

NO. 28602

IN THE SUPREME COURT OF THE STATE OF HAWAII

CIVIL NO. 06-1-0265
UNITE HERE! LOCAL 5; ERIC W. GILL;
TODD A. K. MARTIN,

Plaintiffs,

vs.

CITY AND COUNTY OF HONOLULU; a
municipal corporation; KUILIMA RESORT
COMPANY, a Hawaii corporation; DOE
DEFENDANTS 1-10,

Defendants.

KUILIMA RESORT COMPANY, a Hawaii
general partnership,

Counterclaim Plaintiff,

vs.

UNITE HERE! LOCAL 5 HAWAII, a Hawaii
labor organization; ERIC W. GILL, an
individual,

Counterclaim Defendants.

KUILIMA RESORT COMPANY, a Hawaii
general partnership,

Counterclaim Plaintiff,

vs.

UNITE HERE!, a New York labor
organization; DOE DEFENDANTS 1-10,

Additional Counterclaim
Defendants.

CIVIL NO. 06-1-0265
CIVIL NO. 06-1-0867

APPEAL FROM THE
AMENDED FINAL JUDGMENT, filed on
June 4, 2007

FIRST CIRCUIT COURT

HONORABLE GARY W. B. CHANG
HONORABLE SABRINA S. McKENNA
Judges

Sabrina S. McKenna
CLERK, APPELLATE COURTS
STATE OF HAWAII

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CIVIL NO. 06-1-0867)
 KEEP THE NORTH SHORE COUNTRY, a)
 Hawaii non-profit corporation, and SIERRA)
 CLUB, HAWAII CHAPTER, a foreign non-)
 profit corporation,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY AND COUNTY OF HONOLULU;)
 HENRY ENG, Director of Department of)
 Planning and Permitting in his official)
 capacity; KUILIMA RESORT COMPANY, a)
 Hawaii general partnership; JOHN DOES)
 1-10; JANE DOES 1-10; DOE)
 PARTNERSHIPS 1-10; DOE)
 CORPORATIONS, 1-10; DOE ENTITIES)
 1-10; and DOE GOVERNMENTAL UNITS)
 1-10,)
)
 Defendants.)
)
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RESPONDENTS-DEFENDANTS-APPELLEES CITY AND COUNTY
 OF HONOLULU AND HENRY ENG, DIRECTOR OF DEPARTMENT OF
 PLANNING AND PERMITTING'S MOTION TO
ADVANCE OR POSTPONE ORAL ARGUMENT

MEMORANDUM IN SUPPORT OF MOTION

DECLARATION OF DON S. KITAOKA

CERTIFICATE OF SERVICE

CARRIE K. S. OKINAGA, 5958
 Corporation Counsel
 DON S. KITAOKA, 2967
 Deputy Corporation Counsel
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 Telephone: 768-5248

Attorneys for Respondents-Defendants-Appellees
 CITY AND COUNTY OF HONOLULU and HENRY ENG

IN THE SUPREME COURT OF THE STATE OF HAWAII

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Hawaii general partnership; JOHN DOES)
1-10; JANE DOES 1-10; DOE)
PARTNERSHIPS 1-10; DOE)
CORPORATIONS, 1-10; DOE ENTITIES)
1-10; and DOE GOVERNMENTAL UNITS)
1-10,)

Defendants.)


RESPONDENTS-DEFENDANTS-APPELLEES CITY AND
COUNTY OF HONOLULU AND HENRY ENG, DIRECTOR
OF DEPARTMENT OF PLANNING AND PERMITTING'S
MOTION TO ADVANCE OR POSTPONE ORAL ARGUMENT

Respondents-Defendants-Appellees CITY AND COUNTY OF HONOLULU (the "City") and HENRY ENG, Director of the Department of Planning and Permitting ("DPP"), by and through their attorneys, CARRIE K. S. OKINAGA, Corporation Counsel, and DON S. KITAOKA, Deputy Corporation Counsel, hereby move this honorable court to advance the oral argument currently set for November 19, 2009 to either November 16 or 17, 2009 or postpone the oral argument to anytime after November 27, 2009.

This Motion is brought pursuant to Rules 27 and 34(b) of the Hawaii Rules of Appellate Procedure, and is based upon the attached memorandum, declaration and the records and files herein.

DATED: Honolulu, Hawaii, October 23, 2009.

CARRIE K.S. OKINAGA
Corporation Counsel

By 

DON S. KITAOKA
Deputy Corporation Counsel
Attorneys for Respondents-Defendants-Appellees
City and County of Honolulu and
Henry Eng

IN THE SUPREME COURT OF THE STATE OF HAWAII

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MEMORANDUM IN SUPPORT OF MOTION

Respondents-Defendants-Appellees CITY AND COUNTY OF HONOLULU (the "City") and HENRY ENG, Director of the Department of Planning and Permitting ("DPP"), by and through their attorneys, CARRIE K. S. OKINAGA, Corporation Counsel, and DON S. KITAOKA, Deputy Corporation Counsel, respectfully move this honorable court to advance the oral argument currently set for November 19, 2009 to either November 16 or 17, 2009 or postpone the oral argument to anytime after November 27, 2009.

On or about October 14, 2009, the clerk of the Supreme Court of the State of Hawaii issued a notice that the above-entitled case has been set for oral argument (on the merits) on

November 19, 2009, at 11:00 a.m. The Department of the Corporation Counsel for the City received the notice on October 15, 2009.

The lead attorney for the City and DPP on this case is Don S. Kitaoka, who has represented the City and DPP in this case since its inception. No other attorney within the Department of the Corporation Counsel is presently assigned to the case, as prior co-counsel Lori K. K. Sunakoda, has since left the Department of the Corporation Counsel's office.

Mr. Kitaoka is presently scheduled and committed to be on the mainland from November 18, 2009 to November 27, 2009. Mr. Kitaoka's airline tickets and accommodations have already been booked, and any change in the itinerary would result in significant fees. One of the purposes of Mr. Kitaoka's trip is to visit his son Dorian in Santa Rosa, California. Dorian had to arrange his work schedule with his employer well in advance for time off during the busy holiday season to accommodate Mr. Kitaoka's travel plans. Furthermore, Mr. Kitaoka's spouse, Garyce Kitaoka, is extremely claustrophobic, requires medication for the same, and does not want to travel alone.

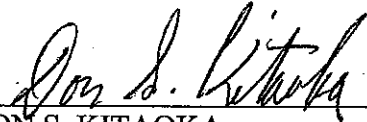
Due to Mr. Kitaoka's travel arrangements and family commitments, the City and DPP respectfully request that the oral argument in this case be advanced a couple days, or postponed for a little more than a week to the week of November 30, 2009 or later. Mr. Kitaoka has contacted Laura Couch, Esq., attorney for the Plaintiffs, and Sharon Lovejoy, attorney for Kuilima Resort Company, and neither had any objection to the City's request to reschedule the oral argument.

This motion is not brought for the purpose of delay or any other ulterior motive. Accordingly, the City and DPP respectfully request that the Court either advance the oral

argument to a date prior to November 18, 2007 or postpone the oral argument to anytime after November 27, 2009, at the convenience of this Court and the other parties.

DATED: Honolulu, Hawaii, October 23, 2009.

CARRIE K.S. OKINAGA
Corporation Counsel

By 
DON S. KITAOKA
Deputy Corporation Counsel
Attorneys for Respondents-Defendants-Appellees
City and County of Honolulu and
Henry Eng

IN THE SUPREME COURT OF THE STATE OF HAWAII

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) HONORABLE SABRINA S. MCKENNA
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 1-10,)
)
 Defendants.)
)
 _____)

DECLARATION OF DON S. KITAOKA

I, DON S. KITAOKA, hereby declare under penalty of law, that the following facts are true:

1. I am a Deputy Corporation Counsel with the City and County of Honolulu. I make this Declaration based upon my personal knowledge gained in that capacity.
2. I am the lead attorney for the Respondents-Defendants-Appellees CITY AND COUNTY OF HONOLULU (the "City") and HENRY ENG, Director of the Department of Planning and Permitting ("DPP") in the above-entitled case, and I have represented the City and DPP in this case since its inception.

3. No other attorney within the Department of the Corporation Counsel is presently assigned to the case, as prior co-counsel Lori K. K. Sunakoda, has since left the Department of the Corporation Counsel's office.

4. On October 15, 2009, the Department of the Corporation received the notice from the Clerk of the Supreme Court, that oral argument in the above-entitled case was scheduled for November 19, 2009, at 11:00 a.m.

5. I am presently scheduled and committed to be on the mainland from November 18, 2009 to November 27, 2009. My airline tickets and accommodations have already been booked, and any change in the itinerary would result in significant fees (\$175 for each ticket, or \$350 for me and my wife).

6. One of the purposes of my trip is to visit my son Dorian in Santa Rosa, California. Dorian had to arrange his work schedule with his employer (Macy's) well in advance for time off during the busy holiday season to accommodate my travel plans.

7. My wife, Garyce Kitaoka, is extremely claustrophobic, requires medication for the same, and does not want to travel alone, and would therefore have to change her travel plans as well if the oral argument is not rescheduled.

8. I have contacted Laura Couch, Esq., attorney for the Plaintiffs, and Sharon Lovejoy, attorney for Kuilima Resort Company, and neither had any objection to the City's request to reschedule the oral argument.

9. The request to reschedule the oral argument in this case is not brought for the purpose of delay or any other ulterior motive other than a desire for domestic tranquility.

I declare under penalty of perjury that the foregoing facts are true and correct to the best of my knowledge and belief.

DATED: Honolulu, Hawaii, October 23, 2009.



DON S. KITAOKA

IN THE SUPREME COURT OF THE STATE OF HAWAII

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 Defendants.)
)
 _____)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof was served upon the following by mailing the same, postage prepaid, on October 23, 2009:

WILLIAM S. HUNT, ESQ.
 LAURA P. COUCH, ESQ.
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Attorney For Amicus Curiae
CONSERVATION COUNCIL FOR HAWAII SURFRIDER FOUNDATION,
HAWAII'S THOUSAND FRIENDS, LIFE OF THE LAND, MAUI
TOMORROW FOUNDATION AND KAHEA

DATED: Honolulu, Hawaii, October 23, 2009.

CARRIE K.S. OKINAGA
Corporation Counsel

By  _____

DON S. KITAOKA
Deputy Corporation Counsel
Attorneys for Respondents-Defendants-Appellees
City and County of Honolulu and
Henry Eng

NO. 28602, UNITE HERE! LOCAL 5; ERIC W. GILL; TODD A.K. MARTIN V. CITY AND COUNTY OF HONOLULU, ET AL. - RESPONDENTS-DEFENDANTS-APPELLEES CITY AND COUNTY OF HONOLULU AND HENRY ENG, DIRECTOR OF DEPARTMENT OF PLANNING AND PERMITTING'S MOTION TO ADVANCE OR POSTPONE ORAL ARGUMENT

06-02763/95633