

**IN THE SUPREME COURT OF GUAM**

**MOBIL OIL GUAM INC.,  
A GUAM CORPORATION,**  
Plaintiff-Appellee,

**v.**

**EMILIANA G. TENDIDO aka EMILINE G. TENDIDO,**  
Defendant-Appellant.

Supreme Court Case No.: CVA03-006  
Superior Court Case No.: CV1214-01

**OPINION**

**Filed: May 7, 2004**

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Appeal from the Superior Court of Guam  
Argued and submitted on November 21, 2003  
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; FRANCES M. TYDINGCO-GATEWOOD, Associate Justice; and MIGUEL S. DEMAPAN, Justice *Pro Tempore*.

**CARBULLIDO, C.J.:**

[1] The Defendant-Appellant, Emiliana G. Tendido (“Tendido”), appeals a Superior Court decision granting summary judgment to the Plaintiff-Appellee, Mobil Oil Guam Inc. (“Mobil”), in a declaratory judgment action brought by Mobil to determine whether an enforceable contract existed between Mobil and Tendido for the purchase of property. The lower court determined that the right of first refusal clause in the parties’ lease contract gave Mobil the irrevocable option to purchase the leased premises in the event Tendido presented Mobil with an acceptable offer to purchase the premises received from a third party. The lower court found that because Tendido presented Mobil with an acceptable offer from a third party, which Mobil accepted within the time period set forth in the right of first refusal clause, an enforceable agreement existed between the parties for the sale of the property. On appeal, Tendido argues that the lower court’s decision is deficient because it lacks adequate reasons supporting summary judgment. Tendido also argues that the lower court erroneously interpreted the right of first refusal provision as granting Mobil an irrevocable option to purchase the property. Further, Tendido contends that summary judgment was inappropriate because there remains a genuine issue of material fact on whether there existed a valid offer to purchase the property in light of an outstanding mortgage on the property which was not addressed in the offer. Finally, Tendido challenges the lower court’s award of attorney’s fees for Mobil. We reject Tendido’s arguments and affirm the lower court’s judgment on the merits and its judgment awarding attorney’s fees.

**I.**

[2] This dispute arose out of a contract between Mobil and Tendido for the lease of a service station property in Dededo (“Premises”). Mobil’s predecessor in interest, Mobil Int’l Petroleum Corp., entered into a contract with Tendido and her now deceased husband for a ten-year lease of the Premises (“Mobil

Lease”) commencing on August 24, 1984. The Mobil Lease contained an option to renew for another ten years, which Mobil exercised on June 29, 1994.<sup>1</sup> Paragraph 6 of the Lease gave Mobil, as lessee, the preemptive right (or right of first refusal) to purchase the Premises should Tendido decide to sell it to a third party during the term of the lease. Paragraph 6 provided that should Tendido receive an acceptable offer from a third party, she shall notify Mobil of the offer and Mobil would thereafter have ninety days to elect to purchase the property under the terms of the offer.

[3] On January 29, 2001, Tendido sent a letter to Mobil advising Mobil of her intent to sell the Premises and acknowledging Mobil’s right of first refusal should she receive an acceptable offer. On February 5, 2001, Tendido sent Mobil another letter enclosing what she asserted was an acceptable offer from a third party, ACIE Corp. (“ACIE”), for the purchase of the Premises. Under the terms of the ACIE offer, contained in a letter dated February 1, 2001, ACIE agreed to purchase the Premises for \$1.6 million, with monthly payments in the amount of \$11,187.43 to be paid over a term of thirty years.

[4] On February 13, 2001, Mobil sent a letter to Tendido confirming that they received the offer made by ACIE to Tendido to purchase the Premises. In the letter, Mobil expressed concern that the ACIE offer did not take into consideration a mortgage on the Premises securing a \$500,000 loan from the Bank of Hawaii. Mobil requested that Tendido clarify what would happen to the mortgage with both ACIE and the Bank of Hawaii. *See* Excerpts of Record, p. 93 (Ltr. from Mobil to Tendido, Feb. 13, 2001) (“We would assume that either the Bank of Hawaii wants to be paid in full at any closing of the sale or that it will require an assignment of the proceeds of any installment contract of sale such as that proposed by ACIE. I would appreciate it if you could clarify this with ACIE and the Bank of Hawaii.”). In response to Mobil’s letter, Tendido apparently raised the matter with ACIE, and ACIE responded with a letter stating that they were well aware of the Bank of Hawaii mortgage, and that it would be premature to notify Bank of Hawaii of the proposed sale. ACIE further stated that the details concerning the disposition of the outstanding

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<sup>1</sup> The Mobil Lease was amended twice, but the provision of the lease in dispute in the instant case (Paragraph 6 of the Mobil Lease) was not affected thereby.

mortgage would be resolved at closing. *See* Excerpts of Record, p. 96 (Ltr. from ACIE to Tendido, Feb. 21, 2001).

[5] On April 26, 2001, Tendido sent Mobil a letter informing Mobil that ACIE withdrew its offer due to ACIE's contention that the original offer did not take into account certain legal issues. Tendido also informed Mobil that ACIE would forward an amended offer, addressing these legal issues, by May 10, 2001.

[6] On April 30, 2001, Mobil sent a letter to Tendido advising Tendido that it elected to purchase the Premises on the terms and conditions set forth in the ACIE offer pursuant to its rights under Paragraph 6 of the Mobil Lease. Tendido refused to sell Mobil the Premises.

[7] On July 16, 2001, Mobil filed the instant action for declaratory relief against Tendido. Mobil requested that the court declare that an enforceable sales contract existed between Mobil and Tendido pursuant to Paragraph 6 of the Mobil Lease.<sup>2</sup> Mobil made a motion for summary judgment, which the lower court granted in a Decision and Order filed on March 13, 2003. Mobil thereafter filed a motion for attorney's fees and costs, which the lower court granted in a separate judgment for fees and costs filed on July 2, 2003.

[8] Tendido filed notices of appeal of both the summary judgment and the judgment regarding fees and costs. In its Appellee's Brief, Mobil requests that this court grant it attorney's fees on appeal.

## II.

[9] This court has jurisdiction over appeals of final summary judgments pursuant to Title 7 GCA § 3107(b) (1994).

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<sup>2</sup> Mobil also sued Goodwin Corp, who in 1989 entered into a lease with Tendido ("Goodwin Lease") which was set to commence after the expiration of the Mobil Lease. The Goodwin Lease contained a provision which stated that should Mobil purchase the Premises under Paragraph 6 of the Mobil Lease, then the Goodwin Lease would extinguish. In the underlying declaratory judgment action, Mobil requested a declaration that under the facts and circumstances of this case, the Goodwin Lease was in fact extinguished. Issues regarding the Goodwin Lease were not raised in this appeal.

[10] Furthermore, an order granting attorney’s fees after judgment on the merits is a final appealable order so long as the order sets a definite amount of attorney’s fees. *See* Title 7 GCA § 25102 (a), (b) (1993) (“An appeal in a civil action or proceeding may be taken from the Superior Court in the following cases: (a) From a judgment, . . . [and] (b) From *an order made after a judgment* made appealable by subdivision (a) . . . .”); *Obin v. Dist. No. 9 of Int’l Ass’n of Machinists & Aerospace Workers*, 651 F.2d 574, 584 (8th Cir. 1981) (stating that an order granting attorney’s fees after judgment is an appealable order). In its Judgment for Fees and Costs entered on the docket on July 3, 2003, the lower court granted Mobil’s motion for attorney’s fees in the amount of \$6,640.00. Accordingly, we have jurisdiction over the lower court’s judgment awarding attorney’s fees and costs.

[11] The lower court’s judgment on Mobil’s claim for attorney’s fees is separately appealable as a final judgment, and “may be consolidated with any pending appeal on the merits of the action.” *Obin*, 651 F.2d at 584. Thus, the underlying summary judgment and the judgment awarding attorney’s fees may be reviewed together in this appeal.

### III.

#### A. Sufficiency of the Lower Court’s Decision.

[12] Tendido appeals the lower court’s decision granting summary judgment in favor of Mobil. We review the grant of summary judgment de novo. *See Iizuka Corp. v. Kawasho Int’l (Guam), Inc.*, 1997 Guam 10, ¶ 7. Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Guam R. Civ. P. 56(c); *see also Guam Hous. & Urban Renewal Auth. (GHURA) v. Dongbu Ins. Co.*, 2001 Guam 24, ¶ 8, *on reh’g*, 2002 Guam 3.

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[13] Tendido first argues that the decision granting summary judgment is inadequate because it does not contain a statement of reasons for granting summary judgment. Appellant’s Brief, p. 6 (July 18, 2003). Specifically, Tendido argues that the lower court erred in determining that Tendido clearly formed the *intent* to sell the property without specifying how the court arrived at the conclusion.

[14] We reject Tendido’s argument. In its Decision and Order granting Mobil’s summary judgment motion, the lower court provided an explanation of the reasons supporting its decision. Furthermore, on our de novo review, we find that the issue of whether Tendido *intended* to sell the property is unnecessary to the disposition of this case. Rather, as will be shown later in this Opinion, the Mobil Lease only required a determination of whether Tendido forwarded to Mobil an acceptable offer from a third-party to purchase the Premises. This latter fact was not in dispute in the lower court.

#### **B. Merits of the Lower Court’s Decision.**

[15] Tendido further argues that the lower court’s award of summary judgment for Mobil was nonetheless improper because the lease contract did not contain an irrevocable option to purchase the Premises, therefore, the trial court’s decision to the contrary was erroneous as a matter of law. Tendido also contends that the offer for the sale of the Premises did not contain a material term relating to an outstanding mortgage on the Premises and thus was incapable of acceptance or enforcement. Tendido argues that, in any event, the issue of whether certain terms in the contract were material is a question of fact which cannot be resolved on summary judgment.

[16] Where there are no disputes as to the relevant facts, the interpretation of a contract is a question of law which we review de novo. *B.M. Co. v. Avery*, 2001 Guam 27, ¶ 9 (“When the trial court looks merely to the contract language in interpreting the contract, and not to extraneous facts, the court’s interpretation is a legal conclusion and is thus reviewed *de novo*.”); see also *Pesino v. Atlantic Bank*, 709 A.2d 540, 545 (Conn. 1998) (“[W]here there is definitive contract language, [the] determination of what [the] parties intended by their contractual commitments is a question of law.”) (citation omitted).

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**1. Paragraph 6 of the Mobil Contract.**

[17] The primary dispute in this case relates to the interpretation of Paragraph 6 of the Mobil Contract, which provides in full:

6. Purchase Offers. Should the Lessor, at any time during the term of this lease or any renewal or extension hereof, receive an acceptable offer for the purchase of the leased premises from any third party, Lessor shall forthwith submit such offer to the Lessee and the Lessee shall be entitled for a period of ninety (90) days after receipt of the offer within which to elect whether or not Lessee will purchase the leased premises on the terms and conditions set forth in the offer. All offers and notices must be in writing. Should the Lessee elect not to purchase the leased premises on the terms and conditions specified in the offer then Lessor shall be free to sell the leased premises but only on the express terms noticed and offered to Lessee. Any sale to a third party shall shall [sic] be subject in all events to the terms of this lease.

Excerpts of Record, p. 23 (Lease Agreement).

[18] Mobil argues, and the trial court agreed, that Paragraph 6 created an irrevocable option, to be held open for a period of ninety days, to purchase the Premises in the event that Tendido transmitted an acceptable offer for the purchase of the Premises from a third party. Thus, once the irrevocable option was created, Tendido had no power to revoke the offer during the ninety-day period. Mobil argues that because it exercised its option within ninety days of the date Tendido notified Mobil of the third-party offer, an enforceable agreement existed between Mobil and Tendido for the sale of the Premises.

[19] Tendido argues that Paragraph 6 did not create an irrevocable option to purchase the Premises, but rather, it is merely a provision giving Mobil the right of first refusal in the event Tendido decides to sell the Premises. Tendido argues that viewed this way, Tendido's decision not to sell the Premises would extinguish Mobil's right of first refusal. Tendido argues that because, in a letter dated April 26, 2003, she informed Mobil that ACIE withdrew its offer for the purchase of the Premises, Mobil could not claim the benefit of its right of first refusal contained in Paragraph 6, and has no present right to purchase the property.

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[20] The parties have identified two lines of authority regarding the interpretation of Paragraph 6. We agree with Mobil that Paragraph 6 gives Mobil a right of first refusal which ripens into an irrevocable option to purchase the Premises in the event the conditions set forth in Paragraph 6 are triggered.

[21] “A right of first refusal, as a preemptive right, requires the property owner to first *offer* the property to the person holding the right of first refusal at the stipulated price and terms in the event the owner decides to sell the property.” *Riley v. Campeau Homes (Texas), Inc.*, 808 S.W.2d 184, 187 (Tex. App. 1991); *Polemi v. Wells*, 759 P.2d 796, 798 (Colo. Ct. App. 1988) (“[A] preemptive right . . . requires the owner, if he should decide to sell, to offer the property first to the lessee for the price at which the owner is willing to sell to a third party.”). Under a preemptive right provision,

[a]n owner does not have to sell and, until the owner decides to sell, there is nothing to exercise and it is not possible to fix a certain purchase price. However, once an owner decides to sell, there is an obligation to offer the holder of the right of first refusal the opportunity to buy the burdened property on the terms offered by a bona fide purchaser.

*Riley*, 808 S.W.2d at 187.

[22] While the parties agree that Paragraph 6 is a right of first refusal provision, they disagree as to whether Paragraph 6 *also* conferred an irrevocable option to purchase the property in favor of Mobil. The source of the dispute in the present case revolves around the effect of Tendido’s revocation of the offer to purchase the property prior to Mobil’s acceptance of the offer. Mobil argues that because Paragraph 6 created an irrevocable option to purchase the property, Tendido was not permitted to revoke that offer within the time set forth in Paragraph 6. Tendido argues that Paragraph 6 did not create an irrevocable option; therefore, her withdrawal of the offer prior to Mobil’s acceptance cancelled Mobil’s power of acceptance thereby thwarting Mobil’s claim that an enforceable contract exists between the parties for the sale of the property. The determinative issue in this case, therefore, is whether Paragraph 6 gave Mobil an irrevocable option to purchase the property.

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[23] “Defined at its most basic level, an option is simply a contract to keep an offer open.” RICHARD A. LORD, 1 WILLISTON ON CONTRACTS, §5:15 (4th ed. 1990) (footnote omitted); *SD Invs., Inc. v. Michael-Paul, L.L.C.*, 90 S.W.3d 75, 82 (Mo. Ct. App. 2002) (“[A]n option is merely a continuing offer to sell property.”); *Matrix Props. Corp. v. TAG Invs.*, 609 N.W.2d 737, 742 (N.D. 2000) (“An option agreement is a contract where the owner of property (optionor or option-giver) gives another (optionee or option-holder) the right to buy the property at a fixed price within a specified time on agreed terms.”). “Option contracts have two components: (1) an underlying contract that is not binding until accepted; and (2) a covenant to hold open to the optionee the opportunity to accept.” *Riley*, 808 S.W.2d at 188; *see also JWS Refrigeration & Air Conditioning, Ltd. v. Charles Young Constr. Co.*, Civ. No. 86-0059A, 1987 WL 109891, at \*2 (D. Guam App. Div. July 16, 1987) (“An option is an irrevocable offer. Like an offer, an option may be accepted or exercised only in strict compliance with its terms, and the optionor can prescribe any mode of acceptance he pleases.”) (citation omitted); *Matrix Props.*, 609 N.W.2d at 742 (“The owner does not sell the property, but sells to the other party the right, at the optionee’s election, to demand the conveyance in the manner specified.”) (citation omitted).

[24] An option, which is a continuing offer to sell, may be revoked prior to being accepted *unless* the option is supported by consideration. *Riley*, 808 S.W.2d at 188. “If no consideration has passed, the option is revocable during its term . . . .” *Id.*; *see also SD Invs., Inc.*, 90 S.W.3d at 82 (“Consideration is only necessary to make it irrevocable.”); *I.R. Kirk Farms, Inc. v. Pointer*, 897 S.W.2d 183, 185 (Mo. Ct. App. 1995) (“Contract law clearly holds that consideration is only necessary in an option situation to make the offer (option) irrevocable. However, even if consideration is not tendered, an option, though not irrevocable, is a continuing offer to sell.”) (emphasis in original omitted); *Matter of Estate of Jorstad*, 447 N.W.2d 283, 285 (N.D. 1989) (“It is general hornbook law that an option is a continuing offer which, if supported by consideration, becomes a legally binding promise to keep the offer open through the time specified in the option. Thus, an option supported by consideration is irrevocable for the life of the offer.”) (internal citation omitted).

[25] There is a distinction between a right of first refusal and an option. *Polemi*, 759 P.2d at 798 (“[A]n option to purchase differs materially from a preemptive right.”). “Unlike an option contract, a right of first refusal does not give the lessee the power to compel an unwilling owner to sell.” *Riley*, 808 S.W.2d at 187; *Polemi*, 759 P.2d at 798 (“[A] preemptive right does not give the lessee the power to require an unwilling owner to sell. It merely requires the owner, if he should decide to sell, to offer the property first to the lessee for the price at which the owner is willing to sell to a third party.”). “On the other hand, by acquiring an option to purchase property, the holder of the option purchases the right to compel a sale of the property on the stated terms before the expiration of the option.” *Riley*, 808 S.W.2d at 188; *Polemi*, 759 P.2d at 798 (“When [an option] . . . is exercised according to its terms, there is a binding contract to sell, and the owner cannot refuse to convey the property.”); *Stuart v. D’ascenz*, 22 P.3d 540, 541-42 (Colo. Ct. App. 2000)<sup>3</sup>.

[26] The trial court found that Paragraph 6 in the Mobil Lease embodied a right of first refusal which was capable of ripening into an irrevocable option at the point Tendido decided to sell the property. This interpretation is consistent with the majority view on the issue. According to the majority view, the contractual “right of first refusal ripens into an option when the owner elects to sell.” *Riley*, 808 S.W.2d at 188; see *Chapman v. Mutual Life Ins. Co. of New York*, 800 P.2d 1147, 1150 (Wyo. 1990) (“We agree with the view that when the condition precedent of the owner’s intention to sell is met the right of first refusal ‘ripens’ into an option and contract law pertaining to options applies.”) (citations omitted); *Vorpe v. Key Island, Inc.*, 374 So. 2d 1035, 1036-37 (Fla. Dist. Ct. App. 1979) (“[Upon the] manifestation of intent to sell . . . [a] right of first refusal [is] converted into an irrevocable option to purchase.”); *Gilmore*

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<sup>3</sup> There, the court explained:

The distinction in law between an option and a right of first refusal is this: an option to purchase gives the holder the power to compel the owner to sell the property regardless of the owner’s desire to do so; in contrast, a right of first refusal does not give the holder the power to compel the owner to sell but merely requires the owner, when and if he or she decides to sell, to offer the property first to the holder.

*v. Letcher*, 508 S.W.2d 257, 262 (Mo. Ct. App. 1974) (“When the owner does arrive at a decision to sell the property, then . . . the pre-emptive right . . . ripens into a full option.”); *Henderson v. Nitschke*, 470 S.W.2d 410, 413 (Tex. Civ. App. 1971) (finding that at the point that the lessor sends that notice pursuant to the contract provision, “the two, the provision and the notice, become an option, and a mutual contract arises when, and only when, the offer to sell is accepted by the optionee under the terms of the lease.”); *G.G.A., Inc. v. Leventis*, 773 P.2d 841, 846 (Utah Ct. App. 1989). Specifically, when a first refusal provision in a lease requires the owner

to notify the holder of a right of first refusal of the owner[’s] election to sell, “the right matures into an enforceable option when the owner gives the required notice.” If no consideration has passed, the option is revocable during its term; however, once consideration passes, the option becomes irrevocable. Generally, the consideration for the privilege of purchasing property under an option “is not separate from the consideration for the lease as a whole, and where the lease is sufficiently supported by a consideration the provision for the privilege of purchasing the property is adequately supported.”

*Riley*, 808 S.W.2d at 188 (citation omitted); *see also Henderson*, 470 S.W.2d at 413.

[27] On appeal, Tendido argues that the court should not follow this line of cases because the interpretation posited by these authorities is contrary to the plain language of Paragraph 6 as well as the general principle of contract law that offers are revocable prior to acceptance. We disagree and decline to adopt the interpretation of Paragraph 6 advanced by Tendido.

[28] Paragraph 6 explicitly gives Mobil ninety days to accept Tendido’s offer. The inclusion of this time limitation indicates that Mobil would be given the full ninety days to decide whether to purchase the Premises under the terms of the third-party offer. Tendido argues that the specification of ninety days does not make the right of first refusal clause an irrevocable offer. Tendido cites *LIN Broadcasting Corp. v. Metromedia, Inc.*, 542 N.E.2d 629 (N.Y. App. Div. 1989), wherein the court found that the fact “that a first refusal clause contains a specific time limitation has no bearing on whether it should be given the effect of a binding option.” *LIN*, 542 N.E.2d at 634. The *LIN* court explained that “[s]uch time limit merely provides a definite date beyond which the first refusal offer, if still outstanding, may no longer be accepted so that the parties may know when they are free to go forward with the contemplated third-party sale.”

*Id.* We are not persuaded by this reasoning.

[29] Courts interpreting right of first refusal clauses which do not contain a time period within which to accept, have held that the offer to purchase the property may be revoked prior to an unconditional acceptance. *See Anderson v. Stewart*, 32 N.W.2d 140, 145 (Neb. 1948). However, when the language of a first refusal clause gives the lessee a specific time to elect to purchase the property, the opportunity for the lessee to exercise its right of first refusal must be held open for the stated amount of time. *See Henderson*, 470 S.W.2d at 413-14. Thus, by including a definite time period wherein the lessee may exercise the right of first refusal, an option, which is a contract to hold an offer open, is thereby created. *Id.* at 413.

[30] Furthermore, options which are supported by consideration are irrevocable during their stated terms. The fact that the first refusal clause does not state that it shall be irrevocable is immaterial.

Implicit in the terms of an option given for a valuable consideration is a binding promise by the optionor to keep his or her offer open for the prescribed length of time; accordingly, it is immaterial that the instrument does not in express terms provide that the offer remains open and cannot be revoked within that time.

77 AM. JUR. 2d, *Vendor and Purchaser*, § 41 (1997) (footnote omitted).

[31] In the present case, because Paragraph 6 gave Mobil ninety days to exercise its preemptive right to purchase the Premises, Paragraph 6 gave Mobil the first right *and option* to purchase the property in the event Tendido transmitted to Mobil an acceptable third-party offer. Tendido notified Mobil of the ACIE offer, therefore, Mobil's right of first refusal transformed into an option to purchase the property for a period of ninety days as specified in Paragraph 6. Further, because the underlying lease was supported by consideration, the option was supported by consideration and was thus irrevocable during the ninety days specified in Paragraph 6.

[32] Mobil notified Tendido of its decision to accept the offer to purchase the property in accordance with the terms of ACIE's offer within the ninety days; therefore, Mobil has a right, under Paragraph 6, to purchase the property and to compel Tendido to sell the property under those terms. This is so

notwithstanding that ACIE, and arguably Tendido, purported to revoke the offer prior to the time Mobil notified Tendido of its acceptance or intent to exercise its option. *See e.g. G.G.A.*, 773 at 846; *Henderson*, 470 S.W.2d at 413.

**2. Whether the lower court erred in declaring that an enforceable contract existed between Mobil and Tendido because ACIE's offer was incapable of acceptance.**

[33] Tendido also argues that because ACIE's offer omitted reference to a \$500,000 mortgage held by the Bank of Hawaii on the Premises, the offer was incapable of acceptance. Mobil counters this by arguing that this is a non-issue. We agree with Mobil that the inclusion of reference to the mortgage was not necessary to the formation of the contract to purchase the Premises.

[34] The three recognized elements of a contract are an offer, acceptance, and consideration. *See* Title 18 GCA § 85102 (1992) ("It is essential to the existence of a contract that there should be: 1) Parties capable of contracting; 2) Their consent; 3) A lawful object; and 4) A sufficient cause or consideration."); *Ex parte Grant*, 711 So. 2d 464, 465 (Ala. 1997) ("The requisite elements of [a contract] include: an offer and an acceptance, consideration, and mutual assent to terms essential to the formation of a contract.") (quotation marks and citation omitted) (alteration in original); *Magill v. Nelbro Packing Co.*, 43 P.3d 140, 142 (Alaska 2001) ("In order to meet their burden in establishing the existence of a contract, . . . plaintiffs must show: 'an offer encompassing all essential terms, unequivocal acceptance by the offeree, consideration, and an intent to be bound.'") (citation and footnote omitted).

[35] "An offer is a manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." RESTATEMENT (SECOND) OF CONTRACTS, § 24 (1979); *O'Brien v. Nationwide Mut. Ins. Co.*, 689 A.2d 254, 258 (Pa. Super. 1997); *Architectural Metal Sys., Inc. v. Consol. Sys., Inc.*, 58 F.3d 1227, 1229 (7th Cir. 1995) ("The test for an offer is whether it induces a reasonable belief in the recipient that he can, by accepting, bind the sender.").

[I]n order for there to be an offer which may ripen into a contract by a simple acceptance, the offer must be reasonably definite in its terms and must sufficiently cover the essentials of the proposed transaction so that, with an expression of assent, there will be a completed and definite agreement on all essential details.

*Edmunds v. Houston Lighting & Power Co.*, 472 S.W.2d 797, 798-99 (Tex. Civ. App. 1971); *see also Magill*, 43 P.3d at 142 (stating that an offer must encompass “all essential terms”). To create the power of acceptance, essential terms in the offer need only be reasonably certain. *See Charbonnages de France v. Smith*, 597 F.2d 406, 417 (4th Cir. 1979). Where an offer does not include an essential term, the contract is unenforceable. *See Smith v. House of Kenton Corp.*, 209 S.E.2d 397, 399-400 (N.C. Ct. App. 1974) (holding that a party could not recover damages for breach of a rental contract where the offer and agreement did not contain essential terms such as the time and manner of payment of rent); *UFG, LLC v. Southwest Corp.*, 784 N.E.2d 536, 544-45 (Ind. Ct. App. 2003) (“[O]nly essential terms are necessary to make a contract enforceable.”) (citation omitted).

[36] “In a real property transaction, the ‘material factors to be ascertained from the written contract are the seller, the buyer, the price to be paid, the time and manner of payment, and the property to be transferred, describing it so it may be identified.’” *Doryon v. Salant*, 142 Cal. Rptr. 378, 380 (Cal. Ct. App. 1977) (citation omitted); *Lang v. Oregon-Idaho Annual Conf. of United Methodist Church*, 21 P.3d 1116, 1122 (Or. Ct. App. 2001) (“In every agreement for the sale of land, the essential terms include the designation of the parties, the identification of the property, the promise to sell and buy, the purchase price and how it will be paid, and a fixed time and place for the delivery of the deed or ‘closing.’”) (quotation mark and citation omitted); *UFG*, 784 N.E.2d at 544-45 (agreeing that the acceptance letter contained the essential terms for an enforceable contract because it identified the parties, the property to be sold, the closing date, down payment, purchase price, terms and conditions of financing, and the amortization schedule).

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[37] The offer from ACIE to Tendido, which was forwarded to Mobil, contained the names of the parties, the description of the lot, the purchase price of \$1.6 million and that the payment would be over the course of thirty years at a set interest rate. Excerpts of Record, p. 51 (Ltr. from ACIE to Tendido, Feb. 1, 2001) (containing the terms of ACIE’s offer). Tendido argues that the Bank of Hawaii mortgage was an essential and material term which was required to be placed in the offer. We disagree. While the question of “[w]hether additional terms are material will vary depending on the ‘particular circumstances of the property or the parties,’” *Lang*, 21 P.3d at 1122 (citation omitted), outstanding mortgages are not generally recognized as a necessary term for contracts for the sale of real property. *Cf. Doryon*, 142 Cal. Rptr. at 380; *Lang*, 21 P.3d at 1122. In *Epdee Corp. v. Richmond*, 75 N.E.2d 238 (Mass. 1947), the court noted:

The effectiveness of a contract for the sale and purchase of real [property] is not impaired by the absence of the elaborate stipulations often found in such contracts providing for the kind of deed to be given, the division of charges against the property, *the disposition of mortgages and other encumbrances*, and similar matters. A simple agreement to sell and to buy is enough if it identifies the parties and the land and fixes the price.

*Id.* at 239 (emphasis added); *see also Reed v. Wadsworth*, 553 P.2d 1024, 1033 (Wyo. 1976) (rejecting the seller’s argument that the contract contained a fatal uncertainty because there was no agreement that the buyer would assume and pay the existing mortgage); *Barry M. Dechtman, Inc. v. Sidpaul Corp.*, 446 A.2d 518, 522 (N.J. 1982) (“[W]hether the first mortgage would be subsequently foreclosed was not an essential term of the contract.”) (citation and footnote omitted); *F&S Pharmacy, Inc. v. Dandra Realty Corp.*, 754 N.Y.S.2d 256, 258 (N.Y. App. Div. 2003) (finding that because the option clause contained in the lease stated simply that the lessee had the option to purchase the property for \$600,000, and did not contain a mortgage contingency, the terms of the mortgage to purchase the property “cannot be considered material”).

[38] Accordingly, we reject Tendido’s contention that the disposition of the outstanding mortgage was a material term necessary to the formation of a contract between the parties.

### 3. The Superior Court erred in granting Mobil's Motion for Attorney's Fees and Costs.

[39] Finally, Tendido challenges the lower court's award of attorney's fees in favor of Mobil. An order granting attorney's fees is generally reviewed for an abuse of discretion. *Fleming v. Quigley*, 2003 Guam 4, ¶ 14. However, "a determination of the legal basis for an award of attorney fees is reviewed de novo as a question of law." *Id.* (citation and internal brackets omitted).

[40] Tendido argues that Paragraph 10 of the Mobil Lease governs the award of attorney fees, and only allows the recovery of fees in the event that the Mobil is required to cure a defect in title to the Premises.<sup>4</sup> Tendido contends that the instant dispute did not relate to a claim regarding the right to possession and quiet enjoyment of the property, and that Mobil is therefore not entitled to fees in this case.

[41] Mobil argues that Paragraph 8 of the Mobil Lease in fact authorized the award of attorney's fees in this case. During oral argument, Tendido elected not to dispute Mobil's contention that fees were authorized under Paragraph 8.

[42] We agree that Paragraph 8 permitted the award of attorney's fees for Mobil at the trial level. We further find that the contract provision authorizes the recovery of fees incurred in defending this appeal.

[43] With regard to litigation expenses, Guam follows the American Rule, which holds that "parties bear their own litigation expenses, including attorney's fees." *Fleming*, 2003 Guam 4 at ¶ 7 (footnote omitted).

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<sup>4</sup> Paragraph 10 of the Mobil Lease provides:

Warranty of Title. Lessor hereby declares and warrants full title and fee simple ownership of the leased premises and that the leased premises are free from any prior liens and encumbrances except easements of record which do not materially impair the use of the property. Lessor also covenants and warrants the right of the Lessee under this lease to possess and quietly enjoy the leased premises and will defend Lessee's right to possession and leasehold title. In the event any claim against the Lessor's title or the leased premises should arise in any manner or in the event an encumbrance is or shall be filed against Lessor's interest, the Lessee may at its option upon notice to Lessor institute necessary proceedings to cure any defect in title and to pay any encumbrance or otherwise make good the Lessor's obligations, and the cost thereof shall be paid by Lessee and Lessor may offset the cost thereof against any rents payable hereunder. \_

One recognized exception to the American Rule is where attorney's fees are allowed by contract. *Id.*

Paragraph 8 of the Mobil Lease provides:

In the event of judicial proceedings by either parties against the other to enforce any of its rights hereunder, the party in default will pay the other party's reasonable attorney's fees and cost of suit.

Excerpts of Record, p. 24 (Mobil Lease).

[44] We first note that under Paragraph 8, attorney's fees are recoverable in the event of a judicial proceeding "to *enforce*" any of the rights under the lease. The term "enforce" means "(1) to give force or effect to (a law, etc.); to compel obedience to. (2) Loosely, to compel a person to pay damages for not complying with (a contract)." BLACK'S LAW DICTIONARY, 549 (7th ed., 1999). Paragraph 8 further provides that the party in "*default*" is responsible to pay the other party's attorney's fees. "Default" is defined as "[t]he omission or failure to perform a legal or contractual duty; esp., the failure to pay a debt when due." *Id.* at 428.

[45] It is clear that in an action for breach of contract would be an action seeking to *enforce* a party's rights under the lease, and whereby one party may be held to be in *default*. In such circumstance, attorney's fees would be available to the prevailing party under Paragraph 8. The instant case, however, is an action for declaratory relief.

[46] Title 7 GCA § 26801 authorizes actions for declaratory relief. It provides that "any person interested . . . under a contract . . . may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an action in the court having jurisdiction for a declaration of his rights and duties in the premises, including a determination of any question of construction or validity arising under such . . . contract." 7 GCA § 26801. "Declaratory judgments are equitable in nature." *Exec. View Estate, Inc. v. Look*, Civ. No. 93-00062A, 1994 WL 129748, at \*2 (D. Guam App. Div. March 15, 1994) (citation omitted). They are a "binding adjudication that establishes the rights and other legal relations of the parties *without providing for or ordering enforcement*." BLACK'S LAW DICTIONARY, 846 (7th ed., 1999).

[47] Declaratory judgments do not provide for or order *enforcement*, therefore, attorney's fees incurred in actions for declaratory relief are arguably not authorized under Paragraph 8 of the Mobil Lease because such actions are not brought to *enforce* a party's rights under a contract. In fact, there is authority to this effect. See *Oliver v. Schene*, 6 Cal. Rptr. 461, 468 (Cal. Dist. Ct. App. 1960) (agreeing with the trial court that because the lease provision allowed the recovery of fees "incurred to enforce the obligations of the lease," the landlord was not entitled to attorney's fees incurred in an action for declaratory relief filed to determine whether a lease was void or terminated).

[48] We decline, however, to adopt such a narrow interpretation of Paragraph 8. In order to pursue a declaratory judgment action, there must exist an "actual controversy relating to the legal rights and duties of the respective parties." Title 7 GCA § 26801 (1994). Therefore, because a controversy must exist, we believe that for purposes of a contractual attorney's fees provision, an action seeking declaratory relief is tantamount to an action to enforce a party's rights under the contract so long as the action arose out of the contract and the contract is central to the controversy. Here, because the Mobil Lease was the source of the underlying action for declaratory relief, and was central to the dispute, attorney's fees are recoverable pursuant to Paragraph 8.

[49] Mobil also requests attorney's fees incurred in this appeal. We find that Mobil is entitled to appellate attorney's fees pursuant to Paragraph 8 of the Mobil Lease. "[C]ontractual provisions providing for the allowance of attorney[s] fees to the winning party are construed to include fees incurred both at the trial level and on appeal." *Gamble v. Northshore P'ship*, 28 P.3d 286, 290 (Alaska 2001) (footnote omitted) (agreeing with this general rule); *Humphries v. Ables*, 789 N.E.2d 1025, 1036 (Ind. Ct. App. 2003) ("When a contract provision provides that attorney fees are recoverable, appellate attorney fees may also be awarded.") (citation omitted); *Wheeler v. T.L. Roofing, Inc.*, 74 P.3d 499, 506 (Colo. Ct. App. 2003), *reh'g denied* July 3, 2003; *Morris v. Roley*, 31 P.3d 400, 402 (Okla. Civ. App. 2001); *Villinger/Nicholls Dev. Co. v. Meleyco*, 37 Cal. Rptr. 2d 36, 40 (App. Ct. 1995); *Dennison v. Marlowe*, 775 P.2d 726, 728-29 (N.M. 1989); *Mgmt. Servs. Corp. v. Dev. Assoc.*, 617 P.2d 406,

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408-09 (Utah 1980); *Steele v. Vanderslice*, 367 P.2d 636, 643 (Ariz. 1961) (*In Banc*). Accordingly, this case is remanded to the trial court to determine and award Mobil the attorney's fees associated with this appeal.

#### IV.

[50] In light of the foregoing, we hold that Paragraph 6 of the Mobil Lease was a right of first refusal provision which ripened into an irrevocable option to purchase the property at the point that Tendido gave Mobil notice of an acceptable third party offer to purchase the Premises. Thus, because Mobil informed Tendido of its intent to exercise its option within ninety days of the date Tendido informed Mobil of an acceptable third-party offer, an enforceable contract exists between Mobil and Tendido for the purchase of the Premises. We further find that the omission of reference to the disposition of an outstanding mortgage on the Premises did not render the offer incapable of acceptance. Finally, we agree that the lower court's award of attorney's fees for Mobil was authorized under Paragraph 8 of the Mobil Lease. Mobil is similarly entitled to attorney's fees on appeal pursuant to Paragraph 8. Accordingly, the trial court's decision granting summary judgment on the merits and its judgment awarding Mobil attorney's fees and costs are hereby **AFFIRMED**. The case is remanded for a determination of the amount of attorney's fees incurred by Mobil in this appeal.