

Great Committee

From: fryrchr@aol.com
Sent: Monday, November 27, 2023 2:32 PM
To: County Clerk; Nohe M. Uu-Hodgins; David M. Raatz
Subject: re: Tuesday 11/28/ 23 GREAT Committtee Testimony 23-227
Attachments: Attorney Schmitt Letter to ODC.pdf; Unemori Engineering and County Fraud.docx

Testimony re: 23-227 Settlement Authorization Christopher Salem

As a paralegal, who assisted Attorney Brad Salter who represented Mr. Salem in the instant case, I am quite familiar with it. I believe that the department of Corp Council, which had to finally recuse itself, breached its fiduciary duty to the County by obstructing the Mayor from following through on his agreement with Mr. Salem to issue a notice non-compliance to the developer in this case. It could have resulted in a global settlement by the parties who committed fraud against Mr. Salem and the County; paying their share that caused Christopher Salem and the County significant harm. That being former Public Works Director Alan Arakawa, and his land planning firm Munekiyo Hiraga, the Unemori Engineering form, Developers Tim (Hugh) Farrington and his associates.

I recently praised P.B. Sullivan Contractor publicly for its help to protect the County from future wildfires. It was PB Sullivan which did an independent evaluation of Unemori's Order of Magnitude Estimate in this case, and it was over ten times more than what Unemori provided.

Also, the Mccoriston law firm, which did an excellent job for the County on Palama Drive negotiations and is being retained now by the County for wildfire representation, also wrote letters supporting the claims of fraud being made by Mr. Salem against the County, evidence of which the County concealed, and for which there is now newly discovered evidence.

County officials, and those private parties mentioned above, committed fraud against Salem and the County. The problem is that for decades, subsequent County officials continued to cover it up, and so the unspoken truth is that the County couldn't go after those private parties without being sued in return. That's why the County has remained in breach of its duties to both Mr. Salem and to taxpaying residents.

Simple Synopsis:

The fraud by both County and Developer and their consultants resulted in two liens put on Salem's then 4.5 million dollar property and home, that he couldn't remove. One lien prevented his selling the property, and the other fraudulent lien caused the properties foreclosure.

Both the developer, it's consultants and the county concealed and withheld records, which resulted in false liens. These liens also destroyed his perfect credit, ruined his professional life, and harmed his creditors. Your new attorneys, KSG. Mr. Salem's Settlement request is just, fair and equitable. It seeks damages for the fraud committed by County Officials, related to those acts. It's in both his Count III which your attorney sought to dismiss and the court denied, and additionally through discovery while working for the Mayor, which revealed material evidence of a false ledger by Former Pub Works Director Arakawa, which Mr. Salem also blew the whistle on and is newly discovered evidence.

At the end of the day if this case isn't settled, Salem's got all this additional newly discovered evidence that your lawyers just admitted to on behalf of the County. Evidence that has been withheld and concealed for years by Corp Counsel, again, I believe, in breach of its fiduciary duties, now admitted to in Discovery by your new counsel KSG.

The Circuit Court saw clearly that the department of Corporation Counsel was conflicted. It was apparent to everyone except Corporation Counsel. With that newly discovered evidence, Mr. Salem would also be able to pursue all sorts of new legal actions if this continues.

Now we finally have the County acknowledging that Unemori's Professional Engineering stamp was used to create a fictitious and fraudulent Order of Magnitude Estimate for its developer client. See attached. I completed a video presentation which has been presented to this Council previously and is being presented again today to provide notice that the fraud which Mr. Salem alleges is true, accurate and correct. This testimony now serves as Notice for the second time to the Council. Councilmember Gabe Johnson, when Michelle McLean told him in the Brown case, during a hearing, how the County relies on the professional Engineers stamp, for the validity and legitimacy of an Order of Magnitude Estimate. Unemori has committed similar acts before, as my video reveals.

Moreover, now the County also has acknowledged through KSG, in Discovery, that the developer didn't complete its required conditioned infrastructure obligations and environmental mitigations for that subdivision's approval. That means the **Subdivision at issue is unlawful**, as I've said all along. And, Unemori helped their client fake an SMA minor permit, in violation of State and County law.

I personally would encourage Mr. Salem to now seek to amend his suit to name your former Director of Corporatiobn Counsel, County Clerk Moana Lutey, Unemori Engineering, and additional parties as well as additional counts for fraud and conspiracy based upon the newly discovered evidence.

If you allow this case to continue, at the end of the day, just like Montana Beach, Palama Drive, and Olowalu; the Council would end up costing the County taxpayers, I believe, anywhere from 15 to 30 million dollars in damages, both compensatory and punitive.

The Council is now in the spotlight for its legislative decisions, like encouraging instead of requiring firebreaks in the West Side Community Plan. It is important that the Council gets this correct and stops kicking the can down the road. To do that now, would be "frought with hazard", because the liabilities accruing will continue to grow.

The video I made about Unemori which is part of my testimony should be admitted as evidence in the case if it's not already, (see link below) and the County should call upon Unemori to contribute to the damages owed to Mr. Salem, that the County is otherwise legally solely responsible for at this point, because of its role in participating in the fraud, covering-it-up, and subsequently failing to act when given notice.

Otherwise , I suggest that Unemori can and should lose its Professional Engineering license, it's contracts with the County. There's your consideration for them to pay Mr. Salem's damages.

[MRN 2022 show 8 final3.mp4 \(vimeo.com\)](#)

MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

RANDALL K. SCHMITT
ATTORNEY

DIRECT #S:
PHONE - (808) 529-7422
FAX - (808) 535-8018

June 6, 2017

VIA HAND DELIVERY

Office of Disciplinary Counsel
1132 Bishop Street, Suite 300
Honolulu, Hawai'i 96813

Re: Chris Salem - Allegations of Professional Misconduct by Maui
Corporation Counsel

Dear Sir/Madam:

A former client of mine, Christopher Salem, a resident of the County of Maui, has asked me to bring to your attention potential professional misconduct by certain attorneys for the County of Maui related to his claims for matters relating to Lot 48A of the Olowalu Mauka subdivision. This firm represented Mr. Salem in an action brought against certain design professionals related to that development, *Salem et al. v. Unemori et al*, Civil No. 07-1-0540 (M). We represented Mr. Salem from approximately October 2010 through February 2012 and have not had any substantive involvement in the matter since that time. While I was counsel for Mr. Salem, however, I prepared a letter to Milton Arakawa, then the Director of Public Works for Maui, dated December 28, 2010, a copy of which is enclosed for your reference. That letter sought the production of certain key records related to the development. Not only did the County not produce the requested records, but also, then deputy corporation counsel, Jane Love, threatened me with Rule 11 sanctions. The requested materials were not produced.

We withdrew as counsel for Mr. Salem in that lawsuit in February 2012 but subsequent events seem to indicate that the records that we requested so many years ago did and do exist. Attached hereto is the affidavit of Jo Anne Johnson Winer dated August 11, 2015, the declaration of Matson Kelley dated March 15, 2016 and a complaint filed in Second Circuit Court by Mr. Salem (Civil No. 17-1-0208(3)), which provide greater detail of the actions related these important documents since our withdrawal.

Office of Disciplinary Counsel
June 6, 2017
Page 2

I would be happy to discuss any aspect of this matter with you concerning the period of my involvement but since we no longer represent Mr. Salem, most of the information concerning any recent events must necessarily come from him.

Sincerely,

McCORRISTON MILLER MUKAI MacKINNON LLP

A handwritten signature in black ink that reads "Randall K. Schmitt". The signature is written in a cursive, flowing style.

Randall K. Schmitt

RKS:jmc

Enclosures

cc: Christopher Salem (via email only) (with enclosures)
358973.1

MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

RANDALL K. SCHMITT
ATTORNEY

DIRECT #:
PHONE - (808) 529-7422
FAX - (808) 535-8018

December 28, 2010

BY REGISTERED MAIL
RETURN RECEIPT REQUESTED

Milton Arakawa, A.I.C.P.
Public Works Management Director
200 S. High Street
Wailuku, Maui, Hawai'i 96793

Re: C. Salem Claims

Dear Mr. Arakawa:

Please be advised that this firm has been retained by Christopher Salem to pursue claims against you personally and prepare and file the appropriate lawsuit. While your recent admission to the County Council that under your authority over 1800 subdivision agreements involving developer roadway obligations have gone unaccounted for and uncollected is both shocking and disturbing on a County wide level, Mr. Salem's claims and damages are both personal and substantial.

Mr. Salem owns a home on Hui Road E over which there was an original 3 lots or less subdivision agreement. As originally drafted, that subdivision agreement allowed a onetime deferral of specific drainage and roadway improvements. As we now know, when your developer client in private practice with Munikiyo, Arakawa, and Hiraga, Inc. ("MAH") submitted a plan to re-subdivide one of the 3 parent parcels, engineering studies, project assessments, SMA permits and land entitlements were issued and conditioned upon that Developer completing the originally deferred roadway improvements.

Your company, MAH, was personally contracted by this Developer to process the necessary SMA assessment studies and SMA Permits just prior to your appointment to your present position with the County of Maui. Immediately after the start of your employment with the County of Maui, you unilaterally shifted the subdivision and SMA Permit drainage and roadway conditions back onto to Mr. Salem and the other owners without notice to Mr. Salem, the general public, or the Planning Commission by using as second set of 3 lots or less deferral agreements. This was illegal and done and with the clear intent to benefit an MAH client while in public office.

Formal requests for production of documents related to this secret decision, both compelled and formally requested of the Department of Public Works, have proven this shifting was done in the secret without any apparent consultation with authorized County Directors nor

240539.3

20. Box 2800 • Honolulu, Hawaii 96803-2800
Five Waterfront Plaza, 4th Floor • 500 Ala Moana Boulevard • Honolulu, Hawaii 96813
Telephone: (808) 529-7300 • FAX: (808) 524-8233

Milton Arakawa, A.L.C.P.
December 28, 2010
Page 2

was it in any way within your authority. I am informed that Mr. Munikiyo was not consulted prior to the alterations to the MAH studies and SMA assessment submissions. It was, we believe, an *ultra vires* act for which you personally orchestrated. As it was to the clear benefit of this former developer client involving hundreds of thousands of dollars, they too may have been involved in a collective action (also known as a conspiracy) to commit this unlawful and subversive act. Questions remain on how many of the 1800 3 lots or less agreements involve this type of intentional manipulation of County ordinances.

Unfortunately for my client, the contributing circumstances to your unlawful administrative decisions do not end with the manipulation of the 3 lots or less agreements. The underlying oceanfront land has now been subdivided twice into five lots with no public or environmental review. This raises further questions regarding your administration of the order of magnitude estimates by the engineer of record for the SMA application. Despite being notified of the intentionally misleading valuations by the engineer of record, you have refused to investigate this matter and take appropriate action to the detriment of my client.

This letter is to place you on notice of these claims and to demand that you immediately notify your various insurance carriers of this cause of action. Mr. Salem has suffered serious financial losses relating to your actions including but not limited to hundreds of thousands of dollars spent in litigating this issue. Your notice to your insurance carriers should include notice to your partners at Munikiyo Arakawa and Hiraga of these claims.

In an effort to resolve this matter, please be advised that we would be willing to enter into good faith mediation with a neutral mediator prior to filing the lawsuit. This option is predicated on your intent to do so in a meaningful fashion with the intent to resolve this situation prior to incurring additional losses and substantial fees and costs.

Please also provide me with contact information for your legal counsel if you retain an attorney to assist you with this claim.

Sincerely,

McCORRISTON MILLER MUKAI MacKINNON LLP


Randall K. Schmitt

RKS:jmc

cc: C. Salem (via email only)

In the Circuit Court of the 2nd Circuit (*Civil No. 07-1-0540(3)*) in response to Plaintiff Salem's discovery requests at the time, WSUE through their attorney Bruce Ito stated;

“WSUE and Ariyoshi have no documents responsive to this request; Neither WSUE nor Ariyoshi were employed to perform any services in connection with the Special Management Area Minor Permit process”

The County Defendants now admit their knowledge of the material fact that WSUE's statement to the Court that they played no role in Lot 48A's SMA permit process was fraudulent, as follows:

“County Defendants admit that the Order of Magnitude Estimate of Construction Cost of Anticipated Improvements for SMA Permit SM2 2000 0042 states that it was done by Warren S. Unemori Engineering, Inc. and the probable construction cost is \$91,402.”

The County Defendants also admit their knowledge of the material fact that the roadway infrastructure represented in WSUE's conditioned SMA Permit Order of Magnitude Estimate includes the roadway infrastructure along the frontage of the “3 Lot or Less” Mailepai Hui Partintion subdivision.

The County Defendants “admit WSUE's Order of Magnitude Estimate details roadway infrastructure improvements, including 220 linear feet of Curbs, Gutters, and Sidewalks along the Lower Honoapiilani Road frontage of Mailepai Hui Partition.”

The County Defendants now alleged as follows:

“County Defendants deny that they were under any obligations or had any such knowledge that this response may suggest.”

Undeniably, the compelled County records confirm that the County Defendants had prior knowledge and have been noticed for years of the fact that licensed engineering firm WSUE and their licensed attorney Brian Ito committed Fraud Upon the Tribunal in order to conceal government records from Plaintiff Salem.

As the compelled records reveal, WSUE's fraudulent representation to the Honorable Court was just one of the conspiring acts by the County Defendants and Developer Lot 48A, LLC for which Defendant Victorrino promised to hold accountable and bring to justice pursuant to Count III.