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CAAP 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) STIPULATION AND ORDER FOR PARTIAL DISMISSAL OF APPEAL WITH PREJUDICE AND FOR REMAND Second Circuit Court Judge: Honorable Peter T. Cahill

STIPULATION AND ORDER FOR PARTIAL DISMISSAL
OF APPEAL WITH PREJUDICE AND FOR REMAND

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STIPULATION FOR PARTIAL DISMISSAL
OF APPEAL WITH PREJUDICE AND FOR REMAND

IT IS HEREBY STIPULATED AND AGREED, by the parties through their respective counsel, that the above-entitled appeal is partially dismissed with prejudice. The appeal is dismissed with prejudice as to Points of Error 5, 6, and 7 of the amended Opening Brief, filed December 25, 2018.[1] The appeal is not dismissed as to Points of Error 1, 2, 3 and 4,[2] which remain for resolution through this appeal.

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[1] Points of Error 5, 6, and 7 of the amended Opening Brief arise from the Circuit Court of the Second Circuit's:

1) 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), filed June 25, 2018 (Dkt. 3);

2) Findings of Fact, Conclusions of Law; Order Granting Plaintiffs' Motions for Partial Summary Judgment on Counts V, VI, VII and VIII of the Second Amended Complaint Filed August 12, 2016, Filed on December 1, 2016; and Denying Defendants County of Maui and the Maui County Council's Motions for Partial Summary Judgment as to Count V of the Plaintiffs' Second Amended Complaint Filed 2016-08-12, Filed on December 12, 2016, filed on August 9, 2017 (Dkt. 10);

3) Order Granting in Part and Deferring in Part Plaintiffs' Motion re Damages Related to Count VIII (42 U.S.C. § 1983) of the Second Amended Complaint Filed August 12, 2016, Filed on September 22, 2017, filed on January 23, 2018 (Dkt. 108:549-50);

4) Order Granting (1) Plaintiffs' Motion for Further Hearing on Plaintiffs' Request for Fees and Costs Relating to Count VIII of the Second Amended Complaint Filed August 12, 2016, Filed March 6, 2018; and (2) Plaintiffs' Motion re Damages Related to Count VIII (42 U.S.C. § 1983) of the Second Amended Complaint Filed August 12, 2016, Filed September 22, 2017, Regarding Attorneys' Fees and Costs, filed on May 30, 2018 (Dkt. 110:788-90); and

5) Final Judgment on Counts V, VI, VII, and VIII of the Second Amended Complaint Filed on August 12, 2016, filed July 2, 2018 (Dkt. 4).

[2] Points of Error 1, 2, 3, and 4, which are not dismissed, relate to claims and orders separate from those related to Points of Error 5, 6, and 7. Points of Error 1, 2, 3, and 4 arise from the Circuit Court's:

IT IS FURTHER STIPULATED AND AGREED between the parties that, pursuant to Rule 27 of the Hawai'i Rules of Appellate Procedure ("HRAP"), this Court remand the matter in part, only as to the dismissed Points of Error, to the Circuit Court of the Second Circuit for further action as separately agreed by the parties in their settlement agreement.

This stipulation is submitted pursuant to HRAP 42(b) and has been signed by all counsel for all parties in this appeal. Each party shall bear its own costs and attorneys' fees related to the appeal of the dismissed Points of Error.

DATED: Wailuku, Maui, Hawaii, December 30, 2019.

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Klein Law Group LLLC
Attorneys for Plaintiffs
/Appellees OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, OCEAN RESORT VILLAS NORTH VACATION OWNERS ASSOCIATION, VIC H. HENRY, and PETER A. BAGATELOS

By /s/ Robert G. Klein
ROBERT G. KLEIN

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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), filed June 25, 2018 (Dkt. 2);

2) Findings of Fact, Conclusions of Law; Order Granting Plaintiffs' Motion for Partial Summary Judgment Re: Illegality of the Timeshare Real Property Tax Classification, Filed December 19, 2017, and Denying as Moot Plaintiffs' Motion for Partial Summary Judgment, Based on Use, as to Count I (Equal Protection) of the Second Amended Complaint Filed August 22, 2016, Filed September 29, 2017, filed on March 23, 2018 (Dkt. 11); and in part

3) Findings of Fact, Conclusions of Law; Order Granting Plaintiffs' Motions for Partial Summary Judgment on Counts V, VI, VII and VIII of the Second Amended Complaint Filed August 12, 2016, Filed on December 1, 2016; and Denying Defendants County of Maui and the Maui County Council's Motions for Partial Summary Judgment as to Count V of the Plaintiffs' Second Amended Complaint Filed 2016-08-12, Filed on December 12, 2016, filed on August 9, 2017 (Dkt. 10), to the extent the Second Circuit Court made findings and rulngs regarding its subject matter jurisdiction over this case.

DATED: Wailuku, Maui, Hawaii, December 30, 2019.

MOANA M. LUTEY
Corporation Counsel
Attorneys for Defendants
/Appellants COUNTY OF MAUI
and MAUI COUNTY COUNCIL

By /s/
BRIAN A. [illegible]BERRY
Deputy Corporation Counsel

APPROVED AND SO ORDERED:

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JUDGE OF THE ABOVE-TITLED COURT