

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

COUNTY OF MAUI,)	CIVIL NO. 24-00203 KJM
DEPARTMENT OF)	
ENVIRONMENTAL)	ORDER DENYING PLAINTIFF
MANAGEMENT,)	COUNTY OF MAUI, DEPARTMENT
)	OF ENVIRONMENTAL
Plaintiff,)	MANAGEMENT’S MOTION FOR AN
)	ORDER OF POSSESSION
vs.)	
)	
KOMAR MAUI PROPERTIES I)	
LLC,)	
)	
Defendant.)	
_____)	

ORDER DENYING PLAINTIFF COUNTY OF
MAUI, DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT’S MOTION FOR AN ORDER OF POSSESSION

Plaintiff County of Maui, Department of Environmental Management (the “County”), commenced this eminent domain proceeding to acquire approximately 20 acres of land (the “Property”) for use as a solid waste disposal site. Defendant Komar Maui Properties I LLC (“Komar”) owns the Property.

On June 12, 2024, the County filed a Motion for an Order of Possession (“Motion”). ECF No. 17. On June 26, 2024, the parties consented to having the undersigned conducting all proceedings in this case. ECF No. 23. On June 28, 2024, Komar filed an Opposition to the Motion. ECF No. 25. On July 5, 2024, the County filed a Reply. ECF No. 28.

On July 10, 2024, the Court held a hearing on the Motion. ECF No. 29. Thomas W. Kolbe, Esq., and Mariana Lowy-Gerstmar, Esq., appeared on behalf of the County. Sharon V. Lovejoy, Esq., and Lindsay E. Orman, Esq., appeared on behalf of Komar. After carefully considering the Motion, memoranda, applicable law, and arguments of counsel, the Court DENIES the Motion for the reasons set forth below.

BACKGROUND

I. Factual Background

The Central Maui Landfill (the “Landfill”) receives non-hazardous municipal solid waste from commercial and residential sources on Maui. ECF No. 17-1 at 1 (citing ECF No. 17-3 at 2 ¶ 4). In or around 1996, the County proposed a project to expand the Landfill to adjacent parcels. ECF No. 17-1 at 1; ECF No. 17-6 at 2; ECF No. 25 at 13–14. The expansion project includes six phases, Phases I through VI. ECF No. 17-1 at 2; ECF No. 17-6 at 2.

On August 8, 2023, Lahaina town on Maui was devastated by the deadliest wildfire in the United States in over 100 years. Nearly one year later, Lahaina residents are still displaced, and a significant amount of the fire debris remains at a temporary storage site.

The County asserts that, at the time it filed the Motion, the Landfill could only accommodate less than three months of municipal solid waste, not including

the Lahaina fire debris. ECF No. 17-1 at 3. As of the date of this order, the Landfill's capacity would appear to be less than two months. The County asserts that it will need twelve acres of land to contain the fire debris safely and permanently, and it anticipates relocating the fire debris from its temporary storage site to the Landfill in early 2025. *Id.* at 4. The County has thus selected the Property for Phase VI of the expansion project. *Id.* at 2, 4.

II. Procedural Background

The County asserts that it has made several attempts to purchase the Property from Komar, but the parties could not reach an agreement. ECF No. 17-3 at 3 ¶ 6. On April 30, 2024, the County filed a Complaint against Komar in the Circuit Court of the Second Circuit, State of Hawaii, seeking to exercise its power of eminent domain over the Property. ECF No. 1-3. That same day, Komar removed the action to this district court based on diversity jurisdiction pursuant to 28 U.S.C. § 1332. ECF No. 1. On June 12, 2024, the County filed the Motion.¹ As part of the Motion, the County deposited \$830,000 with the Clerk of Court as

¹ The Court notes that the County initially filed *ex parte* a Motion for an Order of Possession on June 7, 2024 (“06/07/2024 Motion”). ECF No. 14. The County publicly filed the Motion on June 12, 2024. ECF No. 17. At the Rule 16 Scheduling Conference on June 14, 2024, counsel for the County confirmed that the Motion is a duplicate of the 06/07/2024 Motion and asked the Court to rule on the Motion.

the County's estimated just compensation for taking the Property. ECF Nos. 17-5, 16.

DISCUSSION

The County seeks an order for immediate possession of the Property while this eminent domain proceeding is pending, pursuant to Hawaii Revised Statutes ("HRS") § 101-29. HRS § 101-29 allows the County to file a motion for an order of possession of a property that is the subject of a pending eminent domain action:

Where the plaintiff is the State or any county, the following alternative procedure may be followed. At any time after the commencement of an action pursuant to this part, the State or any county may file a motion for an order of possession invoking this section and supported by an affidavit alleging, or by oral evidence prima facie showing:

- (1) The right of the State or county to maintain the action;
- (2) The public use for which the real property sought to be condemned is being taken; and
- (3) The sum of money estimated by the State or county to be just compensation or damages for the taking of the real property.

Upon such motion and upon payment of such estimated sum of money to the clerk of the court for the use of the persons entitled thereto, the court shall issue an order ex parte putting the State or county in possession of the real property sought to be condemned and permitting the State or county to do such work thereon as may be required for the purpose for which the taking of the property is sought.

Haw. Rev. Stat. § 101-29.

Komar removed this case based on diversity jurisdiction, which the County does not dispute exists. Pursuant to *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938), “federal courts sitting in diversity apply state substantive law and federal procedural law.” *Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 427 (1996). Thus, the critical issue here is whether HRS § 101-29 is substantive or procedural.

The Ninth Circuit has previously stated: “‘In determining whether a state law is substantive or procedural, we ask whether the law is outcome determinative,’ that is, whether or not applying the law would significantly affect the result of the litigation.” *Cooper v. Tokyo Elec. Power Co. Holdings, Inc.*, 960 F.3d 549, 557 (9th Cir. 2020) (quoting *Cuprite Mine Partners LLC v. Anderson*, 809 F.3d 548, 555 (9th Cir. 2015)). This inquiry is “guided by ‘the twin aims of the *Erie* rule: discouragement of forum-shopping and avoidance of inequitable administration of the laws.’” *Cuprite Mine*, 809 F.3d at 555 (quoting *Gasperini*, 518 U.S. at 428). “It is important to the fair administration of the law that ‘the outcome of the litigation in the federal court should be substantially the same, so far as legal rules determining the outcome of a litigation, as it would be if tried in a State court.’” *Cooper*, 960 F.3d at 557–58 (quoting *Gasperini*, 518 U.S. at 427).

The Court finds that HRS § 101-29 is procedural. The plain language of HRS § 101-29 indicates that it is an “alternative *procedure*” that may be followed in eminent domain proceedings. The legislative history for one of HRS § 101-29’s

predecessors, Revised Laws of Hawaii § 319,² indicates that the purpose of the underlying bill was “to make uniform, as far as possible, all *procedures* exercised in eminent domain” S. Journal, 26th Terr. Leg., Judiciary Comm. on S.B. 540, p.541 (Haw. 1951) (emphasis added).

Moreover, the Hawaii Supreme Court has previously referred to HRS § 101-29 as a “procedure,” albeit in passing, in *City & Cnty. of Honolulu by & through Honolulu Authority for Rapid Transportation v. Victoria Ward, Ltd.*, 153 Haw. 462, 541 P.3d 1225 (2023). There, the Hawaii Supreme Court stated: “Under Hawai‘i law, a condemnor who uses the HRS § 101-29 ‘quick-take’ *procedure* is required to estimate the amount of just compensation and damages and deposit that sum with the court.” *Id.* at 502, 541 P.3d at 1265 (emphasis added); *see also id.* at 475, 541 P.3d at 1238 (referring to HRS § 101-29 as an “expedited *procedure*” (emphasis added)).

In arguing that HRS § 101-29 is substantive, the County relies on the Hawaii Supreme Court’s decision in *City & County of Honolulu v. Bishop Trust Co.*, 49 Haw. 494, 421 P.2d 300 (1966). ECF No. 28 at 5–6. In particular, the County emphasizes the Hawaii Supreme Court’s holding that the trial court did not err “in

² Revised Laws of Hawaii (“RLH”) § 319(2) was subsequently recodified as RLH § 8-27 (1955). RLH § 8-27 was subsequently recodified as HRS § 101-29. HRS § 101-29 remains substantively identical to the original language used in RLH § 319(2).

concluding that the City had an absolute right to obtain immediate possession of the premises” under RLH § 8-27—the predecessor to HRS § 101-29. *Id.* at 6 (emphasis and format omitted) (quoting *Bishop Trust*, 94 Haw. at 499, 421 P.2d at 303). The County fails to mention, however, that in the analysis immediately below this quoted language, the Hawaii Supreme Court refers to RLH § 8-27 as an “alternative *procedure.*” *Bishop Trust*, 94 Haw. at 500, 421 P.2d at 304 (emphasis added). The County thus fails to persuade the Court that *Bishop Trust* establishes that HRS § 101-29 is substantive for purposes of an *Erie* analysis.

The Court also finds that HRS § 101-29 is not outcome determinative because applying it would not significantly affect the result of the litigation. *Cooper*, 960 F.3d at 557. The Court acknowledges that the State or county gains leverage by obtaining immediate possession. Possession during the pending proceeding, however, does not determine the outcome of the litigation. Simply put, applying HRS § 101-29 does not affect the key issues of an eminent domain proceeding: whether the State or county may ultimately take the subject property and the amount owed as just compensation for the taking.

Nor does a finding that HRS § 101-29 is procedural subvert *Erie*’s twin aims. Indeed, the County does not contend that not applying HRS § 101-29 would increase forum shopping or result in inequitable administration of laws. Although a defendant would likely prefer to remove an eminent domain proceeding to

federal court to avoid HRS § 101-29, a defendant in a diversity action would have that right in the first place. The Court thus finds that not applying HRS § 101-29 would not run counter to *Erie*'s goal of deterring forum shopping. *See Hum v. Dericks*, 162 F.R.D. 628, 636 (D. Haw. 1995) (“The court could envision a plaintiff attempting to avoid the [pre-filing] procedures for convenience, but forum shopping based on convenience is common and does not run counter to *Erie*.” (citation omitted)). The Court also finds that, because immediate possession “does not affect the merits of the parties’ positions under state law,” not applying HRS § 101-29 in federal court would not result in an inequitable application of the law. *See id.* at 637.

“A substantive rule is one that creates rights or obligations[,]’ while a procedural rule ‘defines a form and mode of enforcing the substantive right or obligation.’” *Cooper* (quoting *Cnty. of Orange v. U.S. Dist. Ct. (In re Cnty. of Orange)*, 784 F.3d 520, 527 (9th Cir. 2015)). In this Court’s view, a substantive rule is one that creates the County’s right to exercise its power of eminent domain. A statute that allows the County to file a motion for immediate possession of the subject property during a pending proceeding, however, is merely a mode of enforcing this right by allowing the County to obtain possession while its eminent domain claim proceeds on the merits. The Court thus finds that HRS § 101-29 is procedural and, therefore, does not apply in this diversity action.

CONCLUSION

Based on the foregoing, the Court DENIES the County's Motion for an Order of Possession (ECF No. 17). The Court DIRECTS the Clerk of Court to return the \$830,000 deposit to the County.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, July 15, 2024.



A handwritten signature in black ink, appearing to read "K. Mansfield".

Kenneth J. Mansfield
United States Magistrate Judge

County of Maui, Department of Environmental Management v. Komar Maui Properties I LLC,
Civil No. 24-00203 KJM; Order Denying Plaintiff County of Maui, Department of
Environmental Management's Motion for an Order of Possession