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A Limited Liability Law Partnership

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Attorney for Third-Party Defendant
FRANK SMIRKE

ORIGINAL

LODGED

JAN 05 2009 3:00 PM

CLERK, U.S. DISTRICT COURT
DISTRICT OF HAWAII

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

FEB 02 2009

at 2 o'clock and 30 min. P.M.
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

ESTATE OF FAITH ROGERS and
MICHELLE ROGERS,

Plaintiffs,

vs.

AOAO MALUNA KAI ESTATES, a
Hawaii unincorporated association,
KENT D. KNOWLEY, DONALD J.
ESSES, JAMES W. BOWMAN,
DIANE M. BOWMAN and DOE
DEFENDANTS 1-20,

Defendants.

Civil No. 07-00373 HG KSC

FINDINGS AND
RECOMMENDATION

Petition for Determination of Good
Faith Settlement:

Date: December 11, 2008
Time: 9:15 a.m.
Judge: Kevin S. Chang

AOAO MALUNA KAI ESTATES,
KENT D. KNOWLEY, JAMES W.
BOWMAN, DIANE M. BOWMAN
AND DONALD J. ESSES,

Third-Party Plaintiffs,

vs.

FRANK SMIRKE, GLADYS
SMIRKE, ANN WHITE, STEWART
WHITE and BRYCE WHITE,

Third-Party Defendants.

FINDINGS AND RECOMMENDATION


Third Party Defendant Frank Smirke's Petition for Determination of Good Faith Settlement (for the settlement between Frank and Gladys Smirke and Plaintiffs Michelle Rogers Individually and as the personal representative of the Estate of Faith Rogers) pursuant to H.R.S. § 663-15.5(b) came for hearing before Magistrate Kevin S. C. Chang on December 11, 2008. Dennis E. W. O'Connor Jr. appeared for Petitioner, David M. Louie for AOA Maluna Kai and its individual Defendants Kent D. Knowley and James W. Bowman, Ward F. N. Fujimoto for Third-Party Defendants Stewart White, Ann White and Bryce White and Anthony L. Ranken for Plaintiffs via telephone. The magistrate, after reviewing the moving papers, the affidavits and declarations and testimony therein, and after hearing oral

argument and for good cause shown, hereby finds pursuant to Troyer v. Adams, 102 Haw. 399 (2003), that under the totality of the circumstances, the settlement between Frank and Gladys Smirke and Plaintiffs was made in good faith.

IT IS HEREBY RECOMMENDED that the petition be granted and that the claims against Petitioner, including the claims of AOA Maluna Kai and the claims of the Whites, be dismissed with prejudice. The Court also recommends that any further claim against Frank and Gladys Smirke are hereby barred. Further, the Court finds that Third-Party Defendants Frank and Gladys Smirke need not answer the cross claim of the Whites.

The issue of whether Frank Smirke will be placed on the verdict form is reserved for the trial court.

DATED: Honolulu, Hawaii, JAN 07 2009.



Judge of the above-entitled Court

Rogers v. AOA Maluna Kai Estates, et al., Civil No. 07-00373 HG KSC;
FINDINGS AND RECOMMENDATION

APPROVED AS TO FORM AND
CONTENT:



ANTHONY L. RANKEN, ESQ.
MICHELLE L. DREWYER, ESQ.
Attorney for Plaintiffs



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AOAO MALUNA KAI ESTATES, KENT
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Rogers v. AOA Maluna Kai Estates, et al., Civil No. 07-00373 HG KSC;
FINDINGS AND RECOMMENDATION