NO. 30484

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAI‘I

In the Matter of the Application of HONOLULU CONSTRUCTION AND DRAYING COMPANY, LIMITED, to register title to land situate at Honolulu, City and County of Honolulu, State of Hawai‘i.	)	ICA NO. 30484 PETITIONER SCENIC HAWAI‘I, INC.’S APPLICATION FOR WRIT OF CERTIORARI REGARDING THE FINAL JUDGMENT FILED ON JANUARY 18, 2013; APPENDIX *(Caption continued on next page)*

PETITIONER SCENIC HAWAI‘I, INC.’S
APPLICATION FOR WRIT OF CERTIORARI

APPENDIX

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NO. 30484

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAI‘I

ALOHA TOWER DEVELOPMENT CORPORATION,	)
Petitioner,	)
vs.	)
STATE OF HAWAI‘I, DEPARTMENT OF LAND AND NATURAL RESOURCES, TRUSTEES OF WILLIAM G. IRWIN CHARITY FOUNDATION, SCENIC HAWAI‘I, INC., THE OUTDOOR CIRCLE, HISTORIC HAWAI‘I FOUNDATION, HAWAI‘I’S THOUSAND FRIENDS, LIFE OF THE LAND, AND INTERVENOR, CITY AND COUNTY OF HONOLULU,	)
Respondents.	)
and	)
SCENIC HAWAI‘I, INC.	)
Respondent/Cross-Appellee,	)
vs.	)
ALOHA TOWER DEVELOPMENT CORPORATION,	)
Petitioner/Cross-Appellant.	)
_____	)

NO. 30484

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAI‘I

In the Matter of the Application of HONOLULU CONSTRUCTION AND DRAYING COMPANY, LIMITED, to register title to land situate at Honolulu, City and County of Honolulu, State of Hawai‘i. ALOHA TOWER DEVELOPMENT CORPORATION, Petitioner, vs. STATE OF HAWAI‘I, DEPARTMENT OF LAND AND NATURAL RESOURCES, TRUSTEES OF WILLIAM G. IRWIN CHARITY FOUNDATION, SCENIC HAWAI‘I, INC., THE OUTDOOR CIRCLE, HISTORIC HAWAI‘I FOUNDATION, HAWAI‘I’S THOUSAND FRIENDS, LIFE OF THE LAND, AND INTERVENOR, CITY AND COUNTY OF HONOLULU, Respondents. and SCENIC HAWAI‘I, INC. Respondent/Cross-Appellee, vs. ALOHA TOWER DEVELOPMENT CORPORATION, Petitioner/Cross-Appellant.	ICA NO. 30484 PETITIONER SCENIC HAWAI‘I, INC.’S APPLICATION FOR WRIT OF CERTIORARI REGARDING THE FINAL JUDGMENT FILED ON JANUARY 18, 2013; APPENDIX

PETITIONER SCENIC HAWAIʻI, INC.'S
APPLICATION FOR WRIT OF CERTIORARI

Petitioner Scenic Hawaiʻi, Inc. by and through its attorneys, Bronster Hoshibata, applies for a writ of certiorari to the Supreme Court of the State of Hawaiʻi.

I. SHORT STATEMENT OF QUESTION PRESENTED IN GENERAL TERMS.

Whether the Intermediate Court of Appeals ("ICA") gravely erred in holding that the Land Court abused its discretion by awarding Scenic Hawaiʻi its attorneys' fees and costs under the Private Attorney General Doctrine ("PAGD"). The Land Court did not abuse its discretion because it followed the precedent established by this court in *Sierra Club v. Dep't of Transp. of State of Hawaiʻi*, 120 Hawaiʻi 181, 202 P.3d 1226 (2009) ("*Sierra Club II*"), and it satisfied all three prongs of the Private Attorney General Doctrine ("PAGD"). The Land Court ruled properly especially in light of the actions of the State and its Attorney General in not only completely abandoning its duty under Haw. Rev. Stat. § 206J-6(c), to preserve Irwin Memorial Park, but in driving the Petition which would have destroyed the Park. But for Scenic Hawaiʻi's intervention, the success in vindicating the public interest would have been problematic.

II. STATEMENT OF PRIOR PROCEEDINGS IN THE CASE.

On May 15, 2001, Aloha Tower Development Corporation ("ATDC"), an agency of the State of Hawaiʻi, filed a Petition in Land Court to expunge a deed restriction to Irwin Memorial Park, which required it to be preserved as a public park. 1 ROA at 1-96. Irwin Park was deeded to the Territory of Hawaiʻi by Helene Irwin Fagan with a reversionary interest that required the Territory to maintain Irwin Park as a public park and, if it failed to do so, the ownership of the land would revert back to Mrs. Fagan or her heirs. 14 ROA at 5378-79.

Before any party filed an answer, on June 8, 2001, Scenic Hawai‘i, along with four other preservation organizations,[1] moved the Land Court for leave to intervene in the litigation in order to preserve Irwin Park as a public park. *Id.* at 116–139. The William G. Irwin Charity Foundation, created by Fagan to hold the reversionary interest among other purposes, answered on June 14, 2001. *Id.* at 141-147. The City & County of Honolulu ("City") moved to intervene on June 15, 2001, and the Court granted the motion on November 9, 2001. *Id*. at 390-92. ATDC then served the Petition on William L. Olds, Jr. and Jane Olds Bogart, the grandchildren of Helene Fagan (who deeded the park to the State) as the Trustees of the William G. Irwin Charity Foundation. *Id*.

On June 27, 2001, Olds and Bogart filed their Answer and Response to the Petition in their own right. 1 ROA at 194-200. They objected nineteen days after Scenic Hawai‘i moved to intervene. *Id.* These Respondents were and are located in California. 15 ROA at 5491; 5494.[2] The State of Hawai‘i filed a joinder in ATDC's petition on February 25, 2002. 3 ROA at 1212-15. The Land Court, Judge Gary W.B. Chang, then ordered the State of Hawai‘i and Department of Land and Natural Resources to appear as parties to the litigation, 3 ROA 1243-1252.

Upon completion of a non-jury trial, the Land Court agreed with Scenic Hawai‘i that ATDC's Petition was not supported by the facts and the law, and it dismissed the Petition with prejudice. 14 ROA at 5132-5136. On August 28, 2008, Scenic Hawai‘i filed its Motion for Attorneys' Fees and Costs. 14 ROA at 5074-5335. On June 26, 2009, the Land Court filed its "Order Granting in Part and Denying in Part Respondent Scenic Hawai‘i, Inc.'s Motion for Attorneys' Fees and Costs Filed on August 28, 2008". 15 ROA at 5556-62. The Court found

[1] The Outdoor Circle, Historic Hawai‘i Foundation, Hawai‘i's Thousand Friends, and Life of the Land. Scenic Hawai‘i, alone, paid for all of the attorneys' fees and costs.

[2] No respondent with a presence in Hawai‘i was named or served by ATDC. 1 ROA at 1-96.

that Scenic Hawai‘i satisfied the three-prong test of the PAGD, and that Scenic Hawai‘i was entitled to an award of its reasonable attorneys’ fees and costs. *Id*. at 5557. The Order also stated that Scenic Hawai‘i’s motion for its attorneys’ fees was denied without prejudice in order to allow Scenic Hawai‘i to clarify and/or supplement its billing entries. *Id*. at 5557-58.

On February 24, 2010, the Land Court issued its “Order Granting Respondent Scenic Hawai‘i’s Renewed Motion for Attorneys’ Fees”, and awarded Scenic Hawai‘i a total amount of $130,674.09 in attorneys’ fees (in addition to the $4,963.60 for Scenic Hawai‘i’s costs). 16 ROA at 5885-92.[3] On March 29, 2010, the Land Court issued its “Final Judgment” in favor of Scenic Hawai‘i, in the total amount of $135,637.69. *Id.* at 5900 – 5906.

ATDC appealed the Land Court’s award of attorneys’ fees. The ICA issued a ruling on December 19, 2012 reversing the Land Court’s award of attorneys’ fees and costs to Scenic Hawai‘i. *See,* ICA Opinion, Appendix.

III. SHORT STATEMENT OF THE CASE WITH MATERIAL FACTS.

In 1930, Helene Irwin Fagan dedicated property now known as Irwin Park to the public in trust to the Territory of Hawai‘i. 14 ROA at 5376.[4] Irwin Park is located *mauka* of the Aloha Tower Marketplace and bounded by North Nimitz Highway, Fort Street, Bishop Street, and Aloha Tower Drive. *Id.* The deed and trust agreement between Mrs. Fagan and the Territory included four restrictive covenants governing the use and maintenance of Irwin Park which required that Irwin Park be preserved and used as a public park. *Id.* at 5377.

On March 13, 1931, Territorial Governor Lawrence M. Judd issued Executive Order No. 472, which set aside the property as a public park and which adopted the reservations and

[3] ATDC has not challenged the amounts and the reasonableness of the fees awarded by the Land Court.

[4] This recitation of relevant facts is based on the Land Court’s Findings of Fact, Conclusions of Law, and Order filed November 3, 2008, which ATDC has elected not to appeal. Thus, these facts are undisputed.

conditions set forth in the deed of Mrs. Fagan. *Id.* at 5379. Executive Order No. 472 remains in full force and effect. *Id.* at 5381. In 1981, the Hawai‘i legislature enacted Haw. Rev. Stat. Chapter 206J, which in relevant part codified Executive Order No. 472 and the reservations and conditions set forth in the Fagan deed. *Id.* at 5388. In October 1999, the Hawai‘i Historic Places Review Board voted unanimously to place Irwin Park on the Hawai‘i Register of Historic Places. *Id.* at 5389. These actions confirmed Irwin Park's protective status as an historic property under Haw. Rev. Stat. § 6E. *Id.*

Despite ATDC's and the State's statutory duty to preserve Irwin Park, the explicit deed, trust, statutory and executive mandates protecting it; and after seventy years of administering Irwin Park as a free and public park, the State through ATDC began its attempt to raze it in favor of a multi-story parking deck. *See* ICA Order, p. 3. ATDC alleged that Mrs. Fagan executed a document in January, 1952 expressing her intent to accept a specific parcel of Maui land in exchange for a waiver of her reversionary interest as to a portion of Irwin Park. 14 ROA at 5392. ATDC alleged that the document itself constituted a full release and discharge of all restrictive covenants then existing on Irwin Park.

Mrs. Fagan died in 1966 without the Territory or the State conveying any Maui land to her, and without her conveying any release to the Territory or the State or discharging any of the restrictive covenants. *Id.* at 5393. However, ATDC nevertheless proceeded with its Petition. Through Scenic Hawai‘i's prompt and vigorous opposition to the petition, Scenic Hawai‘i ensured the property would remain a free and public park, in accordance with the deed, executive order, statute, and its historic preservation status.

IV. BRIEF ARGUMENT WITH SUPPORTING AUTHORITIES.

A. The ICA Failed to Consider the State's Sudden Filing of A Petition Which Would Have Resulted in Irreparable Damage to Irwin Park and the Public Interest.

Before an analysis of why the ICA's opinion, based upon the three prongs of the PAGD, is in error, this Court should consider the transgressions of and the dilemma posed, single-handedly by the State – including the ATDC, the DLNR, and the Attorney General. It is well settled that the State, in particular the Attorney General, is duty-bound to represent the public interest and to ensure proper enforcement of that duty. *In re Water Use Permit Applications*, 96 Hawai'i 27, 28-29, 25 P.3d 802 at 803-804 (2001) ("*Waiahole II*").

In the instant case, despite the Fagan Deed, Executive Order No. 472, and Haw. Rev. Stat. § 206J-6(c), all of which perpetuate Irwin Memorial Park as an historic public park, the State entities willfully and aggressively brought the Petition in a sudden and precipitous manner against non-resident parties who had no ties to Hawai'i. If Scenic Hawai'i had not acted when it did, there was the very real and imminent danger that the ATDC, the State, and its Attorney General would have acted *ultra vires*, and would have eviscerated the Fagan Deed, the Executive Order and the statute. 14 ROA at 5074-5335, 15 ROA at 5249-5488.

B. The ICA Erred in Reversing the Land Court's Award Of Attorneys Fees As An Abuse Of Discretion.

The trial court's grant or denial of attorneys' fees and costs is reviewable under the abuse of discretion standard. *Sierra Club II*, 120 Hawai'i at 197, 202 P.3d at 1242. An abuse of discretion occurs where the trial court has clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant. *Maui Tomorrow v. BLNR*, 110 Hawai'i 234, 242, 131 P.3d 517, 525 (2006) (*"Maui Tomorrow"*) (emphases added).

The Land Court did not abuse its discretion in applying the law to the facts of this case. The recent and seminal case of *Sierra Club II* clearly sets forth the parameters of the application of the PAGD to parties who have satisfied the three factors. *Sierra Club II*, 120 Hawai'i at 218,

202 P.3d at 1263. An analysis of the instant case demonstrates that, like Sierra Club (the coalition, *see* fn 5, below). Scenic Hawai‘i indeed satisfied all three factors of the PAGD.

The Land Court ruled that Scenic Hawai‘i was entitled to its fees and costs based on the PAGD. The ICA then gravely erred by overruling the Land Court's order, despite that Court's conclusion that Scenic Hawai‘i satisfied the three prong test required by the doctrine.

The PAGD is an equitable rule that allows courts to use their discretion to award attorneys' fees to plaintiffs who have vindicated important public rights. *Sierra Club II*, 120 Hawai‘i at 218, 202 P.3d at 1263 [quoting *Maui Tomorrow*, 110 Hawai‘i 234, 244, 131 P.3d 517, 527) and *Waiahole II*, 96 Hawai‘i at 28-29, 25 P.3d at 803-804]. The Hawai‘i Supreme Court stated that "the purpose of the doctrine is to promote vindication of important public rights." *Sierra Club II,* 120 Hawai‘i, 219, 202 P.3d at 1226. Three factors are considered in applying the doctrine: (1) the strength or societal importance of the public policy vindicated by the litigation; (2) the necessity for private enforcement and the magnitude of the resultant burden on the plaintiff; and (3) the number of people standing to benefit from the decision. *Id.* at 220 – 221, 202 P.3d at 1265-1266.

In its opinion, the ICA relied on the three cases referred to above (*Waiahole II, Maui Tomorrow and Sierra Club II*) to determine that Scenic Hawai‘i did not qualify for an award of its fees and costs. The first two cases clarified the facts and circumstances needed to satisfy prongs one and two of the PAGD. *Sierra Club II* held that the third prong of the PAGD had been met, thereby setting the precedent for a finding that Scenic Hawai‘i met all three prongs on this case.

The first two cases in which the Hawai‘i Supreme Court favorably discussed the PAGD doctrine were the *Waiahole II* case and the *Maui Tomorrow* case. In *Waiahole II*, the Court held that while the petitioner (for attorneys' fees under the PAGD) satisfied prongs one and three of

the PAGD, it did not satisfy prong two. The second prong was deemed not to have been met because (1) in other cases, the plaintiffs served as the sole representatives of the vindicated public interest, and (2) in other cases, the government either completely abandoned, or actively opposed, the plaintiff's cause. 96 Hawai'i at 31, 25 P.3d at 806. In the instant case, there is no doubt that the State actively opposed Scenic Hawai'i's cause. 15 ROA at 5430. The other holding of *Waiahole II*, that the plaintiffs were not the sole representatives, is distinguished in the instant case because Scenic Hawai'i intervened in large part because of the uncertainties of the interest and intentions of the Fagan heirs. ROA at 5432. At a key point in time when the Fagan heirs had not been served, when they had little or no contact or relationship with Hawai'i, and when their interests and intentions were unknown, Scenic Hawai'i had to intervene in order to protect the vindicated public interest. 14 ROA at 5074-5335, 15 ROA at 5249-5488.

In the *Maui Tomorrow* case, the Court held that, unlike the Windward Parties in *Waiahole II*, Na Moku "was not contesting apportionment, but was contesting a policy of the BLNR to lease water rights without performing the required analysis . . . [a]s such, that point of the *Waiahole II* analysis is in favor of Na Moku . . . [t]he other points, however, are not." 110 Hawai'i at 245, 131 P.3d at 528. (Emphasis added.) The Court did not specifically state that Na Moku failed to satisfy prong two of the PAGD, but such was the end result.

C. Scenic Hawai'i Vindicated Important Public Policy.

Sierra Club II is the case which the Hawai'i Supreme Court fully embraced the PAGD and held that Sierra Club met all three prongs of the PAGD. *Sierra Club II* supports Petitioner Scenic Hawai'i's argument that it met all three prongs of the PAGD and, therefore, should be awarded its attorneys' fees and costs. *Sierra Club II* concerned the Hawai'i Superferry project

and the efforts of Sierra Club[5] to force the State Department of Transportation ("DOT") to complete an environmental assessment prior to multiple harbor improvements. Sierra Club had succeeded [in *Sierra Club **I***, 115 Hawai'i 299, 167 P.3d 292 (2007)] in persuading the Supreme Court to reverse the Circuit Court's judgment which held that the DOT's determination that the improvements to Kahului Harbor were exempt from the requirements of HRS Chapter 343, which required an environmental assessment. In *Sierra Club **II***, Sierra Club requested its attorneys' fees based upon the PAGD. Preliminarily, the Supreme Court confirmed that "[p]recedent from this court has recognized the exception provided by the **private attorney general doctrine** . . ." 120 Hawai'i at 218, 202 P.3d at 1263. (Emphasis in original). The Court then reviewed its decisions in *Waiahole II* and *Maui Tomorrow* before addressing the key issue:

> DOT and Superferry argue that none of the **private attorney general doctrine** prongs are satisfied in this case. Sierra Club disagrees and argues that all three prongs of the doctrine have been satisfied. We agree with Sierra Club. (Emphasis in original.)

Sierra Club met the first prong of the PAGD, the strength or societal importance of the public policy vindicated by the litigation. The ICA's conclusion in the instant case, that Petitioner did not meet the first prong of the PAGD, is clearly inconsistent with the Supreme Court's holding in *Sierra Club II*. *Sierra Club II* stands, *inter alia*, for the proposition that the application of the PAGD does not rely upon the technical nature of the initial Petition filed by the State; i.e., to prove that Mrs. Fagan waived deed restrictions. In the instant case, the ICA erroneously decided that Scenic Hawai'i did not meet the first prong because the public policy Scenic Hawai'i advocated "had no connection to or impact on" the legal and factual issues before Land Court, i.e. whether Fagan had waived the deed restrictions. ICA Order, p. 12. It

[5] Sierra Club is the collective name for the Sierra Club, Maui Tomorrow, Inc., and the Kahului Harbor Coalition. It, like Scenic Hawai'i in the instant case, represented multiple organizations and was not a "sole representative" of the public interest.

simplistically held that the issue in this case was "whether ATDC had demonstrated it was entitled to modify and amend Land Court Transfer Certificate of Title No. 310,513 ("TCT"), pursuant to HRS § 501-196, to expunge the deed restrictions on the Property transferred from Fagan to the Territory". *Id.*

It is true that the narrow legal issue which was the basis of ATDC's Petition was whether the Land Court TCT was legally modified and amended so as to allow ATDC to expunge specific deed restrictions. However, the ICA stopped its analysis there and failed to consider the inherent impact of the resolution of that issue upon the "societal importance of the public policy vindicated by the litigation." *See,* 120 Hawai'i at 181, 202 P.3d at 1265. The ICA's myopic focus on the issue of the validity of the Irwin Park deed restrictions and its failure to acknowledge that the larger picture of public interest advanced by Scenic Hawai'i were deficient and are grounds for granting this Writ of *Certorari*.

Irwin Park was protected by a deed, an Executive Order, and a statute, yet ATDC, the entity created by the legislature in part to protect it, planned to build a parking lot over it. Scenic Hawai'i challenged ATDC's Petition which sought to expunge the deed restrictions of the development of Irwin Park so that the agency could uproot ancient trees, tear down and destroy architecturally significant stonework, pave the ground with concrete, and replace the decimated park with a multistory parking structure. By holding ATDC and the State to its statutory duty to preserve this park for the public good, Scenic Hawai'i vindicated the public's right to expect and assume that the State will observe its legal obligation to retain the park "as a public park to beautify the entrance to Honolulu Harbor." 14 ROA at 5395. Thus, Scenic Hawai'i, after years of litigation, vindicated the important public policy of preserving Irwin Park for all residents and visitors.

D. Scenic Hawai‘i’s Timely Intervention Was Necessary.

Next, the ICA incorrectly held that Scenic Hawai‘i did not meet the second prong because the Fagan Heirs and Foundation "vigorously" opposed ATDC, ICA Order, p. 4, and Scenic Hawai‘i "did not serve as the sole representative of the vindicated public interest." ICA Order, p. 14. The Land Court did not abuse its discretion, and the ICA's reasoning is mistaken.

The ICA looked to the decision in *Waiahole II* and stated that the Supreme Court held that "fees are warranted only when the litigated issues are of enormous significance to the society as a whole, but do not involve the fortunes of a single individual to the extent necessary to encourage their private vindication in the courts." *Id.* at p. 13 (quoting *Waiahole II*, 96 Hawai‘i at 30, 20 P.3d at 805). However, that court noted "the government completely abandoned or opposed plaintiff's cause." *Waiahole II*, 96 Hawai‘i at 31, 25 P.3d at 806. Regardless, that court did not adopt the PAGD.

In *Sierra Club II*, the Court held that even though there were three parties to split the cost of litigation - two were non-profit organizations and one was an unincorporated association - they were "solely responsible for challenging the DOT's erroneous application of its responsibilities under HRS 343." *Sierra Club II*, 120 Haw. at 220, 202 P.3d at 1265. This result should be applied to Scenic Hawai‘i.

Scenic Hawai‘i clearly meets the second prong. No governmental entity attempted to vindicate a public right. Indeed, the Attorney General *joined* in ATDC's petition to *eliminate* the historic Irwin Park despite its statutory mandate to *protect* the Park. 3 ROA 1212-1215. The City did not move to intervene until *after* Scenic Hawai‘i did. 1 ROA 162-173. The City then

rode the coat-tails of Scenic Hawai‘i. Additionally, even though Judge Chang ordered the State and the DLNR to appear, they took no active role. 4 ROA 1361-1387[6].

Moreover, the ICA mischaracterizes the "vigorous" involvement of the other parties and the lack of any reason for Scenic Hawai‘i to remain involved in the matter after they joined. When Scenic Hawai‘i intervened, there were numerous questions about whether anyone would oppose the State. Thus private enforcement by Scenic Hawai‘i was necessary to preserve the park. And, following the later involvement of the other parties in opposition, Scenic Hawai‘i had an obligation to zealously see the case through to its conclusion. *See*, Hawai‘i Rules of Professional Conduct, "Preamble", §§ 2, 3, 4, 6, 7.

E. The People of the State of Hawai‘i and its Visitors Benefit From The Decision.

Finally, the ICA determined that because Scenic Hawai‘i did not meet the first two prongs, it would not have to consider the third prong. ICA Order, p. 3. Scenic Hawai‘i does indeed meet this prong. *Sierra Club II* held that the entire public benefited because that litigation "established procedural standing in environmental law and clarified the need to address secondary impacts pursuant to HRS chapter 343." *Sierra Club,* 120 Haw. at 221, 202 P.3d at 1266. In the instant case, it is clear that the number of people, both Hawai‘i residents and visitors, who will benefit from the preservation of Irwin Park, is enormous.

Montana's Supreme Court has adopted the same three prong test as Hawai‘i in setting forth its standard for applying the private attorney general doctrine. *Bitterroot River Protective Ass'n v. Bitterroot Conservation Dist.,* 359 Mont. 393 (2011). *Bitterroot* is significant in two respects. It held that where the litigation determined and clarified the status of public waters

[6] Indeed, three of the members on the Board of Land and Natural Resources indicated that they *agreed* with the ATDC's petition and the Chairman specifically *supported* it. 4 ROA 1361-1387.

pursuant to a statute, the third prong is met. *Id.* at 405. The Court held that the case benefited the public of Montana because they no longer had a fear of trespass, the stream in question was protected from unregulated alteration, and the precedential effect was substantial for the purposes of protecting the waterways. *Id.* The Court also held that an award of attorneys' fees as well as the amount of attorneys' fees is squarely within the discretion of the trial court.

In this case, the people of the State of Hawai‘i and visitors benefit from this litigation. Irwin Park is now protected from being completely destroyed. Thus all residents and visitors will be able to continue to enjoy the historic Irwin Park forever. Furthermore, the precedential value of establishing that the State and its agencies must abide by its obligations and statutory requirements is incredibly significant, especially in the case of Irwin Park and other preservation cases. If this Writ is not granted, private enforcement in light of the State's refusal to represent the public interest will effectively be chilled and become non-existent. Now, the public and the State understand that the State must indeed honor deeded obligations, executive orders, and laws, and that vigilance is necessary to protect against abuses of powers and/or dereliction of duty.

V. CONCLUSION.

Scenic Hawai‘i prays that this Court grant the Writ of Certiorari and proceed under its rules to review the matters complained of, above; to reverse the decision of the ICA; and to grant it its reasonable attorneys' fees and costs pursuant to the PAGD.

DATED: Honolulu, Hawai‘i, March 19, 2013.

/S/ JOHN T. HOSHIBATA
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IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

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IN THE MATTER OF THE APPLICATION OF
HONOLULU CONSTRUCTION AND DRAYING COMPANY,
LIMITED, to register and confirm title to land situate
at Honolulu, City and County of Honolulu, State of Hawaiʻi

ALOHA TOWER DEVELOPMENT CORPORATION, Petitioner, v.
STATE OF HAWAIʻI, DEPARTMENT OF LAND AND NATURAL
RESOURCES, TRUSTEES OF THE WILLIAM G. IRWIN CHARITY
FOUNDATION, SCENIC HAWAIʻI, INC., THE OUTDOOR CIRCLE,
HISTORIC HAWAIʻI FOUNDATION, HAWAIʻI'S THOUSAND FRIENDS,
LIFE OF THE LAND, WILLIAM OLDS, JR. AND JANE OLDS BOGART,
AND INTERVENOR, CITY AND COUNTY OF HONOLULU, Respondents

and

SCENIC HAWAIʻI, INC., Respondent/Cross-Appellee v.
ALOHA TOWER DEVELOPMENT CORPORATION, Petitioner/Cross-Appellant

NO. 30484

APPEAL FROM THE LAND COURT OF THE FIRST CIRCUIT
(APPLICATION NO. 787; L.C. CASE NO. 01-1-0007)

DECEMBER 19, 2012

FOLEY, PRESIDING JUDGE, FUJISE and LEONARD, JJ.

APPENDIX

OPINION OF THE COURT BY LEONARD, J.

Petitioner-Appellant Aloha Tower Development Corporation (**ATDC**) appeals from a March 29, 2010 Final Judgment entered against ATDC by the Land Court.[1/] In the Final Judgment, the Land Court, *inter alia*, awarded attorneys' fees and costs, in the amount of $135,637.69, against ATDC and in favor of Intervenor-Defendant-Appellee Scenic Hawai'i, Inc. (**Scenic Hawai'i**),[2/] based on the private attorney general doctrine. As discussed below, we conclude that the Land Court erred in its application of the private attorney general doctrine to this case.

I. BACKGROUND

A. The Deed Restriction and Purported Waiver

On September 3, 1930, the Territory of Hawai'i (**Territory**) entered into an agreement with Helene Irwin Fagan (**Fagan**) and Honolulu Construction and Draying, Ltd. (**HC&D**), whereby: (1) HC&D agreed to sell the property at issue (**Property**) -- which is today known as Irwin Memorial Park (**Irwin Park**)[3/] -- to Fagan for 2300 shares of common stock in Standard Oil Company of California; (2) Fagan agreed to donate the Property to the Territory; and (3) the Territory agreed to accept the donation, subject to restrictions and conditions, including that the Property would be maintained as a "public park to beautify the entrance to Honolulu Harbor." The deed restrictions and conditions stated that if any portion of the Property was

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1/ The Honorable Gary W.B. Chang presided.

2/ "Scenic Hawai'i" herein refers to the five organizations that were jointly represented during these proceedings: Scenic Hawai'i, Inc., The Outdoor Circle, Historic Hawai'i Foundation, Hawai'i's Thousand Friends, and Life of the Land.

3/ Irwin Park "is located mauka of the Aloha Tower Marketplace bounded by North Nimitz Highway, Fort Street, Bishop Street and Aloha Tower Drive."

ever abandoned as a public park, the Property would revert back to Fagan and "her heirs and assigns[.]"

On March 13, 1931, through Executive Order No. 472, the Territory set aside the Property as a public park and noted that the Territory owned the Property subject to the restrictions and conditions set forth in the deed from Fagan to the Territory. In 1939, the Territory and Fagan entered into a Supplemental Agreement "to permit the parking of vehicles of whatsoever nature, whether with or without the payment of a fee or fees . . . on that portion of [Irwin] [P]ark now set aside for the parking of vehicles[.]"

In 1951, the Territory sent a letter to Fagan seeking a release of Fagan's restrictions on Irwin Park because plans to widen Nimitz Highway would encroach upon a portion of the Property. Fagan sent a reply in 1952, stating that she "agreed that the restrictive conditions contained in [the Irwin Park] deed will be withdrawn and cancelled."

In 1966, Fagan passed away.

In 1981, the Legislature enacted Hawaiʻi Revised Statutes (**HRS**) Chapter 206J (2001 & Supp. 2011), which created ATDC as an agency of the State, and which provides that "Irwin Memorial Park shall be retained as a public park subject to the reservations and conditions set forth in the deed of [] Fagan to the Territory[.]" HRS § 206J-6. In 1999, Irwin Park was placed on the Hawaiʻi Register of Historic Places.

B. The Land Court Proceedings

On May 15, 2001, ATDC, as the ground lessee of Irwin Park, filed a Petition to modify and amend Land Court Transfer Certificate of Title No. 310,513, pursuant to HRS § 501-196 (2006), in order to expunge the deed restrictions on Irwin Park (**Petition**). Although not stated in the Petition, it appears that ATDC was pursuing this relief to facilitate the construction of a multi-story parking structure in Irwin Park. Respondents to the

Petition included William L. Olds, Jr. (**Olds**), and Jane Olds Bogart (**Bogart**), the grandchildren and natural heirs of Fagan (collectively, **Fagan Heirs**), and the Trustees of the William G. Irwin Family Charity Foundation (**Foundation**),[4/] which was named as the residual beneficiary under Fagan's Will.

On June 8, 2001, before the Fagan Heirs' and the Foundation's responses to the Petition were filed, Scenic Hawai'i moved to intervene, seeking to represent the general public's interests, asserting that (1) the State, represented by the Department of the Attorney General, would not adequately represent the public's interest because ATDC, although represented by private counsel, and other State agencies, supported the development of Irwin Park, and (2) the Fagan Heirs had not (yet) been served and appeared to defend the restrictive covenant. Scenic Hawai'i contended that its interests involved "questions of law and fact that are inherently essential elements of the petition", including:

> Was and is there a legal waiver by Mrs. Fagan of the restrictive covenant"? As to the evidence of a 'waiver' suggested by [ATDC], is it authentic? Is the signature that of Mrs. Fagan? Was the signature witnessed or notarized? Was the purported 'waiver' conditioned upon a land exchange involving Maui land? If so, was the land exchange ever consummated? What were the intentions of Mrs. Fagan with respect to the use, preservation and future reversion of Irwin Memorial Park? Do the living heirs of Mrs. Fagan have any information concerning Mrs. Fagan's intentions? If so, what testimony or evidence might they present?

(Footnotes omitted.)

As noted above, the Fagan Heirs and the Foundation did in fact (separately) respond to the Petition, vigorously opposing the requested relief based on HRS § 206J-6(c), Executive Order No. 472, which was recorded both as a Land Court Document and in the Bureau of Conveyances, the unwaived and unreleased reservations and conditions in the Fagan deed, and other grounds.

[4/] In 2001, the Trustee of the Foundation were Olds, Bogart, William L. Olds, III, George T. Cronin, and Anthony O. Zanze.

In addition, the City and County of Honolulu (**City**) moved to intervene, asserting, *inter alia*, that "the City has obligation, arguably a responsibility, to take actions which substantially advance legitimate public interests including protecting and preserving open space and the health and welfare to the public that open spaces in urban areas afford", that "removal of the restrictive covenants would eliminate the City's interest in preserving the park", and that "disposition of this matter without the City's involvement would greatly impede its ability to protect the public's interest in preserving open space in a high urban area like downtown Honolulu." (Format altered.) The City's motion to intervene was granted. As the owner of the Property and the lessor on the ground lease with ATDC, the State was joined as a necessary and indispensable party. The Department of Land and Natural Resources, which administers the State's public lands, was also joined.

After a non-jury trial, on December 12, 2002, the Land Court announced its ruling on ATDC's Petition, finding that Fagan neither waived the restrictive covenants burdening the Property nor gifted her reversionary interest in the Property. On that basis, the Petition was denied.

On August 28, 2008, Scenic Hawaiʻi filed a motion seeking attorneys' fees and costs based on the private attorney general doctrine.

On November 3, 2008, the Land Court entered its Findings of Fact, Conclusions of Law and Order, setting forth its ruling on the Petition.

After various additional submissions of the parties, and hearings on the matter, on June 26, 2009, the Land Court entered an order granting in part and denying in part Scenic Hawaiʻi's motion for fees and costs. Although the Land Court concluded that Scenic Hawaiʻi had satisfied the three-prong test requisite to the application of the private attorney general

doctrine, it denied without prejudice any award of attorneys' fees due to issues related to the form of the billing entries submitted to the court. After a renewed motion, and further submissions of the parties, on February 24, 2010, the Land Court granted Scenic Hawaiʻi's renewed request for attorneys' fees and ordered ATDC to pay Scenic Hawaiʻi a total of $135,637.69, inclusive of attorneys' fees and costs.

Final judgment was entered on March 29, 2010, and a notice of appeal was timely filed thereafter.

II. POINT OF ERROR

ATDC raises a single point of error, contending that the Land Court erred when it granted an award of attorneys' fees to Scenic Hawaiʻi under the private attorney general doctrine.

III. STANDARD OF REVIEW

"The trial court's grant or denial of attorney's fees and costs is reviewed under the abuse of discretion standard." Sierra Club v. Dep't of Transp. of State of Hawaiʻi, 120 Hawaiʻi 181, 197, 202 P.3d 1226, 1242 (2009) (**Sierra Club II**) (citations and brackets omitted). "The trial court abuses its discretion if it bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. In other words, an abuse of discretion occurs where the trial court has clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant." Maui Tomorrow v. State of Hawaiʻi, Bd. of Land & Natural Res., 110 Hawaiʻi 234, 242, 131 P.3d 517, 525 (2006) (internal quotation marks, citations, and brackets omitted).

IV. DISCUSSION

A. The Private Attorney General Doctrine

The sole issue on appeal is whether the Land Court abused its discretion when it awarded attorneys' fees to Scenic

Hawai'i.[5/] The Hawai'i Supreme Court has often stated that "normally, pursuant to the 'American Rule,' each party is responsible for paying his or her own litigation expenses." Sierra Club II, 120 Hawai'i at 218, 202 P.3d at 1263 (citation and brackets omitted). The supreme court has recognized various exceptions to this general rule, most commonly when authorized by statute, rule, or the parties' agreement, but also, in more limited circumstances, through judicially-created exceptions such as the private attorney general doctrine. See id.; see also In re Water Use Permit Applications, 96 Hawai'i 27, 29-30, 25 P.3d 802, 804-05 (2001) (**Waiahole II**) (noting various common law exceptions).

The Hawai'i Supreme Court twice considered, but did not apply, the private attorney general doctrine in Waiahole II and Maui Tomorrow, before expressly adopting and applying it in Sierra Club II. In the first case, Waiahole II, the supreme court highlighted the arguments in favor of and against adoption of the private attorney general doctrine and explained how courts have limited the application of the doctrine to exceptional cases in order to provide effective constraints on judicial discretion. Waiahole II, 96 Hawai'i at 30-31, 25 P.3d at 805-06. The court recited the California Supreme Court's summary of the arguments in favor of the private attorney general doctrine, including:

> In the complex society in which we live it frequently occurs that citizens in great numbers and across a broad spectrum

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[5/] None of the parties challenged the Land Court's decision on the merits of ATDC's petition, *i.e.*, the determination that Fagan did not relinquish, waive, or gift her reversionary interest in the Property, that the restrictions and conditions in the deed from Fagan to the Territory remain valid and in effect, and, therefore, that ATDC was not entitled to an expungement of the deed restrictions registered on Transfer Certificate of Title No. 310,513. Nor did any of the parties contend that the Land Court erred when it determined that Scenic Hawai'i had standing and would be permitted to intervene in this Land Court registration matter. We also note that none of the State parties argued that sovereign immunity bars an award of attorney's fees against a State agency herein (or attempted to distinguish this case from the statutory waiver of sovereign immunity that was held to apply in Sierra Club II). Therefore, we do not address these issues and this opinion should be construed accordingly.

> have interests in common. These, while of enormous significance to the society as a whole, do not involve the fortunes of a single individual to the extent necessary to encourage their private vindication in the courts. Although there are within the executive branch of the government offices and institutions (exemplified by the Attorney General) whose function it is to represent the general public in such matters and to ensure proper enforcement, for various reasons the burden of enforcement is not always adequately carried by those offices and institutions, rendering some sort of private action imperative. . . .

Id. at 30, 25 P.3d at 805 (citation omitted; emphasis added).

As stated by an Arizona court, "the purpose of the doctrine is to promote vindication of important public rights." Id. (citation omitted).

Other courts, including the United States Supreme Court, have rejected the private attorney general doctrine, instead deferring to legislative bodies to specify statutory exceptions to the American Rule and raising concerns, including concerns about "[u]nbridled judicial authority to 'pick and choose' which plaintiffs and causes of action merit an award of attorney fees under the private attorney general doctrine[.]" Id. at 30-31, 25 P.3d at 805-06 (citations omitted). Given the Hawai'i Supreme Court's ultimate embrace of the private attorney general doctrine, the court presumably was satisfied with the proponents' responses to these criticisms, most importantly that "limiting the application of the doctrine to exceptional cases pursuant to the three-prong test articulated [below] provides effective constraints on judicial discretion." Id. at 31, 25 P.3d at 806 (citations omitted). The supreme court clearly embraced these constraints, as it utilized the three-prong test in Sierra Club II, as well as in Waiahole II and Maui Tomorrow.

The test adopted by the Hawai'i Supreme Court requires consideration of three factors: "(1) the strength or societal importance of the public policy vindicated by the litigation, (2) the necessity for private enforcement and the magnitude of the resultant burden on the plaintiff, [and] (3) the number of people standing to benefit from the decision." Sierra Club II, 120

Hawai'i at 218, 202 P.3d at 1263 (citations omitted; emphasis added).

In Waiahole II, the supreme court held that the private attorney general doctrine did not apply because, although the first and third prongs of the doctrine's three-prong test were met, the second prong was not. Waiahole II, 96 Hawai'i at 31-32, 25 P.3d at 806-07. Regarding the first and third prongs, the court concluded, "this case involved constitutional rights of profound significance, and all of the citizens of the state, present and future, stood to benefit from the decision." Id. at 31, 25 P.3d at 806 (citation omitted). The court was not convinced, however, that the second prong was satisfied, explaining that, "[i]n other cases, the plaintiffs served as the sole representative of the vindicated public interest. The government either completely abandoned, or actively opposed, the plaintiff's cause." Id. (citations omitted). In the three cases referenced by the supreme court, either: (1) "the agency charged with representing consumer interests made no appearance at all and [] the government opposed the plaintiffs on all issues"; (2) "no governmental agency could reasonably have been expected to represent the rights asserted by plaintiffs"; or (3) "the state's position [was] that it was obligated to defend the disputed statutes[.] Id. (citations omitted). In Waiahole II, the parties seeking private-attorney-general fees, denominated the "Windward Parties," represented "one of many competing public and private interests[.]" Id. Significantly, the supreme court emphasized that "unlike other cases, in which the plaintiffs single-handedly challenged a previously established government law or policy, in this case, the Windward Parties challenged the decision of a tribunal in an adversarial proceeding not contesting any action or policy of the government." Id. at 32, 25 P.3d at 807.

In Maui Tomorrow, although the supreme court recognized that, unlike the plaintiffs in Waiahole II, the plaintiffs therein were challenging a policy of the Board of Land and Natural Resources (**BLNR**), the supreme court rejected the applicability of the private attorney general doctrine based on its reasoning in Waiahole II. Maui Tomorrow, 110 Hawai'i at 244-45, 131 P.3d 527-28. In Maui Tomorrow, the supreme court concluded that the requirements for the applicability of the private attorney general doctrine were not met because the State had not abandoned its duty to protect native Hawaiians' constitutionally-protected rights. Id. at 245, 131 P.3d at 528. Rather, the BLNR was under the mistaken impression that the duty was to be fulfilled by another State agency. Id. In addition, the court noted that, as in Waiahole II, the plaintiffs cited no cases in which fees were awarded under similar procedural circumstances. Id.

In Sierra Club II, the Hawai'i Supreme Court concluded that all three requirements for the application of the private attorney general doctrine were satisfied. Sierra Club II, 120 Hawai'i at 220, 202 P.3d at 1265. Regarding the first prong of the test, the supreme court rejected the State's argument that no public policy was vindicated by Sierra Club's litigation, concluding instead that "this litigation is responsible for establishing the principle of procedural standing in environmental law in Hawai'i and clarifying the importance of addressing the secondary impacts of a project in the environmental review process pursuant to HRS chapter 343." Id. Regarding the second prong, the supreme court stated that the plaintiffs therein "were solely responsible for challenging DOT's erroneous application of its responsibilities under HRS chapter 343." Id. (emphasis added). The court further noted that the State "exempted the Superferry project from the requirements of HRS chapter 343 without considering its secondary impacts on the

environment[,]" thereby wholly abandoning "its duty to consider both the primary and secondary impacts of the Superferry project on the environment." Id. at 221, 202 P.3d at 1266. Finally, the supreme court agreed with the Sierra Club's argument that the third prong was satisfied because the court's decision in Sierra Club I[6] provided a public benefit in that it established procedural standing in environmental law cases and clarified the need to address secondary impacts in an HRS chapter 343 environmental review, and noted that its holding in Sierra Club II determined that Act 2[7] was unconstitutional.[8] Id.

B. Application of the Private Attorney General Doctrine

In this case, ATDC argues that none of the requirements for the application of the private attorney general doctrine are met. Scenic Hawai'i argues that all three prongs of the test have been met.

1. First prong: the strength or societal importance of the public policy vindicated by the litigation

ATDC argues, *inter alia*, that the Land Court's rejection of its petition to expunge certain deed restrictions is not a broad-based public policy vindication of the type necessary to invoke the private attorney general doctrine. Scenic Hawai'i argues that "[b]y holding ATDC and the State to its statutory duty to preserve this park for the public good," Scenic Hawai'i vindicated an important public policy. We are not convinced that

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[6] Sierra Club I refers to Sierra Club v. Dep't of Transp. of State of Hawai'i, 115 Hawai'i 299, 167 P.3d 292 (2007).

[7] Act 2 refers to "A Bill for An Act Relating to Transportation" signed by Governor Linda Lingle on November 2, 2007. 2007 Haw. Sess. Laws Act 2, §§ 1-18 at 5-21.

[8] In Sierra Club II, the supreme court further held that the private attorney general doctrine is subject to potential defenses and, therefore, continued its analysis. Sierra Club II, 120 Hawai'i at 221, 202 P.3d at 1266. As ATDC has raised no such defenses, we need not consider this aspect of the court's analysis in the present case.

ATDC's "statutory duty" was at issue in the Land Court proceedings.

The legal and factual issues before the Land Court concerned whether ATDC had demonstrated it was entitled to modify and amend Land Court Transfer Certificate of Title No. 310,513, pursuant to HRS § 501-196, to expunge the deed restrictions on the Property transferred from Fagan to the Territory. The public policy advocated by Scenic Hawaiʻi, however laudable, had no connection to or impact on the factual dispute regarding whether Fagan had waived the deed restrictions or gifted the reversionary interest. Put another way, even if the Land Court had adopted Scenic Hawaiʻi's argument that the State abandoned its public trust duty to protect the public's interest in maintaining the Property in its current configuration as a park, that position would not have been dispositive of the factual issue of whether Fagan waived the deed restrictions or gifted her reversionary interest to the Territory.[9/] Moreover, whether the Petition was granted or denied, the Land Court's ruling on the Petition was only tangential to the ultimate disposition and future use of Irwin Park and did not include any determination as to whether ATDC's intended use was a violation of HRS § 206J-6 or in contravention of Hawaiʻi Historic Preservation Law, HRS chapter 6E. Cf. Sierra Club II, 120 Hawaiʻi at 220, 202 P.3d at 1265 (holding that the litigation initiated by Sierra Club was "responsible for establishing the principle of procedural standing in environmental law in Hawaiʻi and clarifying the

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[9/] The minutes of the March 27, 2009 hearing on Scenic Hawaiʻi's fees motion state that "the first prong is met because the public policy at stake is the public's right to maintain Irwin Park as a public memorial park in its current form instead of erecting a multiple level parking structure upon it." However, notwithstanding that the Land Court's ruling may have led to an abandonment of ATDC's project and the maintenance of Irwin Park in its current form, the determination of whether or not Fagan waived the deed restrictions or gifted the reversionary interest is not concomitantly transformed into vindication of public policy of strong societal importance.

importance of addressing the secondary impacts of a project in the environmental review process pursuant to HRS chapter 343").

2. Second prong: the necessity for private enforcement and the magnitude of the resultant burden on the plaintiff

As the State points out, the respondents to the Petition, including the persons who hold the private reversionary interests in the Property, appeared and defended their interests. As noted above, the City also intervened in the case for the purpose of defending essentially the same public interests that Scenic Hawai'i sought to protect. Scenic Hawai'i argues that its intervention was necessary because the State, including the Attorney General, supported ATDC's Petition and the private parties, Olds and Bogart, were California residents with minimal connections with Hawai'i.

These circumstances are in stark contrast to those contemplated to necessitate the services of private attorneys general. As the supreme court noted in Waiahole II, the private attorney general exception to the American Rule is warranted only when the litigated issues are "of enormous significance to the society as a whole, [but] do not involve the fortunes of a single individual to the extent necessary to encourage their private vindication in the courts." Waiahole II, 96 Hawai'i at 30, 25 P.3d at 805 (citation omitted). Here, there were actual respondents who vigorously litigated their private interests. We reject any argument that California residents are inherently less interested in preserving their property rights in Hawai'i, particularly in this case, where they have appeared and defended those rights. In addition, even if we assume that the public's interests were at issue in this case and the State did not properly represent the general public's interest in maintaining Irwin Park in its current form, it appears that the City's intervention eliminated any need for "private enforcement." Like

the plaintiffs in Waiahole II, and unlike the plaintiffs in Sierra Club II, Scenic Hawai'i did not serve "as the sole representative of the vindicated public interest." Waiahole II, 96 Hawai'i at 31, 25 P.3d at 806; see also Sierra Club II, 120 Hawai'i at 220, 202 P.3d at 1265.

As we conclude that it was unnecessary for Scenic Hawai'i to respond to ATDC Land Court petition, as necessity is construed under the private attorney general doctrine, we need not consider the magnitude of the burden resulting from Scenic Hawai'i's intervention in this case.

3. Third prong: the number of people standing to benefit from the decision

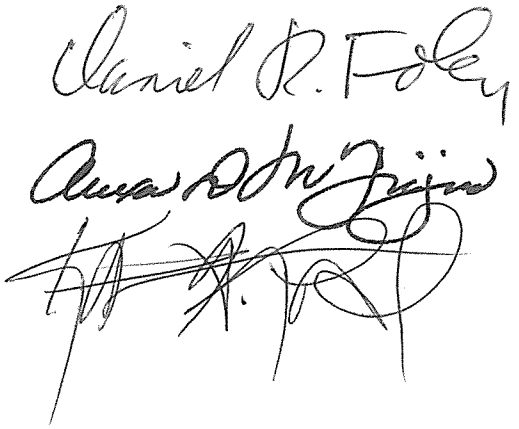
Because Scenic Hawai'i did not satisfy either the first or second prong, there is no need to address the number of people standing to benefit from the decision. In Waiahole II, the supreme court held that the private attorney general doctrine did not apply because although the plaintiffs met the first and third prongs of the doctrine's three-part test, they failed to satisfy the second prong. Waiahole II, 96 Hawai'i at 31, 25 P.3d at 806.

4. The Award of Attorneys' Fees and Costs

As discussed above, a trial court's award of attorneys' fees is reviewed for an abuse of discretion, but a trial court abuses its discretion if it bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the facts of the case. See Maui Tomorrow, 110 Hawai'i at 242, 131 P.3d at 525. This assessment is particularly critical in the application of the private attorney general doctrine's three-prong test, which acts as a constraint on what might otherwise be unbridled judicial discretion to depart from the well-established American Rule. See Waiahole II, 96 Hawai'i at 30-31, 25 P.3d at 805-06. In this case, as the three-prong test is not met, we must conclude that the Land Court abused its discretion in awarding attorneys' fees and costs to Scenic Hawai'i.

V. CONCLUSION

For these reasons, the Land Court's March 29, 2010 Final Judgment is reversed in part, to the extent that it granted attorneys' fees and costs to Scenic Hawaiʻi, and is affirmed in all other respects.



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IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAI‘I

In the Matter of the Application of HONOLULU CONSTRUCTION AND DRAYING COMPANY, LIMITED, to register title to land situate at Honolulu, City and County of Honolulu, State of Hawai‘i.	ICA NO. 30484 RESPONDENT/APPELLEE SCENIC HAWAI‘I, INC.’S APPLICATION FOR WRIT OF CERTIORARI REGARDING THE FINAL JUDGMENT FILED ON JANUARY 18, 2013
ALOHA TOWER DEVELOPMENT CORPORATION, Petitioner, vs. STATE OF HAWAI‘I, DEPARTMENT OF LAND AND NATURAL RESOURCES, TRUSTEES OF WILLIAM G. IRWIN CHARITY FOUNDATION, SCENIC HAWAI‘I, INC., THE OUTDOOR CIRCLE, HISTORIC HAWAI‘I FOUNDATION, HAWAI‘I’S THOUSAND FRIENDS, LIFE OF THE LAND, AND INTERVENOR, CITY AND COUNTY OF HONOLULU, Respondents. and SCENIC HAWAI‘I, INC. Respondent/Cross-Appellee, vs. ALOHA TOWER DEVELOPMENT CORPORATION, Petitioner/Cross-Appellant.	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 19, 2013, a copy of the foregoing document was duly served by electronic means upon the following parties to their last known addresses as indicated below:

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