

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

WELLS FARGO BANK, N.A.,)
)
 Plaintiff,)
)
 vs.) CIVIL NO. 11-1-106
)
 ELAINE E. KAWASAKI, et al.,)
)
 Defendant.)
)

TRANSCRIPT OF PROCEEDINGS

before the HONORABLE, GLENN S. HARA, Judge presiding, Second
Division, on Friday, June 15, 2012.

HEARING ON MOTION TO DISMISS COMPLAINT

APPEARANCES:

For the plaintiff: SOFIA M. HIROSANE, ESQ.
RCO HAWAII LLLC
900 Fort Street Mall
Suite 800
Honolulu, Hawaii 96813

For Defendant ELAINE E. KAWASAKI (Special Appearance):
DEXTER K. KAIAMA, ESQ.
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Reported by: JENNIFER WHETSTONE, CSR 421, RMR
Official Court Reporter
Third Circuit Court, State of Hawaii

1 Friday, June 15, 2012

9:13 A.M.

2 --oOo--

3 THE CLERK: Civil number 11-1-106, Wells Fargo
4 Bank versus Elaine Kawasaki. Defendant Elaine E. Kawasaki's
5 motion to dismiss complaint pursuant to HRCF 12(b)(1).

6 MS. HIROSANE: Good morning, Your Honor; Sofia
7 Hirosane on behalf of the plaintiff.

8 MR. KAIAMA: Good morning, Your Honor; Dexter
9 Kaiama making a special appearance on behalf of
10 Ms. Kawasaki. Ms. Kawasaki is present in the courtroom.

11 THE COURT: Okay, what's the scope of your
12 special appearance?

13 MR. KAIAMA: The scope of my special appearance,
14 Your Honor, is to make argument and presentation with
15 respect to Ms. Kawasaki's 12(b)(1) motion to dismiss
16 challenging the subject matter jurisdiction of this court,
17 Your Honor.

18 THE COURT: And how far does that extend?

19 MR. KAIAMA: If I understand your question
20 correctly, Your Honor, I'm making argument today, um, and
21 after I make argument I -- my appearance would -- that --
22 that terminates my appearance at the end of argument. So if
23 the court were, for example, to deny the motion to dismiss
24 an order from Ms. Hirosane to go directly to Ms. Kawasaki
25 for her review, or if Ms. Hirosane were to submit it

1 pursuant to rule 23, correspondence would go directly to
2 Ms. Kawasaki.

3 THE COURT: Okay, so it's just for today, and
4 then your -- your engagement ends.

5 MR. KAIAMA: That is correct, Your Honor.

6 THE COURT: And Mister -- I just want,
7 Mr. Kaiama, I just wanna make that clear, because it may, as
8 you indicated, I mean there are other things that's going to
9 fall out of this hearing that may require, you know, counsel
10 to act on it, if you were still counsel. And I wanna make
11 sure that it's clear, after today, after you leave the
12 courtroom today, you're not counsel of record.

13 MR. KAIAMA: That is correct, Your Honor. Now,
14 if Ms. Kawasaki wishes to engage me for additional services
15 then she would engage me at that time. But my term, my --
16 my appearance and my representation as counsel ends as I
17 walk out of the courtroom.

18 THE COURT: Okay. Well, that kind of
19 representation makes it very difficult for the court
20 sometimes to --

21 MR. KAIAMA: I can only speak to my
22 representation today, I cannot speculate as to what might
23 happen tomorrow or the next day as to whether she wishes to
24 engage my services or not, Your Honor.

25 THE COURT: Yeah. But that kind of unbundling,

1 if you will, makes it very difficult for the court to
2 determine, sometimes, whether an attorney is still
3 responsible for receiving material for noticing purposes.
4 So I'm gonna make it clear that, after today, unless you put
5 in a appearance of counsel, that your -- your status as
6 counsel in this case terminates.

7 MR. KAIAMA: Thank you, Your Honor. That is
8 fine.

9 THE COURT: All right.

10 MR. KAIAMA: Okay.

11 THE COURT: Okay.

12 MR. KAIAMA: Shall I begin, Your Honor?

13 THE COURT: Hold on. Let me -- so the court
14 does have Ms. Kawasaki's motion to dismiss pursuant to civil
15 rules 12(b)(1). I have plaintiff's memorandum in
16 opposition, and Ms. Kawasaki's reply that was filed on June
17 12th. Do you have the reply?

18 MS. HIROSANE: Yes, I do, Your Honor.

19 THE COURT: So was there anything else that was
20 submitted in the meantime?

21 MR. KAIAMA: My only understanding, I think the
22 court is aware, but with respect to this motion, no, she did
23 file an ex parte motion for a stay of the enforcement of the
24 writ pending the outcome of the motion.

25 THE COURT: Okay. I think I granted the

1 ex parte motion, at least until today's hearing.

2 MR. KAIAMA: That is my understanding, Your
3 Honor.

4 THE COURT: Okay.

5 MS. HIROSANE: That's my understanding. And,
6 Your Honor, just for the record, we were only served with a
7 copy of, uh, Ms. Kawasaki's ex parte motion yesterday.

8 THE COURT: Okay. I think the court instructed
9 the staff to call your firm to let 'em know that I did sign
10 the ex parte motion, 'cause it didn't look like you had been
11 provided a copy.

12 MS. HIROSANE: That's correct, Your Honor. We
13 -- we did appreciate that.

14 THE COURT: Okay. So here's the court's
15 inclination, Mr. Kaiama. And in answer to the plaintiff's
16 comment that maybe the motion may be delayed, it looks like
17 the motion is one that challenges the subject matter
18 jurisdiction. At least on its face. But -- and any time
19 there is a jurisdictional challenge, it can be made at any
20 time. That's my understanding. Because if the court has no
21 jurisdiction then whatever the court does is void. Um, so
22 I'm treating this as a motion to dismiss for the court's
23 lack of subject matter jurisdiction for the reasons stated.
24 And that is that the argument is that the Kingdom of Hawaii
25 still exists, and therefore, in essence, this court has no

1 jurisdiction, it's the courts of the Kingdom of Hawaii.

2 That's how I'm taking the motion. Mr. Kaiama?

3 MR. KAIAMA: And that is essentially
4 Ms. Kawasaki's motion and our argument.

5 THE COURT: Okay. So the court would -- is
6 inclined to deny the motion. I think the Hawaii case law is
7 pretty clear that, um, the jury is still out as to whether
8 or not the Kingdom of Hawaii still exists. That's number
9 one.

10 Number two, even if it existed, there has been
11 no definitive ruling that says that the existence of the
12 kingdom itself would divest the court's of this state of
13 jurisdiction.

14 And it is also clear -- I don't think that
15 Ms. Kawasaki claims to be a citizen of the Kingdom of
16 Hawaii? I didn't see that alleged in her, um, memorandum.
17 And there have been at least three or four cases, either at
18 the supreme court or the intermediate court of appeals, that
19 have held that even if you claim to be a king -- subject of
20 the Kingdom of Hawaii, if you violate laws within the
21 territorial jurisdiction of the State of Hawaii, the
22 criminal laws would still apply to you.

23 I would assume that that same principle would
24 apply even if you don't claim to be a subject of the Kingdom
25 of Hawaii. And if the kingdom did exist, um, that the civil

1 laws, as well, within the jurisdiction of the state court
2 would also be still applicable.

3 And I think the most recent ICA summary
4 disposition order touching on this was Burgo, B-U-R-G-O,
5 versus State of Hawaii. The court of appeals number was
6 CAAP-10-33. And it was decided May 3, 2012. And basically
7 it cited the cases that I think are fairly familiar by now,
8 State versus Fergerstrom, 106 Hawaii 43; State versus
9 Lorenzo, 77 Hawaii, 219; State versus Jim, 80 Hawaii, 168,
10 all for the proposition that being a -- or claiming to be a
11 citizen of the Kingdom of Hawaii would not remove you from
12 being subject to the laws of the State of Hawaii, including
13 the statutes providing for the jurisdiction of the circuit
14 courts.

15 Okay. So, Mr. Kaiama, given that inclination,
16 I'll let you argue further.

17 MR. KAIAMA: Thank you, Your Honor. What
18 continues to be controlling with the courts, Your Honor, is
19 State of Hawaii versus Lorenzo. Even the most recent case
20 that Your Honor cited stands, uh, follows the State of
21 Hawaii versus Lorenzo.

22 Now, in State of Hawaii versus Lorenzo, the
23 ruling of the court was, essentially, that the defendant in
24 that case, Lorenzo, lost its claim that the State of Hawaii
25 did not have jurisdiction, subject matter jurisdiction over

1 him, because Mr. Lorenzo failed to provide the court with a
2 factual legal basis that the Kingdom of Hawaii continues to
3 exist with the state's -- in accordance with the state's
4 sovereign nature.

5 What we're doing here, Your Honor, and recently,
6 and really for the first time, is we are presenting the
7 court with that evidence. And those evidence are the
8 executive agreements. That is the Liliuokulani Assignment,
9 which mandates the President of the United States, or the
10 office of the President of the United States to administer
11 Hawaiian Kingdom law. And the agreement of the res -- and
12 the agreement of restoration, which is an executive
13 agreement which mandates the President of the United States
14 and the office of the President to restore the Kingdom of
15 Hawaii. That is attached as Ms. Kawasaki's -- I believe
16 it's exhibit 4A and 4B, which is attached to the expert
17 memorandum of Dr. Keanu Sai.

18 Your Honor, in the -- essentially the argument
19 or -- or the court's inclination is undeniably intertwined
20 with the presumption that -- that if the Kingdom of Hawaii
21 continues to exist, this state court does not have
22 jurisdiction, or no state court has jurisdiction. And there
23 is a presumption that allows the court and the -- and the
24 plaintiff to argue that there is state statute which confers
25 jurisdiction upon this court.

1 Now, it's a rebuttable presumption which
 2 requires us, the defendant, to provide the court with the
 3 evidence. Once that evidence is provided, that requires the
 4 court to acknowledge the nonexistence of that presumption.
 5 The court must weigh the evidence provided and make a
 6 determination solely based on that evidence and not with any
 7 presumption involved.

8 Again, Your Honor, those are the executive
 9 agreements. Ms., um, Kawasaki's memorandum on the motion to
 10 dismiss, as well as the memorandum on her reply brief,
 11 provides the court with the authorities to confirm that
 12 these exchange of notes are, in fact, executive agreements.

13 Furthermore, Your Honor, there has been no
 14 dispute or no opposition that -- that disputes the argument
 15 that we made that these are executive agreements. Because
 16 they cannot, we believe, respectfully.

17 I have now been arguing, Your Honor, this motion
 18 before judges of the courts of the circuit court and
 19 district court throughout the State of Hawaii, and nearly --
 20 and probably over 20 times, and in not one instance has the
 21 plaintiff in the cases challenged the merits of the
 22 executive agreements to show that either it's not an
 23 executive agreement or that the executive agreements have
 24 been terminated. Because we believe, respectfully, again,
 25 Your Honor, they cannot.

1 Page four of Ms. Kawasaki's reply memorandum
2 speaks to the Restatement, Third, Foreign Relation Laws of
3 the United States. Essentially, Your Honor, what those
4 foreign relation laws of the United States says is that an
5 international agreement, which an executive agreement is, is
6 an agreement between two or more states. And we're talking
7 states in terms of their international relations. The
8 executive agreements could not have occurred between
9 President Grover Cleveland and Queen Liliuokulani unless
10 they were states. Those agreements --

11 THE COURT: Mr. Kaiama, let me just interrupt
12 for a minute. Which of the decisions is the one that I
13 think, um, was an ICA decision? I'm trying to think of the
14 judge who wrote it.

15 MR. KAIAMA: Judge Walter Heen?

16 THE COURT: Judge Heen's decision.

17 MR. KAIAMA: In State of Hawaii versus Lorenzo.

18 THE COURT: Lorenzo.

19 MR. KAIAMA: Yes.

20 THE COURT: And he makes the comment basically
21 that, um, you know, what -- the -- in essence, I mean, it
22 kinda left the door open by saying something to the effect
23 that, you know, there may be other facts or laws out there
24 in the future that might change this.

25 Now, I take his comments to mean -- and all a

1 these things were in existence at that time -- that what
2 he's saying is, going forward, if there are any changes, if
3 there are any new laws, if there are any, you know, uh, acts
4 of congress, if there are any other kinds of acts of
5 judicial bodies that the court needs to -- and -- and the
6 other political entities need to respect and follow as law,
7 um, then at that point we'll revisit what the effects are of
8 being a citizen of the Kingdom of Hawaii is. So I'm taking
9 all of what's happening right now and what you're arguing is
10 kind of like res judicata. It's already been looked at.
11 It's already been decided. And, based on that, they're
12 saying that was not enough.

13 MR. KAIAMA: Your Honor, if I may respectfully
14 disagree.

15 THE COURT: Yeah, go ahead.

16 MR. KAIAMA: And I respectfully disagree in this
17 sense: That the executive agreements that we are bringing
18 before the courts at this time was not available to Judge
19 Heen at the time that motion was decided. These executive
20 documents, while -- while official documents of the United
21 States, were in -- little known to the public and not known
22 to the courts at the time, so they were never presented as
23 evidence to the court. And that's why Judge Heen says until
24 a factual or legal basis is provided, that the Kingdom of
25 Hawaii continues to exist. And he says until that happens

1 then people claiming, whether citizenship or otherwise,
2 would be subject to the laws of the State of Hawaii.

3 Now, we are now meeting the requirements under
4 Lorenzo and presenting essentially, for the first time, to
5 the courts, the evidence that was asked for in Lorenzo. And
6 that evidence are the executive agreements.

7 Now, I think the court is well aware -- and
8 that's part of our argument -- executive agreements are the
9 supreme law of the United States. By Article 6 of the U.S.
10 Constitution, the supremacy clause. And part of our
11 argument as well is that any state statute which runs
12 contrary to the executive agreements are preempted.

13 So along the -- along the line of your -- our
14 arguments, Your Honor, not only are we addressing what the
15 court is requiring in State of Hawaii versus Lorenzo and
16 presenting the evidence, the evidence we present, Your
17 Honor, is irrefutably -- it's irrefutable that these are
18 executive agreements and preempts state law, which is the
19 state constitu -- I mean, excuse me, which is the state
20 statute that plaintiff relies on in their complaint seeking
21 to confer jurisdiction upon that court.

22 That state statute, Your Honor, runs contrary to
23 the executive agreement, which calls for the administering
24 of Hawaiian Kingdom law until the President of the United
25 States can re -- restores the Kingdom of Hawaii, places the

1 queen back into its position, and the queen grants amnesty.
2 Those are in the papers.

3 Now, Your Honor, what we're asking the court to
4 do is not make a determination in its ruling that the
5 Kingdom of Hawaii is to be restored, but what we're asking
6 is what Lorenzo says, is that once we have met our burden,
7 the court cannot have no other, we believe, no other
8 recourse but to dismiss the complaint.

9 THE COURT: No, but, Mr. Kaiama, I think you
10 failed -- in my mind, what you're asking the court to do is
11 commit suicide, because once I adopt your argument, I have
12 no jurisdiction over anything. Not only these kinds of
13 cases where you may claim either being part of -- being the
14 Hawaii, um, a citizen of the kingdom, but jurisdiction of
15 the courts evaporate. All of the courts across the state,
16 from the supreme court down, and we have no judiciary. I
17 can't do that.

18 MR. KAIAMA: Your Honor --

19 THE COURT: I can't make that kind of a finding
20 that basically it's, you know, like the atomic bomb for the
21 judiciary.

22 MR. KAIAMA: I understand the contemplation of
23 the consequences of the court's ruling. However, the
24 contemplation of the consequences of the court's ruling is
25 beyond the authority of the courts. What is in -- within

1 the authority of the courts is to make a determination that
2 jurisdiction does not exist. That is within the court's
3 authority.

4 Now, the actual restoration of the Kingdom of
5 Hawaii belongs to the -- to the President of the United
6 States and the office of the president, not to the courts.
7 What I'm asking the court to do and what we believe is
8 entirely correct is that the court acknowledge, which the
9 president did in 1898, acknowledge that these are executive
10 agreements, which binds him and his office to faithfully
11 administer Hawaiian Kingdom law until the President of the
12 United States is able to restore the Kingdom of Hawaii. So
13 what we're asking the court to do is, essentially it is the,
14 in the time being, it is the military courts, under article
15 two, that would administer Hawaiian Kingdom law until the
16 kingdom is restored.

17 THE COURT: Okay.

18 MR. KAIAMA: So -- so, Your Honor, um, I know
19 Your Honor also made an inclination concerning my client's
20 not asserting a citizenship position.

21 THE COURT: No, I'm saying I didn't perceive
22 one.

23 MR. KAIAMA: Right, you didn't perceive -- and
24 actually one was not made. The reason one is not made is
25 Ms. Kawasaki does not claim to be a citizen of the Kingdom

1 of Hawaii. At least not now. But what's occurring here is
2 that the plaintiff is seeking to get writ of possession or
3 to get an order concerning land which is part of the Kingdom
4 of Hawaii. And judgments concerning land, including
5 evictions and writ of possessions, belongs to the courts of
6 the Kingdom of Hawaii, respectfully, not the circuit courts
7 of the State of Hawaii, because of the arguments we've set
8 forth.

9 Also, in the reply memorandum, Your Honor, we --
10 Miss Kawasaki has provided the courts and sought to evoke
11 estoppel with respect to the defendant's arguments. Because
12 the court -- because the pres -- excuse me, it is a little
13 bit difficult to talk about. Because the United States have
14 already acknowledged -- already acknowledged, through the
15 President of the United States, that being Grover Cleveland,
16 that the Kingdom of Hawaii is, in fact, the de jure and
17 de facto government, and that the provisional government was
18 never de jure or never de facto, plaintiffs at this point
19 are estopped from making any argument, which runs contrary
20 to the acknowledgment of the United States. And therefore
21 they're estopped from making the argument -- the arguments
22 that they've made that this court can confer juris -- that
23 this court has jurisdiction pursuant to state statute.

24 Essentially, Your Honor, Ms. Kawasaki is asking
25 the court to strike defendant's arguments in its entire --

1 excuse me, plaintiff's arguments in its entirety, because of
2 the principles of judicial -- principles estoppel.

3 Ms. Kawasaki has provided, again, the authorities concerning
4 estoppel, including, um, authority of estoppel recognized
5 under international law.

6 Your Honor, what we're presenting to the courts
7 is the evidence. What we're presenting to the courts are
8 legal arguments that have not been refuted or cannot be
9 refuted, we respectfully submit. Miss Kawasaki, in her
10 motion to dismiss, asked the court to take judicial notice
11 of documents. And it's set forth in, and just for the
12 court's convenience --

13 THE COURT: Okay, let me address that right now.

14 MR. KAIAMA: Yes.

15 THE COURT: As for the request for judicial
16 notice, I think I can go ahead and do that with respect to
17 the, um, exhibit one, the Hawaii Kingdom Constitution. The
18 only question I have is, was the original in English or
19 Hawaiian, and is this a translation?

20 MR. KAIAMA: You know, I'm -- I'm sorry, Your
21 Honor, I'm not able to answer this question at this time,
22 but if the court wishes, I can clearly provide that pursuant
23 to a declaration.

24 THE COURT: Well, in --

25 MR. KAIAMA: A supplemental --

1 THE COURT: -- any event, I'm -- I think we have
2 a copy of this in our library, so I'm taking judicial notice
3 of it and, um, also chapter four of the penal code of the
4 kingdom. Was there a -- a date on that?

5 MR. KAIAMA: Okay, hold on one second, Your
6 Honor.

7 THE COURT: I'm just -- reason I'm saying that
8 is I'm looking at the list that's in the memorandum, not at
9 the exhibit itself.

10 MR. KAIAMA: I'm trying to see if I can help
11 find that for you, Your Honor.

12 THE COURT: Part of the problem, it wasn't
13 tabbed.

14 MR. KAIAMA: Um, yeah, Penal Code of the Kingdom
15 of Hawaii from the Penal Code of 1850. It was printed at
16 the Government Press, Honolulu, Oahu, 1869.

17 THE COURT: Okay, I have it now. So we'll take
18 judicial notice of that, also chapter seven, the portion of
19 the Compiled Laws of Hawaii Kingdom relating to the
20 department of foreign affairs.

21 MR. KAIAMA: Thank you. Chapter eight, Your
22 Honor.

23 THE COURT: All right.

24 MR. KAIAMA: Okay.

25 THE COURT: So the court will take judicial

1 notice of that. With respect to Dr. David Sai's expert
2 memorandum, the court's not gonna take judicial notice of
3 that. However, I'm just gonna treat that as a treatise the
4 that the court can consider for information with respect to
5 reaching its decision, much like a law review article. Same
6 as the memorandum of Doctor -- there are several, but all of
7 the Dr. Sai memorandums, that's how I'm treating it.

8 MR. KAIAMA: Thank you, Your Honor.

9 THE COURT: The other matters are treaties and
10 if they're treaties and if they're -- and they appear to be
11 published in the authorized publications of the United
12 States, court would also take judicial notice of the four
13 treaties and conventions. And all of the other matters are
14 -- appear to be reported cases, so I don't think I need to
15 take judicial notice of that. I mean, courts are allowed to
16 refer to other court's opinions. Okay, so I think I've
17 addressed all of those.

18 MR. KAIAMA: Yes, Your Honor. If I may -- yes,
19 Your Honor. Thank you very much. Again, and I don't know
20 if it makes a difference to the court, of course State of
21 Hawaii versus Lorenzo is a ICA Hawaii court decision, United
22 States versus Belmont, versus Pink and American Association
23 -- Insurance Association versus Garamendi, Your Honor, is a
24 U.S. Supreme Court case, and I'm not sure if that makes a
25 difference into whether the court will take judicial notice

1 of that or -- again, um, or not.

2 Um, my question, Your Honor, is with respect to
3 the expert memorandum of Dr. Keanu Sai. He does, within his
4 expert memorandum, provide four exhibits, exhibits A, B, C,
5 and D. Again, 4A is the, uh, what we refer to as the
6 Liliuokulani Assignment. 4B is the Grover Cleveland
7 Agreement of Restoration. Essentially, Your Honor, those
8 are the executive agreements. Um, exhibits C and D, Your
9 Honor, are statements made on the floor of congress by
10 representative Thomas Ball and Senator Augustus Bacon in
11 1898. Your Honor, and just for --

12 THE COURT: Mr. Kaiama, to the extent of the
13 materials that represent analysis or opinions by Dr. Sai,
14 again, I'm taking that as a treatise or a -- like a law
15 review article. As to those matters that are apparently
16 reported as part of the, uh, federal compendium of
17 documents, and so forth, I'll take judicial notice of it,
18 'cause they're readily available, I think, not only through
19 these exhibits but also through other sources.

20 MR. KAIAMA: Yes, Your Honor. They are official
21 government publications.

22 THE COURT: All right.

23 MR. KAIAMA: Thank you, Your Honor.

24 THE COURT: Just because, well, my concern was,
25 you know, just because Dr. Sai's memorandum may have a

1 government printing office number doesn't make it official
2 federal document. It's -- all it means it's cataloged.

3 MR. KAIAMA: Okay.

4 THE COURT: All right?

5 MR. KAIAMA: And just so that I understand, Your
6 Honor, and forgive me for asking, my understanding was that
7 the court would take judicial notice of that 4A, B, C, and
8 D.

9 THE COURT: If it -- those are exhibits of other
10 -- of matters, which they appear to be, that are reported,
11 for example, in a congressional record or some other kind
12 of, um --

13 MR. KAIAMA: And they are, Your Honor.

14 THE COURT: -- yeah, source that's easily --
15 it's easily retrievable and to determine them, yeah, I'm
16 taking judicial notice of it.

17 MR. KAIAMA: Thank you, Your Honor.

18 THE COURT: Okay?

19 MR. KAIAMA: And I am happy to answer any
20 additional inclinations of the court, but I believe that
21 provides us -- provide -- outlines our argument, Your Honor.

22 Again, U.S. versus Pink, Garamendi -- American
23 Association versus Garamendi, and U.S. versus Belmont
24 support the arguments that I made earlier, Your Honor, that
25 executive agreements are treaties under the United States

1 Constitution and under article six of the supreme law of the
2 land. And those cases, Your Honor, supreme court cases,
3 stand for the proposition that any state law which is
4 contrary to the executive agreements are preempted.

5 Also in the, um, Foreign Relations Restatement
6 of Third that I presented to the court, Your Honor, again,
7 as international agreements, these international agreements
8 are binding on the United States to faithful execution.
9 And, again, any municipal or state law to the contrary would
10 be preempted as well.

11 THE COURT: Okay, thank you. Ms. Hirose, any
12 arguments?

13 MS. HIROSE: Your Honor, just -- just really
14 briefly. Just to add to what we've already briefed, uh,
15 Ms. Kawasaki admittedly is not claiming that she's a citizen
16 of this -- of the Kingdom of Hawaii, if it does exist. And
17 as you stated from the outset of this hearing, we're still
18 in -- it's an evolving issue within the court system. But
19 our position remains if Ms. Kawasaki is admittedly not a
20 citizen then how can she raise these arguments to defeat
21 this court's subject matter jurisdiction in these
22 proceedings?

23 THE COURT: I think what he's saying is that if
24 -- the argument is that if, in fact, I buy into his
25 arguments then this court has no jurisdiction over any

1 matter, because it's illegal. That's his analysis, I think.

2 MS. HIROSANE: And that's -- that's my
3 understanding of it too, Your Honor.

4 THE COURT: Okay. So the court will deny the
5 motion to dismiss the complaint pursuant to Hawaii Rules of
6 Civil Procedure 12(b)(1) for lack of subject matter
7 jurisdiction.

8 Having reviewed the matters and the prior court
9 decisions, the court is of the opinion and decides that the
10 court does have subject jurisdiction over the matter of the
11 ejectment case and that the arguments raised by Mr. Kaiama,
12 in essence, have been resolved by the prior appellate court
13 decisions, and the raising of the executive agreements, in
14 my mind, is not persuasive. Those matters were in existence
15 at the time of the prior court decisions, they were
16 available to the court, they were available to attorneys,
17 and I'm not convinced that it's now something new or
18 provides new law or new facts that would cause the prior
19 appellate decisions to be overturned. Okay? So --

20 MR. KAIAMA: Your Honor, thank you. I know
21 she's to prepare the order. Your Honor, respectfully, I
22 would just preserve Ms. Kawasaki's right to take exception
23 to the court's decision today.

24 THE COURT: Yeah, that's not necessary.

25 MR. KAIAMA: And reserve her rights to file an

1 appeal. Your Honor, I have been asked by Ms. Kawasaki,
2 'cause this is an issue concerning the stay matter, she does
3 intend to file an appeal from the court's decision
4 concerning the motion to dismiss as soon as the order is
5 filed, and I know that's gonna take a short period a time.
6 I've been asked by Ms. Kawasaki to make a request to
7 continue the stay while she files -- while she appeals the
8 matter to the appellate courts.

9 THE COURT: Mr. Kaiama, I'm going to deny the
10 request. I think once, you know, the whole thing about
11 what's the final order and what you appeal from, um, it's
12 such an art now. And I -- I hate to even venture a guess.
13 Um, it seems to me that the -- you might have two appealable
14 orders here. I'm not sure if this decision may be a
15 separate appealable order as a collateral matter, because it
16 attacks jurisdiction after the other judgment. But I'm just
17 stating that because it may be, uh, things that counsel need
18 to talk to Ms. Kawasaki about in terms of preserving her
19 rights to appeal, in terms of filing notices for appeal.
20 Uh, but, again, it's pretty clear, if you don't file your
21 written notice of appeal timely then you're out.

22 MR. KAIAMA: (Nodding head.)

23 THE COURT: So I guess, Ms. Hirose, you're
24 sending the proposed order directly to Ms. Kawasaki, is that
25 correct?

1 MR. KAIAMA: That is correct, Your Honor.

2 MS. HIROSANE: Your Honor, may I clarify this?

3 Am I to include language with regard to Mr. Kaiama's oral
4 motion to stay pending appeal?

5 THE COURT: I'm sorry? No, I don't --

6 MS. HIROSANE: Am I to include --

7 THE COURT: Yeah, there is an order, motion for
8 staying the appeal, but this is the nature of I -- I -- of a
9 writ of possession, right?

10 MS. HIROSANE: That's correct, Your Honor.

11 THE COURT: Okay, so is this like an injunction.
12 I mean, they have separate provisions with respect to the
13 stays on injunctive kind of relief, so is that the provision
14 that applies with respect to a stay? Or is it now, what?
15 She has to post a supersedeas bond for a stay?

16 MS. HIROSANE: That would be our position, Your
17 Honor.

18 THE COURT: And what's the amount of the bond?

19 MS. HIROSANE: Well, we have been --

20 THE COURT: There's no judgment other than the
21 judgment for the writ.

22 MR. KAIAMA: And, Your Honor, my understanding
23 is that she is still -- she still has the option to provide
24 the court with a written motion for stay. I am aware of
25 case law which says that the issuance of a supersedeas bond

1 is really discretionary upon the court, and the court can
2 decide the amount of the bond if it decides to require a
3 supersedeas bond.

4 THE COURT: Okay, but that's why I'm saying I
5 don't want to rule on the stay now.

6 MR. KAIAMA: Okay.

7 THE COURT: I think the judgment should issue,
8 you file your notice of appeal and a motion for a stay, I
9 think. And that way the, hopefully, the issues will be
10 clearer as to what the requirements are for a stay, if any,
11 and, you know, what the court needs to decide with respect
12 to any issues concerning the stay. Okay?

13 MR. KAIAMA: Thank you, Your Honor.

14 THE COURT: So the oral motion for a stay is
15 denied.

16 MR. KAIAMA: Thank you, Your Honor.

17 MS. HIROSANE: Thank you, Your Honor.

18 THE DEFENDANT, MS. KAWASAKI: Excuse me, Your
19 Honor. Could I have a transcript of today's --

20 MR. KAIAMA: Oh, you go down there and apply.

21 MS. KAWASAKI: Oh, okay. Thank you.

22 THE COURT: Okay. Thank you. Next case.

23 MS. KAWASAKI: Thank you.

24 (Whereupon the proceedings were concluded.)

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C E R T I F I C A T E

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2 STATE OF HAWAII)
3)
4 COUNTY OF HAWAII)
5)

6 I, JENNIFER WHETSTONE, a Certified Shorthand
7 Reporter in the State of Hawaii, do hereby certify that the
8 foregoing pages, 1 through 25, inclusive, comprise a full,
9 true, and correct transcript of the proceedings had on June
10 15, 2012, at 9:13 a.m., in connection with the
11 above-entitled cause.

12 Dated: June 20, 2012.

13 OFFICIAL COURT REPORTER

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16 JENNIFER WHETSTONE