

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WILLIAM C. FITZPATRICK,)	CIVIL NO. 10-00569 SOM/LEK
)	
Plaintiff,)	ORDER PARTIALLY GRANTING
)	DEFENDANTS' MOTION TO DISMISS
vs.)	
)	
ASSOCIATION OF APARTMENT)	
OWNERS OF KAI MALU AT WAILEA,)	
BOARD OF DIRECTORS OF THE)	
ASSOCIATION OF APARTMENT)	
OWNERS OF KAI MALU AT WAILEA,)	
EKIMOTO & MORRIS, LLLC, a)	
domestic limited liability)	
company,)	
JOHN MORRIS and DOES 1)	
through 20 inclusive,)	
)	
Defendants.		

ORDER PARTIALLY GRANTING DEFENDANTS' MOTION TO DISMISS

On November 8, 2010, Plaintiff William C. Fitzpatrick filed an Amended Complaint against four Defendants, asserting one federal claim and six state law claims. See First Am. Compl., ECF No. 7. The federal claim in Count I alleges violation of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692-1692p, which was enacted to:

eliminate abusive debt collection practices by **debt collectors**, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

15 U.S.C. § 1692(e) (emphasis added).

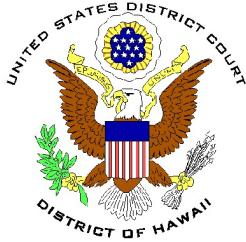
On December 13, 2010, two Defendants, Association of

Apartment Owners of Kai Malu ("AOAO") and Board of Directors of the Association of Apartment Owners of Kai Malu ("Board of Directors"), filed a motion to dismiss Fitzpatrick's First Amended Complaint for lack of subject matter jurisdiction. See Defs. Mot. Dismiss, ECF No. 13. The AOAO and Board of Directors argue that they are not "debt collectors" under the meaning of the FDCPA, and therefore not subject to the provisions of the FDCPA. See Defs. Mot. Dismiss 2. Notwithstanding the asserted jurisdictional basis of the motion, these Defendants are actually arguing that statutory requirements are not satisfied, not that there is no federal question jurisdiction. Therefore, this motion is more properly viewed as a motion to dismiss for failure to state a claim. As Fitzpatrick agrees that the AOAO and Board of Directors are not subject to the FDCPA, see Opp'n 1, 6, ECF No. 18, the court dismisses Count I insofar as it alleges claims against the AOAO and Board of Directors.

Count I against Defendants Ekimoto & Morris, LLLC, and John Morris is unchallenged and remains for further adjudication. The state law claims in Counts II through VII also remain against all four Defendants. Thus, the court partially grants the motion to dismiss.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, January 19, 2011



/s/ Susan Oki Mollway
Susan Oki Mollway
Chief United States District Judge

Fitzpatrick v. Association of Apartment Owners of Kai Malu, et al., Civ. No. 10-00569, ORDER PARTIALLY GRANTING DEFENDANTS' MOTION TO DISMISS.