

EDB Committee

From: Michael Hopper <Michael.Hopper@co.maui.hi.us>
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To: EDB Committee
Subject: Fwd: EDB 86 - Haiku Sugar East Lot 6 Purchase
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Attaching as requested, please let me know if you have any trouble opening.

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Attorney for Plaintiffs:
COURTLANDT DIXON GATES and
NATALIE GATES, Trustees of the Courtlandt
and Natalie Gates 2006 Trust, dated July 31,
2006

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
STATE OF HAWAII

COURTLANDT DIXON GATES and NATALIE
GATES, Trustees of the Courtlandt and Natalie Gates
2006 Trust, dated July 31, 2006

Plaintiffs

vs.

COUNTY OF MAUI; KARY M. HISASHIMA;
KARLEE C. HISASHIMA; JUDY Y. HISASHIMA,
Trustee under that certain Declaration of Revocable
Trust of Judy Y. Hisashima dated September 28, 1981;
JOHN DOES 1-10; JANE DOES 1-10; DOE
PARTNERSHIPS, CORPORATIONS,
GOVERNMENTAL UNITS OR OTHER ENTITIES 1-
10,

Defendants

CIVIL NO.
Other Civil

COMPLAINT; EXHIBIT 1;
SUMMONS; DEMAND FOR JURY
TRIAL

JUDGE: _____
NO TRIAL DATE SET

COMPLAINT

Plaintiffs COURTLANDT DIXON GATES and NATALIE GATES, Trustees of the Courtlandt and Natalie Gates 2006 Trust, dated July 31, 2006 (collectively “**Plaintiffs**”), by and through their counsel, Tom Pierce, Attorney at Law, LLC, hereby allege and aver as follows.

INTRODUCTION

1. The County of Maui (“**County**”) is currently preparing to close on the purchase of “Lot 6”, described below, for open space and conservation purposes. Plaintiffs support the County’s effort to acquire and preserve land for open space and conservation. Therefore, it is with great reluctance that Plaintiffs file this action in order to address an access easement dispute.

2. Upon information and belief, the County claims a right of access through Easement 1A to access and use Lot 6 and or other properties purchased by the County of Maui in 2016, identified below as the “County Properties”.

3. The declaratory and other relief requested herein is necessary to confirm that the County may not use “Easement 1A”, described below, for any purpose. Easement 1A crosses over and burdens Lot 6 and provides access to “Plaintiffs’ Property”, described below, owned and resided on by Plaintiffs.

4. The “Restated Declaration”, defined and described below, expressly provides that Easement 1A is in favor of, and for the sole benefit of Plaintiffs’ Property for private roadway access, and therefore the County as owner of Lot 6, as well as the County Properties, has no access right through Easement 1A.

5. With respect to the County Properties, the County was, at the time of its purchase, granted a different access easement. With respect to Lot 6, it abuts Hana Highway, a public thoroughfare, thereby permitting the County to establish an alternative ingress and egress point for use of Lot 6.

6. Plaintiffs are also entitled to additional declaratory relief that Resolution 20-28 adopted by the Council of the County of Maui (“**County Council**”) to approve the purchase of Lot 6 is null and void. That is because of a material substantive defect in the property description attached thereto, which erroneously purports to provide access to the County

Properties through Easement 1A. The defective Resolution 20-28 establishes that neither the public nor the County Council have been provided accurate information regarding the limited access rights associated with Easement 1A, which burdens Lot 6.

7. Because of the irreparable harm alleged further below, Plaintiffs are also entitled to injunctive relief prohibiting the County from closing on the purchase of Lot 6 until the material defects in Resolution 20-28 have been cured, and until the dispute regarding the interpretation of Easement 1A has been confirmed in Plaintiffs' favor.

JURISDICTION AND VENUE

8. This Court has jurisdiction to hear and adjudicate the allegations, claims and prayers for relief herein pursuant to the following chapters or sections of the Hawai'i Revised Statutes ("HRS") § 603-21.5(3) (civil actions and proceedings); HRS § 603-21.9 (powers); HRS § 603-23 (injunction); § 603-21.5; HRS § 603-21.7(a)(3) and (b) (suits in equity and related equitable relief); HRS § 603-21.9 (general powers to grant relief); and HRS chapter 632 (declaratory judgments).

9. Venue properly lies in this judicial circuit pursuant to HRS § 603-36(5) because the claims for relief arose in this circuit.

PROPERTY AT ISSUE

10. **"Plaintiffs' Property"**, sometimes referred to as **"Lot 2"**, is Lot 2 of Haiku Sugar East, being portions of Royal Patent Number 4490, Land Commission Award Number 10474, Apana 6 to Namaou, and Royal Patent Grant Number 383 to Richard Armstrong) situate, lying and being north of Hana Highway at East Kuiaha and West Kaupakulua, Hamakualoa, Makawao, Island and County of Maui, State of Hawai'i, bearing tax map key number (2) 2-7-007:080.

11. **"Lot 6"** is Lot 6 of Haiku Sugar East, being portions of Grant 6257 to W. R. Patterson and Grant 383 to Richard Armstrong, situate, lying and being north of Hana Highway at East Kuiaha and West Kaupakulua, Hamakualoa, Makawao, Island and County of Maui, State of Hawai'i, bearing tax map key number (2) 2-7-007:005 and totaling 48.774 acres.

12. **"Easement 1A"** burdens Lot 6 and benefits Plaintiffs' Property, as further described below.

PARTIES

13. Plaintiffs COURTLANDT DIXON GATES and NATALIE GATES, are the Trustees of the Courtlandt and Natalie Gates 2006 Trust, dated July 31, 2006, and own and reside on Plaintiffs' Property.

14. Defendant COUNTY OF MAUI ("**County**") is a political corporation subject to suit in its own capacity and on behalf of its departments and their directors, pursuant to HRS § 46-1.5(22).

15. Defendant KARY M. HISASHIMA, who is the husband of Debbie Hisashima, owns an undivided 16% interest in the Hisashima Property, and, upon information and belief, is a resident of the County of Maui, State of Hawai'i.

16. Defendant KARLEE C. HISASHIMA owns an undivided 16% interest in the Hisashima Property, and, upon information and belief, is a resident of the County of Maui, State of Hawai'i.

17. Defendant JUDY Y. HISASHIMA, Trustee under that certain Declaration of Revocable Trust of Judy Y. Hisashima dated September 28, 1981 ("**Judy Hisashima**"), owns an undivided 68% interest in the Hisashima Property, and, upon information and belief, is a resident of the County of Maui, State of Hawai'i.

18. Defendants Kary M. Hisashima, Karlee C. Hisashima and Judy Hisashima are collectively referred to herein as the "**Hisashima Defendants**".

19. Additional Defendants John Does 1-10, Jane Does 1-10, and Doe Partnerships, Corporations, Governmental Units or Other Entities 1-10 (collectively, "**Doe Defendants**") are persons or entities who may be liable to Plaintiffs or may have an interest in the matter or issues pending, whose identities and capacities are presently unknown to Plaintiffs. Plaintiffs have reviewed the permits, records, state and federal statutes, and other documents, relevant to this action, but are unable at this time to ascertain whether or not all parties liable to Plaintiffs are named herein. Plaintiffs will identify such Doe Defendants when their names and capacities are ascertained. Plaintiffs are informed and believe and thereupon allege that some of these Doe Defendants are, and at all times relevant herein, were, in some manner presently unknown to Plaintiffs, engaged in and/or responsible for the acts or omissions alleged herein, and/or were in some manner responsible to Plaintiffs and the public for the acts or omissions, as alleged herein.

RELEVANT FACTS

20. On December 22, 2014, Alexander & Baldwin, LLC (“**A&B**”) and the Hisashima Defendants executed that certain *Declaration of Easements (Haiku Sugar East)*, recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. A-54690744A thru A-54690744B (the “**Original Declaration**”).

21. The Original Declaration affected six (6) lots identified as Lot 1, Lot 2, Lot 3, Lot 4, Lot 5 and Lot 6 of the subdivision called “Haiku Sugar East” (the “**Subdivision**”), comprising approximately 356.64 acres of land in Pauwela, East Kuiaha and West Kaupakulua, Hamakualoa, County and Island of Maui, State of Hawaii, as shown on the final subdivision map of the Subdivision approved by the County of Maui, dated October 10, 2014.

22. At the time of the Original Declaration, A&B owned Lots 1 through 5 of the Subdivision and the Hisashimas owned Lot 6 of the Subdivision.

23. Section 2.1 of the Original Declaration established access Easement 1A, which burdens Lot 6, and granted access to Lots 2, 3, 4 and 5 of the Subdivision through Easement 1A for “pedestrian and vehicular ingress and egress to Hana Highway.”

24. On December 22, 2014, A&B sold and conveyed Lot 2 of the Subdivision (Plaintiffs’ Property) to Plaintiffs through their limited liability company Konanui, LLC (which LLC subsequently conveyed Lot 2 directly to Plaintiffs by deed recorded in the Bureau of Conveyances of the State of Hawai‘i as Document No. A-66810333).

25. In or around 2016, the County expressed an interest in purchasing Lots 1, 3, 4 and 5 from A&B.

26. Before A&B sold the County Properties to the County, A&B entered into negotiations with Plaintiffs and the Hisashimas regarding the provisions set forth in the Original Declaration.

27. During those negotiations, A&B presented the parties with the map and annotations attached hereto as **Exhibit 1**, which show the Lots 1, 2, 3, 4 and 5, as well as the contemplated changes to the Original Declaration, and which is provided herein to assist with understanding the location of the easements in relation to the Lots and public roads.

28. As a result of those negotiations, on September 1, 2016, A&B, the Hisashimas and the Gates (through their predecessor company, Konanui, LLC), executed that certain *Amended and Restated Declaration of Easements (Haiku Sugar East)*, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-60960769 (the “**Restated**

Declaration”).

29. Section 2.1 of the Restated Declaration eliminated access across Easement 1A in favor of Lot 3, 4, and 5.

30. Section 2.1 of the Restated Declaration expressly restricted access across Easement 1A in favor only of Lot 2, and further restricted access solely for “*private* pedestrian and *private* vehicular ingress and egress to Hana Highway.” (Emphasis added).

31. Section 2.1 of the Restated Declaration provided Lots 3 and 4 with a new access and utility easement through Lot 5, identified as “Easement 5A”.

32. Subsequent to the execution and recordation of the Restated Declaration, A&B sold and conveyed to the County Lots 1, 3, 4 and 5 of the Subdivision (collectively the “**County Properties**”).

33. At the time of this conveyance to the County, A&B granted the County Properties with a new access easement through other land owned by A&B that permitted access from Hana Highway via Nahele Road, then via the new access easement providing access to Lots 3, 4 and 5 of the County Properties. Additionally, A&B conveyed Lot 1 of the County Properties with its own separate and independent access point to Hana Highway.

34. In April 2020, Plaintiffs became aware that the County intended to purchase Lot 6. Upon investigating, Plaintiffs became concerned that the County, as well as members of the community supporting the County’s purchase of Lot 6, believed that the County and/or the public had already obtained and/or would have, access rights to Lot 6 and/or the County Properties by way of Easement 1A.

35. Plaintiffs attempted to swiftly resolve this issue, including by phone calls and letters to the County.

36. Despite good faith efforts to avoid litigation, at the time of filing this action, Plaintiffs have been unable to obtain written verification from the County confirming that the County understands, acknowledges and agrees that the County Properties have no right of access over Easement 1A, and further that the County will not be able to use Easement 1A with respect to County activities and uses conducted on Lot 6.

37. At all times relevant herein, Easement 1A, which has a locked gate at its entrance from Hana Highway has been, and continues to be, used solely for private access.

CLAIMS FOR RELIEF

COUNT I— EASEMENT 1A IS LIMITED TO PRIVATE ACCESS FOR THE SOLE BENEFIT OF LOT 2

38. Plaintiffs repeat, reallege, and incorporate by reference each and every allegation set forth above.

39. Section 2.1 of the Restated Declaration, entitled “Declaration of Access Easements”: (a) identifies Easement 1A, (b) provides that Lot 6 is the “Affected Lot” associated with Easement 1A; (c) provides that the only “Benefited Lot” associated with Easement 1A is Lot 2, and (d) provides that the permitted uses of Easement 1A, *i.e.*, “[p]urposes” are limited to “[p]rivate pedestrian and *private* vehicular ingress and egress to Hana Highway.” (Emphasis added).

40. Section 7.9 of the Restated Declaration, entitled “Interpretation of Terms and Phrases,” provides in pertinent part that “In the event a term or phrase in a provision of the [Restated] Declaration may be interpreted to have more than one meaning, *the meaning that provides for enforceability* and/or validity of the provision shall be the meaning of the term or phrase in question.” (Emphasis added).

41. Section 7.10 of the Restated Declaration, entitled “Binding Effect”, provides in pertinent part that the Restated Declaration shall be “for the benefit of the Benefited Lot and shall run with the land.”

42. Plaintiffs are entitled to a declaratory ruling against all Defendants named herein that: (a) Easement 1A solely benefits Lot 2; (b) that the County Properties may not use or benefit from Easement 1A; (c) that the County, upon purchase of Lot 6, may not use Easement 1A for any County purpose; and, therefore (d) that the County shall be required to create an alternative ingress/egress point for access from Hana Highway to Lot 6 for County purposes and uses.

COUNT II—RESOLUTION 20-28 CONTAINS MATERIAL DEFECTS RELATING TO TITLE AND IS THEREFORE NULL AND VOID

43. Plaintiffs repeat, reallege, and incorporate by reference each and every allegation set forth above.

44. On March 13, 2020, the Council of the County of Maui adopted Resolution No. 20-28 to purchase Lot 6 from the Hisashima Defendants for \$1,700,000.

45. Resolution No. 20-28 provides that “the Director of Finance has determined that

acquisition of [Lot 6] is in the public interest.”

46. “Exhibit A” of Resolution 20-28 purports to be the current legal description for Lot 6. However, Exhibit A erroneously states that Easement 1A, which burdens Lot 6, benefits three of the County Properties, as well as Lot 2. Specifically, the Exhibit A legal description erroneously states that Easement 1A is “in favor of Lots 2, 3, 4 and 5 of Haiku Sugar East” (Emphasis added).

47. Plaintiffs are entitled to a declaratory ruling against all Defendants herein that Exhibit A to the Resolution 20-28, providing the legal description for Lot 6 contains a materially erroneous and inaccurate legal description, and that as a result, Resolution 20-28 contains material defects regarding title that thereby render Resolution 20-28 null and void.

COUNT III—MAYOR AND MAYOR’S REPRESENTATIVE LACK AUTHORITY TO CLOSE ON THE PURCHASE OF LOT 6

48. Plaintiffs repeat, reallege, and incorporate by reference each and every allegation set forth above.

49. Section 3 of Resolution No. 20-28 authorized “the Mayor or the Mayor’s duly authorized representative, to execute all necessary documents in connection with the acquisition of [Lot 6].”

50. Plaintiffs are entitled to a declaratory ruling against the County that because Resolution No. 20-28 contains material defects regarding title, and is therefore rendered null and void, that the Mayor and the Mayor’s duly authorized representative lack the legal authority to complete the purchase of Lot 6.

COUNT IV—BREACH OF COVENANTS BY COUNTY OF MAUI REGARDING THE COUNTY PROPERTIES

51. Plaintiffs repeat, reallege, and incorporate by reference each and every allegation set forth above.

52. Pursuant to Section 7.9 of the Restated Declaration, the terms and limitations set forth in the Restated Declaration are binding upon the County Properties.

53. Pursuant to Section 7.8, “Enforcement Costs,” Plaintiffs have a private right of action to enforce the terms of the Restated Declaration against the County, as well as a right to recover attorneys’ fees and costs against the County as the prevailing party in this action.

54. As previously alleged and claimed, the County is not entitled to access to the County Properties through Easement 1A.

55. Through Resolution No. 20-28, and Exhibit A attached thereto, the County, in

breach of the covenants set forth in the Restated Declaration, has expressly claimed a right of access over Easement 1A in favor of the County Properties.

56. As previously alleged, despite Plaintiffs' good faith efforts at early resolution, the County has failed and/or refused to provide written acknowledgement that it is *not* entitled to a right of access over Easement 1A in favor of the County Properties.

57. Plaintiffs are entitled to a judgment against the County for the County's breach of the covenants set forth in the Restated Declaration, including additional damages and/or equitable relief as determined at trial, plus an award of attorneys' fees and costs.

COUNT V—BREACH OF COVENANTS BY COUNTY OF MAUI REGARDING LOT 6

58. Plaintiffs repeat, reallege, and incorporate by reference each and every allegation set forth above.

59. The County is already bound by, and subject to, all of the terms in the Restated Declaration, including those terms relating to Easement 1A, by virtue of its ownership of the County Properties.

60. Therefore, privity of contract already exists between the County and Plaintiffs with respect to interpretation of Easement 1A as it relates to Lot 6.

61. As previously alleged, despite Plaintiffs' good faith efforts at early resolution, the County has failed and/or refused to provide written acknowledgement that, upon its purchase, it will *not* be entitled to a right of access over Easement 1A in favor of Lot 6.

62. With the closing of the purchase of Lot 6 imminent, the County's refusal and/or failure to acknowledge that it will not be entitled to access Easement 1A with respect activities on Lot 6 constitutes a direct and/or anticipatory breach of the covenants in the Restated Declaration.

63. Plaintiffs are entitled to a judgment against the County for the County's breach of the covenants set forth in the Restated Declaration, including additional damages and/or equitable relief as determined at trial, plus an award of attorneys' fees and costs.

COUNT V—INJUNCTIVE RELIEF

64. Plaintiffs repeat, reallege, and incorporate by reference each and every allegation set forth above.

65. Subsequent to the County's purchase, the County has neglected the County Properties, including failing to provide a continuous or frequent security or other management presence.

66. As a result of the County's gross neglect of the County Properties, numerous illegal activities are frequently experienced in close proximity to Plaintiffs' Property, including: abandonment and dismantling of stolen and other vehicles; drug use; dumping of household rubbish and yard waste; motorcycle and other vehicular joy riding; hunting; setting of fires; and nighttime activities. These activities are not only a nuisance but also a health and safety hazard to Plaintiffs, as well as to others.

67. Easement 1A is a specific real property right in favor of Plaintiffs' Property expressly limiting its use to private purposes.

68. Plaintiffs will be irreparably harmed if the County, in violation of Restated Declaration, is permitted to exercise any use of Easement 1A.

WHEREFORE, Plaintiffs respectfully requests that the Court:

- A. Assume jurisdiction over this action;
- B. Issue declaratory judgments and/or orders declaring and adjudging the terms of the Restated Declaration and other laws aforementioned;
- C. Issue a permanent injunction against the County from violating the aforementioned limitations on the private use of Easement 1A solely for the benefit of Plaintiffs' Property;
- D. Reimburse Plaintiffs for their attorneys' fees and costs of suit pursuant to attorneys' fees provision set forth in the Restated Declaration, and any other relevant provisions of state law;
- E. Award Plaintiffs appropriate damages as specified in the Complaint in an amount to be determined at trial;
- F. Grant such other and further appropriate relief to Plaintiffs that this Court deems proper and just;
- G. Retain continuing jurisdiction to review the Defendant's compliance with all judgments and orders entered herein; and,
- H. For such other and further relief as the Court may deem just and proper to effectuate a complete resolution of the legal disputes between Plaintiffs and Defendant.

DATED: Makawao, Maui, Hawai'i, April 23, 2020.

A handwritten signature in black ink, appearing to read 'Tom Pierce', is positioned above a horizontal line.

TOM PIERCE

Tom Pierce, Attorney at Law, LLC

Attorney for Plaintiffs

COURTLANDT DIXON GATES and NATALIE
GATES, Trustees of the Courtlandt and Natalie Gates
2006 Trust, dated July 31, 2006