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S. ENOKA, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

ALOHA ESTATES ASSOCIATION,)
a Hawaii non-profit corporation,)
HORACE E. LUFKIN, EUGENE)
H.D. LEE, DARIEN C. TELEHALA,)
ROBERT BARFIELD, ALEXANDER)
SCHAFFER, KIKUE FURUKAWA, and)
JOHN FLATLEY, individually, and as)
representatives of all other persons)
similarly situated,)

Plaintiffs,)

vs.)

ANTONE BORERO, CHAD GALANTE,)
SONNY A. KALOI, MARIO C.)
CABALARA, ALLEN NOBRIGA,)
ABRAHAM K. KELIPIO and JUDY K.)
McREAVY,)

Defendants.)

CIVIL NO. 99-267
(Declaratory Judgment)

FINDINGS OF FACT, CONCLU-
SIONS OF LAW AND ORDER
GRANTING PARTIAL SUMMARY
JUDGMENT

FINDINGS OF FACT, CONCLUSIONS OF LAW

AND ORDER GRANTING PARTIAL SUMMARY JUDGMENT

THIS MATTER having come on for a hearing on February 17, 2000 on
Plaintiffs' Motion for Summary Judgment, Plaintiffs being represented by STUART H.

I hereby certify that this is a full, true and correct
copy of the original on file in this office.

ODA, and SHERRILL A. ATWOOD, representing Defendant JUDY K. McREAVY being present, the court makes the following Findings of Fact and Conclusions of Law herein:

FINDINGS OF FACT:

1. Plaintiff ALOHA ESTATES ASSOCIATION(hereafter called Association) is a Hawaii non-profit corporation, duly incorporated on August 6, 1979 in the State of Hawaii, and is an active non-profit corporation.

2. It is an association of property owners who reside in or own properties exclusively in the Aloha Estates Subdivision, in Glenwood, District of Puna, County of Hawaii, State of Hawaii.

3. The individual Plaintiffs are all owners of lots within the subdivision, and have been named class representatives by the court.

4. The Defendants are likewise all owners of lots within the subdivision, and are generally opposed to any mandatory road maintenance fees of any type.

5. Aloha Estates Subdivision is a residential subdivision made up of approximately three hundred seventy nine (379) lots. It is located in Glenwood, District of Puna, County of Hawaii.

6. All roadways traversing the subdivision are privately owned by each lot owner having an undivided 1/379th undivided interest in the said roadways. It is not known how many miles of roadways exist throughout the subdivision, but one estimate is about five (5) miles. Most roadways within the subdivision remain unpaved, being composed primarily of cinder and gravel.

7. Since it was formed in 1979, Plaintiff Association has voluntarily assumed the role of maintaining the roadways within the subdivision, funded primarily by annual dues and donations received from its membership and other donors. Such payments, however, have not been sufficient to properly maintain all of the roads.

8. Defendant JUDY K. McREAVY has argued that funds for road maintenance should be administered by a road committee or separate entity, and not by the present association.

9. The deeds of the owners of lots in Aloha Estates Subdivision are silent as to the owner's duty to contribute to the maintenance of the private roads within the subdivision.

10. Plaintiffs, by this action, seek to initiate a mandatory road maintenance program in order to require all property owners to pay their fair share. Since incorporating, Plaintiff Association has been responsible for the maintenance of the roadways within the subdivision.

CONCLUSIONS OF LAW:

1. This court has jurisdiction of this action.
2. The action is maintainable as a Plaintiffs' class action under Rule 23(b)(2), Hawaii Rules of Civil Procedure, and the class is certified as follows:

"All property owners in Aloha Estates Subdivision, Puna, County and State of Hawaii, who are in favor of mandatory assessments of property owners for the maintenance and repair of all subdivision roadways."

3. That the individual Plaintiffs, HORACE E. LUFKIN, EUGENE H.

D. LEE, DARIEN C. TELEHALA, ROBERT BARFIELD, ALEXANDER SCHAFFER, KIKUE FURUKAWA and JOHN FLATLEY have been named class representatives of Plaintiffs' class.

4. In accordance with the opinion of the Supreme Court of the State of Hawaii in *Paradise Hui Hanalike v. Hawaiian Paradise Park Corporation, et al.*, 66 Haw, 362 (1983), where a subdivision is created consisting of lots and private roadways servicing them, and the deeds to the lots are silent as to any duty to contribute to the maintenance of the roads, owners of lots abutting the roads have a legal duty to contribute to necessary road maintenance.

5. Plaintiff Association, a Hawaii non-profit corporation, or its successors and assigns, shall hereafter be entitled to assess and collect mandatory road maintenance fees from all property owners in Aloha Estates Subdivision, Puna, Hawaii. "Property owners" shall include all owners holding legal title as well as purchasers under land sale contracts commonly called Agreements of Sale.

6. Plaintiffs' request for equitable liens and foreclosure rights against delinquent property owners is denied. However, Plaintiff Association shall have its usual remedies of seeking judgments against delinquent owners, as well as all other post judgment remedies as authorized by law, including those remedies specified in Chapters 651 and 652, Hawaii Revised Statutes, as amended.

7. Plaintiff Aloha Estates Association is entitled to continue with its road maintenance program for the said subdivision.

8. Defendant McReavy's request that a special road committee or

separate entity administer the road funds is an internal administrative matter for the association itself to determine and not a matter for the court to decide.

9. As a class action under Rule 23(b)(2), Hawaii Rules of Civil Procedure, the judgment shall be binding upon all property owners in Aloha Estates Subdivision, Puna, County of Hawaii, State of Hawaii, and may be enforced accordingly.

10. PURSUANT TO RULE 23(b)(2), AND RULE 54(b) OF THE HAWAII RULES OF CIVIL PROCEDURE, THE COURT EXPRESSLY DETERMINES THAT THERE IS NO JUST REASON FOR DELAY AND DIRECTS THE ENTRY OF A FINAL JUDGMENT AS TO ALL OF THE CLAIMS BETWEEN THE PLAINTIFFS AND THE DEFENDANTS.

11. Judgment may issue in accordance herewith.

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

Pursuant to the Findings of Fact and Conclusions of Law entered herein ,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiffs' Motion for Summary Judgment is granted in part and denied in part.

2. In accordance with the opinion of the Supreme Court of the State of Hawaii in *Paradise Hui Hanalike v. Hawaiian Paradise Park Corporation, et al.*, 66 Haw, 362 (1983), where a subdivision is created consisting of lots and private roadways servicing them, and the deeds to the lots are silent as to any duty to contribute to the maintenance of the roads, owners of lots abutting the roads have a legal duty to contribute

to necessary road maintenance.

3. Plaintiff Aloha Estates Association, a Hawaii non-profit corporation, its successors and assigns, shall hereafter be entitled to assess and collect mandatory road maintenance fees from all property owners in Aloha Estates Subdivision, Puna, Hawaii. "Property owners" shall include all owners holding legal title as well as purchasers under land sale contracts commonly called Agreements of Sale.

4. Plaintiffs' request for equitable liens and foreclosure rights against delinquent property owners is denied. However, Plaintiff Association shall have its usual remedies of seeking judgments against delinquent owners, as well as all other post judgment remedies as authorized by law, including those remedies specified in Chapters 651 and 652, Hawaii Revised Statutes, as amended.

5. Plaintiff Aloha Estates Association is entitled to continue with its road maintenance program for the said subdivision.

6. A declaratory judgment may issue in accordance herewith.

7. As a class action under Rule 23(b)(2), Hawaii Rules of Civil Procedure, the judgment shall be binding upon all property owners in Aloha Estates Subdivision, Puna, County of Hawaii, State of Hawaii, and may be enforced accordingly.

8. **PURSUANT TO RULE 23(b)(2) AND RULE 54(b) OF THE HAWAII RULES OF CIVIL PROCEDURE, THE COURT EXPRESSLY DETERMINES THAT THERE IS NO JUST REASON FOR DELAY AND DIRECTS THE ENTRY OF A FINAL JUDG-**

MENT AS TO ALL OF THE CLAIMS BETWEEN THE PLAINTIFFS AND THE DEFENDANTS.

DATED: Hilo, Hawaii

MAR - 2 2000

GREG K. NAKAMURA (Seal)

JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

Sherrill A. Atwood

SHERRILL A. ATWOOD, Attorney for
Defendant JUDY K. McREAVY