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SCAP-18-0000578
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SCAP NO. 18-0000578

IN THE SUPREME COURT OF THE 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,

v.

COUNTY OF MAUI and MAUI COUNTY COUNCIL,

Defendants/Appellants.

Civil No. 13-1-0848(2) (PTC)

(Other Civil Action)

COURT ORDERED STATUS REPORT

Second Circuit Court
Judge: Honorable Peter T. Cahill

COURT ORDRED STATUS REPORT

EXHIBIT 1

CERTIFICATE OF SERVICE

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COURT ORDERED STATUS REPORT

Pursuant to the ORDER by McKenna, J, filed December 23, 2019, the Defendants/Appellants and Plaintiffs/Appellees submit the following status report, and the attached form Stipulation and Order for Partial Dismissal of Appeal with Prejudice and for Remand. *See* **Exhibit 1**, attached here. The executed original Stipulation will be concurrently submitted to the court for consideration and entry.

As noted in the parties' joint letter to Ms. Ann Marie Smoke with the Hawai´i Appellate Mediation Program, submitted on November 12, 2019, and as reflected in the attached Stipulation and Order, the parties have resolved the issues raised in Points of Error Nos. 5, 6, and 7 of the Amended Opening Brief on this appeal. The issues remaining for resolution by this court are raised in Points of Error Nos. 1, 2, 3, and 4 of the Amended Opening Appellate Brief, filed December 25, 2018, as follows:

> **1)** The Second Circuit Court's assertion of subject matter jurisdiction over the claims raised in the underlying lawsuit was/is improper, ignores the special and exclusive subject matter jurisdiction of the Tax Appeal Court, and undermines Maui County's constitutional authority to adjudicate real property tax appeals. The Tax Appeal Court has exclusive subject matter jurisdiction over the real property tax matters and disputes raised in the underlying lawsuit as a matter of law.
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> **2)** The Second Circuit Court's declaratory ruling and voiding as "illegal" duly enacted property tax code provisions establishing the County's "Timeshare" general real property tax classification was/is contrary to the constitutional doctrine of the Separation of Powers and interferes with the County of Maui's constitutional "functions, powers, and duties" to identify, define, classify, and assess real property for purposes of taxation, land use policy, and economic policy.

> **3)** The Second Circuit Court's conclusion that the general classification of "Timeshare" for real property tax purposes may only be established upon the sole consideration of "actual use" of property was/is wrong and undermines the entire structure of general classification and application of Maui County's real property tax code.
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> **4)** The Second Circuit Court's ruling that Plaintiffs are entitled to as much as $34,000,000.00 of tax refunds in the aggregate for combined assessment years dating back 12-14 years to 2006 despite Plaintiffs as taxpayers having not appealed their assessments within the required statutory period for each assessment year was/is wrong, is an abuse of discretion, threatens imminent and irreparable harm to Maui County's bond credit rating, and imperils the fiscal security of Maui County and its residents.

See JEFS Dkt. # 212, PDF pp. 28-29 (CAAP-18-0000578).[1]

By the attached form Stipulation and Order, the parties will be requesting this court enter a partial dismissal of the appeal, as related to the second circuit court's orders and findings identified in the Stipulation and Order, and partial remand of the case to the second circuit court. Pursuant to the written Settlement and Release Agreement entered into by the parties, the second circuit court will be petitioned to vacate certain of the rulings made in various of its orders and findings appealed from, and resolved in the Hawai´i Appellate Mediation Program.[2]

Finally, regarding Defendants/Appellants' Reply Brief – the written Settlement and Release Agreement, executed by the parties in partial disposition of this appeal, specifically provides:

> 2.2.6 County's Reply Brief in SCAP No. 18-0000578. The County's reply brief in SCAP No. 18-0000578 is due fourteen (14) days after the Hawai´i Supreme Court dimisses the Amended Assessment Apppeal.

[1] The Amended Opening Brief was filed in CAAP-18-0000578 on December 25, 2019, before the Order Granting Application for Transfer was entered by this court on February 20, 2019. *See* JEFS Dkt. 78 (SCAP-18-0000578).

On this basis, Defendants/Appellants County, et al. have filed separately for consideration a motion for extension of time to file their Appellate Reply Brief, forthwith, after the attached Stipulation and Order for Partial of Appeal with Prejudice and for Remand is entered by this court.

DATED: Wailuku, Maui, Hawaii, January 2, 2020.

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By /s/ Robert G. Klein
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DATED: Wailuku, Maui, Hawaii, January 2, 2020.

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