

CARRIE K.S. OKINAGA, 5958
Corporation Counsel

D. SCOTT DODD, 6811
Deputy Corporation Counsel
530 S. King Street, Room 110
City and County of Honolulu
Honolulu, Hawai'i 96813
Telephone: (808) 768-5129
Facsimile: (808) 768-5105
Email address: dsdodd@honolulu.gov

Attorneys for Defendant
CITY AND COUNTY OF HONOLULU

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

BEVERLY BLAKE, STEPHANIE
CAMILLERI, ARLENE SUPAPO,
individually, and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

CRAIG NISHIMURA, in his official
capacity as Acting Director of the
Department of Facility Maintenance,
City and County of Honolulu; CITY
AND COUNTY OF HONOLULU, a
municipal corporation,

Defendants.

) CIVIL NO. CV08-00281 LEK
)
) (Contract) (Declaratory Judgment)
) (Other Civil Actions)
) Class Action
)
) DEFENDANT CITY AND COUNTY
) OF HONOLULU'S REPLY TO
) PLAINTIFFS' OPPOSITION TO
) DEFENDANT CITY AND COUNTY
) OF HONOLULU'S MOTION FOR
) LEAVE TO FILE THIRD PARTY
) COMPLAINT AGAINST HAWAIIAN
) PROPERTIES, LTD., FILED MAY 15,
) 2009; CERTIFICATE OF SERVICE
)
) Trial Date: December 15, 2009
) Judge: Leslie E. Kobayashi

DEFENDANT CITY AND COUNTY OF HONOLULU'S REPLY TO
PLAINTIFFS' OPPOSITION TO DEFENDANT CITY AND COUNTY OF
HONOLULU'S MOTION FOR LEAVE TO FILE THIRD PARTY COMPLAINT
AGAINST HAWAIIAN PROPERTIES, LTD., FILED MAY 15, 2009

Come now, Defendant City and County of Honolulu ("City"), by and through its attorneys, Carrie S.K. Okinaga, Corporation Counsel, and D. Scott Dodd, Deputy Corporation Counsel, and hereby file its Reply to Plaintiffs' Opposition to Defendant City and County of Honolulu's Motion for Leave to File Third-Party Complaint Against Hawaiian Properties, Ltd., filed on May 15, 2009 (hereinafter "Opposition").

ARGUMENT

I. DISCUSSION

A. Plaintiffs' Claim of "Delay" is Entirely Speculative

Plaintiffs' claim that they will be "prejudiced" by allowing the City to file a third-party complaint as this will "unduly delay" resolution of this case. Of course, Plaintiffs offer nothing but bare speculation to support this bald assertion.

Plaintiffs' claim that this action is being "hijacked" by the City is not appropriate.

The issues between the City and proposed Third-Party Defendant Hawaiian Properties, Ltd. ("HPL") appear fairly limited and simple. The City and HPL entered into a management contract for the property, and HPL agreed to undertake responsibility for establishing and collecting rent under the contract. Clearly, the City's exposure to Plaintiffs arises out of actions undertaken or not undertaken by

HPL. The City anticipates moving for summary judgment on its proposed Third-Party Complaint against HPL as soon as practicable should this Court grant the City's motion.

Further, Plaintiffs argue that the City should have filed the Third-Party Complaint "months ago." When counsel for the City initially discussed filing the Third-Party Complaint with Plaintiffs' counsel, it was unknown whether HPL's insurance carrier would accept the City's tender and provide a defense and/or indemnity to the City. Shortly after the City tendered its defense and indemnity to HPL, HPL's insurance carrier accepted the tender and is providing a defense for the City. However, as indicated in the City's motion for leave, HPL's insurance carrier notified the City (on April 29, 2009) that it would not be indemnifying the City as the claims alleged in Plaintiffs' Complaint were not "covered" claims. Therefore, in order to preserve its claim of indemnity, the City sought leave to seek to proceed against HPL.

B. Judicial Economy

Judicial Economy would be best served by resolving all issues in one litigation. Requiring the City to initiate further litigation in order to proceed on its claims against HPL would waste precious judicial resources and necessitate a separate lawsuit. Clearly all issues could be resolved in one litigation, and this

would be best served by allowing the City to file the proposed Third-Party Complaint.

III. CONCLUSION

In light of the foregoing, the City respectfully requests that this Court grant the City's Motion for Leave to File Third-Party Complaint Against Hawaiian Properties, Ltd. filed May 15, 2009.

DATED: Honolulu, Hawai'i, June 10, 2009.

CARRIE K.S. OKINAGA
Corporation Counsel

By: /s/ D. Scott Dodd
D. SCOTT DODD
Deputy Corporation Counsel

Attorney for Defendant
CITY AND COUNTY OF HONOLULU

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

BEVERLY BLAKE, STEPHANIE)	CIVIL NO. CV08-00281 LEK
CAMILLERI, ARLENE SUPAPO,)	
individually, and on behalf of all)	(Contract) (Declaratory Judgment)
persons similarly situated,)	(Other Civil Actions)
)	Class Action
Plaintiffs,)	
)	CERTIFICATE OF SERVICE
vs.)	
)	
CRAIG NISHIMURA, in his official)	
capacity as Acting Director of the)	
Department of Facility Maintenance,)	
City and County of Honolulu; CITY)	
AND COUNTY OF HONOLULU, a)	
municipal corporation,)	
)	
Defendants.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that, on June 10, 2009, and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses as shown below.

Served Electronically through CM/ECF:

WILLIAM H. DURHAM, ESQ.
GAVIN K. THORNTON
Lawyers for Equal Justice
P. O. Box 37952
Honolulu, Hawai'i 96837

william@lejhawaii.org
gavin@legjawaii.org

and

Served Electronically through CM/ECF:

PAUL ALSTON, ESQ.
JASON KIM, ESQ.
Alston Hunt Floyd & Ing
ASB Tower
1001 Bishop Street, Suite 1800
Honolulu, Hawai'i 96813

palstone@ahfi.com
jkim@ahfi.com

Attorneys for Plaintiffs

DATED: Honolulu, Hawai'i, June 10, 2009.

CARRIE K.S. OKINAGA
Corporation Counsel

By /s/D. Scott Dodd
D. SCOTT DODD
Deputy Corporation Counsel

Attorney for Defendant
CITY AND COUNTY OF HONOLULU