

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

3	BARBARA ARTHURS,)	
4	Plaintiff,)	
5	vs.)	Civil No. 15-1-238
6	FREDERIC B. WIRICK, et al,)	
7	Defendants.)	

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TRANSCRIPT OF PROCEEDINGS

10 held in connection with the above-entitled cause
11 before The Honorable Greg K. Nakamura, Circuit Court
12 Judge, presiding on the 22nd day of June, 2017, in
13 the City of Hilo, County of Hawaii, State of Hawaii,
14 reported by me, Lisa A. Steinmeyer, Certified
15 Shorthand Reporter No. 514, duly certified under and
16 by virtue of the laws of the State of Hawaii.

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A P P E A R A N C E S

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1 *(whereupon, the following proceedings*
2 *were had:)*

3 THE CLERK: Calling Civil No. 15-1-238,
4 Barbara Arthurs versus Frederic B. Wirick, motion
5 for discovery conference, motion to compel response
6 to discovery and for sanctions, motion for order
7 appointing special master. Please state your
8 appearances.

9 MS. LUKE: Good morning, Your Honor.
10 Michele Luke on behalf of defendant Frederic Wirick.

11 MR. PEREZ-MESA: Good morning, Your Honor.
12 Carlos Perez-Mesa appearing on behalf of defendants
13 Wewers, Stoner, Akana and Greene.

14 MR. HARADA-STONE: Good morning, Your
15 Honor. David Harada-Stone appearing on behalf of
16 defendant Rick Turner.

17 MR. ASHIDA: Good morning, Your Honor.
18 Lincoln Ashida representing the nominal defendant,
19 Orchidland Community Association.

20 MR. FARMER: Good morning, Your Honor.
21 David Farmer on behalf of plaintiff Barbara Arthurs,
22 who is also here.

23 THE COURT: Okay. So good morning. So let
24 me speak a little bit about the motion for
25 appointment of a master. So looks like what is

1 occurring is that there are two groups which purport
2 to constitute the legal board of the Orchidland
3 Community Association, I think, and these groups
4 could be characterized as the Wirick group and the
5 Arthurs group. The DCCA might recognize the Arthurs
6 group as the legitimate board for the Association.
7 Yet on the other hand, what apparently is true is
8 that the Wirick group has access to what purports to
9 be the Association's CU Hawaii account, the only
10 unfrozen account of the Association, so that would
11 mean there is at least one other account that is
12 frozen because of the dispute between the two
13 groups.

14 The road maintenance fees have been collected
15 by the Wirick group presumably and road maintenance
16 has been performed by persons or entities who or
17 which apparently do not have valid contractors'
18 licenses. And the status of the Association's
19 finances apparently are unclear at this time.

20 So what the court is thinking, that the court
21 will appoint a master not to take over the entirety
22 of the Association but to initially undertake an
23 investigation, provide a report as to the current
24 situation regarding the governance of the
25 Association, the road maintenance operation and the

1 financial condition of the Association and if that's
2 murky, provide a recommendation as to how to address
3 getting information regarding that and thereafter
4 make recommendations to stabilize the governance of
5 the Association, make recommendations as to how to
6 address road maintenance in the interim and make
7 recommendations as to how to better understand the
8 financial condition of the Association, and what
9 might be helpful is during this interim that
10 discovery be stayed.

11 Mr. Farmer, you want to respond to the court's
12 thoughts on this?

13 MR. FARMER: Your Honor, we believe -- may
14 I step up here? Your Honor, we believe the court
15 has correctly identified what the facts, operative
16 facts are here, and the proposal that the court has
17 laid out to define the scope of the special master
18 is precisely what my client and her group of people,
19 who have their board and other supporters, fervently
20 want. So with that, I'll leave it to --

21 THE COURT: Okay. So, Miss Luke?

22 MS. LUKE: Your Honor, may I argue from
23 here?

24 THE COURT: Yes.

25 MS. LUKE: Thank you, Your Honor. Your

1 Honor, with regard to the facts as recited or
2 understood by the court, we would like to point out
3 that in the plaintiff, Ms. Arthur's own moving
4 papers at Page 3, which is her introductory section,
5 she identifies the defendants to be officers and
6 directors of its board of directors, and the
7 remedies being sought concern claims for breach of
8 fiduciary duty. Now, this runs somewhat contrary to
9 the argument in furtherance of their motion for
10 special master, that there are two competing boards
11 because inherent in the complaint and inherent in
12 the claims that have been asserted against Mr.
13 Wirick and the other individually named defendants
14 is this proposition that they are, in fact, officers
15 and directors of the board of directors of OCLA and,
16 again, that's at Page 3, the introductory paragraph
17 to this motion.

18 With regards to the request for special
19 master, quite frankly, Your Honor, our concern in
20 reading the body of the motion is that the relief
21 that is being sought is essentially that of a
22 receiver.

23 THE COURT: All right. That may be true,
24 but what I'm trying to do is get a master appointed,
25 rather than a receiver, to undertake an

1 investigation because there are these contrasting
2 views of what is occurring, and there is an apparent
3 need to get, frankly, the Association stabilized.
4 So it's to get some recommendations, and even if the
5 master recommends -- I'm assuming -- well, what I'm
6 trying to do is not undertake wholesale overtaking
7 of the Association but just do those things that are
8 minimally necessary to stabilize the situation and
9 make things better in the future.

10 MS. LUKE: And that's part of --

11 THE COURT: It's not like Paradise Hui
12 Hanalike because that was different.

13 MS. LUKE: And in that matter, contrary to
14 what plaintiff's counsel has represented, that was
15 not resolved through the efforts of a special master
16 and a property manager that was retained over the
17 course of six years and paid over the course of six
18 years. It was resolved by the death of the
19 plaintiff and a dismissal of the complaints. So
20 that case is entirely different.

21 THE COURT: well, okay. We might have a
22 different view because I was involved with
23 negotiations involving -- but, okay. Go ahead.
24 Finish.

25 MS. LUKE: So, Your Honor, as I understand

1 Your Honor's comments, you are not granting the
2 motion with regard to a special master; you're not
3 leaning in that direction with regard to the
4 specific relief?

5 THE COURT: Well, I'm not saying I'm taking
6 a position on the specific relief. I'm not
7 considering that right now. All I'm wanting the
8 master to do is undertake an investigation and make
9 a report. That's all.

10 MS. LUKE: So for clarification, Your
11 Honor, are you exercising Rule 53 sua sponte for the
12 purpose that you defined as opposed to the subject
13 matters that were addressed in the motion?

14 THE COURT: I am thinking that I want to
15 provide 53, Rule 53 type relief without the
16 appointment of a receiver but a master. A receiver
17 might come later.

18 MS. LUKE: And as you've defined it or as
19 I've noted, the areas would be to address the
20 current status of governance, the status of road
21 maintenance issues and the current status of
22 finances?

23 THE COURT: Right, to include perhaps this
24 issue about the past financial issues. So the
25 master might make a recommendation regarding the

1 audit, for example.

2 MS. LUKE: I don't think that we are
3 necessarily opposed, Your Honor, to a special
4 master, a true special master, not a receiver, for
5 very limited purposes if there is proper definition.

6 THE COURT: Right.

7 MS. LUKE: The other concern obviously --
8 and I raise it because Miss Arthurs in her moving
9 papers indicated she did not wish delay by the
10 five-year independent audit we suggested to address
11 the primary issue concerning finances. She did not
12 want to have that audit because of the potential
13 delay in trial.

14 THE COURT: But I see perhaps that a trial
15 delay might be inevitable if I grant the stay of
16 discovery.

17 MS. LUKE: I would agree, Your Honor.
18 Thank you.

19 THE COURT: So that would be the trade-off,
20 I think, for Miss Arthurs.

21 MS. LUKE: The alternative that I would ask
22 the court to consider and, again, we believe that --
23 and we've tried to explain, although admittedly
24 having come into this case fairly recent, I can tell
25 you that factually there are many disputes. I

1 believe that we have shown in our opposition that
2 many of the arguments asserted by Ms. Arthurs are
3 just that. They're unsubstantiated claims which
4 perhaps are designed to confuse the issues. I
5 believe that many of the issues that the court is
6 now concerned with in terms of governance and road
7 maintenance in particular can be addressed by way of
8 substantive motions, quite frankly, and I would ask
9 the court to consider that ahead of appointment of a
10 special master to narrow some of the issues.

11 The financial issues we believe are most
12 appropriately and efficiently dealt with by a
13 forensic audit.

14 Our other concern, Your Honor, quite frankly,
15 are the costs that would be imposed upon the
16 Association as a result of having a special master.

17 So, again, we would strongly urge the court to
18 allow us to proceed within a relatively short period
19 of time on substantive motions first to attempt to
20 narrow some of the issues before the court considers
21 appointment or a necessity of the cost of a special
22 master. Thank you, Your Honor.

23 THE COURT: Okay. So, Mr. Perez-Mesa?

24 MR. PEREZ-MESA: Thank you, Your Honor.

25 I'd just join in all of Miss Luke's arguments.

1 She's already made it clear that we believe a
2 special master is warranted. I will also assert
3 that I think a forensic accountant would make a lot
4 of sense to finally give resolution to whether or
5 not there are or are not any financial improprieties
6 which we, of course, assert that there are not. But
7 I think it's in everyone's best interests to be on
8 the same page and resolve that issue.

9 MS. LUKE: Your Honor, I'm sorry. If I
10 might just add one additional comment. And that is
11 that the Association is already planning a
12 three-year audit and, again, I believe that will
13 largely address the vast majority of the issues that
14 have been raised by Ms. Arthurs.

15 THE COURT: Mr. Ashida?

16 MR. ASHIDA: Nothing further, Judge. Thank
17 you.

18 THE COURT: Mr. Harada-Stone?

19 MR. HARADA-STONE: Nothing to add, Your
20 Honor.

21 MR. FARMER: Your Honor, if I may just for
22 the record.

23 THE COURT: Yes.

24 MR. FARMER: The second amended complaint
25 was filed initially against the board that was in

1 place on June 2nd, 2015. It's been a moving feast
2 since then but, again, these folks are all
3 represented by insurance E&O carriers. So that's
4 the last piece that was inserted in the record, was
5 that they are being sued in their individual
6 capacity, which is totally beyond belief.

7 A forensic audit is expensive, time consuming
8 and we have no estimates even what that might be.
9 For the record, my client is not opposed to if they
10 want to do a forensic audit. She just doesn't want
11 to have to pay for doing their work, and that's the
12 position that we have on that.

13 THE COURT: Okay. So regarding the issue
14 of dispositive motions, I think I should stay those
15 as well because having gone through this a little
16 bit, I don't think that dispositive motions would be
17 helpful at this time. If the master wants to say
18 something like, okay, maybe we should have some
19 dispositive motions heard to address certain issues,
20 then, okay, maybe we can do it that way.

21 So the court will go ahead with its
22 inclination and grant in part the motion for the
23 appointment of a special master. It will be along
24 the lines that the court has discussed already and,
25 Mr. Farmer, can submit a form of the order. You say

1 that you have been in contact with Mr. Yoshida?

2 MR. FARMER: Yes, Your Honor.

3 THE COURT: Anybody have a specific
4 objection to the court speaking to Mr. Yoshida about
5 the possibility of him being the special master?

6 MS. LUKE: Quite frankly, Your Honor, we
7 would prefer to be allowed to suggest more
8 appropriate special masters. Given the particular
9 issues that the court has identified in this case,
10 we do not believe that he is the most appropriate
11 person with specialized knowledge necessary to
12 effect the court's goal.

13 THE COURT: And who is that person or
14 people you have in mind?

15 MS. LUKE: I would need to confer with
16 counsel, and I would ask leave of possibly one week
17 to make that submission as well as submitting
18 credentials.

19 THE COURT: So you think that the defense
20 side and the Association side, you can come up with
21 three names? You can do that jointly?

22 MS. LUKE: Yes, I believe so.

23 THE COURT: Okay, and you can put up three
24 names?

25 MR. FARMER: Yes, Your Honor. And we could

1 probably submit a form of order in the meantime with
2 blanks for the name.

3 THE COURT: Okay.

4 MS. LUKE: And, Your Honor, part of the
5 concern is, as conceded by Ms. Arthurs' counsel in
6 moving documents, they have already made overtures
7 to Mr. Yoshida. We don't know if there are
8 potential conflicts of interest, quite frankly.
9 It's concerning that he's had communications with
10 Ms. Arthurs' counsel. We would obviously prefer
11 someone entirely neutral.

12 THE COURT: Then, Mr. Farmer, you would not
13 have an objection to the court contacting anybody on
14 the list of a total six?

15 MR. FARMER: Absolutely no objections.

16 THE COURT: And on the defense side,
17 Association side, no objections?

18 MR. PEREZ-MESA: No objection.

19 MS. LUKE: No, Your Honor.

20 MR. HARADA-STONE: No.

21 THE COURT: Okay. Realistically I'm not
22 going to be able to deal with this until the week of
23 July 17th. So if you want to provide your input
24 regarding the potential masters by July 14th, that
25 will work for the court at least. Okay? Mr.

1 Farmer, you can work on the form of the order.

2 MR. FARMER: Thank you, Your Honor.

3 THE COURT: Thank you. Well, sorry. There
4 are these other two motions. Because the other two
5 motions might deal with what the master will be
6 dealing with I think, why don't we just put those
7 motions off for a bit.

8 MS. LUKE: That's fine, Your Honor. I have
9 one point of clarification, and I understand that
10 essentially the court is staying active litigation
11 in this matter --

12 THE COURT: Right.

13 MS. LUKE: -- pending the special master's
14 initial review and recommendation.

15 THE COURT: Correct.

16 MS. LUKE: With regards to the audit that
17 the board has arranged for, may that go forward?

18 THE COURT: I think that's the board's
19 choice, yeah. I shouldn't say the board. The
20 group's choice.

21 MS. LUKE: I believe we will go forward
22 with that. Thank you, Your Honor.

23 MR. PEREZ-MESA: One other point, Your
24 Honor, real quickly. We were in the process of
25 retaining a road expert who was supposed to do an

1 inspection on June 7th. He was unable to do that
2 because of an illness to his wife. In light of your
3 ruling that discovery is stayed, I assume we'll have
4 to wait to retain a road expert and do that at a
5 later date?

6 THE COURT: Right. If it's for litigation
7 purposes, it will be better, I think, to see what
8 the master does.

9 MR. PEREZ-MESA: Very good.

10 THE COURT: Thank you.

11 *(whereupon, the proceedings were*
12 *concluded.)*

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C E R T I F I C A T E

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3 STATE OF HAWAII)
4 COUNTY OF HAWAII) ss.
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6 I, Lisa A. Steinmeyer, CSR 514, RPR,
7 CRR, Certified Shorthand Reporter of the Third
8 Circuit Court of Hawaii, do hereby certify that the
9 foregoing 16 pages contain a true and correct
10 transcript of the proceedings held in connection
11 with the aforementioned action; that my stenograph
12 notes were thereafter transcribed and reduced to
13 typewritten form under my supervision, as the same
14 appears herein.

15 I further certify that I am not attorney
16 for or relative to any of said parties, or otherwise
17 interested in the event of said action.

18 WITNESS MY HAND this 26th day of June,
19 2017.

20 /s/ Lisa A. Steinmeyer

21 _____
22 LISA A. STEINMEYER, CSR 514, RPR, CRR
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