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Attorneys for Defendant
FREDERIC B. WIRICK

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

BARBARA ARTHURS,	)	CIVIL NO. 15-1-0238 GKN
	)	(Other)
Plaintiff,)	
vs.	)	DEFENDANT FREDERIC B. WIRICK'S
	)	MEMORANDUM IN OPPOSITION TO
	)	PLAINTIFF'S MOTION FOR ORDER
FREDERIC B. WIRICK; RICKY TURNER;	)	(1) APPROVING AND ADOPTING THE
DONALD J. STONER; TEGEN A. GREENE;	)	SPECIAL MASTER'S REPORT, (2)
ELIZABETH M. WEWERS and GERALD A.	)	APPOINTING MASTER RECEIVER
AKANA,	)	AND (3) FOR LEAVE TO FILE
	)	DISPOSITIVE MOTIONS, FILED
Defendants,	)	JANUARY 19, 2018; DECLARATION OF
	)	MICHELE-LYNN E. LUKE; EXHIBIT "1";
	)	CERTIFICATE OF SERVICE
)	
and)	
)	
ORCHIDLAND COMMUNITY	)	HEARING
ASSOCIATION, INC.)	
	)	DATE: March 1, 2018
	)	TIME: 8:30 a.m.
Nominal Defendant.	)	JUDGE: Hon. Greg K. Nakamura
)	
)	
	)	Trial: April 30, 2018
)	

DEFENDANT FREDERIC B. WIRICK'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR ORDER (1) APPROVING AND ADOPTING THE SPECIAL MASTER'S REPORT, (2) APPOINTING MASTER RECEIVER AND (3) FOR LEAVE TO FILE DISPOSITIVE MOTIONS, FILED JANUARY 19, 2018

Defendant Frederic B. Wirick, by and through his attorneys, hereby submits his Memorandum in Opposition to Plaintiff's Motion for Order (1) Approving and Adopting the Special Master's Report, (2) Appointing Master Receiver and (3) for Leave to File Dispositive Motions, Filed January 19, 2018, pursuant to the provisions of Rules 7(b) and 53, *Hawai'i Rules of Civil Procedure*.

For reasons set forth herein, and as more fully presented during the course of oral argument, Plaintiff's motion must be denied, in its entirety.

This Court appointed Ms. Nancy Cabral as Special Master, for purposing of conducting a factual investigation concerning the Orchidland Community Association ("OLCA") in three limited areas, those being: (1) governance; (2) roadway maintenance; and (3) finances. The Court's order of appointment was filed on July 27, 2017.

Following Ms. Cabral's investigation, a four-page narrative report, was filed with the Court, on December 11, 2017. It did not include any exhibits and did not refer to any supporting documentation. Rather, the report was largely based upon Ms. Cabral's unsubstantiated and conclusory impressions, rather than supporting fact. In many instances, Ms. Cabral's commentary was directly contrary to the extensive factual record with which she was presented. Most importantly, Ms. Cabral's ultimate recommendation, the appointment of a receiver, was well beyond the scope of her limited role as special master, and well outside her area of expertise. Ms. Cabral's report, dated December 4, 2018, appears to best reflect Ms. Cabral's frustration at not obtaining a "win-win" compromise situation for both sides, which was contrary to her directive, but to which she repeatedly referred.

Given the foregoing, Defendants¹ filed a joint motion (“Joint Motion”) seeking to strike portions of Ms. Cabral’s report. The motion, filed on January 19, 2018, is scheduled to be heard contemporaneous to Plaintiff’s pending motion. The Joint Motion identified various deficiencies and inaccuracies in Ms. Cabral’s report and effectively joins the issues that are summarily raised in Plaintiff’s pending motion. For this reason, Defendant Wirick incorporates herein, by reference, the issues and arguments raised in the Joint Motion, in opposing Plaintiff’s motion, and further incorporates, prospectively, its reply memorandum to Plaintiff’s anticipated opposition thereto.

This Court is specifically directed to Exhibit “B” to the Joint Motion, containing copies of extensive information and supporting documentation which was provided to Ms. Cabral during the course of her investigation, by the movants to the Joint Motion.²

Defendant Wirick further opposes Plaintiff’s motion seeking the adoption of Ms. Cabral’s recommendation for appointment of a receiver, and “with full authority over the association”,³ for additional reasons. Plaintiff’s Motion argues, contrary to factual circumstance, that “absent some action the Association members will continue to (sic) in the dark as to the financial affairs of the association,” and that the Association is “in desperate need of a Court-ordered Master Receiver to bring order to its operations and to take control of the OLCA operations and financial

¹ For purposes of convenience, all references to “Defendants” as used herein, are meant to include all named Defendants to this action, with the exception of Mr. Ricky Turner. Mr. Turner and his counsel were apparently not consulted by Ms. Cabral during the course of her investigation and was not consulted with regard to the filing of the Joint Motion,

² In addition, Ms. Cabral was directed to numerous financial statements and other records published to the OLCA website, and to which all OLCA members have ready access. Further still, Ms. Cabal met with OLCA’s bookkeeper, Kenneth Ah Lo, who provided copies of OLCA financial records, to her.

³ Plaintiff’s Memo. in Support of her Motion, at p. 4.

affairs to protect the property and financial interests of its members.”⁴ Both of these dramatic statements, ironically, are contrary to Ms. Cabral’s findings concerning the financial state of OLCA and are otherwise entirely unsupported.

Ms. Cabral met with OLCA’s bookkeeper/accountant, Mr. Kenneth Ah Lo, at length. OLCA’s financial records were made available to her at that, for inspection and inquiry. Ms. Cabral was not only satisfied that all of OLCA’s financial records were accounted for and in order, she also expressed her favor in OLCA’s decision to have OLCA’s finances overseen by Mr. Ah Lo, who she acknowledged had an excellent reputation and was well-respected within the community. This same sentiment was expressed multiple times to Defendants and their counsel, during two separate meetings held with Ms. Cabral. Further still, Ms. Cabral made a similar statement to Plaintiff and her group during a meeting attended by Ms. Cabral, in which Ms. Cabral was introduced and made available to answer questions.

At this stage, there are no financial records to which an owner would otherwise be entitled to review, that have been withheld from Plaintiff or her supporters. Plaintiff has suggested that Defendants have withheld financial records to which OLCA’s members are entitled to review. This is a red-herring argument. The additional financial detail⁵ later requested by Mr. Cabral was simply not available through Mr. Ah Lo’s office, prior to the submission of Ms. Cabral’s report. If this information was deemed essential to Ms. Cabral’s investigation, Ms. Cabral could certainly have requested a second extension of time within which to submit her report. This was not done.

⁴ Plaintiff’s Memo. in Support of her Motion, at p. 4.

⁵ Defendants understand that the additional financial detail that Ms. Cabral belatedly requested from Mr. Ah Lo, prior to filing her report, constituted financial detail which Plaintiff and/or her supporters asked Ms. Cabral to secure for them, at the meeting attended by Ms. Cabral.

Moreover, in reviewing the relief being sought, yet again, by Plaintiff, it is evident that Plaintiff's motives in seeking the appointment of a receiver are disingenuous. There are no substantive concerns regarding the current state of OLCA's governance, roadway maintenance or finances. Ms. Cabral's report concedes that Defendants have been attending to these duties, not Plaintiff. Rather, Plaintiff, a former and disgruntled Board member, is effectively seeking to obviate and undermine the statutory and contractual rights of OLCA members to self-govern, and to push her personal agenda. This is evident in Plaintiff's recitation concerning the powers she has asked the court to impart upon a "receiver."

Among the tasks that Plaintiff would have the court charge to a "receiver" is the revision of OLCA's Charter of Incorporation, its Bylaws, and its Policies and Procedures. Ms. Cabral has not even suggested that OLCA's governing documents are insufficient, contradictory or otherwise in need of such revision. In fact, they are not defective and have served OLCA well, for several years. To the extent that any provision of these governing documents may benefit from further change, such a decision properly lies within the discretion of the owners, following an appropriate motion and a sufficient approving vote. Similarly, all other changes that Plaintiff has suggested a receiver mandate, are matters which owners have both statutory and contractual rights to exercise on their on behalf. Plaintiff's request for receiver improperly suspends those rights and essentially seeks changes she would like to implement by legislating the same, under the guise of a receiver.

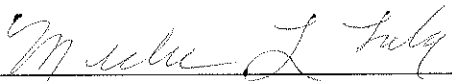
Further, it is of grave concern that Plaintiff and her supporters, who clearly promoted their desire for the appointment of a receiver, discussed the possibility of Ms. Cabral serving in that capacity, with Ms. Cabral. This concern is heightened, under the circumstances, where Ms. Cabral unequivocally represented to Defendants and their counsel, in her initial meeting with them, that receivership was not being considered by her, and assured Defendants that she was

just looking into the three areas identified by the judge in his order. This turnabout, following Plaintiff's suggestion that her group would support Ms. Cabral to serve as the receiver and further suggesting how Ms. Cabral might be paid for such services,⁶ raises, at a minimum, issues of conflicted interests.⁷

Finally, independent of the foregoing, Plaintiff notes in her motion that Ms. Cabral's report did not indicate a need for dissolution of OLCA. That being the case, there is absolutely no statutory or other mechanism available to the Court, upon which the Court could, much less should, appoint a receiver.

Based upon the foregoing, and upon oral argument to be presented at hearing, Defendant Wirick respectfully urges this Court to deny, in its entirety, Plaintiff's instant motion.

DATED: Honolulu, Hawaii, 2/21/18.



MICHELE-LYNN E. LUKE
SAORI TAKAHASHI
Attorneys for Defendant
FREDERIC B. WIRICK

⁶ Ms. Cabral's report suggests that payment of a receiver (presumably herself) could be funded from collection of unpaid debt owed to OLCA in the amount of \$600,000, as of July, 2017, is disturbing for a number of reasons. First, this debt has accrued over an extensive period of time and has largely been written off as uncollectible debt by the Association, with the advise and support of Mr. Ah Lo and other financial consultants. This debt was been previously referenced by Plaintiff in this litigation. Second, it is evident that Ms. Cabral's reference to this debt, as a possible source of payment for a receiver's fees was at the suggestion of Plaintiff and without the benefit of any independent investigation by Ms. Cabral. In fact, the appointment of a receiver would create an unnecessary and substantial financial burden to all OLCA members.

⁷ Even if, *arguendo*, the Court were to appoint a receiver, Ms. Cabral would not be an appropriate candidate.

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

BARBARA ARTHURS,) CIVIL NO. 15-1-0238 GKN
) (Other)
 Plaintiff,)
)
 vs.) DECLARATION OF
) MICHELE-LYNN E. LUKE
)
 FREDERIC B. WIRICK; RICKY TURNER;)
 DONALD J. STONER; TEGEN A. GREENE;)
 ELIZABETH M. WEWERS and GERALD A.)
 AKANA,)
)
 Defendants,)
)
)
)
 and)
)
 ORCHIDLAND COMMUNITY)
 ASSOCIATION, INC.)
)
)
)
 Nominal Defendant.)
)
 _____)

DECLARATION OF MICHELE-LYNN E. LUKE

I, MICHELE-LYNN E. LUKE, declare and affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and is based upon personal knowledge unless stated otherwise:

1. I am one of the attorney of records for Defendant FREDERIC B. WIRICK and make this declaration based on personal knowledge.
2. The factual statements made within the attached memorandum in opposition to Plaintiff's pending motion are based upon personal knowledge, to the extent they concern events which occurred during the course of two meetings held with Defendants, at Ms. Cabral's offices.

Specifically, during the first of two meetings with Ms. Cabral, there was an initial discussion concerning the background of this case and Plaintiff's attempt to place OLCA into receivership. During that exchange, Ms. Cabral stated, unequivocally, that she was considering receivership for OLCA. At no time subsequent time did she indicate to Defendants or to counsel undersigned, that had concerns regarding the governance, roadway maintenance or finances of OLCA, much less that she felt there was any basis to consider the appointment of a receiver.

3. During both meetings with Ms. Cabral, OLCA Board members discussed OLCA's governing documents, including OLCA's Bylaws. In that context, several Board members took substantial time in reviewing the duties of the Board, efforts that were being made and promoted to "grow" the Association and greater involvement by members in the governing process, including the use of proxies. Defendants also explained, in detail, that they had made a point of expanding roadway maintenance efforts to include, within the same 12-month period, services to all of OLCA's road, including those along cul-de-sac and other remote areas. This had prompted positive feedback from the community, and particularly from owners whose roads had either never been serviced or had not been serviced for a long time. With regard to Plaintiff and her supporters, Defendants/OLCA Board members acknowledged that these individuals were part of the Association (assuming payment of their fees) and had the same rights and responsibilities as other members of community. With regard to those who had decided to withhold payment of their fees to the Association, Defendants/OLCA Board members advised Ms. Cabral that they had been communicating with Mr. Ah Lo, who in turn had been working with these owners, to assure them that their fees were being properly credited and used and to work with them in bringing their accounts current. This included the waiver of related penalties and interest. In

short, there were no communications between Ms. Cabral and Defendants/OLCA Board members, during either of the two meetings had, in which any Defendant or Board member expressed a cavalier attitude with regard to the adherence of OLCA's governing documents, or with respect to their obligation to the Association to properly manage the business of OLCA.

4. During the course of meetings with Ms. Cabral, there was discussion concerning whether the County allowed associations, under certain circumstances to use unlicensed contractors for roadway maintenance. Notwithstanding, Defendants/OLCA Board members unequivocally stated to Ms. Cabral that in spite of this apparent exception, the Association was now, and would continue to, use licensed contractors for their roadway work.

5. During the course of Defendants/OLCA Board members' interaction with Ms. Cabral, extensive written material was provided to her. That material has been identified as Exhibit "B" to Defendants' Joint Motion, seeking to strike portions of Ms. Cabral's report and her recommendation. In addition, Ms. Cabral was made aware, several times over, of extensive financial and other information published on OLCA's website and available to all owners.


6. During the course of the second meeting with Ms. Cabral, she stated that she had a very good meeting with Mr. Ah Lo, that everything appeared to be in order, that it was great that OLCA was using an independent bookkeeper; that she did not personally know Mr. Ah Lo but knew that he was well-respected in the community; and that she would definitely be recommending to the judge that OLCA continue to use an independent bookkeeper. She did not express any concern, whatsoever, regarding OLCA's finances.

7. Attached hereto as Exhibit "1" is a true and correct copy of the Declaration of Kenneth Ah Lo, dated February 21, 2018, concerning his interaction with Ms. Cabral. The

original of this Declaration will be filed under separate cover, as soon as it is received by counsel undersigned.

I DECLARE UNDER PENALTY OF LAW THAT THE FOREGOING IS TRUE AND CORRECT.

Dated: Honolulu, Hawaii, February 21, 2018.


MICHELE-LYNN E. LUKE

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

BARBARA ARTHURS,) CIVIL NO. 15-1-0238 GKN
) (Other)
 Plaintiff,)
 vs.) DECLARATION OF KENNETH
) AH LO
)
 FREDERIC B. WIRICK; RICKY TURNER;)
 DONALD J. STONER; TEGEN A. GREENE;)
 ELIZABETH M. WEWERS and GERALD A.)
 AKANA,)
)
 Defendants,)
)
)
)
 and)
)
 ORCHIDLAND COMMUNITY)
 ASSOCIATION, INC.)
)
)
 Nominal Defendant.)
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DECLARATION OF KENNETH AH LO

I, KENNETH AH LO, declare and affirm under penalty of perjury that the statements made herein are true and correct to the best of my personal knowledge, unless otherwise stated:

1. I am the sole owner and President of Data Processing Services, Inc. ("DPS"), which provides accounting and tax services.

2. On May 1, 2015, I was retained by the Orchidland Community Association ("OLCA"), to perform accounting services on behalf of OLCA. Since that time and up to the present, I have continually provided these accounting services, through DPS.

EXHIBIT "1"

3. On or about October 27, 2017, I met with Ms. Nancy Cabral, at her office. To my understanding, at Ms. Cabral's request, the meeting was also attended by OLCA's attorney, Lincoln Ashida. Beforehand, I was told that Ms. Cabral was investigating the status of OLCA's accounts and finances, on behalf of the court and that the OLCA Board had authorized me to meet with Ms. Cabral, provide her with accounting and financial information, and answer any questions she had concerning the handling and status of OLCA's finances.

4. For purposes of my meeting with Ms. Cabral, I brought a binder containing extensive information on OLCA's finances, which I left with her. The meeting lasted approximately two hours. In addition to reviewing OLCA's specific finances, we also discussed the type and extent of my services for OLCA, which includes receiving payments from owners for their roadway maintenance fees; overseeing accounts receivable and payable; my involvement in budgeting and fee scheduling; and my role in vetting, counting and recording election results. Ms. Cabral did not express any concern regarding the status of OLCA's finances and seemed very pleased with my involvement as OLCA's accountant.

5. With regard to the collection of fees from owners, I told Ms. Cabral that I had been working with a number of owners to bring them current on their fees. Many had indicated that they had stopped paying fees because of the lawsuit that was filed and the uncertainty of whether their fees would be properly credited and applied. After giving these owners assurances that all fees were in fact being received at my office and properly credited by me, these owners have brought their accounts current. In doing so, and with the OLCA Board's consent, we have also been able to waive certain penalties and interest accrued, further encouraging them to bring their accounts current. I advised Ms. Cabral that I speak with a number of owners directly, which can be time consuming but is important, to answer any questions or concerns they have regarding the receipt and application of their fees.

6. At the end of the meeting, Ms. Cabral stated that she was satisfied that everything was accounted for and that she was glad that OLCA was using an independent accountant for its services. At that time, she did not ask for any additional information or express any concerns.

7. Sometime in late November, 2017, Ms. Cabral contacted me requesting that I provide additional financial detail. I told her that, because of the time and associated cost in locating and pulling the financial detail she was requesting, I would have to obtain approval from OLCA's Board. I then advised the OLCA Board of Ms. Cabral's request for additional financial detail. Shortly after my request, the OLCA Board approved the expenditure and I began locating the additional information requested. During this process, however, I was told that Ms. Cabral had already submitted her report. The additional detail, which further supports the documents already provided to Ms. Cabral, has been copied and set aside in the event it is still needed in the future.

I declare under penalty of law, that the foregoing is true and correct.


KENNETH AH LO

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

BARBARA ARTHURS,) CIVIL NO. 15-1-0238 GKN
) (Other)
Plaintiff,)
)
vs.) CERTIFICATE OF SERVICE
)
FREDERIC B. WIRICK; RICKY TURNER;)
DONALD J. STONER; TEGEN A. GREENE;)
ELIZABETH M. WEWERS and GERALD A.)
AKANA,)
)
Defendants,)
)
)
)
and)
)
ORCHIDLAND COMMUNITY)
ASSOCIATION, INC.)
)
)
)
Nominal Defendant.)
)
_____)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served upon the following, as indicated

below, on February 21, 2018:

DAVID C. FARMER, ESQ. (Hand Delivery)
Attorney at Law
225 Queen Street, Suite 15A
Honolulu, Hawaii 96813

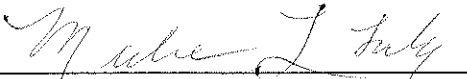
TIMOTHY J. HOGAN, ESQ. (Hand Delivery)
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Honolulu, Hawaii 96813

Attorneys for Plaintiff
BARBARA ARTHURS

DAVID R. HARADA-STONE, ESQ.
Tom Petrus & Miller LLC
1164 Bishop Street, Suite 650
Honolulu, Hawaii 96813
Attorney for Defendant
RICKY TURNER

(Hand Delivery)

DATED: Honolulu, Hawaii, February 21, 2018.


MICHELE-LYNN E. LUKE
SAORI TAKAHASHI
Attorneys for Defendant
FREDERIC B. WIRICK