

Resolution

No. 25-13

AUTHORIZING SETTLEMENT OF HAWAIIAN TELCOM, INC. V.
COUNTY OF MAUI; ABRAHAM PARK, ET AL., CIVIL NO. 2CCV-23-0000401

WHEREAS, Plaintiff Hawaiian Telcom, Inc. ("Plaintiff") filed a Complaint on December 8, 2023 in Second Circuit Court, State of Hawaii, Civil No. 2CCV-23-0000401 against the County of Maui and Abraham Park, an employee with the County's Department of Public Works ("County") for property damage sustained on December 14, 2021; and

WHEREAS, Plaintiff alleges that on December 14, 2021, Abraham Park negligently operated a County truck causing his backhoe load to hit and snag utility lines strung from utility poles near mile post marker 48 on Hana Highway, causing damage to the utility poles and utility lines; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of this claim by way of a negotiated settlement; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms in an executive meeting before the Government Relations, Ethics, and Transparency committee; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a

negotiated settlement by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:


1. That under Maui County Code section 3.16.020, it approves settlement of Hawaiian Telcom, Inc. vs. County of Maui; Abraham Park, et al., under the terms discussed in an executive meeting before its Government Relations, Ethics and Transparency committee;

2. That it authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case, under the terms and conditions as may be imposed by the Corporation Counsel consistent with the Council's settlement approval;

3. That it authorizes the Director of Finance of the County of Maui to satisfy settlement of this case, under terms and conditions as may be imposed by the Corporation Counsel consistent with the Council's settlement approval; and

4. That certified copies of this Resolution be transmitted to the Mayor, the Director of Finance, the Director of Public Works and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



GLEN R. PASCUAL
Deputy Corporation Counsel
County of Maui
LIT-8966

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "John Doe", is written above a horizontal line.

Upon the request of the Mayor.

LAW OFFICES OF ROY F. EPSTEIN

ROY F. EPSTEIN 5302
1003 Bishop Street
1730 Pauahi Tower
Honolulu, Hawaii 96813
Telephone: (808) 526-4999

Attorney for Plaintiff
HAWAIIAN TELCOM, INC.

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SECOND CIRCUIT
2CCV-23-0000401
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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
STATE OF HAWAII

HAWAIIAN TELCOM, INC.,)	CIVIL NO. _____
)	(Motor Vehicle Tort)
Plaintiff,)	
)	COMPLAINT and SUMMONS
vs.)	
)	
COUNTY OF MAUI; ABRAHAM PARK;)	
JOHN DOES 1-5; JANE DOES 1-5;)	
DOE CORPORATIONS 1-5; DOE)	
PARTNERSHIPS 1-5; DOE ENTITIES)	
1-5 and DOE GOVERNMENTAL UNITS)	
1-5;)	
)	
Defendants.)	
)	
)	

COMPLAINT

COMES NOW, Plaintiff HAWAIIAN TELCOM, INC. by and through its attorney ROY F. EPSTEIN ESQ., for a Complaint against Defendant(s) above-named, under HRCF Rules 7, 8 & 10, and hereby claims against said Defendant(s) jointly and severally as follows:

1. At all times relevant herein Plaintiff HAWAIIAN TELCOM, INC. (hereinafter "Plaintiff" or "HAWAIIAN TELCOM") a

Hawaii Corporation, is and was a utility business provider conducting business in the County of Maui, State of Hawaii.

2. At all times relevant herein Defendant COUNTY OF MAUI ("County" or "County of Maui"), is a municipality and/or County and/or municipal corporation organized under the laws of the State of Hawaii.

3. At all times relevant herein Defendant ABRAHAM PARK a citizen and resident of the County of Maui, State of Hawaii was an employee, agent and/or servant acting in such capacity for his employer Defendant COUNTY OF MAUI.

4. The actions of each Defendant constitutes vicarious liability and/or a common enterprise and/or joint venture.

5. Unidentified Defendants JOHN DOES 1-5; JANE DOES 1-5; DOE CORPORATIONS 1-5; DOE PARTNERSHIPS 1-5; DOE ENTITIES 1-5 and DOE GOVERNMENTAL UNITS 1-5, named herein are sued under their fictitious names for the reason that their true names and identities are presently unknown to Plaintiffs. Plaintiffs prays for leave when the true names and capacities of said Defendants are ascertained, and that the same shall be identified with appropriate allegations, amendments of pleadings and service thereon made. Each of the fictitious Defendants named herein is believed to be connected in some manner with the named Defendant and/or the events described herein, as agents, servants, employers, employees, representatives, co-venturers, associates, co-responsible, inspectors or licensors, of the above-named Defendant(s). Each of the fictitious Defendants designated

herein individually or in association with the named Defendant is negligently responsible and/or strictly liable in some manner for the events herein referred to which conduct proximately caused the property damages sustained by Plaintiff(s) herein alleged. Upon identification and proper motion, Plaintiff(s) pray for leave to identify and name Doe Defendants as parties to this action.

6. All matters alleged herein occurred in the County of Maui, State of Hawaii, and are within the jurisdiction of the Second Circuit Court of the State of Hawaii.

7. Plaintiff HAWAIIAN TELCOM, INC. provides integrated communications and technology public utility services through telephone, fiopics and/or fiber optic cables installed throughout Hawaii.

8. On or about December 14, 2021, Defendant PARK was working as a commercial driver operating a Maui County 2006 Kenworth Motor Truck, Hawaii license plate (CM2108), owned by Defendant COUNTY OF MAUI.

9. Defendant Park's truck was transporting a trailer (CM527) holding a backhoe construction vehicle which extended the overall vertical height of the moving vehicle.

10. A commercial driver has a duty to operate his vehicle in a safe and prudent manner, keep a proper lookout, and know the maximum height of his vehicle, to navigate roadways safely.

11. On or about December 14, 2021, Defendant PARK was traveling along Hana Highway at or near mile post marker 48 (past Kailani's Gift Shop) heading towards Ulupalakua when his backhoe load hit utility telephone and/or fiber optic lines strung from utility poles, owned by Plaintiff.

12. Upon reason and belief, Defendant PARK moved his vehicle to his right in such a negligent manor as to cause it to collide with and snag utility lines.


13. The collision by Defendants' vehicle caused utility line damage when it broke the utility lines and a utility pole (#98).

14. As a direct and proximate result of the negligence of Defendants COUNTY OF MAUI and PARK as set forth above, Plaintiff sustained severe utility line and pole damage including but not limited to repair requiring pole transfers; 6 port MST installation; splicing; prep of cables and installation of new fiber splice enclosures; blowing fiber into micro-duct(s); removing fiber from damaged duct(s); traffic control/flagging; standard placement; and fiber cable micro-duct placement and site return to work clean up, costs in excess of \$111,127.00.

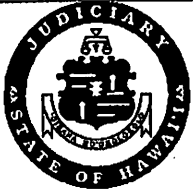

WHEREFORE, upon a hearing hereon, and pursuant to HRCF Rule 54, Plaintiff HAWAIIAN TELCOM, INC. prays that it have judgment in its favor, against Defendants, jointly and severely, for special damages in the amount of \$111,127.00, or the amount proven at time of trial. Plaintiff HAWAIIAN TELCOM, INC. also

will be seeking its costs, attorney fees as provided as may be provided by rule, regulation, statute of law and for other further relief as the Court deems just and proper.

DATED: Honolulu, Hawaii Dec. 8, 2023.



ROY F. EPSTEIN
Attorney for Plaintiff
HAWAIIAN TELCOM, INC.

STATE OF HAWAI'I CIRCUIT COURT OF THE SECOND CIRCUIT		SUMMONS TO ANSWER CIVIL COMPLAINT	
CASE NUMBER		PLAINTIFF'S NAME & ADDRESS, TEL. NO.	
PLAINTIFF HAWAIIAN TELCOM, INC.		ROY F. EPSTEIN 5302 1003 Bishop Street 1730 Pauahi Tower Honolulu, Hawaii 96813 Telephone: (808) 526-4999 Facsimile: (808) 526-4929	
DEFENDANT(S) COUNTY OF MAUI; ABRAHAM PARK; JOHN DOES 1-5; JANE DOES 1-5; DOE CORPORATIONS 1-5; DOE PARTNERSHIPS 1-5; DOE ENTITIES 1-5 and DOE GOVERNMENTAL UNITS 1-5,			
<p>TO THE ABOVE-NAMED DEFENDANT(S)</p> <p>You are hereby summoned and required to filed with the court and serve upon</p> <p>ROY F. EPSTEIN, ESQ. 1003 Bishop Street 1730 Pauahi Tower Honolulu, Hawaii 96813</p> <hr/> <p>plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.</p> <p>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.</p> <p>A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.</p>			
DATE ISSUED December 8, 2023		<p>Effective Date of 03-Jul-2023 signed by: /s/M. Ferreira Clerk, 2nd Circuit, State of Hawai'i</p> <p>The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at: http://www.courts.state.hi.us</p> 	
 <p>If you need an accommodation for a disability when participating in a court program, service, or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation: Call (808) 244-2855 FAX (808) 244-2932 OR Send an e-mail to: adarequest@courts.hawaii.gov. The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.</p>			