

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2016 NOV -9 PM 2: 24

F. OTAKE
CLERK

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Attorneys for Plaintiff/Counterclaim Defendant
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)

FIRST AMENDED FINAL JUDGMENT

Judge: The Honorable Karen T. Nakasone

FIRST AMENDED FINAL JUDGMENT

In accordance with Rule 58 of the Hawai'i Rules of Civil Procedure, this FIRST AMENDED FINAL JUDGMENT is hereby entered and supersedes the FINAL JUDGMENT entered herein on February 3, 2016.

JUDGMENT IS HEREBY ENTERED as follows:

I do hereby certify that this is a full, true, and correct copy of the original on file in this office.


Clerk, Circuit Court, First Circuit

A. Claims Asserted in First Amended Complaint For Trial De Novo filed February 20, 2015 (“First Amended Complaint”): Judgment is entered in favor of Plaintiff ASSOCIATION OF OWNERS OF KALELE KAI (“Plaintiff”) and against Defendant HITOSHI YOSHIKAWA (“Defendant”), as to all claims set forth in the First Amended Complaint, inclusive of Count I (Declaratory and Injunctive Relief) and Count II (Breach of Governing Documents), pursuant to the Findings of Fact, Conclusions of Law, And Order Granting Motion for Summary Judgment Filed 3/17/15 And Injunction Against Hitoshi Yoshikawa, filed herein on August 14, 2015 (“FF/CL/Order/Injunction”);

B. Mandatory and Permanent Injunction: A mandatory and permanent injunction has been issued and remains effective against Defendant as set forth in pages 16-17 of the FF/CL/Order/Injunction, as follows:

1. Defendant is ORDERED to remove his boat, the Rola, from the Project’s marina, within ten (10) days from the date of entry of the FF/CL/Order/Injunction, i.e., within 10 days of August 14, 2015,
2. This injunction is MANDATORY and PERMANENT. Defendant is hereby PERMANENTLY ENJOINED from mooring the Rola at the Kalele Kai marina at any time after ten (10) days of August 14, 2015.
3. Defendant including his agents, representatives, successors, and assignees, are hereby PERMANENTLY ENJOINED from any further or future violation of the 23 foot boat length restriction in Section 5 of the Kalele Kai Declaration.
4. For so long as he remains a member of Plaintiff, Defendant is hereby PERMANENTLY ENJOINED from mooring or causing to moor any boat at the Kalele Kai marina that is in excess of 23 feet in length, unless and until Plaintiff duly

approves an amendment in accordance with HRS §514B-32(a)(11) to modify the 23 foot boat length restriction set forth in Section 5 of the Kalele Kai Declaration.

C. Claims Asserted in Defendant's Counterclaim filed herein on April 29, 2015 ("Counterclaim"): Judgment is entered in favor of Plaintiff and against Defendant as to all claims set forth in the Counterclaim inclusive of Count 1 (Breach of Contract), Count 2 (Breach of Fiduciary Duty), Count 3 (Bad Faith Pursuant to Haw. Rev. Stat. § 514B-9 and Common Law), Count 4 (Intentional Infliction of Emotional Distress), Count 5 (Violation of §6.13 and §6.14 of the Restatement, 3d of Servitudes), Count 6 (Prima Facia Tort), Count 7 (Abuse of Process), Count 8 (Misrepresentation), Count 9 (Bad Faith), Count 10 (Violation of Haw. Rev. Stat. §514B); and Count 11 (Violation of Haw. Rev, Stat. §514B-148), pursuant to the Order Granting Motion to Dismiss "Counterclaim; Cross-Claim" Filed 4/29/2015 (Filed 5/27/2015), filed herein on August 6, 2015; and

D. Claims Asserted in Defendant's Third Party Complaint (Incorrectly Labeled as a "Cross-Claim") filed herein on April 29, 2015 ("Third Party Complaint"): Judgment is entered in favor of Third Party-Defendants BRADFORD OAKES and DARLA SABRY and against Defendant as to all claims set forth in the Third Party Complaint, inclusive of Count 1 (Breach of Contract), Count 2 (Breach of Fiduciary Duty), Count 3 (Bad Faith Pursuant to Haw. Rev. Stat. § 514B-9 and Common Law), Count 4 (Intentional Infliction of Emotional Distress), Count 5 (Violation of §6.13 and §6.14 of the Restatement, 3d of Servitudes), Count 6 (Prima Facia Tort), Count 7 (Abuse of Process), Count 8 (Misrepresentation), Count 9 (Bad Faith), Count 10 (Violation of Haw. Rev. Stat. §514B); and Count 11 (Violation of Haw. Rev, Stat. §514B-148), pursuant to the Order Granting Motion to Dismiss "Counterclaim; Cross-Claim" Filed 4/29/2015 (Filed 5/27/2015), filed herein on August 6, 2015;

E. Reasonable attorneys' fees and costs: Reasonable attorneys' fees and costs are awarded in favor of Plaintiff and against Defendant as follows:

1. The sum of \$5,457.80, pursuant to the Order Granting Plaintiff's "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) filed herein on August 26, 2015. Defendant has paid this sum and satisfied this obligation as reflected in the Partial Satisfaction of Attorney Fee and Cost Awards filed herein on January 12, 2016;
2. The sum of \$2,188.34, pursuant to the Order Awarding Plaintiff Attorneys' Fees and Costs In Accordance With The Order Denying Defendant's Motion For Reconsideration of 8/26/15 Order Granting Plaintiff's 'Motion For Protective Order [Etc.]' (Filed 10/20/15) filed herein on November 3, 2015. Defendant has paid this sum and satisfied this obligation as reflected in the Partial Satisfaction of Attorney Fee and Cost Awards filed herein on January 12, 2016;
3. The sum of \$79,514.50, pursuant to the Order Granting Plaintiff's Motion for Attorney's Fees and Costs Against Hitoshi Yoshikawa, filed herein on November 5, 2015;
4. The sum of \$21,180.35, pursuant to the Order Granting Plaintiff's Motion for Supplemental Award of Attorneys' Fees and Costs Against Hitoshi Yoshikawa (Filed 11/13/15), filed herein on January 5, 2016.

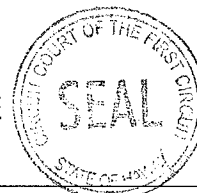
Upon entry of the FINAL JUDGMENT, filed herein on February 3, 2016, post-judgment at the statutory rate of 10 percent per annum shall commence accruing on those attorney fee and cost awards which are outstanding and unpaid, which total \$100,694.85 (sum of the awards

reflected in the above subparagraphs E3 and E4).

This First Amended Final Judgment resolves and disposes of all claims asserted by all parties in this action in accordance with Rule 58 of the Hawai'i Rules of Civil Procedure. No trial date was set by the Court.

DATED: Honolulu, Hawaii, NOV 07 2016.

KAREN T. NAKASONE



JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

TERRANCE M. REVERE, ESQ.
LAUREN C. McDOWELL, ESQ.
Attorneys for HITOSHI YOSHIKAWA

Association of Owners of Kalele Kai vs. Yoshikawa, Civil. No, 15-1-0102-01 (KTN);
FIRST AMENDED FINAL JUDGMENT