

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. )  
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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.  
AGARD & KAIAMA  
500 Ala Moana Boulevard  
Suite 400  
Honolulu, Hawaii 96813

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 HRCP 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. Hiropane, 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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15   
16 JENNIFER WHETSTONE