

O'CONNOR PLAYDON & GUBEN LLP
A Limited Liability Law Partnership

GEORGE W. PLAYDON, JR. (1103)
R. AARON CREPS (8142)
733 Bishop Street, 24th Floor
Honolulu, Hawaii 96813
Telephone: (808) 524-8350
Facsimile: (808) 531-8628
Email: gwp@opglaw.com / rac@opglaw.com

Attorneys for Defendant REALTY LAUA LLC

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

HAZEL MCMILLON; GENE	)	CIVIL NO. 08-00578 JMS/LEK
STRICKLAND; TRUDY	)	Civil Rights Action
SABALBORO; KATHERINE	)	Class Action
VAIOLA; and LEE SOMMERS,)	
each individually and on behalf of a	)	DEFENDANT REALTY LAUA LLC'S
class of present and future residents	)	MEMORANDUM IN OPPOSITION
of Kuhio Park Terrace and Kuhio	)	TO PLAINTIFFS' MOTION FOR
Homes who have disabilities affected	)	PRELIMINARY INJUNCTION FILED
by architectural barriers and	)	DECEMBER 16, 2009; CERTIFICATE
hazardous conditions,	)	OF SERVICE

Plaintiffs,

) HEARING

vs.

) Date: February 22-23, 2010

) Time: 10:00 a.m.

) Judge: Hon. J. Michael Seabright

STATE OF HAWAII; HAWAII
PUBLIC HOUSING AUTHORITY;
REALTY LAUA LLC, formerly
known as R & L Property
Management LLC, a Hawai'i limited
liability company,

) TRIAL DATE: August 3, 2010

Defendants.

**DEFENDANT REALTY LAUA LLC'S
MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION FILED DECEMBER 16, 2009**

I. INTRODUCTION

Comes now Defendant REALTY LAUA LLC (“Realty”), by and through its attorneys, O’Connor Playdon & Guben LLP, and hereby submits this memorandum in opposition to Plaintiffs’ Motion for Preliminary Injunction, filed herein on December 16, 2009 (“the Motion”).

Initially, the Motion’s treatment of the State and Realty as monolithic “Defendants” must be rejected. These entities are separate and distinct. Realty, a privately-held limited liability company, contracted with the State to provide property management services at Kuhio Park Terrace/Kuhio Homes beginning in August of 2007. This was just over a year prior to Plaintiffs filing their Complaint in this case (December 18, 2008).¹

The relief sought in the Motion relates to either major capital improvements or system-wide policies. These matters fall largely, if not entirely, within the purview of the State. The State is therefore in the best position to respond to the gravamen of the Motion. Realty has reviewed and substantively

¹ There is also a parallel case pending in the First Circuit Court of the State of Hawaii, entitled Faletogo, et al. v. State of Hawaii, et al., Civil No. 08-1-2608-12 (SSM). The State court case seeks damages related to allegedly uninhabitable conditions at KPT and Kuhio Homes on breach of lease-type theories.

joins in the State's memorandum in opposition to the Motion, and hereby incorporates by reference the points and authorities cited therein. See Local Rule 7.9.

In addition, Realty raises a procedural objection to the Motion as explained below.

II. ARGUMENT

THE MOTION IS PROCEDURALLY IMPROPER.

A preliminary injunction is a tool with a very narrow purpose. “The purpose of a preliminary injunction *is merely to preserve* the relative positions of the parties until a trial on the merits can be held.” Univ. of Texas v. Camenisch, 451 U.S. 390, 395 (1981) (emphasis added). Correspondingly, burdens of proof and evidentiary rules are ordinarily relaxed. See id. (“ . . . a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits.”). For this reason, “it is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits.” Id.

Here, however, Plaintiffs are not seeking to preserve the status quo. Quite to the contrary, Plaintiffs *are directly challenging the status quo*. The Motion requests fundamental alterations to the buildings and ancillary facilities at Kuhio Park Terrace/Kuhio Homes and to the manner in which the housing project

is operated. This constitutes a request for mandatory injunction: “A mandatory injunction goes well beyond simply maintaining the status quo *pendente lite* and is *particularly disfavored*. When a mandatory preliminary injunction is requested, the district court should deny such relief unless the facts and law clearly favor the moving party.” Stanley v. Univ. S. Cal., 13 F.3d 1313, 1320 (9th Cir. 1994) (internal cites, brackets, and quotes omitted) (emphasis added).

Further, there is nothing preliminary about the Motion. The requested changes are permanent. In reality, Plaintiffs are pursuing a final adjudication on the merits without having to subject their case to the rigors of discovery and trial.

Since the parties have focused their efforts on settlement discussions until just recently, very little discovery has been completed. Plaintiffs’ experts and treating physicians have not been deposed, Plaintiffs themselves have only been deposed on limited areas related to class certification, and the residents that submitted declarations in support of the Motion but are not named-Plaintiffs (James Silva, Sii Tuia, and Melissa Bowers) have not been deposed. Under the circumstances, the State and Realty have not had an opportunity to fully develop their defenses.

Moreover, Plaintiffs rely heavily on improperly authenticated documents (see, e.g., the Exhibits attached to the Declarations of Elizabeth Dunne

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

HAZEL MCMILLON; GENE	)	CIVIL NO. 08-00578 JMS/LEK
STRICKLAND; TRUDY	)	Civil Rights Action
SABALBORO; KATHERINE	)	Class Action
VAIOLA; and LEE SOMMERS,)	
each individually and on behalf of a	)	CERTIFICATE OF SERVICE
class of present and future residents)	
of Kuhio Park Terrace and Kuhio)	
Homes who have disabilities affected)	
by architectural barriers and)	
hazardous conditions,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
STATE OF HAWAII; HAWAII)	
PUBLIC HOUSING AUTHORITY;)	
REALTY LAUA LLC, formerly)	
known as R & L Property)	
Management LLC, a Hawai'i limited)	
liability company,)	
)	
Defendants.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, a copy of the foregoing document was served on the following at their last known addresses by means of either depositing said copy in the United States mail, postage prepaid, or served electronically through CM/ECF as follows:

VICTOR GEMINIANI, ESQ.
WILLIAM H. DURHAM, ESQ.
Lawyers for Equal Justice
P.O. Box 37952
Honolulu, Hawaii 96837

victor@lejhawaii.org
william@lejhawaii.org

PAUL ALSTON, ESQ.
JASON H. KIM, ESQ.
Alston Hunt Floyd & Ing
American Savings Bank Tower
1001 Bishop Street, 18th Floor
Honolulu, Hawaii 96813

palston@ahfi.com
jkim@ahfi.com

and
JINNY KIM, ESQ. Pro Hac Vice
CLAUDIA CENTER, ESQ. Pro Hac Vice
Legal Aid Society – Employment Law Center
600 Harrison Street, Suite 120
San Francisco, CA 94107

Attorneys for Plaintiffs

Caron M. Inagaki, Esq.
Diane K. Taira, Esq.
John M. Cregor, Esq.
John C. Wong, Esq.
Jarod J. Buna, Esq.
Krislen N. Chun, Esq.
Deputy Attorneys General
Department of the Attorney General,
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

Caron.M.Inagaki@hawaii.gov
Diane.K.Taira@hawaii.gov
John.M.Cregor@hawaii.gov
John.C.Wong@hawaii.gov
Jarod.J.Buna@hawaii.gov
Krislen.N.Chun@hawaii.gov

Attorneys for Defendants
STATE OF HAWAII and
HAWAII PUBLIC HOUSING AUTHORITY

MICHAEL D. TOM, ESQ.
Tom Petrus & Miller LLLC
1164 Bishop Street, Suite 650
Honolulu, Hawaii 96813

Attorney for Third-Party Defendant
URBAN MANAGEMENT CORPORATION dba
URBAN REAL ESTATE COMPANY

DATED: Honolulu, Hawaii, February 1, 2010.

/s/ R. Aaron Creps
GEORGE W. PLAYDON, JR.
R. AARON CREPS
Attorneys for Defendant
REALTY LAUA LLC