

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

WALTER JOHN KELLY, et al.,

Plaintiffs,

vs.

1250 OCEANSIDE PARTNERS, a Hawaii
limited liability partnership, et al.,

Defendants.

CIVIL NO. 00-1-0192K
(Kona)
(OTHER CIVIL ACTION)

ORDER RE CIRCUIT COURT'S
INCLINATION TO GRANT JOINT RULE
60(B) MOTION TO PARTIALLY VACATE
THIRD AMENDED FINAL JUDGMENT
ENTERED AUGUST 27, 2004 ;
EXHIBIT "A"

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Loni Ng
CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

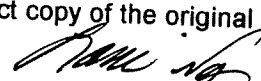
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**ORDER RE CIRCUIT COURT'S INCLINATION TO GRANT PROPOSED JOINT
RULE 60(B) MOTION TO PARTIALLY VACATE THIRD AMENDED FINAL
JUDGMENT ENTERED AUGUST 27, 2004**

Plaintiffs Protect Keopuka Ohana, Walter John Kelly, Charles Ross Flaherty, Jr., Patrick M. Cunningham and Michele Constans Wilkins and Defendants 1250 Oceanside Partners, County of Hawai'i, Christopher Yuen, Dennis Lee, State of Hawaii Department of Health, Dr. Chiyoome Fukino, State of Hawaii Department of Land and Natural Resources and Peter Young (collectively the "Parties") have presented to the Court a proposed Joint Rule 60(b) Motion to Partially Vacate Third Amended Final Judgment Entered August 27, 2004 ("Joint Rule 60(b) Motion") in the form attached hereto as Exhibit "A," which would be filed after a remand from the Hawaii Supreme Court, as part of effecting a settlement and resolution of the current litigation, except for matters presently on appeal between Plaintiff Protect Keopuka Ohana and Defendants Department of Health and County of Hawaii relating to the existence or extent of any public trust obligations relating to coastal water quality, whether such duties as may exist in these areas were violated in this case, and matters related thereto. As this case is presently on appeal, this Court is currently without jurisdiction to grant the motion absent a remand from the Hawaii Supreme Court. Life of the Land v. Ariyoshi, 57 Haw. 249, 553 P.2d 464 (1976).

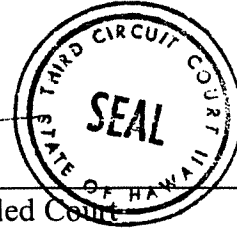
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that for the purposes of informing the appellate courts as to the Court's inclination to rule on the proposed Joint Rule 60(b)

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


Clerk, Third Circuit Court, State of Hawaii

Motion, and without deciding it, this Court hereby grants the parties' request and states that it is **INCLINED TO GRANT** the Joint Rule 60(b) Motion.

DATED: Kealahou, Hawaii, March 2, 2006.



Judge of the above-entitled Court

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

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Hawaii'i limited partnership, et al.,

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**JOINT RULE 60(B) MOTION TO PARTIALLY
VACATE THIRD AMENDED FINAL
JUDGMENT ENTERED AUGUST 27, 2004;
EXHIBIT "A"**

No Hearing Date Set

JUDGE: Hon. Ronald Ibarra

Exhibit "A"

**JOINT RULE 60(B) MOTION TO PARTIALLY VACATE THIRD
AMENDED FINAL JUDGMENT ENTERED AUGUST 27, 2004**

Plaintiffs Protect Keopuka Ohana, Walter John Kelly, Charles Ross Flaherty, Jr., Patrick M. Cunningham and Michele Constans Wilkins and Defendants 1250 Oceanside Partners, County of Hawai'i, Christopher Yuen, Dennis Lee, State of Hawaii Department of Health, Dr. Chiyome Fukino, State of Hawaii Department of Land and Natural Resources and Peter Young move this Court to:

- (1) vacate that portion of the Court's Third Amended Final Judgment filed August 27, 2004 relating to Count IV of Plaintiffs' Fifth Amended Complaint ("Count IV Judgment") and the Court's underlying orders on which the Count IV Judgment is premised;
- (2) dismiss with prejudice Plaintiffs' Count IV claims;
- (3) dissolve the injunction embodied in the Count IV Judgment, and
- (4) enter a Fourth Amended Final Judgment.

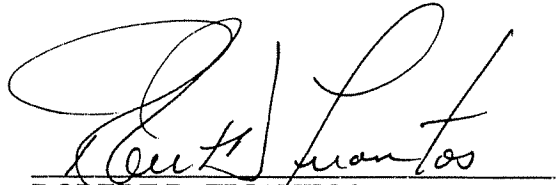
The foregoing would allow for a settlement of the current litigation, with one exception, should the parties, who are in the final stages of negotiations, reach an agreement. The only exception will be the matters presently on appeal between Plaintiff Protect Keopuka Ohana and Defendants Department of Health et al. and County of Hawaii et al. relating to the existence or extent of any public trust obligations relating to coastal water quality, whether such duties as may exist in these areas were violated in this case, and matters related thereto.

This motion is made pursuant to Haw.R.Civ.P. Rule 60(b) (5) and (6), which permits the Court to provide relief from a final judgment if it is no longer equitable that the judgment have prospective application, or for any other reason justifying relief from the operation of the judgment. This motion may be signed in counterparts.

If the Court is inclined to grant this motion, the parties respectfully request that the Court enter an Order to that effect, so that the parties may move the Supreme Court, pursuant to Life of the Land v. Ariyoshi, 57 Haw. 249, 553 P.2d 464 (1976), to remand the case to this Court. For the Court's convenience, a proposed form of Order is attached as Exhibit "A."

This motion is based upon Haw.R.Civ.P. Rule 60(b)(5) and (6) and the entire record on file herein.

DATED: March 2, 2006.



ROBERT D. TRIANTOS
EDMUND W.K. HAITSUKA

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PARTNERS*

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*Attorney for Plaintiffs WALTER JOHN KELLY,
CHARLES ROSS FLAHERTY, JR., PATRICK M.
CUNNINGHAM AND MICHELLE CONSTANS
WILKINS and Plaintiff PROTECT KEOPUKA
OHANA*

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*Attorneys for Defendants COUNTY OF HAWAII,
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DEPARTMENT OF LAND AND NATURAL
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EXHIBIT A

Form of Proposed Order

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED that for the purposes of informing the appellate courts as to the Court's inclination to rule on the proposed Joint Rule 60(b)

Motion, and without deciding it, this Court hereby grants the parties' request and states that it is **INCLINED TO GRANT** the Joint Rule 60(b) Motion.

DATED: Kealahou, Hawaii, March ____, 2006.

Judge of the above-entitled Court