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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I,

Plaintiff/Counterclaim
Defendant,

vs.

JAMES O'SHEA AND DENISE O'SHEA
as Trustees of the James and Denise O'Shea
Trust, JAMES O'SHEA, individually and
DENISE O'SHEA, individually, JOHN
AND JANE DOES 1-10,

Defendants/Counterclaimants.

JAMES O'SHEA and DENISE O'SHEA as
Trustees of the James and Denise
O'Shea Trust, JAMES O'SHEA,
individually and DENISE O'SHEA,
individually,

Third-Party Plaintiffs/
Counterclaim Defendants,

Civil No. 17-1-1543-09 JPC
(Other Civil Action, Injunctive
Relief)(Environmental Court)

ORDER GRANTING IN PART AND DENYING
IN PART THE STATE OF HAWAI'I'S MOTION
FOR PARTIAL SUMMARY JUDGMENT WITH
RESPECT TO THE STATE'S PRAYER FOR A
MANDATORY INJUNCTION, OR IN THE
ALTERNATIVE, FOR DECLARATORY
JUDGMENT FILED MARCH 8, 2021 [DKT.
103]

Oral Arguments:

April 9, 2021, June 4, 2021, July 14, 2021

Judge: Hon. Jeffrey P. Crabtree

Trial Date: January 18, 2022

vs.

RUPERT T. OBERLOHR, individually;
RUPERT T. OBERLOHR, as Trustee of the
Rupert Oberlohr Trust; DOE
DEFENDANTS 1-100,

Third-Party Defendants/
Counterclaimants.

**ORDER GRANTING IN PART AND DENYING IN PART
THE STATE OF HAWAI‘I’S MOTION FOR PARTIAL SUMMARY JUDGMENT
WITH RESPECT TO THE STATE’S PRAYER FOR A MANDATORY INJUNCTION,
OR IN THE ALTERNATIVE, FOR DECLARATORY JUDGMENT
FILED MARCH 8, 2021 [DKT. 103]**

Plaintiff/Counterclaim Defendant STATE OF HAWAI‘I (“State”) filed its Motion For Partial Summary Judgment With Respect To The State’s Prayer For A Mandatory Injunction, Or In The Alternative, For Declaratory Judgment (hereinafter, the “Motion”) on March 8, 2021 as JEFS Dkt. 103. The Motion was first heard on April 9, 2021 at 1:30 p.m. by the Honorable Jeffrey P. Crabtree. Per leave of the Court, the respective counsel for the State and for Defendants/Counterclaimants/Third-Party Plaintiffs/Counterclaim Defendants JAMES O’SHEA AND DENISE O’SHEA as Trustees of the James and Denise O’Shea Trust, JAMES O’SHEA, individually and DENISE O’SHEA, individually (the “O’Sheas”) submitted supplemental materials. Further hearings on the Motion took place on June 4, 2021 at 1:30 p.m. and July 14, 2021 at 10:00 a.m.

The Court considered the Motion, the memoranda in support and opposition thereto, the supplemental materials, the argument of counsel and the records and files in this matter. For reasons including, but not limited to, those stated on the record at the hearings on this Motion and in the Court’s written Ruling dated September 14, 2021 [JEFS Dkt. 205], it is HEREBY

ORDERED that the Motion is GRANTED IN PART and DENIED IN PART as follows:

A. The Court recognizes that in Hawai‘i, beachfront property lines run along the shoreline, defined as the highest wash of the waves, other than storm or seismic waves, at high tide during the season when the highest wash occurs, usually shown by the vegetation line or debris lines (also known as the *Ashford* boundary). See *Application of Ashford*, 50 Haw. 314, 315 (1968); *Application of Sanborn*, 57 Haw. 585, 588 (1977).

B. This Court has jurisdiction to declare whether or not the O’Sheas’ new seawall was built seaward of the *Ashford* boundary and therefore on State land. This Court concludes as a matter of law that the Coastal Zone Management Act (“CZMA”) does not supplant *Ashford* and *Hawaii County v. Sotomura*, 55 Haw. 176, 181-84 (1973) for purposes of determining the location of the *Ashford* boundary.

C. Just as an artificial vegetation line cannot usually set the *Ashford* boundary (*Diamond v. Dobbin*, 132 Hawai‘i 9, 33 (2014)), neither can an artificial seawall usually set the *Ashford* boundary in and of itself. See HRS § 205-42(a) (an artificial structure may be used in a shoreline determination under the CZMA, *if* it was approved by appropriate government agencies). However, as a matter of law, this possibility is not available to the O’Sheas because they engaged in self-help, building their new thirteen-foot seawall without approval from any government authority. At minimum, it appears a variance was required by HRS § 205A-42(a)).

D. The Court finds that there is no genuine issue of material fact disputing that:

1. Ocean waves wash up to and hit the O’Sheas’ new seawall during the winter season; and

2. The winter season on the North Shore of O‘ahu is when the highest wash occurs, and includes December 2, 2020 (the date of the wash of the waves in

State's Exhibit 18 to the Motion).

E. The O'Sheas' new seawall was built separate and apart from the original seawall. The original seawall totally collapsed. *See* the O'Sheas' Response to the State's Interrogatory No. 7 contained in the State's Exhibit 1, p. 007 [JEFS Dkt. 111], and the O'Sheas' photo Exhibits I and J [JEFS Dkt. 144].

F. The Court finds that:

1. The O'Sheas have thus far failed to establish a genuine issue of material fact exists allowing them to build their new seawall on State land or on land owned by the City and County of Honolulu ("County") without authorization; and
2. It is undisputed that the O'Sheas built their new seawall without any State or County permit, variance, or other authorization.

G. If it is established that the wave in Exhibit 18 was not caused by a storm, then the O'Sheas' new seawall was built on State land. This conclusion results from simple logic: if the waves are hitting the seawall, the highest wash of the waves is *mauka* of the seawall.

H. The Court incorporates all legal conclusions and factual findings stated in its September 14, 2021 Ruling.

I. To the extent other aspects of the Motion are not addressed in this Order or in the Court's September 14, 2021 Ruling, they were considered and DENIED, without prejudice.

[SIGNATURE PAGE FOLLOWS]

Dated: Honolulu, Hawai'i, October 20, 2021.

/s/ Jeffrey P. Crabtree



JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

GREGORY W. KUGLE
LOREN A. SEEHASE
VERONICA A. NORDYKE

Attorneys for Defendants/Counterclaimants/
Third-Party Plaintiffs/Counterclaim Defendants
JAMES O'SHEA and DENISE O'SHEA,
Trustees of the James and Denise O'Shea
Trust, JAMES O'SHEA, Individually, and
DENISE O'SHEA, Individually

/s/ Wesley H.H. Ching
WESLEY H.H. CHING

Attorney for Third-Party Defendant RUPERT
T. OBERLOHR, individually; RUPERT T.
OBERLOHR as Trustee of the Rupert
Oberlohr Trust

RUPERT T. OBERLOHR, individually; and as
Trustee of the Rupert Oberlohr Trust
COUNTERCLAIMANT

STATE OF HAWAII v. JAMES O'SHEA AND DENISE O'SHEA as Trustees of the James and Denise O'Shea
Trust, JAMES O'SHEA, individually and DENISE O'SHEA, individually; CIVIL NO. 17-1-1543-09 JPC; ORDER
GRANTING IN PART AND DENYING IN PART THE STATE OF HAWAII'S MOTION FOR PARTIAL
SUMMARY JUDGMENT WITH RESPECT TO THE STATE'S PRAYER FOR A MANDATORY
INJUNCTION, OR IN THE ALTERNATIVE, FOR DECLARATORY JUDGMENT FILED MARCH 8,
2021 [DKT. 103]