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CASE LOMBARDI & PETTIT
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Attorneys for Plaintiff
ASSOCIATION OF OWNERS OF KALELE KAI

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ASSOCIATION OF OWNERS
OF KALELE KAI,

Plaintiff,

vs.

HITOSHI YOSHIKAWA;
DOE DEFENDANTS 1-10,

Defendants.

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

2015 JUN 10 PM 3:56

N. MIYATA
CLERK

CIVIL NO. 15-1-0102-01 KTN
(Declaratory Judgment)

**REPLY IN SUPPORT OF MOTION
FOR PROTECTIVE ORDER RE:
HITOSHI YOSHIKAWA'S "NOTICE OF
TAKING DEPOSITION UPON ORAL
EXAMINATION [COLIN KURATA AND JIM
PROPOTNICK]" FILED 5/5/15 [FILED
5/12/15]; DECLARATION OF COUNSEL;
EXHIBITS I-J; CERTIFICATE
OF SERVICE**

HEARING:

Date: June 17, 2015

Time: 11:00 a.m.

Judge: The Honorable Karen T. Nakasone

No Trial Date

**REPLY IN SUPPORT OF MOTION FOR PROTECTIVE ORDER RE: HITOSHI
YOSHIKAWA'S "NOTICE OF TAKING DEPOSITION UPON ORAL EXAMINATION
[COLIN KURATA AND JIM PROPOTNICK]" FILED 5/5/15 [FILED 5/12/15]**

Plaintiff ASSOCIATION OF OWNERS OF KALELE KAI (“**Association**”) hereby REPLIES in support of its Motion for Protective Order, and to preclude HITOSHI YOSHIKAWA (“**Yoshikawa**”) from taking the oral depositions of Directors Colin Kurata and Jim Propotnick (the “**Motion**”).

The Motion is supported by good cause. A protective order should be issued for the many reasons previously presented.

In addition, events that have and have not occurred since the filing of the Motion on 5/12/15 present additional good and compelling cause for the Court to exercise its discretion¹ and GRANT the Motion, as follows:

1. On 6/8/15, this Court issued its Minute Order which GRANTED the Association’s Motion for Summary Judgment against Yoshikawa, in its entirety, as follows:

PLTFF'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. [...] FOR THE REASONS AND AUTHORITIES SET FORTH BY PLTFF. YOSHIKAWA, AS A UNIT OWNER & MEMBER OF THE ASSOCIATION, IS SUBJECT TO THE PROJECT'S GOVERNING DOCUMENTS, WHICH INCLUDE THE DECLARATION OF CONDOMINIUM PROPERTY. THE DECLARATION REQUIRES ALL ASSOCIATION MEMBERS TO COMPLY STRICTLY WITH THE DECLARATION & BYLAWS OR BE SUBJECT TO INJUNCTIVE RELIEF AND OTHER REMEDIES AVAILABLE TO THE ASSOCIATION. SECTION 5 OF THE DECLARATION CONTAINS RESTRICTIONS ON THE LENGTHS OF BOATS THAT USE THE PROJECT'S BOAT MOORINGS. IT IS UNDISPUTED THAT YOSHIKAWA'S BOAT EXCEEDS THE LENGTH THAT IS PERMITTED UNDER SECTION 5. THEREFORE, THE COURT CONCLUDES THAT INJUNCTIVE RELIEF IS WARRANTED.

FURTHERMORE, THE COURT FINDS THERE ARE NO GENUINE ISSUES OF MATERIAL FACT REGARDING **THE SPECIAL ASSESSMENT FOR REPAIR**

¹ Yoshikawa’s Memorandum in Opposition to the Motion dated 6/9/15 (“**MIO**”) admits that this Court has “**wide discretion**” on matters relating to discovery, including protective orders issued pursuant to HRCP Rule 26(c). See MIO at 4.

THAT WAS IMPOSED ON YOSHIKAWA. THIS ASSESSMENT WAS AND IS VALID, PROPER, & IN ACCORDANCE WITH THE DECLARATION.

PLAINTIFF TO PREPARE A DETAILED ORDER INCLUDING UNDISPUTED FACTS AND CONCLUSIONS OF LAW, ALONG WITH A CD - WORD FORMAT COPY OF THE PROPOSED ORDER.

Exhibit I, 1st to 3rd pages (Court Minute Order, emphasis added).

2. In accordance with the Court's Minute Order, the Association's counsel will prepare and submit [proposed] findings of fact/conclusions of law/order/injunction (in Word, with a CD), which will confirm that the Association's First Amended Complaint has been fully-adjudicated, and that there are no remaining claims or issues thereunder. In other words, there is **no** good faith basis for Yoshikawa to contend in his MIO that oral depositions are needed to "defend against the Association's Complaint" or to discover "historical and current facts relevant to the claims and defenses asserted in this action." See MIO at 3 and 9; attached Declaration of Counsel, ¶4.² Taking the subject depositions would not merely be unnecessary under the circumstances. Doing so would be improper, harassing, oppressive and constitute an undue burden.

3. Cross-Claim Defendants BRADFORD OAKES and DARLENE SABRY (sued by Yoshikawa 1-day after the Court expressed its inclinations at the hearing on the Motion for Summary Judgment) have **still not** entered appearances in this action, filed answers, or otherwise responded to the Cross-Claim. It would be improper for Yoshikawa to take oral depositions without the participation of all named parties.

² The Court provided the Minute Order to all counsel, including Yoshikawa's counsel, via email and pdf attachment on 6/8/15, at 9:43 AM. See Exhibit J. Yoshikawa's MIO was completed and dated **the following day, 6/9/15, yet fails** to address the Court's Minute Order, the ruling's effect on this Motion or Yoshikawa's deposition notices **or** explain how – if at all – oral depositions can be predicated upon a fully-adjudicated Complaint.

4. The MIO indicates that Yoshikawa has **still not** effected service of process on either Mr. Oakes or Ms. Sabry. Yoshikawa suggests, incorrectly, that the Association or counsel are vested with authorization or the responsibility to accept service on behalf of persons other than their client. That view, while mistaken, may explain Yoshikawa's lack of diligence and failure to effect service. See MIO at 9 (complaining about "failure" by Association's counsel to accept service for Mr. Oakes and Ms. Sabry); see also, Yoshikawa's Ex Parte Motion for Service by Certified Mail on Cross-Claim Defendant Bradford Oakes dated 6/8/15 (failing to present any facts showing any effort to personally serve Mr. Oakes); Association's Memorandum in Opposition thereto filed 6/9/15 (pointing out that Yoshikawa has failed to show, as mandated by HRS §634-23, "the methods, means, and attempts made to [...] effect personal service on the defendant and any other pertinent facts").

5. On 5/27/15, the Association filed MOTION TO DISMISS "COUNTERCLAIM; CROSS-CLAIM" ("MTD"). The MTD, set for hearing on 7/30/15, is based upon good cause, and seeks the complete dismissal of Yoshikawa's Counterclaim/Cross-Claim. The Counterclaim and Cross-Claim are identical in all respects. Indeed, they are encompassed in the same document. The MTD, if granted would thereby dispose of the entirety of the Counterclaim/Cross-Claim, this entire action would thereby have been fully-adjudicated, and the necessity to conduct discovery, totally obviated. The oral depositions noticed by Yoshikawa could be avoided, thus achieving substantial savings of time, expense, and inconvenience.

6. In light of the Court's summary judgment ruling, the Association respectfully submits that the Counterclaim/Cross-Claim is likely to be dismissed. Expensive discovery should not occur at this juncture, if at all. This is exemplified by the relief sought by Yoshikawa in his Counterclaim/Cross-Claim, i.e., re-litigating the same issues which the Court's ruling has

adjudicated. The Counterclaim/Cross-Claim seeks the following relief [**comments added in brackets and bold font**]:

- A. That the First Amended Complaint be dismissed with prejudice and that Plaintiff take nothing thereby; [**Adjudicated by the Court against Yoshikawa, see Exhibit I**]
- B. A declaration that Yoshikawa has not violated the Declaration or any of the Governing Documents; [**Same**]
- C. A declaration that Yoshikawa, or any subsequent owner of the modified 69' boat mooring which includes moorings Nos. 28-33, shall have the right to moor therein any length boat that will reasonably fit within the 69' slip; [**Same**]
- D. A declaration that the Kalele Kai boat dock area is a common element; [**Same**]
- E. A declaration that the Kalele Kai limited common element boat moorings consist only of the mooring spaces in the water; [**Irreconcilable with Court's ruling**]
- F. A declaration that the special assessment for repair costs imposed on Yoshikawa was Improper. [**Adjudicated by the Court against Yoshikawa**]
- G. A ruling that Yoshikawa is the prevailing party in this matter; [**Irreconcilable with Court's ruling**]
- H. A ruling that the Counterclaim/Cross-Claim Defendants are liable to Yoshikawa for damages, including but not limited to, general, compensatory, special, and punitive damages, [**Irreconcilable with Court's ruling**]

See Counterclaim/Cross-Claim filed 4/29/15, at 17.

7. Yoshikawa's MIO fails to justify why he needs to conduct expensive oral depositions without the participation of all named parties prior to the hearing on the MTD. The MIO asserts there is a "pressing need" to take depositions to defend against the MTD. MIO at 3. However, that assertion is **wholly conclusory**, and lacks a good faith basis. **No** proposed topics of the depositions are identified, or how these purported witnesses are relevant, if at all, to any matter not covered by the Court's broad grant of summary judgment. **No** assertion is made that any portion of the Cross-Claim (somehow) survives or will survive the summary judgment ruling, and law of the case. Further, the MIO **fails to disclose** that Yoshikawa's lawyers participated in and possess transcripts of pre-hearing oral depositions and the entirety of the

testimony elicited during the multi-day non-binding arbitration hearing.³ No explanation is provided as to why those many transcripts are inadequate, why even more testimony must be elicited testimony, how such testimony would be unique, or any nexus to the MTD and its contention that Yoshikawa has failed to state a claim under Hawaii law.

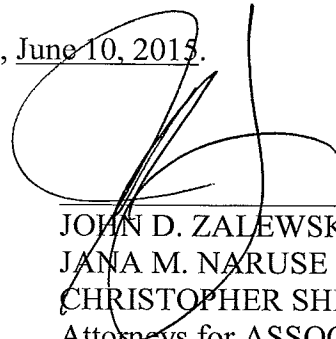
8. The MIO admits that the MTD asserts that the Counterclaim/Cross-Claim fails to state claims upon which relief can be granted (pursuant to Rule 12(b)(6)). See MIO at 4. The MTD establishes that Yoshikawa’s Counterclaim/Cross-Claim fails to follow Hawaii pleading requirements and asserts purported claims that are not cognizable under Hawaii law, e.g., asserting a claim based upon a Restatement provision alone; another purported claim styled as “prima facie tort.” See Mem. in Support attached to MTD filed 5/27/15, at 5-10. “Claims” that are not recognized by Hawaii law or are improperly stated cannot be cured by discovery.

For these reasons, and those set forth in the Motion, the Association respectfully submits that the Motion is supported by good cause, that Yoshikawa’s deposition notices are improper, that a protective order is needed to avoid annoyance, oppression, harassment, and imposition of an undue burden, and to avoid a tremendous waste of time, expense, and inconvenience on the part of the Association, its Board of Directors, the proposed deponents, and Hitoshi Yoshikawa as well.

The Association respectfully requests that this Motion be GRANTED, that a protective order be ISSUED, and that it be AWARDED its reasonable attorneys’ fees and costs.

³ Yoshikawa and his lawyers participated in and have transcripts of the following testimony incident to the non-binding arbitration proceeding: Pre-hearing deposition of Mr. Oakes (7/22/14 and 8/24/14); Pre-hearing deposition of Yoshikawa (7/10/14); Arbitration day 1: Richard Rosic and Mr. Oakes; Day 2: Waldemar Rojec and Mr. Oakes; Day 3: Maiko Yoshikawa and Yoshikawa; Day 4: Mr. Oakes and Kazuhiko Udagawa; Day 5: Bryan Liu. Declaration of Counsel, ¶5.

DATED: Honolulu, Hawaii, June 10, 2015.

A large, stylized handwritten signature in black ink, appearing to be 'J. Zalewski', is written over a horizontal line.

JOHN D. ZALEWSKI
JANA M. NARUSE
CHRISTOPHER SHEA GOODWIN
Attorneys for ASSOCIATION OF
OWNERS OF KALELE KAI

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ASSOCIATION OF OWNERS
OF KALELE KAI,

Plaintiff,

vs.

HITOSHI YOSHIKAWA;
DOE DEFENDANTS 1-10,

Defendants.

CIVIL NO. 15-1-0102-01 KTN
(Declaratory Judgment)

DECLARATION OF COUNSEL;
EXHIBITS I-J

DECLARATION OF COUNSEL

I declare under penalty of law that the following is true and correct:

1. I am an attorney and a director of the law firm Case Lombardi & Pettit (“CLP”), and licensed to practice law before all courts in Hawaii, and an attorney of record for Plaintiff ASSOCIATION OF OWNERS OF KALELE KAI (the “Association”).

2. Attached hereto as Exhibit I is a true and complete copy of the Court’s Minute Order dated 6/8/15.

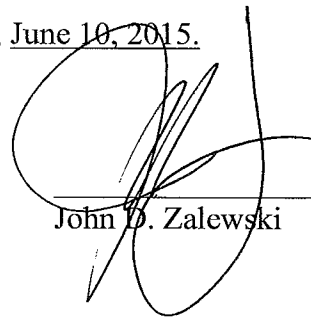
3. Attached hereto as Exhibit J is a true and complete copy of an email message from 22ndDivision.1CC@courts.hawaii.gov sent 6/8/15 at 9:43 AM, with attachment (Court’s Minute Order dated 6/8/15, Exhibit I hereto).

4. In accordance with the Court’s Minute Order, Exhibit I hereto, Declarant will prepare and submit [proposed] findings of fact/conclusions of law/order/injunction (in Word, with a CD), which will confirm that the Association’s First Amended Complaint has been fully-adjudicated and that there are no remaining claims or issues thereunder. In other words, there is no good faith basis for Yoshikawa to contend that oral depositions are needed to “defend against

the Association's Complaint" or to discover "historical and current facts relevant to the claims and defenses asserted in this action."

5. Yoshikawa and his lawyers participated in and have transcripts of the following testimony incident to the non-binding arbitration proceeding that occurred between the parties, as follows: Pre-hearing deposition of Brad Oakes (taken on 7/22/14 and 8/24/14); Pre-hearing deposition of Yoshikawa (taken on 7/10/14); Arbitration day 1: Richard Rosic and Mr. Oakes; Day 2: Waldemar Rojec and Mr. Oakes; Day 3: Maiko Yoshikawa and Yoshikawa; Day 4: Mr. Oakes and Kazuhiko Udagawa; Day 5: Bryan Liu.

DATED: Honolulu, Hawaii, June 10, 2015.



John B. Zalewski

CIVIL MOTIONS CALENDAR
FIRST CIRCUIT
TWENTY SECOND DIVISION - COURTROOM

DATE: TUESDAY, APRIL 28, 2015
JUDGE: HONORABLE KAREN T. NAKASONE, JUDGE PRESIDING
CLERK:
REPORTER:
BAILIFF/LAW CLERK: JEFFREY HU

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SUMMARY JUDGMENT (FILED 3/17/15), DEFT'S
OPPOSITION (FILED 4/20/15), PLTFF'S REPLY (FILED
4/23/15), & SUPPLEMENTAL DECLARATION OF ALAN
TAKUMI IN SUPPORT OF PLTFF'S MOTION (FILED
4/17/15), & HAVING HEARD ADDITIONAL ARGUMENTS
PRESENTED AT THE HEARING ON 4/28/15, GRANTS
PLTFF'S MOTION FOR SUMMARY JUDGMENT, FOR THE
REASONS AND AUTHORITIES SET FORTH BY PLTFF.

YOSHIKAWA, AS A UNIT OWNER & MEMBER OF THE
ASSOCIATION, IS SUBJECT TO THE PROJECT'S GOVERNING
DOCUMENTS, WHICH INCLUDE THE DECLARATION OF
CONDOMINIUM PROPERTY. THE DECLARATION REQUIRES ALL
ASSOCIATION MEMBERS TO COMPLY STRICTLY WITH THE
DECLARATION & BYLAWS OR BE SUBJECT TO INJUNCTIVE
RELIEF AND OTHER REMEDIES AVAILABLE TO THE
ASSOCIATION. SECTION 5 OF THE DECLARATION CONTAINS
RESTRICTIONS ON THE LENGTHS OF BOATS THAT USE THE
PROJECT'S BOAT MOORINGS. IT IS UNDISPUTED THAT
YOSHIKAWA'S BOAT EXCEEDS THE LENGTH THAT IS
PERMITTED UNDER SECTION 5. THEREFORE, THE COURT
CONCLUDES THAT INJUNCTIVE RELIEF IS WARRANTED.

DATE: 06-08-2015 BY ORDER OF THE COURT: _____CLERK

CIVIL MOTIONS CALENDAR
FIRST CIRCUIT
TWENTY SECOND DIVISION - COURTROOM

DATE: TUESDAY, APRIL 28, 2015
JUDGE: HONORABLE KAREN T. NAKASONE, JUDGE PRESIDING
CLERK:
REPORTER:
BAILIFF/LAW CLERK: JEFFREY HU

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10:00 A.M.

1CC 15-1-000102 ASSN OF OWNRS KALELE KAI
VS.
HITOSHI YOSHIKAWA ETAL

CHRISTOPHER SHEA GOODWIN
FOR ASSOCIATION OF OWNER

1. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
(C. GOODWIN)

FURTHERMORE, THE COURT FINDS THERE ARE NO GENUINE ISSUES OF MATERIAL FACT REGARDING THE SPECIAL ASSESSMENT FOR REPAIR THAT WAS IMPOSED ON YOSHIKAWA. THIS ASSESSMENT WAS AND IS VALID, PROPER, & IN ACCORDANCE WITH THE DECLARATION.

PLAINTIFF TO PREPARE A DETAILED ORDER INCLUDING UNDISPUTED FACTS AND CONCLUSIONS OF LAW, ALONG WITH A CD - WORD FORMAT COPY OF THE PROPOSED ORDER.

ATTYS WILL BE PROVIDED A PDF OF THIS MINUTE ORDER VIA EMAIL ON 6/8/15.

DATE: 06-08-2015 BY ORDER OF THE COURT: _____CLERK

From: 22ndDivision 1CC <22ndDivision1CC@courts.hawaii.gov>
Sent: Monday, June 08, 2015 9:43 AM
To: John Zalewski; chris@christophersheagoodwin.com; terry@revereandassociates.com
Subject: 1CC 15-1-0102 AOA vs. Yoshikawa
Attachments: Minute Order re 15-1-0102.pdf

Good morning,

Please find the minute order re: Plaintiff's Motion for Summary Judgment attached.

First Circuit Court - 22nd Division, Judge Karen T. Nakasone

Office: (808) 538-5053

Fax: (808) 538-5118

Email: 22ndDivision.1CC@courts.hawaii.gov

EXHIBIT J

CIVIL MOTIONS CALENDAR
FIRST CIRCUIT
TWENTY SECOND DIVISION - COURTROOM

DATE: TUESDAY, APRIL 28, 2015
JUDGE: HONORABLE KAREN T. NAKASONE, JUDGE PRESIDING
CLERK:
REPORTER:
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1CC 15-1-000102 ASSN OF OWNRS KALELE KAI
VS.
HITOSHI YOSHIKAWA ETAL
CHRISTOPHER SHEA GOODWIN
FOR ASSOCIATION OF OWNER

1. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
(C. GOODWIN)
2. MOTION TO STRIKE AND SEAL DEFENDANT'S MOTION
FOR AN ORDER CONFIRMING THE AWARD [ETC.] FILED
3/11/15 (J. ZALEWSKI)

***** < COURT REPORTER: PATRICIA NELSON > *****
CLERK: J. YAMAGATA
PRESENT: ATTYS JOHN ZALEWSKI AND CHRISTOPHER
GOODWIN FOR PLTF

ATTY TERRANCE REVERE FOR DEFT
AT TERM: 10:06 AM - 10:52 AM
CASE CALLED AND APPEARANCES ENTERED. THE COURT
WILL HEAR MOTION #2, MOTION TO STRIKE AND SEAL,
FIRST. THE COURT HAS REVIEWED THE MOTION,
OPPOSITION AND REPLY, AND DID NOT REVIEW THE
ACTUAL AWARD.

10:10 AFTER HEARING FROM COUNSEL, AND BASED ON
ITS REVIEW OF THE SUBMISSIONS AND APPLICABLE
AUTHORITIES, THE COURT GRANTED THE MOTION.

MR. ZALEWSKI TO PREPARE ORDER.

10:12 AM MOTION #1: MOTION FOR SUMMARY JUDGMENT
THE COURT HAS REVIEWED THE MOTION, OPPOSITION,
REPLY AND SUPPLEMENTAL DOCUMENTATION, AND GAVE ITS
THOUGHTS AND QUESTIONS.

10:51 AM AFTER HEARING FROM COUNSEL, THE COURT
TOOK THE MATTER UNDER ADVISEMENT. BRIEFING IS
CLOSED RE. PENDING MOTION.

PROCEEDING CONCLUDED.

6/8/15 MINUTE ORDER

PLTF'S MOTION FOR SUMMARY JUDGMENT IS GRANTED.
THE COURT, HAVING CONSIDERED PLTF'S MOTION FOR

CIVIL MOTIONS CALENDAR
FIRST CIRCUIT
TWENTY SECOND DIVISION - COURTROOM

DATE: TUESDAY, APRIL 28, 2015
JUDGE: HONORABLE KAREN T. NAKASONE, JUDGE PRESIDING
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FIRST CIRCUIT
TWENTY SECOND DIVISION - COURTROOM

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DATE: 06-08-2015 BY ORDER OF THE COURT: _____ CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ASSOCIATION OF OWNERS
OF KALELE KAI,

Plaintiff,

vs.

HITOSHI YOSHIKAWA;
DOE DEFENDANTS 1-10,

Defendants.

CIVIL NO. 15-1-0102-01 KTN

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

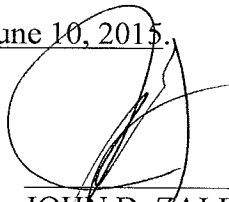
I certify that the foregoing was served on the following persons by the following means
on the following date:

TERRANCE M. REVERE, ESQ.
LAUREN C. McDOWELL, ESQ.
Pali Palms Plaza
970 North Kalaheo Ave., Suite A301
Kailua, HI 96734

First Class United States Mail

Attorneys for Defendant HITOSHI YOSHIKAWA

DATED: Honolulu, Hawaii, June 10, 2015.



JOHN D. ZALEWSKI
JANA M. NARUSE
CHRISTOPHER SHEA GOODWIN
Attorneys for ASSOCIATION OF
OWNERS OF KALELE KAI