

CE Mr

C. CASIL, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

STATE OF HAWAI'I

) CIVIL NO. 06-1-0430(3)
) (Declaratory Judgment/
) Injunction)
)
)
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND ORDER; CERTIFICATE
) OF SERVICE

Plaintiff Charmaine Tavares Campaign's ("Plaintiff")

motion for preliminary injunction filed on December 6, 2006, Plaintiff-Intervenor Quong Enterprises, LLC's ("Plaintiff-Intervenor") motion for preliminary injunction filed on January 31, 2007, Plaintiff and Plaintiff-Intervenor's motion to consolidate motions for preliminary injunction with trial on the merits filed on March 9, 2007, Defendant Barbara U. Wong's ("Defendant") motion for summary judgment filed on March 20, 2007, Plaintiff's motion for summary judgment on claims for declaratory judgment and injunctive relief filed on April 2, 2007, and Plaintiff-Intervenor's motion for summary judgment on claims for declaratory judgment and injunctive relief filed on April 2, 2007, were heard by the above Court on May 4, 2007. William F. Crockett, Esq. appeared on behalf of Plaintiff and Plaintiff-Intervenor. Robyn B. Chun, Esq., Deputy Attorney General for the State of Hawai'i, appeared on behalf of Defendant, who was also present. There having been no objection, the Court granted Plaintiff and Plaintiff-Intervenor's motion to consolidate motions for preliminary injunction with trial on the merits. The Court, having reviewed the record herein and considered the written and oral arguments of the parties, hereby enters the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. None of the material facts are in dispute.

2. Charmaine Tavares ("Tavares") was a candidate for election to the Office of Mayor of the County of Maui during the 2006 election.

3. The Maui County Mayor is elected to a term of four years.

4. Plaintiff is a "candidate committee" organized under the *Hawai'i Election Campaign Contributions and Expenditures Act*, Hawai'i Revised Statutes ("HRS"), § 11-191 *et seq.* (the "Act").

5. Plaintiff was organized "to make expenditures and to accept contributions" to support Tavares' campaign to be elected Maui County Mayor during the 2006 election.

6. At the commencement of Tavares' 2006 election campaign, Plaintiff's representatives informed Tavares' supporters that the Act limited each person to a \$4,000 contribution based upon HRS § 11-204(a)(1)(C) (2005) that provides:

No person or any other entity shall make contributions to:

*

*

*

(C) A candidate seeking nomination or election to a four-year non-statewide office or to the candidate's committee in an aggregate amount greater than \$4,000 during an election period.

7. On April 25, 2006, Plaintiff-Intervenor made a contribution in the amount of \$2,000 directly to Plaintiff.

8. Plaintiff-Intervenor is a limited liability company organized under the laws of the State of California.

9. Paul Quong is the manager of Quong Enterprises.

10. The Operating Agreement of Quong Enterprises, L.L.C., provides as to its purpose:

Business. The Company is to be formed to engage in: (I) the acquisition of real property, or an interest therein, for the development of shopping centers and other real estate-related projects and centers; and (ii) the development, refurbishment or rehabilitation of shopping centers and other commercial real estate-related projects and centers.

11. Plaintiff-Intervenor was not organized for "the purpose of making contributions or expenditures to influence the nomination for election, the election of any candidate to political office, or for or against any issue on the ballot.

12. The \$2,000 contribution made by Plaintiff-Intervenor to Plaintiff on April 25, 2006 was made from the Plaintiff-Intervenor's general business funds. The source of the contribution was not attributable to other persons who were interested in advancing Tavares' election as Maui County Mayor during the 2006 election.

13. On March 10, 2006, Talboy Construction, Inc. ("Talboy") made a \$2,000 contribution to Plaintiff. Talboy is a corporation organized under the Idaho corporation act, qualified to engage in business in the State of Hawai'i for the purpose of engaging in the construction business.

14. On May 9, 2006, Cheeseburger in Paradise, Inc. ("Cheeseburger") made a \$1,000 contribution to Plaintiff.

Cheeseburger is a corporation organized under the State of California corporation act, qualified to engage in business in the State of Hawai'i for the purpose of engaging in the restaurant business.

15. On May 9, 2006, Cheeseburger in Paradise-Waikiki ("Cheeseburger-Waikiki") made a \$1,000 contribution to Plaintiff. Cheeseburger-Waikiki is a limited partnership organized under the State of California limited partnership act, qualified to engage in business in the State of Hawai'i.

16. Defendant does not assert that any of the aforementioned contributors had a "political action committee." All contributions in question were made directly from a business account to Plaintiff and did not pass through any political action committee or other account.

17. Defendant is the Executive Director of the Hawai'i Campaign Spending Commission and is named as Defendant herein in her official capacity as Executive Director.

18. By letters dated August 24,, 2006, Defendant informed Plaintiff-Intervenor and the other aforementioned contributors that each had violated the Act by making the contributions described above, that such contributions constituted "excess contributions" under the Act, and that they

were subject to a "fine" under the Act.

19. Plaintiff-Intervenor and the other contributors forwarded Defendant's letter to Plaintiff and inquired as to the contradictory information they had received from Plaintiff.

20. Plaintiff's counsel communicated with Defendant in an attempt to explore the issues raised by Defendant's August 24, 2006 letters to Plaintiff-Intervenor and the other contributors.

21. On November 14, 2006, Defendant forwarded to Plaintiff-Intervenor a proposed conciliation agreement pursuant to which Plaintiff-Intervenor would admit that its contribution to Plaintiff violated the Act and Plaintiff-Intervenor would pay a \$350 fine.

22. Paul Quong believed that Defendant intended to prosecute Plaintiff-Intervenor under the Act.

23. Efforts to resolve the issues related to this dispute were unsuccessful. On November 28, 2006, when it appeared that Defendant intended to proceed under the Act against Plaintiff-Intervenor and the other contributors, Plaintiff filed the instant declaratory judgment/injunctive relief action against Defendant.

24. On February 20, 2007, Plaintiff-Intervenor intervened.

25. Plaintiff and Plaintiff-Intervenor allege that Defendant incorrectly interpreted HRS § 11-204 (2005) and as a

result, that Defendant's letters to Plaintiff-Intervenor and the other aforementioned contributors that informed them of their excess contributions and imposed penalties against them were erroneous.

26. As and for relief, Plaintiff and Plaintiff-Intervenor originally requested that the Court: (a) determine how HRS § 11-204 (2005) should be interpreted; and (b) enjoin Defendant from enforcing any other interpretation of the law. Plaintiff and Plaintiff-Intervenor continue to request entry of a declaratory judgment, but withdrew their requests for injunctive relief by pleading filed May 7, 2007.

27. If it should be determined that any of these findings of fact should be properly deemed conclusions of law, the Court so concludes on those legal issues.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this action and the parties pursuant to HRS §§ 603-21.5, 603-23, and 632-1.

2. Defendant has threatened to prosecute Plaintiff-Intervenor under the Act for the \$2,000 contribution made by Plaintiff-Intervenor to Plaintiff during the 2006 election for Maui County Mayor. Plaintiff-Intervenor has a present, concrete interest in obtaining a declaratory judgment as to whether such contribution to Plaintiff violated the Act.

3. Plaintiff received the contributions described

above that Defendant asserts constitute "excess contributions" and must escheat to the State of Hawai'i under the Act. If Defendant is correct, Plaintiff must make the escheat payment of "excess contributions" to the State of Hawai'i. Plaintiff has a present concrete interest in obtaining a declaratory judgment as to whether such contributions violated the Act.

4. There is a present, concrete, actual controversy between Plaintiff and Defendant over whether the above contributions made by Plaintiff-Intervenor and the other contributors violated the Act.

5. There is a present, concrete, actual controversy between Plaintiff-Intervenor and Defendant over whether Plaintiff-Intervenor's contribution violated the Act.

6. An actual controversy exists between Defendant, on the one hand, and Plaintiff and Plaintiff-Intervenor, on the other hand, as to the interpretation of HRS § 11-204 (2005) to determine whether the contributions in question violated the Act so that the contributors may be subject to fines to be imposed by Defendant.

7. The separate contributions of \$1,000 each, made by Cheeseburger and Cheeseburger-Waikiki to Plaintiff on May 9, 2006 are aggregated under the Act and treated as a single contribution in the amount of \$2,000. HRS § 11-204 (2005).

8. The fundamental starting point for statutory

interpretation is the language of the statute itself. Where the statutory language is plain and unambiguous, the court's sole duty is to give effect to its plain and obvious meaning. Implicit in the task of statutory construction is the court's foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. Where there is no ambiguity in the language of a statute and the literal application of the language would not produce an absurd or unjust result, clearly inconsistent with the purposes and policies of the statute, there is no room for judicial construction and interpretation and the statute must be given effect according to its plain and obvious meaning. *UPW v. Hanneman*, 106 Hawai'i 359, 363, 105 P.3d 236, 240 (2005), *Peterson v. Hawaii Elec. Light Co., Inc.*, 85 Hawai'i 322, 327-28, 944 P.2d 1265 1270-71 (1997), *superseded on other grounds by HRS § 269-15.5* (Supp.1999).

9. Haw. Rev. Stat. § 11-204(a)(1)(C) (2005) provides:

No person or any other entity shall make contributions to:

* * *

(C) A candidate seeking nomination or election to a four-year non-statewide office or to the candidate's committee in an aggregate amount greater than \$4,000 during an election period.

10. Haw. Rev. Stat. § 11-204(b) provides:

No person or any other entity shall make

contributions to a noncandidate committee, in an aggregate amount greater than \$1,000 in an election.

11. Haw. Rev. Stat. § 11-191 defines "noncandidate committee" as follows:

"Noncandidate committee" means a committee as defined in this section that has the purpose of making contributions or expenditures to influence the nomination for election, the election of any candidate to political office, or for or against any issue on the ballot, but does not include a candidate's committee.

12. The language of HRS § 11-204(a)(1)(C) is plain and clear. The above contributors, who were not noncandidate committees, were permitted to make direct contributions to Plaintiff, a candidate committee, not exceeding an aggregate amount of \$4,000.

13. Relying on the definitions of "noncandidate committee" and "committee"¹ found in HRS § 11-191 and HRS § 11-

¹ HRS § 11-191 defines "committee" as follows:

"Committee" means:

- (1) Any organization, association, or individual that accepts or makes a contribution or makes an expenditure for or against any:
 - (A) Candidate;
 - (B) Individual who files for nomination at a later date and becomes a candidate; or
 - (C) Party;

with or without the authorization of the candidate, individual, or party. In addition, the term "committee" means any organization, association, or individual who accepts or makes a contribution or makes an expenditure for or against any question or issue appearing on the ballot at the next applicable election; or

- (2) Any organization, association, or individual that raises or holds money or anything of value for a political purpose, with or without the consent or knowledge of any:
 - (A) Candidate;

204 (2005), Defendant argues that regardless of a contributor's business purpose, a contributor becomes a "noncandidate committee" when a contribution is made from a company treasury directly to a campaign committee. Thus, argues Defendant, such a contributor becomes subject to the \$1,000 contribution limit found in HRS § 11-204(b) (2005).

14. Defendant further argues that HRS § 1-16 mandates that statutes *in pari materia* be construed in reference to each other. Defendant asserts that when HRS §§ 11-204(a) and (b) are construed together, there exists a plausible basis for Defendant's interpretation of HRS § 11-204 (2005). Defendant concedes that while Defendant's interpretation may not be the only conceivable interpretation, it is not obviously or manifestly wrong and must be given judicial deference.

15. Laws *in pari materia*, or upon the same subject matter, shall be construed with reference to each other. HRS §

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- (B) Individual who files for nomination at a later date and becomes a candidate; or
 - (C) Party; and

subsequently contributes money or anything of value to, or makes expenditures on behalf of, the candidate, individual, or party.

Notwithstanding any of the foregoing, the term "committee" shall not include any individual making a contribution or expenditure of the individual's own funds or anything of value that the individual originally acquired for the individual's own use and not for the purpose of evading any provision of this subpart, or any organization, which raises or expends funds for the sole purpose of the production and dissemination of informational or educational advertising.

1-16. What is clear in one statute may be called in aid to explain what is doubtful in another. *State v. Putnam*, 93 Haw. 362, 370 n. 9, 3 P.3d 1239,1248, n. 9(2000). However, there is no doubt or ambiguity here. Thus, there is no reason to conduct such a tortuous construction of the statute.

16. Defendant asserts that deference should be given to Defendant's interpretation of HRS § 11-204 (2005). However, deference is constrained by a court's obligation to honor the clear meaning of a statute as revealed by its language, purpose, and history. *UPW v. Hanneman*, *supra* at 365, 105 P.3d at 242 (2005).

17. Plaintiff-Intervenor's contribution of \$2,000 to Plaintiff during the 2006 Maui County Mayor election was not a contribution "to a noncandidate committee." Thus, the contribution did not violate HRS § 11-204(b). To the contrary, said contribution was a lawful contribution under HRS. § 11-204(a)(1)(C) (2005) as a contribution to a candidate seeking nomination or election to a four-year non-statewide office or to the candidate's committee that did not exceed \$4,000.

18. The contribution of Talboy in the amount of \$2,000 and the contributions Cheeseburger and Cheeseburger-Waikiki in the aggregate amount of \$2,000 to Plaintiff during the 2006 Maui County Mayor election were not contributions "to a noncandidate committee." Thus, said contributions did not violate HRS § 11-

204(b). To the contrary, the contributions were lawful contributions under HRS § 11-204(a)(1)(C) (2005) as contributions to a candidate seeking nomination or election to a four-year non-statewide office or to the candidate's committee that did not exceed \$4,000.

19. With respect to each of the above contributions, Plaintiff is not obligated to make any "escheat" payment to the State of Hawai'i under the Act.

20. Although the Court has determined that HRS § 11-204(a)(1)(C) (2005) is clear in its meaning, if one is to examine the legislative history, the same supports the identical plain and literal reading of HRS § 11-204 (2005).

21. If it should be determined that any of these conclusions of law should be properly deemed findings of fact, the Court so finds as to those facts.

ORDER

IT IS HEREBY ORDERED as follows:

1. Plaintiff and Plaintiff-Intervenor's motion to consolidate motions for preliminary injunction with trial on the merits is granted.

2. Plaintiff's motion for summary judgment on claims for declaratory judgment and injunctive relief filed on April 2, 2007 is granted with respect to Plaintiff's claim for a declaratory judgment. Plaintiff's claim for injunctive relief

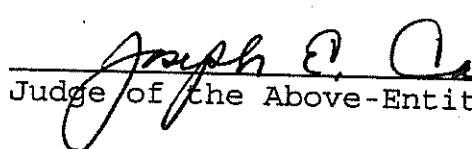
has been withdrawn and is dismissed.

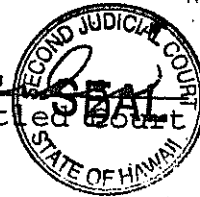
3. Plaintiff-Intervenor's motion for summary judgment on claims for declaratory judgment and injunctive relief filed on April 2, 2007 is granted with respect to Plaintiff-Intervenor's claim for a declaratory judgment. Plaintiff-Intervenor's claim for injunctive relief has been withdrawn and is dismissed.

4. Defendant's motion for summary judgment is denied.

5. Plaintiff and Plaintiff-Intervenor shall prepare a declaratory judgment consistent with the above.

DATED: Wailuku, Hawaii, July 23, 2007.


Judge of the Above-Entitled Court



I hereby certify that a copy
of the within was served this
23rd day of July, 2007, on:

William F. Crockett, Esq.
Robyn B. Chun, Esq., DAG ✓

sgd/ C. Casil

Clerk