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FIRST CIRCUIT COURT
STATE OF HAWAII
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J. KUBO
CLERK

Attorneys for Defendant
HITOSHI YOSHIKAWA

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
)
)
) DEFENDANT HITOSHI YOSHIKAWA'S
) MOTION TO DISMISS COMPLAINT FOR
) TRIAL DE NOVO, filed January 21, 2015;
) MEMORANDUM IN SUPPORT OF
) MOTION; DECLARATION OF COUNSEL;
) EXHIBITS 1-6; NOTICE OF HEARING
) MOTION & CERTIFICATE OF SERVICE
)
)
) HEARING:
)
) DATE: 4/15/15
)
) TIME: 9:00 am
)
)
) JUDGE: The Honorable Karen T. Nakasone

DEFENDANT HITOSHI YOSHIKAWA'S MOTION TO DISMISS COMPLAINT
FOR TRIAL DE NOVO, filed January 21, 2015

Defendant HITOSHI YOSHIKAWA (“Yoshikawa”) by and through his undersigned counsel, Revere & Associates, LLLC, respectfully moves this Court for an order dismissing, with prejudice, Plaintiff ASSOCIATION OF OWNERS OF KALELE KAI’s (“Association”) Complaint for Trial De Novo filed on January 21, 2015 in the above-entitled action.

The Association’s Complaint for Trial De Novo should be dismissed with prejudice because the Association has failed to state claims against Yoshikawa upon which relief can be granted in light of the judicial admissions made by the Association during the arbitration of this matter. The Association’s Complaint asserts claims for (I) injunctive and declaratory relief and (II) breach of governing documents. Neither claim is viable in light of the fact that the Association has judicially admitted that:

(1) The purpose of the Declaration’s 23’ boat length limitation is to prohibit perpendicularly moored boats from protruding past the boundary of Association’s 30’ easement out into the Hawaii Kai Marina (the Yoshikawas’ boat is moored perpendicularly and does not protrude past the 30’ easement); and

(2) The Yoshikawa’s boat is located on the property of the Hawaii Kai Marina Association and not the property of the Association.

Because the Association has judicially admitted that the purpose of the so-called limitation in question is inapplicable to Yoshikawa, holds a purpose that Yoshikawa has not violated, and that Yoshikawa’s boat is not on the Association’s property, there is no basis upon which relief can be granted to the Association.

This Motion is brought pursuant to Rules 7, and 12(b)(6) of the Hawaii Rules of Civil Procedure, and is based upon the memorandum in support, declaration of counsel, and exhibits, appended hereto and the files and records herein, as well as such further and additional matters

that may be presented to and at this hearing on this Motion, all of which are incorporated herein by reference.

DATED: Kailua, Hawaii, February 17, 2015

A handwritten signature in black ink, appearing to read 'T.M. Revere', written over a horizontal line.

TERRANCE M. REVERE
LAUREN C. McDOWELL

Attorneys for Defendant
HITOSHI YOSHIKAWA

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ASSOCIATION OF OWNERS OF KALELE KAI,)	Civil No. 15-1-0102-01 KTN
)	
Plaintiff,)	MEMORANDUM IN SUPPORT OF
)	MOTION
vs.)	
)	
HITOSHI YOSHIKAWA)	
DOE DEFENDANTS 1-10,)	
)	
Defendants.)	
<hr/>		

MEMORANDUM IN SUPPORT OF MOTION

Defendant HITOSHI YOSHIKAWA (“Yoshikawa”) has moved this Court for an order dismissing, with prejudice, Plaintiff ASSOCIATION OF OWNERS OF KALELE KAI’s (“Association”) Complaint for Trial De Novo filed on January 21, 2015 in the above-entitled action.

I. INTRODUCTION

The Association’s Complaint for Trial De Novo should be dismissed with prejudice because the Association has failed to state claims against Yoshikawa upon which relief can be granted in light of the judicial admissions made by the Association during the arbitration of this matter. The Association’s Complaint asserts claims for (I) injunctive and declaratory relief and (II) breach of governing documents. Neither claim is viable in light of the fact that the Association has judicially admitted that:

(1) The purpose of the Declaration’s 23’ boat length limitation is to prohibit perpendicularly moored boats from protruding past the boundary of Association’s 30’ easement

out into the Hawaii Kai Marina (the Yoshikawas' boat is moored perpendicularly and does not protrude past the 30' easement);

(2) The Yoshikawa's boat is located on the property of the Hawaii Kai Marina Association and not the property of the Association.

Because the Association has judicially admitted that the purpose of the so-called limitation in question is inapplicable to Yoshikawa, holds a purpose that Yoshikawa has not violated, and that Yoshikawa's boat is not on the Association's property, there is no basis upon which relief can be granted to the Association.

II. BACKGROUND

1. The Developer never intended to restrict boats longer than 23'

Beginning in the 1990s and throughout the entire history of the Kalele Kai Condominium Association ("Kalele Kai"), the Association expressly allowed the side tying of boats longer than 23' and never considered them to be in violation of the Declaration.

Kalele Kai was developed and marketed to potential buyers with a common 69' side-tie mooring. During the arbitration of this matter, a representative of the developer of the Kalele Kai, Kevin Showe, submitted declaration attached hereto as "Exhibit 3" which confirmed the intent of the developer in establishing the 23' boat length limitation:

3. I am familiar with the 23' limitation for boats moored at Kalele Kai which is found in the Kalele Kai Declaration.
4. There is a 30' easement into the marina for the docks at Kalele Kai. The marina itself belongs to the Hawaii Kai Marina Association.
5. I believe that the reason for the 23' limitation is related to the easement and for marina navigation, in particular because there is an island near Kalele Kai.
6. I believe that the purpose of the limitation is to keep boats that were moored perpendicular to the Kalele Kai main dock from protruding into the marina navigation easement.

7. The 23' limitation should have no applicability to boats that are side-tied to the Kalele Kai main dock since they are not protruding out into the marina beyond the easement.
8. The original Kalele Kai marina was build with a 69' side-tie slip.

Exhibit 3.

2. The Association not only allowed but encouraged boats longer than 23' to be side-tied at Kalele Kai for years

The modification of moorings in order to side-tie boats larger than 23' was expressly approved by the Association on numerous occasions, at least that six¹ boats larger than 23' were docked in these side-tie moorings for years, and the larger boats became an important part of everyday life and the community at Kalele Kai. The Association's own April 2006 Newsletter, contained an article that advised how homeowners could buy and modify boat docks. The Article stated:

Information on the boat docks

- When Kalele Kai first sold the condominium units to the general public, all but two of the 60 boat docks were retained by the developer
- Two of the boat docks (#7 and #8) are common elements and can be used by association owners and their tenants with advance notice to the management office on site.
- The remaining 58 boat docks have been purchased by the owners of Kalele Kai from the developer.
- Only owners of Kalele Kai are allowed to own the boat docks as limited common elements.
- Users of the Hawaii Kai Marina must comply with Marina Rules and vessels must be registered at the Marina Office.

¹ (1) Flying bridge Bayliner owned by Carl & Sidney Fratski - Over 23' in length.

(2) Ariel, a Quantum 38 owned by Richard Rosic – 38'6" in length.

(2) Ariel, a Quantum 38 owned by Richard Rosic – 38'6" in length.

(3) Shilan, a 26' Glacier Bay owned by Ike and Angela Hung

(4) 26' Glacier Bay owned by Edward and Sharon Peterson.

(5) Nakanishis boat – longer than 23' in length.

(6) Cracovia, a 37' (inclusive of 4' swimming platform) Doral Elegante owned by Waldamar and Eva Rojek.

- **The Kalele Kai boat docks are 23 feet long.**
- **If an owner has a boat that is too long to fit into a single slip, the piers can be moved to accommodate a larger boat parallel to the shore.**
- **Currently there are 17 boat docks available to owners of Kalele Kai to purchase. Some docks are for single slips and some groups of docks can accommodate larger vessels.**
- For further information please feel free to contact the Management Office, located next to the pool in person or by calling Eric or Anne at 395-0431.

Exhibit 1. (Emphasis added).

3. A prior arbitration involving the Association and two other families besides that Yoshikawas shows that the Association has already litigated and lost the same issues it is pursuing here

On September 9, 2011, the Petersons and the Hungs, demanded mediation and then arbitration over the Association's demand that they remove their boats that exceeded 23' in length. On February 1, 2012, the Arbitrator ruled on the Hung's Motion for Summary Judgment holding:

"...to the extent the Board minutes seek to restrict the ability of existing boat-mooring owners from the sale of their modified boat moorings, the Arbitrator agrees that the Board minutes contradict almost ten years of AOA's policy allowing the Hungs and other boat-mooring buyers/owners to modify their moorings and sell their moorings in a modified condition. The Board cannot now negate Boat mooring owners' reliance on the AOA's longstanding policy by a Board vote that purportedly claims to "grandfather" existing owners while simultaneously restricting their ability to sell their modified boat moorings. Accordingly, the Hung's motion for a declaratory order disallowing the Board's retraction of the sale of modified boat moorings is granted."

Exhibit 6 - The summary judgment order in the Hung & Petersen Arbitration.

4. In this case, the Association judicially admitted that mooring Boat does not violate the purpose of the rule

Even *after* the Arbitrator's ruling in the Hung case, and even after its own statement that the existing boats were grandfathered, the Association took yet another aggressive and unwarranted position: on August 23, 2013, Yoshikawa received a letter from the Association's

management company claiming that his then boat, the Ariel, was in violation of the 23' "rule." **By that point, the Ariel had been moored at Kalele Kai for over eleven years.** Yoshikawa replaced the Ariel with another boat longer than 23' which is still side-tied in their mooring area, and the Association still persist in persecuting Yoshikawa.

Amazingly, the Association took this position despite its judicial admission at the hearing that Yoshikawa's boat did not violate the purpose of the so-called 23's limitation. Association Board President Brad Oakes judicially admitted that the purpose of the 23' limitation is to prevent boats moored perpendicularly from protruding past the Association's 30' easement:

6 Q. What's the purpose of the 23-foot
7 restriction? 164

...
18 A. The purpose -- well, I can give you
19 what I believe the purpose is. **The purpose is**
20 **obviously you can only put 23 feet with the**
21 **easement and stick out 30 feet.** Then we abide by
22 two sets of rules for the marina. The marina
23 association obviously tells us what the easement
24 is. Then we have the Kalele Kai documents that
25 tell us what the length or the restrictions to the 165
1 boats are. So we have to live within both of
2 those.

...
23 Q. We've already agreed on the purpose of 209
24 the 23-foot vote is because there is a 30-foot
25 easement, right? We've already agreed to that?

1 THE ARBITRATOR: That was his 210
2 testimony.

22 Q. Is there anything in the declaration 233
23 that says in order to protect views that's not
24 guaranteed anyway, we have a 23-foot restriction?
25 Do you see any language like that in the

234

1 declaration?
2 A. No.

Exhibit 4 – 8/25/14 Arbitration Transcript at pages 164, 165, 209, 210, 233, and 234. (Emphasis added).

383

6 Q. Do you understand the purpose of why
7 that rule is there?

8 MR. ZALEWSKI: Objection. Asked and
9 answered.

10 Q. Do you know?

11 THE ARBITRATOR: You going to go with
12 your answer yesterday?

...

385

5 THE ARBITRATOR: I have a clear
6 recollection of what his answer was yesterday.

7 A. My answer is the same as yesterday.
8 It's very simple, I believe. And I think I said
9 it the same way yesterday.

Exhibit 5 – 8/26/114 Arbitration Transcript at pages 383 & 385.

The AOA also Judicially admitted that the Yoshikawas boat isn't even on Kalele Kai's property: During the arbitration, Association Board President Brad Oakes judicially admitted that the Yoshikawa boat is moored **in water that belongs to the Hawaii Kai Marina Association, not the Kalele Kai AOA:**

174

11 Q. Let's go to Exhibit 156, please.

12 A. Okay. Got it.

13 Q. And you recognize this as part of the
14 marina area bordering Kalele Kai, correct?

15 A. Correct.

16 Q. The thing that looks like there's -- if
17 we were completely on land it looks like an upper
18 sidewalk. There is a sidewalk to the right and a
19 sidewalk to the left. I'm not saying there is a
20 sidewalk. That's what it appears to be. Where is

21 the sea wall in this picture? Show it, please.

22 A. It would be right (indicating) down
23 this wall, down this side between the mooring
24 where the sidewalk here and this.

25 Q. And that's the sea wall. Correct?

175

1 A. That's correct.

2 Q. So everything to the left of that is
3 Hawaii Kai Marina Association property, correct?

4 MR. ZALEWSKI: Objection. Calling for
5 a legal conclusion. You asking for his
6 understanding?

7 THE ARBITRATOR: Can you qualify it.

8 MR. REVERE: I think owners are allowed
9 to give their understanding of their property line
10 limits.

11 Q. Is that your understanding that
12 everything to the left of that sea wall is marina
13 association property?

14 A. Yes.

Exhibit 4 - 8/25/14 Arbitration Transcript at pages 174 & 175.

Because the Association has judicially admitted that Yoshikawa's boat is moored in water owned by the Hawaii Kai Marina Association, the Association has failed to state a claim against Yoshikawa for injunctive and declaratory relief or breach of governing documents, for which relief can be granted.

III. LEGAL STANDARD

A. Motions to Dismiss

In considering a motion to dismiss under Hawaii Rules of Civil Procedure Rule 12(b)(6), a court is to construe the allegations of a complaint as true. Claims should not be dismissed for failure to state a claim unless it appears beyond a doubt that the complainant can prove no set of facts in support of his claim that would entitle him to relief. Marsland v. Pang, 5 Haw. App. 463, 474, 701 P.2d 175, 186 (1985). **However, in weighing the allegations of the complaint as against a motion to dismiss, the court is not required to accept conclusory allegations on the**

legal effect of the events alleged. *Id.*, (citing Wright and Miller, Federal Practice and Procedure: Civil § 1357 (1969)) (Emphasis added). In the present case, the Association's judicial admissions obviate any basis upon which relief can be granted. Dismissal with prejudice is therefore proper and warranted.

B. Breach of Governing Documents & Declaratory & Injunctive Relief

"The covenants and restrictions in the declaration shall be enforceable equitable servitudes that may be enforced by any owner of a separate interest, or by the association, or by both. These agreements are enforced based on contract principles. To establish a breach of contract claim, a plaintiff must establish the following elements: (1) existence of the contract; 2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damages to plaintiff as a result of the breach. A contractual obligation is a pre-requisite to a breach of an implied covenant of good faith and fair dealing. 1894 Condos. Ass'n v. Bruner, 2011 U.S. LEXIS 16017, 6-7 (E.D. Cal. Feb. 16, 2011) (Citations, quotations and brackets omitted).

"Declaratory relief is only appropriate (1) when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding." *Id.* (Citations omitted).

C. Judicial Admissions

"A judicial admission is a formal statement, either by (a) party or his or her attorney, in (the) course of (a) judicial proceeding (that) removes an admitted fact from (the) field of controversy. It is a voluntary concession of fact by a party or a party's attorney during judicial proceedings." Takaki v. Allied Mach. Corp., 87 Haw. 57., 69 n.18, 951 P.2d 507, 519 n.18 (Haw.Ct.App. 1998) (citing Han v. Yang, 84 Haw. 162, 174 n.18, 931 P.2d 604, 616 n.18 (App. 1997) (emphasis omitted). "A judicial admission is defined by Wigmore as 'a formal act, done in the course of judicial proceedings, which waives or dispenses with the production of evidence, by conceding for the purposes of litigation that the proposition of fact alleged by the opponent is

true.’ (4 Wigmore, Evidence [3d ed.], § 1058, p. 20.) It is a waiver of proof.” Chu v. Wong, 39 Haw. 278, 283 (1952).

IV. ARGUMENT

During the arbitration, the Association made judicial admissions which prove that there has been no violation of the Association’s Declaration and as such obviate any basis upon which relief can be granted for its two claims.

A. The Association Judicially Admitted That the Declaration Limitation Does Not Apply to Yoshikawa and that Yoshikawa Has Not Violated the Purpose of the Limitation

The Association has failed to state a claim against Yoshikawa upon which relief can be granted in light of its judicial admission regarding the purpose of the Declaration’s 30’ limitation. The Association’s Complaint for Trial De Novo includes two claims: (I) declaratory and injunctive relief and (II) breach of governing documents. Both of the Association’s claims are based on the Association’s allegation that Yoshikawa is in violation of a 23’ boat length limitation in the Declaration. However, during the arbitration of this matter, the Association judicially admitted that the purpose of the Declaration’s 23’ boat length limitation is to prevent boats moored perpendicularly at Kalele Kai from protruding past the Association’s 30’ easement and out into the Hawaii Kai Marina. Because Yoshikawa’s boat is side-tied vertically along the dock, it therefore does not protrude past the 30’ easement and Yoshikawa is not in violation of the restriction. In light of the Association’s judicial admission and the inapplicability of the limitation to Yoshikawa, the Complaint should be dismissed with prejudice.

The Association has judicially admitted that the purpose of the limitation was to keep boats from protruding out past 30’ into the rest of the Hawaii Kai Marina. There can be no dispute that the limitation does not apply to Yoshikawa and that Yoshikawa is not in violation of the purpose of the limitation since his boat is parked parallel to the shore and is completely

within the 30' easement area. As such, the Association has failed to state a claim against Yoshikawa for injunctive and declaratory relief or breach of governing documents, for which relief can be granted.

The admitted purpose of the 23' limitation, keeping perpendicularly moored boats from protruding past the Association's 30' easement into the marina, is relevant to the application of the restriction today. According to the Restatement of Property, Third:

"A servitude should be interpreted to give effect to the intention of the parties ascertained from the language used in the instrument, or the circumstances surrounding creation of the servitude, and to carry out the purpose for which it was created."

§4.1 Interpretation of Servitudes, Restatement of Property, Third, Servitudes at page 496 (2000).

Here, the intention of the limitation, to abide by the 30-foot easement, is honored when a larger boat like Yoshikawa's is side-tied to the dock because the vessel does not protrude into the marina past the 30-foot easement. The Restatement commentary states that:

"The purpose of the servitude can be derived from the language of the instrument used to create the servitude, the relationship between the parcels of land burdened and benefited, the use made of the servitude, the use made of the benefited and burdened parcels before and after creation of the servitude and from other circumstances surrounding creation of the servitude. Generally, the inferences that ordinary, reasonable purchasers of property benefited or burdened by the servitude would draw from the language, used in the context of the particular transaction or the character of the neighborhood, determine the purpose to be attributed to the creating parties."

Id. at 503. See also, Lookout Mtn. Paradise Hills Homeowners' Ass'n v. Viewpoint Assoc., 867 P.2d 70 (Colo.Ct.App.1993) (restrictive covenants must be construed as a whole and interpreted in view of their underlying purposes, giving effect to all provisions contained therein); Royal Oak Landing Homeowner's Ass'n, Inc. v. Pelletier, 620 So.2d 786 (Fla.Dist.Ct.App..1993) (contract principles that intention governs construction and interpretation applied to declaration of covenants; court should consider entire text, including the purpose; when faced with

ambiguous language, court should arrive at interpretation consistent with logic and reason, probability, and the practical aspect of the transaction; Bellevue Construction Co. v. Rugby Hall Community Ass'n, Inc., 321 Md. 152, 582 A.2d 493 (1990) (cardinal principle in constructing covenants is that court should be governed by intention of the parties; language of the instrument is properly considered in connection with the object in view and circumstances and conditions affecting the property; principle is consistent with general law of contracts); McDonald v. Chaffin, 529 S.W.2d 54, 57 (Tenn.Ct.App.1975) (“Restrictive covenants are to be strictly construed. That is, they are to be read without the drawing of unnecessary implications and will not be taken to preclude that which is not plainly prohibited.... But in reading the covenant we should give words a fair and reasonable meaning in order to effectuate its purpose”); Lakes at Mercer Island Homeowners Ass'n v. Witrak, 61 Wash.App. 177, 810 P.2d 27 (1991) (courts should not give a covenant a broader than intended application, but a covenant should not be read to defeat the plain and obvious meaning); Hiner v. Hoffman, 90 Haw. 188, 977 P.2d 878 (Haw. 1999) (Supreme Court of Hawaii found that a restrictive covenant prohibiting buildings more than two stories in height was ambiguous because it did not define the height of a “story” and as such was invalid and unenforceable); Colony Park Ass'n v. Dugas, 44 Mich.App. 467, 205 N.W.2d 234 (1973) (motor homes not covered by covenant adopted in 1927 prohibiting tents, camping outfits, or temporary structures; covenant did not prohibit trailers and nothing indicates modern motor home was contemplated; restrictive covenants are not favored and should be strictly construed against the party seeking enforcement); Buoncrisiani v. Randall, 526 S.W.2d 68 (Mo.Ct.App.1975) (substantial doubts as to meaning should be resolved in favor of free use of property); Wessel v. Hillsdale Estates, Inc., 200 Neb. 792, 266 N.W.2d 62 (1978) (covenants are to be construed in connection with surrounding circumstances parties are

supposed to have had in mind, **location and character of entire tract of land, purpose of restriction**, whether covenant was for sole benefit of grantor or for benefit of grantee and subsequent purchasers, and whether in pursuance of general plan of development); Elk Mountain Safari v. U.S. Dept. of Interior and Bureau of Land Management, 645 F.Supp. 151 (D.Wyo.1986) (subsequent actions of the parties may indicate intent of the parties at the time the restrictions were created); Phillips v. Schwartz, 607 S.W.2d 203 (Mo.Ct.App.1980) (action of developer and trustees permitting and encouraging use of camper trailers during formative years of recreational-residential development supported trial court's conclusion that covenant prohibiting "any trailer or movable house" applied only to mobile homes, not to camper trailers); Diefenderfer v. Forest Park Springs, 599 So.2d 1309 (Fla.Dist.Ct.App.1992) (ambiguities in easement created by express grant must be resolved against grantor; proper construction of grant must be arrived at by looking at what original parties intended as well as their successors in title as manifested by both the circumstances and the actions and statements of people involved); Phillips v. Schwartz, 607 S.W.2d 203 (Mo.Ct.App.1980) (to ascertain intent of the parties, inquiry into purpose they sought to accomplish is almost necessarily required; developer's testimony that purpose of covenant prohibiting trailers or moveable homes was to prevent development from becoming a mobile-home court supported conclusion that covenant was not intended to bar camper trailers); Hayes v. City of Loveland, 651 P.2d 466 (Colo.Ct.App.1982) (replacement of wooden power poles with taller steel structure is change in degree and not in kind and within scope of prescriptive easement; city not liable in inverse condemnation action); Gendron v. Central Marine Power Co., 379 A.2d 1002 (Me.1977) (power company entitled to replace old wooden poles with longer ones, add extra pole for payment specified in 1927 deed,

replace wires with heavier ones, and add aerial ground wires, where burden on servient estate will not be significantly increased).

B. The Association Judicially Admitted that Yoshikawa's Boat is Moored in Water that Belongs to the Hawaii Kai Marina Association and Not Kalele Kai Association

The Association has failed to state a claim against Yoshikawa upon which relief can be granted in light of its judicial admission that Yoshikawa's **boat is not moored on Association property**. The Association's Complaint for Trial De Novo includes two claims: (I) declaratory and injunctive relief and (II) breach of governing documents. Both of the Association's claims are based on the Association's allegation that it can regulate the mooring of Yoshikawa's boat. However, during the arbitration of this matter, the Association judicially admitted that Yoshikawa's boat is moored in water that belongs to the Hawaii Kai Marina Association and **not the Kalele Kai Condominium Association:**

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11 Q. Let's go to Exhibit 156, please.
12 A. Okay. Got it.
13 Q. And you recognize this as part of the
14 marina area bordering Kalele Kai, correct?
15 A. Correct.
16 Q. The thing that looks like there's -- if
17 we were completely on land it looks like an upper
18 sidewalk. There is a sidewalk to the right and a
19 sidewalk to the left. I'm not saying there is a
20 sidewalk. That's what it appears to be. Where is
21 the sea wall in this picture? Show it, please.
22 A. It would be right (indicating) down
23 this wall, down this side between the mooring
24 where the sidewalk here and this.
25 Q. And that's the sea wall. Correct?

175

1 A. That's correct.
2 Q. So everything to the left of that is

3 Hawaii Kai Marina Association property, correct?
4 MR. ZALEWSKI: Objection. Calling for
5 a legal conclusion. You asking for his
6 understanding?
7 THE ARBITRATOR: Can you qualify it.
8 MR. REVERE: I think owners are allowed
9 to give their understanding of their property line
10 limits.
11 Q. Is that your understanding that
12 everything to the left of that sea wall is marina
13 association property?
14 A. Yes.

Exhibit 4 - 8/25/14 Arbitration Transcript at pages 174 & 175. In light of the Association's judicial admission that Yoshikawa's boat is not moored on Association property the Complaint should be dismissed with prejudice.

V. CONCLUSION

Based on the foregoing, the Complaint for Trial De Novo should be dismissed in its entirety, with prejudice.

DATED: Honolulu, Hawaii, February 17, 2015.



TERRANCE M. REVERE
LAUREN C. McDOWELL

Attorneys for Defendant
HITOSHI YOSHIKAWA

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ASSOCIATION OF OWNERS)	Civil No. 15-1-0102-01 KTN
OF KALELE KAI,)	
)	
Plaintiff,)	DECLARATION OF TERRANCE M.
)	REVERE
vs.)	
)	
HITOSHI YOSHIKAWA)	
DOE DEFENDANTS 1-10,)	
)	
Defendants.)	
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DECLARATION OF TERRANCE M. REVERE

I, TERRANCE M. REVERE, declare under penalty of law that the following is true and correct:

1. I am competent to make this declaration, and do so based upon personal knowledge, except as otherwise stated.
2. I am the principle of Revere and Associates, LLLC, representing Defendant Hitoshi Yoshikawa.
3. I am executing this Declaration in support of the attached *DEFENDANT HITOSHI YOSHIKAWA'S MOTION TO DISMISS COMPLAINT FOR TRIAL DE NOVO, filed January 21, 2015.*
4. Attached hereto as "Exhibit 1" is a true and correct copy of Association's April 2006 Kurrents Newsletter.
5. Attached hereto as "Exhibit 2" is a true and correct copy of December 12, 2015 Partial Final Award of the Arbitrator in the arbitration of this matter in DPR 13-0496-A.
6. Attached hereto as "Exhibit 3" is a true and correct copy of the August 21, 2014 Signed Declaration of Kevin M. Showe.
7. Attached hereto as "Exhibit 4" is a true and correct copy of excerpts from the

August 25, 2014 transcript from the arbitration of this matter.

8. Attached hereto as "Exhibit 5" is a true and correct copy of excerpts from the August 26, 2014 transcript from the arbitration of this matter.

9. Attached hereto as "Exhibit 6" is a true and correct copy of the Arbitrator's Order on Plaintiff's Motion for Partial Summary Judgment in Ike Hung and Angela Hung v. Association of Owners of Kalele Kai, DPR No. 11-0369-A.

10. Exhibits 1 and 3-6 were authenticated and received by the Arbitrator into evidence during the arbitration of this matter in DPR 13-0496-A.

DATED: Honolulu, Hawaii, February 17, 2015



TERRANCE M. REVERE