

The Maui News

Judge dismisses Bank of America suit against county

County mulls legal action over lender's decades-old \$150M home loan promise



A Bank of America sign is seen outside a branch in Los Angeles in 2011. A federal judge dismissed Bank of America's lawsuit against Maui County on Monday, paving the way for the county to pursue possible claims against the banking giant. AP file photo

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A federal judge on Monday dismissed a Bank of America lawsuit against the County of Maui, paving the way for the county to pursue possible claims against the banking giant over a decades-old \$150 million home loan promise to Native Hawaiians and others that allegedly went unmet.

Pointing to the fact that the county hasn't yet filed a lawsuit, U.S. District Court Judge J. Michael Seabright on Oahu granted the county's motion to dismiss the Bank of America lawsuit during an online hearing Monday.

Seabright called the bank's move a big-pocketed preemptive strike against the county, which has been gearing up to take possible legal action over longstanding concerns that Bank of America reneged on home loans for Native Hawaiians, Filipinos and other residents.

"Most parties don't have the resources to do what you did. I mean . . . this is kind of a preemptive strike," Seabright told the bank's lawyer, Ryan T. Scarborough of Williams & Connolly. *"I don't know what the county is going to claim. And neither do you."*

Scarborough said legal threats from the county have been *"escalating"* over recent years, culminating with a move in July to retain legal counsel.

"The basic issue here is . . . there was a clear threat from the county that they were going to sue," he said during the hearing. *"And that literally is the language . . . they were adopting in their resolution. And it's the language that the council members use when they, at the time they were taking their votes."*

Margery S. Bronster of Honolulu-based Bronster Fujichaku Robbins, who is representing the county, said that Bank of America's suit is a *"blatant attempt"* to define the county's reasons for a suit and then set arguments aside by *"prematurely"* asking the court to rule on defenses in a case that has not even been brought.

"They don't know what are the causes of action," she said. *"They don't know when we might bring them. They don't know whether we're going to bring them in state or federal courts. They don't know whether we're going to bring them."*

Bank of America filed a suit in federal court in July to stop Maui County hours after the Maui County Council voted to hire legal counsel to pursue claims against the bank and other mortgage lenders for *“failure to fulfill loan commitments, fraudulent foreclosures and similar unlawful conduct.”*

During public testimony before the council in July, Brandon Maka’awa’awa of Na Po’e Kokua praised the council and said he hoped other Hawaii leaders would follow. He added that the effort to right the wrongs against Native Hawaiians has been community driven.

“When you go after somebody like Bank of America, there is no, you know, you don’t make a lot of friends out there,” he said. *“There’s not a lot of corporations lined up to help you.”*

As a condition of Bank of America’s acquisition of Liberty Bank in the 1990s, the Federal Reserve System ordered Bank of America to make \$150 million in home loans available on Hawaiian Home Lands by 1998.

Nonprofit Na Po’e Kokua, which created the Hawaii Fair Lending Coalition as a group of Native Hawaiian housing advocates in 1993, has said the bank failed to fulfill that promise and alleged discriminatory lending practices in the form of redlining — denying services to residents of certain areas based on racial or ethnic composition of those locations.

Bank of America has claimed that it has fulfilled the \$150 million commitment and received a letter of confirmation from the state Department of Hawaiian Home Lands in 2007; the Hawaiian Homes Commission in 2012 disputed the letter and said that the bank had still not fully followed through on its pledge.

In 2018, Gov. David Ige invited bank officials to meet with Na Po’e Kokua in Hawaii and work out a fair settlement.

Unhappy with the lack of movement on the issue, Maui County voted to hire legal counsel earlier this year.

“Preliminary estimates of Bank of America’s late fees are nearly \$400,000,000 based on data from the urban development, lost opportunities for building equity and reaping the benefits of a booming housing market and paying affordable mortgages rather than skyrocketing rents over the last 20 years for 890 Native Hawaiian families who should have received Bank of America mortgages by 1998,” according to documents from the council’s Governance, Ethics and Transparency Committee.

Monday’s decision affirms that Maui County may pursue damages for Bank of America’s failure to uphold lending commitments, according to Council Member Tasha Kama, who has worked on the issue while in office and as a member of Na Po’e Kokua prior to joining the council.

“Our county would be in a much better place financially — and many families would now be owning homes of their own — had Bank of America upheld its promise to the Hawaiian and Filipino communities,” she said Monday. *“Bank of America must be held accountable.”*

Hawaii native and Haiku resident Ian Chan Hodges, who has worked for more than two decades on this issue, praised Monday’s decision on *“the largest loan commitment to native trust lands in U.S. history.”*

“It was gratifying to hear Hawaii’s chief federal judge articulate and push back on what the community has known for decades: That Bank of America arrogantly thinks it has the resources to define its own reality and remain unaccountable to the rule of law,” he said.

County lawyers and special counsel will now confer on the next step, council officials said Monday.

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