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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.

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

FIRST AMENDED COMPLAINT FOR
TRIAL DE NOVO; SUMMONS

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

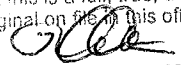
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F. OTAKE
CLERK

FIRST AMENDED COMPLAINT FOR TRIAL DE NOVO

COMES NOW, Plaintiff ASSOCIATION OF OWNERS OF KALELE KAI
("Association"), by and through attorneys, CHRISTOPHER SHEA GOODWIN, ATTORNEY
AT LAW, LLLC, and CASE LOMBARDI & PETTIT, and files this First Amended Complaint
for Trial De Novo pursuant to HRS §514B-163 against Defendant HITOSHI YOSHIKAWA
("Yoshikawa"), and avers and alleges as follows:

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


Clerk Circuit Court, First Circuit

PARTIES

1. The Association is a Hawaii nonprofit condominium association existing pursuant to Hawaii Revised Statutes Chapter 514B, formed in accordance with and governed by the Declaration of Condominium Property Regime recorded in the State of Hawaii Bureau of Conveyances as Document No. 93-089469 on June 1, 1993, as amended (“Declaration”) and the Bylaws of the Association of Owners of Kalele Kai in the State of Hawaii Bureau of Conveyances as Document No. 93-87470 recorded on June 1, 1993, as amended (“Bylaws”).

2. Yoshikawa is a member of the Association, and owns Apartment No. 106, also known as TH1006, and Boat Moorings Nos. 28-33 appurtenant thereto, at the residential condominium project known as Kalele Kai, located at 1 Keahole Place, Honolulu , Hawaii 96825 (“Property”), by virtue of the Apartment Deed (With Boat Moorings), recorded in the State of Hawaii Bureau of Conveyances as Document No. 2010-165562 on November 1, 2010.

3. DOE Defendants 1-10 are persons, corporations, entities or governmental units which in some manner presently unknown to the Association are liable to the Association, have engaged or involved in the activities alleged herein and/or were in some manner responsible for the injuries or damage to the Association, and whose true names, identities and capacities are presently unknown to the Association or its attorneys. The Association will substitute the true names, identities, capacities, activities and/or responsibilities when the same are ascertained.

4. The acts and omissions alleged herein occurred in the City and County of Honolulu, State of Hawaii. The amount of damages suffered by the Association as a result thereof is in excess of the jurisdictional requirements of this Court.

FACTS

5. The Declaration and Bylaws run with the land.

6. The Declaration and Bylaws are restrictions stated in to Yoshikawa's Apartment Deed.

7. As a member of the Association and an owner of a unit at Kalele Kai, Yoshikawa is obligated to comply strictly with the Declaration and Bylaws.

8. Declaration §5 restricts the use of the boat moorings to **boats no larger than twenty-three (23) feet in length.**

9. Pursuant to Declaration §5, all boat moorings at Kalele Kai are limited common elements, with the exception of Boat Moorings Nos. 7 and 8, which are common elements.

10. Declaration §5 provides in part (emphasis added):

Common Elements. One freehold estate is hereby designated in all of the remaining portions and appurtenances of the Project (hereinafter referred to as the "common elements"), including specifically, but not limited to:

- (a) The Land in fee simple;
- (b) All structural components [...];
- (c) All walkways, including the boat mooring walkways, and interior

roadways located upon the Land; [...]

(j) Two (2) boat moorings (designated B7 and B8 on the Condominium Map). The boat moorings shall be restricted to use by boats no larger than twenty-three (23) feet in length and shall be subject to that certain Declaration of Protective Provisions dated January 30, 1991, recorded in the Bureau as Document No. 91-026955, as amended (hereinafter referred to as the "Declaration of Protective Provisions (Hawaii Kai Marina)") and any rules and regulations promulgated thereunder, this Declaration, the Bylaws and any house rules adopted by the Board. **All remaining boat moorings of the Project shall be designated as "limited common elements" appurtenant to designated condominium units as described in more detail herein below; [...]**

11. Declaration §5 further provides in part (emphasis added):

Limited Common Elements:

The following common elements, (hereinafter referred to and designated as "limited common elements"), are hereby set aside and reserved for the exclusive use of certain condominium units, and such condominium units shall have appurtenant thereto exclusive easements for use of such limited common elements. **The limited common elements so set aside and reserved are as follows: [...]**

(b) **All boat moorings shall be identified by the letter "B" and a number. Condominium unit 3110 initially shall have appurtenant thereto boat moorings B1 through B6, inclusive, and B9 through B60, inclusive,** as designated on the Condominium Map. Notwithstanding any provision of this Declaration, the Developer, as the initial owner of condominium unit 3110, shall have the right to amend this Declaration (1) prior to the conveyance of condominium unit 3110, to transfer and redesignate any unsold boat moorings from condominium unit 3110 to any other condominium unit(s), and (2) as often as is necessary thereafter, to transfer and redesignate any unsold boat moorings from any condominium units owned by the Developer to any other condominium unit(s). Such transfers and redesignations shall be effectuated by amendments to the Declaration signed by the Developer and recorded in the Bureau. Such condominium units shall enjoy the exclusive use of the boat moorings appurtenant thereto, subject to that certain Declaration of Protective Provisions (Hawaii Kai Marina) and any rules and regulations promulgated thereunder, this Declaration, the Bylaws and any house rules adopted by the Board. The relocation and/or removal of boat moorings may be undertaken only in accordance with such rules and regulations as may be adopted by the Board.¹ Notwithstanding any provision of this Declaration, owners shall have the right to transfer and change the designation of boat moorings which are appurtenant to their respective condominium units by recordation in the Bureau of an amendment to this Declaration and appropriate conveyance document, both signed by the seller and the buyer of the boat mooring, and their respective mortgagees, if any.

The boat mooring shall be restricted to use by boats no larger than twenty-three (23) feet in length. The owner of a condominium unit to which a boat mooring is appurtenant, at such owner's sole expense, shall maintain and repair the boat mooring in a good, safe and clean condition; provided, that if owner fails to maintain and/or repair the boat mooring in a good, safe and clean condition, the Association may arrange for the maintenance and/or repair work to be performed and the actual cost of such work plus a reasonable administrative fee as may be levied by the Board shall be charged to the owner so long as the Association (i) has provided the owner with written notice of the maintenance and/or repair work, the estimated cost of such work and the estimated administrative fee for arranging for such work on behalf of the owner, and (ii) the owner fails to notify the Association in writing within seven (7) days of owner's receipt of the Association's notice that owner has made arrangements for such maintenance and/or repair work to be performed, the person or persons who will perform such work, and the date such work will begin.

12. The Declaration §13 provides in part (emphasis added):

Compliance with Declaration, Bylaws and the Act. All owners, their tenants, families, employees, servants, guests, and any other persons who may in any manner use the Project, shall be bound by and comply strictly with the

¹ This sentence was added by the Tenth Declaration Amendment recorded in the State of Hawaii Bureau of Conveyances on August 28, 2009.

provisions of this Declaration, the Bylaws, the Act, **all agreements, decisions and determinations by the Association as are lawfully made or amended from time to time**, that certain Declaration of Restrictive Covenant (Private Park) dated June 3, 1991 recorded in the Bureau as Document No. 91-119313 (hereinafter referred to as the “Declaration of Restrictive Covenant (Private Park)”), and the Declaration of Protective Provisions (Hawaii Kai Marina), **and failure to comply with any of the same shall be grounds for** an action to recover sums due for damages or **injunctive relief, and any other remedies available in law or in equity, maintainable by the Board** or managing agent **on behalf of the Association** or, in a proper case, by any aggrieved owner. [...]

13. In early 2011, the Association requested an assessment of the condition of its marina consisting of the boat mooring walkways and boat moorings for repairs and maintenance.

14. Pursuant to recommendations received from by two qualified consultants, the Association awarded a contract to Bellingham Marine to perform repairs and renovations to the Kalele Kai marina. These repairs and renovations were completed in 2012.

15. In 2012, the Association assessed each boat mooring owner a special assessment of \$2,000 per mooring, attributable to costs incurred to repair and renovate the marina. Yoshikawa was assessed \$12,000 pursuant to his ownership of six appurtenant boat moorings.

16. On or around November 30, 2012, Yoshikawa, through his representative Kazuhiko Udagawa, informed the Association of his intent to purchase a Riviera 43 Offshore Express, measuring approximately 49 feet and 4 inches in length.

17. Prior to Yoshikawa’s purchase of a Riviera 43 Offshore Express, the Association, through both its Resident Manager and General Counsel, advised Yoshikawa of the Declaration’s 23 foot boat length restriction, that Yoshikawa lacked approval to moor a boat in excess of 23 feet in length at Kalele Kai, and that the Board of

Directors of the Association objected to Yoshikawa's intention to moor a boat in excess of 23 feet in length at Kalele Kai.

18. The foregoing communications by the Association were expressed in person and in writing to Yoshikawa, his agent, Mr. Udagawa, and his fiancé and now spouse, Maiko Sakata (Yoshikawa), and in writing to his legal counsel.

19. Notwithstanding multiple communications of the Association's objections and concerns made to Yoshikawa, and without Association approval, Yoshikawa proceeded to purchase the Riviera 43 Offshore Express which he named the "ROLA," and moored the ROLA for the first time at Kalele Kai on October, 28, 2013, one (1) day before Mediation was scheduled to commence between the parties.

20. The Association through its Resident Manager issued a written Notice of Violation to Yoshikawa, and made subsequent written demands upon Yoshikawa to remove the ROLA and comply with the Declaration, yet Yoshikawa remains in violation.

21. From October 28, 2013 to present, Yoshikawa continues to moor the ROLA Kalele Kai, in ongoing and material violation of the Declaration's 23 foot boat length restriction.

21. The ROLA is the only boat presently moored at Kalele Kai in violation of the Declaration's 23 foot boat length restriction.

COUNT I
Declaratory and Injunctive Relief

22. The Association incorporates by reference herein all paragraphs in this Complaint as if fully set forth herein.

23. Pursuant to Hawaii Revised Statutes Chapter 632, and Rule 57 of the Hawaii Rules of Civil Procedure, the Association seeks declaratory relief and final adjudication as to the rights and liabilities of the parties herein, as follows:

(a) That Yoshikawa has materially, intentionally, and openly violated the 23-foot boat length restriction set forth in the Declaration §5.

(b) That the Kalele Kai boat dock area and boat moorings were and are designated properly as limited common elements in accordance with Declaration §5.

(c) That the special assessment for repair costs which was imposed on Yoshikawa, and all other appurtenant boat mooring owners, was and is valid, proper, and in accordance with Declaration §5.

24. The Association seeks injunctive relief and the issuance of a permanent injunction which compels Yoshikawa to immediately and permanently remove the ROLA from Kalele Kai, in accordance with the Declaration and Hawaii law.

COUNT II
Breach of Governing Documents

25. The Association incorporates by reference herein all paragraphs in this Complaint as if fully set forth herein.

26. Yoshikawa, as an owner at Kalele Kai and member of the Association, is obligated to comply strictly with the Association's governing documents, including the Declaration, Bylaws and House Rules pursuant to the Declaration §13 and HRS § 514B-112.

27. Yoshikawa has breached the Association's governing documents, which entitled the Association to damages, in an amount to be proven at trial.

PRAYERS FOR RELIEF

The Association respectfully prays that the Court GRANT the following relief:

A. A declaration that Yoshikawa has materially, intentionally, and openly violated the Declaration's 23-foot boat length restriction, and he has failed to comply strictly with the restriction in accordance with his obligation owed as a member of the Association and an owner at Kalele Kai.

B. A permanent and mandatory injunction that compels Yoshikawa to strictly, immediately, and permanently comply with the Declaration, remove the ROLA from Kalele Kai, and permanently enjoin Yoshikawa from mooring a boat at Kalele Kai over 23 feet in length.

C. A declaration that the Kalele Kai boat dock area and boat moorings were and are designated properly as limited common elements in accordance with the Declaration.

D. A declaration that the special assessment for repair costs imposed on Yoshikawa and all other boat mooring owners was and is valid, proper, and in accordance with the Declaration.

E. A ruling that Yoshikawa breached the Association's governing documents and is liable to the Association for damages, including, but not limited to, general, compensatory, special and punitive damages, in an amount to be proven at trial;

F. For an award in favor of the Association for its reasonable attorneys' fees and costs from Yoshikawa; and

G. For such other relief which this Court finds is just and equitable.

DATED: Honolulu, Hawaii, February 20, 2015.



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

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CIVIL NO. 15-1-0102-01 KTN

SUMMONS

SUMMONS

STATE OF HAWAII

TO THE ABOVE-NAMED DEFENDANT

You are hereby summoned and required to file with the Court and serve upon Plaintiff's attorneys, Christopher S. Goodwin AAL, LLC, whose address is at Pacific Guardian Center, Mauka Tower, 737 Bishop Street, Suite 1640, Honolulu, Hawaii 96813 and Case Lombardi and Pettit, whose address is Pacific Guardian Center, Mauka Tower, 737 Bishop Street, Suite 2600, Honolulu, Hawaii 96813, an answer to the First Amended Complaint that is attached. This action must be taken within twenty (20) days after service of this summons upon you, exclusive of the day of service.

If you fail to make your answer within the twenty (20) day time limit, judgment by default will be taken against you for the relief demanded in the First Amended Complaint.

This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

DATE ISSUED: Honolulu, Hawaii, FEB 20 2015.

F. OTAKE



CLERK OF THE ABOVE-ENTITLED COURT