

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

JUL - 8 2015

1:07 o'clock P.M.

[Signature]
Clerk, 14th Division

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

RENO ABELLIRA, MARK CUNNINGHAM,
KEONE DOWNING, JOCK SUTHERLAND,
BILL MARTIN and THE SAVE
LANIAKEA COALITION,

Plaintiffs,

v.

STATE OF HAWAI'I DEPARTMENT OF
TRANSPORTATION, and JOHN DOES
1-10, JANE DOES 1-10, DOE
CORPORATIONS 1-10, DOE BUSINESS
ENTITIES 1-10, and DOE
GOVERNMENTAL ENTITIES 1-10 and
DOE UNINCORPORATED ASSOCIATIONS
1-10,

Defendants.

CIVIL NO. 14-1-0005-01 (GWBC)
(Declaratory Judgment and
Injunction)

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND ORDER
AND PRELIMINARY INJUNCTION**

Hearing Date: June 4, 2015

Hearing Time: 3:00 p.m.

Judge: The Honorable Gary W.B.
Chang

**FINDINGS OF FACT AND CONCLUSIONS OF
LAW AND ORDER AND PRELIMINARY INJUNCTION**

Plaintiffs RENO ABELLIRA, MARK CUNNINGHAM, KEONE DOWNING, JOCK SUTHERLAND, BILL MARTIN and THE SAVE LANIAKEA COALITION filed their *Motion For Declaratory And Injunctive Relief And For Summary Judgment* on April 21, 2015 [hereinafter "Motion"]. In response, Defendant State of Hawaii Department of Transportation filed *State Of Hawaii's Memorandum In Opposition To Plaintiffs' Motion For Declaratory And Injunctive Relief And For Summary Judgment Filed April 21, 2015 And State Of Hawaii's Counter Motion For Summary Judgment* on May 12, 2015 [hereinafter "Counter Motion"]. Plaintiffs filed *Plaintiffs' Memorandum In Opposition To State of Hawaii's Counter Motion For Summary Judgment Filed May 12, 2015* on May 27, 2015. The State filed *Defendant State of Hawaii's Reply Memorandum In Support Of Its Counter Motion For Summary Judgment Filed May 12, 2015* on June 1, 2015.

A hearing on Plaintiffs' Motion and the State's Counter Motion was held on June 4, 2015, presided over by the Honorable Gary W.B. Chang. Present at the hearing for Plaintiffs were William W. Saunders, Jr., Esq., and Nathan P. Roehrig, Esq. Present at the hearing for the State was Deputy Attorney General John H. Price, Esq.

The Court, after hearing the oral argument of representative counsel, and having considered the written

submissions and the record and file in this case, hereby DENIES Plaintiffs' and Defendant's Motions for Summary Judgment.

The Court exercises its equitable discretion by treating Plaintiffs' motion as a Motion for Preliminary Injunction and grants that motion for the reasons stated hereinbelow.

The Court GRANTS Plaintiffs' injunctive relief pursuant to Counts I and II of Plaintiffs' Complaint filed January 2, 2014. The Court DENIES Plaintiffs' Motion in all other respects. The Court also DENIES defendant State's Counter Motion.

The Court hereby enters the following Findings of Fact and Conclusions of Law and Order and Preliminary Injunction.

FINDINGS OF FACT

1. Plaintiffs Reno Abellira, Mark Cunningham, Keone Downing, Jock Sutherland, and Bill Martin [collectively hereinafter "Plaintiffs"] are residents of the State of Hawaii. The Save Laniakea Coalition is an unincorporated association that is doing business in the State of Hawaii.

2. Defendant State of Hawaii Department of Transportation [hereinafter "DOT"] is the sovereign and they have ownership and management jurisdiction over the State highway system that includes Kamehameha Highway in the area of Laniakea Beach.

3. Laniakea Beach on the North Shore of the Island of Oahu lies immediately adjacent to and on the northwest side of Kamehameha Highway.

4. Kamehameha Highway is owned and maintained by defendant DOT.

5. Across from, and adjacent to, the Highway from Laniakea Beach lies a large parcel of unimproved land, which has been referred to on some documents as "Laniakea Support Park" [hereinafter "Park"]¹. The Park is owned by the City and County of Honolulu [hereinafter "City"].

6. Historically, for several decades, the public has been parking their vehicles on a barren and unimproved strip of Park land [hereinafter "Parking Area"], that is immediately adjacent to Kamehameha Highway, as a means of accessing and enjoying a variety of recreational tourist destination pursuits at Laniakea Beach, the Laniakea surfing site, and other adjacent natural ocean resources. Laniakea Beach has some unique features and qualities which are not readily available elsewhere. This makes Laniakea Beach a very popular destination for local residents and tourists alike.

7. As a consequence of the attractiveness of Laniakea Beach, the motor vehicle and pedestrian traffic in the area tends to become profoundly congested from time to time. On occasion, the motor vehicle traffic on Kamehameha Highway slows to a snail's pace or even a stop-and-go pace. The vehicular

¹. The State takes issue with the reference to this parcel of land being referred to as a city "park." However, the State did not introduce any evidence to shed any light upon the status of this parcel of land. Therefore, until such time as further evidence is introduced into the record regarding the status of this parcel of land across the Highway from Laniakea Beach, the court shall loosely refer to this parcel as a "park."

congestion and crawling traffic is exacerbated by pedestrians scurrying back and forth across Kamehameha Highway, and darting in between and around vehicles moving on the Highway, to get from their vehicles parked on the Parking Area to and from the beach.

8. The status quo featured complete, unobstructed access for vehicles and pedestrians between Laniakea Beach and the Parking Area by crossing Kamehameha Highway. Pedestrians cross the Highway anywhere between Laniakea Beach and the Parking Area. There are no marked crosswalks, curbs, or barriers of any kind on or around Kamehameha Highway in the Laniakea Beach area. The Park Area is a wide, unimproved, barren shoulder area adjacent to a paved roadway. The movement and parking of vehicles and the movement of pedestrians along and across the Highway was essentially unregulated, except for the posted vehicular speed limit and lane markings dividing the Highway.

9. The Court takes judicial notice that DOT received numerous complaints about the slow moving, extremely congested vehicle traffic and the hazardous pedestrian crossing movement on Kamehameha Highway in the Laniakea Beach area, particularly on holidays.

10. On or about December 23, 2013, the DOT, in what it represented would be a "short-term" "demonstration project," installed temporary concrete traffic barriers along the

southeast side of Kamehameha Highway thereby blocking vehicle access to the Park Area for members of the public who wanted to park on the Park Area in order to access Laniakea Beach and its adjacent ocean resources.

11. Portions of the barriers lie within 40 feet of the high wash of the waves during extremely high or storm surf conditions that cause wave and debris to be washed onto Kamehameha Highway.

12. The barriers completely block and prevent members of the motoring public from parking on that strip of land in the Park Area. There is no other place to park in the immediate Laniakea Beach area other than on that Park Area. Without a place to park, a person intending to use Laniakea Beach is effectively denied access to Laniakea Beach, with the exception of those who are transported to, and dropped off at, the beach or if the user is willing to walk hundreds of yards from the nearest available alternate area of opportunistic parking².

13. The lack of access to the parking on the Park Area effectively denies Plaintiffs reasonable access to Laniakea Beach and its adjacent ocean resources. Plaintiffs cannot be deprived of such access without the protections that City permit processes afford.

². "Opportunistic parking" means informal parking opportunities along the side of Kamehameha Highway where parking is permitted. This is largely roadside parking along the Highway. There is no designed parking lot or other improved parking area, besides roadside parking, that anyone has provided for users of Laniakea Beach.

14. Prior to the installation of the barriers, DOT did make inquiry with the City to ascertain whether it was required to obtain any Special Management Area [hereinafter "SMA"] permits in order to erect any barriers on City property. The City advised DOT that no permits were required for a "short term" "demonstration project." Therefore, DOT did not apply for and did not obtain an SMA permit for the installation of the barriers.

15. The City's Department of Planning and Permitting [hereinafter "DPP"], the agency that handles SMA permits and variances, told the State's consultant that no SMA permit would be required for the placement of the barriers on the Park Area.

16. Prior to the installation of the barriers, the State also received a December 3, 2013 letter from DPP saying that no SMA permit would be required for the placement of the barriers as long as certain conditions existed.

17. The State acted in reliance on the representations of the DPP and proceeded to install the barriers on the Park Area. This prevented cars from parking on the Park Area.

18. Furthermore, prior to the installation of the barriers, DOT did not apply for and did not obtain a variance for the installation of the barriers within the 40-foot

shoreline setback area. Again, DOT was not advised by the City that any such permits were required.

19. What was represented by DOT to be a "short-term" "demonstration project" has now persisted for over a year-and-a-half and the DOT represents that it may keep the barriers in place indefinitely.

20. In February 2015, the DPP, the City agency empowered under HRS Chapter 205A to enforce the provisions of that Chapter on O'ahu, has now informed DOT that it needs an SMA permit to keep its barriers in place. To its credit, DOT moved expeditiously to initiate the permit application process on its own, before formal court proceedings were scheduled.

21. To the extent that any of these findings of fact are conclusions of law, they are to be so construed.

CONCLUSIONS OF LAW

1. Plaintiffs have standing and a right to bring this action for temporary and permanent injunctive relief.

2. The record shows that, when DOT initially installed the traffic barriers along the Park Area, they were advised that no permits were required in order to install traffic barriers on the Park Area.

3. However, in February 2015, the City's position changed and the City informed DOT that permits were now required in order to install traffic barriers on the Park Area.

4. Therefore, the traffic barriers cannot be maintained in place without DOT first securing the necessary permits.

5. Based upon the current record, Plaintiffs have sustained their burden of proof to show that they are likely to prevail upon the merits of the dispute regarding whether DOT can maintain the traffic barriers on the Park Area without the necessary permits.

6. The issuance of a preliminary injunction herein that requires DOT to comply with all requirements of the law before installing barriers on the Park Area is in the public interest.

7. Since DOT did not consent or agree to remove the barriers without a court order, it is necessary for the court to issue an order entering a preliminary injunction requiring DOT to remove the barriers as soon as practicable; *provided that*, under no circumstances shall the barriers be allowed to be left in place on the Park Area any longer than thirty (30) days after the date these Findings of Fact and Conclusions of Law and Order and Preliminary Injunction is filed with the above-entitled court.

8. After the removal of the barriers, they shall not be reinstalled, in whole or in part, by DOT in the Park Area unless

and until (1) DOT has complied with all requirements of the law in order to install such barriers, or (2) the City lawfully directs the installation of traffic barriers on the Park Area as part of the City's determination of the permitted and duly authorized usage of its own park land or (3) until further order of the court.

9. Nothing herein prevents the parties from entering into an agreement that is approved and ordered by the court regarding a mutually agreeable barrier installation design and protocol on the Park Area, which affects the access to, and usage of, Laniakea Beach.

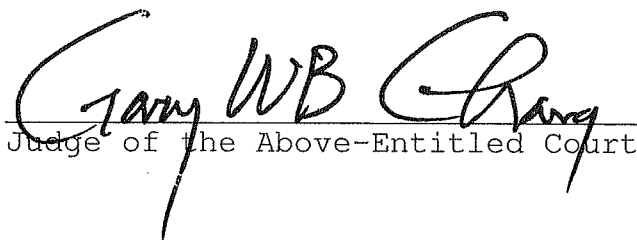
PRELIMINARY INJUNCTION

1. Defendant State of Hawaii Department of Transportation is enjoined from maintaining the barriers on the Park Area and shall remove the barriers from the Park Area as soon as practicable, but under no circumstances later than 30 days from the date this Findings of Fact and Conclusions of Law and Order and Preliminary Injunction is filed with the above-entitled court.

2. Once removed, the barriers shall not be reinstalled, in whole or in part, by DOT in the Park Area unless and until (1) DOT has complied with all requirements of the law in order to install such barriers, or (2) the City lawfully directs the

installation of traffic barriers on the Park Area as part of the City's determination of the permitted and duly authorized usage of its own park lands or (3) until further order of the court.

DATED: HONOLULU, HAWAII, JUL - 8 2015


Judge of the Above-Entitled Court

Reno Abellira, et al. v. State of Hawaii etc.,
Civil No.: 14-1-0005-01 (GWBC)
FINDINGS OF FACT AND CONCLUSIONS OF LAW AND
ORDER AND PRELIMINARY INJUNCTION

NOTICE SENT TO:

WILLIAM W. SAUNDERS JR., ESQ.
NATHAN P. ROHRIG, ESQ.
BICKERTON LEE DANG & SULLIVAN
745 FORT STREET, SUITE 801
HONOLULU, HAWAII 96813


Via U.S. Mail, Postage Prepaid
ATTORNEYS FOR PLAINTIFFS

DAVID M. LOUIE
ATTORNEY GENERAL OF HAWAII
WILLIAM I. WYNHOFF
H. RAMSEY ROSS
DEPUTY ATTORNEYS GENERAL
DEPARTMENT OF ATTORNEY GENERAL
ROOM 300, KEKUANA`O`A BUILDING
465 SOUTH KING STREET
HONOLULU, HAWAII 96813

Via U.S. Mail, Postage Prepaid
ATTORNEYS FOR DEFENDANT DEPARTMENT OF
TRANSPORTATION, STATE OF HAWAI`I

NOTICE OF ENTRY

The foregoing Findings of Fact and Conclusions of Law and Order and Preliminary Injunction in Civil No. 14-1-0005-01 (GWBC) has been entered and copies thereof served on the above-identified parties by placing the same in the United States mail, postage prepaid, on July 8, 2015.



Clerk, Fourteenth Division