

NOV 21 2017

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re: ) BAP No. HI-17-1066-LBTa  
 ) BAP No. HI-17-1137-LBTa  
 6 YOUNG HUI KIM, ) (related appeals)  
 )  
 7 Debtor. ) Bk. No. 14-01353  
 )  
 8 ) Adv. No. 15-90001  
 YOUNG HUI KIM; GLORY OF GOD )  
 9 PRESBYTERIAN CHURCH; )  
 10 PACIFIC EAGLE REALTY LLC, )  
 )  
 11 Appellants, )  
 )  
 v. ) **MEMORANDUM\***  
 )  
 12 JULIA RIIHIMAKI, )  
 )  
 13 Appellee. )  
 14 )

Argued and Submitted on October 26, 2017  
at Honolulu, Hawaii

Filed - November 21, 2017

Appeal from the United States Bankruptcy Court  
for the District of Hawaii

Honorable Robert J. Faris, Chief Bankruptcy Judge, Presiding

Appearances: Christopher James Muzzi of Mosely Biehl Tsugawa  
Lau & Muzzi argued for Appellants; Ronald K.K.  
Sakimura argued for Appellee.

Before: LAFFERTY, BRAND, and TAYLOR, Bankruptcy Judges.

\*This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may  
have (see Fed. R. App. P. 32.1), it has no precedential value.  
See 9th Cir. BAP Rule 8024-1.

1 **INTRODUCTION**

2 Appellee moved to enforce an agreement to settle her  
3 nondischargeability claims and Appellants' counterclaims.  
4 Appellants contended that there was no enforceable settlement  
5 agreement because Appellant Young Hui Kim ("Reverend Kim") had  
6 not provided written authorization for her attorney to settle the  
7 matter, as required under Hawaii law. After a five-day  
8 evidentiary hearing, the bankruptcy court found that although  
9 Reverend Kim had not provided written authorization to settle,  
10 she had ratified the settlement by failing to raise her  
11 objections within a reasonable time. The bankruptcy court thus  
12 granted the motion to enforce. The bankruptcy court also granted  
13 Appellee's motion for attorney's fees. Appellants timely  
14 appealed both orders. We AFFIRM both orders.

15 **FACTS**

16 Reverend Kim is a licensed real estate broker and the owner  
17 of Appellant Pacific Eagle Realty LLC ("Realty"); she is also  
18 owner and pastor of Appellant Glory of God Presbyterian Church  
19 ("Church"). Pre-petition, the parties to this appeal were  
20 involved in litigation in Hawaii state court. That litigation  
21 commenced in February 2011 when Appellee Julia Riihimaki filed a  
22 lawsuit against Reverend Kim to recover money that Reverend Kim  
23 allegedly swindled from Ms. Riihimaki through a number of real  
24 estate transactions and monetary advances. Reverend Kim filed a  
25 counterclaim. Less than two months later, the parties settled  
26 and dismissed their respective claims. Reverend Kim did not  
27 follow through with the settlement; instead, in June 2011 she  
28 filed a complaint against Ms. Riihimaki in state court asserting

1 claims that were substantially identical to those alleged in her  
2 counterclaim in the first litigation. Ms. Riihimaki filed a  
3 counterclaim; she also filed a complaint against Reverend Kim and  
4 Realty in the Hawaii Regulated Industries Complaints Office  
5 ("HRICO").

6 The second state court action was stayed when Reverend Kim  
7 filed a chapter 7<sup>1</sup> petition on October 8, 2014. Ms. Riihimaki  
8 filed a timely complaint against Appellants and others, alleging  
9 essentially the same conduct alleged in the first state court  
10 action and seeking a declaration of nondischargeability under  
11 §§ 523(a)(2), (4) and (6). Ms. Riihimaki alleged that the debt  
12 owed to her by Reverend Kim was not dischargeable because  
13 Reverend Kim, while acting as Ms. Riihimaki's real estate agent,  
14 had cheated her out of money and property by false pretenses,  
15 false representations, and fraud. Reverend Kim filed a  
16 counterclaim against Ms. Riihimaki that was similar to her  
17 counterclaim in the first state court action and her complaint in  
18 the second state court action (seeking compensatory and punitive  
19 damages for breach of contract and unjust enrichment or  
20 rescission of a transfer of real property from Reverend Kim to  
21 Ms. Riihimaki).

22 Reverend Kim was originally represented in her bankruptcy  
23 case by attorney Gregory T. Dunn; attorney Jean Christensen  
24 represented Reverend Kim, the Church, and Realty in the Riihimaki  
25

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26 <sup>1</sup>Unless specified otherwise, all chapter and section  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.  
28 "LBR" references are to the Local Bankruptcy Rules for the  
District of Hawaii.

1 adversary proceeding. Ms. Christensen and Ms. Riihimaki's  
2 counsel - Ronald Sakimura and Ronald Ogomori - began discussing  
3 settlement early on. Reverend Kim was incentivized to settle  
4 because (i) she lacked sufficient funds to pay defense counsel;  
5 (ii) Ms. Riihimaki had sued some of Reverend Kim's relatives and  
6 business associates, and Reverend Kim did not want the litigation  
7 to affect those people; (iii) the litigation was preventing  
8 Reverend Kim from focusing on her ministry; and (iv) Reverend Kim  
9 risked losing her real estate license if Ms. Riihimaki proved  
10 that Reverend Kim had committed fraud.

11 On July 17, 2015, Ms. Christensen sent a settlement proposal  
12 to Mr. Ogomori and Mr. Sakimura. On July 31, 2015, Mr. Ogomori  
13 responded with a counteroffer (the "Counteroffer"). Among the  
14 terms of the Counteroffer were: (1) Reverend Kim would stipulate  
15 to a judgment against her, the Church, and Realty, in the amount  
16 of \$1,350,000, \$650,000 of which would be nondischargeable under  
17 § 523, to be paid over a specified schedule; (2) Ms. Riihimaki  
18 would file a proof of claim for the full judgment amount in  
19 Reverend Kim's bankruptcy case, and any recovery on that claim in  
20 excess of \$7,500 would be applied to the nondischargeable portion  
21 of the judgment; (3) defendants would make two cash payments of  
22 \$30,000 and \$28,450.43<sup>2</sup> that would not be credited to the  
23 judgment; (4) any proceeds received by Ms. Riihimaki from certain  
24 real property, net of expenses outlined in the Counteroffer,  
25 would be applied to the nondischargeable portion of the judgment;

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27  
28 <sup>2</sup>The \$28,450.43 represented a discovery sanction that had  
been imposed against Reverend Kim in the state court litigation.

1 (5) the pending state court action, the adversary proceeding, and  
2 the complaint filed in the HRICO would be dismissed with  
3 prejudice and all claims released, subject to specified  
4 conditions precedent; (6) the settlement agreement would not be  
5 construed as an admission by Reverend Kim, the Church, or Realty  
6 of liability in the adversary proceeding; and (7) the settlement  
7 agreement would be subject to review by Reverend Kim's bankruptcy  
8 trustee and the approval of the bankruptcy court.

9 On August 20, 2015, Ms. Christensen emailed Mr. Ogomori and  
10 Mr. Sakimura stating that the terms of the Counteroffer were  
11 acceptable to her clients. Thereafter, counsel for each side  
12 worked on the specific language to be included in a written  
13 agreement, and Ms. Christensen met with Reverend Kim several  
14 times to discuss the settlement terms; at no time during those  
15 discussions did Reverend Kim object to the settlement. In late  
16 September 2015, Ms. Christensen presented Reverend Kim with a  
17 final version of the settlement agreement (the "Draft Settlement  
18 Agreement"). The Draft Settlement Agreement contained some terms  
19 that were materially different from those contained in the  
20 Counteroffer. Reverend Kim refused to sign the Draft Settlement  
21 Agreement. Ms. Christensen thereafter withdrew from representing  
22 Reverend Kim; attorney Christopher Muzzi substituted in as  
23 counsel for Appellants in the adversary proceeding and for  
24 Reverend Kim in the main case.

25 On November 5, 2015, Ms. Riihimaki filed a motion to enforce  
26 the settlement. Appellants opposed the motion to enforce,  
27 arguing that Ms. Christensen did not have written authority to  
28 settle the adversary proceeding and that Reverend Kim had not

1 ratified the settlement.

2       The bankruptcy court held an evidentiary hearing over  
3 several days in late 2016. Reverend Kim, Ms. Christensen,  
4 Gregory Dunn, and Francene Dunn, Gregory Dunn's wife and legal  
5 assistant, testified regarding meetings at which they were  
6 present when settlement terms were discussed. Ms. Christensen  
7 testified that she believed Reverend Kim had authorized her to  
8 accept the terms of the Counteroffer. Reverend Kim testified  
9 that she never saw any settlement proposals and had not agreed to  
10 any settlement. Nevertheless, based on trial testimony,  
11 exhibits, and credibility determinations, the bankruptcy court  
12 found that:

13             After months of discussion, Reverend Kim orally  
14 authorized Ms. Christensen to send a written settlement  
15 offer to Ms. Riihimaki's counsel. Reverend Kim  
16 understood and approved all of the terms of the offer.  
17 Ms. Christensen did not, however, obtain Reverend Kim's  
18 written authority to make the offer.

19 Riihimaki v. Kim (In re Kim), 565 B.R. 169, 172 (Bankr. D. Haw.  
20 2017).

21       Ms. Christensen, Mr. and Mrs. Dunn, and Reverend  
22 Kim met several times to discuss the counteroffer. The  
23 circumstances of those meetings were far from ideal  
24 (most of the meetings were held in bars and restaurants  
25 over drinks). Further, the dispute with Mrs. Riihimaki  
26 made Reverend Kim very angry; she believed that  
27 Mrs. Riihimaki had defrauded her, rather than the other  
28 way around, and resented the fact that she might have  
to compromise with Mrs. Riihimaki. Nevertheless, by  
the last such meeting, Reverend Kim was fully informed  
of, understood, and agreed to the terms of the  
counteroffer. Reverend Kim orally authorized  
Ms. Christensen to accept the counteroffer, and  
Ms. Christensen did so. Because Reverend Kim  
understood the terms of the counteroffer, there was a  
meeting of the minds about the essential terms of the  
settlement. Ms. Christensen did not obtain Reverend  
Kim's written authorization, in any form, before  
sending the acceptance.

1 Ms. Riihimaki's counsel prepared a draft  
2 settlement agreement. (Nothing in the counteroffer or  
3 the acceptance provides that the parties' agreement was  
4 contingent upon the execution of a formal settlement  
5 agreement.) The draft settlement agreement included  
6 provisions that were inconsistent with and materially  
7 different from the terms of the accepted counteroffer.

8 . . . .

9 Ms. Christensen presented Reverend Kim with the  
10 draft settlement agreement. Despite the numerous  
11 glaring inconsistencies between the accepted  
12 counteroffer and the draft settlement agreement,  
13 Ms. Christensen told Reverend Kim that it was a "take  
14 it or leave it" proposition. Upon reviewing the draft,  
15 Reverend Kim, for the first time, instructed  
16 Ms. Christensen to discontinue seeking a settlement.  
17 She said that she felt defrauded by Ms. Riihimaki,  
18 rather than vice versa, and she now wanted to prove it.

19 Reverend Kim never agreed to the terms in the  
20 draft settlement agreement that varied from the July 31  
21 counteroffer.

22 Id. at 174-75.

23 The terms of the Draft Settlement Agreement that differed  
24 from the Counteroffer included the following: (i) a requirement  
25 that Reverend Kim admit that the judgment was based on false  
26 pretenses, a false representation, or actual fraud; (ii) releases  
27 in favor of Ms. Riihimaki were to become effective long before  
28 the releases in favor of defendants; (iii) extra conditions were  
imposed before Ms. Riihimaki would be required to withdraw her  
HRICO complaint; (iv) Reverend Kim was required to provide  
extensive information to Ms. Riihimaki and limit her business  
activity to the Church and Realty until the entire judgment was  
satisfied; and (v) Reverend Kim would be required to obtain an  
order from the bankruptcy court that authorized her to act for  
and on behalf of the chapter 7 trustee to the extent necessary to  
dismiss the claims in the state court action and the

1 counterclaims in the adversary proceeding. Id.

2       Based on these findings, the bankruptcy court concluded that  
3 although Reverend Kim had not agreed to the terms of the Draft  
4 Settlement Agreement, she had agreed to the terms of the  
5 Counteroffer; thus, the terms outlined in the Counteroffer were  
6 enforceable as a valid contract. Applying Hawaii state law, the  
7 bankruptcy court concluded that although Reverend Kim did not  
8 provide written authorization for Ms. Christensen to settle the  
9 adversary proceeding, she had ratified the terms of the  
10 settlement as outlined in the Counteroffer:

11           Given her knowledge of and acquiescence in the ongoing  
12 settlement discussions and of the efforts that the  
13 attorneys were expending to negotiate and document the  
14 settlement, she waited an unreasonably long time to  
15 raise her objections. Therefore, she ratified her  
16 attorney's acceptance of the counteroffer and both she  
17 and Mrs. Riihimaki are bound by it.

18 Id. at 177.

19       The bankruptcy court thereafter entered a judgment declaring  
20 that the Counteroffer constituted a binding and enforceable  
21 contract between Appellee and Appellants. Appellants timely  
22 appealed (BAP No. HI-17-1066). A BAP motions panel granted leave  
23 to appeal on June 6, 2017, and the bankruptcy court granted a  
24 stay pending appeal.

25       After the first appeal was filed, Ms. Riihimaki filed a  
26 motion for attorneys' fees and costs based on the attorneys' fee  
27 provision in the Counteroffer and Haw. Rev. Stat. § 607-14.  
28 Ms. Riihimaki requested total fees and costs of \$177,449.37.  
Appellants opposed the motion, arguing that (i) Ms. Riihimaki was  
not entitled to attorneys' fees because LBR 7054-2 permits a  
prevailing party to move for attorney's fees and costs only if

1 the judgment so provides; (ii) Ms. Riihimaki was not the  
2 prevailing party; and (iii) the time sheets did not contain  
3 sufficient descriptions, included billing for work that was  
4 excessive, redundant and unnecessary, and contained many "block-  
5 billed" entries. Appellants also disputed the cost request on  
6 similar grounds.

7 At a hearing in April 2017, the bankruptcy court granted  
8 Ms. Riihimaki's motion for fees and costs in part. The court  
9 found that LBR 7054-2 did not preclude the award. The bankruptcy  
10 court concluded that it could award fees under Haw. Rev. Stat.  
11 § 607-14, which authorizes attorneys' fees to a prevailing party  
12 in actions on a written contract that provides for such an award  
13 and limits the award to 25 percent of the judgment amount. The  
14 court concluded that Ms. Riihimaki was the prevailing party on  
15 the main disputed issue of whether there was a settlement. The  
16 court disallowed some of the fees and costs and entered an order  
17 granting fees of \$161,212.43 and costs of \$16,236.94. Appellants  
18 timely appealed that order (BAP No. HI-17-1137).

#### 19 **JURISDICTION**

20 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
21 §§ 1334 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C.  
22 § 158.

#### 23 **ISSUES**

24 Whether the bankruptcy court erred in granting  
25 Ms. Riihimaki's motion to enforce.

26 Whether the bankruptcy court abused its discretion in  
27 awarding attorneys' fees to Ms. Riihimaki.

28



1 great deference to the bankruptcy court's findings, because the  
2 bankruptcy court, as the trier of fact, had the opportunity to  
3 note "variations in demeanor and tone of voice that bear so  
4 heavily on the listener's understanding of and belief in what is  
5 said." Retz v. Samson (In re Retz), 606 F.3d 1189, 1196 (9th  
6 Cir. 2010) (quoting Anderson, 470 U.S. at 575).

7 We review a bankruptcy court's determination on attorney's  
8 fees for abuse of discretion or erroneous application of the law.  
9 Bertola v. N. Wisc. Produce Co. (In re Bertola), 317 B.R. 95, 99  
10 (9th Cir. BAP 2004). A bankruptcy court abuses its discretion if  
11 it applies the wrong legal standard, misapplies the correct legal  
12 standard, or if its actual findings are clearly erroneous.  
13 TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832 (9th  
14 Cir. 2011).

## 15 DISCUSSION

### 16 **A. The bankruptcy court did not err in granting Ms. Riihimaki's 17 motion to enforce.**

#### 18 **1. The bankruptcy court did not err in applying Hawaii 19 state law to the question of enforceability.**

20 The bankruptcy court correctly applied Hawaii state law to  
21 the question of whether the settlement was enforceable. See  
22 O'Neil v. Bunge Corp., 365 F.3d 820, 822 (9th Cir. 2004) (in the  
23 absence of federal statute governing the matter, Oregon law would  
24 have applied to determine the enforceability of a settlement  
25 agreement); United Commercial Ins. Servs., Inc. v. Paymaster  
26 Corp., 962 F.2d 853, 856 (9th Cir. 1992) ("the construction and  
27 enforcement of settlement agreements are governed by principles  
28 of local law which apply to interpretation of contracts  
generally.").

1           Although Ms. Riihimaki did not cross-appeal, she argues that  
2 the bankruptcy court should have applied federal law to determine  
3 the question of Ms. Christensen's authority to settle the  
4 nondischargeability action because the underlying matter was a  
5 federal question (nondischargeability) being decided in a federal  
6 court. Under federal common law, once a settlement has been  
7 entered into, a presumption is created that the attorney who  
8 enters into the settlement agreement had the authority to do so,  
9 and the burden to show that there was no consent to the  
10 settlement is placed on the person challenging the validity of  
11 the agreement. Scott v. Burns Int'l Sec. Servs., Inc., 165 F.  
12 Supp. 2d 1133, 1139 n.5 (D. Haw. 2001), rev'd in part on other  
13 grounds, vacated in part sub nom. Scott v. Borg Warner Protective  
14 Servs., 55 F. App'x 414 (9th Cir. 2003).

15           Assuming without deciding that Ms. Riihimaki did not need to  
16 file a cross-appeal to raise this argument, we do not find it  
17 persuasive. The primary issue for the bankruptcy court was the  
18 enforceability of the settlement. Ms. Christensen's authority to  
19 settle was implicated in answering the question of whether there  
20 was a meeting of the minds and an acceptance under contract law,  
21 but that authority was not the primary issue to be determined.  
22 And the Ninth Circuit cases cited above make clear that the  
23 enforceability of a settlement is to be determined in accordance  
24 with state law, unless there is a controlling federal statute.<sup>3</sup>

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26           <sup>3</sup>Additionally, even though federal law controls the issue of  
27 nondischargeability, a determination of the existence and amount  
28 of the underlying debt is controlled by state law. Grogan v.  
Garner, 498 U.S. 279, 283-284 (1991).

1           **2. Requirements for an enforceable contract under Hawaii**  
2           **law**

3           Under Hawaii law, “[a] compromise agreement, like other  
4 contracts, requires an offer and acceptance, consideration, and  
5 parties who have the capacity and authority to agree as they do.”  
6 Amantiad v. Odum, 977 P.2d 160, 170 (Haw. 1999) (citing 15A Am.  
7 Jur. 2d Compromise and Settlement § 7 (1976)). There must also  
8 be mutual assent or a meeting of the minds as to the essential  
9 elements of the contract. Siopes v. Kaiser Found. Health Plan,  
10 Inc., 312 P.3d 869, 879 (Haw. 2013).

11           The parties do not dispute that they had the capacity to  
12 enter into a contract, that Ms. Riihimaki, through counsel, made  
13 an offer (the Counteroffer) and that Ms. Christensen accepted the  
14 Counteroffer on Reverend Kim’s behalf, and that the parties’  
15 mutual promises constituted consideration. The dispute in this  
16 appeal centers around (i) whether Reverend Kim understood the  
17 terms of the Counteroffer such that there was a meeting of the  
18 minds and (ii) whether Reverend Kim ratified the terms of the  
19 Counteroffer in the absence of express written consent to her  
20 attorney to settle. The bankruptcy court found that Reverend Kim  
21 understood the terms of the Counteroffer; thus there was a  
22 meeting of the minds as to those terms. The bankruptcy court  
23 further found that Reverend Kim ratified her attorney’s  
24 acceptance of the Counteroffer by failing to timely object,  
25 resulting in an enforceable contract. For the reasons explained  
26 below, we find no error in these conclusions.

1           **3. The bankruptcy court did not clearly err in finding**  
2           **that Reverend Kim understood the terms of the**  
3           **Counteroffer and ratified it.**

4           Under Hawaii law, an attorney must have express written  
5 consent from a client to settle a lawsuit. Hawai'i Hous. Auth.  
6 v. Uyehara, 883 P.2d 65, 71 (Haw. 1994). Specifically, Haw. Rev.  
7 Stat. § 605-7 provides:

8           The practitioners licensed by the supreme court shall  
9 have control to judgment and execution, of all suits  
10 and defenses confided to them; provided that no  
11 practitioner shall have power to compromise, arbitrate,  
12 or settle such matters confided to the practitioner,  
13 unless upon special authority in writing from the  
14 practitioner's client.

15           It is undisputed that Reverend Kim never gave written  
16 authority to Ms. Christensen to settle the adversary proceeding.  
17 Hawaii law, however, recognizes an exception to the written  
18 authority requirement if the client ratifies the settlement.  
19 Uyehara, 883 P.2d at 71. Whether the client has ratified the  
20 settlement depends on the facts and circumstances of the  
21 particular case. Scott v. Pilipo, 25 Haw. 386, 390 (1920).  
22 Ratification may be express or implied. Id. Ratification may be  
23 implied where the client acquiesces in the settlement by failing  
24 to object to the settlement within a reasonable time or by  
25 accepting the benefits of the settlement. Nelson v. Boone,  
26 890 P.2d 313, 321 (Haw. 1995); Scott, 25 Haw. at 390; McKeague v.  
27 Freitas, 40 Haw. 108, 115 (1953); Cook v. Sur. Life Ins., Co.,  
28 903 P.2d 708, 716 (Haw. App. 1995), as amended (Aug. 30, 1995).

          Appellants contend that these cases stand for the  
proposition that a significant time - years - must pass without  
objection before a failure to object can be deemed a  
ratification, or that the party opposing enforcement sought or

1 received benefits under the settlement agreement. No such  
2 requirements are contained in the cited cases, which make clear  
3 that whether ratification occurred is an intensely factual  
4 determination; as such, those cases do not establish any bright  
5 line rules regarding the requirements for ratification.

6 Despite conflicting testimony, there is evidence in the  
7 record to support the bankruptcy court's findings that  
8 Reverend Kim both understood and ratified the terms of the  
9 Counteroffer. Ms. Christensen testified that after she received  
10 the Counteroffer, she met with Reverend Kim three times to review  
11 it. At the third meeting on August 19, 2015, Ms. Christensen  
12 completed reviewing the Counteroffer with Reverend Kim and  
13 understood that Reverend Kim wanted her to accept the terms of  
14 the Counteroffer. It is undisputed that the next day,  
15 Ms. Christensen sent an email to Ms. Riihimaki's counsel stating  
16 that the terms of the Counteroffer were acceptable to her  
17 clients.

18 Ms. Christensen testified that Reverend Kim's acceptance was  
19 "not in so many words." But later, Ms. Christensen testified  
20 that she did not believe she had misunderstood Reverend Kim's  
21 instructions to accept. Moreover, she advised Reverend Kim that  
22 she had accepted the Counteroffer, and Reverend Kim did not  
23 object.

24 Ms. Christensen then testified that on August 26, 2015, at  
25 Reverend Kim's request, she emailed a copy of the July 17  
26 settlement proposal and Counteroffer to Reverend Kim. Two days  
27 later, Ms. Christensen met with Reverend Kim and the Dunns. At  
28 that meeting, Reverend Kim indicated to Ms. Christensen that she

1 was still on board with the settlement; moreover, Reverend Kim  
2 told Ms. Christensen that she had shown the offer and  
3 Counteroffer to a friend, who had advised Reverend Kim to accept  
4 the Counteroffer. Over the next few weeks, Ms. Christensen  
5 communicated with Mr. Sakimura regarding the language of the  
6 settlement agreement; she also had several meetings with  
7 Reverend Kim. On September 11, 2015, she met with Reverend Kim  
8 and the Dunns to discuss the settlement agreement. On  
9 September 18, 2015, Ms. Christensen received the Draft Settlement  
10 Agreement by email from Mr. Sakimura. Later that day, she met  
11 with Reverend Kim at Mr. Dunn's office, but this meeting was  
12 primarily to discuss a proposed sale of certain property. It is  
13 not clear exactly when Reverend Kim was provided a copy of the  
14 Draft Settlement Agreement, but on September 22, 2015,  
15 Ms. Christensen again met with Reverend Kim and the Dunns. The  
16 ostensible purpose of the meeting was for Ms. Christensen to  
17 answer Reverend Kim's questions about the settlement agreement  
18 and possibly obtain Reverend Kim's signature. Ms. Dunn had been  
19 reviewing the settlement terms with Reverend Kim, and Reverend  
20 Kim had questions that Ms. Dunn could not answer. According to  
21 Ms. Christensen's testimony, the status of the settlement was  
22 discussed, but it was not clear that anything substantive was  
23 accomplished at this meeting ("there was a lot of social banter  
24 . . . so it was hard to get a lot of focus on [the settlement] at  
25 that meeting, but . . . we did discuss the status and . . . we  
26 had an agreement, but often with these restaurant meetings it was  
27 hard to really . . . focus."). In any event, Reverend Kim did

28

1 not raise any objection to the settlement at this meeting.<sup>4</sup>

2 Another meeting occurred on September 29, 2015.

3 Ms. Christensen could not recall what was discussed at that  
4 meeting, but it was around this time that Reverend Kim refused to  
5 sign the Draft Settlement Agreement.<sup>5</sup> Shortly thereafter,  
6 Ms. Christensen withdrew from representing Reverend Kim.

7 The Dunns' testimony was not helpful in either corroborating  
8 or contradicting Ms. Christensen's version of events; neither of  
9 them seemed to remember any details of the various meetings they  
10 attended. Ms. Christensen's time sheets and the text messages  
11 exchanged between Ms. Christensen and the Dunns, however, were  
12 consistent with her version of events.

13 Reverend Kim contradicted much of Ms. Christensen's  
14 testimony. Reverend Kim testified that she had not authorized  
15 Ms. Christensen to accept the Counteroffer, had never seen the  
16 offer or Counteroffer, and did not tell Ms. Christensen that her  
17 friend had advised her to accept the settlement.

18 The bankruptcy court did not explicitly find that  
19 Reverend Kim's testimony was not credible. Such a finding was  
20 implicit, however, in the court's statement that "I have  
21 considered all of the testimony and other materials that were  
22

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23  
24 <sup>4</sup>Ms. Christensen also testified that Reverend Kim never  
25 asked for an interpreter or asked for a Korean translation of the  
settlement terms.

26 <sup>5</sup>There was some testimony at trial indicating that  
27 Reverend Kim expected to receive some insurance proceeds that she  
28 could use to fund further litigation, suggesting that this gave  
her a motive to renege on the agreement. The bankruptcy court  
made no such finding, however.

1 received in evidence, much of which is in sharp conflict, and  
2 have evaluated the credibility and weight of each piece of  
3 evidence[,]” In re Kim, 565 B.R. at 171, and in its factual  
4 findings, which were consistent with Ms. Christensen’s testimony  
5 rather than Reverend Kim’s. As such, we must defer to the  
6 bankruptcy court’s finding that Reverend Kim was aware of and  
7 authorized Ms. Christensen to accept the terms of the  
8 Counteroffer. The bankruptcy court found that Reverend Kim  
9 raised no objections “until the settlement negotiations were  
10 complete and a draft of a formal settlement agreement (which was  
11 not necessary to the effectiveness of the agreement) was  
12 presented to her.” From this, and from the fact that Reverend  
13 Kim knew about and acquiesced in the ongoing settlement  
14 discussions and the efforts that the attorneys were expending to  
15 negotiate and document the settlement, the bankruptcy court  
16 concluded that “she waited an unreasonably long time to raise her  
17 objections.”

18 Appellants argue that the record does not support these  
19 findings. Appellants’ argument, however, is dependent upon  
20 accepting Reverend Kim’s version of events, i.e., that she did  
21 not see the offer or Counteroffer and did not understand the  
22 terms and conditions of the Counteroffer. Appellants also  
23 attempt to cast doubt on whether Ms. Kim understood the terms of  
24 the Counteroffer by pointing out that English is Ms. Kim’s second  
25 language but that no interpreter was present during any of her  
26 meetings with Ms. Christensen. Appellants note further that most  
27 of the meetings were held in noisy, dimly lit restaurants where  
28 alcohol was being consumed. It was undisputed, however, that

1 Reverend Kim specifically declined having an interpreter present.  
2 And the bankruptcy court, having heard testimony from all parties  
3 present at those meetings, implicitly concluded that the  
4 circumstances of the meetings, while not ideal, had not hindered  
5 Reverend Kim's understanding of the settlement terms. As noted,  
6 the bankruptcy court implicitly rejected Reverend Kim's testimony  
7 as not credible, and the other evidence in the record supports  
8 the bankruptcy court's findings. Accordingly, we find no clear  
9 error in the bankruptcy court's factual finding that Reverend Kim  
10 ratified the Counteroffer.<sup>6</sup>

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15 <sup>6</sup>Although the Draft Settlement Agreement contained terms  
16 that were materially different from the Counteroffer, this did  
17 not negate the enforceability of the Counteroffer. As the  
18 bankruptcy court found, the Counteroffer did not require a  
19 written agreement; thus a binding contract was created when  
20 Reverend Kim accepted the Counteroffer. Accordingly, the varying  
21 material terms in the Draft Settlement are more appropriately  
22 viewed as a proposed modification to the contract. See Shanghai  
23 Inv. Co., Inc. v. Alteka Co., 993 P.2d 516, 531 (Haw. 2000),  
24 overruled in part on other grounds by Blair v. Ing, 31 P.3d 184,  
25 188 (Haw. 2001) ("[a] modification of a contract is a change in  
26 one or more respects which introduces new elements into the  
27 details of the contract and cancels others but leaves the general  
28 purpose and effect undisturbed.") (quoting Int'l Bus. Lists, Inc.  
v. Am. Tel. & Tel. Co., 147 F.3d 636, 641 (7th Cir. 1998)). "The  
original contract generally remains in force except as modified  
or superseded by the new agreement." Id. But because Reverend  
Kim did not accept that modification, it is not binding on the  
parties.

26 Importantly, Ms. Riihimaki asks this Panel to affirm the  
27 bankruptcy court's ruling, thus implicitly abandoning the terms  
28 of the Draft Settlement Agreement and accepting the terms of the  
Counteroffer.

1 **B. The bankruptcy court did not abuse its discretion in**  
2 **awarding attorneys' fees and costs to Ms. Riihimaki.**

3 The bankruptcy court granted most of the fees and costs  
4 requested by Ms. Riihimaki, finding that Ms. Riihimaki was the  
5 prevailing party. The attorneys' fee award was authorized under  
6 Paragraph 16.d. of the Counteroffer: "If any action or proceeding  
7 is commenced to enforce the terms of the settlement agreement,  
8 the prevailing party shall be entitled to recover its reasonable  
9 attorneys' fees and costs incurred therein, in an amount to be  
10 determined by the court." The fee award was subject to Haw. Rev.  
11 Stat. § 607-14, which provides, in relevant part:

12 In all the courts, in all actions in the nature of  
13 assumpsit and in all actions on a promissory note or  
14 other contract in writing that provides for an  
15 attorney's fee, there shall be taxed as attorneys'  
16 fees, to be paid by the losing party and to be included  
17 in the sum for which execution may issue, a fee that  
18 the court determines to be reasonable; provided that  
19 the attorney representing the prevailing party shall  
20 submit to the court an affidavit stating the amount of  
21 time the attorney spent on the action and the amount of  
22 time the attorney is likely to spend to obtain a final  
23 written judgment, or, if the fee is not based on an  
24 hourly rate, the amount of the agreed upon fee. The  
25 court shall then tax attorneys' fees, which the court  
26 determines to be reasonable, to be paid by the losing  
27 party; provided that this amount shall not exceed  
28 twenty-five per cent of the judgment.

21 In determining who is the prevailing party under this  
22 statute, Hawaii courts focus on which party prevailed on the  
23 disputed main issue. Countrywide Home Loans, Inc. v. Hoopai  
24 (In re Hoopai), 581 F.3d 1090, 1101-02 (9th Cir. 2009) (citing  
25 Food Pantry, Ltd. v. Waikiki Bus. Plaza, Inc., 575 P.2d 869, 879  
26 (Haw. 1978)). The disputed main issue is determined by "looking  
27 to the pleadings and proof in a particular case[.]" Id. at 1102  
28 (citing Fought & Co., Inc. v. Steel Eng'g & Erection, Inc.,

1 951 P.2d 487, 503 (Haw. 1998); additional citation omitted).

2 “[T]he ‘prevailing party’ is the party that succeeds on the issue  
3 or issues that are (1) the ‘principal’ issues raised in the  
4 litigation and (2) disputed by the parties.” Id.

5 The bankruptcy court concluded that the disputed main issue  
6 was whether there was a settlement and that Ms. Riihimaki had  
7 prevailed on that issue. The court noted that the terms of that  
8 settlement, while important, were not the main issue.

9 Appellants do not dispute the amount of the attorneys’ fees  
10 and costs awarded or the bankruptcy court’s conclusion that  
11 LBR 7054-2 did not preclude the award. Appellants’ sole argument  
12 is that Ms. Riihimaki was not the prevailing party on the main  
13 disputed issue of the motion to enforce. They reason that the  
14 motion sought enforcement of the Draft Settlement Agreement that  
15 Reverend Kim had objected to, but the bankruptcy court ruled that  
16 the Counteroffer, not the draft written agreement, should be  
17 enforced.

18 We agree with the bankruptcy court that the main disputed  
19 issue of the motion to enforce was whether a settlement had been  
20 reached; the exact terms of that settlement were secondary. In  
21 her motion, Ms. Riihimaki argued that Appellants had accepted the  
22 terms of the Counteroffer, resulting in a binding contract  
23 between the parties, and that Reverend Kim’s refusal to sign the  
24 Draft Settlement Agreement was unjustified. In their opposition,  
25 Appellants argued that Reverend Kim had not authorized settlement  
26 in writing as required under Hawaii law and that Reverend Kim had  
27 not ratified the settlement; thus the settlement was not  
28 enforceable. In short, the parties focused virtually all of

1 their arguments on the issue of whether an enforceable agreement  
2 existed. The bankruptcy court ruled that it did; thus  
3 Ms. Riihimaki was the prevailing party. The fact that the  
4 bankruptcy court ruled that the terms agreed to were those  
5 contained in the Counteroffer rather than the Draft Settlement  
6 Agreement does not change that conclusion. Accordingly, the  
7 bankruptcy court did not abuse its discretion in awarding  
8 attorneys' fees and costs.

9 **CONCLUSION**

10 For the reasons explained above, we AFFIRM both the  
11 bankruptcy court's order granting the motion to enforce and its  
12 order granting attorneys' fees to Ms. Riihimaki.