

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

SMALL LANDOWNERS ASSOCIATION, an unincorporated Hawai'i association, CLIFFORD F. YOUNG, Successor Trustee of that certain Trust Indenture, dated December 30, 1957, CLIFFORD F. YOUNG and LAURA M. YOUNG, Co-Trustees of the Clifford F. Young Trust and the Laura M. Young Trust, DOUGLAS YOUNG and GERALDINE ING YOUNG, Co-Trustees of the Cecil Ming Young Trust and the Geraldine Ing Young Trust, STELLA ANN YOUNG CHAN, Trustee of the Stella Ann Young Trust, HYACINTH YUK LEN YOUNG, Trustee of the Hyacinth Yuk Len Young Trust, LEIGHTON S. C. LOUIS, Trustee of the Leighton S. C. Louis Trust, MOLLY ING LOUIS, Trustee of the Molly Ing Louis Trust, NANCY WEE YOUNG, FRANCIS T. C. LEONG, ROCHARD LEONG and BEATRICE L. WONG, Trustees of the Yau Hoon Leong Trust, ALBERT K. M. PANG, Trustee of the Albert K. M. Pang Trust, an unrecorded Semi-Revocable Living Trust dated March 14, 1989, HARRIET K. B. PANG, Trustee of the Harriet K. B. Pang Trust, an unrecorded Semi-Revocable Living Trust dated March 14, 1989, ROBERT AKIMOTO, Trustee of the Rose K. N. Akimoto Generation Transfer Trust for Robert Akimoto, an unrecorded Irrevocable Trust dated December 22, 1993, ROBERT AKIMOTO, Trustee of the Rose K. N. Akimoto Generation Transfer Trust for Susan B. Akimoto, an unrecorded Irrevocable Trust dated December 22, 1993, ROBERT AKIMOTO, Trustee of the Robert Akimoto Trust, an unrecorded Revocable Living Trust dated July 8, 1994, WILFRED Y. S. YEE, Trustee of the Wilfred Y. S. Yee Revocable Trust, an unrecorded Revocable Living Trust dated May 20, 1988, DOROTHY A. YEE, Trustee of the Dorothy A. Yee Revocable Trust, FRANCIS YAT ON YEE, SHIRLEY K. H. YEE, Trustee of the Shirley K. H. Yee Trust, an unrecorded Revocable Living Trust dated July 18, 1988, FLORENCE C. YEE, Successor Trustee of the Charles Y. H. Yee Revocable Trust dated May 25, 1988, FLORENCE C. YEE, Trustee of the Florence C. Yee Revocable Trust dated May 25, 1988, ELEANOR YUN HO YEE, a.k.a. Eleanor C. Yee, as Trustee under that certain unrecorded Declaration of Trust dated August 21, 1987,
Plaintiffs-Appellants,

vs.

CITY AND COUNTY OF HONOLULU, Defendant-Appellee,

and

JOHN DOES 1-50, MARY DOES 1-50, and DOE PARTNERSHIPS 1-50,
CORPORATIONS 1-50, DOE ENTITIES 1-50, and DOE GOVERNMENTAL UNITS
1-50, Defendants,

and

HAWAII LEASEHOLDERS EQUITY COALITION, a Hawai'i non-profit corporation, Intervenor-Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL. NO. 98-2590)
SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama,
Ramil, and Acoba, JJ.)

The plaintiffs-appellants Small Landowners Association, et al. [hereinafter, collectively, "Small Landowners"], appeal from the corrected final judgment of the first circuit court, the Honorable Marie N. Milks presiding, in favor of the defendant-appellee City and County of Honolulu, and further entering final judgment as to intervenor Hawaii Leaseholders Equity Coalition. Specifically, Small Landowners argue that the circuit court erred in concluding that the City's interpretation of Revised Ordinances of Honolulu (ROH) § 38-2.2 (1991), as set forth in Rules for Residential Condominium, Cooperative and Planned Development Leasehold Conversion [hereinafter, "Rules"] § 2-3 (1993), promulgated by the City's Department of Housing and Community Development [hereinafter, "the Department"] is valid and enforceable, notwithstanding the fact that it conflicts with the express requirements of ROH § 38-2.2 regarding the minimum number of qualified condominium owners required to trigger lease-to-fee conversions pursuant to ROH ch. 38.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we vacate the circuit court's corrected final judgment. In light of

our recent decision in Coon v. City and County of Honolulu, No. 23246 (Haw. May 30, 2002), holding (1) that "'50 percent of the condominium units,' as employed in ROH § 38-2.2(a)(1), means just that -- fifty percent of all the units in the condominium development[,]” slip op. at 25, and, therefore, (2) that Rules § 2-3 conflicts with ROH § 38-2.2 and is invalid and unenforceable insofar as it impermissibly lowers the number of applicants required to trigger lease-to-fee conversion, we agree with the plaintiffs that the circuit court erred in concluding to the contrary. Accordingly, the circuit court further erred in denying Small Landowners’ motion for partial summary judgment and in entering summary judgment in favor of the City, based on the rationale that Rules § 2-3 does not conflict with ROH ch. 38 and that the City may initiate lease-to-fee conversion of a condominium project without applications from either twenty-five owner occupants or owner occupants of fifty percent of the condominium units in the project, whichever number is less. Therefore,

IT IS HEREBY ORDERED that the circuit court’s “corrected final judgment and further entering final judgment,” from which the appeal is taken, is vacated, and we remand this case to the circuit court for further proceedings.

DATED: Honolulu, Hawai‘i, June 25, 2002.

On the briefs:

James K. Mee, of Ashford & Wriston,
for the plaintiffs-appellants,
Small Landowners, et al.

Ann C. Teranishi (Burt T. Kobayashi,
Jr. and Lex R. Smith with her on
the brief), of Kobayashi Sugita
& Goda, for the defendant-appellee,
City and County of Honolulu