a meeting of minds and no mutual mistake and that the mistake was in reducing the terms to writing when the facts suggest that the lender understood AHPW to liable on the loan and the parties stipulated that AHPW should have signed the promissory note and that the defendants intended to guarantee the loan. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 396 (App. 2006).

The trial court did not err when it reformed the loan documentation to reflect the parties' stipulated intent that AHPW be the obligor on the promissory note and that the appellants be guarantors of that obligation. As such, appellants were not guaranteeing their own obligation, they were guaranteeing AHPW's obligation on the promissory note. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 397 (App. 2006).

To be enforceable, a guaranty, like other contracts, must be supported by consideration. However, if a guaranty is made as part of a transaction or arrangement which created the guaranteed debt or obligation, it is not essential to a recovery on the promise of guaranty that the promise shall have been supported by a consideration other than that of the principal debt. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 397 (App. 2006).

When a corporate resolution agreed to guarantee another corporation's loan and that guaranty included any and all of the borrower's indebtedness to the lender and was used in the most comprehensive sense and means and included any and all of the borrower's liabilities then existing or thereafter incurred or created, the guaranty was sufficiently broad to include any restructuring of the loan even if the restructuring was considered a debt thereafter incurred or created, and thus, no later corporate resolution was needed for the guaranty to cover the restructuring. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 287 (Chk. 2009).

A guaranty is an enforceable undertaking or promise on the part of one person which is collateral to a primary or principal obligation on the part of another. A guaranty binds the guarantor to performance in the event of nonperformance by such other, the latter being bound to perform primarily. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

When the primary performer, the borrower, stopped making loan repayments to the bank and defaulted, the guarantors were then bound to perform on the loan repayments once the borrower had ceased to. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

The false notarization of a guaranty does not affect the guaranty's substantive provisions as it relates to the signer when the signer admits that he did sign the guaranty. This is because the purpose of notarization is to verify the identity and signature of the person who signed the document. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 & n.8 (Pon. 2016).

If a guaranty is made as part of a transaction or arrangement which created the guaranteed debt or obligation, it is not essential to a recovery on the promise of guaranty that the promise was supported by a consideration other than that of the principal debt. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

When security, such as a guaranty, is given as part of the same transaction that created the debt to the bank, no further or independent consideration is needed. The loan itself is sufficient consideration. This principle holds true when a mortgage is the security given for a loan to a third party. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

There is substantial authority for the proposition that partial payments by a principal debtor do not toll the statute of limitations as to the note's guarantors. The rationale behind this general rule is that a guarantor's consent to the debtor's future conduct may not be presumed merely on the basis of the original guarantee. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

The general rule is that a payment by the principal before the action is time-barred, operates as a renewal as to the principal, and to a surety, but not to a guarantor. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

A payment by the principal debtor will not operate to toll the statute of limitations as to a guarantor of the debt, even though it might do so as to a surety. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

When the trial court correctly decided that the statute of limitations was tolled by the debtor's partial payments, but did not separately determine whether those partial payments also tolled the statute of limitations with respect to the guarantor mortgagors, the appellate court will vacate the trial court judgment against the mortgagors and remand the matter for the trial court to conduct further proceedings to make that determination since that determination may need factual findings about whether the mortgagors were aware that the debtor was making partial payments and whether they acquiesced to the acknowledgment of the debt, and the trial court is the place to address those factual issues. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

– Illegality

The court may not simply assume that an illegal contract is unenforceable, but must make its own determination as to whether public policy factors militating against enforcement so outweigh the interests in favor that enforcement must be refused. Falcam v. FSM Postal Serv., 3 FSM R. 112, 121 (Pon. 1987).

A contract ostensibly entered into by government officials on behalf of the government but in violation of applicable law is illegal. Ponape Transfer & Storage v. Federated Shipping Co., 3 FSM R. 174, 178 (Pon. 1987).

As a general rule, an illegal contract is unenforceable. Even when performance occurs and a benefit is conferred, no recovery in either expectation damages or quantum meruit may be had. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 125 (Pon. 1993).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and requires a party to either return what has been received under the contract or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another. Etscheit v. Adams, 6 FSM R. 365, 392 (Pon. 1994).

A party to an illegal agreement will not be permitted to avail himself of its illegality until he restores to the other party all that has been received from such a party on the illegal agreement, and so long as he continues to enjoy the benefits of the agreement, he will not be allowed to set up its nullity. Nanpei v. Kihara, 7 FSM R. 319, 325 (App. 1995).

Contract provisions that exceed allowable interest rates, and are reached in violation of conflict of interest laws or the procedures prescribed by law, all concern possible violations of the law and may render the contract void as against public policy. Any contract that violates the law when made is not enforceable in the courts with respect to the illegality. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 340 (Chk. S. Ct. Tr. 1995).

The prohibition against the impairment of contracts is not absolute. The contract must be valid and enforceable when made. A contract which is illegal when made is unenforceable because no obligation arises from an illegal contract, thus there is no obligation that may be impaired. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 341 (Chk. S. Ct. Tr. 1995).

A claim of illegality cannot be raised by a party to nullify a contract until it restores to the other party all that it has received under the contract. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (I), 7 FSM R. 387, 389 (Pon. 1996).

Even though there is offer and acceptance and consideration exists, there is no contract when the agent signing the proposal was without authority to bind the principal, and the signing violated statutes, which rendered it illegal. Hauk v. Terravecchia, 8 FSM R. 394, 396 (Chk. 1998).

Whether a trial court correctly used the balancing of factors in weighing enforceability of part of an illegal employment contract, or whether the hiring, being in violation of public policy is unenforceable, is a matter of law, which is reviewed de novo. FSM v. Falcam, 9 FSM R. 1, 4

(App. 1999).

The general rule that illegal agreements are void is not without exceptions and restitution ought to be awarded in some situations. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

Because Congress has not explicitly made employment contracts which violate 11 F.S.M.C. 1305 unenforceable, the FSM Supreme Court may properly decide whether a contravention of public policy is grave enough to warrant unenforceabillty. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

The standard of review of whether the balancing factors for weighing enforceability of part of an illegal employment contract were weighed properly is whether the trial court abused its discretion. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

When there is no national precedent on the issue of the enforcement of an employment contract term which was violative of public policy, and there is no custom or tradition governing the matter, the FSM Supreme Court may look to the common law of the United States. FSM v. Falcam, 9 FSM R. 1, 5 (App. 1999).

Although there was a public interest in denying enforcement because the hiring violated public policy, this is outweighed by the special public interest of the government's failure to provide any hearing or opportunity to be heard concerning its failure to pay the employee or take any steps to terminate the contract, thus constituting a violation of due process rights; the employee's justified expectations of being paid; and the substantial forfeiture would result if enforcement were to be denied. Therefore the trial court did not abuse its discretion in its weighing of the factors on the issue of enforceability. FSM v. Falcam, 9 FSM R. 1, 5 (App. 1999).

A contract entered into by government officials on behalf of the government, but in violation of applicable law, is illegal. Talley v. Lelu Town Council, 10 FSM R. 226, 233 (Kos. S. Ct. Tr. 2001).

A contract which is illegal when it is made is not enforceable because there is no obligation that arises from the illegal contract. There is thus no obligation that has been impaired. Talley v. Lelu Town Council, 10 FSM R. 226, 233 (Kos. S. Ct. Tr. 2001).

As a general rule, an illegal contract is unenforceable. Talley v. Lelu Town Council, 10 FSM R. 226, 233 (Kos. S. Ct. Tr. 2001).

When there was no promise or expectation of the plaintiff's continued employment by the municipal government after the contract's expiration; when the plaintiff makes no salary claim for unpaid work because, despite the fact that the second contract failed to receive the town council's support as required by the municipal charter and was therefore illegal, the plaintiff was paid for all work performed under the second written contract; public policy weighs in favor of enforcing the provisions of the municipal charter and weighs against enforcement of a contract made in violation of those charter provisions. Plaintiff's breach of contract claim thus fails. Talley v. Lelu Town Council, 10 FSM R. 226, 234 (Kos. S. Ct. Tr. 2001).

A defendant would be estopped from raising an illegality of contract as a defense to a negligence claim when as the other party to the allegedly illegal contract he had the benefit of it.

Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

A contract entered into by government officials on behalf of the government but in violation of applicable law is illegal, and as a general rule an illegal contract is unenforceable, even when a benefit has been conferred on the party against whom enforcement is sought. Billimont v. Chuuk, 11 FSM R. 77, 80, 81 (Chk. S. Ct. Tr. 2002).

In order for a lease to be a valid obligation of state funds, it is necessary that the funds be not only already appropriated and available, but appropriated to the specific purpose of funding the lease payments. It is not enough that there are some funds in some account which could be used to pay the lease, having not been used as originally appropriated. Billimont v. Chuuk, 11 FSM R. 77, 80 (Chk. S. Ct. Tr. 2002).

The Restrictive Measures Act, clearly and unambiguously, prohibits execution of housing leases for the benefit of state personnel following its effective date with the only possible exception for the benefit of expatriate professional employees. A lease for a Chuuk citizen does not fit the exception. Billimont v. Chuuk, 11 FSM R. 77, 81 (Chk. S. Ct. Tr. 2002).

When the contract at issue is in violation of two separate Chuuk state statutes, it is illegal, void, and unenforceable, and the plaintiff's breach of contract claim cannot be upheld. Judgment for the defendant on that claim is mandated. Billimont v. Chuuk, 11 FSM R. 77, 81 (Chk. S. Ct. Tr. 2002).

A contract that is entered into *ultra vires* is void and illegal. As a general rule, an illegal contract is unenforceable. Even when performance occurs and a benefit has been conferred, no recovery in either expectation damages or quantum meruit may be had. Nagata v. Pohnpei, 11 FSM R. 265, 271 (Pon. 2002).

A party to an illegal agreement will not be permitted to avail himself of its illegality until he restores to the other party all that has been received from such a party on the illegal agreement, and so long as he continues to enjoy the benefits of the agreement, he will not be allowed to set up its nullity. Goyo Corp. v. Christian, 12 FSM R. 140, 148 (Pon. 2003).

Generally, to avoid liability under an illegal contract, the party seeking to avoid liability must return the benefit received under the illegal contract. Thus, in the case of an illegal loan, a borrower seeking to avoid liability would have to return the loan principal. Arthur v. Pohnpei, 16 FSM R. 581, 599 n.13 (Pon. 2009).

A bank depositor's complaint against a bank fails to state a claim on which it can obtain relief and will be dismissed when the bank honored, in conformance with 54 F.S.M.C. 153, a Division of Customs and Tax Administration Notice of Levy and Execution that was regular on its face since that is not an unauthorized withdrawal from the depositor's account or the result of the bank's negligence of any kind and since it cannot be a breach of any contract between the depositor and the bank because the bank cannot contract to violate FSM law or statutes. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

The 38 U.S.C. § 5301 ban on assigning U.S. military retirement benefits does not constitute a meritorious defense because 38 U.S.C. § 5301 is a United States statute that is applicable wherever the United States is sovereign, but which has no effect in the separate and distinct sovereignty of the Federated States of Micronesia. Since there is no similar FSM statute in

effect, the defendant's assignment is not an illegal contract. FSM Dev. Bank v. Talley, 22 FSM R. 587, 595 (Kos. 2020).

To avoid liability under an illegal contract, the party seeking to avoid liability must return the benefit received under the illegal contract; thus, in the case of an illegal loan, a borrower seeking to avoid liability would have to return the loan principal. FSM Dev. Bank v. Talley, 22 FSM R. 587, 595 n.3 (Kos. 2020).

– Implied Contracts

When passengers purchase passage in an ocean-going vessel for transportation, there is an implied maritime contract for passage even in the absence of written document. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

Where prior course of dealing and surrounding circumstances make it apparent that the parties' intention was that pay for unused vacation time would be an implied term of the contract, the former employee is entitled to the pay for unused vacation time minus the applicable taxes. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM R. 354, 356 (Pon. 1992).

The doctrine of unjust enrichment has been expanded to cover cases where there is an implied contract, but a benefit officiously thrust upon one is not considered an unjust enrichment and restitution is denied in such cases. Etscheit v. Adams, 6 FSM R. 365, 392 (Pon. 1994).

When a defendant, after canceling her long distance phone telephone service, continues to make long distance calls because the plaintiff is slow in terminating the service, the defendant, having made those calls, is precluded from arguing that she should not pay for them. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 17 (Yap 1999).

As a general proposition, an express contract and an implied contract for the same thing cannot exist at the same time. Where an express contract is in force, the law does not recognize an implied one. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

The settled rule that the statute of limitations begins to run upon the accrual of a cause of action applies in actions on implied and quasi contracts. When compensation for services is to be made on a certain date, the statute of limitations on an implied or quasi contract begins to run at that time. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 559 (Pon. 2000).

Quantum meruit is an equitable doctrine, based on the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby; under those circumstances, the law implies a promise to pay a reasonable amount for the labor and materials furnished, even absent a specific contract therefor. The doctrine of unjust enrichment has been recognized in the FSM. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 232 (Pon. 2002).

A motion to amend a complaint to add an unjust enrichment claim will be denied when it is based upon a defendant's failure to abide by the alleged agreements' terms because these are express agreements, and unjust enrichment is a theory applicable to implied contracts. Adams

v. Island Homes Constr., Inc., 11 FSM R. 218, 232 (Pon. 2002).

The doctrine of unjust enrichment only applies where there is no enforceable contract; the doctrine of restitution may not be applied where there is a contract; and the doctrines of implied contract and quantum meruit do not apply where there is an enforceable written contract. Esau v. Malem Mun. Gov't, 12 FSM R. 433, 436 (Kos. S. Ct. Tr. 2004).

The equitable doctrine of unjust enrichment operates in the absence of an enforceable contract. The principle requires that the party receiving something of value either pay for it or return it, and is based on the notion that one individual should not be allowed to enrich himself at another's expense. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 515 (App. 2005).

Contracts are express agreements, and unjust enrichment is a theory applicable to implied contracts. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 515 (App. 2005).

To say that a plaintiff's only remedy was to sue a defendant it had contracted with on a contract theory misses the point that it was the other defendant that was unjustly enriched, and to accept that the plaintiff's only remedy would be against long defunct enterprise defendant would confer upon the plaintiff an illusory remedy, and would confound its efforts to call to account the other defendant which actually received the money the plaintiff paid to the first defendant. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 516 (App. 2005).

If a defendant had had capabilities and resources equal to the transaction it undertook – then when it did not perform its contract, the plaintiff may well have had an adequate remedy in suing it on its contract to supply outboard motors, but when it was never a viable business entity, but a shell enterprise the purpose of which was to funnel the money to the other defendant, under all the case's facts and circumstances, the plaintiff should be permitted to "follow the money." Precluding the plaintiff from doing so would result in the other defendant's unjust enrichment at the plaintiff's expense. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 516 (App. 2005).

Unjust enrichment relates to the doctrine of implied contracts, which is to say that the court will, in the absence of a legally enforceable contract, imply a contract in law in the absence of a contract in fact in order to avoid unjust enrichment. Neither the concept of unjust enrichment or the closely associated idea of an implied contract apply where there is an enforceable written contract, since an express contract and implied contract for the same thing cannot govern a legal relationship at the same time. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 651-52 (Pon. 2008).

Although an express contract and implied contract for the same thing cannot govern a legal relationship at the same time, this principle is subject to two exceptions. The first exception is that a party can recover when the implied-in-law contract, also known as a quasi contract, relates to matters outside the express contract or to issues arising after the express contract. The second exception is that a party may prevail in the appropriate case on a quasi-contract when a party has no rights under an enforceable contract. Examples of the second exception are where a contract has failed or was rescinded. Actouka Executive Ins. Underwriters v.

Simina, 15 FSM R. 642, 652 (Pon. 2008).

An exception to the principle that an express contract and implied contract for the same thing cannot govern a legal relationship at the same time is when the implied-in-law contract relates to matters outside the express contract. It will apply when the broker's advancing the premiums fell outside the parties' binding contracts that the broker would obtain insurance coverage for the Chuuk-operated vessels and that Chuuk would pay for that coverage since the documents do not address whether the broker could, or would, advance the premiums and the broker advanced the premiums after the agreements were reached, and after Chuuk had failed to remit the premiums that it was obligated to pay under the contract. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 652 (Pon. 2008).

A marine insurance broker who advances fleet insurance premiums may obtain reimbursement from the insured on whose behalf it advanced those premiums under an implied-in-law contractual right to reimbursement of the premiums it advanced on another's behalf when the implied-in-law contractual right is integrally related both to the contract whereby the broker was to procure insurance and to the insurance contracts that resulted from that agreement. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 652 (Pon. 2008).

When, although Chuuk did not pay the premiums, they were paid by the broker on Chuuk's behalf and the policies were in full force and effect for the vessels operated by Chuuk, Chuuk is responsible for these premiums because the broker established by a preponderance of the evidence at trial that the broker and Chuuk had entered into an agreement whereby the broker would procure insurance for the Chuuk-operated vessels and that Chuuk would pay for that insurance. This express contract serves as the basis for an implied-in-law contract that Chuuk is liable for reimbursement to the broker. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 653 (Pon. 2008).

The existence of an account stated need not be express and frequently is implied from the circumstances. For example, where a creditor renders a statement and the debtor fails to object in a reasonable time, the open account may be superseded by an account stated. Saimon v. Wainit, 16 FSM R. 143, 147 n.1 (Chk. 2008).

6 F.S.M.C. 702(3) waives the FSM's sovereign immunity only for claims, whether liquidated or unliquidated, upon an express or implied contract with the FSM. But, although the equitable doctrine of unjust enrichment operates in the absence of an enforceable contract when a party has received something of value and neither paid for it or returned it, unjust enrichment is a theory applicable to implied contracts. Thus, depending upon the facts of a case, 6 F.S.M.C. 702(3) does not bar an unjust enrichment claim since it does waive the FSM's sovereign immunity for implied (as well as express) contract claims. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009).

The equitable doctrine of unjust enrichment, a theory applicable to implied contracts, operates in the absence of an enforceable contract and this principle requires that the party receiving something of value either pay for it or return it, and is based on the notion that one party should not be allowed to enrich himself at another's expense. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 119 (App. 2011).

A trial court has wide discretion in determining the amount of damages in contract and quasi-contract cases involving equitable doctrines, such as promissory estoppel and restitution

and the plaintiff may be compensated for the injuries by awarding compensation for the expenditures made in reliance on the promise. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

When the equities involved include that the plaintiff falsely informed Chuuk that the marine insurance policy was not in effect when, in fact, it was in effect because the net premium had been paid to the insurer, promissory estoppel may instead be a better measure of the damages than implied contract or unjust enrichment. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

When the plaintiff was a new hire and had not completed her probationary period and when the employer included in its employee handbook a clear and unambiguous disclaimer that the handbook is not to be construed as a contract, the disclaimer is effective and the employee handbook does not create an implied employment contract and the plaintiff was an at-will employee who could have been terminated at any time within the introductory period with or without cause. Peniknos v. Nakasone, 18 FSM R. 470, 483-84 (Pon. 2012).

If there was a valid contact, a court cannot use an implied contract and an unjust enrichment analysis because the doctrines of unjust enrichment and implied contract do not apply when there is a valid, enforceable written contract. The unjust enrichment doctrine applies only when there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or other reason and is based on the idea one person should not be permitted to unjustly enrich himself at another's expense. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

Unjust enrichment is an equitable doctrine that relates to the doctrine of implied contracts in that the court will, in the absence of a legally enforceable contract, imply a contract in law in the absence of a contract in fact in order to avoid unjust enrichment. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

When the trial court concluded that Kosrae was liable because there was an implied contract and because Kosrae was unjustly enriched, it must necessarily have also concluded that there was no valid enforceable contract since if there were an express contract, the implied contract and unjust enrichment doctrines would not apply. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

The implied contract doctrine is a method by which a contract is derived from the parties' intentions and actions when there is no enforceable contract. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

Either the circumstances are such that a contract is implied in law or the circumstances are such that a contract cannot be implied in law and there is no contract at all. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

Unjust enrichment is a theory applicable to implied contracts. The unjust enrichment doctrine covers cases where there is an implied contract. But if a benefit is officiously thrust upon another, it is not considered an unjust enrichment and restitution is denied in such cases. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

When the appellees did not officiously thrust their services as vice-principals on Kosrae but had applied for the vice-principal position; thought they had been hired for the position (and did

not know their contracts were invalid); and then performed the duties required by that position and as they were instructed by their superiors, Kosrae was unjustly enriched and therefore should compensate the appellees. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

Since it is an established rule in this jurisdiction that an express contract and an implied contract cannot govern a legal relationship at the same time and since the lease is an express contract that governs the legal relationship between the parties and has a provision which grants the plaintiffs sole physical possession of the property and a separate provision that speaks to the issue of utilities payments, the court may not recognize the existence of an implied in fact contract that would govern these same issues. Harden v. Inek, 19 FSM R. 244, 250-51 (Pon. 2014).

Unjust enrichment relates to the doctrine of implied contracts, which is to say that in order to avoid unjust enrichment the court will, in the absence of a legally enforceable contract, imply a contract in law in the absence of a contract in fact. Neither the concept of unjust enrichment or the closely associated idea of an implied contract apply when there is an enforceable written contract, since an express contract and implied contract for the same thing cannot govern a legal relationship at the same time. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

The doctrine of unjust enrichment does not apply when there is a legally binding agreement in the form of life and cancer insurance policies that the parties agreed to and executed. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

An action based on a judgment is an action based on contract. The judgment becomes a debt which the judgment debtor is obligated to pay and the law implies a contract on his part to pay it. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 (Pon. 2019).

– Indemnification

Where it is shown that the party seeking indemnification drafted the contract language, had greater bargaining power than the other party, had greater control over the work activities, or had considerably larger stake and expectation of profits from the endeavor, the courts become increasingly insistent upon ever more precise language in the indemnity clause as a condition to a finding that a non-negligent indemnitor is required by the clause to bear the burden of the indemnitee's negligence. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 146 (Pon. 1985).

Where there was no clear statement in a contractual indemnification clause that the indemnitee was to be protected against its own negligence, a reasonably intelligent FSM citizen aware of the general circumstances of the parties would not have perceived the English words used would require that the non-negligent party who had no control over, and relatively little economic stake in the work, must indemnify the major contractor against negligence of that major contractor. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 149 (Pon. 1985).

In indemnification provisions, in particular, the court requires pristine clarity in the language of the clause. Bank of the FSM v. Bartolome, 4 FSM R. 182, 185 (Pon. 1990).

Because agreements in promissory notes for the payment of attorney's fees are essentially

indemnity clauses, they will be given effect only to the extent that expenses and losses are actually incurred, as demonstrated by detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

A contract between a foreign fishing agreement party and the owner of vessels permitted under that agreement that the vessels' owner will be responsible for criminal and civil charges for fishing violations merely provides the foreign fishing agreement party with a contractual right of indemnity against the vessels' owner and does not bar the government's imposition of penalties for fishing agreement violations on the foreign fishing agreement party. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 89 (Pon. 1997).

Although the FSM Supreme Court has recognized claims for indemnity based on contractual provisions between two parties, and required precise clarity in the indemnification clause language, it is not prepared to create a common law indemnity claim. Joy Enterprises, Inc. v. Pohnpei Utilities Corp., 8 FSM R. 306, 311 (Pon. 1998).

When an agreement's indemnification provisions regarding the transfer of liability for causes of action and other claims are clear, the transferee is liable to indemnify the transferor for damages awarded for the transferor's negligence. Asher v. Kosrae, 8 FSM R. 443, 453 (Kos. S. Ct. Tr. 1998).

In the case of indemnity the defendant is liable for the whole damage springing from contract, while in contribution the defendant is chargeable only with a ratable proportion founded not on contract but upon equitable factors measured by equality of burden. Senda v. Semes, 8 FSM R. 484, 505 (Pon. 1998).

Although the court has previously recognized claims for indemnity based on contractual provisions between two parties, in the absence of a contractual provision it will not create a common law indemnity claim, therefore, in the absence of any contractual provisions between the parties, there is no basis for a claim of indemnity by a defendant against a plaintiff, the court will dismiss the defendant's counterclaim for indemnity. Primo v. Semes, 11 FSM R. 324, 329 (Pon. 2003).

Indemnification arises out of an express or implied contract by which a party held liable shifts the entire loss to another in order to prevent an unjust or unsatisfactory result. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 449 (Pon. 2003).

The court will recognize claims for indemnity based on contractual provisions between two parties, but, in the absence of a contractual provision, it will not create a common law indemnity claim. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 347 (Pon. 2004).

A hold-harmless agreement is a contract in which one party agrees to indemnify the other. "Indemnify" means to reimburse another for a loss suffered because of a third party's act or default; or to promise to reimburse another for such a loss; or to give another security against such a loss. Thus in a hold-harmless agreement, one of the two parties assumes any liability to third parties. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 364 (Yap 2009).

Logically indemnification cannot be applied to cases involving claims for losses that do not arise from liability to a third party. Where a party does not seek to be held harmless from a third

party claim, but rather from the other party's own claim for damage to the other party's property and business, a contract's hold-harmless or indemnification provision does not apply. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 364-65 (Yap 2009).

Courts require crystal clarity in a contract's indemnification language before holding that a non-negligent indemnitor must bear the burden of the indemnitee's negligence. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 365 (Yap 2009).

Although the FSM Supreme Court has recognized claims for indemnity based on contractual provisions between two parties, and required precise clarity in the indemnification clause language, it is not prepared to create a common law indemnity claim. Thus, even assuming the court had found any defendant liable, when no contractual provision for indemnification between the plaintiff and any of the defendants was presented to the court, the plaintiff's claim for indemnity fails. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 458 (Pon. 2009).

When the 2009 Chuuk-FSM Joint Law Enforcement Agreement contains a clause whereby the FSM national government and the State of Chuuk "agree that at the end of each fiscal year the terms of this agreement shall continue in effect until such time it is terminated or renewed by the parties" and when neither party has given the required thirty days notice to terminate the 2009 Joint Law Enforcement Agreement, the agreement remains in effect. FSM v. Sias, 16 FSM R. 661, 663 (Chk. 2009).

A joint law enforcement agreement clause that states – "Any renewal shall be subject to the availability of funds." – applies only to a renewal, not to a continuation of the current agreement. FSM v. Sias, 16 FSM R. 661, 663 (Chk. 2009).

Although the FSM Supreme Court has recognized indemnity claims based on the parties' contractual provisions and has required precise clarity in the indemnification clause language, it has not been prepared to create a common law indemnity claim. Thus, when, even assuming the court were to find a defendant liable, there is no contractual provision for the plaintiff's indemnification by a defendant, a plaintiff's indemnity claim fails. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

When a lease's only indemnification provision is one by which the lessee is required, under certain circumstances, to indemnify the lessor, the lessee's indemnification cross-claim against the lessor accordingly fails and is dismissed. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

A hold-harmless agreement is a contract in which one party agrees to indemnify the other party, that is, to reimburse the other party for a loss suffered because of a third party's act or default; or to promise to reimburse the other party for such a loss; or to give another security against such a loss. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 353 (App. 2012).

The words "indemnify" and "hold harmless" are typically interpreted to apply to third-party claims. Logically, a contract's hold-harmless or indemnification provision cannot apply when the party invoking it does not seek to be held harmless from a third-party claim but rather asserts its own claim against the other party for damage to its property or business. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 353 (App. 2012).

In a hold-harmless agreement, one of the two contracting parties assumes any liability to third parties. The hold-harmless provision thus allocates between the contracting parties the risk of liability to third parties. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 353 (App. 2012).

When a contracting party seeks damages, not for liability to a third-party, but for its own claim against the other contracting party for losses to its business by their failure to remit its funds to its home office, the contract's hold-harmless provision cannot be used as a basis for liability since it is a dispute between the contracting parties. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 353 (App. 2012).

– Installment Contracts

In a contract for installment shipments of goods where the parties' agreement was not in writing and there was no oral agreement or other manifestation of intent that the buyer's obligation to accept shipments was to be conditioned upon each prior shipment having arrived in timely fashion and in good condition, a nonoccurrence of the event or act is a breach of promise which gives rise to a claim for damages, rather than a failure of a condition to performance, which frees the other party from any further duty to perform the promised acts. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM R. 123, 127 (Pon. 1991).

In an installment contract setting, the statute of limitations begins to run from the time that each installment is due. Segal v. National Fisheries Corp., 11 FSM R. 340, 342 (Kos. 2003).

An installment contract is one in which the agreed performance of at least one of the parties is to be rendered, not as a whole at one time and place, but piecemeal at different times or different places. Bank of Hawaii v. Susaia, 19 FSM R. 66, 70 (Pon. 2013).

A cause of action accrues and the statute of limitations begins to run, when a suit may be successfully maintained thereon. When a note is payable in installments, each installment is a distinct cause of action and the statute of limitations begins to run against each installment from the time it becomes due, that is, from the time when an action might be brought to recover it. Bank of Hawaii v. Susaia, 19 FSM R. 66, 70 (Pon. 2013).

The applicable statute of limitation period for an installment contract is six years. Bank of Hawaii v. Susaia, 19 FSM R. 66, 70 (Pon. 2013).

– Interpretation

When a purported state employment contract erroneously and consistently recites that it is between the employee and the Trust Territory of the Pacific Islands and contains other statements demonstrating that the contract words were not taken seriously and did not comport with reality, the document is unpersuasive evidence of the relationships among the employee, the state, and the national government. Manahane v. FSM, 1 FSM R. 161, 165-67 (Pon. 1982).

Where there is ambiguity within a contractual clause and there are various reasonable and practical alternative constructions available, it is necessary to employ rules of interpretation. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 147 (Pon. 1985).

The purpose of the common law rules of interpretation is to assist in reaching an objective

interpretation, determining the meaning which reasonably intelligent people, knowing the circumstances, would place upon the words. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 148 (Pon. 1985).

Where two clauses within an agreement are inconsistent, the court should attempt to interpret the agreement so that each provision has meaning, but the paramount rule is that the deed must be construed so as to give effect to the intention of the parties as collected from the whole instrument. Melander v. Kosrae, 3 FSM R. 324, 327 (Kos. S. Ct. Tr. 1988).

Where there are various reasonable and practical alternative constructions of a contractual provision available, rules of interpretation dictate that any ambiguities in a contract should be construed more strictly against the party who wrote it. Bank of the FSM v. Bartolome, 4 FSM R. 182, 185 (Pon. 1990).

Contracts are not interpreted on the basis of subjective uncommunicated views, or secret hopes of one of the parties, but on an objective basis, according to the reasonable expectations or understanding of parties based upon circumstances known to the parties and their words and actions, at the time the agreement was entered into. Kihara v. Nanpei, 5 FSM R. 342, 345 (Pon. 1992).

Where prior course of dealing and surrounding circumstances make it apparent that the parties' intention was that pay for unused vacation time would be an implied term the former employee is entitled to the pay for unused vacation time minus the applicable taxes. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM R. 354, 356 (Pon. 1992).

The controlling factor in the interpretation of contracts is the intention of the parties at the time of the entering into of the contract. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM R. 354, 356 (Pon. 1992).

When the language of a contract is ambiguous or uncertain a court may look beyond the words of the contract to the surrounding circumstances and the parties' intent without changing the writing. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM R. 354, 356 (Pon. 1992).

Where the express language of the contract does not unambiguously require the employer to pay a terminated employee the equivalent of the cost of shipping household goods back to point of hire when no goods are actually shipped and where there are no surrounding circumstances or prior course of dealing indicating that this was the parties' intent the court will find that it was not the parties' intent and thus not a term of the contract that terminated employees be paid shipping costs for household goods not shipped. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM R. 354, 357 (Pon. 1992).

Contracts frequently do not specify the time of performance and courts routinely decide what a reasonable time for performance is in those cases where no time has been specified. Iriarte v. Micronesian Developers, Inc., 6 FSM R. 332, 335 (Pon. 1994).

The presumption that a written contract that is complete on its face embodies the final and entire agreement between the parties may be rebutted by evidence presented at trial. Etscheit v. Adams, 6 FSM R. 365, 384 (Pon. 1994).

An instrument that is not a promissory note because it fails to contain words of negotiability

may still be enforceable as a contract between the parties. Nanpei v. Kihara, 7 FSM R. 319, 323 (App. 1995).

Interpretations of terms in contracts are matters of law to be determined by the court. Nanpei v. Kihara, 7 FSM R. 319, 323 (App. 1995).

When the language of a contract is ambiguous or uncertain a court may look beyond the words of the contract to the surrounding circumstances to determine the parties' intent without changing the writing, and the court should attempt to determine meaning of words used rather than what signatory later says he intended. Nanpei v. Kihara, 7 FSM R. 319, 324 (App. 1995).

When faced with an allegation that an ambiguous contract provision creates a condition, courts prefer either an interpretation that imposes on a party a duty to see that an event occurs, rather than one that makes the other party's duty conditional on the occurrence of the event, or an interpretation that will reduce an obligee's risk of forfeiture if the event does not occur. Nanpei v. Kihara, 7 FSM R. 319, 324 (App. 1995).

Unless it is clear from the agreement or the surrounding circumstances that the obligee has assumed the risk of forfeiture, courts prefer an interpretation that reduces that risk. Nanpei v. Kihara, 7 FSM R. 319, 324 (App. 1995).

Interpretations of contract terms are matters of law to be determined by the court, and are reviewed on appeal *de novo*. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 621 (App. 1996).

Contracts are not interpreted on the basis of subjective uncommunicated views, or secret hopes of one of the parties, but on an objective basis. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 86 (Pon. 1997).

The determining factor as to the rights of a third-party beneficiary is the intention of the parties who actually made the contract. The question whether a contract was intended for the benefit of a third person is generally regarded as one of construction of the contract. The parties' intention in this respect is determined by the terms of the contract as a whole, construed in the light of the circumstances under which it was made and with the apparent purpose that the parties are trying to accomplish. Mailo v. Penta Ocean Inc., 8 FSM R. 139, 141 (Chk. 1997).

The time for completion of a house is not a material term of the parties' agreement when nothing in the parties' oral agreement indicated that the "time was of the essence" for completion of the house within two months and when the plaintiff pointed out no particular day of completion as being crucial. Therefore, late completion of the house should not be seen as a failure of a condition to further obligations under the contract. O'Byrne v. George, 9 FSM R. 62, 64 (Kos. S. Ct. Tr. 1999).

The controlling factor in the interpretation of contracts is the intention of the parties at the time of the entering into the contract. Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

Contracts are not interpreted on the basis of subjective uncommunicated views, or secret hopes of one of the parties, but on an objective basis. Contracts are interpreted according to the reasonable expectations or understanding of parties based upon circumstances known to the parties and their words and actions, at the time the agreement was entered into. Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

When the parties made their verbal agreement promising that the plaintiff would provide fill materials from his quarry for various of the defendant's municipal projects and that the defendant would provide the plaintiff with two loads of fill material for each day of hauling, they formed a contract because these promises contained an offer, acceptance and consideration and the terms of the agreement were definite and enforceable. The parties' essential commitments and agreement were identified and definite. Therefore the agreement is binding. Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

Once a forum selection clause is determined to be binding, its scope and effect should be determined under a contract law analysis. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 127 (Pon. 1999).

When the forum selection clause language uses "exclusive jurisdiction" in conjunction with the mandatory language, "hereby irrevocably consent," it establishes an intent to have any dispute resolved only by the other forum and it leaves no room for dispute over the clause's meaning in this respect. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 127 (Pon. 1999).

Contractual interpretation is a question of law to be reviewed de novo on appeal. Wolphagen v. Ramp, 9 FSM R. 191, 194 (App. 1999).

When a lease provides that the lessees have the right to build such structures as they see fit with the buildings to become the lessor's property upon the lease termination and the lessees built two houses, they built such structures as they saw fit, and in doing so defined the nature of those structures. Once built, those structures became the lessor's property, although not until the lease's termination. At that time, the lessor was entitled to find himself the owner of dwellings, not a bar. He was within his rights to prevent the houses from being renovated for use in that manner. Wolphagen v. Ramp, 9 FSM R. 191, 195 (App. 1999).

It is a well established principle of contract construction that clauses which are knowingly incorporated into a contract should not be treated as meaningless. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

Ambiguity in a contract provision is generally construed against the drafter. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 111 (Chk. 2001).

In interpreting a contract, words are to be given their plain and ordinary meaning. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

A contract provision that states that a fishing association will "take necessary steps to facilitate prompt and adequate settlement of any claim for loss or damage" against its member vessels cannot be read to mean that the association assumed liability for those claims because to "facilitate" a settlement of a claim or loss, without more, does not mean to assume liability for the claim or loss. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

When contractual provisions differ significantly from similar ones in another contract they therefore must be interpreted differently, and a party's liability must be based on the language in the agreement it signed, not on the language in the agreement that another signed. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 173 (Chk. 2001).

Interpretations of contract terms are matters of law to be determined by the court. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 173 (Chk. 2001).

When a fishing agreement requires that the signatory organizations must only take "necessary steps to ensure" that their members comply with the laws, regulations, and their permits and the government has made no allegation and introduced no evidence that the signatory has failed to take any of these "necessary steps," the government cannot seek to impose some sort of strict liability on the signatory for the actions of its members' employees because the fishing agreement's terms, without more, do not create liability for the signatory organizations for each and every violation of FSM fishery law or the foreign fishing agreement that their members commit. The government is therefore not entitled to summary judgment because, as a matter of law, the foreign fishing agreement's contractual terms do not impose vicarious liability on the signatory. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 173-74 (Chk. 2001).

Construction of a contract for an attorney's compensation is governed by the same rules that apply to contracts generally and interpretation of contract terms are matters of law to be determined by the court. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496 (Chk. 2002).

Contracts are not interpreted on the basis of one of the parties' subjective uncommunicated views or secret hopes. Instead, courts interpret and enforce agreements on an objective basis, according to the parties' reasonable expectations based upon the circumstances known to the parties and their words and actions, at the time the agreement was entered into. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 504-05 (Pon. 2002).

The fact that a party's understanding of an agreement is at variance with its express terms does not raise an issue of fact precluding summary judgment. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 505 (Pon. 2002).

Ambiguities in a contract must be construed against the drafter. Hauk v. Board of Dirs., 11 FSM R. 236, 241 (Chk. S. Ct. Tr. 2002).

In interpreting a contract, the words thereof are to be given their plain and ordinary meaning. Hauk v. Board of Dirs., 11 FSM R. 236, 241 (Chk. S. Ct. Tr. 2002).

When a contract provision for written notice of termination was inserted in the contract to assure that the employee had actual notice of the adverse action and when there is no dispute that the employee received actual notice of his termination, the employer's failure to provide written notice is not actionable breach of contract. Hauk v. Board of Dirs., 11 FSM R. 236, 242 (Chk. S. Ct. Tr. 2002).

When an employment contract has no provision for immediate termination under any circumstances, even where it is undisputed that the employer's property was misappropriated by an employee under contract, the court, construing the contract against the drafter, must conclude that the employer was required to provide the employee with sixty days written notice of his termination, which must run from the date of actual notice of impending termination. Hauk v. Board of Dirs., 11 FSM R. 236, 242 (Chk. S. Ct. Tr. 2002).

When interpreting a contract, the FSM judiciary may not simply assume that reasonably

intelligent Micronesians will perceive the same meaning as would reasonably intelligent Americans. The court may not blind itself to the pertinent aspects of Micronesian society, such as less facility in the English language, less exposure to business concepts, and paucity of legal resources, which might cause a reasonably intelligent Micronesian to perceive a meaning differently than would a person from some other nation. Phillip v. Marianas Ins. Co., 11 FSM R. 559, 563 n.4 (Pon. 2003).

Contracts are not interpreted on the basis of subjective, uncommunicated views or secret hopes of one of the parties. Instead, courts interpret and enforce agreements on an objective basis, according to the parties' reasonable expectations or understanding based upon the circumstances known to the parties and their words and actions, at the time the agreement was entered into. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

Only when there is ambiguity within a contract and there are various reasonable and practical alternative constructions available is it necessary to employ rules of interpretation. Otherwise, a party may not seek to introduce evidence that shows that the clear and unambiguous terms of a written agreement are other than as shown on the face of the agreement. Such a prohibition preserves the security and credibility of those who contract with the good faith belief that what they sign is what they agree to. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

The word "shall" renders the indicated procedures mandatory. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239 (Pon. 2003).

Contracts frequently do not specify the time of performance and courts routinely decide what is a "reasonable time" for performance in those cases. Therefore, if the timing of a party's performance under a contract is in dispute, it is the court's duty to determine what is a "reasonable time" for performance. Esau v. Malem Mun. Gov't, 12 FSM R. 433, 435 (Kos. S. Ct. Tr. 2004).

A default judgment's determination of damages may require the court to interpret a contract's terms. Interpretations of contract terms are matters of law to be determined by the court. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 554 (Chk. 2005).

When the contract addendum language is plain and unambiguous that the extra $3,000 per year pay was contingent upon the employer actually obtaining OMIP funding, not upon the plaintiff's trying his best or taking all possible steps to obtain that funding, the plaintiff's base annual pay was $55,000, not $58,000, and $55,000 should be read into the contract in place of $58,000. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 555 (Chk. 2005).

Interpretation of contract provisions is a matter of law to be determined by the court. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 364 (Yap 2009).

A contract must be read as a whole in the light of the circumstances under which it was made and with the apparent purpose that the parties are trying to accomplish. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 365 (Yap 2009).

A court may not simply assume that reasonably intelligent Micronesians will perceive the same meaning as would reasonably intelligent Americans because the court will not blind itself to the pertinent aspects of Micronesian society, such as less facility in the English language,

less exposure to business concepts, and paucity of legal resources, which might cause a reasonably intelligent Micronesian to perceive meaning differently than would a person from some other nation. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 365 n.2 (Yap 2009).

Disclaimers of the warranties of merchantability and fitness for a particular purpose for certain equipment, translated into plain English, mean that the equipment is not warrantied or guaranteed to be in the condition to be used for the purpose it is being supplied, that is, the equipment is supplied "as is." Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 367 (Yap 2009).

Since U.S. common law decisions are an appropriate source of guidance for contract and tort issues unresolved by statutes, decisions of FSM constitutional courts, or custom and tradition within the FSM, the Kosrae State Court will look to U. S. common law decisions for guidance on contract issues against the background of pertinent aspects of Micronesian society and culture. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

A contract's prohibition of subcontracting includes independent contractors as well as those subcontractors over whom the contractor would exercise strict supervision and close control. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

Contracts are not interpreted and enforced on the basis of one party's subjective, uncommunicated views or secret hopes but on an objective basis based upon the parties' words and actions and the circumstances known to them when the contract was made. A court should try to determine the meaning of the contract's words rather than rely on what a signatory later says was intended. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 n.3 (Pon. 2011).

For the final expression of the parties' intent, the court relies primarily on the terms as expressed in the contract's words although when the contract language is ambiguous, it can look beyond the contract's words to the surrounding circumstances to determine the parties' intent without changing the writing. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 n.4 (Pon. 2011).

When waiver of the subcontracting prohibition can only be granted by the FSM's "prior written consent," the FSM's contracting officer's failure to object to subcontracting is not a waiver under the contract, nor can it be deemed an acceptance of subcontracting as in compliance with the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 (Pon. 2011).

When a contract provision unequivocally authorizes a party's involvement in Asian Development Bank development projects since the ADB is a foreign donor organization and when there is no contractual provision requiring the party to contact foreign donor organizations only through the FSM diplomatic channels or requiring any particular procedure at all, the party's direct contact with the ADB may have caused puzzlement and delay by the ADB and become politically awkward for the FSM, but it was not a breach of the contract between the party and the FSM. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 579 (Pon. 2011).

When, in a contract, the nearest antecedent to the term "on a monthly basis" is "submission of duplicate invoices and progress reports," the phrase "on a monthly basis" qualifies when duplicate invoices and progress reports are due, not when payments are due because the grammatical construction of contracts generally requires that a qualifying or modifying phrase be construed as referring to its nearest antecedent. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 587

(Pon. 2011).

Contractual terms that provide that payment is due upon the occurrence of a stated event are generally not considered to be conditions indicating a forfeiture or a breach of contract but are merely a means of measuring time, and, if time is not of the essence of the contract, then the payment is due after a reasonable time, and what constitutes a reasonable time depends on the attendant circumstances in each case and is often based on factual determinations. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 587-88 (Pon. 2011).

Interpretations of contract terms are matters of law to be determined by the court. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 588 (Pon. 2011).

When the previously agreed percentages for completed work should be sufficient for a court to determine a contract price for any work done during the contract's last three years; when there is no indication that these same percentages were not intended for use throughout the contract's remaining three years and the overall grant award from the U.S. had a set figure; and when, if the parties thought that the payment terms for the contract's last three years were uncertain, the contract could be amended at any time with or without additional consideration, the court cannot conclude that there was no contract beyond the first two years because no prices had been set for the last three years or that there was no consideration for the last three years. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 589 (Pon. 2011).

Since interpretation of contract provisions is a matter of law to be determined by the court, an appellate court will review de novo the interpretation of contract provisions. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

Interpretation of contract provisions is a matter of law to be determined by the court, and an appellate court reviews issues of law de novo. Smith v. Nimea, 19 FSM R. 163, 169 (App. 2013).

Appellate courts interpret contract language de novo. Smith v. Nimea, 19 FSM R. 163, 171 (App. 2013).

When the contract language is clear and the record is clear, the appellate court may, on an alternate ground, affirm the trial court's decision denying an employee's claims for wages and overtime claims when the state administrative decision found as fact that he worked only on the projects for which he was paid a commission and when that decision was necessarily before the trial court when it was asked to grant partial summary judgment. Smith v. Nimea, 19 FSM R. 163, 171 (App. 2013).

When, under the employment contract, compensation is to be figured on the "net total amount for the specific job" not on the net total amount for only a part of the contract job, the employee's commission compensation must be figured on a contract job by contract job basis, not on a task-by-task basis within the contract job. Smith v. Nimea, 19 FSM R. 163, 172 (App. 2013).

A court will enforce a contract as written. Contracts are not interpreted and enforced on the basis of one party's subjective views or secret hopes but on an objective basis based upon the meaning of the contract's words rather than on what a signatory later says. Smith v. Nimea, 19 FSM R. 163, 172 (App. 2013).

When the contract's words mean that the employee's compensation must be based on a prorated share of the time spent on the project, the trial court did not err by concluding that the employee's compensation was based on the proportion of the time spent since that is what the contract required. Smith v. Nimea, 19 FSM R. 163, 172 (App. 2013).

A contract must be interpreted on an objective basis, based upon the parties' intent at the time of contracting. Harden v. Inek, 19 FSM R. 244, 249-50 (Pon. 2014).

The controlling factor in interpretation of contracts is the parties' intention at the time of entering into the contract. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 274 (Pon. 2014).

When a contract's language is ambiguous or uncertain, a court may look beyond the words of the contract to the surrounding circumstances and the parties' intent without changing the writing. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 274 (Pon. 2014).

Contracts are not interpreted on the basis of subjective uncommunicated views or secret hopes of one of the parties, but on an objective basis according to the parties' reasonable expectations or understanding based upon circumstances known to the parties and their words and actions when the agreement was entered into. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 274 (Pon. 2014).

When, given the plaintiffs' work experience, the objective intent of the parties must have been for the plaintiffs to perform work on a barge, the only two possibilities of the parties' intent that are in any way supported by the contract's context are for the contract term "project" to refer either to the barge's conduction voyage or to its conduction voyage and subsequent dredging activity. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 274 (Pon. 2014).

Common law decisions of the United States are an appropriate source of guidance for the FSM Supreme Court for contract issues unresolved by statutes, decisions of constitutional courts, or custom and tradition within the FSM. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 275 (Pon. 2014).

The court's precedents establish the validity of the principle of *contra proferentem* – any ambiguity in a contract is to be construed against the drafter – in this jurisdiction. But the rule that language is interpreted against the party who chose it has no direct application to cases where the language is prescribed by law. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 275 (Pon. 2014).

When one party chooses a contract term he is likely to provide more carefully for the protection of his own interests than for those of the other party. However, when the government mandates the specific contract language, neither party can directly impact the language through superior bargaining power and so the rule of *contra proferentem* does not apply. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 275 (Pon. 2014).

A rationale for the rule of *contra proferentem* is that the party against whom it operates had the possibility of drafting the language so as to avoid the dispute. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 275 (Pon. 2014).

When the employer could not have drafted the contract's duration clause differently because the language was mandated by a government agency, the policy rationale behind the doctrine of *contra proferentem* is inapplicable and the court will not use it to interpret the term "project" in the contract's duration clause. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 275 (Pon. 2014).

When the defendant arranged accommodation for its crew at a hotel and the crew members signed a check-in form that specified the check-out date as January 15, 2011, and since the January, 15 2011 check-out date not an ambiguous term, the meaning of the term is a question of law. The court will interpret the term according to its plain meaning that as a matter of law the contract ran through January 15, 2011. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 277 (Pon. 2014).

When a court is presented with a valid contract that lacks a duration clause, it must construct one into the contract using the guideline of reasonableness. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 277 (Pon. 2014).

When, under the circumstances, a reasonable duration term would be that the parties intended the crew to remain until the defendant provided the hotel with notice that accommodations were no longer required and when two of the crew members departed before January 27, 2011, and the hotel duly checked them out of the hotel and closed their account, this course of performance aids the court in determining that the parties intended the contract's duration to be that the crew members remain until the hotel was notified that accommodations were no longer required. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 277 (Pon. 2014).

Contracts frequently do not specify the time of performance and courts routinely decide what a reasonable time for performance is when no time has been specified. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

When repayment of the airport renovation loan was due a reasonable time after the $500,104.65 partial payment and when, without identifying the exact date that would constitute a reasonable time after the partial payment that the repayment should be complete, the court is confident that, based on the attendant circumstances, that time frame would be within the six-year period before suit was filed on January 24, 2012. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

What constitutes a reasonable time depends on the attendant circumstances in each case and is often based on factual determinations. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

Contracts are not interpreted on the basis of subjective, uncommunicated views or secret hopes of one of the parties. Instead, courts interpret and enforce agreements on an objective basis, according to the parties' reasonable expectations or understanding based upon the circumstances known to the parties and their words and actions, at the time the agreement was entered into. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

Whether the term "costs" in a verbal contract between a client and his attorney included attorney's fees is a question of contract interpretation that must be resolved by the court as a

matter of law. Damarlane v. Damarlane, 19 FSM R. 519, 523 (Pon. 2014).

Since a sophisticated lawyer negotiating against her own client should have reduced the agreement to writing and specified that "costs" included attorney's fees, the court will not reward the attorney's flawed conduct by imposing her interpretation of the term "costs" on her client more than 20 years after they entered into the representation agreement. Damarlane v. Damarlane, 19 FSM R. 519, 524 (Pon. 2014).

Whether a breach of contract has occurred is generally not a question of law but is rather a factual question, but when the facts are undisputed, the determination of whether there has been a material non-compliance with a contract's terms is necessarily reduced to a question of law. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

When only the construction of a contract is at issue, the legal effect and interpretation of the contract is a question of law, and summary judgment is proper. George v. Palsis, 19 FSM R. 558, 565 (Kos. 2014).

A written instrument, such as a contract, must be read as a whole and in the light of the circumstances under which it was made. George v. Palsis, 19 FSM R. 558, 565 (Kos. 2014).

When the Personnel Manual, read as a whole, authorizes the payment of the full amount (if it is 600 hours or less) of accrued annual leave to a former employee only when that employee has resigned with two weeks' written notice, the result must be that an employee's right to accrued annual leave pay is contingent upon certain events and if those events do not occur, the right never becomes a vested property interest. When it is undisputed that those events (written resignation with two weeks' notice) never occurred, the former employee, as a matter of law, did not have a vested property interest in his accrued annual leave. George v. Palsis, 19 FSM R. 558, 566 (Kos. 2014).

A court should endeavor to determine the meaning of a contractor's words, rather than rely on what a signatory later says was intended. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 223-24 (Pon. 2015).

The interpretation of terms within contracts constitutes a matter of law to be determined by the court. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

An insurance contract in the FSM that made reference to "the benefits provided under the Workers' Compensation of the CNMI," only intended to merely utilize 4 N. Mar. I. Code § 9310 to ascribe a dollar amount to the benefits to which an injured employee would be entitled, as opposed to adopting the entire CMNI Workers' Compensation Program. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

In interpreting a contract, the words thereof, are to be given their plain and ordinary meaning. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

Clauses that are knowingly incorporated into a contract should not be treated as meaningless. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

Any ambiguities in a contract provision should be construed more strictly against the party who wrote it. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

Questions of contract interpretation are matters of law to be determined by the court. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

When a letter signed by both parties clearly states that the partial payments were a "repayment plan for the outstanding balance of the loan," it cannot be interpreted in any way other than as an acknowledgment of the whole debt and that the agreed $100 payments were partial payments on the whole debt. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

Interpretation of contract provisions is a matter of law to be determined by the court. Eot Municipality v. Elimo, 20 FSM R. 482, 489 (Chk. 2016).

Since the Chuuk State Supreme Court has generally, except when a Chuuk statute or constitutional provision is applicable, followed common law contract principles in deciding contract cases, the court will apply common law contract rules. Common law decisions of the United States are thus an appropriate source of guidance for the FSM Supreme Court for contract issues unresolved by statutes, decisions of constitutional courts, or custom and tradition within the FSM. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 n.1 (Chk. 2017).

If a loan is in default and the promissory note contains an acceleration clause, the lender may choose to accelerate payment of the entire amount due and payable under the note. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 172 (Pon. 2017).

When a promissory note contains a clause under which the bank, in the event of a default, is entitled to reasonable attorney's fees, expenses and costs of collection, the borrowers thus agreed to the imposition of reasonable attorney's fees and costs of collection if they defaulted on their payment obligation to the bank. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 173 (Pon. 2017).

– Mistake and Misunderstanding

Where fraud or mistake are involved, the court can reform or cancel a deed, but relief will be denied in either situation if the misunderstanding of the aggrieved party was caused by his unexplained failure to read the necessary documents. Melander v. Kosrae, 3 FSM R. 324, 329 (Kos. S. Ct. Tr. 1988).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and requires a party to either return what has been received under the contract or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another. Etscheit v. Adams, 6 FSM R. 365, 392 (Pon. 1994).

The parol evidence rule generally prohibits the introduction of any extrinsic evidence, whether oral or written, to vary, alter or add to the terms of an integrated written instrument, but parol evidence is generally held admissible to alter the terms of a written contract when it is shown that by reason of mutual mistake the parties' true intention is not expressed. FSM Dev. Bank v. Arthur, 10 FSM R. 479, 480 (Pon. 2001).

In the case of mutual mistake the adversely affected party may rescind or avoid the

contract. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

A mutual mistake occurs when both parties are under substantially the same erroneous belief as to the facts. In a mutual mistake case, the party adversely affected must show that: 1) the mistake goes to a basic assumption on which the contract was made; 2) the mistake has a material effect on the agreed exchange of performances; and 3) the mistake is not one of which he bears the risk. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

When the mistake did not go to a basic assumption upon which the contract (loan) was made; when the mistake had no effect on the agreed exchange of performances – the loan terms offered by the bank and accepted and agreed to by the borrower were not a result of the "mistake"; and when both parties were not under substantially the same erroneous belief as to the facts that were the basis of the agreement, there was no mutual erroneous belief about the facts which were the basis for the loan and its terms and it is not a case of mutual mistake. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

Contracts are not reformed for mistake, writings are. The distinction is crucial. Courts have been tenacious in refusing to remake a bargain entered into because of mistake. They will, however, rewrite a writing which does not express the bargain. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

The classic case for reformation is a scrivener's or typist's error. Reformation is available in the case of the omission of a term agreed on, the inclusion of a term not agreed on, or the incorrect reduction of a term to writing. At the simplest level it is the mechanism for the correction of typographical and other similar inadvertent errors in reducing an agreement to writing. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

The variance between the original agreement and the writing may take any one of an infinity of conceivable forms. Often, the mistake is as to the legal effect of the writing; the parties' agreement called for a particular legal result. The writing, if enforced, produces a different result. Reformation is available. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

Where, because of mistake, a writing fails to accurately state the parties' agreement, reformation is the exclusive remedy. If the writing is inaccurate because of fraud, the alternative remedies of reformation and rescission are available. But when no allegation of fraud has been made, rescission is not an available remedy. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

– Modification

The parol evidence rule does not bar evidence of subsequent modification of the contract. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

The court will find that the parties' verbal agreement was not modified later by any of the parties' later actions when the plaintiff has failed to sustain his burden of proof with respect to those later actions. Tulensru v. Utwe, 9 FSM R. 95, 98 (Kos. S. Ct. Tr. 1999).

When both plaintiff and defendant were aware of the project's changed specifications; when defendant was present at the project site on the first day of construction and on several days throughout the project term; when defendant had ample notice and knowledge that the project

specifications had been changed; and when defendant did not, at any time, notify, stop or interfere with plaintiff's work and completion of the project, it would be unfair to enforce the contract term that required a writing signed by both parties to amend the agreement's terms and conditions. The parol evidence rule does not bar evidence of subsequent modification of a contract. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

When a contract was later modified verbally by the parties to require a monthly rental payment of $150 for the first year of the agreement, in addition to the agreed upon repairs to be completed by the defendant, this verbal modification of the lease agreement is enforceable. Lonno v. Talley, 12 FSM R. 484, 486 (Kos. S. Ct. Tr. 2004).

When there was a binding purchase agreement between a land buyer and a clan land seller and the plaintiffs were intended beneficiaries of that contract and when that contract could only be modified by a consensus decision by the seller's clan members evidenced by the agreement of five or more of the six designated clan members but the purported modification did not contain five genuine signatures of the designated committee representatives, there was a breach of the purchase agreement entitling plaintiffs to damages. Edgar v. Truk Trading Corp., 13 FSM R. 112, 117-18 (Chk. 2005).

Although the written contract required the plaintiffs to give the defendant a non-refundable retainer fee of $5,000, the defendant waived this requirement when he only required $500, altering the contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 647 (Kos. S. Ct. Tr. 2009).

Whether a contract has been modified by the parties thereto is ordinarily a question of fact for the finder of fact. Harden v. Inek, 19 FSM R. 244, 250 (Pon. 2014).

Since modification is a common law doctrine in the field of contracts, the court will consider United States decisions as an appropriate source of guidance in analyzing unresolved questions arising in the area of contracts. Under longstanding principles of common law, a contract may be modified with both parties' assent, provided that there is consideration for the new agreement or it is made under circumstances making consideration unnecessary. Harden v. Inek, 19 FSM R. 244, 250 (Pon. 2014).

A subordinate and separable part of the contract may be waived or modified by the parties without a cancellation of the whole contract. Harden v. Inek, 19 FSM R. 244, 250 (Pon. 2014).

When it is clear that the parties did not reach a meeting of the minds necessary to modify the contract, the absence of mutual assent makes the doctrine of modification inapplicable. Harden v. Inek, 19 FSM R. 244, 250 (Pon. 2014).

The Pohnpei statute of frauds provision bars the enforcement of oral contracts that could not be performed within one year from the making thereof. It does not bar modifying a contract more than one year after the contract's original formation or make that modification unenforceable. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 178 (Pon. 2017).

A borrower cannot make a bank liable for payment for further construction work (in effect, requiring the bank to make a further loan to the borrower) without the bank's consent. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 181 (Pon. 2017).

– Necessity of Writing

Under a statute of frauds writings are not required to make a contract, but to provide evidence that a contract has been made. A writing meets the statute of frauds if it contains the names of the parties, terms and conditions of the contract, a reasonable description of the subject of the contract and is signed by the party to be charged. It need not state the particulars of the contract so long as its substance or essential terms are stated, and it need not be a single document, but may be pieced together from separate writings. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 620 (App. 1996).

When the leading object of a party promising to pay the debt of another is to promote his own interests, and not to become surety or guarantor, and the promise is made on sufficient consideration, it will be valid, although not in writing. Adams v. Island Homes Constr., Inc., 9 FSM R. 530a, 530d (Pon. 2000).

There is no statute of frauds – a law requiring that certain agreements or contracts to be in writing before they are enforceable in court – in Chuuk. Customarily, any agreement, even that selling land, might be oral. Marcus v. Truk Trading Corp., 10 FSM R. 387, 389 (Chk. 2001).

There is no statute of frauds in Chuuk, that is, no legal requirement that there be a writing for there to be an enforceable contract. Under Chuukese customary law, no writing is needed to effect any contractual transaction, including the transfer of an interest in land. Nakamura v. Moen Municipality, 15 FSM R. 213, 217 (Chk. S. Ct. App. 2007).

There is no statute of frauds – a law requiring that certain agreements or contracts to be in writing before they are enforceable in court – in Chuuk. Customarily, any agreement, even that selling land, might be oral, but in some situations, a customary oral transfer must be registered to be enforceable. The reason is not that the Torrens land registration system must supplant custom and tradition. Rather, the reason is one of evidence because certificates of title are prima facie evidence of ownership as stated therein against the world. Setik v. Ruben, 17 FSM R. 465, 472 (App. 2011).

Chuuk does not have a statute of frauds. Killion v. Nero, 18 FSM R. 381, 384 (Chk. S. Ct. Tr. 2012).

There is no statute of frauds in the FSM Code. The relevant statutes do not require salvage contracts, or maritime contracts of any kind, to be in writing in order to be enforceable. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

It is generally true that salvage contracts may be oral. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

The Pohnpei statute of frauds covers a contract to charge any person upon any special promise to answer for the debt, default, or misdoing of another. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 n.3 (Pon. 2013).

Under a statute of frauds, writings are not required to make a contract, but to provide evidence that a contract has been made. A writing meets the statute of frauds if it contains the parties' names, terms and conditions of the contract, a reasonable description of the subject of

the contract and is signed by the party to be charged. The writing need not state the contract's particulars so long as its substance or essential terms are stated, and it need not be a single document, but may be pieced together from separate writings. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

Generally, an oral agreement is as enforceable as a written one. Reducing an agreement to writing, however, can assist the parties in assuring that all the necessary terms have been agreed to and are definite, or later assist a court in ascertaining what those terms were. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 n.3 (Pon. 2016).

The Pohnpei statute of frauds provides that no action may be brought and maintained on any agreement that is not to be performed within one year from the making thereof unless the promise, contract, or agreement, upon which the action is brought or some memorandum or note thereof, is in writing, and is signed by the party to be charged therewith or by some person legally authorized to sign for that party. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 177 (Pon. 2017).

An alleged oral contract for a fifty-year term, which by its terms could not be performed within one year, is not actionable under the Pohnpei statute of frauds. This is true even if the oral contract could have been terminated within one year for cause. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 177 (Pon. 2017).

The Pohnpei statute of frauds provision bars the enforcement of oral contracts that could not be performed within one year from the making thereof. It does not bar modifying a contract more than one year after the contract's original formation or make that modification unenforceable. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 178 (Pon. 2017).

There is no statute of frauds – a law requiring that certain agreements or contracts to be in writing before they are enforceable in court – in Chuuk. Customarily, any agreement, even that selling land, might be oral. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 163 (Chk. 2019).

– Novation

The general rule is that parties to a contract may rescind it by making a new contract that is inconsistent with the original contract. Phillip v. Aldis, 3 FSM R. 33, 37 (Pon. S. Ct. Tr. 1987).

Liabilities arising from a contract are not assignable without the consent of the creditor, and the mere assumption of the debt by a third party is not sufficient to establish a novation of the original contract unless there is a clear assent by the creditor to the substitution of a new obligor. Black Micro Corp. v. Santos, 7 FSM R. 311, 314-15 (Pon. 1995).

Liabilities arising from a contract are not assignable without the consent of the creditor, and a third party's mere assumption of the debt is not sufficient to establish a novation of the original contract unless there is a clear assent by the creditor to the substitution of a new obligor. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 74 (Pon. 2001).

The term "novation" is used almost exclusively in contract law and denotes the parties' substitution of a new agreement for an old one that involves either a new obligation between the

same parties, or a new debtor, or a new creditor. Walter v. Chuuk, 10 FSM R. 312, 315 (Chk. 2001).

Even assuming that the seller historically did not charge interest on its account with the buyer, nothing precludes the parties to a commercial transaction from coming to a new agreement regarding installment payments on the outstanding indebtedness that also included an interest component calculated over the prior 26 months period, so long as the interest rate charged did not contravene FSM public policy as set out in 34 F.S.M.C. 204. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 504 (Pon. 2002).

Parties to a contract may agree to replace an existing contract with a new and different contract before the original contract's term has expired. The general rule is that parties to a contract may rescind it by making a new contract that is inconsistent with the original contract. Uehara v. Chuuk, 14 FSM R. 221, 226 (Chk. 2006).

Since, upon the execution of a valid and legal substituted agreement the original agreement merges into and is extinguished, and since failure to perform the substituted agreement will not revive the old agreement, a 1999 lease agreement that was extinguished by a 2001 land purchase agreement will not be revived by the state's breach of the land purchase agreement. Uehara v. Chuuk, 14 FSM R. 221, 226 (Chk. 2006).

Parties to a contract may agree to replace an existing contract with a new and different contract before the original contract's term has expired. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611 (Chk. 2011).

The general rule is that parties to a contract may rescind it by making a new contract that is inconsistent with the original contract. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611 (Chk. 2011).

The parties' stipulated judgment in a state court action for breach of an easement agreement constituted a new contract – a new easement agreement – between the parties because it was a contract or agreement that was inconsistent with the original contract or agreement, especially when the amount stipulated to, $50,000, greatly exceeded the value of the undelivered 40 cubic yards of sand and 40 cubic yards of aggregates that constituted the breach. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611-12 (Chk. 2011).

When borrowers signed a November 17, 2014 promissory note that superseded and replaced an earlier April 20, 2012 promissory note after they requested that the original loan be restructured and the monthly payments lowered, the bank offered to do so under the terms in its response, and, by signing the bank's commitment letter and the November 17, 2014 amended and restated promissory note, the borrowers accepted that offer and agreed to those "restructured" terms and agreed and acknowledged that their remaining indebtedness to the bank was $17,831.33. Since the $17,831.33 credit the bank extended to the borrowers through the November 17, 2014 amended and restated promissory note paid off and retired the original April 20, 2012 promissory note and its debt, the borrowers' lament that the borrowers never received the $17,831.33 in cash is misguided. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 607 (Pon. 2020).

– Option Contract

An option contract is a unilateral contract where an offer is made and the offeree is invited to accept by rendering a performance instead of promising something in return. Once the offeree either tenders or begins the invited performance, the option contract is created. The offer then becomes irrevocable. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM R. 48, 53 (Pon. 1993).

The offeror may vary the common law rule by express provision in the contract; thus, he remains in control of his offer. Absent express provisions to the contrary, an option contract is binding on the offeror who must keep the offer open for a specified time period. The offeree is free to accept or reject within that period. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM R. 48, 53 (Pon. 1993).

– Parol Evidence

A party may not seek to introduce evidence that shows that the clear and unambiguous terms of a written agreement are other than as shown on the face of the agreement. Such a prohibition preserves the security and credibility of those who contract with good faith belief that what they sign is what they agree to. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM R. 48, 55 (Pon. 1993).

The parol evidence rule bars evidence of a contemporaneous or prior oral agreement that contradicts or alters the terms of the written agreement. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

Parol evidence of a collateral agreement that does not alter or contradict the written agreement is not barred by the parol evidence rule if the collateral agreement is one that in the circumstances might naturally be omitted from the writing. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

The parol evidence rule does not bar evidence of subsequent modification of the contract. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

When there is a single and final memorial of the understanding of the parties embodied in a written agreement, for evidentiary purposes all prior and contemporaneous negotiations are treated as having been superseded by that written memorial under the parol evidence rule. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 604-05 (Pon. 1996).

When both plaintiff and defendant were aware of the project's changed specifications; when defendant was present at the project site on the first day of construction and on several days throughout the project term; when defendant had ample notice and knowledge that the project specifications had been changed; and when defendant did not, at any time, notify, stop or interfere with plaintiff's work and completion of the project, it would be unfair to enforce the contract term that required a writing signed by both parties to amend the agreement's terms and conditions. The parol evidence rule does not bar evidence of subsequent modification of a contract. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

The parol evidence rule generally prohibits the introduction of any extrinsic evidence, whether oral or written, to vary, alter or add to the terms of an integrated written instrument, but

parol evidence is generally held admissible to alter the terms of a written contract when it is shown that by reason of mutual mistake the parties' true intention is not expressed. FSM Dev. Bank v. Arthur, 10 FSM R. 479, 480 (Pon. 2001).

A parol agreement inconsistent with a written agreement made contemporaneously therewith is void and unenforceable, unless it was omitted from the written contract by fraud, accident, or mistake. FSM Dev. Bank v. Arthur, 10 FSM R. 479, 480 (Pon. 2001).

The parol evidence rule bars evidence of a contemporaneous or prior oral agreement that contradicts or alters the terms of the written agreement, but parol evidence of a collateral agreement that does not alter or contradict the written agreement is not barred by the parol evidence rule if the collateral agreement is one that in the circumstances might naturally be omitted from the writing. Western Sales Trading Co. (Phils) v. B & J Corp., 14 FSM R. 423, 425 (Chk. 2006).

Since interest on unpaid amounts is not a collateral agreement that in the circumstances might naturally be omitted from the writing but is a term that would naturally be expected to be part of an agreement about payment for goods provided on an open account or on credit because it alters the written agreement between the parties, therefore evidence of a contract term that 1½% interest per month was due on unpaid amounts is inadmissible under the parol evidence rule. Western Sales Trading Co. (Phils) v. B & J Corp., 14 FSM R. 423, 425 (Chk. 2006).

The parol evidence rule bars evidence of a contemporaneous or prior oral agreement that contradicts or alters the terms of the written agreement. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 176 (Pon. 2017).

Parol evidence of a collateral agreement that does not alter or contradict the written agreement is not barred by the parol evidence rule if the collateral agreement is one that in the circumstances might naturally be omitted from the writing. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 176 (Pon. 2017).

Since an employment contract's duration, including termination, are not matters collateral to the employment contract, evidence of a prior oral contract with terms that contradict or alter the terms of the written employment contract that the employee signed, is barred. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 176 (Pon. 2017).

– Ratification

If a board of directors, upon learning of an officer's unauthorized transaction, does not promptly attempt to rescind or revoke the action previously taken by the officer, the corporation is bound on the transaction on a theory of ratification. Asher v. Kosrae, 8 FSM R. 443, 452 (Kos. S. Ct. Tr. 1998).

A corporation's directors may ratify any unauthorized act or contract. A corporation's ratification need not be manifested by any vote or formal resolution of the board of directors. An implied ratification can arise if the corporate principal, with full knowledge and recognition of the material facts, exhibits conduct demonstrating an adoption and recognition of the contract as binding, such as acting in the contract's furtherance. It is well established that if a corporation,

with knowledge of its officer's unauthorized contract and the material facts concerning it, receives and retains the benefits resulting from the transaction, it thereby ratifies the transaction. A corporation may not accept a transaction's benefit and at the same time attempt to escape its consequences on the ground that the transaction was not authorized. Asher v. Kosrae, 8 FSM R. 443, 452-53 (Kos. S. Ct. Tr. 1998).

When the board of directors did not act promptly to rescind or revoke the agreement made by its general manager; when all its subsequent actions have been consistent with the agreement's terms; when it had knowledge of the unauthorized contract and of the material facts concerning it; when it received, retained, and continues to receive and retain the benefits resulting from the transaction; it is clear that the board of directors has ratified the agreement. The corporation may not accept the agreement's benefits and at the same time escape its liabilities. Asher v. Kosrae, 8 FSM R. 443, 453 (Kos. S. Ct. Tr. 1998).

Even if a corporate official did not have the authority to execute a lease, his execution of the lease was ratified by the corporation's long acceptance of the lease's benefits. Marcus v. Truk Trading Corp., 11 FSM R. 152, 158 (Chk. 2002).

A clan or lineage in some respects functions as a corporation – it is, or can be, composed of many members, but is considered a single legal entity, capable of owning land, suing and being sued, and performing other acts, and which must necessarily act through its representatives. In this respect a corporation and a clan or lineage are analogous. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

Generally, any ratification of an unauthorized agreement must be in its entirety because an entity cannot accept the benefits of an unauthorized act, but reject its burdens. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

When a lineage as a whole has accepted all of the benefits of a lease – all of the payments that the lessee was required to make – up to the present and even beyond, it cannot now reject the burden of the lessee exercising its options to renew. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

It is possible for an agreement not authorized by all lineage members to be ratified by the later conduct of those who did not authorize it. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

Lineage members' consent or acquiesce to the sale of lineage land can be shown by affirmative assent, or an acquiescence, or by ratification of the act. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

Ratification is the approval of an otherwise unauthorized act or transaction. An implied ratification may take place if one, with full knowledge and understanding of the material facts, exhibits conduct that shows a recognition and adoption of the unauthorized act or transactions. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 443 (Pon. 2009).

The insurer ratified, or approved, the check cashing activities of its agents to the extent that they distributed the money obtained from the checks to policy holders for legitimate insurance purposes, and that the insurer gave credit to its agents for these distributions shows this

conclusively. But the insurer never ratified the agents' conversion of the funds that were not accounted for, or were not used for insurance purposes since the insurer's efforts to figure out what had happened, to stop it from happening, to arrive at an accounting for the missing money, and to restore order to its Pohnpei operation, manifest its disapproval of the practice of cashing premium checks initiated and continued by its agents. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 444 (Pon. 2009).

Generally, any ratification of an unauthorized agreement must be in its entirety because an entity cannot accept the benefits of an unauthorized act, but reject its burdens. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 2012).

When an insurer, by its acts, ratified only the unauthorized agreements between its agents and its eligible policy-holders – the distribution of cash advances to eligible policy-holders, it "recovered" those funds from its policy-holders and since the insurer is not entitled to a double recovery, it cannot hold others liable for those sums and must give them credit for those sums. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 2012).

Once the insurer ratified its agents' unauthorized agreements with its eligible policy-holders, it was barred from recovering any of that money from others because that would be a double recovery since the insurer had already "recovered" those funds from its policy-holders. Plaintiffs are not permitted a double recovery. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 2012).

An insurer did not ratify its agents' check-cashing agreements with a business by giving the business credit for its agents' cash advances to its eligible policy-holders. It merely recognized that it was not entitled to double recovery. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 2012).

When the insurer did not ratify any of its agents' check-cashing agreements but ratified only each of its agents' unauthorized agreements with its eligible policy-holders, no unauthorized agreement was partially ratified. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 361 (App. 2012).

– Reformation

Reformation of an insurance contract may be sought under a theory of mutual mistake or mistake or fraud of the insurance agent. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

Reformation is an equitable doctrine that allows a court to conform a contract (even an insurance contract) to the true agreement between the parties rather than the agreement as written. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

Contracts are not reformed for mistake, writings are. The distinction is crucial. Courts have been tenacious in refusing to remake a bargain entered into because of mistake. They will, however, rewrite a writing which does not express the bargain. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

The classic case for reformation is a scrivener's or typist's error. Reformation is available in

the case of the omission of a term agreed on, the inclusion of a term not agreed on, or the incorrect reduction of a term to writing. At the simplest level it is the mechanism for the correction of typographical and other similar inadvertent errors in reducing an agreement to writing. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

The variance between the original agreement and the writing may take any one of an infinity of conceivable forms. Often, the mistake is as to the legal effect of the writing; the parties' agreement called for a particular legal result. The writing, if enforced, produces a different result. Reformation is available. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

Where, because of mistake, a writing fails to accurately state the parties' agreement, reformation is the exclusive remedy. If the writing is inaccurate because of fraud, the alternative remedies of reformation and rescission are available. But when no allegation of fraud has been made, rescission is not an available remedy. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

Reformation will not be granted if its effect would be to curtail the rights of a bona fide purchaser for value or others who have relied upon the writing. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

When a loan agreement and promissory note that were the writings memorialized an agreement are reformed to accurately reflect the parties' agreement, the court is not creating an obligation where none currently exists by reforming the writings. The court is merely reforming the writings to reflect an obligation that already exists. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

The trial court did not err in finding a meeting of minds and no mutual mistake and that the mistake was in reducing the terms to writing when the facts suggest that the lender understood AHPW to liable on the loan and the parties stipulated that AHPW should have signed the promissory note and that the defendants intended to guarantee the loan. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 396 (App. 2006).

Reformation is available where there is an incorrect reduction of a term to a writing. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 397 (App. 2006).

The trial court did not err when it reformed the loan documentation to reflect the parties' stipulated intent that AHPW be the obligor on the promissory note and that the appellants be guarantors of that obligation. As such, appellants were not guaranteeing their own obligation, they were guaranteeing AHPW's obligation on the promissory note. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 397 (App. 2006).

When, even though the employment contract was printed with a Pohnpei state government letterhead, the Pohnpei Visitors Bureau's actual function and operation shows that it is independent of the Pohnpei state government; when the PVB's funding is provided for under the Compact of Free Association, but is deposited with the Pohnpei Department of Treasury and Administration for custodial purposes and disbursement; and when the PVB's actual decision-making lies with its Board, the PVB is an entity that operates independent of the state government, and its Board is responsible for its General Manager's hiring, thus making the state's non-renewal of the plaintiff's contract unlawful. Santos v. Pohnpei, 21 FSM R. 495, 499 (Pon. 2018).

Although the contract in question is a personal services contract which names the State of Pohnpei as the contracting party, because the Pohnpei Visitors Bureau operates and is controlled by its Board, and not by the state government, the agreement is between the plaintiff and the PVB, through its Board of Directors. Santos v. Pohnpei, 21 FSM R. 495, 499 (Pon. 2018).

– Rescission

The general rule is that parties to a contract may rescind it by making a new contract that is inconsistent with the original contract. Phillip v. Aldis, 3 FSM R. 33, 37 (Pon. S. Ct. Tr. 1987).

Rescission of an insurance contract would, if granted, absolve an insured from liability for the premium and could even entitle him to return of the premium paid. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

Where, because of mistake, a writing fails to accurately state the parties' agreement, reformation is the exclusive remedy. If the writing is inaccurate because of fraud, the alternative remedies of reformation and rescission are available. But when no allegation of fraud has been made, rescission is not an available remedy. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

An insurer seeking rescission of an insurance contract based on a misrepresentation in an insurance application must tender the premiums back to the insured. Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 (Kos. 2009).

An insurer seeking to rescind a life insurance policy upon a ground which rendered it voidable from the beginning must return or tender the premium paid thereunder because rescission of an insurance contract would, if granted, absolve an insured from liability for the premium and entitle him to return of the premium paid since the general rule is that a contract must be rescinded in whole and cannot be rescinded in part. Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 (Kos. 2009).

If an insurer seeks to avoid liability for the policy death benefit because of the insured's misrepresentation in the application process, it must tender the premiums to the beneficiaries. If it does not, it cannot prevail on the defense that the insured's misrepresentation made the policy voidable. This is because, after an insured's death, if a tender of the premium in avoidance of the life insurance policy for misrepresentation is not made to the beneficiaries in a timely manner or within a reasonable time, the defense of fraud or misrepresentation is deemed waived, and if the beneficiaries refuse the tender, it should then be paid into court before the insurer seeks a decision on the merits of its defense of fraud or misrepresentation. Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 (Kos. 2009).

The court will not hesitate to deny rescission and order enforcement of the contract when the party seeking rescission has not made a timely tender of the premiums (or benefit) it received under the contract. Sigrah v. Micro Life Plus, 16 FSM R. 253, 261 (Kos. 2009).

Lawyers are accustomed to seeing the word "restitution" in connection with the "rescission" or cancellation of a contract because when a contract is rescinded, each party is entitled to be

restored what he gave the other, or in other words, is entitled to restitution. Killion v. Nero, 18 FSM R. 381, 385 (Chk. S. Ct. Tr. 2012).

Rescission will normally be accompanied by restitution on both sides. It is the general rule that rescission will be granted only on the condition that the party asking it restore to the other party, substantially, the consideration received. Killion v. Nero, 18 FSM R. 381, 385 (Chk. S. Ct. Tr. 2012).

When parties bind themselves by their lawful contracts, courts are usually unable to alter these agreements even if they later seem unfair to one of the parties. Generally, a contract's terms determine when commissions are computed and paid. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 385 (App. 2017).

– Specific Performance

The equitable remedy of specific performance is one where the court orders a breaching party to do that which he has agreed to do, thereby rendering the non-breaching party the exact benefit which he expected. The remedy is available when money damages are inadequate compensation for the plaintiff – when damages cannot be computed or when a substitute cannot be purchased. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 126 (Pon. 1993).

The definiteness of the contract terms and the ease or difficulty of enforcement or supervision must be considered before awarding specific performance damages. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 623 (App. 1996).

When the parties have agreed in the court's presence to specific performance on the issue of damages, trial is not necessary on that issue. James v. Lelu Town, 10 FSM R. 648, 650 (Kos. S. Ct. Tr. 2002).

Specific performance is itself not a cause of action, but is rather a possible remedy for breach of contract under certain circumstances. Mailo v. Chuuk, 13 FSM R. 462, 472 n.7 (Chk. 2005).

Specific performance is a contract remedy that is available only when the usual measures of damages, expectancy, restitution, or reliance money damages, are inadequate compensation or cannot be computed or when a substitute cannot be purchased. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 606 (Pon. 2009).

If a party prevails upon its contract counterclaim and if none of the contract money damage remedies are applicable, specific performance is a possible remedy, even if the party has not prayed for it since, except for default judgments, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Since specific performance, even when an unlikely remedy, is dependent upon the success of a breach of contract counterclaim and could be awarded even if it were dismissed, the dismissal of what is essentially a part of the prayer for relief will be denied. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 606 (Pon. 2009).

A common remedy for the breach of a land contract is specific performance – the transfer of the land to be acquired – since land is considered unique. Killion v. Nero, 18 FSM R. 381, 385

(Chk. S. Ct. Tr. 2012).

Specific performance is a contract remedy that is available only when the usual measures of damages – expectancy, or reliance, or restitution money damages – are inadequate compensation or cannot be computed or when a substitute cannot be purchased. Killion v. Nero, 18 FSM R. 381, 385 (Chk. S. Ct. Tr. 2012).

The court cannot order the specific performance that the plaintiff would receive his "expectancy" – the land that he was to have received in exchange when the defendants do not have the land to exchange. Killion v. Nero, 18 FSM R. 381, 385 (Chk. S. Ct. Tr. 2012).

Specific performance is a contract remedy that is available only when the usual measures of damages, expectancy, restitution, or reliance money damages, are inadequate compensation or cannot be computed or when a substitute cannot be purchased. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

Any court order enforcing the specific performance of a contract right to exclusive possession of a factory must await a final judgment on the merits. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

The FSM Supreme Court generally encourages parties to voluntarily agree to resolve their disputes through alternative means such as arbitration and will specifically enforce the parties contract to arbitrate. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 657 (Pon. 2013).

There are no FSM statutes governing arbitration, therefore only common law arbitration exists here. Nevertheless, when a contract clearly shows the parties' intent to submit disputes to arbitration, the court will allow and encourage the parties to freely contract to resolve their disputes in other forums, with the confidence that the court will enforce such agreements. The court will hold the parties to their agreement and specifically enforce the arbitration provisions in the contract. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 657-58 (Pon. 2013).

In the absence of a statute requiring it, the specific enforcement of the arbitration clause does not mandate that litigation be dismissed before the arbitration can proceed. Generally, judicial proceedings will instead be stayed pending the arbitration. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 658 (Pon. 2013).

In the absence of a statute requiring dismissal and in the interests of judicial economy and of lessening the parties' financial burden, the best way to specifically enforce the arbitration clause's intent is not to dismiss the case in the hope that a foreign arbitration will proceed smoothly and not require further judicial enforcement. The best way to specifically enforce the arbitration clause is to stay the judicial proceedings and maintain the status quo while the parties go through arbitration. A preliminary injunction will therefore remain in effect and the case will remain open while the arbitration proceeds. Once an arbitration decision is rendered, the court can then enforce that decision as a judgment or final order of this court and take such further steps as may be necessary and appropriate to conclude this litigation. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 658 (Pon. 2013).

An agreement to arbitrate future contractual disputes is specifically enforceable, even if one

party attempts to revoke the agreement. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 658 (Pon. 2013).

The equitable remedy of specific performance is where the court orders a breaching party to do that which he has agreed to do, thereby rendering the non-breaching party the exact benefit which he expected. The remedy is available when money damages are inadequate compensation for the plaintiff, or when damages cannot be computed. Harden v. Inek, 19 FSM R. 244, 251-52 (Pon. 2014).

When, if specific performance were ordered, the court would order that the plaintiff be allowed to resume possession of a lot for five more months, but when, because that lot was undeveloped and did not generate any revenue, five months of resumed occupation by the plaintiff would not affect the plaintiff's income and thus specific performance of the last five months of the lease would seem pointless, a money award for actual damages should suffice. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 378 (Pon. 2014).

The equitable remedy of specific performance is one where the court orders a breaching party to do that which he has agreed to do, thereby rendering the non-breaching party the exact benefit which he expected. The remedy is available when money damages are inadequate compensation for the plaintiff, when damages cannot be computed, or when a substitute cannot be purchased. Panuelo v. FSM, 20 FSM R. 62, 69 (Pon. 2015).

Specific performance is available only when the usual contract measures of damages, expectancy, restitution, or reliance money damages, are inadequate compensation or cannot be computed or when a substitute cannot be purchased. Panuelo v. FSM, 20 FSM R. 62, 69 (Pon. 2015).

By ordering the promisor to render the promised performance, the court attempts to produce, as nearly as is practicable, the same effect as if the contract had been performed, but a court will not order a performance that has become impossible, unreasonably burdensome, or unlawful, nor will it issue an order that can be frustrated by the defendant through exercise of a power of termination or otherwise. Panuelo v. FSM, 20 FSM R. 62, 69 (Pon. 2015).

Because specific performance is a remedy in equity under contract law, an applicant's claim for specific performance is unenforceable when no valid agreement exists between the applicant and the government since, for the court to order the Secretary to hire the applicant based on an invalid contract, through specific performance, would be unlawful and a violation of public policy. Panuelo v. FSM, 20 FSM R. 62, 69 (Pon. 2015).

Specific performance is a contract remedy that is available only when the usual measure of damages, expectancy, restitution, or reliance money damages are inadequate compensation, or cannot be computed, or when a substitute cannot be purchased. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 535 (App. 2018).

When a money award for actual damages should suffice and the amount is capable of being ascertained, specific performance is, by implication, an unsuitable remedy. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 536 (App. 2018).

Specific performance, however, should only be granted where no adequate remedy at law exists. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 536 (App. 2018).

– Surety

In a broad sense a guarantor or surety is one who promises to answer for the debt or default of another. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

The main distinction between a contract of surety and one of guaranty has been expressed by stating that a surety is primarily and jointly liable with the principal debtor, while a guarantor's liability is collateral and secondary and is fixed only by the inability of the principal debtor to discharge the primary obligation. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

When the defendants attempted to obtain an $8.1 million standby letter of credit through the Bank of the FSM, Colonia, Yap, but were unable to because that bank was institutionally unable to handle such a letter of credit for a sum larger than $2.5 million; when the possibility that the other bank in the FSM, the Bank of Guam, might be able to issue such a letter of credit was not explored; and the defendants submitted a surety bond from the Travelers Casualty and Surety Company of Hartford, Connecticut; and when the court issued its order, it was under the impression that a standby letter of credit could be issued through the Bank of the FSM, Yap, and if it had had any hint that such was not possible, the order would have specified a letter of credit through any bank in the FSM and only if that was unavailable would an alternative bond have been considered; the court will approve the Travelers surety bond that the defendants have already obtained and stay execution on the judgment pending appeal and further court order. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 533, 534-35 (Yap 2007).

The general rule is that a payment by the principal before the action is time-barred, operates as a renewal as to the principal, and to a surety, but not to a guarantor. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

A payment by the principal debtor will not operate to toll the statute of limitations as to a guarantor of the debt, even though it might do so as to a surety. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

A surety contract is a contract between the court and a third party, the surety, under which the surety ensures that the criminal defendant will appear before the court for all court proceedings and complies with all other terms listed – in exchange for the court granting the defendant freedom from incarceration until the court's final judgment. The contract ends, at latest, when the defendant is sentenced – although it may end earlier. Chuuk v. Dawe, 22 FSM R. 415, 416 (Chk. S. Ct. Tr. 2019).

When the State has not made any allegations that the criminal defendant violated his conditions of release before he was sentenced, but merely alleged that the defendant failed to abide by the conditions of his suspended sentence, the surety is not obligated for a breach of the surety contract because the surety contract expired when the defendant was sentenced and the surety had no duty to ensure that the defendant fulfilled the conditions of his suspended sentence. Chuuk v. Dawe, 22 FSM R. 415, 416 (Chk. S. Ct. Tr. 2019).

– Third-Party Beneficiary

A third person may, in his own right and name, enforce a promise made for his benefit even

though he is a stranger both to the contract and to the consideration. This concept, originally an exception to the rule that no claim can be sued upon contractually unless it is a contract between the parties to the suit, has become so general and far-reaching in its consequences as to have ceased to be an exception, but is recognized as an affirmative rule, generally known as the third-party beneficiary doctrine. Mailo v. Penta Ocean Inc., 8 FSM R. 139, 141 (Chk. 1997).

The determining factor as to the rights of a third-party beneficiary is the intention of the parties who actually made the contract. The question whether a contract was intended for the benefit of a third person is generally regarded as one of construction of the contract. The parties' intention in this respect is determined by the terms of the contract as a whole, construed in the light of the circumstances under which it was made and with the apparent purpose that the parties are trying to accomplish. Mailo v. Penta Ocean Inc., 8 FSM R. 139, 141 (Chk. 1997).

When the third-party beneficiary is so described as to be ascertainable, it is not necessary that he be named in the contract in order to enforce the contract. Mailo v. Penta Ocean Inc., 8 FSM R. 139, 141-42 (Chk. 1997).

Where a contract is made especially for the benefit of a third person he may enforce it directly against the promisor. Mailo v. Penta Ocean Inc., 8 FSM R. 139, 142 (Chk. 1997).

An intended third party beneficiary may enforce a settlement agreement not to seek further compensation from the third party even though not all the compensation agreed to has been paid when the settlement agreement clearly contemplated that the compensation might be tardy and provided a remedy for such an occurrence. Mailo v. Penta Ocean Inc., 8 FSM R. 139, 142 (Chk. 1997).

A third party beneficiary can only recover if he is an intended beneficiary of the contract; he may not recover if he is only an incidental beneficiary of that contract. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 75 (Pon. 2001).

The determining factor as to a third party beneficiary's rights is the intention of the parties who actually made the contract. The question whether a contract was intended for a third person's benefit is generally regarded as one of construction of the contract. The parties' intention in this respect is determined by the contract's terms as a whole, construed in the light of the circumstances under which it was made and with the apparent purpose that the parties are trying to accomplish. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 75 (Pon. 2001).

When a contract's parties did not enter into that agreement primarily to benefit another, they were seeking to benefit themselves, and when their purpose was not to give the bank the benefit of their bargain, the bank is not the agreement's intended beneficiary and has no right to enforce that agreement. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 75 (Pon. 2001).

A third party beneficiary can only recover if he is an intended beneficiary of a contract. The determining factor as to a third party beneficiary's rights is the intention of the parties who actually made the contract. The question whether a contract was intended for the benefit of a third person is generally regarded as one of construction of the contract. The parties' intention in this respect is determined by the contract's terms as a whole, construed in the light of the circumstances under which it was made and with the apparent purpose that the parties are trying to accomplish. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 633 (Pon. 2002).

There must be a valid agreement between two parties to enable a third person, for whose benefit the promise is made, to sue upon it. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 633 (Pon. 2002).

A third person can, in his own name and claiming his own right, enforce a promise made to benefit him regardless of the fact that he is a stranger to the contract and the consideration. The determining factor in a third party beneficiary claim is the parties' intent, which is a question of the construction of the contract as determined by the contract's terms as a whole. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 228 (Pon. 2002).

A third person may enforce a contract for his own benefit when he is a stranger to the contract if the contract shows the parties intended to benefit the third person. The question of the parties' intent is generally one of construction of the contract, and this intention is determined by the contract terms as a whole, construed in light of the circumstances of the contract's making and the parties' purpose. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239 (Pon. 2003).

When a third-party beneficiary can be ascertained from the contract, he need not be named therein. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239 (Pon. 2003).

A claimant may enforce a loan contract and require payment by the lender if he can prove that he was a third-party beneficiary of the loan contract. He must, however, sustain the essential elements of a third party beneficiary claim. There must be a legally enforceable contract, and the parties must have intended that the third party be benefited by the contract's performance. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239 (Pon. 2003).

When the lender bank was in charge of the disbursement of the loan proceeds and when the contract language provided that no loan proceeds would be disbursed until the bank had received evidence that all labor and materials have been paid for, the bank assumed the duty under the agreement not to disburse loan proceeds until it had received verification that the suppliers had been paid. When, if the bank had met its commitment in this regard, it would have been impossible for the project to be completed without the suppliers being fully paid, the suppliers were as a matter of law intended third-party beneficiaries of the loan agreement. In such a case, the third-party may enforce the contract against the promisor. The bank's promise not to disburse loan proceeds until it had received confirmation that the suppliers had been paid, is enforceable against the bank. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239-40 (Pon. 2003).

When, if the bank had met its obligation under the loan agreement the suppliers would have been fully paid upon completion of the project, the bank is liable to the suppliers. But since the bank, not the borrowers, made the promise not to disburse the loan proceeds until proof of payment to the suppliers, it follows that the suppliers may enforce the promise against the bank but not the borrowers because, at most, the borrowers may have had an unspecified duty to participate in the verification process, which is insufficient to render them liable to the suppliers as intended third-party beneficiaries. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 240 (Pon. 2003).

The absence of any express duty in a construction contract to insure the payment of the suppliers means that as a matter of law the parties to the construction agreement did not intend the suppliers to be third-party beneficiaries. Adams v. Island Homes Constr., Inc., 12 FSM R.

234, 241 (Pon. 2003).

When a party is precluded from contesting its liability on an oral agreement as a result of its willful, bad faith discovery misconduct and when the plaintiffs' damages are also fully awardable under the plaintiffs' third-party beneficiary claim quite apart from any liability under the agreement, the party's contention that it is not liable under the agreement is wholly lacking in merit. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 241 (Pon. 2003).

A third party beneficiary can only recover if he or she is an intended beneficiary of a contract. When a contract is made especially for the benefit of a third person, he or she may enforce it directly against the promisor. The determining factor in a third party beneficiary claim is the parties' intent, which is a question of the construction of the contract as determined by the contract's terms as a whole. Benjamin v. Youngstrom, 13 FSM R. 542, 547 (Kos. S. Ct. Tr. 2005).

When a quitclaim deed conveys all of the seller's rights, title and interest in a parcel to a buyer, his children and all his future heirs; when there is no reference made to the plaintiffs or to reservation of any rights for the plaintiffs; and when the quitclaim deed clearly indicates the parties' intent: the sale of all rights, title and interest in the parcel for $3000; the quitclaim deed was not made especially for the benefit of third persons. As the plaintiffs were not the intended beneficiaries on the contract, and do not satisfy the requirements of third party beneficiaries, they cannot recover on the breach of contract claim. Benjamin v. Youngstrom, 13 FSM R. 542, 547 (Kos. S. Ct. Tr. 2005).

A contract's intended third-party beneficiary can recover attorney's fees under a contract providing for attorney's fees if it has to sue to enforce its third-party beneficiary rights and prevails. Similarly, a prevailing party can recover attorney's fees from an intended third-party beneficiary litigant if that beneficiary could have recovered attorney's fees from that party under the contract. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 (App. 2006).

A corporation has no valid cross-claim against a co-party and its cross-claims will be dismissed when it was not a party to the lease upon which the cross-claims are based and was not named as an intended third-party beneficiary in the lease. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

The usual reason for determining whether a non-contracting party is an intended third-party beneficiary to a contract is when that beneficiary is seeking to enforce some favorable contract provision or to collect damages for the contract's breach. This is because a third-party beneficiary can enforce a contract if it is an intended beneficiary of the contract, but it cannot if it is only an incidental beneficiary. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 591 & n.23 (Pon. 2011).

When none of the four states, the entities that would normally assert third-party beneficiary status, are parties to the action; when the contract itself is plain and unambiguous; and when all of the issues in the declaratory judgment request are also before the court in the parties' direct actions, the court sees no need for a declaratory judgment on whether the four states are third-party beneficiaries of the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 591 (Pon. 2011).

The FSM cannot raise a sovereign immunity defense when it has statutorily waived its sovereign immunity for damages arising out of the improper administration of FSM statutory

laws and when a sound basis for the FSM's waiver of sovereign immunity may be the waiver for claims, whether liquidated or unliquidated, upon an express or implied contract with the FSM because the Memorandum of Understanding between Chuuk and the FSM provides that the FSM handles, processes, and pays the Chuuk Special Education Program payroll. Since that express contract obligates the FSM to make all properly obligated withholdings from the employees' pay, the Chuuk Health Care Plan is, by statute, an intended third-party beneficiary of the contract between the FSM and Chuuk so that the Plan's claim is therefore a claim based on Chuuk's contract with the FSM. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 497 (Chk. 2013).

There is no hidden third-party beneficiary contract between an insurer and its insured for the benefit of a salvor when there is a contract between the salvor and the insurer in plain view. No discovery is needed to determine its existence and terms. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

There must be a valid agreement between two parties to enable a third person, for whose benefit the promise is made, to sue upon it. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

A third party beneficiary can only recover if he or she is an intended beneficiary of a contract. When a contract is made especially for the benefit of a third person, he or she may enforce it directly against the promisor. The determining factor in a third party beneficiary claim is the parties' intent, which is a question of the construction of the contract as determined by the contract's terms as a whole. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

When it is unclear what testimony or evidence forms the basis for the plaintiff's third-party beneficiary cause of action, she will not prevail on the claim. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

To intervene to prosecute a third-party beneficiary claim when the movant lacks privity of contract and there is no existing statutory provision that the movant might be able to avail itself, the movant must make a showing that it has actually suffered a loss or injury, which would be capable of being redressed through its proposed intervention, and which is separate from the rights and claims asserted by the existing parties. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 218 (Pon. 2015).

A third party beneficiary can recover if he or she is an intended beneficiary of a contract, but cannot enforce a contract or recover if he or she is only an incidental beneficiary and not an intended beneficiary of the contract. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 175 (Pon. 2017).

The determining factor in a third party beneficiary claim is the parties' intent, which is a question of the contract's construction as determined by the contract's terms as a whole. A person is an incidental beneficiary if the benefits accruing to him or her are merely incidental to the contract's performance. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 175 (Pon. 2017).

Contracting parties are presumed to act for themselves. Therefore an intent to benefit a third person must be clearly expressed in the contract. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 175 (Pon. 2017).

Employment contracts generally do not make the employee's family members or dependants intended third-party beneficiaries. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 175 (Pon. 2017).

When any benefits accruing to an employee's family members due to the employee's performance of his employment contract were merely incidental to that contract, the family members do not have a third-party beneficiary cause of action for breach of contract, even if the employee were to prove that his employer breached the contract. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 175 (Pon. 2017).

– Unconscionable

The traditional test for unconscionability is: a contract is unconscionable if it is such as no man in his senses and not under delusion would make on the one hand, and as no honest or fair man would accept, on the other. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 180 (Pon. 2017).

It is generally held that the unconscionability test involves the question of whether the provision amounts to the taking of an unfair advantage by one party over the other. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 180 (Pon. 2017).

To be unconscionable, the contract term must be so one-sided as to be oppressive. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 180 (Pon. 2017).

The determination of unconscionability is a question of law. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 180 (Pon. 2017).

– Undue Influence

A forum selection clause unaffected by fraud, undue influence, or overweening bargaining power should be given full effect. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 126 (Pon. 1999).

An attorney seeking to recover unpaid attorney fees on the theory of account stated must prove the reasonable value of the services rendered if the fee agreement was entered into during the course of the attorney-client relationship. This is because when the account stated is for legal services, there is a presumption of undue influence when entered between an attorney and client during their fiduciary relationship. The attorney has the burden of showing that the transaction was fair and regular and entered voluntarily by the client with full knowledge of the facts. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

There are two broad classes of undue influence cases, and a third category involving attorneys. In the first, one party uses a dominant psychological position in an unfair manner to induce the subservient party to consent to an agreement to which the other party would not have otherwise consented. In the second class, one uses a position of trust and confidence, rather than dominance, to unfairly persuade the other into a transaction. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 180 (Pon. 2017).

The key to undue influence contract cases is perhaps not the means, but the results. The foremost indicator of undue influence is an unnatural transaction resulting in the enrichment of

one of the parties at the expense of the other. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 180 (Pon. 2017).

When there is nothing unnatural, oppressive, or grossly one-sided in the construction contract between the owner and the builder, it was not an unnatural transaction enriching one party at the other's expense through undue influence, since the owner received a well-built house and the builder adequate compensation for its construction work. The contract did not result in the builder's enrichment at the owner's expense because the owner got value for money – he got a well-built house. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 180 (Pon. 2017).

– Unilateral Contract

An option contract is a unilateral contract where an offer is made and the offeree is invited to accept by rendering a performance instead of promising something in return. Once the offeree either tenders or begins the invited performance, the option contract is created. The offer then becomes irrevocable. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM R. 48, 53 (Pon. 1993).

Provisions in a personnel handbook may be enforceable as an employment contract if they meet the requirements for the formation of a unilateral contract. The offer must be definite in form and must be communicated to the offeree. Whether a proposal is meant to be an offer for a unilateral contract is determined by the outward manifestations of the parties, not by their subjective intentions. An employer's general statements of policy are no more than that and do not meet the contractual requirements for an offer. Reg v. Falan, 14 FSM R. 426, 431 (Yap 2006).

It does not matter whether a personnel handbook was received at the time the employee was hired or at some later time because the distribution of the manual may act as an offer of a unilateral contract even if there was no unilateral contract offered at the time of hiring. This is because the consideration for the contract was supplied when the employee continued to work, after receipt of the manual, when he had no obligation to do so. Reg v. Falan, 14 FSM R. 426, 431 n.2 (Yap 2006).

When a personnel policies manual is detailed and the court finds that it was intended to set the terms of employment; when a review of the employee handbook makes it clear that the employer intended its employees to be bound by the manual's terms and that it intended to bind itself to these terms, the personnel policies manual was meant to be an offer for a unilateral employment contract and an employee has accepted the offer through his continued employment. Reg v. Falan, 14 FSM R. 426, 431-32 (Yap 2006).

When an employee is presented with an employee handbook, instructed to read and understand it, told to sign-off on it, and when the employee does so, the employee handbook will constitute a unilateral contract between the parties. Ihara v. Vitt, 18 FSM R. 516, 525 (Pon. 2013).

Personnel handbook provisions can be enforceable as an employment contract if they meet the requirements for the formation of a unilateral contract, which are: the offer must be definite in form and must be communicated to the offeree. An employer's general statements of policy are no more than that and do not meet the contractual requirements for an offer. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

When a personnel policies manual is detailed and the court finds that it was intended to set the terms of employment; when a review of the employee handbook makes it clear that the employer intended its employees to be bound by the manual's terms and that it intended to bind itself to these terms, the personnel policies manual was meant to be an offer for a unilateral employment contract and an employee has accepted the offer through his continued employment. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

When an employee is presented with an employee handbook, instructed to read the handbook, told to sign off on the handbook, and when the employee does so, the employee handbook will constitute a unilateral contract between the parties. Ramirez v. College of Micronesia, 20 FSM R. 254, 266 (Pon. 2015).