

CRUISE & YOST
A Limited Liability Law Company

MICHAEL R. CRUISE 7334-0
COLIN A. YOST 7739-0
The Empire Building
49 South Hotel Street, Suite 305
Honolulu, Hawaii 96813
Telephone: (808) 275-1200
Facsimile: (808) 275-8808
Email: colin@cruiseyost.com

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

2008 MAY -1 PM 2: 51

E. ALAGAO
CLERK

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CHRISTINA ANNE JENSEN and BERNARD)
MICHAEL MORIAZ,)

Plaintiffs,)

vs.)

POAMOHO ESTATES, UNIT I,)
COMMUNITY ASSOCIATION; DOE)
INDIVIDUALS 1-15; DOE ENTITIES 1-15,)

Defendants.)

CIVIL NO. 08-1-0876-05 **GJK**
(Other Civil Action)

COMPLAINT; DEMAND FOR JURY
TRIAL; SUMMONS

COMPLAINT

Plaintiffs CHRISTINA ANNE JENSEN and BERNARD MICHAEL MORIAZ,
come now by and through their attorneys, CRUISE & YOST, A Limited Liability Law
Company, and for their complaint against the above-named defendants, allege and aver as
follows:

PARTIES

1. Plaintiffs CHRISTINA ANNE JENSEN and BERNARD MICHAEL

MORIAZ ("Plaintiffs") are husband and wife and the owners, as tenants by the entirety, of Lot 1, Poamoho Estates-Unit 1, situated at Kamananui, Wailua, City and County of Honolulu, State of Hawai'i ("Subject Property"). At all relevant times herein, Plaintiffs are and have been residents of the City and County of Honolulu, State of Hawai'i.

2. Defendant POAMOHO ESTATES, UNIT I, COMMUNITY ASSOCIATION ("Defendant Association") is, and was at all relevant times herein, a planned community association subject to Chapter 421J of the Hawai'i Revised Statutes ("HRS") and a Hawai'i nonprofit corporation.

3. Doe Individuals 1-15 and Doe Entities 1-15 (collectively, "Doe Defendants") are believed to be either individuals, entities, partnerships, or other business or governmental agencies who committed acts or omissions that were tortious or otherwise wrongful within the State of Hawai'i in or relating to the escrow account funds issued to Descendant and/or relating to Plaintiffs' present legal rights or prospective economic damages. Doe Defendants are sued herein under fictitious names for the reasons that their true names, identities, capacities, activities, and/or responsibilities are presently unknown to Plaintiffs or their attorneys, despite diligent and good faith efforts to ascertain their identities and responsibilities, except that they are connected in some manner with the named defendant or may be liable to Plaintiffs for their tortious conduct or other wrongdoing individually and/or as agents, servants, employees, alter egos of the named defendant (or one or more of them), employers, representatives, co-venturers, vendors, suppliers, manufacturers, designers, experts or consultants and/or were in some manner by their tortious conduct or other wrongdoing responsible for the injuries or damages to Plaintiffs. If necessary, Plaintiffs will seek leave of court to amend their Complaint and/or certify as party defendants those individuals and/or

entities presently named as Doe Defendants whose true names and capacities become known to Plaintiffs. Defendants Poamoho Estates, Unit I, Community Association and Doe Defendants are hereinafter collectively referred to as "Defendants."

JURISDICTION AND VENUE

4. The conduct, acts and/or omissions alleged herein occurred in the State of Hawai'i. Pursuant to Hawai'i Revised Statutes § 603-21.5, this Court has jurisdiction to decide the issues of Hawai'i law related to this matter.

5. Venue is proper in this Court pursuant to Haw. Rev. Stat. § 603-36.

BACKGROUND FACTS

6. In November 1995, a property developer, Poamoho Venture LP ("Developer"), established a fifteen (15) lot agricultural subdivision known as Poamoho Estates, Unit I ("Subdivision"), and filed the Subdivision's Declaration of Covenants and Restrictions ("Declaration") in the Bureau of Conveyances of the State of Hawai'i as document number 96-030085 on March 5, 1996.

7. All of the lots in the Subdivision, including the Subject Property, are classified by State of Hawai'i as having a class B soil productivity rating and are within the agricultural district. Because of the Subdivision's highly productive soil, use of the land is restricted to certain activities enumerated in HRS §205-4.5.

8. In addition, the Subdivision's Declaration states, in Section 3(a):

No owner shall use his Lot, or any part thereof, for any purpose or in any manner inconsistent with the uses specified in Section 205-4.5, H.R.S., as the same may be amended, or any successor statute thereto. It shall be a further condition that the use of any Lot shall be primarily in pursuit of an agricultural activity, and that the persons owning or occupying such Lot must actually derive income from such agricultural activity.

9. The Declaration and the Bylaws of Defendant Association assign the duty of enforcing HRS 205-4.5's restrictions and the Declaration's terms to Defendant Association, by and through its Board of Directors.

10. The Bylaws of Defendant Association, adopted in November 2005, provide in Article VIII, Section 1(D) that "No owner shall use or keep anything on or in the common areas which would in any way hinder the full use and enjoyment thereof by any other owner or occupant."

11. In the summer of 2003, Plaintiffs negotiated for the purchase of the Subject Property from the Developer, who was represented by David Taogoshi. Plaintiffs informed Mr. Taogoshi that they were interested in the Subject Property because they intended to expand their current plant rental business (which involved the cultivation of various decorative plants for rent) and also to establish a nursery and farm to sell agricultural products to the general public.

12. Plaintiffs were especially interested in the Subject Property because it was right next to the Kaukonahua Road, which would help to attract potential nursery/farm customers traveling to and from the North Shore of O'ahu. Mr. Taogoshi assured Plaintiffs that the Subject Property would fit their needs perfectly and, like all other lots in the Subdivision, the Subject Property was restricted to agricultural activities.

13. At the time Plaintiffs' negotiated the purchase of the Subject Property, most of the other lots were vacant, and the only full time resident operated a productive farm. A simple, metal gate with a chain and padlock separated the Subdivision from the public road, but Mr. Toagoshi represented that the gate's sole purpose was for security at night, and that it would remain open during the day.

14. On or about August 27, 2003, Plaintiffs purchased the Subject Property. Soon thereafter, Plaintiffs began to invest in the development of their plant nursery, fruit orchard and flower farm.

15. Although Plaintiffs understood from the Developer that the Subdivision's main gate would remain open during daylight business hours, Plaintiffs soon found that the gate would sometimes be locked during the day by other lot owners, more of whom were steadily moving into the Subdivision.

16. In March of 2004, Plaintiffs wrote to Daren Truitt, then President of Defendant Association, to emphasize the necessity of keeping the gate open during business hours in order to operate Plaintiffs' agricultural business. Mr. Truitt's response to Plaintiffs' letter stated, in part: "The hours of gate operation is a mix of personal and business concerns, all have [sic] points equally have merit for consideration. We must institute a policy that will provide security, low liability, privacy, emergency access, and access for customers of permitted agricultural uses and businesses."

17. In June 2005, Plaintiffs began advertising in the North Shore News that their nursery was open to the public seven days a week from 7:30 a.m. to 4:30 p.m. for the purchase of landscape plants of all sizes and cut flowers. Since that time, Plaintiffs have consistently advertised their nursery business in both the North Shore News and the Paumaulu Press.

18. Throughout 2004, 2005 and 2006, the Subdivision's gate generally remained open during business hours, but this practice changed abruptly in or about January 2007 when Defendant Association decided to close one-half of the gate (the side to exit the

Subdivision) full-time.

19. Plaintiffs were alarmed by the decision to close half the gate and by Defendant Association's gradual transformation of the gate side pillars from rustic lava structures to more formal and exclusive looking stone block pillars. Plaintiffs heard from nursery customers and potential customers that the gate had an uninviting and intimidating appearance, because it appeared that the open portion of the gate could close at any moment and trap non-residents of the Subdivision inside.

20. Plaintiffs did their best to persuade Defendant Association to leave the gate entirely open during agricultural business hours, but their efforts were unsuccessful. It was apparent to Plaintiffs from Defendant Association's choices that a substantial majority of the members of Defendant Association seemed progressively more interested in establishing a gated residential community than complying with the agricultural use mandate of the Declaration.

21. On September 15, 2007, over Plaintiffs' protests, Defendant Association implemented a policy of closing both sides of the gate 24 hours a day, which remains in effect as of the filing of this Complaint.

22. A sign in the center of the closed entry side of the gate states "Private Property, No Trespassing, Violators Will Be Prosecuted." Access to the gate is restricted to the use of an electronic keypad which displays, one at a time, the residents of the Subdivision. Prospective visitors to Plaintiffs' nursery and farm must scroll through a list of other residents and then press a displayed code for access. This code does not open the gate but rather calls a phone number designated by each lot owner, and if the lot owner answers the phone, he or she may punch the number nine, which will cause the entry side of the gate to automatically open.

23. The above described gate policy has effectively closed Plaintiffs nascent nursery and farm business. Upon information and belief, most prospective customers are repelled by what appears on its face to be the gate of an exclusive residential community that is closed to the public. Further, even if a customer manages to find Plaintiffs' business on the keypad (which is often difficult to read in the glare of the sun), Plaintiffs do not have a phone number that will be consistently heard when it rings, because they and their employees are usually working in the field and often operate noisy equipment.

24. To make the best of an unreasonable situation, Plaintiffs at one time disclosed their entry code for the gate on their answering machine and to a public meeting of prospective customers, but Defendant Association has threatened to fine Plaintiffs if these disclosures are repeated.

25. In a letter to all members dated April 6, 2008, Defendant Association's Board of Directors wrote the following:

The automatic features of the gate have been in operation since September '07. We believe we have installed a system that adequately addresses the security concerns of our members and allows sufficient access for bone [sic] fide guests and visitors. It has come to our attention that one of our members incorporated one of their gate automatic entry codes into their telephone answering machine message. This abuse of the codes allows unattended entry at all times to strangers calling that number even when no one is at the property. We also learned that a member made an announcement of one of their gate codes at a public meeting. The Board believes these public releases of gate codes violate the intent of our entry system and undermine the security of our community and has disabled that code. Regrettably, the Board now finds it necessary to assess costs, fees and penalties to any member for such actions as may undermine the security of our community or inhibit or damage the operation of the gate and its features.

26. In their efforts to sell their lots, several lot owners have represented in promotional materials that their lots are in "the gated community of Poamoho Estates," and/or that the lot is "secure and private in an exclusive, gated community."

27. An internet listing currently posted by Paradise Real Estate states: "Build the home of your dreams on over 5 acres in Poamoho Estates, a gated community in the North Shore. Your home will have beautiful panoramic views of the ocean & Mt. Kaala. Short drive to famous North Shore beaches & Haleiwa Town with shops & restaurants. \$1,550,000."

28. To date, Plaintiffs have invested over \$150,000, not including labor expenses, in the development of their plant nursery and fruit/flower business, which is fully operational and ready to receive customers. Upon information and belief, Plaintiffs should have income of at least \$300/day from drive-in business, but their revenue thus far has been negligible. Plaintiffs have stopped the propagation of landscaping plants for nursery sale and may be forced to lay off employees or close their business entirely if unrestricted and welcoming public access to the agricultural business is not permitted soon.

29. When Plaintiffs could not reach an informal resolution with Defendant Association regarding the gate dispute, Plaintiffs submitted the matter to mediation under HRS § 421J-13. The mediation is complete and was not successful.

30. Since 2003, Plaintiffs have made repeated demands upon Defendant Association to enforce the Declaration by implementing a gate policy that promotes the derivation of income from agricultural activity instead of hindering or preventing it. Defendant Association has ignored Plaintiffs' demands and instead has implemented a policy that is wholly inconsistent with the Declaration and the Bylaws in an attempt to transform this important agricultural land into an exclusive, residential gated community.

///

///

COUNT I

(Declaratory Relief For Defendant Association's Violations Of Declaration, Bylaws;
HRS Chapter 421-J)

31. Plaintiffs reallege and incorporate herein by reference the allegations set forth above.

32. Defendant Association has a duty to strictly adhere to and enforce the Declaration and Bylaws of the Subdivision.

33. Defendant Association breached its duty to adhere to and enforce the Declaration by implementing a gate policy that contravenes the Declaration's mandate that lot owners use their lots primarily for income producing agricultural activity.

34. Defendant Association also breached its duty to adhere to and enforce the Bylaws by implementing a gate policy which hinders Plaintiffs' full use and enjoyment of the Subject Property and common areas.

35. An actual controversy exists as to the legal effect of Defendant Association's acts and omissions. For the above reasons, Plaintiffs are entitled to a judgment declaring Defendant Association's gate policy to be in violation of the Declaration and Bylaws. Plaintiffs are also entitled to an award of their attorneys' fees and costs as provided by law.

COUNT II
(Injunctive Relief)

36. Plaintiffs reallege and incorporate herein by reference the allegations set forth above.

37. As a result of the aforesaid acts and omissions, Defendant Association has violated the Declaration and Bylaws.

38. Plaintiffs are likely to prevail on the merits and are likely to suffer

irreparable injury if injunctive relief is not granted preventing Defendant Association from continuing to restrict public access to the Subject Property in a manner which threatens the viability of Plaintiffs' permitted agricultural activity. The public interest also strongly favors an injunction.

39. Plaintiffs are thus entitled to permanent, preliminary and temporary injunctive relief prohibiting Defendant Association from violating the Declaration and imposing a requirement that both sides of the gate be left open during agricultural business hours.

COUNT III
(Nuisance)

40. Plaintiffs reallege and incorporate herein by reference the allegations set forth above.

41. By the acts and omissions alleged herein relating to the Subdivision gate, Defendant Association invaded, annoyed, inconvenienced, damaged and disturbed Plaintiffs' free/ordinary use, possession, legal rights and enjoyment of the Subject Property, thus causing a nuisance.

42. As a result of said nuisance, Plaintiffs have suffered damages in an amount to be shown at trial.

WHEREFORE, Plaintiffs pray that judgment be entered in favor of Plaintiffs and against Defendants herein, granting Plaintiffs relief as follows:

1. Declaratory and injunctive relief;
2. General, special, and consequential damages in amounts to be proven at trial;
3. Plaintiffs' costs and reasonable attorneys' fees; and

//

//

4. Such further and other relief as the Court deems just and proper.

DATED: Honolulu, Hawai'i, May 1, 2008.

A handwritten signature in black ink, appearing to read 'C. Yost', is written over a horizontal line.

COLIN A. YOST
Attorney for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

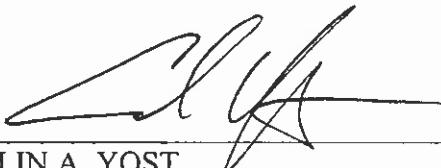
STATE OF HAWAII

CHRISTINA ANNE JENSEN and BERNARD)	CIVIL NO. _____
MICHAEL MORIAZ,)	(Other Civil Action)
))
Plaintiffs,)	DEMAND FOR JURY TRIAL
))
vs.))
))
POAMOHO ESTATES, UNIT I,)	
COMMUNITY ASSOCIATION; DOE)	
INDIVIDUALS 1-15; DOE ENTITIES 1-15,)	
)	
Defendants.)	
_____)	

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues triable of right by jury in this case. This demand is made pursuant to Rule 38, Haw. R. Civ. P.

DATED: Honolulu, Hawai'i, May 1, 2008.



COLIN A. YOST
Attorney for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CHRISTINA ANNE JENSEN and BERNARD)	CIVIL NO. _____
MICHAEL MORIAZ,)	(Other Civil Action)
)	
Plaintiffs,)	SUMMONS
)	
vs.)	
)	
POAMOHO ESTATES, UNIT I,)	
COMMUNITY ASSOCIATION; DOE)	
INDIVIDUALS 1-15; DOE ENTITIES 1-15,)	
)	
Defendants.)	
)	

SUMMONS

STATE OF HAWAII:

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon Cruise & Yost, A Limited Liability Law Company, 49 South Hotel Street, Suite 305, Honolulu, Hawaii 96813, an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This Summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours. A failure to obey this

Summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawaii, MAY 1 - 2008

ALAGAO



CLERK OF THE ABOVE ENTITLED COURT