

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

MAUNALUA BAY BEACH)
OHANA 28, a Hawai'i Non-Profit)
Corporation; MAUNALUA BAY BEACH)
OHANA 29, a Hawai'i Non-Profit)
Corporation; and MAUNALUA BAY)
BEACH OHANA 38, a Hawai'i Non-)
Profit Corporation, individually and on)
behalf of all others similarly situated;)

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

Civil No. 05-1-0904-05 EEH
(Inverse Condemnation)

**ORDER GRANTING PLAINTIFFS'
AMENDED MOTION FOR PARTIAL
SUMMARY JUDGMENT FILED
FEBRUARY 13, 2006**

Date: May 3, 2006
Time: 10:45 a.m.
Judge: Eden E. Hifo

**ORDER GRANTING PLAINTIFFS' AMENDED MOTION FOR
AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiffs Maunalua Bay Beach Ohana 28, Maunalua Bay Beach Ohana 29, and Maunalua Bay Beach Ohana 38 ("Plaintiffs") filed an Amended Motion for Partial Summary Judgment filed February 13, 2006. The motion was heard by the Honorable Eden E. Hifo on May 3, 2006 at 10:45 a.m. Paul Alston and Laura P. Couch appeared on behalf of Plaintiffs; William J. Wynhoff appeared on behalf of Defendant State of Hawai'i.

Having considered the memoranda filed by the parties, the arguments of counsel, and the record and files in this action, the Court finds there are no disputed issues of material fact and that plaintiffs are entitled to partial summary judgment as a matter of law as follows:

- (1) Act 73 (2003) ("Act 73") represented a sudden change in the common law and effected an uncompensated taking of, and injury to, (a) littoral owners' accreted land, and (b) littoral owners' right to ownership of future accreted land, insofar as Act 73 declared accreted land to be "public land" and prohibited littoral owners from registering existing and future accretion under Haw. Rev. Stat. Chapter 501 and/or quieting title under Haw. Rev. Stat. Chapter 669.

- (2) Act 221 (1985) was not intended to alter, and did not alter, the common law of Hawai'i with respect to the ownership of accreted land by the littoral owner. Such land belongs to the littoral landowner, whether or not title thereto is registered under Haw. Rev. Stat. Chapter 501 or quieted under Haw. Rev. Stat. Chapter 669, and it was not taken by the State from littoral landowners so long as the littoral landowners remained free to register title thereto accretion under Haw. Rev. Stat. Chapter 501 or quiet title thereto under Haw. Rev. Stat. Chapter 669.
- (3) Land which accreted naturally and imperceptibly before Act 221 was not made "public land," and was not taken from littoral landowners by the State so long as littoral landowners remain free to register title to the accreted land under Haw. Rev. Stat. Chapter 501 and/or quiet title under Haw. Rev. Stat. Chapter 669;
- (4) Land which accreted naturally and imperceptibly after Act 221 is not public land and was not and was not taken by the State from littoral landowners by Act 73, even if the land is not "permanent" within the meaning of Act 221, so long as littoral landowners remains free to register title to "permanent" accreted land under Haw. Rev. Stat. Chapter 501 and/or quiet title under Haw. Rev. Stat. Chapter 669.

Accordingly, for good cause it is ORDERED that the Amended Motion for Summary Judgment is GRANTED insofar as Plaintiffs sought declaratory relief.

DATED: Honolulu, Hawai'i, AUG 31 2006

EDEN ELIZABETH HIFO

Judge of the Above-Entitled Court



Approved as to Form:

WILLIAM J. WYNHOFF
Attorney for Defendant
State of Hawai'i

Maunalua Bay Beach Ohana 28, et al. v. State of Hawaii,
Civil No. 05-1-0904-05 EEH, **ORDER GRANTING PLAINTIFFS' AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT FILED FEBRUARY 13, 2006**