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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

Daisy Mitchell
Rebecca Melendez

Plaintiff/Petitioner,

vs.

Kamehameha Schools
Marissa Harmain in her professional capacity
Hawaii Planning Depart.
Jeff Darrow in his professional capacity
G70
Kawika McKeague in his Professional capacity
Joe Doe, John Doe

Defendant.

CASE NO. 3CCV-25-0000438

TITLE OF DOCUMENT:

Petitioners' Ex Parte Motion for leave to file Sur-Reply to Respondents G70 and Kawika McKeague's Reply Memorandum (Docket 81) And to Shorten Time for Hearing; Sur-Reply; Proposed ORDER; Certificate of Service

DECLARATION OF DAISY MITCHELL AND REBECCA MELENDEZ IN SUPPORT OF PETITIONERS' EX PARTE MOTION FOR LEAVE TO FILE SUR-REPLY AND TO SHORTEN TIME FOR HEARING

We, Daisy Mitchell and Rebecca Melendez, Petitioners in the above-captioned action appearing pro se, declare under penalty of law as follows:

1. We make this Declaration based on personal knowledge and, if called as witnesses, could and would testify competently to the matters stated herein.

2. This Declaration is submitted in support of Petitioners' Ex Parte Motion for Leave to File a Sur-Reply and to Shorten Time for Hearing.

3. On June 9, 2026, Respondents G70 and Kawika McKeague filed their Reply Memorandum (Docket 81), which raised new legal authority and new arguments, including assertions that Petitioners conceded certain issues by silence, that were not presented in the original Motion to Dismiss (Docket 55) and that Petitioners had no prior opportunity to address.

4. The hearing on the Motion to Dismiss is scheduled for July 8, 2026. Petitioners were unable to meet the ordinary notice period because, as pro se litigants, additional time was required to research and prepare a response to the new matters raised in Docket 81. Without leave to file the accompanying sur-reply, Petitioners would be prejudiced by being unable to address those new matters before the hearing.

5. On June 22, 2026, Petitioners provided notice by email and Regular Mail to counsel for all Respondents of their intent to file this Ex Parte Motion and requested that the G70 Respondents stipulate to the requested relief.

6. As of the date of this Declaration,

_____.

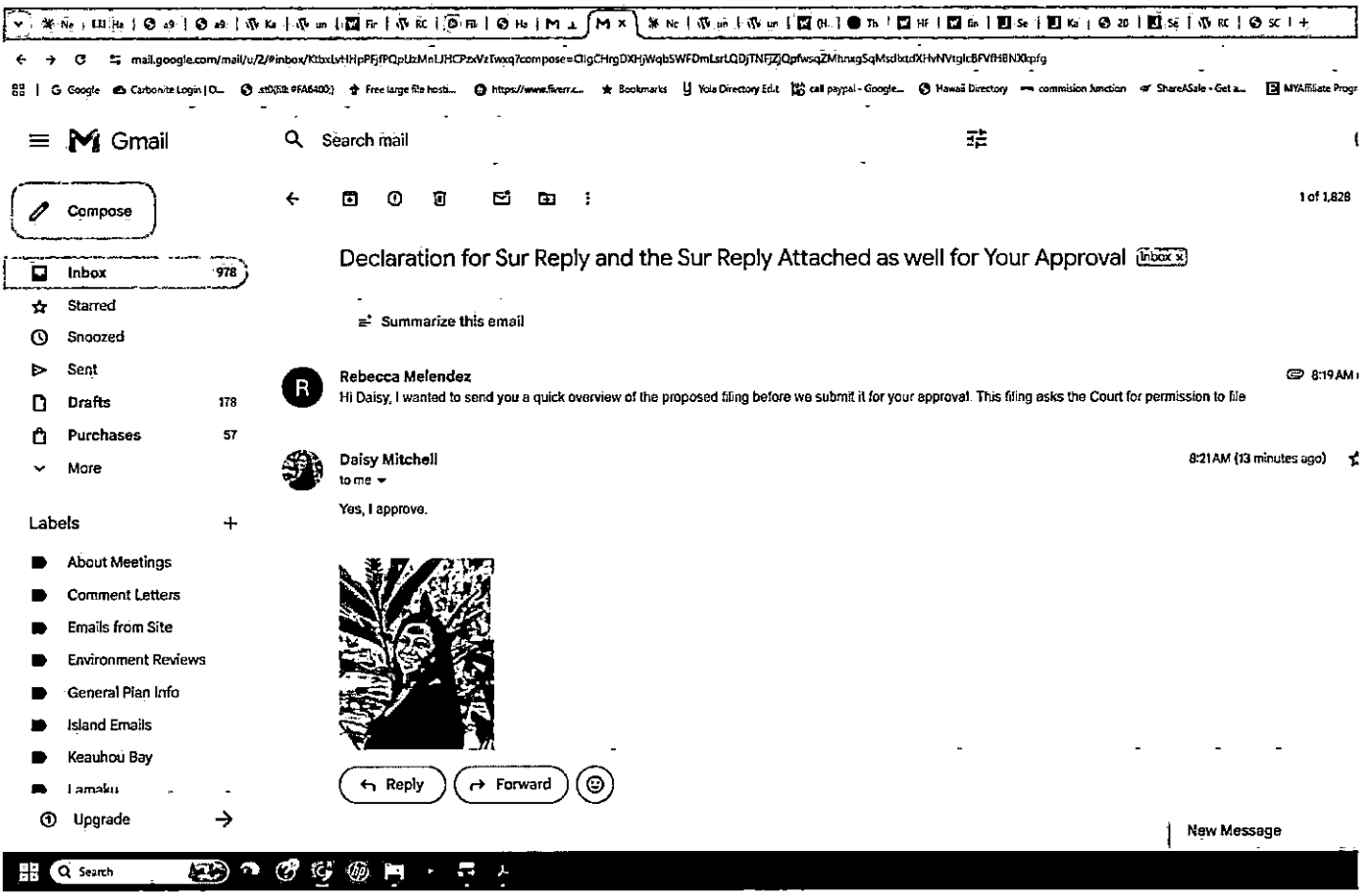
7. No party will be prejudiced by the requested relief. The accompanying sur-reply is narrowly limited to addressing new matters raised for the first time in Docket 81, and the G70 Respondents are already scheduled to appear at the July 8, 2026 hearing on their Motion to Dismiss.

We declare under penalty of law that the foregoing is true and correct.

DATED: Kailua-Kona, Hawai'i, June 22, 2026.

DAISY MITCHELL, Pro Se

Petitioner Daisy Mitchell reviewed and approved this Declaration and the accompanying Sur-Reply but was unavailable to provide a physical signature due to her husband's medical procedure and caregiving responsibilities. A true and correct copy of her written email approval is attached in support of her authorization for this filing.



DATED: Kailua-Kona, Hawai'i, June 22, 2026.

REBECCA MELENDEZ, Pro Se

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DAISY MITCHELL; REBECCA MELENDEZ,

Petitioners,

v.

KAMEHAMEHA SCHOOLS (BISHOP ESTATE), et al.,

Respondents.

Civil No. 3CCV-25-0000438

(Declaratory Judgment)

PETITIONERS' EX PARTE MOTION FOR LEAVE TO FILE SUR-REPLY TO RESPONDENTS G70 AND KAWIKA MCKEAGUE'S REPLY MEMORANDUM (DOCKET 81) AND TO SHORTEN TIME FOR HEARING; SUR-REPLY; PROPOSED ORDER; CERTIFICATE OF SERVICE

HEARING MOTION JUDGE: Honorable Kauanoe Jackson HEARING DATE: July 8, 2026
HEARING TIME: 10:00 am TRIAL DATE: None

PETITIONERS' EX PARTE MOTION FOR LEAVE TO FILE SUR-REPLY AND TO SHORTEN TIME FOR HEARING

Petitioners Daisy Mitchell and Rebecca Melendez, appearing pro se, respectfully move this Court ex parte for: (1) leave to file a sur-reply to Respondents G70 and Kawika McKeague's Reply Memorandum filed June 9, 2026 (Docket 81); and (2) an order shortening time to permit this motion to be heard at the hearing already scheduled for July 8, 2026 at 10:00 am.

I. AUTHORITY

This motion is brought pursuant to the Court's inherent authority to manage proceedings and ensure fairness to all parties, Rules of the Circuit Courts Rule 7.2(f) (ex parte motions) and Rule 7.2(g)(5) (motions to shorten time for hearing).

II. GROUNDS FOR LEAVE TO FILE SUR-REPLY

Good cause exists for leave to file a sur-reply because Docket 81 raises new legal authority and new arguments not contained in the original Motion to Dismiss (Docket 55), which Petitioners had no opportunity to address in their Response (Docket 57).

A. New Case Law Not Raised in Docket 55. At pages 4–5, Docket 81 cites *Maui Lani Neighbors, Inc. v. State*, No. SCWC-16-0000444 (Haw. Sept. 12, 2025), a case that was not cited anywhere in Docket 55. Petitioners therefore had no opportunity to address this new authority in their Response. Under Rule 7(b) of the Circuit Court Rules, a reply "must respond only to arguments raised in the opposition." By introducing new case law for the first time in its reply, G70 exceeded the proper scope of a reply memorandum.

Moreover, the cited decision expressly recognizes that HEPA claims under HRS Chapter 343 are treated differently from other claims, stating: "Unlike their other claims, the neighbors were not required to assert that claim in an HRS chapter 91 appeal. Rather, HRS § 343-7 (Supp. 2014) provided the circuit court with original jurisdiction to consider that claim in the first instance." This language confirms that HRS § 343-7 provides original circuit court jurisdiction over Chapter 343 claims.

B. New Concession Argument. Docket 81, at pages 8–9, argues for the first time that Petitioners effectively conceded G70's relation-back argument by failing to respond to it in their Response, citing *Hong v. Estate of Graham*, No. 22562 (Haw. May 30, 2003) (SDO). This concession argument was not raised in Docket 55. Petitioners therefore had no opportunity to address either G70's new forfeiture theory or its reliance on *Hong* in their Response.

C. Petitioners Did Not Concede the Court's Authority to Grant Removal Relief. Docket 81, at page 7, asserts that Petitioners did not respond to G70's argument that the Court lacks authority under Chapter 343 to order the removal of Mr. McKeague from further exercise of authority. Petitioners respectfully disagree. In their Response (Docket 57), Petitioners expressly requested such relief and explained the factual basis for it, disputing G70's characterization that no meaningful relief was sought against the G70 Respondents. Although Petitioners did not separately brief the legal basis for the Court's authority to grant that remedy, they did not concede the issue and address it further in the accompanying sur-reply.

D. Even If Removal Relief Is Unavailable, Dismissal of the G70 Respondents Is Premature

Docket 81 argues that the Court lacks authority under HRS Chapter 343 to order Mr. McKeague's removal from his corporate position. Petitioners do not concede that issue. However, even assuming, *arguendo*, that such relief is unavailable, dismissal of the G70 Respondents would still be improper at the pleading stage.

The Hawai'i Supreme Court has made clear that dismissal is appropriate only where no set of facts could entitle the plaintiff to relief. As the Court explained:

"**[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.**" *Ravelo v. County of Hawai'i*, 66 Haw. 194, 198, 658 P.2d 883, 886 (1983) (quoting *Midkiff v. Castle & Cooke, Inc.* and *Conley v. Gibson*).

The Court further stated:

"**[I]t ... is the rule that a complaint is not subject to dismissal if plaintiff is entitled to relief under any state of facts which could be proved in support of the claim, and a party shall be granted the relief to which he is entitled even if he has not demanded that relief in his pleadings.**" *Ravelo*, 66 Haw. at 198–99, 658 P.2d at 886 (quoting *Waterhouse v. Capital Investment Co.* and citing HRCP Rule 54(c)).

The *Ravelo* court further explained that its duty was to view the complaint in the light most favorable to the plaintiffs and determine whether the allegations could give rise to recovery under alternative theories of relief.

Accordingly, even if this Court were ultimately to conclude that removal of Mr. McKeague from his corporate position is not an available remedy under HRS Chapter 343, that conclusion would not require dismissal of the G70 Respondents. The dispositive question at this stage is whether Petitioners have alleged facts that could entitle them to any form of relief. The First Amended Petition seeks declaratory, injunctive, equitable, and other remedial relief arising from G70's and Mr. McKeague's alleged role in preparing, coordinating, transmitting, and advancing the challenged FEIS. Under *Ravelo* and HRCP Rule 54(c), the Court should not dismiss the claims merely because one requested remedy may ultimately prove unavailable.

Applying that same framework here, even if the Court ultimately agrees that removal from corporate office is not an available remedy against Mr. McKeague, that conclusion would not warrant dismissal of the G70 Respondents from this action. The First Amended Petition alleges that G70 and Mr. McKeague personally participated in preparing, coordinating, executing, transmitting, and advancing the FEIS challenged in this proceeding and seeks declaratory, injunctive, equitable, and other remedial relief arising from that alleged conduct. Under *Ravelo*, the relevant inquiry at the pleading stage is whether Petitioners could be entitled to relief under any provable set of facts, not whether every requested form of relief is ultimately available. Viewing the allegations in the light most favorable to Petitioners, as *Ravelo* requires, dismissal of the G70 Respondents based solely on the potential unavailability of one requested remedy would be premature.

III. GROUNDS FOR SHORTENING TIME

Rule 7(a) of the Circuit Court Rules requires motions to be filed and served not less than 18 days before the hearing date. The hearing on G70's Motion to Dismiss is currently scheduled for July 8, 2026. The hearing was previously postponed from June 15, 2026 to July 8, 2026, and Docket 81 was not filed until June 9, 2026. Petitioners were unable to file this motion within the standard 18-day window.

No party will be prejudiced by hearing this motion at the already-scheduled July 8, 2026 hearing. Petitioners are pro se litigants and have acted diligently under the circumstances. Petitioner Rebecca Melendez works full-time, and Petitioner Daisy Mitchell has been caring for her husband, who has serious health issues and has undergone multiple surgeries, both of which delayed completion of this motion and the accompanying sur-reply until shortly before this filing. On the date of this filing, Petitioners contacted all counsel of record by email to request a stipulation to shorten the 18-day notice period for this motion. Given the limited time remaining before the July 8, 2026 hearing, Petitioners are filing this motion concurrently rather than awaiting a response. Petitioners are unrepresented, pro se parties residing in Kailua-Kona, while Respondents are represented by counsel located in Honolulu and Hilo.

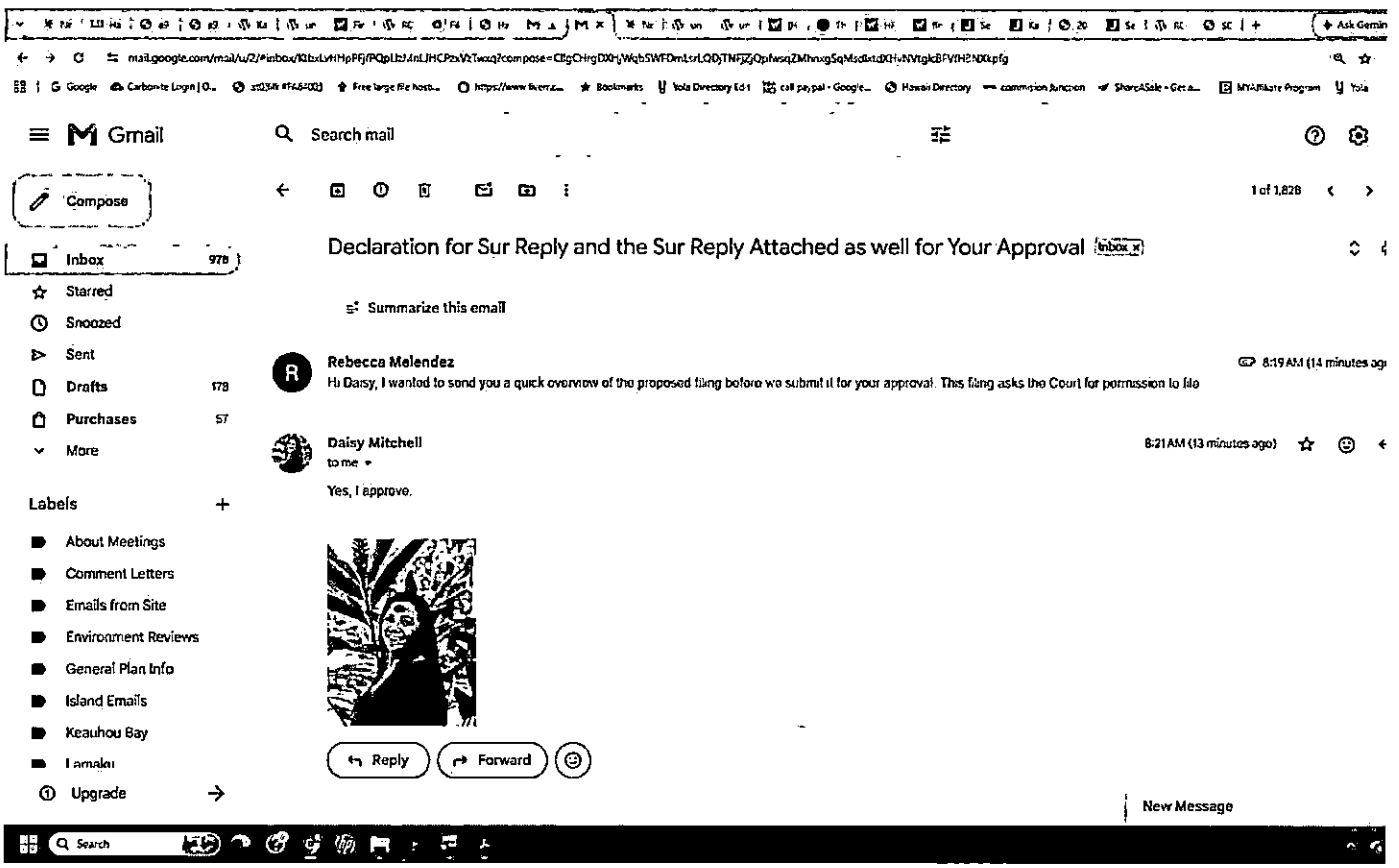
IV. RELIEF REQUESTED

Petitioners respectfully request that this Court: (1) grant leave to file the sur-reply below; (2) shorten time for hearing and permit this motion to be heard at the hearing already scheduled for July 8, 2026 at 10:00 am; and (3) grant such other and further relief as this Court deems just and equitable.

DATED: June 21, 2026, Kailua Kona, Hawai'i,

DASIY MITCHELL, Pro Se

Petitioner Daisy Mitchell reviewed and approved this Declaration and the accompanying Sur-Reply but was unavailable to provide a physical signature due to her husband's medical procedure and caregiving responsibilities. A true and correct copy of her written email approval is attached in support of her authorization for this filing.



Date: June 22, 2026, Kailua Kona, Hawai'i, REBECCA MELENDEZ, Pro Se

PETITIONERS' SUR-REPLY TO RESPONDENTS G70 AND KAWIKA MCKEAGUE'S REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS (DOCKET 81)

I. INTRODUCTION

This sur-reply is submitted to address new matters raised for the first time in the G70 Respondents' Reply Memorandum (Docket 81) that were not presented in their original Motion to Dismiss (Docket 55) and therefore could not have been addressed in Petitioners' Response. Specifically, Docket 81 introduces new legal authority, including *Maui Lani Neighbors, Inc. v. State* and *Hong v. Estate of Graham*, advances a new argument that Petitioners effectively conceded the relation-back issue by failing to respond to it, and asserts that Petitioners did not respond to G70's contention that the Court lacks authority to grant removal-related relief against Mr. McKeague. Petitioners respectfully submit this sur-reply to address those new authorities and arguments and to clarify that they have not conceded the Court's authority to grant appropriate relief or the continued propriety of the G70 Respondents as parties to this action. Sections D and E further address the merits of Docket 81 by explaining why dismissal of the G70 Respondents would be premature even if one requested remedy were unavailable and why G70's continued reliance on an isolated quotation from the First Amended Petition does not warrant dismissal.

II. ARGUMENT

A. Maui Lani Neighbors Does Not Support Dismissal

Docket 81, at pages 4-5, cites Maui Lani Neighbors, Inc. v. State, No. SCWC-16-0000444 (Haw. Sept. 12, 2025) This case was not cited in Docket 55.

Petitioners agree that this action is brought under HRS § 343-7(c) and challenges the acceptance of the FEIS. Petitioners' First Amended Petition expressly invokes HRS § 343-7(c) as the basis for this action.

As stated on page 3 of *Maui Lani Neighbors*, Article XI, section 9 of the Hawai'i Constitution establishes the right to a clean and healthful environment, and the Hawai'i Supreme Court recognized that the public may enforce that right, "subject to reasonable limitations and regulation as provided by law." The Court also stated: "Unlike their other claims, the neighbors

were not required to assert that claim in an HRS chapter 91 appeal. Rather, HRS § 343-7 provided the circuit court with original jurisdiction to consider that claim in the first instance."

This case likewise is not an HRS chapter 91 appeal. Petitioners seek judicial review of the acceptance of the FEIS under HRS § 343-7(c), the statutory procedure expressly invoked in the First Amended Petition. Petitioners allege deficiencies in the FEIS itself and rely on Chapter 343 as the statutory basis for judicial review. Petitioners' constitutional and public trust allegations do not alter the fact that this action is brought under HRS § 343-7(c).

G70 further argues that no reported Hawai'i case has named an environmental consultant as a respondent or imposed liability on such a consultant under Chapter 343. Even if true, the absence of a reported case does not establish that Chapter 343 prohibits such claims or grants consultants immunity from judicial review where they are alleged to have personally participated in preparing and advancing the challenged FEIS. Petitioners allege that G70 and Mr. McKeague actively participated in the preparation, coordination, execution, transmission, and advancement of the FEIS at issue. At the pleading stage, those allegations must be accepted as true.

Petitioners further note that HRS § 343-7(c) requires only that an action be **"initiated"** within the statutory period. The statute does not state that every respondent must be named or served within that period. Petitioners timely initiated this proceeding under HRS § 343-7(c). In addition, G70 was identified in the original pleading in connection with the FEIS.

Consistent with that, Rule 15(a)(1) of the Hawai'i Rules of Civil Procedure provides that a party **may amend its pleading once as a matter of course before a responsive pleading is served.** Petitioners exercised that procedural right by filing the First Amended Petition before any responsive pleading had been served. Thus, Petitioners' amendment was authorized by the Hawai'i Rules of Civil Procedure and does not alter the fact that this action was timely initiated under HRS § 343-7(c).

In addition, Petitioners filed a **Motion to Extend Time for Service (Docket 20)**, and the Court **granted that request in Docket 36**, extending the deadline for service. Those proceedings addressed service separately from the statutory requirement that the action be initiated. Petitioners timely initiated this action and thereafter proceeded in accordance with the Hawai'i Rules of Civil Procedure and the Court's orders.

B. Petitioners Have Not Conceded the Relation-Back Argument

As a threshold matter, Hong v. Estate of Graham, No. 22562 (Haw. May 30, 2003) (SDO), is an unpublished Summary Disposition Order issued before July 1, 2008. Under Hawai'i Rules of Appellate Procedure Rule 35(c)(1), such dispositions shall not be cited in any other action or proceeding unless they establish the law of the pending case, have res judicata or collateral estoppel effect, or — in a criminal proceeding — involve the same respondent. None of those exceptions applies here. G70's reliance on *Hong*, at Docket 81, pages 8–9, is therefore improper on this basis alone.

Even setting that aside, G70's reliance is misplaced. *Hong* held that the appellants waived certain arguments by failing to raise them in the trial court and by failing to present adequate appellate argument in compliance with HRAP Rule 28(b)(7). It did not address whether a party in the trial court automatically concedes a legal issue merely by not specifically discussing it in an opposition memorandum. To the contrary, Petitioners have consistently maintained that this judicial proceeding was timely initiated under HRS § 343-7(c) on October 22, 2025, within sixty days of the September 23, 2025 FEIS acceptance.

Petitioners have conceded nothing. Petitioners continue to maintain that HRS § 343-7(c) requires only that the judicial proceeding be "initiated" within the statutory period and that this proceeding was timely initiated. Petitioners further maintain that the First Amended Petition was filed in accordance with the Hawai'i Rules of Civil Procedure before any responsive pleading had been served, and that nothing in Petitioners' prior filings should be construed as abandoning or conceding any argument concerning amendment or relation back.

Relation back under HRCP Rule 15(c)(3)(A) requires that the party to be brought in by amendment have received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits. Here, the original Complaint, as filed, includes email correspondence at PDF pages 5–7 reflecting G70's direct involvement in the public comment process on the very FEIS at issue, including a reply email at PDF page 7 sent from "221053-01 KS Keauhou Entitlements" and signed "G70 Planning" on G70's own letterhead, listing G70's business address, phone number, and project email domain. Under HRCP Rule 10(c), a written instrument attached to a pleading is a part of that pleading for all purposes. G70's connection to the FEIS and the Keauhou Bay project was therefore apparent from the face of the original pleading, as filed, well before the First Amended Petition was filed.

Beyond the notice reflected in the original Complaint's attachments, the First Amended Petition itself alleges that G70 and Mr. McKeague were repeatedly placed on notice, prior to FEIS acceptance, of scientific and community evidence contradicting the FEIS's conclusions, through formal written submissions including Exhibits R-4-1 through R-4-56. (FAP p. 36.) This pre-litigation awareness of the underlying controversy bears on whether G70 knew or should have known, within the meaning of HRCP Rule 15(c)(3)(B), that but for a mistake concerning the proper parties, an action challenging the FEIS would have been brought against it as well.

C. Petitioners Have Not Waived or Abandoned Their Request for Removal-Related Relief

Docket 81, at page 7, argues that the Court lacks authority under HRS Chapter 343 to remove Mr. McKeague from his corporate position or from further work for an applicant and notes that Petitioners "do not respond to this point." Petitioners respectfully disagree with the implication that the issue has been abandoned.

Petitioners' Response (Docket 57) expressly requested removal-related relief and set forth the factual basis for that request, alleging that Mr. McKeague participated in the preparation, coordination, execution, transmission, sign-off, and advancement of the challenged FEIS despite

the alleged deficiencies identified throughout the First Amended Petition. The Response also disputed G70's characterization that no meaningful relief was sought against the G70 Respondents.

Although Petitioners' Response did not separately brief the narrower legal question of the Court's authority to grant removal-related relief under HRS Chapter 343, Petitioners did not waive, abandon, or concede that issue. Petitioners address that legal question in this sur-reply and further explain in Section D that, even if the Court were ultimately to conclude that removal from corporate office is not an available remedy, dismissal of the G70 Respondents would nevertheless be premature because the First Amended Petition seeks additional declaratory, injunctive, equitable, and other relief arising from their alleged conduct.

D. G70's Relief and Timeliness Arguments Do Not Warrant Dismissal

G70 argues that no meaningful relief can operate against the G70 Respondents. Petitioners respectfully disagree. The First Amended Petition expressly alleges that G70 and Mr. McKeague played an "integral and foundational role in preparing and advancing the FEIS." Petitioners continue to stand by that allegation. Petitioners further allege that G70 and Mr. McKeague personally prepared, signed, coordinated, and advanced the FEIS challenged in this proceeding and that the FEIS contains material deficiencies identified in the First Amended Petition and supporting exhibits.

With respect to timeliness, Petitioners' primary position has consistently been that this judicial proceeding was timely initiated under HRS § 343-7(c). The statute requires that a judicial proceeding be "initiated" within sixty days after notice of FEIS acceptance. Petitioners timely initiated this proceeding on October 22, 2025. HRS § 343-7(c) does not expressly state that every respondent must be named or served within that same sixty-day period.

Petitioners have not conceded any relation-back issue. Petitioners further note that the First Amended Petition was filed before any responsive pleading had been served, and Petitioners also

obtained an extension of time for service through Docket 20 and the Court's order in Docket 36. Nothing in Petitioners' prior filings should be construed as abandoning or conceding any argument concerning amendment or relation back.

G70 also argues that Petitioners seek no relief that could affect the G70 Respondents. However, the First Amended Petition expressly requests relief directed to Mr. McKeague based on his alleged conduct, and G70's own Motion acknowledges that request. Whether the Court ultimately determines that a particular remedy is available under HRS Chapter 343 is a separate question from whether the G70 Respondents should be dismissed at the pleading stage. Petitioners maintain that G70's alleged participation in preparing and advancing the challenged FEIS is the basis for naming them as Respondents.

The Hawai'i Supreme Court has held that "a complaint is not subject to dismissal if plaintiff is entitled to relief under any state of facts which could be proved in support of the claim, and a party shall be granted the relief to which he is entitled even if he has not demanded that relief in his pleadings." *Ravelo v. County of Hawai'i*, 66 Haw. 194, 198–99, 658 P.2d 883, 886 (1983) (quoting *Waterhouse v. Capital Investment Co.* and citing HRCP Rule 54(c)). Accordingly, even if the Court were ultimately to conclude that one particular form of requested relief is unavailable, that would not warrant dismissal of the G70 Respondents where the First Amended Petition alleges facts that may entitle Petitioners to other declaratory, injunctive, equitable, or appropriate relief.

This conclusion is also consistent with *Au v. Au*, in which the Hawai'i Supreme Court reiterated that, "[a]lthough a motion to dismiss for failure to state a claim should rarely be granted, a complaint may be dismissed when it appears beyond a doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Au v. Au*, 63 Haw. 210, 221, 626 P.2d 173, 181 (1981). Petitioners respectfully submit that standard is not satisfied here.

E. The 'Solely Because' Quote Is Not a Concession

G70 quotes the First Amended Petition at page 37 three times across two filings — at Docket 55, pages 1 and 9, and at Docket 81, page 6 — where Petitioners stated G70 was named 'solely because of its integral and foundational role in preparing and advancing the FEIS.' At Docket 55, page 9, G70 calls this 'dispositive.' Petitioners have conceded nothing. Petitioners stand by that statement—because that foundational role is precisely the problem. Petitioners allege that G70's integral role was to prepare and advance a FEIS containing the following deficiencies, each of which Petitioners contend is demonstrated by the face of the FEIS and the cited exhibits:

1. Water allocation — 150 units vs. 101 units. The Department of Water Supply letter at Exhibits B-6-1 and B-6-2 is addressed directly to Mr. McKeague and G70 it states only 101 units assigned. A second notice of this was received during the FEIS comment period (Exs. B-7-1 and B-7-2, FAP p. 268-269). The FEIS describes a 150-unit resort without reconciling this discrepancy (Ex. B-8, FAP p. 270).

2. Nonexistent Section 2.7. The FEIS Table of Contents lists Section 2.7 'Purpose and Need' but the section does not exist, along with Sections 2.6.2 through 2.6.5 and 2.8 (Exs. B-1-16 and B-1-15, FAP p. 224-225). The FEIS references 2.7, that nonexistent section, in its own responses to public comments (Exs. B-10 through B-1-12, starting FAP p. 219).

3. Cultural analysis deferred. The FEIS at Exhibit B-11-1, FAP p. 274, states: 'Although not required for the acceptance of the EIS, a Ka Pa'akai analysis will be required for obtaining the SMA permit for the Project.' Under HAR § 11-200.1-13(b)(1) and (b)(4), effects on cultural resources and cultural practices are mandatory significance criteria. Under HAR § 11-200.1-24(j), the EIS must include the relationship of the proposed action to cultural resource plans and controls. The FEIS defers this mandatory analysis in its own words.

4. Expert comments — blank response column. Jeff Caufield, Esq., submitted eight sections of expert comments (Exs. R-5-1 through R-5-16 FAP p. 457 through 472). The FEIS response table (Exs. R-7-1 through R-7-8, FAP p. 480 through 487) shows that Section VI (Freshwater Cultural Resources), Section VII (Traffic Into Culturally Sensitive Areas), and Section VIII

(Conclusion) have blank response columns. Zero response. HAR § 11-200.1-26 requires responses to all substantive written comments.

5. No baseline data in responses. For sections that did receive responses, the FEIS responded with Kamehameha Schools' mission statements rather than addressing specific environmental concerns. The FEIS itself acknowledges baseline conditions were not fully established (Ex. M-21, FAP p. 33).

6. Mischaracterized public comments. The FEIS attributes to Petitioner Rebecca Melendez a statement she alleges was never made (Ex. R-6-1, FAP p. 473), identifies her only as 'Rebecca' omitting her last name, and characterizes submissions in a manner that minimizes public opposition (Exs. R-6-2 through R-6-7, FAP p. 474 through 479).

7. Consultation Record Reflects Community Support for Cultural Preservation and Education Rather Than the Proposed Bungalow Resort Development.

The consultation record reflects community support for cultural preservation and educational uses rather than for the proposed bungalow resort development (Exs. B-12-1 through B-12-4; M-26-1; M-26-2; M-27-1; M-27-2; M-28-1; M-28-2). The public petition garnered more than 7,400 signatures opposing the proposed development (FAP p. 8).

8. FEIS admits baseline not established. The FEIS acknowledges that baseline conditions were not fully established or quantified (Ex. M-21, FAP p. 33).

9. McKeague personally signed and transmitted the FEIS. The transmittal letter submitting the FEIS for agency review and acceptance bears Mr. McKeague's personal signature as President of G70 (Ex. B-20, FAP p. 311). That is what 'integral and foundational role' means. That is personal participation.

III. CONCLUSION

The "beyond doubt" standard for dismissal under HRCP Rule 12(b)(6) cannot be met here. A nonexistent section, a 49-unit water discrepancy, and the FEIS's own admission that baseline conditions were not fully established—all visible on the face of the document—are only a few examples of the alleged deficiencies identified by Petitioners. These and the other allegations set

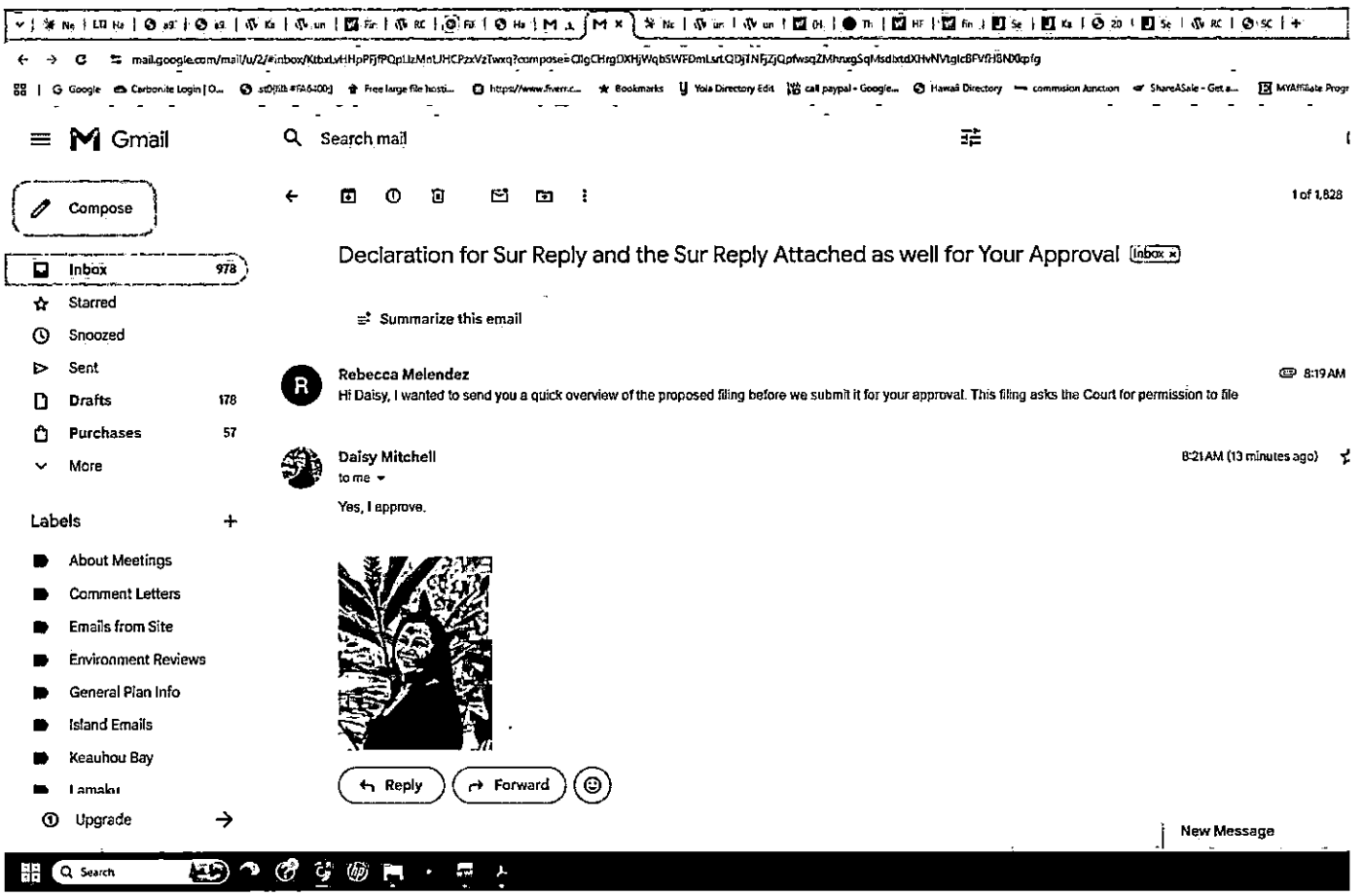
forth in the First Amended Petition demonstrate that Petitioners can prove a set of facts entitling them to relief.

Petitioners respectfully request that the Court deny the Motion to Dismiss as to the G70 Respondents.

DATED: June 21, 2026, Kailua-Kona, Hawai'i

DAISY MITCHELL, Pro Se

Petitioner Daisy Mitchell reviewed and approved this Declaration and the accompanying Sur-Reply but was unavailable to provide a physical signature due to her husband's medical procedure and caregiving responsibilities. A true and correct copy of her written email approval is attached in support of her authorization for this filing.



DATED: June 21, 2026, Kailua-Kona, Hawai‘i.

REBECCA MELENDEZ, Pro Se

PROPOSED ORDER

Upon consideration of Petitioners' Ex Parte Motion for Leave to File Sur-Reply and to Shorten Time for Hearing, and good cause having been shown:

IT IS HEREBY ORDERED that:

(1) Petitioners' motion for leave to file a sur-reply is GRANTED / DENIED.

(2) Petitioners' motion to shorten time is GRANTED / DENIED, and this motion shall be heard at the hearing scheduled for July 8, 2026 at 2:00 pm.

DATED: _____, Hawai'i, _____, 2026.

_____

Honorable Kauanoe Jackson

Judge of the Above-Entitled Court

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was duly served upon the following parties by depositing the same in the United States mail, postage prepaid, on June 22, 2026, and by email:

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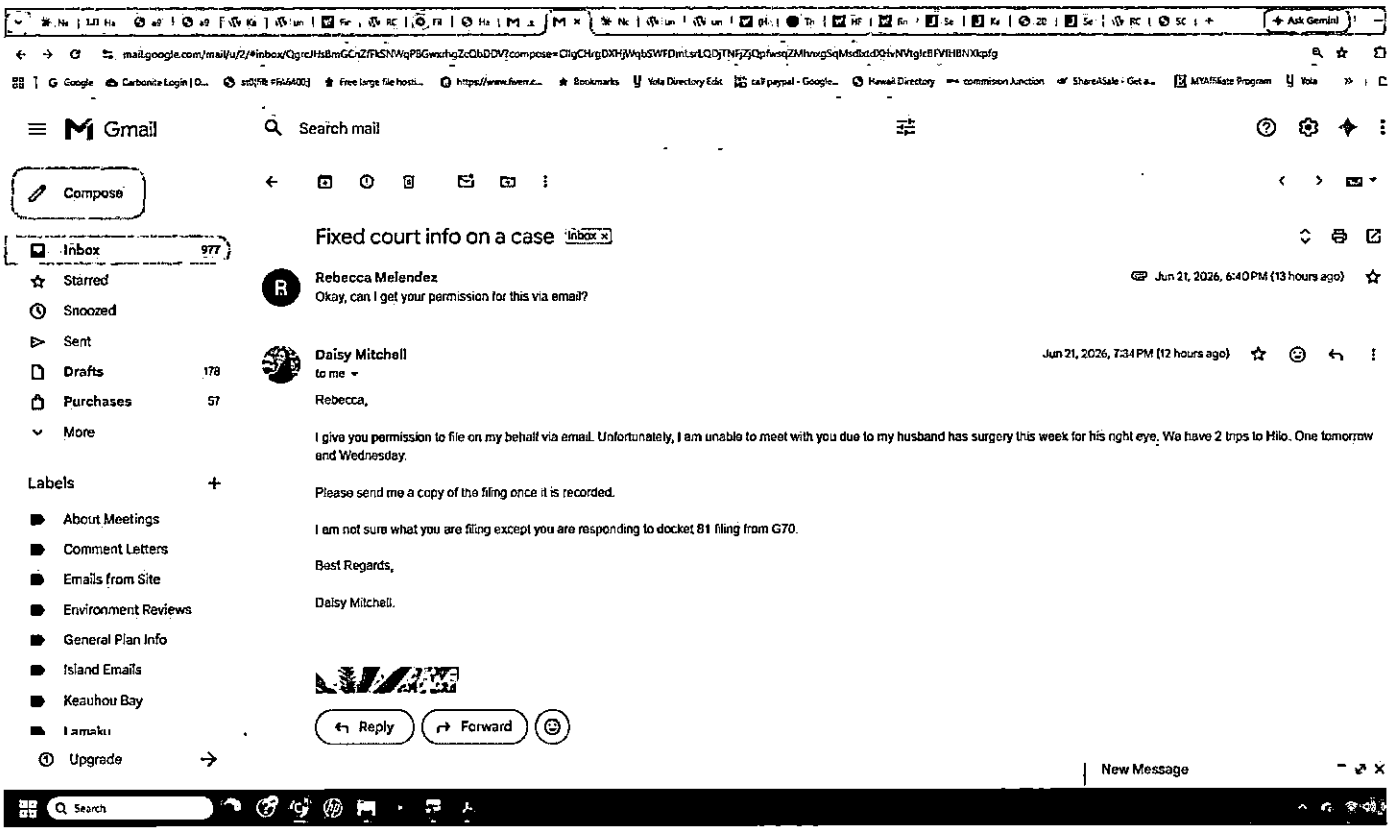
DATED: Kailua-Kona, Hawai'i, June 21, 2026.

DAISY MITCHELL, Pro Se

Petitioner Daisy Mitchell reviewed and approved this Declaration and the accompanying Sur-Reply but was unavailable to provide a physical signature due to her husband's medical procedure and caregiving responsibilities. A true and correct copy of her written email approval is attached in support of her authorization for this filing.



DATED: Kailua-Kona, Hawai'i, June 21, 2026.

REBECCA MELENDEZ, Pro se

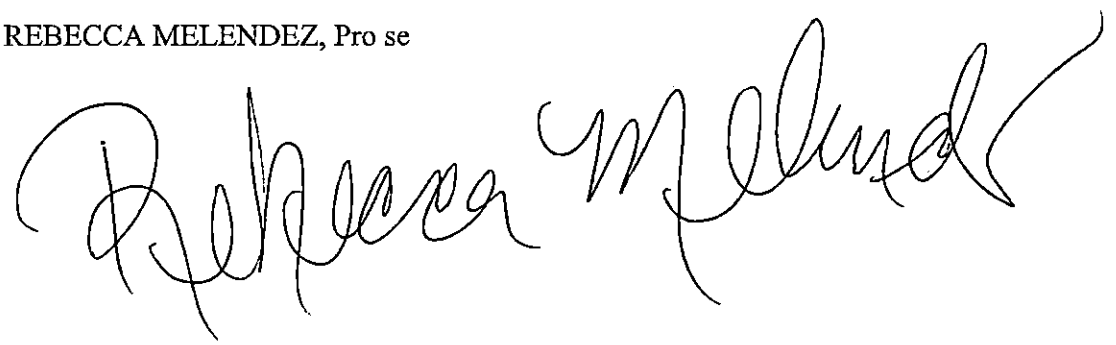


EXHIBIT 1

MAUI LANI NEIGHBORS, INC. v. STATE OF HAWAI'I, ET AL.
SCWC-16-0000444
Supreme Court of the State of Hawai'i
Opinion Filed September 12, 2025

Attached Pages:

- Cover Page of Published Opinion
- Page 3 of Published Opinion (discussing HRS § 343-7 and original jurisdiction over Chapter 343 claims)

Submitted in support of Petitioners' Sur-Reply.

Electronically Filed
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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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MAUI LANI NEIGHBORS, INC., a Hawai'i Nonprofit Corporation,
Petitioner/Plaintiff-Appellant,

vs.

STATE OF HAWAI'I; STATE OF HAWAI'I DEPARTMENT OF LAND AND NATURAL RESOURCES; STATE OF HAWAI'I BOARD OF LAND AND NATURAL RESOURCES; DAWN N.S. CHANG, in her official capacity as chair of the State of Hawai'i Board of Land and Natural Resources; COUNTY OF MAUI; COUNTY OF MAUI PLANNING COMMISSION; COUNTY OF MAUI DEPARTMENT OF PLANNING; and KATE L.K. BLYSTONE, in her official capacity as County of Maui Planning Director,
Respondents/Defendants-Appellees.

SCWC-16-0000444

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-16-0000444; CASE NO. 2CC141000501)

SEPTEMBER 12, 2025

RECKTENWALD, C.J., McKENNA, EDDINS, AND DEVENS, JJ.,
AND CIRCUIT JUDGE CASTAGNETTI IN PLACE OF GINOZA, J., RECUSED

case, that statutory remedy shall be followed." HRS § 632-1(b). Here, there is such a remedy: the right to appeal from the Commission's ruling granting the permit under HRS § 91-14 (2012). The lone exception relates to the neighbors' claims that environmental review of the project was insufficient under HRS chapter 343, the Hawai'i Environmental Policy Act (HEPA). Unlike their other claims, the neighbors were not required to assert that claim in an HRS chapter 91 appeal. Rather, HRS § 343-7 (Supp. 2014) provided the circuit court with original jurisdiction to consider that claim in the first instance. Thus, the circuit court and the ICA erred in dismissing it.

The neighbors also assert that article XI, section 9 of the Hawai'i Constitution empowered the circuit court to exercise jurisdiction over several of their claims in the first instance, and particularly, those arising under HRS chapters 46, 205, and 343. Article XI, section 9 establishes the right to a clean and healthful environment. In County of Hawai'i v. Ala Loop Homeowners, 123 Hawai'i 391, 235 P.3d 1103 (2010), this court for the first time recognized that the public can enforce that right, "subject to reasonable limitations and regulation as provided by law."

In the circumstances of this case, we hold that the jurisdictional limitation within HRS § 632-1 was a reasonable

EXHIBIT 2

RAVELO BY RAVELO v. COUNTY OF HAWAI'I
66 Haw. 194, 658 P.2d 883 (1983)
Supreme Court of Hawai'i

Relevant Excerpt:
Addressing the Rule 12(b)(6) standard for dismissal, the principle that a complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts entitling the plaintiff to relief, and that a party may be granted relief even if not specifically demanded in the pleadings.

Submitted in support of Petitioners' Sur-Reply.

RAVELO BY RAVELO v. County of Hawaii

Full Name: RAVELO BY RAVELO v. County of Hawaii

Citation: 658 P.2d 883

Docket Number: 7937

Date: February 15, 1983

658 P.2d 883 (1983)

Christine RAVELO, a minor, and Jennifer Ravelo, a minor, by their Guardians Ad Litem, Benjamin RAVELO and Marlene Ravelo, and Benjamin Ravelo and Marlene Ravelo, Plaintiffs-Appellants, v. COUNTY OF HAWAII, a municipal corporation, Defendant-Appellee.

No. 7937.

Supreme Court of Hawaii.

February 15, 1983.

*884 Jeffrey Choi, Hilo (Doi, Cook, Choi & Quitiquit, Hilo, of counsel), for plaintiffs-appellants.

*885 Barbara P. Richardson, Deputy Corp. Counsel, Hilo, for defendant-appellee.

Before LUM, Acting C.J., NAKAMURA, PADGETT and HAYASHI, JJ., and MENOR, Retired Justice, in place of RICHARDSON, C.J., disqualified.

NAKAMURA, Justice.

The question in this interlocutory appeal from the Circuit Court of the Third Circuit is whether the complaint filed by Plaintiffs-appellants Benjamin Ravelo and Marlene Ravelo (Mr. and Mrs. Ravelo) against Defendant-appellee County of Hawaii (the County) stated a cause of action upon which relief could be granted. Concluding from a review of the record that the Ravelos' original pleading recited facts that could give rise to a cognizable claim under the promissory estoppel doctrine, see Restatement (Second) of Contracts § 90 (1979), we reverse the circuit court's dismissal of the complaint and remand the case for further proceedings not inconsistent with this opinion.

I.

The controversy stems from the rescission by the County Police Department of a prior acceptance of Benjamin Ravelo's application for employment. The original pleading filed

Following the entry of the order dismissing the complaint, plaintiffs-appellants sought a reconsideration of the matter. When this was denied, they moved to amend their complaint. The amended complaint they sought to file, however, essentially reiterated the original allegations, only in much greater detail. Concomitantly with the motion to amend the complaint, plaintiffs-appellants requested leave to pursue an interlocutory appeal to this court in the event the proposed amendment was disallowed. Amendment was denied, but permission to seek interim review was granted.

II. A.

The circuit court concluded the Ravelos' complaint did not articulate an enforceable claim sounding in contract because Benjamin Ravelo obviously did not attain membership in the County civil service. And as the lack of such status enabled the County to terminate any purported employment with impunity, the court could observe no cause of action for the negligent infliction of emotional distress. We cannot fault the circuit court's perception that the averments in the complaint could not sustain an action premised on a breach of a formal contract or tortious conduct.

Still, our position has been that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Midkiff v. Castle & Cooke, Inc., 45 Haw. 409, 414, 368 P.2d 887, 890 (1962) (quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 101-2, 2 L. Ed. 2d 80 (1957); see also Au v. Au, 63 Haw. 210, 221, 626 P.2d 173, 181 (1981); Hall v. Kim, 53 Haw. 215, 221-22, 491 P.2d 541, 545 (1971). For

[i]t ... is the rule that a complaint is not subject to dismissal if plaintiff is entitled to relief under any state of facts which could be proved in support of the claim, and a party shall be granted the relief to which he is entitled even if he has not demanded that relief in his pleadings. 2 Moore, Federal Practice, § 12.08 (2d ed.); H.R.C.P., Rule 54(c); Territory v. Branco, 42 Haw. 304, 311 [1958]; Yap v. Wah Yen Ki Tuk Tsen Nin Hue, 43 Haw. 37 [1958].

Waterhouse v. Capital Investment Co., 44 Haw. 235, 248-49, 353 P.2d 1007, 1016 (1960). Our duty then is to view the Ravelos' complaint in a light most favorable to them, Gonsalves v. Gilbert, 44 Haw. 543, 554, 356 P.2d 379, 385 (1960), to decide whether the allegations could give rise to recovery under alternative theories of relief. *887 Waterhouse v. Capital Investment Co., 44 Haw. at 248-49, 353 P.2d at 1016.

The allegations recounted earlier state there was a promise of employment extended to Benjamin Ravelo. The Ravelos further maintain they relied on the County's word that Benjamin Ravelo would be sworn in as a police recruit several weeks hence in quitting their jobs and laying plans to move to the Big Island. The County, we believe, could have

EXHIBIT 3

HONG v. ESTATE OF GRAHAM
No. 22562
Supreme Court of the State of Hawai'i
Summary Disposition Order (Not for Publication)
Filed May 30, 2003

Relevant Page Demonstrating That the Court's Waiver Analysis Was Based on Failure to Raise Arguments in the Trial Court and Failure to Present Adequate Appellate Argument Under HRAP Rule 28(b)(7), Not on a Failure to Address Every Argument in a Trial Court Opposition Memorandum.

Submitted in Support of Petitioners' Sur-Reply.

*** NOT FOR PUBLICATION ***

NO. 22562

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

SONG HONG and HYANG HONG, Plaintiffs-Appellants

vs.

THE ESTATE OF RUTH GRAHAM, DECEASED, GRAHAM PROPERTIES, INC., CHARLOTTE GRAHAM, Defendants-Appellees

and

JONG HYE KIM, RICHARD DAGGETT REALTY, SENTINEL SILENT ALARM CO., INC., JOHN DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, and DOE ENTITIES 1-10, Defendants

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APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 96-2593)

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Nakayama J., and
Circuit Judge Watanabe, in place of Acoba, J. recused, and
Circuit Judge Pollack, assigned by reason of vacancy,
Dissenting, with whom Levinson, J., joins[1])

Plaintiffs-appellants Song Hong (Mr. Hong) and Hyang Hong (Mrs. Hong) [collectively, "the Hongs"], appeal from the March 15, 1999 judgment of the circuit court of the first circuit, the Honorable Marie N. Milks presiding, that resulted from the circuit court's partial grant of summary judgment, issued March 20, 1998, the Honorable Kevin S.C. Chang presiding, and the circuit court's grant of summary judgment as to all remaining claims, issued November 4, 1998, the Honorable Allene K. Suemori presiding, all in favor of defendants-appellees the Estate of Ruth Graham (Ruth Graham), Graham Properties, Inc.,

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[1] The majority disposition issued because of the imminent retirement of Judge Watanabe. The dissent will follow.

(c) the implied warranty of quiet enjoyment.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that the Hongs waived all of their arguments with respect to an alleged duty to disclose by: (1) failing to assert the arguments regarding Restatement (Second) of Torts § 551 and HRS § 467-14(18) during trial court proceedings, see Bitney v. Honolulu Police Dept., 96 Hawai'i 243, 251, 30 P.3d 257, 265 (2001) (citations and brackets omitted) ("Appellate courts will not consider an issue not raised below unless justice so requires."); HRS § 641-2 (1993) ("The supreme court may correct any error appearing on the record, but need not consider a point which was not presented in the trial court in an appropriate manner."); and (2) failing to set forth an argument in compliance with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(7),[5] inasmuch as bare assertions that a special relationship need not exist to impose a duty, without legal argument as to how Restatement (Second) of Torts § 302 serves as a basis for imposing a duty, are insufficient where Restatement (Second) of Torts § 302 by itself does not create or establish a legal duty, see McKenzie v.

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[5] HRAP Rule 28(b)(7) provides in relevant part:

> (b) Opening brief. Within 40 days after the filing of the record on appeal, the appellant shall file an opening brief, containing the following sections in the order here indicated:
>
> . . . .
>
> (7) The argument, containing the contentions of the appellant on the points presented and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on. . . . Points not argued may be deemed waived.

EXHIBIT 4

AU v. AU
63 Haw. 210, 626 P.2d 173 (1981)
Supreme Court of Hawai'i

Relevant Excerpt:
Page Addressing the Rule 12(b)(6) Standard, including the Hawai'i Supreme Court's statement that a motion to dismiss for failure to state a claim should rarely be granted and that dismissal is appropriate only when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief.

Submitted in Support of Petitioners' Sur-Reply.

Au v. Au

Full Name: Au v. Au

Citation: 626 P.2d 173

Docket Number: 6706

Date: March 23, 1981

626 P.2d 173 (1981)

Belinda AU, Plaintiff-Appellant, v. Gordon S. K. AU and Herbert Hu, Defendants-Appellees.

No. 6706.

Supreme Court of Hawaii.

March 6, 1981.

On Motion for Partial Reconsideration March 23, 1981.

*175 George Kimura, Honolulu (Leslie Togioka, Honolulu, with him on briefs), for plaintiff-appellant.

Reuben S.F. Wong, Honolulu (Robert K. Matsumoto, Honolulu, with him on brief), for defendants-appellees.

Before RICHARDSON, C.J., and OGATA, MENOR, LUM and NAKAMURA, JJ.

OGATA, Justice.

The instant appeal concerns the application of the proper statute of limitations by the trial court to a five-count complaint brought by plaintiff-appellant Belinda Au (hereinafter appellant) against defendant-appellee Gordon Au, the owner of the home (hereinafter appellee Au), and defendant-appellee Herbert Hu, the salesperson (hereinafter *176 appellee Hu), for damages resulting from water leakages in the residence purchased by appellant. Specifically, appellant appeals from an order of the trial court granting appellees' motion to dismiss the complaint based on the bar of the statute of limitations. We affirm with regard to Count IV but reverse as to Counts I, II, and III.[1]

The complaint was filed in the court below by appellant against both appellees on February 6, 1976, and alleged the following: Count I that appellant and appellees are residents of the City and County of Honolulu; that appellant, prior to purchasing the two-story dwelling at 2048 Mauna Place in Honolulu from appellee Au, did inspect the residence and during this inspection appellant noticed what appeared to be a water stain on the wall in the bottom

agreement to deed for land); Goglia v. Rand, 114 N.H. 289, 319 A.2d 281 (1974) (parol evidence admissible to clarify ambiguity); Smith v. Michael Kurtz Const. Co., 232 N.W.2d 35 (N.D. 1975) (representations made prior to written contract which induced party to sign were held not to violate parol evidence *181 rule). Since this case must be remanded as to Counts I, II and III, we need not reach this issue.

V.

Finally, we consider whether the court below was warranted in dismissing Count IV.

Count IV alleged a breach of the agreement of sale by appellee Au due to the recurring water leakages.[9] After a careful examination of the record, we are unable to determine the nature of the claim alleged in Count IV.

Generally, pleadings should be construed liberally and not technically. Island Holidays, Inc., v. Fitzgerald, 58 Haw. 552, 574 P.2d 884 (1978). Thus, Rule 8(a) H.R.C.P., requires a complaint to set forth a "short and plain statement of the claim... ." This requirement under our pleading system provides defendant with fair notice of what the plaintiff's claim is and the grounds upon which the claim rests. Conley v. Gibson, 355 U.S. 41, 47, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957); Hall v. Kim, 53 Haw. 215, 491 P.2d 541 (1971). We repeatedly have said that the Rules of Civil Procedure were not meant to be a game of skill where one misstep by counsel would be decisive to the outcome. Conley v. Gibson, supra; Hall v. Kim, supra. Although a motion to dismiss for failure to state a claim should rarely be granted, a complaint may be dismissed when it appears beyond a doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, supra; Hall v. Kim, supra; Midkiff v. Castle & Cooke, 45 Haw. 409, 368 P.2d 887 (1962).

In the instant case, even liberally construing the pleadings of Count IV, we believe that appellant can prove no set of facts which would entitle her to relief under that claim. Count IV fails to specify what provisions of the agreement of sale were breached. Thus, this count fails to give appellees fair notice of what appellant's claim is or the grounds upon which it rests.

Therefore, we hold that the dismissal of Count IV was proper.[10]

VI.

We reverse the order of the trial court as to Counts I, II, and III and remand the case for further proceedings not inconsistent with this opinion. We affirm the dismissal of Count IV of the complaint.

Affirmed in part, reversed in part.