

Tsukazaki Yeh & Moore
ATTORNEYS AT LAW
A Limited Liability Law Company

85 W. Lanikaula Street Hilo, Hawaii 96720-4199
Telephone: (808) 961-0055 FAX (808) 969-1531

2007-01-000005 /
R. BEN TSUKAZAKI
rbt@lava.net
THOMAS L.H. YEH
tly@lava.net
MICHAEL W. MOORE
mmoore@lava.net
JAMAE K.K. KAWAUCHI
jkk@lava.net

NOV 20 5 00 12 08
RECEIVED
COUNTY OF HAWAII
NOV 15 2007
November 15, 2007

Clarence A. Medeiros, Jr.
86-3672 Government Main Road
Captain Cook, Hawaii 96704

Re: Ki'ilae Farms Subdivision

Dear Mr. Medeiros:

This responds to your letter to Alan Livingston dated October 22, 2007, on behalf of Mr. Livingston and his principal Ki'ilae Estates, LLC.

In your letter, you allege that you have an undivided interest in Grant 1575, which is part of the lands comprising the Ki'ilae Farms Subdivision at Kauleoli, South Kona, and that you do not consent to the subdivision. You reference a deed which you recorded in the Bureau of Conveyances in January 2007, in which you, as Grantor, purportedly conveyed an interest in Grant 1575 to yourself as trustee of your personal trust. You further threaten Mr. Livingston that he will be in violation of certain laws governing real estate brokers if he does not disclose to potential purchasers of lots in the subdivision of your alleged interest in the property, the existence of two trails, and the existence of burials within the subdivision.

As you are aware, you have been asserting that you have an ownership interest in this property for many years. In April 2000, Ki'ilae Estates, LLC was conveyed title to the property and Title Guaranty of Hawaii, Inc. issued a title insurance without any exception concerning your alleged interest. In 2001, Ki'ilae Estates, LLC retained the services of Title Guaranty of Hawaii, Inc. to examine and research the validity of your assertions. At that time, you were invited to present any documentary evidence which supported your claim, and you were invited to personally meet with representatives of Ki'ilae Estates and Title Guaranty to address your claim. You declined to do so. Nevertheless, Title Guaranty extensively examined your claim and found it to be without merit.

You have alleged that you have an undivided interest in Grant 1575 as a descendant of Henry Clark, who was the owner of these lands when he passed away in 1866 and his title was inherited by his siblings. You claim that Clark had two children by two different women. You claim that Clark was also known as Kaelemakule, and under this name married Kahikoku (w), with whom he sired a daughter named Kaehamalaole Kaelemakule. You claim that Kaehamalaole is your great great grandmother, that she married John Mokuohai, and they had a daughter, Abigail, who is your great grandmother.

035500

Clarence A. Medeiros, Jr.
November 15, 2007
Page 2

In researching your claim, Title Guaranty retained the services of Edith McKinzie, a recognized expert in Hawaiian land title and genealogy. Ms. McKinzie researched the genealogy of Henry Clark. She was unable to locate any documentation which evidenced that Henry Clark was known as Kaelemakule or Elemakule, that Clark had been married to Kahikoku, that Clark and Kahikoku had a legitimate daughter named Kaehamalaole Kaelemakule, that Kaehamalaole was married to John Mokuohai, or that Kaehamalaole and John Mokuohai had a legitimate daughter named Abigail Mokuohai. Ms. McKinzie signed an affidavit affirming this.

Title Guaranty also reviewed sworn testimony and various documents provided by your father, Clarence Medeiros, Sr., in two quiet title actions in which he was asserting an interest in other lands in South Kona owned by McCandless Ranch (Ki'ilae Estates' predecessor in interest of Grant 1575). In a deposition in 1988, your father testified that his grandmother was Abigail Apikaila Mokuohai Puhalahua, and that Abigail's parents were John Mokuohai and Kamahana Hanawahine (not Kaehamalaole). Your father also produced a genealogy chart in that case which indicated Kamahana as the mother of Abigail.

You claim your interest in Grant 1575 by way of a deed from your father in 1988, in which he conveyed to you "[a]ll kuleanas, Land Commission Awards, Royal Patent Grants and any other titles within the boundaries of [Honokua] ahupuaa and within the State of Hawaii; and all Grantors [sic] interest and undivided interest in the Island of Hawaii and in the entire State of Hawaii." Yet your father's own testimony under oath refutes your claim of an interest in Grant 1575. Your father's deed, and your deed to your trust in 2007, do not in themselves establish that you have any legal interest in Grant 1575.

If you have any information or documentation which establishes that you do in fact have a legal interest in the property, please provide same for our review and consideration.

As to your claims concerning the validity of the subdivision approval issued by the County of Hawaii Planning Director for Ki'ilae Farms Subdivision, you are well aware that you raised these claims in your appeal of the issuance of tentative subdivision approval in 2004, and they were all considered and determined to have no merit by the County of Hawaii Board of Appeals.

Specifically, with respect to your claim that subdivision approval was in violation of Hawaii County Code Section 23-63(7), *i.e.* that a title report should have been submitted rather than a title insurance policy, in the *Hearing Officer Findings of Fact, Conclusions of Law, Decision and Recommended Order* dated September 30, 2005, which were adopted by Board of Appeals in its decision to uphold the Planning Director's issuance of tentative subdivision approval, the Board ruled that "[t]he Planning Director's approval was consistent with the requirements of the

Clarence A. Medeiros, Jr.
November 15, 2007
Page 3

subdivision code regarding title, as sufficient information was provided to the Director regarding title.” You did not appeal this finding of the Board and your attempt to raise this issue at this time is frivolous.

Concerning your claims regarding two historic trails, these trails were identified as ancient trails and designated for preservation in the Archaeological Preservation Plan prepared in connection with the subdivision, which has been approved by the State Historic Preservation Division of the Department of Land and Natural Resources (“SHPD”). Na Ala Hele was apparently unaware of this when it issued its April 2, 2007 memo, and has since been advised that the trails will be preserved. Your claims in this regard are misleading and disingenuous.

With respect to your claims concerning burials, you are well aware that a Burial Treatment Plan for the property has been approved by the Hawaii Island Burial Council. You asserted the same claims of unidentified burials in your appeal of tentative subdivision approval, and they were found to be without merit. Specifically, the Board of Appeals made the following findings of fact/conclusions of law:

Medeiros [Clarence A. Medeiros, Jr.] asserts that a burial cave, designated as Site 23200 in the Archaeological Inventory Survey and Burial Treatment Plan, contains burials that are not identified. Despite ample opportunity to do so, Medeiros never brought this information to the attention of Dr. Rechtman [Ki`ilae’s archaeologist] prior to the approval of the Burial Treatment Plan by the Hawaii Island Burial Council and DLNR-SHPD.

Medeiros had numerous opportunities to present evidence of burial and other historic sites to the Applicant [Ki`ilae Estates, LLC] and its representatives, to DLNR-SHPS [sic], and to the Burial Council prior to the issuance of tentative subdivision approval, but either refused or has been unable to do so.

Medeiros was first made aware that the Hawaii Island Burial Council was considering a Burial Treatment Plan for the proposed subdivision by public notice on or about April, 2001.

Medeiros was interviewed by Kepa Maly concerning his knowledge of the property in May 2001. Medeiros did not provide

Clarence A. Medeiros, Jr.
November 15, 2007
Page 4

Mr. Maly with any information concerning burials on the property at that time, except for one burial in Kiilae near the National Park.

Medeiros spoke and met with Dr. Robert Rechtman on several occasions, including at Medeiros' home in North Kona. Medeiros did not take those opportunities to communicate to Dr. Rechtman his concerns about burials on the property.

Medeiros submitted a letter to DLNR-SHPD on or about December 5, 2001 concerning the proposed development of the property. He did not raise any concerns about burials on the property in this letter. His sole concern was with his claims concerning title to Kauleoli.

Medeiros submitted a letter to the Hawaii Island Burial Council on or about December 19, 2001 concerning the proposed development of the property. He did not raise any concerns about unidentified burials on the property in this letter. His sole concern was with his claims concerning title to Kauleoli.

The Hawaii Island Burial Council discussed Medeiros' claims concerning title to Kauleoli at its meeting on December 20, 2001. There was no discussion concerning any information about burials regarding Medeiros' claim.

Medeiros submitted a letter to the Hawaii Island Burial Council on or about April 16, 2002. He expressed concerns about the title to the property and also stated in the letter that there were many burials on the property that were not being addressed by the developer.

Medeiros claims that the Burial Treatment Plan for the property fails to identify at least 80 burials on the property. Medeiros will not disclose the location of these burials to the Applicant, but alleges that he identified the location of these burials to the Hawaii Island Burial Council on August 19, 2004 and on April 10, 2005, after tentative subdivision approval and after the approval of the Burial Treatment Plan.

Clarence A. Medeiros, Jr.
November 15, 2007
Page 5

Medeiros was given many opportunities during the extensive consultation process associated with the proposed subdivision to disclose significant historic sites that he knew about. He indicated during both informal and formal interviews that he knew of no such sites within the project area. It was only after the subdivision approval was granted that he came forward claiming knowledge of such sites.

Dr. Rechtman testified that almost all of the families from the area were involved in the consultation process, including Medeiros, and that two [sic] large public consultation meetings were held relating to burials.

Dr. Rechtman testified that the later discovered burials will be treated in connection with any proposed development of the land where they are located, as they are outside the project development area.

Prior to the issuance of tentative subdivision approval, the Applicant commenced an extensive archaeological inventory survey prepared by Rechtman Consulting for the subject property, together with a detailed archival search of the archaeological, cultural and historical literature, and a comprehensive oral history interview program.

As conditions of tentative subdivision approval, the Applicant is required to implement the Archaeological Preservation Plan, including any conditions or modifications required by SHPD, and to implement applicable conditions of the approved Burial Treatment Plan.

Pursuant to State law, HRS Chapter 6E, at any site where burials are discovered or are known to be buried, the remains and associated burial goods shall not be moved without the approval of the Department of Land and Natural Resources, and shall be preserved in place until compliance with Chapter 6E.

Clarence A. Medeiros, Jr.
November 15, 2007
Page 6

Again, you did not appeal the decision of the Board of Appeals with respect to your claims of unidentified burials, and the Board found these claims to be without merit.

In summary, your attempt to intimidate Mr. Livingston is based upon unsubstantiated, frivolous and discredited claims. Your efforts in this regard are a form of harassment. If you continue to attempt to interfere with Ki'ilae Estates, LLC lawful development and sales of the lots within the subdivision, Ki'ilae Estates, LLC will take all necessary steps to protect its interest.

Very truly yours,

TSUKAZAKI YEH & MOORE

A handwritten signature in black ink, appearing to read 'Michael Moore', with a long horizontal flourish extending to the right.

MICHAEL MOORE

xc: Martin Quill, Ki'ilae Estates, LLC
Alan Livingston
✓ Christopher Yuen, Planning Director, County of Hawaii
Frank DeMarco, Department of Public Works, County of Hawaii
Kaleo Paik, SHPD-DLNR
Laura H. Thielen, DLNR
Linda Smith, Sr. Policy Advisor, Office of the Governor
Calvin Kimura, REB-DCCA
Danielle Thompson, RICO (Kona)-DCCA