

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAII

CIVIL NO. 11-1-590

DEUTSCHE BANK NATIONAL  
TRUST COMPANY, AS  
TRUSTEE IN TRUST FOR THE  
BENEFIT OF THE  
CERTIFICATEHOLDERS FOR  
ARGENT SECURITIES INC.,  
ASSET-BACKED  
PASS-THROUGH  
CERTIFICATES, SERIES  
2006-W2,

Plaintiffs,

vs.

DIANNE DEE GUMAPAC;  
KALE KEPEKAIIO GUMAPAC;  
JOHN DOES 1-50; AND JANE  
DOE 1-50

Defendants.

TRANSCRIPT OF PROCEEDINGS

held in connection with the above-entitled cause  
before the Honorable Greg K. Nakamura, Circuit Court  
Judge, First Division, presiding, on the 14th day of  
February, 2012.

REPORTED BY: GERALDINE L. SAFFERY, CSR 328, RPR

## 1 APPEARANCES:

2 CHARLES R. PRATHER, AAL for Plaintiffs  
3 RCO Hawaii LLC  
4 900 Fort St. Mall  
5 Suite 800  
6 Honolulu, HI 96813

7 DEXTER K. KAIAMA, AAL Special Appearance  
8 Seven Waterfront Plaza for the Defendants  
9 500 Ala Moana Blvd.  
10 Suite 400  
11 Honolulu, HI 96813

12 Also present

13 Mr. Kale Kepekaio Gumapac  
14 HC2 Box 9607  
15 Keaau, HI 96749  
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1 TUESDAY, FEBRUARY 14, 2012

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3 THE CLERK: Civil 2011-590 Deutsche Bank  
4 vs. Dianne Gumapac, et al.; Defendant Kale Gumapac's  
5 Motion to Dismiss Complaint pursuant to H.R.C.P.  
6 12(b)(1).

7 MR. PRATHER: Good morning, Your Honor.  
8 Charles Prather on behalf of the Plaintiff.

9 MR. KAIAMA: Good morning, Your Honor.  
10 Dexter -- Dexter Kaiama on behalf of the -- uh --  
11 Mr. Gumapac. I'm making a special appearance for  
12 purposes of this motion, Your Honor.

13 You need me to repeat my name in there?

14 THE REPORTER: (No verbal response.)

15 MR. KAIAMA: Okay.

16 THE COURT: So anything to add with  
17 respect to the motion?

18 MR. KAIAMA: Thank you, Your Honor, if I  
19 may.

20 Um, I -- a -- again, in Mr. Gumapac's  
21 motion and his reply memorandum, I guess the first order  
22 of business, Your Honor, is the taking of judicial  
23 notice of the documents set forth in the, uh, both the  
24 motion and the reply memorandum, that being the, um,  
25 what we -- what's referred to as the Liliuokalani

1 Assignment and the Agreement of Restoration, these are  
2 executive documents on affairs in Hawaiì, 1894 to 1895;  
3 as well as the statements made by House of  
4 Representative Thomas Ball and Senator Augustus Bacon  
5 from the 55th Congress, Second Session, 1898; and House  
6 Concurrent Resolution No. 107, uh, which is State of  
7 Hawaiì House of Representatives.

8           Your Honor, in addition, in the reply  
9 memorandum, um, Mr. Gumapac does ask and we would  
10 request the Court take judicial notice of the cases, U.  
11 S. Supreme Court cases in: *U.S. vs. Belmont*, 301 U.S.  
12 324; *U.S. vs. Pink*, 315 U.S. 203; and *American Insurance*  
13 *Association vs. Garamendi*, 539 U.S. 396.

14           Uh, a -- again, Your Honor, respectfully,  
15 um, our motion is predicated on the -- the Court's  
16 taking judicial notice of these documents and the cases.  
17 My understanding is that the, um, um, Plaintiffs'  
18 counsel has provided no opposition to the Court's taking  
19 judicial notice, uh, and this court, Your Honor, is  
20 familiar with, um, this request having taken judicial  
21 notice I believe on two other occasions of these  
22 documents.

23           THE COURT: well the only thing that, uh,  
24 might not have seen before, uh, is that study prepared  
25 for the Committee on Foreign Relations, but you tell me

1 that I did, uh, I'll accept what -- your word.

2 MR. KAIAMA: Uh, and -- and Your Honor,  
3 um, previously we had not asked the Court to take  
4 judicial notice of that study. Um, so again, uh, for  
5 purposes of this motion, um, uh, we're requesting just  
6 the documents that's referred to in our motion itself,  
7 the documents that I referred to.

8 THE COURT: To include that particular  
9 document?

10 MR. KAIAMA: Well, Your Honor, um, I --  
11 I -- I guess at this time, since we've included it in  
12 our exhibits, I -- I would ask that the Court take  
13 judicial notice of that document as well, which is also,  
14 uh, an -- a -- a -- a copy of a official publication  
15 from, uh, from a government -- a government publication,  
16 Your Honor.

17 THE COURT: So is it, uh, Mister  
18 "Pray-ther"? "Pra-ther"?

19 MR. PRATHER: "Pray-ther", Your Honor.

20 THE COURT: Prather, okay.  
21 You want to respond to the request?

22 MR. PRATHER: Your Honor, the Court can  
23 give whatever weight it wants to the documents that have  
24 been attached to the motion.

25 THE COURT: Okay.

1           So the Court will take judicial notice of  
2 the documents, um, that were attached and for which  
3 judicial notice is requested. And Court, of course,  
4 would take judicial notice of any United States Supreme  
5 Court opinions.

6           MR. KAIAMA: Okay. Thank you, Your  
7 Honor.

8           Um, the Court having taken judicial  
9 notice, uh, um, I'll-- I'll -- I will try to be brief.

10           Our position is, uh, pursuant to *U.S. vs.*  
11 *Pink, U.S. vs. Belmont*, and American Associate --  
12 *American Insurance Association vs. Garamendi*, um, uh,  
13 we believe that the Court, um, uh, should dismiss the  
14 complaint. We've now met the burden as set forth under  
15 *Lorenzo, State of Hawaii vs. Lorenzo*. We've provided  
16 the Court now with evidence that the Kingdom of Hawaii  
17 continues to exist with the attributes, um, that the  
18 Court's taking judicial notice.

19           If I may refer to, um, one additional  
20 rule, Your Honor, and that is Hawaii Rule of Evidence  
21 302, Section B. Um, and then that is presumptions  
22 imposing burden on producing evidence, the -- and I'll  
23 read for you just briefly, Your Honor.

24           "The affect of a presumption  
25 imposed in the burden of producing evidence

1 is to require the trier of fact to assume  
2 the existence of a presumed fact unless and  
3 until evidence is introduced which would  
4 support a finding of its nonexistence, in  
5 which case no instruction or presumption  
6 shall be given and the trier of fact shall  
7 determine the existence or nonexistence of  
8 the presumed fact from the evidence and  
9 without regard to the presumption."

10 Your Honor, our position is that, um, the  
11 Plaintiffs cannot rely merely on the recitation of a  
12 State's, uh, State, uh, State statute, um, that is in  
13 fact a presumption that we've now provided evidence, um,  
14 of its nonexistence, and the Court no longer can rely on  
15 the Plaintiffs', um, on the presumption of that State,  
16 um, statute and must make -- make an -- in -- in fact  
17 what it's done now, Your Honor, it's our position  
18 respectfully, that we've now replaced the presumption  
19 and that presumption now is a presumption that the  
20 Kingdom of Hawai'i continues to exist, that we've met our  
21 burden, that this Court in fact has no jurisdiction and  
22 must dismiss the complaint.

23 Uh, and also briefly, Your Honor, um, as  
24 set forth in our brief, again, um, what we've presented  
25 is evidence of an executive agreement. An executive

1 agreement being the supreme call, uh, law of the land  
2 under the supremacy clause, it is both my obligation and  
3 respectfully, uh, submitted, that it's the Court's  
4 obligation at this time to acknowledge the existence of  
5 that executive agreement and acknowledge the fact that  
6 this Court no longer has jurisdiction.

7 Uh, thank you, Your Honor.

8 THE COURT: Mr. Prather?

9 MR. PRATHER: Uh, I mean I believe the  
10 Court's familiar with the issues. I think we've set out  
11 our opposition in our -- our written filing. I don't  
12 have much to add to the -- to this time other than the  
13 fact that I'm not aware of any citation to Rule 302  
14 either in the motion or in reply. As it stands I think  
15 our opposition's already been set forth.

16 THE COURT: Okay.

17 So what we're -- Court will deny the  
18 motion. Court believes it has jurisdiction pursuant to  
19 Article 6 of the Hawaii State Constitution and H.R.S.  
20 §603-21.9.

21 Mr. Prather, please submit a form of the  
22 order.

23 MR. PRATHER: Thank you.

24 THE COURT: Thank you.

25 MR. KAIAMA: Uh, and Your Honor, just for



1 clarification, um, a -- again I think we've dealt with  
2 this in the past, I think we would -- Mr. Gumapac would  
3 have 20 days upon the filing of the order to file his  
4 answer to the complaint?

5 THE COURT: Mr. Prather, as a matter of  
6 practice, uh, I ask, um, in regard to the form of the  
7 order, that it -- there be a included provision which  
8 allows, um, a defendant to respond within 20 days from  
9 the entry of the order to the complaint, answer within  
10 that 20-day period.

11 MR. PRATHER: Twenty days from the entry  
12 of the order --

13 THE COURT: Yeah.

14 MR. PRATHER: -- from today?

15 THE COURT: Uh, from the entry of the  
16 order.

17 MR. PRATHER: Okay.

18 MR. KAIAMA: Respectfully speaking, uh,  
19 uh, requesting, Your Honor, is -- and -- and I -- I know  
20 it's within the Court's discretion, but may we ask that  
21 the -- that the, uh, Plaintiffs' counsel provide a, um,  
22 um, findings of facts, conclusions of law, and an order  
23 for purposes of this motion?

24 THE COURT: I think an order would be  
25 sufficient 'cause it's a, to me, a clear issue of

1 law.

2 MR. PRATHER: Thank you.

3 MR. KAIAMA: Thank you, Your Honor.

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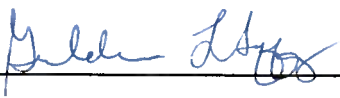
2 STATE OF HAWAII )

3 CERTIFICATE

4 I, Geraldine L. Saffery, CSR 328, RPR,  
5 official Court Reporter of the Third Circuit Court, do  
6 hereby certify that the foregoing pages numbered 3 to  
7 10, inclusive, contains a true and accurate  
8 transcription, done to the best of my ability, of the  
9 proceedings held in connection with the aforementioned  
10 cause.

11 To protect the transcript's integrity,  
12 this certification of authenticity and accuracy is valid  
13 only with an original inked signature and an unbroken  
14 transcript seal.

15 Dated this 22nd day of February, 2012.

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18 GERALDINE L. SAFFERY, CSR 328, RPR

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