

NO. 27473

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

ERIC AARON LIGHTER, INDIVIDUALLY, AND
AS OWNER OF THE CLAIMS OF INTEGRITY FIVE TRUST AND
CREDIT BUREAU INTERNATIONAL TRUST, Appellant-Appellant,

v.

CHRISTOPHER J. YUEN, PLANNING DIRECTOR,
COUNTY OF HAWAI'I, Appellee-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 04-1-0224)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Foley and Fujise, JJ.)

Appellant-Appellant Eric Aaron Lighter (Lighter),
individually and as owner of the claims of Integrity Five Trust
and Credit Bureau International Trust, appeals, *pro se*, from the
August 9, 2005 Judgment entered in the Circuit Court of the Third
Circuit.¹

By a lease dated April 10, 1997, Ronald Ober (Ober)
leased to Lighter the property at 11-3832 2nd Street, Volcano,
Hawai'i 96785 (the Property). The lease contained an option to
purchase.

On December 11, 1998, Lighter, as Trustee for Integrity
Five Trust, which was wholly owned by Credit Bureau International
Trust, filed with the County of Hawai'i Planning Department (the
Department) an Application for Plan Approval of a plan to use the
Property as a Bed & Breakfast.

In Civil No. 99-217, a "Final Judgment Re Possession
of Second Street Property" filed on January 24, 2003, and a
"Final Judgment as to All Claims and All Parties" filed on

¹

Judge Greg K. Nakamura presided.

EM RINANDO
CLERK, APPELLATE COURT
STATE OF HAWAII

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FILED

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May 7, 2003,² cancelled the lease and resulted in the return of the Property from Lighter to Ober.

This case centers on "Use Permit No. 171." On October 21, 2003, at the County of Hawai'i Planning Commission (the Commission), Lighter filed a document entitled "Withdrawal of Special Use Permit", which stated, in part:

On or about November 26, 1997, the . . . Commission sent to Lighter, et al. notice . . . that Lighter, et al. received approval for special use permit for the above captioned property. Said permit was USE 97-20 [sic], and same is hereby withdrawn. Termination of special use permit for Lighter, et. al. AND therefore for said property is hereby invoked.

The instant withdrawal is based on Lighter, et. al.'s (1) Complaint filed with the County of Hawaii Planning Department dated October 9, 2003, . . . , and (2) Complaint filed with the State of Hawaii Environmental Health Services for the Department of Health and the Hawaii County Department of Public Works, Building Division, . . . , as amended. Both complaints, as amended, available upon request, are good cause for said withdrawal and termination of said special use permit.

In addition, Lighter, et al. has ownership and control over a property located two lots away, . . . , and hereby utilizes said standing therefrom in supporting said instant withdrawal and termination of said special use permit.

On November 3, 2003, the County of Hawai'i Planning Director wrote to Lighter:

Thank you for your letter received on October 21, 2003, requesting to revoke Use Permit No. 171. Our records indicate that there are two listed owners of the property, you and Ronald A. Ober. Mr. Ober must also authorize us to process the request. Please provide us with a letter from Mr. Ober.

To be able to process this request, you will need to submit an original and twenty (20) copies of your request along with the filing fee of two hundred and fifty dollars (\$250) payable to the County Director of Finance. You will also be required to notify surrounding property owners and lessees within 300 feet of your property boundaries of the request to revoke Use Permit No. 171. Upon receipt of the proper filing, we will then forward the request to the Planning Commission.

On November 7, 2003, Lighter filed with the Commission a "Petition for Public Hearing for Declaratory Ruling" stating as follows:

² Judge Riki Mae Amano presided.

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Lighter asserts therefore that the subject special use permit was obtained by fraud and/or material false testimony. Section 25-4-7 of the Hawaii County Zoning Code does not provide for reversion of the special use permit from the lessee-operator to the fee owner.

Lighter therefore seeks a Declaratory Ruling pursuant to public hearing to determine:

Is a special use permit, which obtained by fraud and/or material false testimony, valid and enforceable?

If the lessee-operator terminates permitted use provided in the special use permit, does the special use permit revert to the fee owner who merely consented to the lessee-operator's application for special use permit?

If the lessee-operator terminates permitted use provided in the special use permit, does the special use permit revert to the fee owner who merely consented to the lessee-operator's application for special use permit, AND said fee owner's consent was based on fraud and/or false testimony, by commission and/or omission, of said fee owner and/or building contractor operating on behalf of said fee owner to further enhance and commit related fraud and/or false testimony?

Does a special use permit run with the land in perpetuity irrespective of sales, leases, possession or operator, and without notice or approval of the Planning Department and Planning Commission for the County of Hawaii, and/or without public hearing therefore?

Is Rule 7-11 of the Rules of Practice and Procedure of the Planning Commission for the County of Hawaii now void, inasmuch as the instant case is one where "[t]here have been continual violations of the use permit", and "[t]he use authorized under the use permit is creating a threat to health or safety of the community"?

(Brackets in original.)

On November 7, 2003, Lighter filed with the Department a similar "Petition for Public Hearing for Declaratory Ruling".

A December 26, 2003, letter from Planning Director Christopher J. Yuen (the Director) denied both petitions, advised Lighter that "the essence of your petition is requesting a ruling on the validity of the permit issued by the . . . Commission and does not appear to be an issue that the . . . Director should be issuing a declaratory ruling for[,]" and cited Commission Rule 7-10(a), which states:

A use permit shall be revoked by the Commission at the request of any property owner who holds the use permit sought to be revoked

or at the request of any other person with the property owner's consent upon the submission of a written statement to the Commission verifying that the use approved under the use permit issued has either not been established or has been abandoned.

On January 16, 2004, Lighter filed a "Notice of Appeal to the Board of Appeals" of the County of Hawai'i, requesting review of the denials.

On June 28, 2004, the Board of Appeals of the County of Hawai'i filed its Findings of Fact; Conclusions of Law; and Decision and Order (June 28, 2004 Order).

On July 26, 2004, Lighter filed a "Notice of Appeal to the Circuit Court" from the June 28, 2004 Order. In the November 19, 2004 opening brief in the circuit court, Lighter stated that he

requested and requests determination of the current status of laws and rules, and whether he also can be given "insider" status and its resulting special treatment that "winks" at fraud and violation of law, including fraud on authorities. In fact, Lighter has standing to bring an original action in a type of *ex relatione* fashion in such a manner, to halt "a wrong against the institutions set up to protect and safeguard the public[.]"

On February 24, 2005, after a hearing on February 1, 2005, the court entered Findings of Fact, Conclusions of Law, and Decision and Order. It states in part as follows:

FINDINGS OF FACT

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16. Rule 3 of the . . . Department's Rules of Practice and Procedure provides that "the Director may issue a declaratory order as to the applicability of any statutory provision, ordinance, or any rule or order of the Director or the Department."

17. Use Permit No. 171 is not a statute, ordinance, rule or order of the Director or the . . . Department. (. . .)

18. Rule 3 of the . . . Commission's Rules of Practice and Procedure provides that "[o]n a petition of an interested person, the Commission may issue a declaratory order as to the applicability of any statutory provision, ordinance, or of any rule or order of the Commission." (Emphasis added.) A petition for declaratory ruling shall contain a "designation of the specific provision, rule, or order in question, together with a statement of the controversy or uncertainly involved." The rule

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also provides that a "memorandum of authorities, containing a full discussion of reasons and legal authorities in support of such position or contention" is to be contained in the petition for declaratory ruling.

19. Neither of [Lighter]'s requests for declaratory ruling contained a memorandum of authorities containing a full discussion of the reasons and legal authorities in support of his position.

20. The Director rejected [Lighter]'s request to the . . . Department as Use Permit No. 171 is not a statute, ordinance, rule or order of the Director or the . . . Department.

21. The Director rejected [Lighter]'s petition to the . . . Commission because it was defective.

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CONCLUSIONS OF LAW

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7. The Director's decision to deny the petition was not erroneous, or a violation of any applicable law, or arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion as the Director is not required to issue a declaratory ruling and the petition to the Director did not concern a statutory provision, ordinance, or any rule or order of the Director or the Department.

8. The Director's decision to deny the petition to the . . . Commission was not erroneous, or a violation of any applicable law, or arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion as the Commission is not required to issue a declaratory ruling and the petition to the Commission was defective as it did not contain a legal memorandum of authorities containing a full discussion of the reasons and legal authorities in support of [Lighter]'s position.

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10. It is the Court's decision to deny the appeal, and uphold the decision by the Board of Appeals, based upon [Lighter] not having met his burden of proof, including the burden of producing evidence as well as the burden of persuasion, by failing to adduce a preponderance of the evidence, both by documentary evidence and by testimony at the hearing.

The August 9, 2005 Judgment followed.

Lighter filed this appeal on August 26, 2005, and it was assigned to this court on March 14, 2006.

In the opening brief, Lighter states in part as follows:

Lighter has already detailed on the record herein how the County of Hawaii Uniform Building Code mandates that the alleged building permits for the 2nd St. property are void due to fraudulent and/or false submissions therefore. . . .

Withdrawal of the 2nd St. property use permit pursuant to fraud in the inducement in obtaining same-fraud that persists to this minute-would be appropriate relief, but Lighter did not Petition for that. Instead, Lighter requested that his Petitions be answered as to each question therein[.]

Lighter also states that "[s]aid Petitions do not request action on Use Permit No. 171, but rather seek determination of application of law such as in the example of that property which Lighter has personal standing and witness to so question for the sake of the application of the law not of said property[.]"

In the reply brief, Lighter states that his Petitions were to "address the systemic defense of fraud, and demand a systemic resolution for all cases of fraud."

We conclude that the proceedings commenced and pursued by Lighter are not appropriate for the result he allegedly sought. Therefore, in accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and applying the law relevant to the issues raised and arguments presented, IT IS HEREBY ORDERED that the August 9, 2005 Judgment is affirmed.

DATED: Honolulu, Hawai'i, September 15, 2006.

On the briefs:

Eric Aaron Lighter
Appellant-Appellant Pro Se.

Bobby Jean Leithead-Todd,
Deputy Corporation Counsel,
County of Hawai'i
for Appellee-Appellee.


Chief Judge


Associate Judge


Associate Judge