CAAP-14-0000828

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

COUNTY OF KAUAI, Plaintiff-Appellee, vs. HANALEI RIVER HOLDINGS, LTD., a Cook Islands corporation, and MICHAEL G. SHEEHAN, Defendants-Appellants, and PATRICIA WILCOX SHEEHAN, as Trustee of that certain unrecorded Revocable Trust Agreement of Patricia Wilcox Sheehan, dated December 21, 1994, PATRICIA WILCOX SHEEHAN; GAYLORD H. WILCOX; DANIEL H. CASE; GROVE FARM COMPANY, INC., a Hawaii corporation; HUGH W. KLEBAHN; DONN A. CARSWELL; PAMELA W. DOHRMAN; ROBERT D. MULLINS; WILLIAM D. PRATT; RANDOLPH G. MOORE; and the Heirs and/or Assigns of JOHN B. BROSSEAU, also known as JOHN BROSSEAU, JOHN B. BRASSEAU and J. B. BRASSEAU; JOHN DOES 1-200; DOE PARTNERSHIPS 1-25; DOE CORPORATIONS	Civil No. 11-1-0098 (Condemnation) APPEAL FROM JUDGMENT ENTERED ON APRIL 25, 2014 FIFTH CIRCUIT COURT STATE OF HAWAII HONORABLE KATHLEEN N.A. WATANABE

1-25; DOE ENTITIES 1-25; and DOE GOVERNMENTAL UNITS 1-25,

Defendants-Appellees.

PLAINTIFF-APPELLEE COUNTY OF KAUA'I'S ANSWERING BRIEF

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PLAINTIFF-APPELLEE COUNTY OF KAUA'I'S ANSWERING BRIEF

Plaintiff-Appellee County of Kaua'i ("County") submits this Answering Brief in response to Defendants-Appellants Hanalei River Holdings, Ltd. ("HRHL") and Michael G. Sheehan's ("Sheehan") Opening Brief (collectively "Appellants").

In their Opening Brief, Appellants contend that the trial court erred in three respects[1] in this condemnation action: (1) by allowing the County to withdraw a portion of its funds deposited with the trial court when the County took possession of the Lots, after the County learned the deposit exceeded the Lots' estimated fair market value; (2) by rejecting the severance damages claimed by Sheehan alone[2], based upon property which he did not own and which the County did not take; and (3) by agreeing with the County's calculation of blight of summons damages based upon the difference between the funds deposited in court by the County and the jury verdict. They seek a remand for determination of severance damages (which would entail another jury trial) and for recalculation by the trial court of blight damages. They seek no relief for the first alleged error regarding the County's withdrawal of the excess deposit. Opening Brief at 16.

The County respectfully urges this Court to affirm the proceedings below. As demonstrated herein, the trial court correctly ruled. Perhaps more importantly, Appellants in their Opening Brief fail to show how they are aggrieved by any of the trial court's decisions relating to their three points on appeal. Appellants received full just compensation for their former property condemned by the County; they are entitled to nothing more.

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[1] Appellants originally enumerated five points on appeal. Appellants' Statement of Points of Error on Appeal filed on June 18, 2014. In their Opening Brief, they abandoned two of those alleged points of error.

[2] In the Statement of Points of Error on Appeal referenced in the above footnote, Appellants both claimed entitlement to severance damages. In the Opening Brief, however, HRHL no longer argued that it was entitled to such damages.

I. CONCISE STATEMENT OF THE CASE

To expand "Black Pot Beach Park" in Hanalei[3], the County condemned three lots—Lots 33, 34 and 49. Complaint, RA Vol. 1 at 2, ¶4; First Amended Complaint, RA Vol. 1 at 79, ¶4. The date of summons of the Complaint, May 31, 2011 (RA Vol. 1 at 40-41), fixed the valuation date to measure just compensation. HRS § 101-24.

Pertinent factual background relating to the County's deposit of estimated just compensation: The County took possession of the property on April 30, 2012. RA Vol. 1 at 99-121. As required by law, the County deposited its estimated just compensation with the clerk of court. HRS §101-29. The County based its $5,890,000 deposit upon the October 19, 2010 appraisal prepared for the County by Alan Conboy, MAI, when the County was considering expanding the beach park. RA Vol. 3 at 91-92.

Appellants made no effort to withdraw the deposit until almost a year later. RA Vol. 3 at 44-55. Before Appellants ever tried to withdraw the deposit,[4] the County asked Mr. Conboy to update his appraisal by valuing the three Lots as of the applicable May 31, 2011 valuation date. RA Vol. 3 at 67-68, 102-103. Pursuant to the trial court's Order Setting Trial Date, this updated appraisal was due by May 29, 2013. RA Vol. 3 at 18.

In his updated appraisal, Mr. Conboy concluded that the fair market value had declined to $4,860,000. When the County learned of this change, it moved to reduce its deposit by

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[3] At trial, Appellants did not challenge that the condemnation was for a public use. Yet they appear to backpedal now, intimating that the County intends to use the property for a boatyard. Opening Brief at 1. This claim is both untimely and lacking in merit. RA Vol. 5 at 180-253; Vol. 6 at 51-52; Vol. 6 at 343-344.

[4] Appellants wrongly infer that the County sought to reduce its deposit in response to Appellants' motion to withdraw the deposit. Opening Brief at 7. The record establishes otherwise. The County did move to withdraw the excess deposit shortly after Appellants moved to withdraw the deposit, but the timing was unrelated. The County's motion was based upon Mr. Conboy's revised appraisal requested before Appellants ever tried to withdraw the deposit.

withdrawing from court the difference in its deposit between Mr. Conboy's original and updated appraisals, namely $1,030,000. RA Vol. 3 at 86-92, 149-155. The trial court granted the motion. RA Vol. 3 at 157-158.

Appellants' effort to withdraw the deposit was complicated by the fact that the condemned property was not owned by the same parties. Sheehan owned Lot 49; HRHL owned Lots 33 and 34. To allow withdrawal of the money on deposit without apportioning entitlement, the County entered into a Stipulation (RA Vol. 3 at 132-135) and related Agreement (RA Vol. 6 at 363-365) with Appellants. Sheehan then withdrew the $4,860,000 deposit. RA Vol. 3 at 136-142.

Pertinent factual background relating to severance damages: The trial court's scheduling order required Appellants to produce the appraisal report upon which they intended to rely at trial by June 30, 2013. RA Vol. 3 at 18. Over the County's strong objection (RA Vol. 3 at 176-185; Tr. 6/19/13 at 5 – 13), the trial court gave Appellants an additional month to disclose that appraisal. RA Vol. 4 at 64-65.

When Appellants finally produced their appraisal report, the County learned for the first time that Appellants[5] claimed entitlement to severance damages. Before then, neither HRHL nor Sheehan asserted such a claim: not in their respective Answers (HRHL--RA Vol. 2 at 64-65; Sheehan--RA Vol. 2 at 250-251), their Pretrial Statement (RA Vol. 2 at 281-282), or elsewhere.

That report, prepared by Appellants' valuation expert Paul Cool, MAI, valued the three Lots acquired by the County at $6,740,000. Mr. Cool agreed with Mr. Conboy that residential use was the highest and best use for those Lots, and he valued the Lots accordingly. RA Vol. 4

[5] The appraisal submitted by Appellants did not apportion severance damages between Sheehan and HRHL. Only Sheehan now claims entitlement to such damages. Opening Brief at 8.

at 179-180. Like Mr. Conboy, Mr. Cool attributed no value to the improvements on Lots 33 and 34 once used in connection with a boatyard formerly located on the property. RA Vol. 4 at 155.

In addition to his valuation of the three Lots, Mr. Cool opined that property adjacent to HRHL's Lot 34 and not being acquired by the County (referred to by him as "Area 51") suffered damages in an approximate amount of between $250,000 and $300,000. This amount constituted the estimated cost of replicating on Area 51 certain improvements located on Lots 33 and 34 which had been used in connection with Sheehan's former boatyard. In response, the County sought partial summary judgment on this severance damages issue on August 13, 2013. RA Vol. 4 at 132-316; Vol. 5 at 70-97.

On September 3, 2013, Appellants opposed the motion. Appellants' opposition was supported only by an argumentative declaration of counsel (RA Vol. 5 at 31-32) and an unsigned declaration from Sheehan (RA Vol. 5 at 35). Appellants never requested more time pursuant to HRCP 56(f) to obtain facts supportive of their opposition.

When the trial court granted the County's motion, Appellants requested submission of proposed Findings of Fact and Conclusions of Law because they "disagree(d) that there are no disputed issues of material fact." Tr. 9/10/13 at 40.

The County prepared its proposed Findings/Conclusions and filed its Notice of Submission on September 26, 2013, 2013. RA Vol. 5 at 131-132. The County noted therein as follows: "Pursuant to Rule 23, any party objecting to the form of the proposed Order must serve upon counsel for Plaintiff, and deliver to the Court, a written statement of said party's objections and reasons therefor within five (5) days of the service of this document." Appellants did not submit their own Findings/Conclusions nor did they contest the County's submission. The court entered its Findings/Conclusions and Order on October 3, 2013. RA Vol. 5 at 305-318.

Pertinent factual background relating to calculation of blight of summons damages: Jury trial was held on the week of November 4, 2013. In its Special Verdict, the jury awarded just compensation for each of the three Lots as of the May 31, 2011 valuation date. The jury valued HRHL's Lot 33 at $2,030,000 and Lot 34 at $3,016,000, and Sheehan's Lot 49 at $754,000. RA Vol. 6 at 342.

The final matter left to determine—blight of summons damages to be added to the jury verdict from the valuation date to the date of full payment of the verdict—was decided by the trial court. RA Vol. 7 at 12-13. Final Judgment was thereupon entered. RA Vol. 7 at 54-66.

Upon payment by the County of the jury verdict and the blight damages, the trial court entered its Final Order of Condemnation. RA Vol. 7 at 67-76.

II. STANDARD OF REVIEW

This relates to Sheehan's severance damages claim. On appeal, a trial court's findings of fact are reviewed under the clearly erroneous standard. Marvin v. Pflueger, 127 Haw. 490, 495, 280 P.3d 88, 93 (2012); Bremer v. Weeks, 104 Haw. 43, 85 P.3d 150, 158 (2004). Unchallenged findings of fact are binding on this Court. Okada Trucking Co. v. Bd. Of Water Supply, 97 Haw. 450, 458, 40 P. 3d 73, 81 (2002). "(I)f a finding is not properly attacked, it is binding; and any conclusion which follows from it and is a correct statement of law is valid." Kawamata Farms, Inc. v. United Agri Prods., 86 Haw. 214, 252, 948 P. 2d 1055, 1093 (1997) (citation and internal quotation marks omitted).

III. SUMMARY OF ARGUMENT

A. Withdrawal Of The Excess Portion Of The Estimate Of Just Compensation Is Not Reviewable And Appellants Were Not Aggrieved By The Reduced Deposit

1. As part of its motion to take possession of the three Lots before the jury fixed just compensation, the County deposited with the court its estimate of just compensation. The

County was not bound by any specific statutory standards or methodology in calculating its deposit and the trial court had no jurisdiction to review this deposit. HRS §101-29(3). The County based its deposit upon an appraisal prepared for it in advance of the condemnation. When a subsequent appraisal as of the May 31, 2011 valuation date indicated that the deposit was too high, the County withdrew the excess amount. The County's decision to withdraw the excess is, respectfully, not reviewable on appeal.

2. In any event, Appellants were not harmed by the withdrawal of a portion of the deposit. HRS §101-33 entitles Appellants blight of summons damages (interest) on any "shortfall" between the amount of the deposit and the amount of just compensation determined by the jury. To the extent that the County's withdrawal of a portion of its deposit reduced the deposit below the jury verdict, Appellants were awarded blight of summons damages. Appellants cannot show how they were aggrieved by the trial court's order regarding reduction of the County's deposit. Thus there is no jurisdiction on appeal to consider Appellants' first alleged point of error. Inter-Island Resorts, Ltd. v. Akahane, 44 Haw. 93, 98, 352 P.2d 856, 960 (1960) (appeal is available only to a party aggrieved by the judgment); S.Utsonomiya Enterprises, Inc. v. Moomuku Country Club, 75 Haw. 480, 494, 966 P.2d 95, 960 (1994) (an "aggrieved" party is one who is affected or prejudiced by the appealable order).

B. Sheehan Was Not Entitled To Recover Severance Damages For Property He Did Not Own And Thus He Was Not Aggrieved By The Trial Court's Ruling

1. Sheehan could not meet the "Three Unities test" required by City & County of Honolulu v. Bonded Investment, 54 Haw. 523, 511 P.2d 163 (1973) ("Bonded Investment"), to establish a claim for severance damages. Most importantly, Sheehan did not own the property ("Area 51") for which he claimed severance damages. The property which he did own, Lot 49, was not physically contiguous with Area 51. And any use rights (as opposed to ownership) that

Sheehan had to use Area 51 ended in 2010, when his permits to operate a boatyard were revoked. That revocation was sustained by this Court in Michael G. Sheehan v. County of Kaua'i, et al., CAAP-11-0000601 (cert. denied).

2. The trial court also properly held that Appellants were estopped from claiming severance damages because they never disclosed that they were seeking such damages until shortly before trial.

C. The Trial Court Properly Calculated Blight Of Summons Damages And Appellants Were Not Aggrieved By The Trial Court's Ruling

1. The trial court correctly calculated blight of summons damages.

2. Although Appellants now argue that somehow the County's deposit of estimated just compensation was "conditional," any alleged "condition" was imposed for Appellants' benefit to allow withdrawal of the deposit. It was also expressly agreed to by Appellants, to their benefit. They are estopped from challenging that agreement here. S.Utsonomiya Enterprises, Inc. v. Moomuku Country Club,75 Haw. at 495-96, 966 P.2d at 960 (by accepting the benefit of an order, a party waives the right to have the order reviewed by an appellate court).

3. Appellants cannot show how they were harmed by the "conditional" deposit, in that they were able both to withdraw the deposit and received full blight of summons damages on the shortfall. Again, as with the reduction of the deposit, Appellants cannot show how they are aggrieved by the trial court's decision, and thus there is no jurisdiction on appeal to consider it here. Inter-Island Resorts, Ltd. v. Akahane, 44 Haw. At 98, 352 P.2d at 960 (appeal is available only to a party aggrieved by the judgment); S.Utsonomiya Enterprises, Inc. v. Moomuku Country Club,75 Haw. at 494, 966 P.2d at 960 (an "aggrieved" party is one who is affected or prejudiced by the appealable order).

IV. ARGUMENT

A. The Trial Court Properly Allowed The County To Withdraw Its Excess Deposit

Appellants argue that the trial court abused its discretion by allowing the County to reduce its deposit of estimated just compensation. Appellants do not show, however, how the court's decision harmed them.[6] Though the County's revised deposit was ultimately less than the jury verdict, Appellants received blight of summons damages measured by the difference between the revised deposit and the jury verdict. Appellants were therefore not aggrieved by the County's withdrawal of a portion of its deposit. Further, the relief requested by Appellants—vacatur of the court's order allowing withdrawal of the excess deposit—would offer no relief to Appellants. The County therefore respectfully submits that the court's order should be affirmed.

The County filed its Ex Parte Motion for an Order Putting Plaintiff in Possession on April 30, 2012. In connection with such a motion, HRS §101-29 requires the condemnor to deposit with the court its estimate of just compensation "for the use of the persons entitled thereto...." Once the condemnor makes its deposit, the trial court is statutorily required to "issue an order [of possession] ex parte." RA Vol. 2 at 95.

The purpose of HRS §101-29 is to ameliorate the impact of the condemnation for both condemnor and condemnee. The condemnor is relieved from having to pay interest ("blight of summons damages") on the amount of estimated just compensation deposited into court. And if the condemnee does not dispute condemnor's right to take the property, the condemnee can

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[6] In fact, the court's decision ultimately redounded to Appellants' benefit. Appellants would have owed the County interest if the court refused to allow the County to reduce its deposit because the original deposit exceeded the jury verdict. Bonded Investment, 54 Haw. at 393-395, 507 P.2d at 1090-91.

withdraw the deposit (if the condemnee can show it has a right to the deposit). Bonded Investment, 54 Haw. at 393-94, 507 P.2d at 1090-91.

In calculating the amount of the deposit, the County was not bound by any specific statutory standards or methodology. HRS §101-29. As noted above, the County estimated total compensation for the three Lots at $5,890,000 based upon the appraisal of its valuation expert.

On May 4, 2012, the trial court entered its Ex Parte Order Putting Plaintiff in Possession. RA Vol. 2 at 120 – 121. On August 16, 2012, HRHL[7] sought to vacate the Order of Possession, alleging among other grounds that the County's deposit was not a good faith estimate of the property's fair market value. The appraisal upon which the County's deposit was based was prepared several months earlier. HRHL therefore complained that the appraisal was "stale as a matter of law." RA Vol. 2 at 71, 157. HRHL provided no legal support for such assertion, nor did it provide any evidence that the County's appraisal did not reflect the property's value.[8] The trial court denied this motion. RA Vol. 2 at 224-225.

For almost a year after the County took possession of the three Lots, Appellants made no effort to withdraw the County's estimated just compensation. Nearly six million dollars of the County's money remained on deposit with the trial court, accruing no interest or otherwise benefitting the County and its residents.

In preparation for trial, the County had its valuation expert update his appraisal, valuing the three Lots as of the May 31, 2011 valuation date. Using then-current market data, the County's appraiser concluded that the total value decreased by $1,030,000. Rather than leave

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[7] Sheehan never filed a written joinder in HRHL's motion.

[8] HRHL also complained that the County's appraisal did not value improvements used in connection with the boatyard which Sheehan had formerly operated on the property and for which the permit had already been revoked. Michael G. Sheehan vs. County of Kaua'i et al., 134 Haw. 132, 337 P.3d 53 (App. 2014) (CAAP-11-0000601).

the excess on deposit with the court, the County sought to reduce the deposit by withdrawing the excess. RA Vol. 4 at 86-92, 149-155.

Despite HRHL's earlier complaint that the County's original deposit was invalid because it was based upon a "stale" appraisal, HRHL and Sheehan did an about-face and objected to the County's updating its appraisal. They opposed the County's effort to withdraw from court the difference between the County's initial deposit of estimated just compensation and Mr. Conboy's updated value estimate. RA Vol. 4 at 144-147.

Appellants conceded at the hearing that the County had the right to determine the amount of deposit, and that the County's estimate of just compensation did not constitute a binding admission. See, e.g., Tr. 5/1/13 at 8, 12, 19, 26-27.[9] They argued, however, that the County could not reduce its deposit once it took possession of the condemned property. RA Vol. 4 at 146.[10]

Hawaii Supreme Court case law directly on point supports the County's entitlement to withdraw the excess money deposited with the Court. In Bonded Investment, the City & County of Honolulu ("City") deposited a certain amount of money with the court as estimated just compensation. The condemnee withdrew that deposit from court. The parties then proceeded to jury trial on the question of just compensation. The jury ultimately awarded as just

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[9] Appellants also recognized that the County's estimate "doesn't have to be exact because it's a jury question on the valuation." Tr. 9/5/12 at 17. Nevertheless, Appellants inconsistently (and wrongly) argue that the initial deposit was a "promise" which the County is estopped to modify. Opening Brief at 7. The deposit was not a "bargain" which the County made with Appellants. Opening Brief at 8. Sheehan voluntarily withdrew the funds. If he did not want to waive a public use challenge to the condemnation, he did not have to withdraw the deposit.

[10] Appellants strangely argue that the County could have reduced any deposit of estimated just compensation *before* the County took possession of the property. Opening Brief at 6. This makes no sense. Until the County took possession, it had no obligation to make any deposit. HRS §101-29.

compensation an amount less than the City deposited and the condemnee withdrew. The trial court disregarded the jury's verdict and awarded to the condemnee the City's deposit of estimated just compensation. In reversing the trial court, the Supreme Court held that the County was entitled to restitution of the total excess deposit with interest.

The Court first noted that HRS §101-29 provides for a deficiency judgment for the condemnee, in the event that the final award exceeds the estimate. Even though no statutory provision exists to cover the situation where the jury verdict is less than the condemning authority's deposited estimate, the Court reasoned that the statute must be construed in favor of the City in order to avoid injustice. The Court therefore ruled that the City was entitled to full restitution of the overage plus 5% interest. Instructive to the present appeal, the Court noted as follows: "[W]e are of the opinion that an 'estimate of just compensation and damages' is just that—an estimate. It was not intended in any manner to be dispositive, final or binding as a settlement on the amount due....[T]his estimate has no relevance to the conduct of the primary eminent domain proceeding to determine just compensation. It follows also that the estimate cannot serve as an admission against interest." Bonded Investment, 54 Haw. at 394-95, 507 P.2d at 1091.

Guidance can also be found by examining federal cases applying the federal version of the "quick take," the Declaration of Taking Act, 40 USC § 258(a) et seq. The Hawaii Supreme Court in Bonded Investment examined the federal act in construing Hawaii's statute:

> The United States Supreme Court, in United States v. Miller, 317 U.S. 369 (1943), in construing the Federal Declaration of Taking Act, which also made no provision for return of excess deposit, concluded that a denial of restitution of the excess deposits would defeat the policy of the statute and work injustice. The court stated at 381-82:
>
> > The purpose of the statute is two-fold. First, to give the Government immediate possession of the property and to relieve it of the burden of interest accruing on the sum deposited from the date of taking to

> the date of judgment in the eminent domain proceeding. Secondly, to give the former owner, if his title is clear, immediate cash compensation to the extent of the Government's estimate of the value of the property . . . .
>
> We find that the above purpose is similar to the purpose of HRS §101. It is apparent that the statute's purpose is to avoid undue hardship by either party caused by protracted litigation.

Bonded Investment, 54 Haw. 385, 393-94.

The rationale of the Miller case has been construed by the federal courts as allowing the federal government to reduce the amount of the deposit during the course of litigation because the deposit is only an estimate. The protection to the condemnee is that if the government over-withdraws, it then becomes liable for interest on the amount of the eventual deficiency. See, e.g., United States v. 53 ¼ Acres of Land, 176 F.2d 255 (2d Cir. 1949); United States v. City of New York, 186 F.2d 418, 422 (2d Cir. 1951); United States v. 15.03 Acres of Land, 253 F.2d 698, 699 (2d Cir. 1958); Bishop v. United States, 288 F.2d 525, 528-29 (5th Cir. 1961); United States v. 1,997.66 Acres of Land, 137 F.2d 8 (8th Cir. 1943).

Indeed, federal courts have held the condemnor's right to reduce its deposit as being absolute and not subject to judicial review, even if the reduction is alleged to be done in bad faith.

> . . . [W]e deem the settled law to be that the purported bad faith exception to the rule of finality of the administrative estimate of just compensation does not exist, that, in short, the courts have no jurisdiction to review the amount of estimated compensation, none to set aside or vacate a declaration of taking, none to refuse a declaration of possession on the grounds asserted here. If the law were otherwise, a district judge, under the guise of determining whether the declaration of taking was in good faith and the amount tendered sufficient to escape the charge that it was arbitrary or fraudulent, could superintend the whole act of taking, vesting title, and acquiring possession, and thereby prevent its accomplishment unless the amount estimated measured up to his idea of what the amount should be.

In re United States, 257 F.2d 844, 848 (5th Cir. 1958). Construing the federal act, the Fifth Circuit stated "[t]he statute itself is clear. It provides that the declaration of taking contain a

statement of the sum of money 'estimated by said acquiring authority to be just compensation for the land taken.' Congress plainly gave the acquiring authority, not the courts, the function of estimating just compensation for this purpose." Id.

Appellants' complaint that the County's reduction of its deposit was made in bad faith is without merit. The County reduced its deposit based upon its updated appraisal. And because the County's deposit was only an estimate and was not final or binding, the County was entitled to withdraw a portion of the deposit to reflect the reduction in the estimated just compensation. Appellants suffered no practical harm.

When the amount of just compensation determined by the jury was greater than the amount of the deposit, Appellants received an award of interest on the shortfall. RA Vol. 7 at 54-66. Final Judgment was immediately fully satisfied by full payment by the County, at which time Final Order of Condemnation entered. RA Vol. 7 at 67-76. Appellants never appealed from the Final Order, by claiming that the compensation received was less than the compensation to which they were entitled. The issue therefore is moot.[11]

Because Appellants cannot show how they are aggrieved by the trial court's decision, there is no jurisdiction on appeal to consider their arguments here. Inter-Island Resorts, 44 Haw. at 98, 352 P.2d at 960 (appeal is available only to a party aggrieved by the judgment); S.Utsonomiya Enterprises,75 Haw. at 494, 966 P.2d at 960 (an "aggrieved" party is one who is affected or prejudiced by the appealable order). At most, their arguments are abstract propositions of law without real-world effect. Courts have no jurisdiction to consider abstract propositions of law or moot cases. Wong v. Board of Regents, 62 Haw. 391, 394-95, 616 P.2d 201, 204 (1980).

[11] Indeed, Appellants admit in their Opening Brief at fn.16, that the County's "...final payment when made included all interest due and payable on that date."

B. The Trial Court Correctly Denied The Severance Damages Claim

Appellants argue that the trial court erroneously granted the County's motion for partial summary judgment on the issue of severance damages. The County respectfully asserts that the trial court correctly excluded this argument from the jury's consideration.

The issue of severance damages first arose on July 29, 2013, when Appellants gave the County their appraisal report. The report was dated July 26, 2013, and signed by Paul Cool, MAI. RA Vol. 4 at 151-202. In addition to valuing the Lots subject to condemnation, the appraisal estimated "damages" allegedly caused by the condemnation to property adjacent to Lot 34 (referred to in the appraisal as "Area 51").

> The three Hanalei Bay parcels [Lots 33, 34 and 49] and Area 51 have been used as a boatyard and in conjunction with boat and ocean activity operators from the property since the late 1980s. Improvements include:
>
> - Canoe pavilion with kitchen
> - Restroom facility
> - Outdoor shower
> - Boat wash down facility
>
> The taking of the three Hanalei River parcels will require operations to be consolidated onto Area 51.[12] While having no contributory value to the highest and best use of the three Hanalei River parcels,[13] the improvements on Parcels 33 and 34 are

[12] This assumes that Area 51 could ever be used as a boatyard. In his unsigned Declaration, Sheehan asserts that the three condemned Lots and Area 51 were all "integral parts of my boatyard." (RA Vol. 7 at 41, ¶4) But Sheehan's permits to operate a boatyard in the area were revoked. See fn. 16, below.

[13] Both valuation experts, Mr. Conboy (RA Vol. 8 at 24) and Mr. Cool (RA Vol. 9 at 36), opined that the highest and best use for the property was residential. Improvements useful for a boatyard would have no utility to a homesite. In fact, such improvements would have to be demolished at the expense of a developer of a home. Appellants conceded that the improvements "may not represent the highest and best use of the property." RA Vol. 2 at 157.

> integral to the continued activities that remain on Area 51. As a result, the damages to the adjacent Area 51 is [*sic*] estimated as the cost to replace these improvements and restore the functionality that was lost due to the taking of the three adjacent Hanalei River parcels. Based on the analysis presented in the attached report, these costs are estimated at between $250,000 and $300,000.

RA Vol. 4 at 125.

For an owner to be entitled to severance damages for a parcel of land remaining after the condemnation of a parcel of land, there must be established, as between the two parcels: (1) unity of title; (2) physical unity, and (3) unity of use. Bonded Investment, 54 Haw. at 525, 511 P.2d at 164. Because Appellants[14] could not meet these tests, the County moved for summary judgment.

The Hawaii Supreme Court recognizes that "summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Nuuanu Valley Ass'n v. City and County of Honolulu, 119 Haw. 90, 96, 194 P.3d 531, 537 (2008).

In its Motion, the County presented a full evidentiary record supportive of its position. Appellants now complain that the County's evidence "was only....various records and documents." Opening Brief at 8-9. This complaint makes no sense. The primary basis of the

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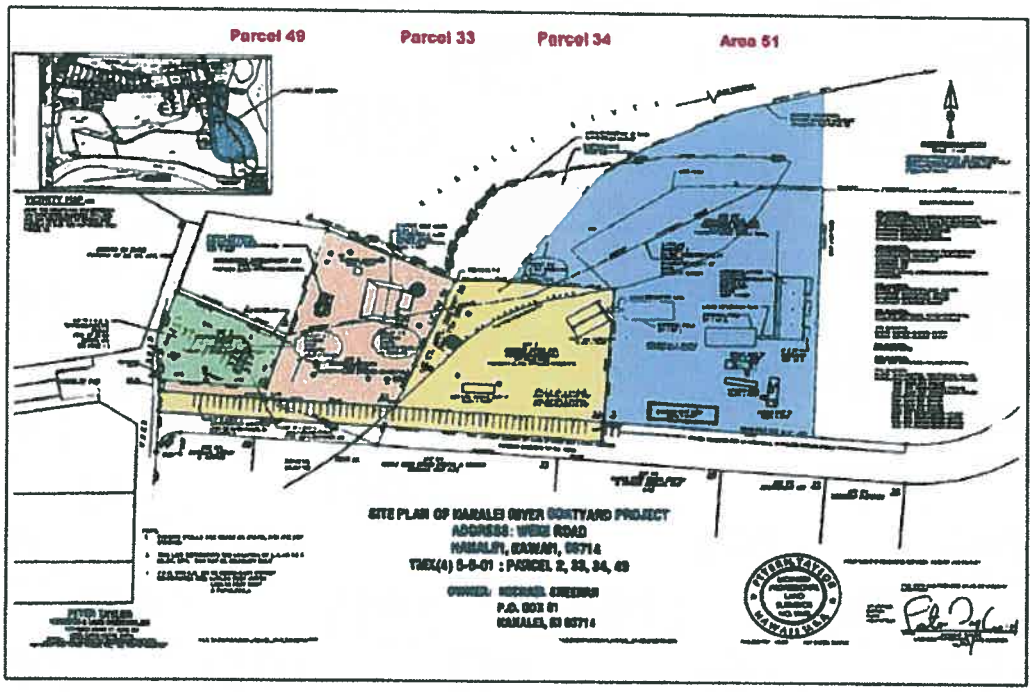
[14] The Cool Appraisal did not apportion his estimated severance damages between HRHL and Sheehan. In the proceedings below, the County demonstrated to the trial court's satisfaction that neither Appellant met the Three Unities test. As stated by the trial court: "The Court hereby finds and concludes that Defendants Michael Sheehan and HRHL have not met the test for being able to claim severance damages as to Area 51 set forth in Bonded Investment, nor have they demonstrated in their filing in connection with this motion that there is any genuine issue of material fact that would preclude granting of summary judgment in favor of the County on this issue. RA Vol. 5 at 317 ¶12. On appeal, only Sheehan claims entitlement to severance damages. This Court therefore need not review the trial court's decision that HRHL was also not entitled to these damages.

County's position was that neither Appellant had title to Area 51. The "records and documents" proved that Defendant Patricia Sheehan, not HRHL or Sheehan, actually owed the property of which Area 51 was a part.[15]

Having satisfied its initial burden of proof, the burden shifted to Appellants to respond with specific facts that a genuine issue worthy of trial exists. GECC Financial Corp. v. Jaffarian, 79 Haw. 516, 521 (App. 1995), aff'd., 80 Haw. 118 (1995). "Bare allegations or factually unsupported conclusions are insufficient to raise genuine issues of material fact," and cannot prevent the granting of summary judgment. Housing Finance and Development Corp. v. Castle, 79 Haw. 64, 91 (1995) (citations omitted) (rejecting speculative, conclusory evidence raised in opposition to a summary judgment motion); see also Henderson v. Prof'l Coatings Corp., 72 Haw. 387, 401 (1991). To defeat the County's motion, Appellants had to produce significant probative evidence tending to support their theory. Costa v. Able Distrib., Inc., 3 Haw. App. 486, 488, 653 P.2d 101, 104 (1982); Commodity Futures Trading Comm'n v. Savage, 611 F.2d 270, 282 (9th Cir. 1979). Appellants failed to meet this burden. The only "evidence" proffered by Appellants in opposition to the County's motion was an argumentative Declaration by counsel and an unsigned Declaration by Sheehan. The signed version was untimely filed later, on March 24, 2014 (more than four months after the valuation jury trial). RA Vol. 7 at 40-42.

[15] Sheehan complains that the County should have submitted testimony from a "percipient witness" to explain "the significance of those records." Opening Brief at 2. The certified title documents of course speak for themselves. In any event, in opposing the County's motion for summary judgment, Sheehan himself submitted no such testimony. His unsigned Declaration attached to his opposition memorandum did not create disputed issues of material fact.

Mr. Cool's Appraisal provided no legal description of Area 51 but depicted it on "Exhibit II-C." RA Vol. 4 at 137.



Lot 49 (in green) was owned by Sheehan; Lot 33 (in pink) and Lot 34 (in yellow) were owned by HRHL. Area 51 (in blue) was not a legal lot; it had no tax map key number. It was a portion of a larger legal lot, Land Court Lot 127, owned by Defendant Patricia Sheehan. RA Vol. 4 at 138.

1. Sheehan Is Not Entitled To Compensation For Alleged Severance Damages to "Area 51" Because He Does Not Have Title to "Area 51" or Otherwise Meet the "Three Unities" Test under Hawaii Law

HRS § 101-23 provides, in pertinent part, that "[i]f the property sought to be condemned constitutes only a portion of a larger tract, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned . . . shall also be assessed . . . ."

In order to claim severance damages, the property sought to be condemned must be part of a larger tract owned by the condemnee, and the part of the tract that is not condemned must be damaged by the taking. In Bonded Investment, the Hawaii Supreme Court established a strict test (sometimes referred to as the "Three Unities" test) to qualify for a claim for severance damages:

> When one portion of a single parcel of land is condemned and another portion of the same parcel is not condemned, the owners of the single parcel of land are entitled not only to just compensation for the portion condemned, but also to severance damages, if any, accruing to the portion not condemned, by reason of the separation of the condemned portion from the single parcel of land owned prior to the subdivision caused by the condemnation.
>
> . . . For an owner to be entitled to severance damages for a parcel of land remaining after the condemnation of a parcel of land, there must be established, as between the two parcels: (1) unity of title, (2) physical unity, and (3) unity of use.
>
> . . . When the owners by choice and design have separated the use of one lot from another lot, it can no longer be said that there is such 'connection, or relation of adaptation, convenience, and actual and permanent use between them, as to make the enjoyment of the parcel taken, reasonably and substantially necessary to the enjoyment of the parcel left, in the most advantageous and profitable manner in the business for which it is used.' In such circumstances, as a matter of law, the lots are separate and independent and not portions of a single tract of land.

Bonded Investment, 54 Haw. at 523, 511 P.2d at 164 (Court's syllabus) (emphasis added). As further stated by the Court:

> Under such rule, the test generally used by courts to determine whether a parcel to be acquired by eminent domain proceeding is a part of a larger tract of land to entitle owners to severance damages is that there must be unity of title, physical unity, and unity of use of the parcel taken and parcel left. . . . We believe that the test adopted by other courts is fair and reasonable and should be followed by this court.

Id. at 525, 511 P.2d at 165 (emphasis added).

In Appellants' Opening Brief, only Sheehan (not HRHL) claims entitlement to severance damages. In order to support this claim, unity of title is required. But "Area 51" is not part of any property owned by Sheehan. During all relevant times, it has been owned by Defendant Patricia Sheehan. RA Vol. 5 at 309 ¶¶12-14.

Sheehan claimed his interest in Area 51 due to a Grant of Easement given to him by Defendant Patricia Sheehan in 2004. Opening Brief at 9; RA Vol. 4 at 267-271. That Grant of Easement granted to Sheehan an easement to use premises which appear to correspond to Area 51 for a "boat baseyard." That Grant of Easement provided at p. 4 that

> In the event the Special Management Use Permit, SMA(U)-87-8; Special Permit SP-87-9; Use Permit U-87-32, and Class IV Zoning Permit Z-IV-87-40, and the authority to use the easement premises as a boat baseyard is withdrawn, cancelled or revoked by the Planning Commission of the County of Kauai, State of Hawaii, this "Grant of Easement" shall expire and be null and void upon the recordation at the Bureau of Conveyances of the State of Hawaii, of a certified copy of said action of the Kauai County Planning Commission disallowing any further use of the premises for a boat baseyard.

The permits referred to were revoked in 2010.[16]

Sheehan's claim to severance damages is even more absurd considering that he only owns Lot 49. Lot 49 is two parcels away from Area 51 and is not even physically contiguous (no physical unity). Nor are the "boatyard" improvements, the loss of which is alleged to create a severance damage situation for Area 51, located on Sheehan's Lot 49. Thus, in addition to no unity of title and no physical unity, there is no unity of use between Lot 49 and Area 51 given

[16] Those permits were revoked by the Kaua'i Planning Commission on June 21, 2010. The revocation was affirmed by the Fifth Circuit Court and further affirmed by this Court. Sheehan, 134 Haw. 132, 337 P.3d 53 (CAAP-11-0000601). Appellants sought certiorari review (Opening Brief at fn. 1) which was denied.

that the two areas are separated from each other by another owner's land and the claimed boatyard improvements are not located on Sheehan's parcel, but on the land of HRHL.[17]

2. Sheehan Is Estopped From Claiming Severance Damages Because He Did Not Disclose His Alleged Claim To Area 51 During Discovery

Further, Sheehan is estopped from attempting to claim any severance damages to Area 51. In his responses to discovery, he refused to disclose whether he had an interest in any other property because he asserted he was only seeking compensation for property being taken in the condemnation.

In "Plaintiff's Request for Answers to Interrogatories to Defendant Michael Guard Sheehan," dated January 9, 2013 (RA Vol. 4 at 276-283), the County asked Sheehan to "Identify by tax map key number all properties on Kaua'i which you 'own' (as defined in Definitions above, ¶4." (RA Vol. 4 at 283.) "Own" was defined in the interrogatories as "(1) to have legal title to real property (whether in fee simple, leasehold or any other interest, or (2) to have beneficial interest in such real property through any sort of trust arrangement, foundation, agreement or covenant affecting such real property; (3) to have any ownership or control interest, whole or partial, in a corporation, limited liability company, partnership, foundation or other

[17] The Findings of Fact entered by the trial court establish the factual bases supporting the trial court's Conclusions of Law. In his Opening Brief, however, Sheehan fails to challenge the accuracy of any of these Findings as required by HRAP Rule 28 (b) (4) (C). While noncompliance with Rule 28 does not always result in waiver of points of error or arguments, Marvin v. Pfueger, 127 Haw. at 496, 280 P.3d at 94, in this appeal the challenged Conclusions follow inexorably from the unchallenged Findings. Wisdom v. Pflueger, 4 Haw. App. 455, 459, 667 P.2d 844, 848 (1983) ("an attack on a conclusion which is supported by a finding is not an attack on that finding"); Sheehan, 134 Haw. 132, 337 P.3d 53 (CAAP-11-0000601) ("conclusions which flow from the circuit court's ...unchallenged FOFs, and are correct statements of law, are not in error"). Unchallenged Findings of Fact are binding on this Court. Okada Trucking, 97 Haw. at 458, 40 P.3d at 81. ("[I]f a finding is not properly attacked, it is binding; and any conclusion which follows from it and is a correct statement of law is valid." Kawamata Farms, Inc. v. United Agri Prods., 86 Haw. 214, 252, 948 P. 2d 1055, 1093 (1997) (citation and internal quotation marks omitted)).

business entity that has legal title to, or a beneficial interest in, such real property." (RA Vol. 4 at 279 (emphasis added).)

In "Defendant Michael G. Sheehan's Answer to Plaintiff's First Request for Answers to Interrogatories to Defendant Michael G. Sheehan," Sheehan responded as follows:

> 2. Identify by tax map key numbers all properties on Kauai which you "own" (as defined in Definitions above ¶4.
>
> Answer:
>
> I am not trying to be difficult, but that is none of the County's business. The Subject Property as defined in ¶10 in the section entitled "Definitions and Instructions" is the only property which is the subject of this condemnation proceeding. Accordingly, using the definition set forth in ¶4, I own TMK No. 5-5-01-49.

RA Vol. 4 at 287.[18]

In opposing the County's motion to compel discovery (RA Vol. 3 at 190-203), Sheehan never mentioned Area 51 or severance damages. His counsel instead asserted that: "The **only** issue for trial is the valuation of the subject properties' (highest and best use)." RA Vol. 4 at 34 (emphasis in original). His counsel further emphasized the point: "Let's be real clear on this point; the only relevant issues is [sic] determining the fair market value of the property at its highest and best use. That is it, nothing more and nothing less." RA Vol. 4 at 35-36.

Because Sheehan refused to disclose any alleged ownership interest in Area 51, he should be judicially estopped to assert otherwise as to any claim for severance damages[19]:

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[18]Paragraph 10 of the Instructions stated: "'Subject Property' refers to TMK No. (4) 5-5-01-33, TMK No. (4) 5-5-01-034 and TMK No. (4) 5-5-01-049, as set forth in the First Amended Complaint." RA Vol. 4 at 279.

[19] Sheehan blames the County for failing to ask him whether he claimed severance damages. Opening Brief at 9-10. This stands the discovery process on its head. The County never bore the burden of suggesting possible claims to Appellants. Rather, Appellants should have told the County if they claimed severance damages. The County then could have sought to

> [a] party will not be permitted to maintain inconsistent positions or to take a position in regard to a matter which is directly contrary to, or inconsistent with, one previously assumed by him, at least where he had, or was chargeable with, full knowledge of the facts, and another will be prejudiced by his action.

Roxas v. Marcos, 89 Hawai'i 91, 124, 969 P.2d 1209, 1242 (1998) (quoting from Rosa v. CWJ Contractors, Ltd., 4 Haw. App. 210, 218, 664 P.2d 745, 751 (1983)).

After asserting in discovery that his rights in any other property were "none of the County's business," the trial court properly rejected his attempt to claim compensation for severance damages to other property.[20]

C. The Trial Court Correctly Calculated Blight Of Summons Damages

Appellants argue without merit that the trial court's calculation of blight of summons damages constituted an abuse of discretion. In the proceedings below, Appellants presented inconsistent theories regarding how to calculate blight damages.[21] Their Opening Brief further confuses the issue. Like Appellants' arguments on the first two points on appeal, one cannot decipher by reading the Opening Brief how Appellants are aggrieved by the trial court's decision.

The County's obligation to pay blight of summons damages arises because the valuation date for the three Lots was fixed by law at the May 31, 2011 date of summons of the County's

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discover whether any factual bases existed for such a claim. In litigation, parties are expected to raise claims in a timely manner, to give the trial court greater opportunity to consider the claims and to discourage "sandbagging." Marvin v. Pflueger, 127 Haw. at 509, 280 P.3d at 107.

[20] As set forth in the County's Motion for Partial Summary Judgment (RA Vol. 4 at 132–290, 295-316; Vol. 5 at 70-96 and 98-115) and the Findings of Fact and Conclusions of Law entered by the trial court (RA Vol. 5 at 305-318), additional reasons exist to affirm the trial court's rejection of the severance damages claim. It is not necessary for this Court to consider those additional grounds to dispose of this appeal.

[21] In their Opening Brief at 14, Appellants attempt to excuse this inconsistency by claiming that they "...initially miscalculated the blight of summons damages."

condemnation complaint. To finalize the case, the trial court had to determine blight damages to bring the jury award from the 2011 valuation date to current value. HRS § 101-33; City & County v. Market Place Ltd., 55 Haw. 226, 235-241, 517 P.2d 7 ("Marketplace") (1973); Bonded Investment, 54 Haw. at 395-397, 507 P.2d 1084.

The County filed its motion regarding blight damages on November 18, 2013. (RA Vol. 6 at 357-365) Therein, the County calculated blight damages based upon three time periods:

May 31, 2011 – May 4, 2012	5%/year blight damages owed
May 5, 2012 – April 28, 2013	no blight damages owed
April 29, 2013 – up to final payment	5%/year blight damages owed on the difference between the County's reduced deposit and the jury verdict

Appellants had approximately six weeks to respond. In their responsive Memorandum, Appellants advanced two mutually inconsistent calculation methods. RA Vol. 6 at 371-373; Vol. 7 at 9. Though difficult to pin down, it appeared that Appellants' calculation differed from the County's calculation by only $26,000 - $79,000. Tr. 1/8/14, pp. 3, 20.

The trial court agreed that the County correctly calculated blight damages and granted the County's motion. RA Vol. 7 at 12-13. Appellants moved for reconsideration. RA Vol. 7 at 14-24. Therein, they presented in writing for the first time yet another method of calculating blight damages. Appellants offered no new evidence or argument to support reconsideration. Vol. 7 at 27-31. The trial court denied their reconsideration motion. RA Vol. 7 at 38-39.

The pertinent facts demonstrating that the trial court correctly calculated blight damages follow.

When the County condemned the three Lots on May 31, 2011, it did not deposit estimated just compensation with the clerk of court. Therefore, blight damages began to accrue at the rate of 5%/year on the $5,800,000 jury verdict.

On May 4, 2012, the County deposited estimated just compensation of $5,890,000 (an amount which was ultimately more than the jury verdict). Having made that deposit, the County stopped the accrual of blight damages because its deposit exceeded the jury verdict. Therefore, Appellants were entitled to no blight damages from May 5, 2012 – April 28, 2013 even though they made no effort at the time to withdraw the deposit.

The amount of blight damages set by the trial court for this May 31, 2011 – May 4, 2012 period is uncontested by Appellants. The trial court calculated that Appellants were entitled to $275,698.63 in blight damages (measured by 5% on the total jury verdict of $5,800,000).[22]

As noted above, on April 29, 2013, the County withdrew $1,030,000 of its deposit (the difference between Mr. Conboy's original appraisal and his updated appraisal as of the applicable valuation date). From April 29, 2013 until the County paid the jury verdict, Appellants were entitled to blight damages measured at 5% of $940,000 (the difference between the $5,800,000 jury verdict and the County's $4,860,000 revised deposit).[23]

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[22] This time period was comprised of 347 days. The trial court calculated blight damages using the jury's apportionment of just compensation: $2,030,000 for Parcel 33, $3,016,000 for Parcel 34 and $754,000 for Parcel 49. Thus, the blight damages measured at 5% interest for Parcel 33 was $96,494.52, for Parcel 34 was $143,363.29 and for Parcel 49 was $35,840.82.

[23] With regard to this period, the calculation of blight damages measured at 5% interest was made according to the following differences between the parties' Agreement regarding apportionment of the County's $4,860,000 deposit and the jury verdict: namely $300,000 for Parcel 33, $566,000 for Parcel 34 and $74,000 for Parcel 49. See Agreement Regarding Withdrawal Of Deposit, RA Vol. 6 at 363-365. Blight damages through November 18, 2013 measured at 5% interest for Parcel 33 was $8,342.47 (with per diem damages thereafter measured at $41.10/day), for Parcel 34 was $15,739.45 (with per diem damages thereafter measured at $77.53/day) and for Parcel 49 was $2,057.81 (with per diem damages thereafter

Appellants first argued that they were entitled to blight damages (a) from May 31, 2011 until May 4, 2012 measured by 5% interest on $5,890,000, *and in addition*, (b) from May 31, 2011 until they were paid the jury verdict measured by 5% on $940,000. Such double calculation of blight damages is surely incorrect.

Appellants then argued that they were entitled to blight damages (a) from May 31, 2011 until May 4, 2012 measured by 5% interest on the jury verdict, and (b) thereafter until they were fully paid the jury verdict measured by 5% on the $940,000 difference between the jury verdict and the County's revised $4,860,000 deposit. In other words, the County's original deposit of $5,890,000 did not stop accrual of blight damages.

Neither position is consistent with law. The County unconditionally deposited $5,890,000 on May 4, 2012, and then the County reduced its unconditional deposit to $4,890,000 on April 29, 2013. Those are the dates and the amounts which the trial court correctly applied when awarding blight damages.

Appellants appeal from the trial court's calculation by arguing that the County's deposit of estimated just compensation was "conditional." They base this claim upon two differing theories. The first was advanced in connection with the County's motion for blight damages; the second was belatedly advanced in writing in Appellants' reconsideration motion. The record establishes that neither argument has merit.

Appellants' first "conditionality argument" was presented in their written position regarding calculation of blight damages as follows:

> The County's decision to reduce the amount of its deposit demonstrates that the $5.89 million was not an unconditional

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measured at $10.14/day). Appellants agreed with the per diem rate but disagreed as to the rest.

> deposit, but rather conditioned upon the County obtaining a second, updated appraisal.

RA Vol. 6 at 373. As noted above, the County's reduction of its deposit was unrelated to any conditions. It simply reflected the updated appraisal of the County's valuation expert as of the legally applicable valuation date (May 31, 2011).

Appellants' second "conditionality argument" was belatedly advanced in writing in its reconsideration motion as follows:

> The language of the Agreement Regarding Withdrawal of Deposit is clear; disbursement was conditioned on Sheehan, one of the landowners, indemnifying the County by guarantying repayment of any funds disbursed to Hanalei River Holdings, Ltd. if the jury ultimately awarded a lower amount at trial. That is the epitome of a conditional deposit.

RA Vol. 7 at 15. This argument fails by review of the record.[24]

The parties' Agreement does not change the County's deposit of estimated just compensation from unconditional to conditional. Unlike the single condemnee in the Marketplace case upon which Appellants rely, in this case there were two claimants for the ultimate payment of just compensation, HRHL (for Lots 33 and 34) and Sheehan (for Lot 49). Before either could withdraw the deposit, an apportionment of the proceeds would have to occur. RA Vol. 4 at 62-84. To facilitate withdrawal of the deposit without an adjudication of apportionment, the County voluntarily entered into a Stipulation (RA Vol. 3 at 132-135) and a related Agreement (RA Vol. 6 at 363-365). Those actions allowed Sheehan to withdraw immediately all of the deposit.

[24] The County attached the Agreement as an exhibit to support its blight motion. In oral argument regarding computation of blight damages, the County referenced the Agreement to demonstrate that the County imposed no limitation on Appellants' ability to withdraw the deposit. Tr. 1/8/14 at 6. Although Appellants never argued to the contrary in their written submission to the court, they for the first time at oral argument claimed that the Agreement made the County's deposit "conditional." Tr. 1/8/14 at 9-11.

The April 10, 2013 Transcript of Proceedings presents the full picture. Therein, Appellants' counsel recognized both the problem caused by withdrawal of the deposit in the case of multiple claimants to the deposit and also the difficulty of disbursing proceeds to HRHL, a Cook Islands corporation. To address this concern, Sheehan "personally agreed" to indemnify the County in the case of overpayment to HRHL.[25] This was not a condition imposed by the County. The County accepted Sheehan's offer to facilitate Sheehan's withdrawal of the deposit. In response to the County's agreement, Appellants extended their profuse appreciation for the County's cooperation. Tr. 4/10/13 at 5-6 and 8. But now, following the adage of "no good deed goes unpunished," Appellants attempt to use the County's cooperation against the County. Tr. 1/8/14, p. 14. Because Appellants accepted the benefit of the Stipulation and Agreement, they waive the right to have these matters reviewed by this Court. S.Utsonomiya, 75 Haw. at 495-96, 966 P.2d at 960.

The trial court was fully informed of the County's efforts to facilitate HRHL and Sheehan's withdrawal of the County's deposit. Tr. 4/10/13 at 7. The trial court therefore properly rejected Appellants' untimely argument that the County's deposit was conditional and the blight damages should continue to accrue despite the deposit and despite Appellants' withdrawal of the money. Tr. 1/8/14 at 20.

Defendants admit that the County's final payment of just compensation "included all interest due and payable on that date." Opening Brief at 12, fn. 16. Therefore Appellants are not aggrieved by the trial court's decision regarding blight and there is no relief that this Court could order. Inter-Island Resorts, 44 Haw. at 98, 352 P.2d at 960 (appeal is available only to a party

[25] Because HRHL was not overpaid, Sheehan never had to make good on this indemnity.

aggrieved by the judgment); S.Utsonomiya, 75 Haw. at 494, 966 P.2d at 960 (an "aggrieved" party is one who is affected or prejudiced by the appealable order).

Like the trial court's rulings on the other two points on appeal, the County respectfully submits that the trial court's ruling on blight damages should be affirmed.

V. STATEMENT OF RELATED CASES

Michael G. Sheehan vs. County of Kaua'i et al., 134 Haw. 132, 337 P.3d 53 (App. 2014) (CAAP-11-0000601), recently decided by this Court and cited by Appellants in their Opening Brief at fn.1, relates to Appellants' second point of error concerning severance damages. Therein, this Court confirmed the revocation of Sheehan's permits to operate a boatyard on the Lots here at issue due to violations of various permit conditions. That revocation occurred before the May 31, 2011 valuation date here applicable.

VI. CONCLUSION

For the foregoing reasons, the County respectfully urges affirmance in all respects of the Final Judgment (RA Vol. 7 at 54-66) and the Final Order of Condemnation (RA Vol. 7 at 67-76) entered by the Fifth Circuit Court.

DATED: Honolulu, Hawai'i; January 23, 2015.

/s/ Rosemary T. Fazio
MAUNA KEA TRASK
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Attorneys for Plaintiff-Appellee
COUNTY OF KAUA'I

CAAP-14-0000828

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

COUNTY OF KAUAI, Plaintiff-Appellee, vs. HANLEI RIVER HOLDINGS, LTD., a Cook Islands corporation, and MICHAEL G. SHEEHAN, Defendants-Appellants, and PATRICIA WILCOX SHEEHAN, as Trustee of that certain unrecorded Revocable Trust Agreement of Patricia Wilcox Sheehan, dated December 21, 1994, PATRICIA WILCOX SHEEHAN; GAYLORD H. WILCOX; DANIEL H. CASE; GROVE FARM COMPANY, INC., a Hawaii corporation; HUGH W. KLEBAHN; DONN A. CARSWELL; PAMELA W. DOHRMAN; ROBERT D. MULLINS; WILLIAM D. PRATT; RANDOLPH G. MOORE; and the Heirs and/or Assigns of JOHN B. BROSSEAU, also known as JOHN BROSSEAU, JOHN B. BRASSEAU and J. B. BRASSEAU; JOHN DOES 1-200; DOE PARTNERSHIPS 1-25; DOE CORPORATIONS	Civil No. 11-1-0098 (Condemnation) APPEAL FROM JUDGMENT ENTERED ON APRIL 25, 2014 FIFTH CIRCUIT COURT STATE OF HAWAII HONORABLE KATHLEEN N.A. WATANABE

1-25; DOE ENTITIES 1-25; AND DOE GOVERNMENTAL UNITS 1-25,

Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date set forth below a true and correct copy of the Answering Brief was duly served upon the following parties by electronic mail:

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PATRICIA WILCOX SHEEHAN, Individually and as Trustee of that certain unrecorded Revocable Trust Agreement of Patricia Wilcox Sheehan, dated December 21, 1994

DATED: Honolulu, Hawai'i, January 23, 2015.

/s/ Rosemary T. Fazio
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