Electronically Filed
Intermediate Court of Appeals
CAAP-18-0000578
10-DEC-2018
01:53 PM

CAAP NO. 18-0000578

IN THE INTERMEDIATE COURT OF APPEALS

STATE OF HAWAI'I

OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, OCEAN RESORT VILLAS NORTH VACATION OWNERS ASSOCIATION, VIC H. HENRY, and PETER A. BAGATELOS,	)	CIVIL NO. No. 13-1-0848(2) (PTC) (Other Civil Action)
	)	CAAP-18-0000578
	)	APPELLANT COUNTY OF MAUI'S AND MAUI COUNTY COUNCIL'S

[CAPTION CONTINUED ON NEXT PAGE]

RESPONDENTS-PLAINTIFFS/APPELLEES' RESPONSE TO MOTION OF TAX FOUNDATION OF HAWAII FOR LEAVE TO FILE AMICUS CURIAE BRIEF, FILED ON DECEMBER 3, 2018

CERTIFICATE OF SERVICE

McCORRISTON MILLER
MUKAI MacKINNON LLP

LISA W. CATALDO #6159-0
BECKY T. CHESTNUT #7756-0
Five Waterfront Plaza, 4th Floor
500 Ala Moana Boulevard
Honolulu, Hawai'i 96813
Telephone No.: (808) 529-7300
Facsimile No.: (808) 524-8293
Email: cataldo@m4law.com;
chestnut@m4law.com

Attorneys for Respondents-Plaintiffs/Appellees OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION; OCEAN RESORT VILLAS NORTH VACATION OWNERS ASSOCIATION; VIC H. HENRY; and PETER A. BAGATELOS

Plaintiffs/Appellees, vs. COUNTY OF MAUI and MAUI COUNTY COUNCIL, Defendants/Appellants.	NOTICE OF APPEAL FROM **1)** ORDER CERTIFYING FOR INTERLOCUTORY APPEAL THE FINDINGS OF FACT CONCLUSIONS OF LAW; [ILLEGALITY] ORDER, FILED MARCH 23, 2018, PURSUANT TO HAWAI'I REVISED STATUTES SECTION 641-1(b) AND STAYING PROCEEDINGS UNDER HAWAI'I RULES OF CIVIL PROCEDURE RULE 62(d) AND (e), **2)** ORDER CERTIFYING FOR INTERLOCUTORY APPEAL COUNTS V, VI, VII, AND VIII OF THE SECOND AMENDED COMPLAINT, FILED AUGUST 12, 2016, PURSUANT TO HAWAI'I RULES OF CIVIL PROCEDURE RULE 54(b), AND STAYING PROCEEDINGS UNDER HAWAI'I RULES OF CIVIL PROCEDURE RULE 62(d) AND (e), and **3)** FINAL JUDGMENT ON COUNTS V, VI, VII, AND VIII OF THE SECOND AMENDED COMPLAINT FILED ON AUGUST 12, 2016 Second Circuit Court Judge: Honorable Peter T. Cahill

CAAP NO. 18-0000578

IN THE INTERMEDIATE COURT OF APPEALS

STATE OF HAWAI‘I

OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, OCEAN RESORT VILLAS NORTH VACATION OWNERS ASSOCIATION, VIC H. HENRY, and PETER A. BAGATELOS, Plaintiffs/Appellees, vs. COUNTY OF MAUI and MAUI COUNTY COUNCIL, Defendants/Appellants.	CIVIL NO. No. 13-1-0848(2) (PTC) (Other Civil Action) CAAP-18-0000578 APPELLANT COUNTY OF MAUI'S AND MAUI COUNTY COUNCIL'S NOTICE OF APPEAL FROM **1)** ORDER CERTIFYING FOR INTERLOCUTORY APPEAL THE FINDINGS OF FACT CONCLUSIONS OF LAW; [ILLEGALITY] ORDER, FILED MARCH 23, 2018, PURSUANT TO HAWAI‘I REVISED STATUTES SECTION 641-1(b) AND STAYING PROCEEDINGS UNDER HAWAI‘I RULES OF CIVIL PROCEDURE RULE 62(d) AND (e), **2)** ORDER CERTIFYING FOR INTERLOCUTORY APPEAL COUNTS V, VI, VII, AND VIII OF THE SECOND AMENDED COMPLAINT, FILED AUGUST 12, 2016, PURSUANT TO HAWAI‘I RULES OF CIVIL PROCEDURE RULE 54(b), AND STAYING PROCEEDINGS UNDER HAWAI‘I RULES OF CIVIL PROCEDURE RULE 62(d) AND (e), and **3)** FINAL JUDGMENT ON COUNTS V, VI, VII, AND VIII OF THE SECOND AMENDED COMPLAINT FILED ON AUGUST 12, 2016 Second Circuit Court Judge: Honorable Peter T. Cahill

RESPONDENTS-PLAINTIFFS/APPELLEES' RESPONSE TO MOTION OF TAX FOUNDATION OF HAWAII FOR LEAVE TO FILE AMICUS CURIAE BRIEF, FILED ON DECEMBER 3, 2018

Pursuant to Rules 27(a) and 28(g) of the Hawai'i Rules of Appellate Procedure, Respondents-Plaintiffs/Appellees Ocean Resort Villas Vacation Owners Association; Ocean Resort Villas North Vacation Owners Association; Vic H. Henry; and Peter A. Bagatelos (collectively, "Respondents")—Plaintiffs below and Appellees in the pending appeal in this matter—respond to the Motion of Tax Foundation of Hawai'i for Leave to File Amicus Brief, filed on December 3, 2018 ("Motion," Docket 188).

If the Court is inclined to grant the Motion, Respondents request that the Court strike the proposed Amicus Brief of Tax Foundation of Hawai'i ("Proposed Brief," Exhibit A to the Motion) from the record, and require that the Tax Foundation of Hawai'i re-submit its proposed amicus brief to this Court for consideration to ensure that it has eliminated those arguments that do not address the findings and conclusion of the circuit court or those raised in Appellants' Statement of Points of Error, filed August 21, 2018 (Docket 28).

More specifically, the Proposed Brief includes a full section, Section IV.B.3, devoted to the application of the rational basis test to the Timeshare real property tax classification at issue, see Proposed Brief at 13-14, but the circuit court explicitly declined to reach this issue. In its related Findings of Fact and Conclusions of Law, filed March 23, 2018 ("FOF/COL," Docket 108 at PDF 935), the circuit court held the Timeshare real property tax classification was void because it violated the Maui County Code ("MCC"). Significant to this Court's consideration of the Motion, the circuit court concluded: "Because the legality of the Timeshare real property tax classification is implicit to Count I (Equal Protection) of the Second Amended Complaint, filed on August 12, 2016, the Court's conclusion that the classification is illegal and void disposes of

Count I." Docket 108 at PDF 947 (FOF/COL at COL 36). The circuit court thus explicitly declined to apply the rational basis test, applicable to equal protection claims, finding it unnecessary to reach the issue of whether the classification violated equal protection: "Because the Court concludes that the Timeshare real property tax classification violates the MCC and is thus illegal and void, the Court need not conduct a rational basis analysis. . . ." Id. at COL 37 (emphasis added). Accordingly, the application of the rational basis test is not at issue in this appeal, as confirmed by Appellants' Statement of Points of Error, filed August 21, 2018 (Docket 28).

The issues for appeal are confined to those raised by Appellants. See Lance Camper Mfg. Corp. v. Republic Indem. Co. of Am., 90 Cal. App. 4th 1151, 1161 n.6 (2001) (declining to address arguments in amicus brief not raised in appellant's opening brief, stating: "Amicus Curiae must accept the issues made and propositions urged by the appealing parties, and any additional questions presented in a brief filed by an amicus curiae will not be considered."). Accordingly, Respondents request that if the Court is inclined to grant the Motion, the Court strike the Proposed Brief from the record and require that the Tax Foundation of Hawai‘i re-submit its proposed amicus brief to this Court for consideration to ensure that it has eliminated those arguments that do not address the findings and conclusion of the circuit court or those raised in Appellants' Statement of Points of Error, filed August 21, 2018.

//

//

//

//

//

Respondents also ask that if the Court grants the Motion, it order that any responses to the amicus brief be due within a reasonable time after Appellants' reply brief is, or could have been, filed.

DATED: Honolulu, Hawai'i, December 10, 2018.

/s/ Lisa W. Cataldo
LISA W. CATALDO
BECKY T. CHESTNUT

Attorneys for Respondents-Plaintiffs/Appellees OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION; OCEAN RESORT VILLAS NORTH VACATION OWNERS ASSOCIATION; VIC H. HENRY; and PETER A. BAGATELOS

CAAP NO. 18-0000578

IN THE INTERMEDIATE COURT OF APPEALS

STATE OF HAWAI‘I

OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, OCEAN RESORT VILLAS NORTH VACATION OWNERS ASSOCIATION, VIC H. HENRY, and PETER A. BAGATELOS, Plaintiffs/Appellees, vs. COUNTY OF MAUI and MAUI COUNTY COUNCIL, Defendants/Appellants.	CIVIL NO. No. 13-1-0848(2) (PTC) (Other Civil Action) CAAP-18-0000578 APPELLANT COUNTY OF MAUI'S AND MAUI COUNTY COUNCIL'S NOTICE OF APPEAL FROM **1)** ORDER CERTIFYING FOR INTERLOCUTORY APPEAL THE FINDINGS OF FACT CONCLUSIONS OF LAW; [ILLEGALITY] ORDER, FILED MARCH 23, 2018, PURSUANT TO HAWAI‘I REVISED STATUTES SECTION 641-1(b) AND STAYING PROCEEDINGS UNDER HAWAI‘I RULES OF CIVIL PROCEDURE RULE 62(d) AND (e), **2)** ORDER CERTIFYING FOR INTERLOCUTORY APPEAL COUNTS V, VI, VII, AND VIII OF THE SECOND AMENDED COMPLAINT, FILED AUGUST 12, 2016, PURSUANT TO HAWAI‘I RULES OF CIVIL PROCEDURE RULE 54(b), AND STAYING PROCEEDINGS UNDER HAWAI‘I RULES OF CIVIL PROCEDURE RULE 62(d) AND (e), and **3)** FINAL JUDGMENT ON COUNTS V, VI, VII, AND VIII OF THE SECOND AMENDED COMPLAINT FILED ON AUGUST 12, 2016 Second Circuit Court Judge: Honorable Peter T. Cahill

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that on this date, a true and correct copy of the foregoing document was duly served upon the following persons through the Judiciary Electronic Filing and Service System (JEFS):

PATRICK K. WONG pat.wong@co.maui.hi.us
Corporation Counsel
BRIAN A. BILBERRY brian.bilberry@co.maui.hi.us
Deputy Corporation Counsel
County of Maui
200 South High Street
Wailuku, Maui, Hawai‘i 96793

Attorneys for Petitioners-Defendants/Appellants
COUNTY OF MAUI and
MAUI COUNTY COUNCIL

THOMAS YAMACHIKA tom@tfhawaii.org
Tax Foundation of Hawai‘i
126 Queen Street, Suite 304
Honolulu, Hawai‘i 96813

Attorney for Movant
TAX FOUNDATION OF Hawai‘i

DATED: Honolulu, Hawai‘i, December 10, 2018.

/s/ Lisa W. Cataldo
LISA W. CATALDO
BECKY T. CHESTNUT

Attorneys for Respondents-Plaintiffs/Appellees
OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION; OCEAN RESORT VILLAS NORTH VACATION OWNERS ASSOCIATION; VIC H. HENRY; and PETER A. BAGATELOS