

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

## **CASE MANAGEMENT ORDER**

In light of the hearing that was held on October 13, 2011, the Court enters the following case management order.

## I. Renumbering of Cases

This case involves two removed state-court actions, but has heretofore been assigned only a single case number in this Court, Civ. No. 11-00396 ACK-RLP. That case is now divided into

two cases, reflecting the two state-court ejectment actions that Defendants Abel Lui, et al., have removed to this Court. The case that was numbered 3RC11-1-195K in the state court (filed by the Olson Trust) shall be numbered Civ. No. 11-00396 ACK-RLP in this Court. The case that was numbered 3RC11-1-131K in the state court (filed by the County of Hawai‘i) shall be numbered Civ. No. 11-00614 ACK-RLP in this Court. The Court will not require Defendants to pay an additional filing fee for Civ. No. 11-00614 ACK-RLP. The Court will not consolidate the two cases with each other. Nor will the Court consolidate the cases with Civ. No. 10-00691 ACK-RLP, as requested in the notice of removal. The three cases involve some different issues.

The cases shall be captioned, and the respective parties referred to as Plaintiffs or Defendants, as they are above. These captions are based on the complaints that were filed in the state ejectment actions. The Court recognizes that the new caption does not fully describe what parties are defendants in this matter. There have been questions raised about whether all of the defendants in the state-court actions joined in the notice of removal filed in this Court, which listed Abel Lui and Han Phua as plaintiffs, rather than defendants, and described them as "The Heirs to the Family of Timoteo Keawe." By setting the captioned Defendants in this case as "Abel LUI, et al.," the Court does not intend to foreclose any argument

concerning whether all defendants in the state-court ejectment actions joined in the notice of removal. If either of these actions remain in this Court after the Court decides the pending motions to remand, the Court will recaption the cases as necessary.

The Court deems all filings that have been made to date in Civ. No. 11-00396 ACK-RLP as having been made as follows, on the dates that they were originally filed:

All filings entered by the Court are deemed as having been filed in both cases.

All filings entered by the Defendants are deemed as having been filed in both cases.

All filings by non-party Shelley Stephens are deemed as having been filed in both cases.<sup>1/</sup>

All filings by the Olson Trust are deemed as having been filed in Civ. No. 11-00396 ACK-RLP.

All filings by the County of Hawai‘i are deemed as having been filed in Civ. No. 11-00614 ACK-RLP.

To the extent possible in the CM/ECF system, the clerk shall populate the docket for Civ. No. 11-00614 ACK-RLP to reflect the above division of filings. The clerk need not delete the County’s filings from the docket for Civ. No. 11-00396 ACK-

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<sup>1/</sup> The Court has not yet resolved whether Stephens has standing to file documents in these matters.

RLP, as doing so might affect the numbering of other documents filed in that docket.

**II. Hearing on Motions to Dismiss or, in the Alternative, Remand**

The Olson Trust has filed a "Motion to Dismiss for Improvident Removal and for Sanctions" and an "Amended Motion to Dismiss for Improvident Removal and for Sanctions," in Civ. No. 11-00396 ACK-RLP. (ECF Nos. 18, 34.) The County has filed a "Memorandum in Opposition" to the motions for preliminary relief that were before the Court at the October 13 hearing. (ECF No. 36.)

As agreed to by the parties at the hearing, the Court construes each of the above three filings as containing a motion to dismiss or, in the alternative, a motion to remand these actions to state court. The Court will hold a hearing on these motions on October 25, 2011, at 10:00 a.m. This hearing will take place before the transaction concerning the land is set to close on October 31. Both the Olson Trust and the County assured the Court at the October 13 hearing that no attempt to remove Defendants from the land at issue will be made before the hearing. If, after the hearing, the Court decides not to dismiss or remand one or both of these actions, the Court will rule on the pending motions for preliminary relief.

Defendants shall file any opposition to the motions by October 20, 2011, at noon. Defendants' opposition to the Olson

Trust's motions shall be filed in Civ. No. 11-00396 ACK-RLP.

Defendants' opposition to the County's motion shall be filed in Civ. No. 11-00614 ACK-RLP.

The Olson Trust and the County shall file any reply in support of their respective motions by October 24, 2011, at noon.

IT IS SO ORDERED.

DATED: Honolulu, Hawai'i, October 14, 2011.



*Alan C. Kay*  
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Alan C. Kay  
Sr. United States District Judge

Olson v. Lui, Civ. No. 11-00396 ACK-RLP; and County of Hawai'i v. Lui, Civ. No. 11-00614 ACK-RLP: Case Management Order