

H. WILLIAM BURGESS #833
2299C Round Top Drive
Honolulu, Hawaii 96822
Telephone:(808) 947-3234
Fax: (808) 947-5822
Email: hwburgess@hawaii.rr.com
Attorney for Appellants



IN THE TAX APPEAL COURT OF THE STATE OF HAWAII

In the Matter of the Consolidated
Tax Appeals of

**STIPULATION OF FACTS;
EXHIBITS 1 – 17**

JOHN M. CORBOY and STEPHEN
GARO AGHJAYAN,
APPELLANTS,

TA NO. 07-0086

GARRY P. SMITH and EARL F.
ARAKAKI,
APPELLANTS,

TA NO. 07-0099

J. WILLIAM SANBORN,
APPELLANT,

TA NO. 07-0102

STEPHEN GARO AGHJAYAN
APPELLANT,

TA NO. 08-0039

JOHN M. CORBOY,
APPELLANT,

TA NO. 08-0040

GARRY P. SMITH
APPELLANT,

TA NO. 08-0041

J. WILLIAM SANBORN,
APPELLANT,

TA NO. 08-0042

EARL F. ARAKAKI,
APPELLANT.

TA NO. 08-0043

STIPULATION OF FACTS

The following facts are undisputed. This is not necessarily all the relevant facts. Each party reserves the right to present additional evidence.

1. Each Plaintiff-Appellant (hereinafter “Appellant”) in these 8 consolidated cases is, and at all times relevant to these cases has been, a citizen and registered voter of the United States and the State of Hawaii and owns an interest in real property in the county where he resides.

Appellant Smith – City & County of Honolulu

2. Appellant Garry P. Smith timely appealed the assessment by the City & County of Honolulu for the purpose of real property taxation for tax years 2006, 2007 and 2008 on the real property owned by him and his wife Pamela Smith, located at 91-321 Pupū Place, Ewa Beach, HI 96706 identified as TMK 91030014.

3. In the appeals, Mr. Smith on behalf of himself and his wife seeks, on constitutional, lack of uniformity or inequality grounds, exemption from real property taxes equivalent to that given to Department of Hawaiian Home Lands lessees.

4. Mr. Smith also timely filed in this court the complaint in TA No. 07-0099 for refund of the real property taxes paid under protest for that property in amounts greater than would have been payable if he and his wife had the same exemption as DHHL lessees. The amounts paid by Mr. Smith were: \$2,148.26 for

2006; \$3,244.93 for 2007; and \$3,457.46 for 2008. He believes that if he and his wife had the same exemptions as DHHL lessees, their real property taxes would have been only \$100 for each of those years. He therefore seeks an aggregate refund for those three years of **\$8,550.65**, in addition to declaratory and injunctive relief.

Appellant Arakaki - City & County of Honolulu

5. Appellant Earl F. Arakaki timely appealed the assessment by the City & County of Honolulu for the purpose of real property taxation for tax years 2006, 2007 and 2008 on the real property owned by him and his wife Evelyn Arakaki, located at 91-030 Amio St., Ewa Beach, HI 96706 identified as TMK 91027035.

6. In the appeals, Mr. Arakaki on behalf of himself and his wife seeks, on constitutional, lack of uniformity or inequality grounds, exemption from real property taxes equivalent to that given to Department of Hawaiian Home Lands lessees.

7. Mr. Arakaki also timely filed in this court the complaint in TA No. 07-0084 for refund of the real property taxes paid under protest for that property in amounts greater than would have been payable if he and his wife had the same exemption as DHHL lessees. The amounts paid by Mr. Arakaki were: \$1,107.87 for 2006; \$1,145.25 for 2007; and \$1,295.60 for 2008. He believes that if he and his wife had the same exemptions as DHHL lessees, their taxes would have been

only \$100 for each of those years. He therefore seeks an aggregate refund for those three years of **\$3,248.72**, in addition to declaratory and injunctive relief.

Appellant Corboy – County of Maui

8. Appellant John M. Corboy timely appealed the assessment by the County of Maui for the purpose of real property taxation for tax years 2007 and 2008 on the real property owned by him located at Kaunakakai, HI 96748 identified as TMK 54016012.

9. In the appeals, Dr. Corboy seeks, on constitutional, lack of uniformity or inequality grounds, exemption from real property taxes equivalent to that given to Department of Hawaiian Home Lands lessees.

10. Dr. Corboy also timely filed in this court the complaint in TA No. 07-0086 for refund of the real property taxes paid under protest for that property in amounts greater than would have been payable if he had the same exemption as DHHL lessees. The amounts paid by Dr. Corboy were: \$2,046.20 for 2007; and \$2,192.60 for 2008. He believes that if he had the same exemptions as DHHL lessees, his real property taxes would have been only \$100 for each of those years. He therefore seeks an aggregate refund for those two years of **\$4,038.80**, in addition to declaratory and injunctive relief.

Appellant Sanborn – County of Hawaii

11. Appellant J. William Sanborn timely appealed the assessment by the

County of Hawaii for the purpose of real property taxation for tax years 2007 and 2008 on the real property owned by him located at Kameula, HI 96743 identified as TMK 62003007.

12. In the appeals, Mr. Sanborn seeks, on constitutional, lack of uniformity or inequality grounds, exemption from real property taxes equivalent to that given to Department of Hawaiian Home Lands lessees.

13. Mr. Sanborn also timely filed in this court the complaint in TA No. 07-0102 for refund of the real property taxes paid under protest for that property in amounts greater than would have been payable if he had the same exemption as DHHL lessees. The amounts paid by Mr. Sanborn were: \$1,308.15 for 2007; and \$1,613.98 for 2008. He believes that if he had the same exemption as DHHL lessees during the first seven years of their lease terms, his real property taxes would have been only approximately \$100 per year for each of those years. He therefore seeks an aggregate refund for those two years of **\$2,722.13**, in addition to declaratory and injunctive relief for future years.

Appellant Aghjayan – County of Kauai

14. Appellant Stephen Garo Aghjayan timely appealed the assessment by the County of Kauai for the purpose of real property taxation for tax years 2007 and 2008 on the real property owned by him located at Lihue, HI 96766 identified as TMK 360030260074.

15. In the appeals, Mr. Aghjayan seeks, on constitutional, lack of uniformity or inequality grounds, exemption from real property taxes equivalent to that given to Department of Hawaiian Home Lands lessees.

16. Mr. Aghjayan also timely filed in this court the complaint in TA No. 07-0086 for refund of the real property taxes paid under protest for that property in amounts greater than would have been payable if he had the same exemption as DHHL lessees. The amounts paid by Mr. Aghjayan were: \$745.53 for 2007; and \$658.26 for 2008. He believes that if he had the same exemptions as DHHL lessees during the first seven years of their lease terms, his real property taxes would have been only approximately \$25 per year for each of those years. He therefore seeks an aggregate refund for those two years of **\$1,403.79**, in addition to declaratory and injunctive relief for future years.

LEGAL BACKGROUND

The Hawaiian Homes Commission Act

17. In 1921, Congress enacted the Hawaiian Homes Commission Act, 42 Stat. 108 (1921) (“HHCA”) which set aside about 200,000 acres of Hawaii’s ceded lands and provided for long term homestead leases (99 years renewable for another 100 years) each at a rent of \$1 per year to “native Hawaiians”, defined in the HHCA as “any descendant of not less than one-half part of the blood of the races

inhabiting the Hawaiian Islands previous to 1778.”

18. Under HHCA §208(7) “The lessee shall pay all taxes assessed upon the tract and improvements thereon” and under §208S(8) ... provided that an original lessee shall be exempt from all taxes for the first seven years after commencement of the term of the lease.”

19. In 1959, when Hawaii became a state, Congress required in §4 of the Admission Act that the new State of Hawaii “as a compact with the United States” adopt the HHCA as a provision of its Constitution; and prohibited repeal or amendment of the HHCA (impairing Hawaiian home loan, operating or development funds or reducing lessee benefits or qualifications) without the consent of the United States. That compact and §4 of the Admission act remain in force today.

20. Under the State of Hawaii Constitution, Art. VIII, §3, adopted in 1978, “all functions, powers and duties relating to the taxation of real property shall be exercised by the counties, with the exception of Kalawalo.”

21. The City and County of Honolulu (“C&C”) and the counties of Hawaii, Maui and Kauai all recognize and implement the seven year real property tax exemption of land and improvements for Hawaiian homestead lessees required by HHCA §208(8) and each county extends the exemption in some respects to later years of the lease terms.

22. The C&C (R.O.H Sec. 8-10.23) and Maui County Code (Sec. 3.48.555) exempt Hawaiian homestead lessees from real property tax on land or improvements throughout the term of the leases (except for the minimum real property tax of \$100 per year). Hawaii County Code (Sec. 19-89) and Kauai Ordinance 682 exempt Hawaiian homestead lessees from real property tax on their land values, except for a minimum tax of \$25 or less, and allow the regular homeowner exemption for the improvements if the claim is timely filed.

Earlier demands for equal protection, privileges and immunities

23. Exhibit 1 is a true copy of the March 20, 2007 letter from Appellants' counsel to United States President George W. Bush, Hawaii Governor Linda Lingle and City and County of Honolulu Mayor Mufi Hannemann, demanding, among other things, that the exemption from real property taxes now given exclusively to Hawaiian homesteaders be extended to Plaintiffs and all other property owners similarly situated in the City and County of Honolulu. Exhibit 2 is a true copy of Governor Lingle's response dated March 30, 2007. Exhibit 3 is a true copy of Plaintiffs' counsel's follow up letter of April 3, 2007 to the Governor; and Exhibit 4 is a true copy of the Governor's reply dated April 27, 2007.

24. Exhibits 5 – 8 attached hereto are true copies of four letters from May 14, 2007 through June 12, 2007 between Appellants' counsel and the U.S. Department of Housing and Urban Development ("HUD") in which Appellants'

counsel demanded that HUD cease and desist from assisting, financing, aiding or abetting the enforcement or implementation of the HHCA.

Excerpts from DHHL Annual Report 6/30/2006 and 6/30/2003.

25. Exhibit 9 contains true copies of the cover page, message 1/5/2007 from Micah Kane Chairman Hawaiian Homes Commission, preamble, and pages 8, 9, 13, 14, 16, 17 and 26 – 31. The full DHHL annual report, as well as the annual reports for 2003 - 2006 are posted on the DHHL website at <http://hawaii.gov/dhhl/publications/annual-reports/>

26. Exhibit 10, is a true copy of the message from Chairman Micah Kane 1/7/2004 which accompanied the DHHL Annual Report of 6/30/2003.

Media reports

27. Exhibit 11 is a true copy of the article from Honolulu Weekly August 30, 2006 Hawaiian Homeland Improvement: Micah Kane presides over the biggest housing push in Hawaiian Homes history, posted on the DHHL home page as of October 15, 2007. http://hawaii.gov/dhhl/publications/dhhl-in-the-news/2006-in-the-news/Feature_HonoluluWeekly_8-30-06.pdf

28. Exhibit 12 is a true copy of the article from Building Industry magazine issue of June 2007 featuring Micah Kane on the cover page, History in the making, Update: DHHL projects, also posted on the DHHL home page as of October 15, 2007.

29. Exhibit 13 is a true copy of the Article in Ka Wai Ola October 2007 at pages 9 and 10, "DHHL stands by its record, by Micah A. Kane.

30. Exhibit 14 is a true copy of the Honolulu Advertiser report February 11, 2007, "More are realizing homestead dreams" with graphic charts and sidebars with photos.

31. Exhibit 15 is a true copy of the article from West Hawaii Today 10/11/2007 DHHL officials: Superstore would benefit Native Hawaiians.

32. Exhibit 16 is a true copy of pages 1 and 2 of the glossy DHHL Ka Nuhou Summer 2008, OHA Bolsters DHHL Projects.

33. Exhibit 17 is a true copy of the Honolulu Weekly June 30, 2004 nine page "The NEW HOMESTEAD."

DATED: Honolulu, Hawaii, April ____ . 2009.

H. WILLIAM BURGESS
Attorney for Appellants
DATED: _____

BRIAN T. MOTO
Office of Maui Corporation Counsel
DATED: _____

MARK J. BENNETT
Attorney General State of Hawaii
DATED: _____

LINCOLN S.T. ASHIDA
Office of Hawaii Corporation Counsel
DATED: _____

MATTHEW S.K. PYUN, JR.
Office of Kauai County Attorney
DATED: _____

CARRIE OKINAGA
Real Property Tax Division
DATED: _____