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**Electronically Filed
FIFTH CIRCUIT
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Attorneys for Plaintiffs
5425 PAU A LAKA LLC and
MP ELKO II, LLC

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI‘I

5425 PAU A LAKA LLC, a Hawai‘i limited liability company, MP ELKO II, LLC, a Nevada limited liability company,)	CIVIL NO. _____
)	(Declaratory Judgment)
)	
Plaintiffs,)	COMPLAINT FOR DECLARATORY
)	JUDGMENT AND INJUNCTIVE RELIEF;
)	SUMMONS
vs.)	
)	
COUNTY OF KAUA‘I,)	
)	
Defendant.)	
_____)	

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiffs 5425 PAU A LAKA LLC, a Hawai‘i limited liability company (“*5425 Pau*”), and MP ELKO II, LLC, a Nevada limited liability company (“*MP*”) (collectively, “*Plaintiffs*”), through their counsel, McCorrison Miller Mukai MacKinnon LLP, file this Complaint for Declaratory Judgment and Injunctive Relief against Defendant COUNTY OF KAUA‘I, a

political subdivision of the State of Hawai‘i (“*Defendant*”), and hereby alleges and avers as follows:

PARTIES

1. Plaintiffs are and at all relevant times herein the owners and developers of those certain parcels of real property situated in Koloa, Kaua‘i, Hawai‘i, designated by Tax Map Key (“*TMK*”) Nos. (4) 2-8-014-032:0001 – 0019 (collectively, the “*Property*”).

2. Defendant is and was at all relevant times herein a political subdivision of the State of Hawaii within which the Property is located.

JURISDICTION AND VENUE

3. This Complaint for declaratory judgment and injunctive relief is instituted pursuant to sections 603-21.5(a)(3) and 632-1 of the Hawaii Revised Statutes (“*HRS*”) and Rule 57 of the Hawai‘i Rules of Civil Procedure (“*HRCP*”).

4. Venue is proper pursuant to HRS section 603-36 because the claim for relief arose in this judicial circuit.

GENERAL ALLEGATIONS

5. Upon information and belief, Kiahuna Poipu Golf Resort LLC and/or its affiliates previously owned and developed the Property as part of a larger development.

6. The larger development consists of numerous parcels rezoned under Ordinance No. PM-31-79, Bill No. 585 (as amended), entitled An Ordinance Amending Ordinance No. 164 Comprehensive Zoning Ordinance of the County of Kauai (Moana Corporation), approved on May 23, 1979 by Mayor of the County of Kauai Eduardo E. Malapit. Collectively, these lands together with the Property are referred to herein as the “*Master Development*”).

7. In connection with the Master Development, Kiahuna Poipu Golf Resort LLC applied for, and the Planning Director of the County of Kaua'i approved by letter dated September 15, 2006, the following permits, subject to certain conditions: (1) Project Development Use Permit P.D. U-2006-25, (2) Use Permit U-2006-26, and (3) Class IV Zoning Permit Z-IV-2006-27 (collectively, the "*Permits*").

8. Condition 26 of the Permits provides: "Prior to building permit approval, the Applicant shall submit a master drainage plan for all lands mauka of Poipu Road rezoned under Moana Corporation Ordinance No. PM-31-79 for Planning Commission review and approval, including Kaneiolouma Heiau."

9. Upon information and belief, the Property was transferred to Maryl Group dba Kiahuna Kanahiku, LLC and Wind Ridge Island Properties, LLC.

10. Upon information and belief, the Property was then transferred to Yellow Hale, LLC, a Hawaii limited liability company.

11. By Warranty Deed dated May 26, 2021, between Yellow Hale, LLC, as Grantor, and 5425 Pau, as Grantee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i (the "*Land Court*") as Document No. T-11474216, 5425 Pau obtained title to the Property.

12. By Warranty Deed dated August 10, 2021, filed in the Bureau of Conveyances of the State of Hawai'i on August 12, 2021 as Document No. A-78940056, 5425 Pau conveyed its entire interest in the Property to MP.

13. Plaintiffs, together with Kauai Hale, Inc., a Delaware corporation, as Developer, submitted the Property, formerly designated by TMK No. (4) 2-8-014-034, to a condominium property regime established under and pursuant to that certain First Amended and Restated

Declaration of Condominium Property Regime for Kauanoe O Koloa Condominium Project dated December 27, 2021, recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. A-80460606 (the "*Condominium*").

14. Although the Property is only a small portion of the Master Development, pursuant to Condition 26 of the Permits, Plaintiffs must submit a master drainage plan for all lands Mauka of Poipu Road rezoned under Moana Corporation Ordinance No. PM-31-79, including Kaneiolouma Heiau (collectively, the "*Mauka Lands*") for Planning Commission review and approval before they may obtain building permit approval for the Condominium.

15. The Property makes up only a small portion of the Mauka Lands.

16. Kaneiolouma Heiau is not located on the Property.

17. Because Plaintiffs do not own all of the Mauka Lands, they must obtain permission from all other owners of the Mauka Lands to access those areas to complete the required drainage studies for the master drainage plan. Those other owners of Mauka Lands are not obligated to provide such permission.

18. The estimated cost to complete drainage studies for the master drainage plan is approximately \$200,000.00 and would take approximately nine (9) months to complete, assuming that Plaintiffs are able to obtain permission to conduct the studies from all other owners of the Mauka Lands.

19. Requiring Plaintiffs to complete and submit a master drainage plan for properties that it does not own is not roughly proportional to the burden placed on Defendant resulting from Plaintiffs' proposed development (i.e., the risk of uncontrolled and/or unmanaged drainage with respect to the Mauka Lands), in part, because Plaintiffs are proposing to develop only a small portion of the Mauka Lands.

COUNT I
(DECLARATORY RELIEF)

20. Plaintiffs re-allege and hereby incorporate by this reference paragraphs 1 through 19, inclusive, as if set forth in full herein.

21. As a result of the above-described events and circumstances, there is an actual and continuing controversy between Plaintiffs and Defendant regarding whether Plaintiffs must prepare and submit a master drainage plan for properties within the Mauka Lands that they do not own.

22. A declaratory judgment will terminate the controversy that Defendant has created regarding the requirements of Condition 26 of the Permits.

23. Therefore, Plaintiffs pray for a declaration that Condition 26 of the Permits is applicable only to property owned by Plaintiffs (i.e., the Property).

COUNT II
(INJUNCTIVE RELIEF)

24. Plaintiffs re-allege and hereby incorporate by this reference paragraphs 1 through 23, inclusive, as if set forth in full herein.

25. If Defendant requires that Plaintiffs submit a master drainage plan for all of the Mauka Lands prior to building permit approval, Plaintiffs will be irreparably harmed for which there is no adequate remedy at law. Plaintiffs are entitled to an order enjoining Defendant from requiring that Plaintiffs prepare and submit a master drainage plan for properties that Plaintiffs do not own.

REQUESTS FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

A. That judgment be entered in favor of Plaintiffs and against Defendant as set forth in the foregoing Counts;

B. For a binding declaration by this Court that Condition 26 of the Permits is applicable only to property owned by Plaintiffs;

C. That the Court issue a temporary restraining order, preliminary injunction, and/or a permanent injunction preventing Defendant from requiring that Plaintiffs prepare and submit a master drainage plan for properties that Plaintiffs do not own;

D. For an award of general, special, and punitive damages against Defendant in an amount to be determined at trial;

E. That Plaintiffs be awarded its reasonable attorney's fees and costs of suit, pre and post judgment interest; and

F. That Plaintiffs be awarded such other and further relief as the Court deems just and proper.

DATED: Honolulu, Hawai'i, August 9, 2023.

/s/ David J. Minkin
LAUREL LOO
DAVID J. MINKIN
JORDAN K. INAFUKU

Attorneys for Plaintiffs
5425 PAU A LAKA LLC and
MP ELKO II, LLC

**STATE OF HAWAII
CIRCUIT COURT OF THE
FIFTH
CIRCUIT**

**SUMMONS
TO ANSWER CIVIL COMPLAINT**

CASE NUMBER

PLAINTIFF'S NAME & ADDRESS, TEL. NO.

PLAINTIFF

5425 PAU A LAKA LLC, a Hawaii limited liability company; MP ELKO II, LLC, a Nevada limited liability company

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DEFENDANT(S)

COUNTY OF KAUA'I

TO THE ABOVE-NAMED DEFENDANT(S)

You are hereby summoned and required to filed with the court and serve upon
LAUREL LOO, ESQ.
4463 Pahe'e Street, Suite 208
Lihue, Hawaii 96766

DAVID J. MINKIN, ESQ.
JORDAN K. INAFUKU, ESQ.
Five Waterfront Plaza, 4th Floor
500 Ala Moana Boulevard
Honolulu, Hawaii 96813

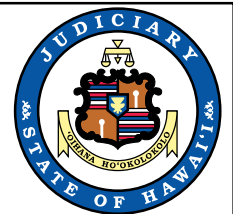
plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.

A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.

DATE ISSUED _____

Effective Date of 28- Oct- 2019
Signed by: /s/ J. Ephan Clerk,
5th Circuit, State of Hawaii`i



In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Fifth Circuit Court Administration Office at PHONE NO. 482-2347, FAX 482-2509.