

The record in Civil No. 11-1-1577-07 (Exhs. 99, 100, Ho'ohiki) was vital to a fair disposition of the first Appeal, for which reason had been requested in its Opening Brief. of that Opening Brief is now requested here, as Appellate courts may take judicial notice of documents filed in related cases, Fujii v. Osborne, 67 Haw. 322, 329, 687 P.2d 1333 (1984); Peters v. Aipa, 119 Haw. 308, 311 n.3, 188 P.3d 822 n.3 (App. 2008); Kaleikini v. Thielen, 124 Haw. 1, 5, 237 P.3d 1067, 1071 (2010).

### **C. POINTS OF ERROR**

There were five points of error set forth in the Opening Brief for the first appeal:

1. KKP Lacked Standing To Foreclose, To Bid, Or To A Deficiency Judgment;
2. Consolidation Of Both Cases Was Required;
3. KKD And Fuchs' Claims Should Not Have Been Dismissed Absent Discovery;
4. Judge Ayabe Was A Disqualified Jurist; and
5. Hawaii's Judge-Made Deficiency Procedures Are Unconstitutional.

Points 2, 3, and 4 above are identical to points of error for this related appeal and identically cover all of the challenged orders and judgments being herewith appealed below:

1. "Order Denying Ke Kailani Development LLC And Michael J. Fuchs' Motion To Consolidate Two Related Cases, Civil No. 09-1-2523-10-BIA And Civil No. 11-1-1577-07 BIA," filed on December 19, 2011 (Exh. "A");

2. "Order Granting In Part Defendants Ke Kailani Partners, LLC, Hawaii Renaissance Builders,, LLC, Bank of Hawaii, Central Pacific Bank, And Finance Factors, Ltd.'s Motion To Strike Consolidated Supplemental Opposition To (1) Motion For Summary Judgment Filed September 9, 2011 Based On HRPC Rule 56(f) And (2) Motion For Protective Order And Temporary Deferral Of Discovery Filed On September 20, 2011, Filed October 3, 2011," filed on December 19, 2011(Exh."B");

3. "Judgment," filed on December 19, 2011 (Exh. "C");

4. "Order Denying Ke Kailani Development LLC And Michael J. Fuchs' Motion To Disqualify The Honorable Bert I. Ayabe From All Proceedings In Civil No. 11-1-1577-07 Filed November 25, 2011," filed on January 27, 2012 (Exh. "D");

5. "Order Granting In Part Defendants Ke Kailani Partners, LLC And Hawaii Renaissance Builders, LLC's Motion To Dismiss First Amended Complaint With Prejudice And To Strike Jury Trial Demand, Filed On November 28, 2011," filed on April 23, 2012

(Exh. "E");

6. "Judgment," filed on April 23, 2012 (Exh. "F");

7. "Order Denying Ke Kailani Development, LLC And Michael J. Fuchs' Motion Based On Newly Discovered Evidence To Disqualify The Honorable Bert I. Ayabe From All Proceedings In Civil No. 11-1-1577, Filed June 12, 2012," filed on July 30, 2012 (Exh. "G");

8. "Final Judgment," filed on April 19, 2013" ("H") and

9. "Order Denying Plaintiffs' Motion (A) Motion For Rehearing And Reconsideration And The Setting Aside Of The Following Nonfinal Orders And Judgments Based On Newly Discovered Evidence, Supervening Authority, And Due Process; (1) Order Denying Ke Kailani Development LLC And Michael J. Fuchs' Motion To Consolidate Two Related Cases, Civil No. 09-1-2523-10-BIA And Civil No. 11-1-1577-07 BIA, Filed On December 19, 2011; (2) Order Granting In Part Defendants Ke Kailani Partners, LLC And Hawaii Renaissance Builders, LLC's Motion To Dismiss First Amended Complaint With Prejudice And To Strike Jury Trial Demand, Filed On November 28, 2011, Filed On April 23, 2012; (3) Judgment, Filed On April 23, 2012; (4) Order Denying Ke Kailani Development, LLC And Michael J. Fuchs' Motion Based On Newly Discovered Evidence To Disqualify The Honorable Bert I. Ayabe From All Proceedings In Civil No. 11-1-1577, Filed June 12, 2012, Filed July 30, 2012; (B) Motion For HRCP Rule 62(h) Stay Of The Enforcement Of The Deficiency Judgment Entered In Civil No. 09-1-2523-10 Until All Related Issues In Civil No. 11-1-1577-07 Are Fully Adjudicated; And (C) Motion To Preserve The Right To Trial By Jury, Timely Demanded, On All Issues Of Material Fact In Genuine Dispute In Civil No. 11-1-1577-07," filed on August 21, 2013 ("I").

The points on appeal, restated for this appeal, are as follows:

**1. Consolidation Of The Second Related Case With The Foreclosure Case Was Required.**

Both actions should have been consolidated, having common issues of law and fact, allowing KKD and Fuchs to prove their interrelated case against HRB and KKP. *Rule 28 Compliance*: KKD and Fuchs objected on this ground (9/6/11 Transcript of Proceedings, (9) 727-741;(14) 106, *et seq.*, especially 120-126; (9) 9/12/11 Reply 399, *et seq.*; (10) 300-306), whose specific objections however were rejected below (12/19/11 Order Denying Consolidation, (14) 325-329).

**2. KKD And Fuchs' Claims In Their First Amended Complaint Should Not Have Been Dismissed Absent Discovery and When Discovery Was Allowed By The Reassigned Judge, Genuine Issues Of Material Fact Proved To Be Amply Present.**

Genuine issues of material fact existed precluding summary adjudication, which however Judge Ayabe granted in awarding confirmation of sale over objections as to adequacy of price and in dismissing the new action against HRB and KKP based on his interpretation of documents that were being challenged for fraud and rescission. *Rule 28 Compliance*: KKD and Fuchs objected on this ground (10/5/11 Transcript of Proceedings, (13) 516-569, (14) 106, *et seq.*, especially 120-126; 12/20/11 Transcript of Proceedings, (16) 205-258, especially 225, 215-245), whose specific objections however were rejected below (4/23/12 Order Dismissing First Amended Complaint, 1577 (Exh. 70)).

**3. Judge Ayabe Was A Disqualified Jurist In The Second Related Case And All Of His Decisions In The Second Related Case Should Be Set Aside.**

Judge Ayabe was a disqualified jurist with numerous appearances of impropriety in violation of due process and his orders and judgments should be set aside. *Rule 28 Compliance*: KKD and Fuchs objected on this ground (6/12/12 Disqualification Motion 2523, (16) 15, 23-48, *et seq.*; 12/20/11 Transcript of Proceedings, (16) 205-258, especially 208-211, 218-227), whose specific objections however were rejected below (1/27/12 Order Denying Disqualification, (14) 362-365; 7/30/12 Order Denying Disqualification 2523, (16) 747-750).

**D. STANDARDS OF REVIEW**

*Point 1*: Consolidation is a matter within the discretion of the trial judge, warranted to prevent undue delay and promote the interests of justice, especially in order to avoid inconsistent results, Sanders v. Point After, Inc., 2 Haw. App. 65, 626 P.2d 193 (1981).

*Point 2*: Pleadings must be viewed in a light most favorable to the pleading parties, consideration being strictly limited to the allegations in the challenged pleading, Baehr v. Lewin, 74 Haw. 530, 852 P.2d 44, *clarified on reconsideration*, 74 Haw. 645, *reconsideration granted in part on other grounds*, 74 Haw. 650, 875 P.2d 225 (1993).

HRCP Rule 8(e) in this "notice pleading jurisdiction" merely requires that averments in pleadings "shall be simple, concise, and direct. No technical forms of pleading . . . are required," Island Holidays, Inc. v. Fitzgerald, 58 Haw. 552, 574 P.2d 884 (1978) (pleadings

must be construed liberally and not technically); Au v. Au, 63 Haw. 210, 626 P.2d 173, *reconsideration denied*, 63 Haw. 263, 626 P.2d 173 (1981) (pleadings required only to give defendants fair notice of what Plaintiff's claims are and the grounds upon which they rest).

*Point 3:* The standard of review for denials of judicial disqualification is "whether the court abused its discretion," State v. Ross, 89 Haw. 371, 375-376 (1998). However, when constitutional rights are implicated, such questions of law are reviewed *de novo* under a right/wrong standard, Bank of Hawaii v. DeYoung, 92 Haw. 347, 351, 992 P.2d 42 (2000).

## **E. LEGAL ARGUMENT REQUIRING REVERSAL**

### **1. Consolidation Of The Second Related Case With The Foreclosure Case Was Required.**

Identical standing questions are involved in both cases. This is in the second part of a foreclosure action, dealing with the foreclosure sale and its confirmation. Civil No. 11-1-1577-07 similarly had as its main focus identical standing issues as to the right to foreclose.

Hunt through KKP and HRB indemnified the three banks, inducing them to break their agreement with KKD and Fuchs, parties to not only the Acquisition Agreement but also the original Loan PSA, without whose consent there would never have been any purchase and sale to HRB in the first place. Nevertheless, Judge Ayabe denied consolidation and approved the sale of the property while the other case on its merits was still pending.

### **2. KKD And Fuchs' Claims In Their First Amended Complaint Should Not Have Been Dismissed Absent Discovery and When Discovery Was Allowed By The Reassigned Judge, Genuine Issues Of Material Fact Proved To Be Amply Present.**

First, Judge Ayabe quickly dismissed the Complaint in Civil No. 11-1-1577-07, entering final judgment contrary to existing Hawaii Supreme Court case law, since an amended pleading had been filed before his written dismissal order was entered, and then Judge Ayabe dismissed the First Amended Complaint finding, contrary to the documentary evidence presented, that Fuchs was supposedly not a party to either the Acquisition Agreement or the original Loan PSA and that the absence of his signing off on the escrow cancellation and release form as Guarantor was therefore not needed.

On the other hand, the First Amended Complaint, *inter alia*, sought rescission of the KKD escrow cancellation and release form that Judge Ayabe relied on, due to fraud.

Moreover, ambiguity or not, fraud or not, where several instruments are made at the same time (the First Amendment to the Acquisition Agreement made necessary by the

parties as a condition at the last minute for closing the original Loan PSA) and have the same relation to the same subject matter, for more than a century as a matter of law in Hawaii they must be considered parts of one transaction and construed together in ascertaining the agreement between parties, Johnson v. Tisdale, 4 Haw. 605 (1883).

Where several writings are made as part of one transaction, executed between the same parties, the law in Hawaii Courts remains to this day that they must be read together as one instrument, Hayashi v. Chong, 2 Haw. App. 411, 634 P.2d 105 (1981).

Separate agreements must be read together as to parties and performances when their relationship or connection to each other appears on their face evidencing internal unity, Glockner v. Town, 42 Haw. 485 (1958). Judge Ayabe's dismissal Orders to the contrary contain absolutely no supporting authority whatsoever, as there is none whatsoever.

A promissory note as a matter of law is, moreover, a negotiable instrument governed by the Uniform Commercial Code, and the decision of this Court in Cosmopolitan Financial Corporation v. Runnels, 2 Haw. App. 33, 625 P.2d 390 (1981), held that oral promises are admissible), which Judge Ayabe's decisions have further overlooked. This Court in Runnels, 2 Haw. App. at 38-39, adopted a "liberal approach towards the receipt of extrinsic evidence" *even in the absence of any evidence of fraud* ("As between immediate parties, however, all evidence, whether written or oral, whether of conditions precedent or subsequent, should be admitted to determine what the parties understood the true contractual relationship to be."

"Fraud in the inducement" to enter into a written agreement may be shown by parol or extrinsic evidence in Hawaii trial courts, thus permitting the trier of fact to set aside such agreements, which defense Judge Ayabe ignored, Honolulu Federal Savings and Loan Association v. Murphy, 7 Haw. App. 196, 201, 753 P.2d 807 (1988).

Subsequent to Runnels, the Hawaii Supreme Court in Fujimoto v. Au, 95 Haw. 116, 157, 19 P.3d 699 (2001), reaffirmed that governing evidential principle that parol evidence is clearly admissible where fraud in the inducement is alleged: "Fraud vitiates all agreements as between the parties affected by it. . . . The general rule is that '[i]f a party's misrepresentation of assent is induced by either a fraudulent or a material misrepresentation by the other party upon which the recipient is justified in relying, the contract is voidable.'"

Judge Ayabe's decisions were clearly contrary to the recently published decision of the Hawaii Supreme Court in Ralston v. Yim, 129 Hawaii 46, 292 P.3d 1276 (2013).

### 3. Judge Ayabe Was A Disqualified Jurist In The Second Related Case And All Of His Decisions In The Second Related Case Should Be Set Aside.

Section 601-7(a)(1) of the Hawaii Revised Statutes understandably requires that judges shall be disqualified in any case in which a judge has "more than a *de minimis* pecuniary interest," *de minimis* being undefined in the statute.

Additionally, Rule 2.11(a)(2)(C) and 2.11(a)(3) of the Hawaii Revised Code of Judicial Conduct (Exh. 76; RP (12) 28-33) requires that judges shall be disqualified in situations that create the appearance of impropriety, a broader ethical standard, including but not limited to where a judge or a family member "has more than a *de minimis* interest that could be substantially affected by the proceeding" or an "economic interest in the subject matter."

While federal courts and other state courts whose jurisdictions have adopted somewhat identical ethical requirements have disqualified judges possessing even one share of stock in a corporate party, Judge Ayabe failed to explain why the ethical result should be any different here than in the federal system, and depend appearance-wise on which side of Punchbowl Street, for instance, one happens to stand on.

To the contrary, for nearly 100 years Hawaii appellate case law has held that any stock ownership in a party automatically required recusal or disqualification, Thomson v. McGonagle, 33 Haw. 565 (1935) ("it is settled that a stockholder of a corporation has a 'pecuniary interest' in an action in which the corporation is interested in its individual capacity . . . and it follows that Mr. Justice Peters is disqualified to sit in this cause").

As the U.S. Supreme Court held in Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 863, 865 (1988), where a jurist holds an financial interest in a party before him "we must continually bear in mind that 'to perform its high function in the best way "justice must satisfy the appearance of justice".' *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955) \* \* \* \* to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible."

Nor can a judge merely divest himself or herself of such stock and continue to preside, Shell Oil Co. v. United States, 672 F.3d 1283, 1291 (Fed. Cir. 2012) ("because the judge's wife owns shares in the parent company of Texaco and Union Oil . . . requires recusal" and "the judge's decision to *sua sponte* sever Texaco and Union Oil did not satisfy the statutory requirement of disqualifying himself").

Judge Ayabe's family's BOH 600-share stock ownership can hardly be considered *de minimis* in any event considering that it reportedly has a value of nearly \$30,000, which is a significant percentage of a Hawaii Circuit Court Judge's entire annual salary.

Other States, moreover, that have adopted the same Model Code of Judicial Conduct as has Hawaii, have held that the "appearance of impropriety" standard supersedes any *de minimis* inquiry where disqualification is based on stock ownership.

Thus, the Arkansas Supreme Court rejected a *de minimis* excuse in Huffman v. Arkansas Judicial Discipline and Disability Commission, 344 Ark. 274, 281-282, 42 S.W.3d 386, 344 (2001) ("while there is little doubt that the action taken by Judge Huffman was unlikely to fundamentally affect the value of his and his wife's stock, which comprises but a minuscule percentage of the total stock existing in Wal-Mart, this analysis on the *de minimis* value of an economic interest mentioned in Canon 3E(1)(c) ignores the more basic issue of appearance of impropriety").

Similarly, the Georgia Court of Appeals rejected a *de minimis* excuse in White v. Suntrust Bank, 245 Ga. App. 828, 538 S.E.2d 889 (2000) ("a judge who holds stock in a corporation that is a party to a suit should recuse herself from the case"), even though its Code of Judicial Conduct is identical to that in Hawaii (e.g.: "judges shall disqualify themselves in any proceeding in which their impartiality might reasonably be questioned, including but not limited to instances where: . . . the judge . . . is known by the judge to have a more than *de minimis* interest that could be substantially affected by the proceeding").

BOH was in fact the principal and only Plaintiff in the foreclosure action, Civil No. 09-1-2523-10, when it began and when summary judgment for foreclosure was entered.

As the New Hampshire Supreme Court held in Blaisdell v. City of Rochester, 135 N.H. 598, 593-594, 609 A.2d 388 (1992), "it is the judge's responsibility to disclose, *sua sponte*, all information of any potential conflict between himself and the parties or their attorneys when his impartiality might reasonably be questioned. . . . [There is no] obligation to investigate the judge's impartiality; \* \* \* \* we hold that a judge's failure to disclose to the parties the basis for his or her disqualification under Canon 3C will result in a disqualification of the judge."

Here, all of the many appearances of impropriety and all of the contrary to law rulings below, taken together, compelled disqualification (Exh. 83, RP (16) 722, 739); see, e.g. Peters v. Jamieson, 48 Haw. 247, 264, 397, P.2d 575 (1964) ("collectively considered").

One does not even have to tediously examine the materiality of the many appearances of impropriety in this case, since Judge Ayabe failed to disclose his ownership of the BOH stock at the time it was indeed the plaintiff in the first case and was indeed a defendant in the second case, all before he made any of his dispositive rulings in those cases respectively.

He had a *separate ethical duty* at the very least to disclose his conflicts of interest and those of his family; disclosing them to the Hawaii Supreme Court as he did was not enough and an admission of that separate ethical duty.


Having failed to do so, Judge Ayabe deprived KKD and Fuchs of their right at that critical time with that knowledge to have objected on the record, to have conducted further inquiry, and to have sought immediate appellate relief; see, e.g., this Court's recent decision in Nordic v. LPIHGC, LLC, 2014 WL 624870 (February 14, 2014).

#### **F. CONCLUSION**

For all of the reasons set forth above, Appellants respectfully request that the orders and judgments appealed from all be reversed.

DATED: Honolulu, Hawaii; 6/18/14.

Respectfully submitted,

  
GARY VICTOR DUBIN  
FREDERICK J. ARENSMEYER  
ANDREW D. GOFF  
RICHARD FORRESTER  
Attorneys for Appellants  
Ke Kailani Development LLC  
and Michael J. Fuchs



**STATEMENT OF RELATED CASES**

**A**

**CIVIL NO. 09-1-2523-10 BIA**

KE KAILANI PARTNERS, LLC, a Hawaii limited liability company,  
Plaintiff,

vs.

KE KAILANI DEVELOPMENT LLC, a Hawaii limited liability company and MICHAEL J.  
FUCHS, INDIVIDUALLY, ET AL.,  
Defendants.

**B**

**APPELLATE CASES**

**CAAP-12-0000070**

**CAAP-12-0000153**

**CAAP-12-0000758**

**CAAP-12-0000759**

**STATEMENT OF RELATED CASES**

**A**

***CIVIL NO. 09-1-2523-10 BIA***

KE KAILANI PARTNERS, LLC, a Hawaii limited liability company,  
Plaintiff,

vs.

KE KAILANI DEVELOPMENT LLC, a Hawaii limited liability company and MICHAEL J.  
FUCHS, INDIVIDUALLY, ET AL.,  
Defendants.

**B**

**APPELLATE CASES**

**CAAP-12-0000070**

**CAAP-12-0000153**

**CAAP-12-0000758**

**CAAP-12-0000759**

**No. CAAP-13-0004290**

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**IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII**

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KE KAILANI DEVELOPMENT LLC,  
a Hawaii limited liability company, and MICHAEL J. FUCHS,

*Plaintiffs-Appellants,*

vs.

KE KAILANI PARTNERS LLC, a Hawaii limited liability company; HAWAII  
RENAISSANCE BUILDERS LLC, a Delaware limited liability company registered in  
Hawaii; BAYS DEEVER LUNG ROSE & HOLMA, a Hawaii law partnership; GEORGE  
VAN BUREN, solely in his capacity,

*Defendants-Appellees,*

and

JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE  
CORPORATIONS 1-50; DOE LIMITED LIABILITY COMPANIES 1-50; DOE ENTITIES  
1-50; AND DOE GOVERNMENTAL UNITS 1-50,

*Defendants.*

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**On Appeal from the Circuit Court of the First Circuit  
(Civil No. 11-1577-07)**

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**APPENDIX TO OPENING BRIEF**

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# **EXHIBIT "A"**

STARN • O'TOOLE • MARCUS & FISHER  
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HAWAII, CENTRAL PACIFIC BANK, AND  
FINANCE FACTORS, LTD.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KE KAILANI DEVELOPMENT LLC, a Hawaii  
limited liability company; and MICHAEL J.  
FUCHS,

Plaintiffs,

vs.

KE KAILANI PARTNERS LLC, a Hawaii limited  
liability company, HAWAII RENAISSANCE  
BUILDERS LLC, a Delaware limited liability  
company; BANK OF HAWAII, as agent for itself  
and for CENTRAL PACIFIC BANK and  
FINANCE FACTORS, LIMITED; BANK OF  
HAWAII; CENTRAL PACIFIC BANK;  
FINANCE FACTORS, LIMITED; GEORGE  
VAN BURKEN, solely in his capacity as  
Foreclosure Commissioner; JOHN DOES 1-50;  
JANE DOES 1-50; DOE PARTNERSHIPS 1-50;  
DOE CORPORATIONS 1-50; DOE LIMITED  
LIABILITY COMPANIES 1-50; DOE ENTITIES  
1-50; AND DOE GOVERNMENTAL UNITS 1-  
50,

Defendants.

CIVIL NO. 11-1-1577-07 (BIA)  
(Foreclosure)

**ORDER DENYING KE KAILANI  
DEVELOPMENT LLC AND MICHAEL J.  
FUCHS' MOTION TO CONSOLIDATE  
TWO RELATED CASES, CIVIL NO. 09-1-  
2523-10-BIA AND CIVIL NO. 11-1-1577-07  
BIA**

DATE: September 6, 2011  
TIME: 9:30 a.m.  
JUDGE: Bert I. Ayabe

No trial date set.

FILED  
STATE OF HAWAII

2011 DEC 10 AM 8:34

S. TAMAHANA  
CLERK

**ORDER DENYING KE KAILANI DEVELOPMENT LLC AND MICHAEL J. FUCHS'  
MOTION TO CONSOLIDATE TWO RELATED CASES, CIVIL NO. 09-1-2523-10-BIA  
AND CIVIL NO. 11-1-1577-07 BIA**

Plaintiffs KE KAILANI DEVELOPMENT LLC and MICHAEL J. FUCHS' ("Plaintiffs")  
Motion to Consolidate Two Related Cases, Civil No. 09-1-2523-10-BIA and Civil No. 11-1-1577-  
07 BIA, filed on August 4, 2011 ("Motion to Consolidate"), came on for hearing before the  
Honorable Bert I. Ayabe on September 6, 2011. Richard J. Wallsgrove, Esq. appeared on behalf  
of Defendants KE KAILANI PARTNERS LLC, HAWAII RENAISSANCE BUILDERS, LLC,  
BANK OF HAWAII, CENTRAL PACIFIC BANK, and FINANCE FACTORS, LIMITED. Gary  
V. Dubin, Esq. appeared on behalf of Plaintiffs, and R. Laree McGuire, Esq. appeared on behalf of  
Ke Kailani Community Association, The Association of Villa Owners of Ke Kailani and Mauna  
Lani Resort Association.

Having reviewed the subject motion, memoranda, and responses, having heard arguments  
of counsel, being duly advised of the records and files herein, and good cause appearing therefore;

**THE COURT HEREBY ORDERS, ADJUDGES AND DECREES that the Motion to  
Consolidate is DENIED.**

DATED: Honolulu, Hawaii,

DEC 16 2011

  
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

\_\_\_\_\_  
GARY V. DUBIN  
PETER T. STONE  
Attorneys for Plaintiffs Ke Kailani Development LLC and  
Michael J. Fuchs

\_\_\_\_\_  
R. LAREE MCGUIRE  
Attorney for Defendants Ke Kailani Community Association,  
The Association of Villa Owners of Ke Kailani and  
Mauna Lani Resort Association

\_\_\_\_\_  
*Ke Kailani Development LLC, et al. v. Ke Kailani Partners LLC, et al.*, Civil No. 11-1-1577-07 (BIA),  
Circuit Court of the First Circuit, State of Hawaii: ORDER DENYING KE KAILANI  
DEVELOPMENT LLC AND MICHAEL J. FUCHS; MOTION TO CONSOLIDATE TWO  
RELATED CASES, CIVIL NO. 09-1-2523-10-BIA AND CIVIL NO. 11-1-1577-07 BIA

# **EXHIBIT "B"**



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HAWAII, CENTRAL PACIFIC BANK, AND  
FINANCE FACTORS, LTD.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KE KAILANI DEVELOPMENT LLC, a Hawaii  
limited liability company; and MICHAEL J.  
FUCHS,

Plaintiffs,

vs.

KE KAILANI PARTNERS LLC, a Hawaii limited  
liability company, HAWAII RENAISSANCE  
BUILDERS LLC, a Delaware limited liability  
company; BANK OF HAWAII, as agent for itself  
and for CENTRAL PACIFIC BANK and  
FINANCE FACTORS, LIMITED; BANK OF  
HAWAII; CENTRAL PACIFIC BANK;  
FINANCE FACTORS, LIMITED; GEORGE  
VAN BURKEN, solely in his capacity as  
Foreclosure Commissioner; JOHN DOES 1-50;  
JANE DOES 1-50; DOE PARTNERSHIPS 1-50;  
DOE CORPORATIONS 1-50; DOE LIMITED  
LIABILITY COMPANIES 1-50; DOE ENTITIES  
1-50; AND DOE GOVERNMENTAL UNITS 1-  
50,

Defendants.

CIVIL NO. 11-1-1577-07 (BIA)  
(Foreclosure)

**ORDER GRANTING IN PART  
DEFENDANTS KE KAILANI PARTNERS,  
LLC, HAWAII RENAISSANCE  
BUILDERS, LLC, BANK OF HAWAII,  
CENTRAL PACIFIC BANK, AND  
FINANCE FACTORS, LTD.'S MOTION  
TO STRIKE CONSOLIDATED  
SUPPLEMENTAL OPPOSITION TO (1)  
MOTION FOR SUMMARY JUDGMENT  
FILED SEPTEMBER 9, 2011 BASED ON  
HRCP RULE 56(f) AND (2) MOTION FOR  
PROTECTIVE ORDER AND  
TEMPORARY DEFERRAL OF  
DISCOVERY FILED ON SEPTEMBER 20,  
2011, FILED OCTOBER 3, 2011**

DATE: October 5, 2011  
TIME: 9:00 a.m.  
JUDGE: Bert I. Ayabe

No trial date set.

STATE OF HAWAII  
FILED

2011 DEC 19 AM 8:34

S. TAMAHANA  
J. EDU

2011 NOV -7 PM 12: 04  
FIRST JUDICIAL CIRCUIT  
STATE OF HAWAII  
21ST DIVISION

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ORDER GRANTING IN PART DEFENDANTS KE KAILANI PARTNERS, LLC,  
HAWAII RENAISSANCE BUILDERS, LLC, BANK OF HAWAII, CENTRAL PACIFIC  
BANK, AND FINANCE FACTORS, LTD.'S MOTION TO STRIKE CONSOLIDATED  
SUPPLEMENTAL OPPOSITION TO (1) MOTION FOR SUMMARY JUDGMENT  
FILED SEPTEMBER 9, 2011 BASED ON HRCP RULE 56(f) AND (2) MOTION FOR  
PROTECTIVE ORDER AND TEMPORARY DEFERRAL OF DISCOVERY FILED ON  
SEPTEMBER 20, 2011, FILED OCTOBER 3, 2011

Defendants KE KAILANI PARTNERS LLC, HAWAII RENAISSANCE BUILDERS  
LLC, BANK OF HAWAII, BANK OF HAWAII, CENTRAL PACIFIC BANK, and FINANCE  
FACTORS, LTD.'s (collectively "Defendants") Motion to Strike Plaintiffs Ke Kailani  
Development LLC and Michael J. Fuchs' Consolidated Supplemental Opposition to (1) Motion for  
Summary Judgment filed September 9, 2011 Based on HRCP Rule 56(f) and (2) Motion for  
Protective Order and Temporary Deferral of Discovery, came on for hearing on October 5, 2011  
before the Honorable Bert I. Ayabe ("Motion to Strike").

Sharon V. Lovejoy, Esq. and Richard J. Wallsgrove, Esq. appeared on behalf of  
Defendants. Gary V. Dubin, Esq. and Peter T. Stone, Esq. appeared on behalf of the Plaintiffs Ke  
Kailani Development LLC and Michael J. Fuchs.


Having reviewed the subject motion and memoranda and heard arguments of counsel, and  
being duly advised of the record and file herein, and for good cause appearing therefore,

THE COURT HEREBY ORDERS, ADJUDGES AND DECREES THAT:


1. Plaintiffs' Supplemental Opposition shall be stricken as an opposition to  
Defendants' Motion for Summary Judgment, as the supplemental opposition was filed less than  
eight (8) days before the date set for the hearing, in violation of Rule 7 of the Hawaii Rules of the  
Circuit Courts.

2. However, the Supplemental Opposition shall not be stricken as an opposition to the Defendants' Motion for Protective Order, as the Supplemental Opposition was timely filed as to that hearing date (October 11, 2011).

DATED: Honolulu, Hawaii, DEC 16 2011

  
\_\_\_\_\_  
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

  
\_\_\_\_\_  
GARY V. DUBIN  
PETER T. STONE  
Attorneys for Plaintiffs Ke Kailani Development LLC  
and Michael J. Fuchs

*Ke Kailani Development LLC et al v. Ke Kailani Partners LLC, et al., Civil No. 11-1-1577-07 (BIA); Circuit Court of the First Circuit, State of Hawaii: ORDER GRANTING IN PART DEFENDANTS KE KAILANI PARTNERS, LLC, HAWAII RENAISSANCE BUILDERS, LLC, BANK OF HAWAII, CENTRAL PACIFIC BANK, AND FINANCE FACTORS, LTD.'S MOTION TO STRIKE CONSOLIDATED SUPPLEMENTAL OPPOSITION TO (1) MOTION FOR SUMMARY JUDGMENT FILED SEPTEMBER 9, 2011 BASED ON HRCF RULE 56(f) AND (2) MOTION FOR PROTECTIVE ORDER AND TEMPORARY DEFERRAL OF DISCOVERY FILED ON SEPTEMBER 20, 2011, FILED OCTOBER 3, 2011*

# **EXHIBIT "C"**

STARN • O'TOOLE • MARCUS & FISHER  
A Law Corporation

TERENCE J. O'TOOLE 1209  
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Telephone: (808) 537-6100

Attorneys for Defendants  
KE KAILANI PARTNERS, LLC, HAWAII  
RENAISSANCE BUILDERS, LLC, BANK OF  
HAWAII, CENTRAL PACIFIC BANK, and  
FINANCE FACTORS LTD.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KE KAILANI DEVELOPMENT LLC, a Hawaii  
limited liability company; and MICHAEL J.  
FUCHS,

Plaintiffs,

vs.

KE KAILANI PARTNERS LLC, a Hawaii limited  
liability company, HAWAII RENAISSANCE  
BUILDERS LLC, a Delaware limited liability  
company; BANK OF HAWAII, as agent for itself  
and for CENTRAL PACIFIC BANK and  
FINANCE FACTORS, LIMITED; BANK OF  
HAWAII; CENTRAL PACIFIC BANK;  
FINANCE FACTORS, LIMITED; GEORGE  
VAN BURKEN, solely in his capacity as  
Foreclosure Commissioner; JOHN DOES 1-50;  
JANE DOES 1-50; DOE PARTNERSHIPS 1-50;  
DOE CORPORATIONS 1-50; DOE LIMITED  
LIABILITY COMPANIES 1-50; DOE ENTITIES  
1-50; AND DOE GOVERNMENTAL UNITS 1-  
50,

Defendants.

CIVIL NO. 11-1-1577-07 (BIA)  
(Foreclosure)

JUDGMENT

DATE: October 5, 2011  
TIME: 9:00 a.m.  
JUDGE: Bert I. Ayabe

No trial date set.

STATE OF HAWAII  
FILED

2011 DEC 10 AM 8:31

S. TAMAHANA  
CLERK

~~595604~~

JUDGMENT

Pursuant to Rule 54 of the Hawaii Rules of Civil Procedure, and the *Order: (1) Granting Defendants Ke Kailani Partners, LLC, Hawaii Renaissance Builders, LLC, Bank Of Hawaii, Central Pacific Bank, and Finance Factors, Ltd.'s Motion To Dismiss With Prejudice Complaint and to Strike Jury Demand Filed July 27, 2011, Or Alternatively To Strike Complaint (Filed September 6, 2011); (2) Regarding Defendants Ke Kailani Partners, LLC, Hawaii Renaissance Builders, LLC, Bank Of Hawaii, Central Pacific Bank, And Finance Factors, Ltd.'s Motion For Summary Judgment Filed On September 8, 2011; and (3) Regarding Ke Kailani Partners, LLC, Hawaii Renaissance Builders, LLC, Bank Of Hawaii, Central Pacific Bank, and Finance Factors, Ltd.'s Motion For Protective Order And Temporary Deferral of Discovery Filed On September 20, 2011, entered on DEC 16 2011, Judgment is entered as follows:*

- (1) Judgment is entered in favor of Defendants Ke Kailani Partners, LLC, Hawaii Renaissance Builders, LLC, Bank of Hawaii, Central Pacific Bank, and Finance Factors, Ltd.; and against Plaintiffs Ke Kailani Development LLC and Michael J. Fuchs ("Plaintiffs").
- (2) All issues and claims in the Complaint filed by Plaintiffs on July 27, 2011 have been dismissed with prejudice and resolved as to all parties. This Judgment is entered as a final judgment on all claims in Plaintiffs' Complaint.
- (3) In light of this Judgment, the Notice of Pendency of Action filed by Plaintiffs on August 3, 2011, and recorded in the State of Hawaii Bureau of Conveyances on August 4, 2011 as Document No. 2011-123362, is expunged.

DATED: Honolulu, Hawaii, DEC 16 2011

  
JUDGE OF THE ABOVE-ENTITLED COURT

*Ke Kailani Development LLC et al. v. Ke Kailani Partners, LLC, et al.*, Civil No. 11-1-1577-07  
(BIA), Circuit Court of the First Circuit, State of Hawaii: JUDGMENT

# **EXHIBIT "D"**



FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2012 JAN 27 AM 8:40

STARN • O'TOOLE • MARCUS & FISHER  
A Law Corporation

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H. CHING  
CLERK

Attorneys for Defendants  
KE KAILANI PARTNERS, LLC and HAWAII  
RENAISSANCE BUILDERS, LLC

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KE KAILANI DEVELOPMENT LLC, a Hawaii  
limited liability company; and MICHAEL J.  
FUCHS,

Plaintiffs,

vs.

KE KAILANI PARTNERS LLC, a Hawaii limited  
liability company, HAWAII RENAISSANCE  
BUILDERS LLC, a Delaware limited liability  
company; BAYS LUNG ROSE & HOLMA, a  
Hawaii law partnership, GEORGE VAN  
BURKEN, solely in his capacity as Foreclosure  
Commissioner; JOHN DOES 1-50; JANE DOES  
1-50; DOE PARTNERSHIPS 1-50; DOE  
CORPORATIONS 1-50; DOE LIMITED  
LIABILITY COMPANIES 1-50; DOE ENTITIES  
1-50; AND DOE GOVERNMENTAL UNITS 1-  
50,

Defendants.

CIVIL NO. 11-1-1577-07 (BIA)  
(Foreclosure)

ORDER DENYING KE KAILANI  
DEVELOPMENT LLC and MICHAEL J.  
FUCHS' MOTION TO DISQUALIFY THE  
HONORABLE BERT I. AYABE FROM  
ALL PROCEEDINGS IN CIVIL NO.  
11-1-1577-07 FILED NOVEMBER 25, 2011

DATE: Dec. 20, 2011  
TIME: 9:30 a.m.  
JUDGE: Hon. Bert I. Ayabe

No trial date set.

**ORDER DENYING KE KAILANI DEVELOPMENT LLC and MICHAEL J. FUCHS'  
MOTION TO DISQUALIFY THE HONORABLE BERT I. AYABE FROM ALL  
PROCEEDINGS IN CIVIL NO. 11-1-1577-07 FILED NOVEMBER 25, 2011**

Plaintiffs KE KAILANI DEVELOPMENT LLC and MICHAEL J. FUCHS' ("Plaintiffs")  
Motion to Disqualify the Honorable Bert I. Ayabe from All Proceedings in Civil No. 11-1-15-07-<sup>77</sup><sub>A</sub>  
BIA, filed on November 25, 2011 ("Motion to Disqualify"), came on for hearing before the  
Honorable Bert I. Ayabe on December 20, 2011. Gary V. Dubin, Esq. and Peter T. Stone, Esq.  
appeared on behalf of Plaintiffs. Richard J. Wallsgrove, Esq. appeared on behalf of Defendants  
KE KAILANI PARTNERS, LLC and HAWAII RENAISSANCE BUILDERS, LLC. Maria  
Wang, Esq. appeared on behalf of Defendants BAYS LUNG ROSE & HOLMA. No other parties  
to this matter appeared. R. Laree McGuire, Esq. appeared on behalf of Ke Kailani Community  
Association, The Association of Villa Owners of Ke Kailani, and Mauna Lani Resort Association  
in Civil No. 09-1-2523-10, in which Plaintiffs filed a related motion.

Having reviewed the subject motion, memoranda, and responses, having heard arguments  
of counsel, being duly advised of the status of the case, and good cause appearing therefore,

THE COURT HEREBY ORDERS, ADJUDGES AND DECREES that the Motion to  
Disqualify is DENIED.

DATED: Honolulu, Hawaii, JAN 26 2012

BERT I. AYABE  
JUDGE OF THE ABOVE ENTITLED COURT




*Ke Kailani Development, LLC et al. v. Ke Kailani Partners, LLC, et al.*, Civil No. 11-1-1577-07 (BIA),  
Circuit Court of the First Circuit, State of Hawaii: ORDER DENYING KE KAILANI DEVELOPMENT  
LLC and MICHAEL J. FUCHS' MOTION TO DISQUALIFY THE HONORABLE BERT I. AYABE  
FROM ALL PROCEEDINGS IN CIVIL NO. 11-1-1577-07 FILED NOVEMBER 25, 2011

APPROVED AS TO FORM:

---

GARY V. DUBIN  
PETER T. STONE  
Attorneys for Plaintiffs Ke Kailani Development LLC and  
Michael J. Fuchs

  
LEX. R. SMITH  
MARIA WANG  
Attorney for Defendants Bays Lung Rose & Holma

---

*Ke Kailani Development, LLC et al. v. Ke Kailani Partners, LLC, et al.*, Civil No. 11-1-1577-07 (BIA),  
Circuit Court of the First Circuit, State of Hawaii: ORDER DENYING KE KAILANI DEVELOPMENT  
LLC and MICHAEL J. FUCHS MOTION TO DISQUALIFY THE HONORABLE BERT I. AYABE  
FROM ALL PROCEEDINGS IN CIVIL NO. 11-1-1577-07 FILED NOVEMBER 25, 2011

# **EXHIBIT "E"**

STARN • O'TOOLE • MARCUS & FISHER  
A Law Corporation

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RICHARD J. WALLSGROVE 9054  
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Attorneys for Defendants  
KE KAILANI PARTNERS, LLC and HAWAII  
RENAISSANCE BUILDERS, LLC

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2012 APR 23 AM 11:07

H. CHING  
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KE KAILANI DEVELOPMENT LLC, a Hawaii  
limited liability company; and MICHAEL J.  
FUCHS,

Plaintiffs,

vs.

KE KAILANI PARTNERS LLC, a Hawaii limited  
liability company, HAWAII RENAISSANCE  
BUILDERS LLC, a Delaware limited liability  
company; BAYS LUNG ROSE & HOLMA, a  
Hawaii law partnership, GEORGE VAN  
BURKEN, solely in his capacity as Foreclosure  
Commissioner, JOHN DOES 1-50; JANE DOES  
1-50; DOE PARTNERSHIPS 1-50; DOE  
CORPORATIONS 1-50; DOE LIMITED  
LIABILITY COMPANIES 1-50; DOE ENTITIES  
1-50; AND DOE GOVERNMENTAL UNITS 1-  
50,

Defendants.

CIVIL NO. 11-1-1577-07 (BIA)  
(Foreclosure)

ORDER GRANTING IN PART  
DEFENDANTS KE KAILANI PARTNERS,  
LLC AND HAWAII RENAISSANCE  
BUILDERS, LLC'S MOTION TO DISMISS  
FIRST AMENDED COMPLAINT WITH  
PREJUDICE AND TO STRIKE JURY  
DEMAND, FILED ON NOVEMBER 28,  
2011


DATE: Dec. 20, 2011

TIME: 9:30 a.m.

JUDGE: Hon. Bert I. Ayabe

No trial date set.

I do hereby certify that this is a full, true and  
correct copy of the original on file in this office.

  
Clerk, Circuit Court, First Circuit

ORDER GRANTING IN PART DEFENDANTS KE KAILANI PARTNERS, LLC AND  
HAWAII RENAISSANCE BUILDERS, LLC'S MOTION TO DISMISS FIRST AMENDED  
COMPLAINT WITH PREJUDICE AND TO STRIKE JURY DEMAND, FILED ON  
NOVEMBER 28, 2011

Defendants KE KAILANI PARTNERS, LLC and HAWAII RENAISSANCE BUILDERS, LLC'S ("KKP/HRB Defendants") Motion to Dismiss First Amended Complaint With Prejudice and to Strike Jury Demand, filed on November 28, 2011 ("Motion to Dismiss First Amended Complaint"), came on for hearing before the Honorable Bert I. Ayabe on December 20, 2011. Gary V. Dubin, Esq. and Peter T. Stone, Esq. appeared on behalf of Plaintiffs MICHAEL J. FUCHS and KE KAILANI DEVELOPMENT LLC ("Plaintiffs"). Richard J. Wallgrove, Esq. appeared on behalf of the KKP/HRB Defendants. Maria Wang, Esq. appeared on behalf of Defendants BAYS LUNG ROSE & HOLMA. No other parties to this matter appeared. R. Larce McGuire, Esq. appeared on behalf of Ke Kailani Community Association, The Association of Villa Owners of Ke Kailani, and Mauna Lani Resort Association in Civil No. 09-1-2523-10, in which Plaintiffs filed a separate motion.

Having reviewed the subject motion, memoranda, and responses, having heard arguments of counsel, being duly advised of the status of the case, and good cause appearing therefore,

THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

A. Counts 1, 2, 4, 9, 10 and 12 of the First Amended Complaint are precluded by the Court's earlier finding that (1) Plaintiff Michael J. Fuchs was not a party to the Acquisition Agreement and therefore lacks standing to sue for breach of that agreement; (2) the Acquisition Agreement was cancelled, pursuant to the "Cancellation Agreement" (Exhs. 70 and 71 to First Amended Complaint); and (3) Plaintiffs Ke Kailani Development, LLC and Michael J. Fuchs lack standing to sue for breach of the Mortgage Loan Purchase and Sale Agreement (Ex. 52 to First Amended Complaint).

B. Plaintiffs' claim in Count 3 of the First Amended Complaint is for tortious interference. The Court finds that under the Consent, Waiver and Confidentiality Agreement (Exh. 39 to Plaintiffs' First Amended Complaint), Plaintiffs consented to direct communications between Bank of Hawaii and Hawaii Renaissance Builders, LLC, and irrevocably and unconditionally waived any claim of any kind against Hawaii Renaissance Builders, LLC for tortious interference with contract and tortious interference with prospective business advantage.

C. Plaintiffs' claim in Count 11 of the First Amended Complaint alleges that the Cancellation Agreement is null and void because (1) it was not signed by Plaintiff Michael J. Fuchs in his individual capacity; (2) it was not intended or understood by Plaintiff Ke Kailani Development LLC to represent a general release; and (3) Plaintiff Ke Kailani Development LLC's signature was procured by fraud and deceit. The Court finds that (1) Plaintiff Michael J. Fuchs' signature in his individual capacity was not required on the Cancellation Agreement as Plaintiff Michael J. Fuchs was not a party to the underlying Acquisition Agreement being cancelled; (2) Plaintiff Ke Kailani Development, LLC's failure to understand the Agreement does not create a cause of action for its rescission; and (3) the Motion for Substitution of Parties (Exh. 72 to the First Amended Complaint) was filed and served on counsel for Plaintiffs Ke Kailani Development LLC and Michael J. Fuchs on December 6, 2010, before Plaintiff Ke Kailani Development LLC signed the Cancellation Agreement on December 10, 2010. The Motion for Substitution of Parties therefore put Plaintiffs on notice of the information that Plaintiffs are alleging was intentionally concealed.

For reasons including but not limited to the foregoing, THE COURT HEREBY GRANTS, IN PART, the KKP/HRB Defendants' Motion to Dismiss First Amended Complaint, dismissing

with prejudice all claims in Plaintiffs' First Amended Complaint against the KKP/HRB Defendants.

The Court DENIES Defendants' Motion to Dismiss First Amended Complaint with respect to Bank of Hawaii, Central Pacific Bank, and Finance Factors, Ltd. ("Banks") since the Banks are not parties to the instant action and did not move to intervene pursuant to Haw. R. Civ. P. Rule 24.

Pursuant to Rule Haw. R. Civ. P. Rule 54(b), there is no just reason for delay and final judgment shall enter in favor of the KKP/HRB Defendants, and against Plaintiffs, with respect to all claims in the First Amended Complaint made against the KKP/HRB Defendants.

In light of the Court's ruling granting the Motion to Dismiss First Amended Complaint, and pursuant to Haw. R. Civ. P. Rule 54(c), the Court confirms that the Notice of Pendency of Action filed by Plaintiffs on November 4, 2011, and recorded in the State of Hawaii Bureau of Conveyances on November 4, 2011 as Document No 2011-183645 ("NOPA"), and any other notice of pendency of action filed by Plaintiffs arising from Plaintiffs' claims against the KKP/HRB Defendants in this action, is expunged.<sup>1</sup>

DATED: Honolulu, Hawaii,

APR 20 2012

BERT I. AYABE  
JUDGE OF THE ABOVE ENTITLED COURT



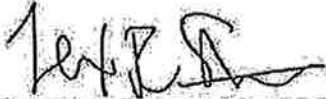
<sup>1</sup> See also Order: (1) Granting Defendants Ke Kailani Partners, LLC, Hawaii Renaissance Builders, LLC, Bank of Hawaii, Central Pacific Bank, and Finance Factors, Ltd.'s Motion to Dismiss With Prejudice and to Strike Jury Demand Filed July 27, 2011, or Alternatively to Strike Complaint (Filed September 6, 2011); (2) Regarding Defendants Ke Kailani Partners, LLC, Hawaii Renaissance Builders, LLC, Bank of Hawaii, Central Pacific Bank, and Finance Factors, Ltd.'s Motion for Summary Judgment Filed on September 8, 2011; and (3) Regarding Ke Kailani Partners, LLC, Hawaii Renaissance Builders, LLC, Bank of Hawaii, Central Pacific Bank, and Finance Factors, Ltd.'s Motion for Protective Order and Temporary Deferral of Discovery Filed on September 20, 2011, entered on December 19, 2011, ¶ 14 ("In light of the Court's ruling granting the Motion to Dismiss, the Court hereby expunges the Notice of Pendency of Action filed by Plaintiffs on August 3, 2011, and recorded in the State of Hawaii Bureau of Conveyances on August 4, 2011 as Document No. 2011-123362).



APPROVED AS TO FORM:

---

GARY V. DUBIN  
PETER T. STONE  
Attorneys for Plaintiffs Ke Kailani Development LLC and  
Michael J. Fuchs



---

LEX. R. SMITH  
MARIA WANG  
Attorney for Defendants Bays Lung Rose & Holma

---

*Ke Kailani Development, LLC et al. v. Ke Kailani Partners, LLC, et al.*, Civil No. 11-1-1577-07 (BIA),  
Circuit Court of the First Circuit, State of Hawaii: ORDER GRANTING IN PART DEFENDANTS KE  
KAILANI PARTNERS, LLC AND HAWAII RENAISSANCE BUILDERS, LLC'S MOTION TO  
DISMISS FIRST AMENDED COMPLAINT WITH PREJUDICE AND TO STRIKE JURY DEMAND,  
FILED ON NOVEMBER 28, 2011

# **EXHIBIT "F"**

STARN • O'TOOLE • MARCUS & FISHER  
A Law Corporation

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Attorneys for Defendants  
KE KAILANI PARTNERS, LLC and HAWAII  
RENAISSANCE BUILDERS LLC

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2012 APR 23 AM 11:08

H. CHING  
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KE KAILANI DEVELOPMENT LLC, a Hawaii  
limited liability company; and MICHAEL J.  
FUCHS,

Plaintiffs,

vs.

KE KAILANI PARTNERS LLC, a Hawaii  
limited liability company, HAWAII  
RENAISSANCE BUILDERS LLC, a Delaware  
limited liability company; BAYS LUNG ROSE &  
HOLMA, a Hawaii law partnership, GEORGE  
VAN BURKIN, solely in his capacity as  
Foreclosure Commissioner; JOHN DOES 1-50;  
JANE DOES 1-50; DOE PARTNERSHIPS 1-50;  
DOE CORPORATIONS 1-50; DOE LIMITED  
LIABILITY COMPANIES 1-50; DOE  
ENTITIES 1-50; AND DOE GOVERNMENTAL  
UNITS 1-50,

Defendants.

CIVIL NO. 11-1-1577-07 (BIA)  
(Foreclosure)

JUDGMENT

DATE: December 20, 2011  
TIME: 9:30 a.m.  
JUDGE: Bert I. Ayabe

No trial date set.

I do hereby certify that this is a full, true and  
correct copy of the original on file in this office.

*H. Ching*  
Clerk, Circuit Court, First Circuit

JUDGMENT

Pursuant to Rule 54 of the Hawaii Rules of Civil Procedure, and the *Order Granting in Part Defendants Ke Kailani Partners and Hawaii Renaissance Builders, LLC's Motion to Dismiss First Amended Complaint With Prejudice and to Strike Jury Demand (filed November 28, 2011)* entered herein, Judgment is entered as follows:

(1) Judgment is entered in favor of Defendants Ke Kailani Partners, LLC and Hawaii Renaissance Builders (the "KKP/HRB Defendants"), and against Plaintiffs Ke Kailani Development LLC and Michael J. Fuchs ("Plaintiffs"), with respect to all claims in this action against the KKP/HRB Defendants.

(2) All issues and claims in the First Amended Complaint filed by Plaintiffs on November 4, 2011 have been dismissed with prejudice and resolved as to the KKP/HRB Defendants. This Judgment is entered as a final judgment on all claims herein against the KKP/HRB Defendants.

(3) In light of this Judgment, the Court confirms that the Notice of Pendency of Action filed by Plaintiffs on November 4, 2011, and recorded in the State of Hawaii Bureau of Conveyances on November 4, 2011 as Document No. 2011-183645, is expunged.

DATED: Honolulu, Hawaii, APR 20 2012

BERT I. AYASE  
JUDGE OF THE ABOVE ENTITLED COURT




*Ke Kailani Development LLC et al. v. Ke Kailani Partners, LLC, et al.*, Civil No. 11-1-1577-07 (BIA), Circuit Court of the First Circuit, State of Hawaii: JUDGMENT

APPROVED AS TO FORM:

---

GARY V. DUBIN, ESQ.  
PETER STONE, ESQ.  
Counsel for Ke Kailani Development LLC and  
Michael J. Fuchs



---

LEX R. SMITH, ESQ.  
MARIA Y. WANG, ESQ.  
Counsel for Bays Lung Rose & Holma

---

*Ke Kailani Development LLC et al. v. Ke Kailani Partners, LLC, et al.*, Civil No. 11-1-1577-07  
(BIA), Circuit Court of the First Circuit, State of Hawaii: JUDGMENT

# **EXHIBIT "G"**

1ST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2012 JUL 30 PM 4:07

N. ANAYA  
CLERK

STARN • O'TOOLE • MARCUS & FISHER  
A Law Corporation

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Telephone: (808) 537-6100

Attorneys for Defendants  
KE KAILANI PARTNERS, LLC and HAWAII  
RENAISSANCE BUILDERS, LLC

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KE KAILANI DEVELOPMENT, LLC, a Hawaii  
limited liability company; and MICHAEL J.  
FUCHS,

Plaintiffs,

vs.

KE KAILANI PARTNERS, LLC, a Hawaii  
limited liability company, HAWAII  
RENAISSANCE BUILDERS LLC, a Delaware  
limited liability company; BAYS LUNG ROSE &  
HOLMA, a Hawaii law partnership, GEORGE  
VAN BURKEN, solely in his capacity as  
Foreclosure Commissioner; JOHN DOES 1-50;  
JANE DOES 1-50; DOE PARTNERSHIPS 1-50;  
DOE CORPORATIONS 1-50; DOE LIMITED  
LIABILITY COMPANIES 1-50; DOE ENTITIES  
1-50; AND DOE GOVERNMENTAL UNITS 1-  
50,

Defendants.

CIVIL NO. 11-1-1577-07 (BIA)  
(Foreclosure)

ORDER DENYING KE KAILANI  
DEVELOPMENT, LLC AND MICHAEL J.  
FUCHS' MOTION BASED UPON NEWLY  
DISCOVERED EVIDENCE TO  
DISQUALIFY THE HONORABLE BERT I.  
AYABE FROM ALL PROCEEDINGS IN  
CIVIL NO. 11-1-1577, FILED JUNE 12,  
2012

DATE: July 3, 2012  
TIME: 9:30 a.m.  
JUDGE: Hon. Bert I. Ayabe

No trial date set.






APPROVED AS TO FORM:

---

GARY V. DUBIN  
Attorney for Plaintiffs Ke Kailani Development, LLC and  
Michael J. Fuchs



---

LEX. R. SMITH  
Attorney for Defendants Bays Lung Rose & Holma

---

*Ke Kailani Development, LLC et al. v. Ke Kailani Partners, LLC, et al.*, Civil No. 11-1-1577-07 (BIA),  
Circuit Court of the First Circuit, State of Hawaii: ORDER DENYING KE KAILANI DEVELOPMENT,  
LLC and MICHAEL J. FUCHS MOTION TO DISQUALIFY THE HONORABLE BERT I. AYABE  
FROM ALL PROCEEDINGS IN CIVIL NO. 11-1-1577-07 FILED NOVEMBER 25, 2011

# **EXHIBIT "H"**

STARN • O'TOOLE • MARCUS & FISHER  
A Law Corporation

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SIGNED AND FILED  
APRIL 19, 2013

Attorneys for Defendants KE KAILANI  
PARTNERS, LLC and HAWAII RENAISSANCE  
BUILDERS, LLC.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

KE KAILANI DEVELOPMENT, LLC, a Hawaii  
limited liability company; and MICHAEL J.  
FUCHS,

Plaintiffs,

vs.

KE KAILANI PARTNERS, LLC, a Hawaii  
limited liability company, HAWAII  
RENAISSANCE BUILDERS, LLC, a Delaware  
limited liability company; BAYS LUNG ROSE &  
HOLMA, a Hawaii law partnership, GEORGE  
VAN BUREN, solely in his capacity as  
Foreclosure Commissioner; JOHN DOES 1-50;  
JANE DOES 1-50; DOE PARTNERSHIPS 1-50;  
DOE CORPORATIONS 1-50; DOE LIMITED  
LIABILITY COMPANIES 1-50; DOE ENTITIES  
1-50; AND DOE GOVERNMENTAL UNITS 1-  
50,

Defendants.

CIVIL NO. 11-1-1577-07 (GWBC)  
(Foreclosure)

FINAL JUDGMENT

Honorable Gary W.B. Chang

No trial date set.

**FINAL JUDGMENT**

Pursuant to the (1) ORDER GRANTING IN PART DEFENDANTS KE KAILANI PARTNERS, LLC AND HAWAII RENAISSANCE BUILDERS, LLC'S MOTION TO DISMISS FIRST AMENDED COMPLAINT WITH PREJUDICE AND TO STRIKE JURY DEMAND, FILED ON NOVEMBER 28, 2011 (entered on April 23, 2012); and (2) STIPULATION FOR DISMISSAL WITH PREJUDICE AS TO ALL CLAIMS AGAINST DEFENDANT BAYS LUNG ROSE & HOLMA (entered on January 31, 2013), and in accordance with Hawaii Rules of Civil Procedure Rule 58,

It is hereby ORDERED, ADJUDGED and DECREED, that Final Judgment is hereby entered in favor of Defendants Ke Kailani Partners, LLC and Hawaii Renaissance Builders, LLC, and against Plaintiffs Ke Kailani Development, LLC and Michael J. Fuchs, dismissing with prejudice all claims asserted against them by Plaintiffs against in this action. The claims of Plaintiffs against Bays Lung Rose & Holma have previously been dismissed with prejudice by stipulation of the parties. Any remaining parties and/or claims are dismissed.

All issues and claims have been resolved, and there are no remaining issues and/or parties in this case. This Court expressly directs that this Judgment be entered as a final judgment. Any award of costs shall be determined as provided by law.

**IT IS SO ORDERED AND ADJUDGED** this \_\_\_\_ day of \_\_\_\_\_, 2013


\_\_\_\_\_  
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

\_\_\_\_\_  
GARY VICTOR DUBIN  
FREDERICK J. ARENSMEYER  
Attorneys for Plaintiffs  
KE KAILANI DEVELOPMENT, LLC and  
MICHAEL J. FUCHS

\_\_\_\_\_  
*Ke Kailani Development, LLC et al. v. Ke Kailani Partners, LLC, et al.*, Civil No. 11-1-1577-07  
(GWBC), Circuit Court of the First Circuit, State of Hawaii: **FINAL JUDGMENT**

APPROVED AS TO FORM:



---

LEX R. SMITH  
MARIA Y. WANG  
Attorneys for Defendant  
BAYS LUNG ROSE & HOLMA

---

*Ke Kailani Development, LLC et al. v. Ke Kailani Partners, LLC, et al.*, Civil No. 11-1-1577-07  
(GWBC), Circuit Court of the First Circuit, State of Hawaii: **FINAL JUDGMENT**

# **EXHIBIT "I"**

TLC

FIRST CIRCUIT COURT  
STATE OF HAWAII

2013 AUG 21 PM 1:56

*[Signature]*  
F. DIAKE  
CLERK

STARN • O'TOOLE • MARCUS & FISHER  
A Law Corporation

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Attorneys for Defendants  
KE KAILANI PARTNERS, LLC and HAWAII  
RENAISSANCE BUILDERS, LLC

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KE KAILANI DEVELOPMENT, LLC, a Hawaii  
limited liability company; and MICHAEL J.  
FUCHS,

Plaintiffs,

vs.

KE KAILANI PARTNERS, LLC, a Hawaii  
limited liability company, HAWAII  
RENAISSANCE BUILDERS, LLC, a Delaware  
limited liability company; BAYS LUNG ROSE &  
HOLMA, a Hawaii law partnership, GEORGE  
VAN BUREN, solely in his capacity as  
Foreclosure Commissioner; JOHN DOES 1-50;  
JANE DOES 1-50; DOE PARTNERSHIPS 1-50;  
DOE CORPORATIONS 1-50; DOE LIMITED  
LIABILITY COMPANIES 1-50; DOE ENTITIES  
1-50; AND DOE GOVERNMENTAL UNITS 1-  
50,

CIVIL NO. 11-1-1577-07 (GWBC)  
(Foreclosure)

**ORDER DENYING PLAINTIFFS'**

(A) MOTION FOR REHEARING AND  
RECONSIDERATION AND THE SETTING  
ASIDE OF THE FOLLOWING NONFINAL  
ORDERS AND JUDGMENTS BASED ON  
NEWLY DISCOVERED EVIDENCE,  
SUPERVENING AUTHORITY, AND DUE  
PROCESS:

(1) ORDER DENYING KE KAILANI  
DEVELOPMENT LLC AND MICHAEL J.  
FUCHS' MOTION TO CONSOLIDATE  
TWO RELATED CASES, CIVIL NO. 09-1-  
2523-10 BIA AND CIVIL NO. 11-1-1577-07  
BIA, FILED ON DECEMBER 19, 2011;  
*(caption continued on next page)*

Hearing Dates:

April 30, 2013, May 1, 2013,  
June 14, 17, 2013

JUDGE: Hon. Judge Gary W.B. Chang

No trial date set.

2013 JUN 11 PM 1:55

(2) ORDER GRANTING IN PART DEFENDANTS KE KAILANI PARTNERS, LLC AND HAWAII RENAISSANCE BUILDERS, LLC'S MOTION TO DISMISS FIRST AMENDED COMPLAINT WITH PREJUDICE AND TO STRIKE JURY TRIAL DEMAND, FILED ON NOVEMBER 28, 2011, FILED ON APRIL 23, 2012;

(3) JUDGMENT, FILED ON APRIL 23, 2012;

(4) ORDER DENYING KE KAILANI DEVELOPMENT, LLC AND MICHAEL J. FUCHS' MOTION BASED ON NEWLY DISCOVERED EVIDENCE TO DISQUALIFY THE HONORABLE BERT I. AYABE FROM ALL PROCEEDINGS IN CIVIL NO. 11-1-1577, FILED JUNE 12, 2012, FILED JULY 30, 2012;

(B) MOTION FOR HRCP RULE 62(h) STAY OF THE ENFORCEMENT OF THE DEFICIENCY JUDGMENT ENTERED IN CIVIL NO. 09-1-2523-10 UNTIL ALL RELATED ISSUES IN CIVIL NO. 11-1-1577-07 ARE FULLY ADJUDICATED;

(C) MOTION TO PRESERVE THE RIGHT TO TRIAL BY JURY, TIMELY DEMANDED, ON ALL ISSUES OF MATERIAL FACT IN GENUINE DISPUTE IN CIVIL NO. 11-1-1577-07; AND

(D) NOTICE OF SUBMISSION ACCORDINGLY OF OPPOSITION TO THE ENTRY OF AND "FINAL JUDGMENT" UNTIL THE ABOVE MATTERS CAN BE DISPOSED OF



**ORDER DENYING PLAINTIFFS' (A) MOTION FOR REHEARING AND  
RECONSIDERATION AND THE SETTING ASIDE OF THE FOLLOWING NONFINAL  
ORDERS AND JUDGMENTS BASED ON NEWLY DISCOVERED EVIDENCE,  
SUPERVENING AUTHORITY, AND DUE PROCESS: ETC.**

Plaintiff KE KAILANI DEVELOPMENT LLC and MICHAEL J. FUCHS' "(A) MOTION FOR REHEARING AND RECONSIDERATION AND THE SETTING ASIDE OF THE FOLLOWING NONFINAL ORDERS AND JUDGMENTS BASED ON NEWLY DISCOVERED EVIDENCE, SUPERVENING AUTHORITY, AND DUE PROCESS: (1) ORDER DENYING KE KAILANI DEVELOPMENT LLC AND MICHAEL J. FUCHS' MOTION TO CONSOLIDATE TWO RELATED CASES, CIVIL NO. 09-1-2523-10 BIA AND CIVIL NO. 11-1-1577-07 BIA, FILED ON DECEMBER 19, 2011; (2) ORDER GRANTING IN PART DEFENDANTS KE KAILANI PARTNERS, LLC AND HAWAII RENAISSANCE BUILDERS, LLC'S MOTION TO DISMISS FIRST AMENDED COMPLAINT WITH PREJUDICE AND TO STRIKE JURY TRIAL DEMAND, FILED ON NOVEMBER 28, 2011, FILED ON APRIL 23, 2012; (3) JUDGMENT, FILED ON APRIL 23, 2012; (4) ORDER DENYING KE KAILANI DEVELOPMENT, LLC AND MICHAEL J. FUCHS' MOTION BASED ON NEWLY DISCOVERED EVIDENCE TO DISQUALIFY THE HONORABLE BERT I. AYABE FROM ALL PROCEEDINGS IN CIVIL NO. 11-1-1577, FILED JUNE 12, 2012, FILED JULY 30, 2012; (B) MOTION FOR HRCP RULE 62(h) STAY OF THE ENFORCEMENT OF THE DEFICIENCY JUDGMENT ENTERED IN CIVIL NO. 09-1-2523-10 UNTIL ALL RELATED ISSUES IN CIVIL NO. 11-1-1577-07 ARE FULLY ADJUDICATED; (C) MOTION TO PRESERVE THE RIGHT TO TRIAL BY JURY, TIMELY DEMANDED, ON ALL ISSUES OF MATERIAL FACT IN GENUINE DISPUTE IN CIVIL NO. 11-1-1577-07; AND (D) NOTICE OF SUBMISSION ACCORDINGLY OF OPPOSITION TO THE ENTRY OF AND "FINAL JUDGMENT" UNTIL THE ABOVE MATTERS CAN BE

DISPOSED OF ("*Motion*"), came on for hearing on April 30, 2013, and continued on May 1, 2013, June 14, 2013, and June 17, 2013.

Gary V. Dubin appeared on behalf of Plaintiffs Ke Kailani Development LLC and Michael J. Fuchs. Sharon V. Lovejoy and Andrew J. Lautenbach appeared on behalf of Defendants Ke Kailani Partners, LLC and Hawaii Renaissance Builders, LLC. No other appearances were made.

Having reviewed the subject motion, memoranda, responses, and having heard arguments of counsel, being duly advised of the record herein, and good cause appearing therefore,

THE COURT HEREBY DENIES THE MOTION IN ITS ENTIRETY.

DATED: Honolulu, Hawaii, AUG 29 2013

  
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

\_\_\_\_\_  
GARY V. DUBIN  
Attorney for Plaintiffs KE KAILANI DEVELOPMENT,  
LLC and MICHAEL J. FUCHS

\_\_\_\_\_  
*Ke Kailani Development, LLC et al. v. Ke Kailani Partners, LLC, et al.*, Civil No. 11-1-1577-07 (GWBC), Circuit Court of the First Circuit, State of Hawaii: **ORDER DENYING PLAINTIFFS' (A) MOTION FOR REHEARING AND RECONSIDERATION AND THE SETTING ASIDE OF THE FOLLOWING NONFINAL ORDERS AND JUDGMENTS BASED ON NEWLY DISCOVERED EVIDENCE, SUPERVENING AUTHORITY, AND DUE PROCESS, etc.**


**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing document was duly served on the date first written below by the JEFS Electronic filing system to the following persons:

Terence J. O'Toole, Esq.  
Sharon V. Lovejoy, Esq.  
733 Bishop Street, Suite 1900  
Honolulu, Hawaii 96813  
Telephone: (808) 537-6100

*Attorneys for Appellees  
Ke Kailani Partners, LLC and  
Hawaii Renaissance Builders*

DATED: Honolulu, Hawaii; November 24, 2013.

  
GARY VICTOR DUBIN  
FREDERICK J. ARENSMEYER  
Attorneys for Appellants  
Ke Kailani Development LLC  
and Michael J. Fuchs

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

AUG 21 2012

1:51 o'clock A.M.

*e.g. G. G. G.*  
Clerk, 21<sup>st</sup> Division

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KE KAILANI DEVELOPMENT LLC, a Hawaii limited liability company; and MICHAEL J. FUCHS,	)	CIVIL NO. 11-1-1577-07 (BIA)
	)	(Foreclosure)
	)	
Plaintiffs,	)	ORDER DENYING PLAINTIFFS KE
	)	KAILANI DEVELOPMENT LLC AND
vs.	)	MICHAEL J. FUCHS' NON-HEARING
	)	MOTION, BASED ON MANIFEST
	)	ERROR AND NEWLY DISCOVERED
	)	ADMISSIONS AGAINST INTEREST,
KE KAILANI PARTNERS LLC, a Hawaii	)	FOR RECONSIDERATION AND
limited liability company, HAWAII	)	REHEARING OF THE ENTRY OF THIS
RENAISSANCE BUILDERS LLC, a	)	COURT'S APRIL 23, 2012 (1) ORDER
Delaware limited liability company registered	)	GRANTING IN PART DEFENDANTS
in Hawaii; BAYS DEEVER LUNG ROSE &	)	KE KAILANI PARTNERS, LLC AND
HOLMA, a Hawaii law partnership,	)	HAWAII RENAISSANCE BUILDERS,
GEORGE VAN BUREN, solely in his	)	LLC'S MOTION TO DISMISS FIRST
capacity as Foreclosure Commissioner; JOHN	)	AMENDED COMPLAINT WITH
DOES 1-50; JANE DOES 1-50; DOE	)	PREJUDICE AND TO STRIKE JURY
PARTNERSHIPS 1-50; DOE	)	TRIAL DEMAND FILED ON
CORPORATIONS 1-50; DOE LIMITED	)	NOVEMBER 28, 2011, AND (2)
LIABILITY COMPANIES 1-50; DOE	)	JUDGMENT THEREON
ENTITIES 1-50; AND DOE	)	
GOVERNMENTAL UNITS 1-50,	)	
	)	
Defendants.	)	

ORDER DENYING PLAINTIFFS KE KAILANI DEVELOPMENT LLC AND  
MICHAEL J. FUCHS' NON-HEARING MOTION, BASED ON MANIFEST ERROR  
AND NEWLY DISCOVERED ADMISSIONS AGAINST INTEREST, FOR  
RECONSIDERATION AND REHEARING OF THE ENTRY OF THIS COURT'S  
APRIL 23, 2012 (1) ORDER GRANTING IN PART DEFENDANTS KE KAILANI  
PARTNERS, LLC AND HAWAII RENAISSANCE BUILDERS, LLC'S MOTION TO  
DISMISS FIRST AMENDED COMPLAINT WITH PREJUDICE AND TO STRIKE JURY  
TRIAL DEMAND FILED ON NOVEMBER 28, 2011, AND (2) JUDGMENT THEREON

The Court, having reviewed the subject motion, memoranda, and responses and being duly advised of the record and file herein and for good cause appearing therefore, hereby DENIES Plaintiff's Ke Kekailani Development LLC and Michael J. Fuchs' Non-Hearing Motion, Based on Manifest Error and Newly Discovered Admissions Against Interest, for Reconsideration and Rehearing of the Entry of this Court's Order Granting in Part Motion to Dismiss First Amended Complaint and Judgment Thereon.

DATED: HONOLULU, HAWAII, AUG 21 2012

*Ben A.*  
JUDGE OF THE ABOVE-ENTITLED COURT  


A file-marked copy of this Order was placed in the attorney court jacket on the date of filing to all persons listed below:

GARY VICTOR DUBIN, ESQ.  
FREDERICK J. ARENSMEYER, ESQ.  
DUBIN LAW OFFICES  
Suite 3100, Harbor Court  
55 Merchant Street  
Honolulu, HI 96813  
Attorneys for Plaintiffs KE KAILANI DEVELOPMENT LLC and  
MICHAEL J. FUCHS

TERENCE J. O'TOOLE, ESQ.  
SHARON V. LOVEJOY, ESQ.  
RICHARD J. WALLSGROVE, ESQ.  
STARN O'TOOLE MARCUS & FISHER  
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Honolulu, HI 96813  
Attorneys for Defendants KE KAILANI PARTNERS, LLC and  
HAWAII RENAISSANCE BUILDERS

LEX R. SMITH, ESQ.  
KOBAYASHI SUGITA & GODA  
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Honolulu, HI 96813  
Attorney for Bays Deaver Lung Rose & Holma

GEORGE W. VAN BUREN, ESQ.  
VAN BUREN CAMPBELL & SHIMIZU  
745 Fort Street, Suite 1950  
Honolulu, HI 96813  
Foreclosure Commissioner

No. CAAP-13-0004290

---

**IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII**

---

KE KAILANI DEVELOPMENT LLC,  
a Hawaii limited liability company, and MICHAEL J. FUCHS,

*Plaintiffs-Appellants,*

vs.

KE KAILANI PARTNERS LLC, a Hawaii limited liability company; HAWAII  
RENAISSANCE BUILDERS LLC, a Delaware limited liability company registered in  
Hawaii; BAYS DEEVER LUNG ROSE & HOLMA, a Hawaii law partnership; GEORGE  
VAN BUREN, solely in his capacity,

*Defendants-Appellees,*

and

JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE  
CORPORATIONS 1-50; DOE LIMITED LIABILITY COMPANIES 1-50; DOE ENTITIES  
1-50; AND DOE GOVERNMENTAL UNITS 1-50,

*Defendants.*

---

**On Appeal from the Circuit Court of the First Circuit  
(Civil No. 11-1577-07)**

◆◆◆◆

**CERTIFICATE OF SERVICE**

---

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing document was duly served on the date first written below by the JEFS Electronic filing system to the following persons representing only those Appellees participating in this Appeal:

Terence J. O'Toole, Esq.  
Sharon V. Lovejoy, Esq.  
733 Bishop Street, Suite 1900  
Honolulu, Hawaii 96813  
Telephone: (808) 537-6100

*Attorneys for Appellees  
Ke Kailani Partners, LLC and  
Hawaii Renaissance Builders*

DATED: Honolulu, Hawaii; June 18, 2014.

  
GARY VICTOR DUBIN  
FREDERICK J. ARENSMEYER  
Attorneys for Appellants  
Ke Kailani Development LLC  
and Michael J. Fuchs



**H**

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Intermediate Court of Appeals  
CAAP-13-0004290  
25-NOV-2014  
12:44 PM

NO. CAAP-13-0004290  
IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

---

Ke Kailani Development LLC, a Hawaii limited liability company, and Michael J. Fuchs, Plaintiffs-Appellant, vs. Ke Kailani Partners LLC, a Hawaii limited liability company, Hawaii Renaissance Builders LLC, a Delaware limited liability company registered in Hawaii, Bays Deaver Lung Rose & Holma, a Hawaii law partnership, George Van Buren, solely in his capacity as Foreclosure Commissioner, Defendants-Appellees, and John Does 1-50, Jane Does 1-50, Doe Partnerships 1-50, Doe Corporations 1-50, Doe Limited Liability Companies 1-50, Doe Entities 1-50, and Doe Governmental Units 1-50, Defendants.

---

**NOTICE OF INTERMEDIATE COURT OF APPEALS MERIT PANEL MEMBERS**

TO: Gary V. Dubin  
gdubin@dubinlaw.net

Frederick John Arensmeyer  
farensmeyer@dubinlaw.net

Terence J. O'Toole  
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Sharon V. Lovejoy  
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Andrew James Lautenbach  
alautenbach@starnlaw.com

Lex R. Smith  
lsmith@ksglaw.com

George W. Van Buren  
gvb@vcshawaii.com

Please take notice that the merit panel members for the above-captioned case are:

Honorable Alexa D. M. Fujise  
Honorable Katherine G. Leonard  
Honorable Lisa M. Ginoza

**DATED: Honolulu, Hawai'i, 25-NOV-2014**

/S/ Appellate Clerk



**I**

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Intermediate Court of Appeals  
CAAP-13-0004290  
01-MAR-2016  
09:56 AM

NO. CAAP-13-0004290

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

KE KAILANI DEVELOPMENT, LLC, a Hawaii limited liability company; and MICHAEL J. FUCHS, Plaintiffs-Appellants, v. KE KAILANI PARTNERS LLC, a Hawaii limited liability company; HAWAII RENAISSANCE BUILDERS LLC, a Delaware limited liability company registered in Hawaii; BAYS DEEVER LUNG ROSE & HOLMA, a Hawaii law partnership; GEORGE VAN BUREN, solely in his capacity as Foreclosure Commissioner, Defendants-Appellees, and JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE CORPORATIONS 1-50; DOE LIMITED LIABILITY COMPANIES 1-50; DOE ENTITIES 1-50; and DOE GOVERNMENTAL UNITS 1-50, Defendants

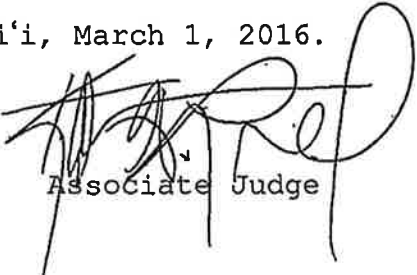
APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 11-1-1577)

CERTIFICATE OF RECUSAL

(By: Leonard, J.)

I hereby recuse myself from sitting in this case.

DATED: Honolulu, Hawaii, March 1, 2016.

  
Associate Judge

**J**

Electronically Filed  
Intermediate Court of Appeals  
CAAP-13-0004290  
01-MAR-2016  
10:34 AM



**Supreme Court Office of the Chief Clerk THE JUDICIARY STATE OF HAWAII**  
417 SOUTH KING STREET ALIOLANI HALE HONOLULU, HAWAII 96813-2902 TELEPHONE (808) 539-4919 FAX (808) 539-4928

**Mark E. Recktenwald**  
CHIEF JUSTICE  
SUPREME COURT OF HAWAII

**Craig H. Nakamura**  
CHIEF JUDGE  
INTERMEDIATE COURT OF APPEALS

**Rochelle R. T. Kau**  
CHIEF CLERK

**Evelyn M. Rimando**  
SUPREME COURT CLERK - SUPREME COURT

**Janice T. Matsumoto**  
SUPREME COURT CLERK - INTERMEDIATE COURT OF APPEALS

### NOTICE OF ASSIGNMENT OF SUBSTITUTE JUDGE

TO: Gary V. Dubin  
gdubin@dubinlaw.net

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farensmeyer@dubinlaw.net

Terence J. O'Toole  
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Sharon V. Lovejoy  
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Andrew James Lautenbach  
alautenbach@starnlaw.com

Lex R. Smith  
lsmith@ksglaw.com

George W. Van Buren  
gvb@vcshawaii.com

FROM: Appellate Clerk  
DATE: 01-MAR-2016  
RE: No. CAAP-13-0004290

Ke Kailani Development LLC, a Hawaii limited liability company, and Michael J. Fuchs, Plaintiffs-Appellant, vs. Ke Kailani Partners LLC, a Hawaii limited liability company, Hawaii Renaissance Builders LLC, a Delaware limited liability company registered in Hawaii, Bays Deaver Lung Rose & Holma, a Hawaii law partnership, George Van Buren, solely in his capacity as Foreclosure Commissioner, Defendants-Appellees, and John Does 1-50, Jane Does 1-50, Doe Partnerships 1-50, Doe Corporations 1-50, Doe Limited Liability Companies 1-50, Doe Entities 1-50, and Doe Governmental Units 1-50, Defendants.

Please take notice that the Honorable Chief Judge Craig Nakamura of the Intermediate Court of Appeals, is assigned to the merit panel in place of Associate Judge Katherine Leonard, recused or disqualified.



**K**

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Intermediate Court of Appeals  
CAAP-13-0004290  
14-MAR-2016  
08:32 AM

CAAP-13-0004290

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

KE KAILANI DEVELOPMENT, LLC,  
a Hawaii limited liability company;  
and MICHAEL J. FUCHS, Plaintiffs-Appellants,

v.

KE KAILANI PARTNERS, LLC, a Hawaii limited liability company;  
HAWAII RENAISSANCE BUILDERS, LLC, a Delaware limited liability  
company registered in Hawaii; BAYS DEEVER LUNG ROSE & HOLMA, a  
Hawaii law partnership; GEORGE VAN BUREN, solely in his capacity  
as Foreclosure Commissioner, Defendants-Appellees,

and

JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE  
CORPORATIONS 1-50; DOE LIMITED LIABILITY COMPANIES 1-50; DOE  
ENTITIES 1-50; and DOE GOVERNMENTAL UNITS 1-50, Defendants

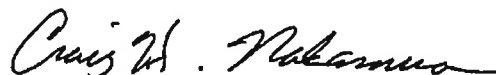
APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 11-1-1577)

CERTIFICATE OF RECUSAL

(By: Nakamura, Chief Judge)

I hereby recuse myself from sitting in this case.

DATED: Honolulu, Hawaii, March 14, 2016.



Chief Judge

**L**

Electronically Filed  
Intermediate Court of Appeals  
CAAP-13-0004290  
14-MAR-2016  
09:10 AM



**Supreme Court Office of the Chief Clerk THE JUDICIARY STATE OF HAWAII**  
417 SOUTH KING STREET ALI'IOLANI HALE HONOLULU, HAWAII 96813-2902 TELEPHONE (808) 539-4919 FAX (808) 539-4928

**Mark E. Recktenwald**  
CHIEF JUSTICE  
SUPREME COURT OF HAWAII

**Craig H. Nakamura**  
CHIEF JUDGE  
INTERMEDIATE COURT OF APPEALS

**Rochelle R. T. Kau**  
CHIEF CLERK

**Evelyn M. Rimando**  
SUPREME COURT CLERK - SUPREME COURT

**Janice T. Matsumoto**  
SUPREME COURT CLERK - INTERMEDIATE COURT OF APPEALS

### NOTICE OF ASSIGNMENT OF SUBSTITUTE JUDGE

TO:

Gary V. Dubin  
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Andrew James Lautenbach  
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Lex R. Smith  
lsmith@ksglaw.com

George W. Van Buren  
gvb@vcshawaii.com

FROM: Appellate Clerk  
DATE: 14-MAR-2016  
RE: No. CAAP-13-0004290

Ke Kailani Development LLC, a Hawaii limited liability company, and Michael J. Fuchs, Plaintiffs-Appellant, vs. Ke Kailani Partners LLC, a Hawaii limited liability company, Hawaii Renaissance Builders LLC, a Delaware limited liability company registered in Hawaii, Bays Deaver Lung Rose & Holma, a Hawaii law partnership, George Van Buren, solely in his capacity as Foreclosure Commissioner, Defendants-Appellees, and John Does 1-50, Jane Does 1-50, Doe Partnerships 1-50, Doe Corporations 1-50, Doe Limited Liability Companies 1-50, Doe Entities 1-50, and Doe Governmental Units 1-50, Defendants.

Please take notice that the Honorable Associate Judge Lawrence Reifurth of the Intermediate Court of Appeals, is assigned to the merit panel in place of Chief Judge Craig Nakamura, recused or disqualified.

**M**

**Rule 77. CIRCUIT COURTS AND CLERKS. \* \* \* \***

**(d) Notice of orders or judgments.** Immediately upon entry of a judgment, or an order for which notice of entry is required by these rules, the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of a judgment or order is required by these rules. In addition, immediately upon entry, the party presenting the judgment or order shall serve a copy thereof in the manner provided in Rule 5. Lack of notice of the entry by the clerk or failure to make such service, does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Hawai‘i Rules of Appellate Procedure. The court may impose appropriate sanctions against any party for failure to give notice in accordance with this rule.

**Rule 4. APPEALS - WHEN TAKEN.**

**(a) Appeals in civil cases.**

(1) TIME AND PLACE OF FILING. When a civil appeal is permitted by law, the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order. \* \* \* \*

(4) EXTENSIONS OF TIME TO FILE THE NOTICE OF APPEAL. \* \* \* \*

**(B) *Requests for extensions of time after expiration of the prescribed time.***

The court or agency appealed from, upon a showing of excusable neglect, may extend the time for filing the notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by subsections (a)(1) through (a)(3) of this Rule. However, no such extension shall exceed 30 days past the prescribed time. Notice of an extension motion filed after the expiration of the prescribed time shall be given to the other parties in accordance with the rules of the court or agency appealed from.

**N**



**Federal Civil Rule 77. Conducting Business; Clerk's Authority; Notice of an Order or Judgment \* \* \* \***

(d) Serving Notice of an Order or Judgment.

(1) *Service.* Immediately after entering an order or judgment, the clerk must serve notice of the entry, as provided in Rule 5(b), on each party who is not in default for failing to appear. The clerk must record the service on the docket. A party also may serve notice of the entry as provided in Rule 5(b).

(2) *Time to Appeal Not Affected by Lack of Notice.* Lack of notice of the entry does not affect the time for appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed, except as allowed by Federal Rule of Appellate Procedure (4)(a).

**Federal Appellate Rule 4. Appeal as of Right**

(a) APPEAL IN A CIVIL CASE. \* \* \* \*

(6) *Reopening the Time to File an Appeal.* The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77 (d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77 (d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

O

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Intermediate Court of Appeals  
CAAP-16-0000209  
22-MAY-2016  
11:52 PM

No. CAAP-16-0000209

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**IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII**

---

JASON SAMUEL KING,  
*Plaintiff-Appellee,*

vs.

AVRAHAM ELKAYAM and DAFNA ELKAYAM,  
*Defendants-Appellants,*

and

THE BANK OF NEW YORK MELLON, a New York corporation, AS TRUSTEE FOR THE BENEFIT OF CWMBS, INC. AND CHL MORTGAGE PASS-THROUGH TRUST 2007-12 MORTGAGE PASS THROUGH CERTIFICATES, SERIES 2007-12; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., solely as nominee for FIRST MAGNUS FINANCIAL CORPORATION; BANK OF AMERICA CORPORATION, a Delaware corporation; STATE OF HAWAII, DEPARTMENT OF TAXATION; JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE CORPORATIONS 1-50; DOE ENTITLES 1-50; and DOE GOVERNMENTAL ENTITIES 1-50, DOES 1 THROUGH 20, inclusive,

Defendants.

---

**On Appeal from the Circuit Court of the Second Circuit  
(Civil No. 10-1-0589(2) -- The Honorable Peter T. Cahill, Presiding)**

◆◆◆◆

**APPELLANTS' OPPOSITION TO MOTION TO DISMISS**

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## APPELLANTS' OPPOSITION TO MOTION TO DISMISS

COME NOW Appellants, by and through their undersigned counsel, and hereby oppose Plaintiff/Appellees' Motion To Dismiss, as follows:

1. On March 21, 2016 Appellants filed their first Notice of Appeal (Appeal No. CAAP-16-0000209) with respect to three decisions below:

a. Order Granting Plaintiff's Motion for Confirmation of Foreclosure Sale, filed February 17, 2016 (Record, Part 3, pages 69-75),

b. Order Denying Motion for Relief from Judgment or Order Under Rule 60, filed February 17, 2016 (Record, Part 3, pages 76-79), and

c. Judgment [Regarding Confirmation] (Record, Part 3, pages 85-87), filed February 23, 2016.

2. The undersigned never received notice of the filing of the above three Orders and Judgment until the time to appeal the entry of the Order Denying Motion for Relief from Judgment or Order Under Rule 60, after February 17, 2016 when the time to appeal the Order denying reconsideration, a post-judgment order, had expired.


3. The undersigned therefore immediately, upon finding out from Ho'ohiki that all three were already filed, which I had been continuously monitoring, but the Second Circuit does not timely post on Ho'ohiki, filed a motion in the Circuit Court to extend the deadline for appealing the Order denying reconsideration, as set forth in Exhibit "A" which includes the undersigned's declaration, assuming that the extension would result in that premature appeal becoming timely, but was abruptly denied an extension, as set forth in Exhibit "B".

4. The undersigned has now appealed that extension denial (Appeal No. CAAP-16-0000384), the second Appeal.

5. The Motion To Dismiss the entire first Appeal is mistaken in that the Order confirming sale was timely appealed since the Judgment thereon was not entered until February 23, 2016 rendering the deadline to appeal the confirmation of sale March 24, 2016, whereas the first Notice of Appeal was therefore timely filed on March 21, 2016.

6. And with respect to the February 17, 2016 Order denying reconsideration, the preferred alternative procedure it is respectfully suggested would be to consolidate the first and second Appeals.

DATED: Honolulu, Hawaii; May 22, 2016.

  
GARY VICTOR DUBIN  
FREDERICK J. ARENSMEYER  
Attorneys for Defendants Avraham  
Elkayam and Dafna Elkayam

*Gary Victor Dubin 3181*  
*Frederick J. Arensmeyer 8471*  
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E-Mail: [farensmeyer@dubinlaw.net](mailto:farensmeyer@dubinlaw.net)  
*Attorneys for Appellants*

---

A

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Email: gdubin@dubinlaw.net  
Email: farensmeier@dubinlaw.net

Appearing Attorneys for Defendants  
Avraham Elkayam and Dafna Elkayam

Ex Officio Clerk  
Circuit Court  
CLEAN APPELLATE COURTS  
STATE OF HAWAII

2016 MAR 21 PM 4:01

FILED

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

JASON SAMUEL KING,

Plaintiff,

vs.

AVRAHAM ELKAYAM; DAFNA  
ELKAYAM; THE BANK OF NEW YORK  
MELLON, a New York corporation, AS  
TRUSTEE FOR THE BENEFIT OF  
CWMBS, INC. AND CHL MORTGAGE  
PASS-THROUGH TRUST 2007-12  
MORTGAGE PASS THROUGH  
CERTIFICATES, SERIES 2007-12;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., solely  
as nominee for FIRST MAGNUS  
FINANCIAL CORPORATION; BANK OF  
AMERICA CORPORATION, a Delaware  
corporation; STATE OF HAWAII,  
DEPARTMENT OF TAXATION; JOHN  
DOES 1-50; JANE DOES 1-50; DOE  
PARTNERSHIPS 1-50; DOE  
CORPORATIONS 1-50; DOE ENTITLES  
1-50; and DOE GOVERNMENTAL  
ENTITIES 1-50,

Defendants.

) CIVIL NO. 10-1-0589 (2)  
) (Foreclosure)

) NONHEARING MOTION FOR ORDER  
) EXTENDING DEADLINE IN WHICH TO  
) APPEAL PURSUANT TO RULE 4(a)(4)(B)  
) OF THE HAWAII RULES OF CIVIL APPELLATE  
) PROCEDURE; DECLARATION OF GARY  
) VICTOR DUBIN; EXHIBITS 1 AND 2;  
) NOTICE OF MOTION; CERTIFICATE OF  
) SERVICE

) Nonhearing Motion  
) (The Honorable Peter T. Cahill)



**NONHEARING MOTION FOR ORDER EXTENDING DEADLINE IN WHICH TO  
APPEAL PURSUANT TO RULE 4(a)(4)(B) OF THE HAWAII RULES OF CIVIL  
PROCEDURE**

---

COME NOW Defendants AVRAHAM ELKAYAM and DAFNA ELKAYAM,  
pursuant to Rule 4(a)(4)(B) of the Hawaii Rules of Civil Procedure, and hereby requests  
the above entitled relief for the reasons set forth in the Declaration of Gary Victor Dubin.

DATED: Honolulu, Hawaii; March 21, 2016.



---

GARY VICTOR DUBIN  
FREDERICK J. ARENSMEYER  
Attorneys for Defendants Avraham  
Elkayam and Dafna Elkayam

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

JASON SAMUEL KING,	)	CIVIL NO. 10-1-0589 (2)
	)	
Plaintiff,	)	DECLARATION OF GARY VICTOR
	)	DUBIN
vs.	)	
	)	
AVRAHAM ELKAYAM; DAFNA	)	
ELKAYAM; THE BANK OF NEW YORK	)	
MELLON, a New York corporation, AS	)	
TRUSTEE FOR THE BENEFIT OF	)	
CWMBS, INC. AND CHL MORTGAGE	)	
PASS-THROUGH TRUST 2007-12	)	
MORTGAGE PASS THROUGH	)	
CERTIFICATES, SERIES 2007-12;	)	
MORTGAGE ELECTRONIC	)	
REGISTRATION SYSTEMS, INC., solely	)	
as nominee for FIRST MAGNUS	)	
FINANCIAL CORPORATION; BANK OF	)	
AMERICA CORPORATION, a Delaware	)	
corporation; STATE OF HAWAII,	)	
DEPARTMENT OF TAXATION; JOHN	)	
DOES 1-50; JANE DOES 1-50; DOE	)	
PARTNERSHIPS 1-50; DOE	)	
CORPORATIONS 1-50; DOE ENTITLES	)	
1-50; and DOE GOVERNMENTAL	)	
ENTITIES 1-50,	)	
	)	
Defendants.	)	

---

**DECLARATION OF GARY VICTOR DUBIN**

I, GARY VICTOR DUBIN, DECLARE:

1. Declarant is an attorney licensed to practice law in the Courts of the State of Hawaii, and represents the Moving Defendants herein.

2. The Hawaii Rules of Appellate Procedure provide that notices of appeal must be filed within thirty days of the entry of an appealable decision, but Rule 4(a)(4)(B) allows for late filing upon approved motion granted by the lower court provided the

notice of appeal is filed within no more than an additional thirty days past the original due date.

3. Rule 23(b) of the Rules of the Circuit Courts of the State of Hawaii additionally establishes an orderly procedure for the settlement of judgments, decrees, and orders preceding the starting of the time allowed in which to file a notice of appeal, specifically requiring that a form of proposed judgment, decree, or order must be submitted to the lower court at which time notice of that submission must be served on all parties so that they have an opportunity to object.

4. In this case, although Plaintiff's counsel submitted proposed orders and judgments to the undersigned, as shown in Exhibits 1 and 2, Plaintiff's counsel appears to have a mistaken interpretation of Circuit Rule 23, for he never notified the undersigned of his subsequent submission of same to this Court.

5. Nor was the undersigned ever served copies of the orders and judgment eventually filed by this Court, which appears to be a systemic problem with the Second Circuit Clerk's Office, as was the case recently when none of the counsel in another case in this Court received filed copies of numerous orders and judgments in Civil No. 13-1-0283 (3) until just after the time to file a notice of appeal had expired.

6. In this case, the undersigned has not received any filed orders and filed judgment to this day, and just today by checking Ho'ohiki discovered that the orders and judgment sought to be appealed in this case by the Moving Defendants were filed on February 17, 2016, and thus the time to appeal expired one court day ago, on Friday March 18, 2016, necessitating the filing of this Motion today *ex officio*.

7. And pursuant to Appellate Rule 4(a)(4)(B), this Court needs to enter an Order allowing additional time for the filing of a notice of appeal so that a notice of appeal can be filed **before April 18, 2016** (the prior Sunday excluded in the computation).

I declare under penalty of law that the foregoing is true and correct. Executed at Honolulu, Hawaii, on March 21, 2016.



GARY VICTOR DUBIN

# CAIN & HERREN

A LAW CORPORATION

David W. Cain  
Benard M. Herren  
Michael J. Collins  
Marie J. Kosegarten  
Lauren Sharon  
Brienne L.O. Wong Leong

2141 WEST VINEYARD STREET  
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January 22, 2016

Gary Dubin, Esq.  
DUBIN LAW OFFICES  
Suite 3100, Harbor Court  
55 Merchant Street  
Honolulu, Hawaii 96813

RE: Jason King v. Avraham Elkayam, et al.  
Civil No. 10-1-589(2)  
Rule 23 Proposed Order

Dear Mr. Dubin:

At the hearing in the above referenced case on January 20, 2016, I was ordered to prepare a written order formalizing the decisions made by the Court. I am proposing to submit the enclosed:

- (1) ORDER GRANTING PLAINTIFF'S MOTION FOR CONFIRMATION OF FORECLOSURE SALE, ALLOWANCE OF COSTS, COMMISSIONS AND FEES, DISTRIBUTION OF PROCEEDS, DIRECTING CONVEYANCE AND FOR WRIT OF POSSESSION/EJECTMENTS; WRIT OF POSSESSION; JUDGMENT FOR POSSESSION & NOTICE OF ENTRY OF JUDGMENT FOR POSSESSION;
- (2) ORDER HOLDING MOTION TO CLARIFY AS MOOT; and
- (3) ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT OR ORDER UNDER RULE 60.

If the proposed forms meet your approval, please sign where indicated and return them to our office for filing with the Court.

As an alternative to submitting competing proposed orders, if there are any changes you feel are appropriate, please let me know. I would be happy to consider any suggested changes.

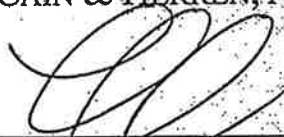
①

Please be advised that pursuant to Rule 23 of the Rules of the Circuit Courts of the State of Hawaii, if we do not receive the executed order or any proposed changes from you within 5 days, we will be submitting our proposed Order to the Court for review and the Judge's signature.

Thank you for your prompt attention and cooperation in this matter.

Sincerely,

CAIN & HERREN, ALC

A handwritten signature in black ink, appearing to be 'M. Collins', written over a horizontal line.

Michael J. Collins, Esq.

*Attorneys for Plaintiff Jason Samuel King*

**CAIN & HERREN**  
A LAW CORPORATION

*David W. Cain  
Benard M. Herren  
Michael J. Collins  
Marie J. Kosegarten  
Lauren Sharon  
Brianna L.O. Wong Leong*

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Email  
[law@cainandherren.com](mailto:law@cainandherren.com)

February 4, 2016

Gary Robert  
ATTORNEY AT LAW  
808 Wainee Street, #201  
Lahaina, Hawaii 96761

Gary Dubin, Esq.  
DUBIN LAW OFFICES  
Suite 3100, Harbor Court  
55 Merchant Street  
Honolulu, Hawaii 96813

Charles R. Prather  
RCO Hawaii, LLC  
900 Fort Street Mall, Suite 800  
Honolulu, Hawaii 96813

RE: Jason King v. Avraham Elkayam, et al., Civil No. 10-1-589(2), Rule 23 Proposed Order

Gentlemen:

I am proposing to submit the enclosed:

1. Writ Of Possession/Order and;
2. Judgment.

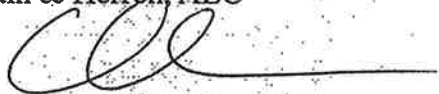
If the proposed forms meet your approval, please sign where indicated and return them to our office for filing with the Court.

As an alternative to submitting competing proposed orders, if there are any changes you feel are appropriate, please let me know. I would be happy to consider any suggested changes.

Please be advised that pursuant to Rule 23 of the Rules of the Circuit Courts of the State of Hawaii, if we do not receive the executed documents or any proposed changes from you within 5 days, we will be submitting the above documents to the Court for review and the Judge's signature.

Thank you for your prompt attention and cooperation in this matter.

Sincerely,  
Cain & Herren, ALC

A handwritten signature in black ink, appearing to be 'Michael J. Collins', written over a horizontal line.

Michael J. Collins, Esq.  
*Attorneys for Plaintiff Jason Samuel King*

/bb

*Enclosures*



IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

JASON SAMUEL KING,

Plaintiff,

vs.

AVRAHAM ELKAYAM; DAFNA  
ELKAYAM; THE BANK OF NEW YORK  
MELLON, a New York corporation, AS  
TRUSTEE FOR THE BENEFIT OF  
CWMBS, INC. AND CHL MORTGAGE  
PASS-THROUGH TRUST 2007-12  
MORTGAGE PASS THROUGH  
CERTIFICATES, SERIES 2007-12;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., solely  
as nominee for FIRST MAGNUS  
FINANCIAL CORPORATION; BANK OF  
AMERICA CORPORATION, a Delaware  
corporation; STATE OF HAWAII,  
DEPARTMENT OF TAXATION; JOHN  
DOES 1-50; JANE DOES 1-50; DOE  
PARTNERSHIPS 1-50; DOE  
CORPORATIONS 1-50; DOE ENTITLES  
1-50; and DOE GOVERNMENTAL  
ENTITIES 1-50,

Defendants.

) CIVIL NO. 10-1-0589 (2)

) NOTICE OF MOTION

**NOTICE OF MOTION**

To:

Michael J. Collins, Esq.  
2141 W. Vineyard Street  
Wailuku, Hawaii 96793  
*Attorney for Plaintiff*  
*Jason Samuel King*

Gary Robert, Esq.  
808 Waivee Street, #201  
Lahaina, Hawaii 96761  
*Commissioner*


Charles R. Prather, Esq.  
900 Fort Street Mall, Suite 800  
Honolulu, Hawaii 96813  
*Attorney for Defendant*  
*Bank of New York Mellon*

PLEASE TAKE NOTICE that the above-identified Motion has been submitted to the Honorable Peter T. Cahill of the Above-Entitled Court as a Non-Hearing Motion.

Any response to said Motion must be filed with the Court and served no later than ten (10) days after the date of the Certificate of Service attached.

If service of this Motion has been made upon you by mail pursuant to Rule 6(e) of the Hawaii Rules of Civil Procedure, any response to said Motion must be filed with the Court and served no later than twelve (12) days after the date of said Certificate of Service.

DATED: Honolulu, Hawaii; March 21, 2016.

  
\_\_\_\_\_  
GARY VICTOR DUBIN  
FREDERICK J. ARENSMEYER  
Attorneys for Defendants Avraham  
Elkayam and Dafna Elkayam

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

JASON SAMUEL KING,	)	CIVIL NO. 10-1-0589 (2)
	)	
Plaintiff,	)	CERTIFICATE OF SERVICE
	)	
vs.	)	
	)	
AVRAHAM ELKAYAM; DAFNA	)	
ELKAYAM; THE BANK OF NEW YORK	)	
MELLON, a New York corporation, AS	)	
TRUSTEE FOR THE BENEFIT OF	)	
CWMBS, INC. AND CHL MORTGAGE	)	
PASS-THROUGH TRUST 2007-12	)	
MORTGAGE PASS THROUGH	)	
CERTIFICATES, SERIES 2007-12;	)	
MORTGAGE ELECTRONIC	)	
REGISTRATION SYSTEMS, INC., solely	)	
as nominee for FIRST MAGNUS	)	
FINANCIAL CORPORATION; BANK OF	)	
AMERICA CORPORATION, a Delaware	)	
corporation; STATE OF HAWAII,	)	
DEPARTMENT OF TAXATION; JOHN	)	
DOES 1-50; JANE DOES 1-50; DOE	)	
PARTNERSHIPS 1-50; DOE	)	
CORPORATIONS 1-50; DOE ENTITLES	)	
1-50; and DOE GOVERNMENTAL	)	
ENTITIES 1-50,	)	
	)	
Defendants.	)	

---

**CERTIFICATE OF SERVICE**

I hereby certify that I duly served a copy of the foregoing document on the day first written below by U.S. Mail to the following persons:

Michael J. Collins, Esq.  
2141 W. Vineyard Street  
Wailuku, Hawaii 96793

*Attorney for Plaintiff  
Jason Samuel King*

Gary Robert, Esq.  
808 Wainee Street, #201  
Lahaina, Hawaii 96761

*Commissioner*

Charles R. Prather, Esq.  
900 Fort Street Mall, Suite 800  
Honolulu, Hawaii 96813

*Attorney for Defendant  
Bank of New York Mellon*

DATED: Honolulu, Hawaii; March 21, 2016.



---

GARY VICTOR DUBIN  
FREDERICK J. ARENSMEYER  
Attorneys for Defendants Avraham  
Elkayam and Dafna Elkayam

**B**

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Email: farensmeier@dubinlaw.net

Appearing Attorneys for Defendants  
Avraham Elkayam and Dafna Elkayam

FILED

2016 APR -6 PM 2: 18

M. FERNANDEZ-KAHAKAUWILA, CLERK  
SECOND CIRCUIT COURT  
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

JASON SAMUEL KING,  
  
Plaintiff,

vs.

AVRAHAM ELKAYAM; DAFNA  
ELKAYAM; THE BANK OF NEW YORK  
MELLON, a New York corporation, AS  
TRUSTEE FOR THE BENEFIT OF  
CWMBS, INC. AND CHL MORTGAGE  
PASS-THROUGH TRUST 2007-12  
MORTGAGE PASS THROUGH  
CERTIFICATES, SERIES 2007-12;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., solely  
as nominee for FIRST MAGNUS  
FINANCIAL CORPORATION; BANK OF  
AMERICA CORPORATION, a Delaware  
corporation; STATE OF HAWAII,  
DEPARTMENT OF TAXATION; JOHN  
DOES 1-50; JANE DOES 1-50; DOE  
PARTNERSHIPS 1-50; DOE  
CORPORATIONS 1-50; DOE ENTITLES  
1-50; and DOE GOVERNMENTAL  
ENTITIES 1-50,

Defendants.

) CIVIL NO. 10-1-0589 (2)  
) (Foreclosure)

) ORDER EXTENDING DEADLINE IN  
) WHICH TO APPEAL PURSUANT TO  
) RULE 4(a)(4)(B) OF THE HAWAII RULES  
) OF APPELLATE PROCEDURE

**DENIED**

) Nonhearing Motion  
) (The Honorable Peter T. Cahill)

**DENIED**

**ORDER EXTENDING DEADLINE IN WHICH TO APPEAL PURSUANT TO RULE  
4(a)(4)(B) OF THE HAWAII RULES OF APPELLATE PROCEDURE**

---

Upon reviewing Defendants Avraham Elkayam and Dafna Elkayam's above-referenced "Nonhearing Motion For Order Extending Deadline In Which To Appeal Pursuant To Rule 4(a)(4)(B) Of The Hawaii Rules Of Appellate Procedure," and good cause appearing therefor:

IT IS HEREBY ORDERED that the Motion is GRANTED, and that pursuant to Rule 4(a)(4)(B) of the Hawaii Rules of Appellate Procedure the time in which to file a Notice of Appeal from this Court's (1) Order Granting Plaintiff's Motion for Confirmation of Foreclosure Sale, filed February 17, 2016, and (2) Order Denying Motion for Relief from Judgment or Order Under Rule 60, February 17, 2016 is hereby extended thirty days from March 18, 2016 to April 18, 2016 (the prior weekend excluded in the computation).

IT IS SO ORDERED.

APR - 6 2016

DATED: Wailuku, Hawaii; \_\_\_\_\_.

/s/ DENIED - PTC  
JUDGE OF THE ABOVE-ENTITLED COURT

---

JASON SAMUEL KING V. THE BANK OF NEW YORK MELLON, A NEW YORK CORPORATION, AS TRUSTEE FOR THE BENEFIT OF CWMBS, INC. AND CHL MORTGAGE PASS-THROUGH TRUST 2007-12 MORTGAGE PASS THROUGH CERTIFICATES, SERIES 2007-12, ET AL.; CIVIL NO. 10-1-0589 (2); ORDER EXTENDING DEADLINE IN WHICH TO APPEAL PURSUANT TO RULE 4(a)(4)(B) OF THE HAWAII RULES OF APPELLATE PROCEDURE.

No. CAAP-16-0000209

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**IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII**

---

JASON SAMUEL KING,

*Plaintiff-Appellee,*

vs.

AVRAHAM ELKAYAM and DAFNA ELKAYAM,

*Defendants-Appellants,*

and

THE BANK OF NEW YORK MELLON, a New York corporation, AS TRUSTEE FOR THE BENEFIT OF CWMBS, INC. AND CHL MORTGAGE PASS-THROUGH TRUST 2007-12 MORTGAGE PASS THROUGH CERTIFICATES, SERIES 2007-12; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., solely as nominee for FIRST MAGNUS FINANCIAL CORPORATION; BANK OF AMERICA CORPORATION, a Delaware corporation; STATE OF HAWAII, DEPARTMENT OF TAXATION; JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE CORPORATIONS 1-50; DOE ENTITLES 1-50; and DOE GOVERNMENTAL ENTITIES 1-50, DOES 1 THROUGH 20, inclusive,

Defendants.

---

**On Appeal from the Circuit Court of the Second Circuit  
(Civil No. 10-1-0589(2) -- The Honorable Peter T. Cahill, Presiding)**

◆◆◆◆

**CERTIFICATE OF SERVICE**

---



**CERTIFICATE OF SERVICE**

I hereby certify that I duly served a copy of the foregoing document on the day first written below by the Court's JEFS System to all appearing parties below if registered and otherwise by U.S. Mail:

Michael J. Collins, Esq.  
2141 W. Vineyard Street  
Wailuku, Hawaii 96793

*Attorney for Plaintiff  
Jason Samuel King*


Gary Robert, Esq.  
808 Wainee Street, #201  
Lahaina, Hawaii 96761

*Commissioner*

Charles R. Prather, Esq.  
900 Fort Street Mall, Suite 800  
Honolulu, Hawaii 96813

*Attorney for Defendant  
Bank of New York Mellon*

DATED: Honolulu, Hawaii; May 22, 2016.

  
\_\_\_\_\_  
GARY VICTOR DUBIN  
FREDERICK J. ARENSMEYER  
Attorneys for Defendants Avraham  
Elkayam and Dafna Elkayam

**P**

Electronically Filed  
Supreme Court  
SCRU-10-0000012  
07-MAR-2016  
09:50 AM

SCRU-10-0000012

IN THE SUPREME COURT OF THE STATE OF HAWAII

---

In the Matter of the  
HAWAII RULES OF APPELLATE PROCEDURE

---

ORDER AMENDING RULE 4 OF THE  
HAWAII RULES OF APPELLATE PROCEDURE

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

IT IS HEREBY ORDERED that Rule 4 of the Hawai'i Rules of Appellate Procedure is amended, effective July 1, 2016, as follows (deleted material is bracketed and stricken; new material is underscored):

**Rule 4. APPEALS - WHEN TAKEN.**

**(a) Appeals in civil cases.**

(1) **TIME AND PLACE OF FILING.** When a civil appeal is permitted by law, the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order.

A motion for leave to file an interlocutory appeal from an order of the circuit court must be filed within 30 days of the court's entry of the order. If such a motion is filed and granted, then the notice of appeal shall be filed within 30 days after entry of the circuit court's order granting permission for leave to file an interlocutory appeal.

Unless filed electronically, as required by Rule 25 of these Rules and Rules 2.2 and 4.1 of the Hawai'i Electronic Filing and Services Rules, the notice of appeal shall be filed with the clerk of the court or agency from which the

appeal is taken. If a notice of appeal is mistakenly submitted to the appellate clerk, the appellate clerk shall note on it the date of receipt and shall electronically file the notice of appeal. The date of receipt by the appellate clerk shall be deemed to be the date the notice of appeal was filed with the clerk of the court or agency appealed from.

When filed electronically, the notice of appeal shall be filed in the appellate case created for that appeal. A notice of appeal filed through JEFS or JIMS is deemed filed with the clerk of the court or agency appealed from.

\*\*\*

(3) TIME TO APPEAL AFFECTED BY POST- JUDGMENT MOTIONS. If any party files a timely motion for judgment as a matter of law, to amend findings or make additional findings, for a new trial, to reconsider, alter or amend the judgment or order, or for attorney's fees or costs, and court or agency rules specify the time by which the motion shall be filed, then the time for filing the notice of appeal is extended for all parties until 30 days after entry of an order disposing of the motion.~~[, provided, that the failure]~~ The presiding court or agency in which the motion was filed shall [to] dispose of any such post-judgment motion by entering an order [entered] upon the record within 90 days after the date the motion was filed [shall constitute a denial of the motion]. If the court or agency fails to enter an order on the record, then, within 5 days after the 90th day, the clerk of the relevant court or agency shall notify the parties that, by operation of this Rule, the post-judgment motion is denied and that any orders entered thereafter shall be a nullity. The time of appeal shall run from the date of entry of the court or agency's order disposing of the post-judgment motion, if the order is entered within the 90 days, or from the filing date of the clerk's notice to the parties that the post-judgment motion is denied pursuant to the operation of the Rule.

The notice of appeal shall be deemed to appeal the disposition of all post-judgment motions that are timely filed after entry of the judgment or order.

The 90-day period shall be computed as provided in Rule 26 of these Rules.

\*\*\*

**(b) Appeals in criminal cases.**

(1) TIME AND PLACE OF FILING. In a criminal case, the notice of appeal shall be filed within 30 days after entry of the judgment or order appealed from.

A motion for leave to file an interlocutory appeal from an order of the circuit court must be filed within 30 days of the court's entry of the order. If such a motion is filed and granted, then the notice of appeal shall be filed within 30 days after entry of the circuit court's order granting permission for leave to file an interlocutory appeal.

Unless filed electronically, as required by Rule 25 of these Rules and Rules 2.2 and 4.1 of the Hawai'i Electronic Filing and Service Rules, the notice of appeal shall be filed with the clerk of the court from which the appeal is taken. If a notice of appeal is mistakenly submitted to the appellate clerk, the appellate clerk shall note on it the date of receipt and shall electronically file the notice of

appeal. The date of the receipt by the appellate clerk shall be deemed to be the date the notice of appeal was filed with the clerk of the court appealed from.

When filed electronically, the notice of appeal shall be filed in the appellate case created for that appeal. A notice of appeal filed through JEFS or JIMS is deemed filed with the clerk of the court appealed from.

\*\*\*

DATED: Honolulu, Hawai'i, March 7, 2016.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson



No. SCWC-13-0004290

---

---

IN THE SUPREME COURT OF THE STATE OF HAWAII

---

KE KAILANI DEVELOPMENT LLC,  
a Hawaii limited liability company, and MICHAEL J. FUCHS,

*Plaintiffs-Appellants/Petitioners,*

vs.

KE KAILANI PARTNERS LLC, a Hawaii limited liability company; HAWAII  
RENAISSANCE BUILDERS LLC, a Delaware limited liability company registered in  
Hawaii; BAYS DEEVER LUNG ROSE & HOLMA, a Hawaii law partnership; GEORGE  
VAN BUREN, solely in his capacity,

*Defendants-Appellees/Respondents,*

and

JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE  
CORPORATIONS 1-50; DOE LIMITED LIABILITY COMPANIES 1-50; DOE ENTITIES  
1-50; AND DOE GOVERNMENTAL UNITS 1-50,

*Defendants.*

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On Petition for a Writ of Certiorari  
To the Intermediate Court of Appeals of the State of Hawaii  
Case No. CAAP-13-0004290

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**CERTIFICATE OF SERVICE**

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing document was duly served on the date first written below by the JEFS Electronic filing system to the following persons representing only those Appellees participating in this Appeal:

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DATED: Honolulu, Hawaii; May 23, 2016.

  
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