

Circuit Court of the Third Judicial Circuit - THE JUDICIARY · STATE OF HAWAII

DRUG COURT: 81-940 HALEKI'I STREET - KEALAKEKUA, HAWAII 96750 - TELEPHONE (808) 322-5910

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Ronald Ibarra
CHIEF JUDGE, THIRD JUDICIAL CIRCUIT
THIRD DIVISION - KONA

Greg K. Nakamura
DEPUTY CHIEF JUDGE
FIRST DIVISION - HILO
SENIOR FAMILY JUDGE, FAMILY DIVISION


Glenn S. Hara
JUDGE, SECOND DIVISION - HILO

Elizabeth A. Strance
JUDGE, FOURTH DIVISION - KONA

Lester D. Oshiro
CHIEF COURT ADMINISTRATOR

July 9, 2008

TO: Stuart Oda
Alan Murakami
Gary Okuda

FROM: Junette Nakamura, Clerk to Judge Greg Nakamura 

RE: CIV 06-1-99 - Orchidland Community Association, Inc. v. Shigeo Murakami, et al.

Please be advised that the Court has ruled on Plaintiff's Motion for Summary Judgment, filed on July 13, 2007, and heard and taken under advisement on July 8, 2008. See attached for the Court's specific ruling.

Orchidland Community Association v. Shigeo Murakami, et al.
Civil No. 06-1-0099

Plaintiff's Motion for Summary Judgment, filed on July 13, 2007 (the "Motion").

The Motion is granted to the following extent: The Court determines, as a matter of law, that Plaintiff Orchidland Community Association is entitled to receive payments from Defendants on assessments for road maintenance performed within the Orchidland Estates subdivision ("Subdivision"). Otherwise, the Motion is denied.

Generally, the Motion seeks a declaratory judgment stating: (1) that Plaintiff is entitled to receive payments from Defendants on assessments for road maintenance within the Subdivision, (2) that Plaintiff is entitled to liens on Defendants' property in the Subdivision for unpaid assessments and (3) that Plaintiff is entitled to foreclose upon those liens.

First, the Court has jurisdiction under HRS § 632-1. Under the statute, the District Court does not have subject matter jurisdiction over a claim for declaratory relief.

Second, the Court determines, as a matter of law, that Plaintiff is entitled to receive payments from Defendants on assessments for road maintenance within the Subdivision. This determination is based upon both *Kaanapali Hillside Homeowners' Association v. Doran*, 112 Hawai'i 356 (2006) and *Paradise Hui Hanalike v. Hawaiian Paradise Park Corp.*, 66 Haw. 362 (1983).

Third, the property in the Subdivision is Land Court land. The obligation to make payments for road maintenance is the type of burden or incident of ownership which attaches to unregistered land. Therefore, under HRS § 501-81, even though the property is Land Court land, an owner has the obligation to make payments for road maintenance within the Subdivision even though that obligation does not appear on the certificate of title.

Fourth, pursuant to HRS § 501-102, Plaintiff may not have a lien on property within the Subdivision unless the lien is registered in the Land Court. Therefore, Plaintiff may not have a lien on Defendants' property merely because Defendants may be in arrears on assessments for road maintenance.

Fifth, presumably, in order for Plaintiff to have a lien on Defendants' property in the Subdivision, Plaintiff must, first, obtain a judgment against Defendants for the payment of the road maintenance assessments and then register the judgment with an assistant registrar of the Bureau of Conveyances. Thereafter, Plaintiff may execute on the judgment lien. In this context, Plaintiff's remedy is execution on a judgment lien and not foreclosure on the lien.

Plaintiff's counsel is to submit a form of the order consistent with this advisory.