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FILED
CIRCUIT COURT OF
THE THIRD CIRCUIT
STATE OF HAWAII

2010 OCT 11 AM 11:30

CLERK L. GIBSON

Attorneys for Plaintiff
KEAHI YOUNG, TRUSTEE OF THE
PRISCILLA C. YOUNG TRUST

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

KEAHI YOUNG, TRUSTEE OF THE
PRISCILLA C. YOUNG TRUST,

Plaintiff,

v.

KUMUKOA (w), aka EMILY KUMUKOA
KEAKUANUU OHIA; et al.,

Defendants.

CIVIL NO. 08-1-0087 (GKN)
(Other Civil Action)

**ORDER (1) GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT RE QUIETING TITLE AS
TO HEIRS OF KEKUANU (K) FILED
MARCH 4, 2010 and (2) DENYING
DEFENDANT PRO SE COLBURN V.
OHIA'S MOTION FOR AMENDED
SUMMARY JUDGMENT FILED
MARCH 11, 2010; EXHIBITS "A"-"F"**

Hearing:

Date: April 1, 2010
Time: 8:00 a.m.
Judge: Honorable Greg K. Nakamura

Hearing:

Date: April 20, 2010
Time: 8:30 a.m.
Judge: Honorable Greg K. Nakamura

Supplemental Hearing:

Date: June 24, 2010
Time: 9:30 a.m.
Judge: Honorable Greg K. Nakamura

I hereby certify that this is a full, true and correct
copy of the original on file in this office.

L. Gibson

Clerk, Third Circuit Court, State of Hawaii

**ORDER (1) GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT RE
QUIETING TITLE AS TO HEIRS OF KEKUANU (K) FILED MARCH 4, 2010
and (2) DENYING DEFENDANT PRO SE COLBURN V. OHIA'S MOTION FOR
AMENDED SUMMARY JUDGMENT FILED MARCH 11, 2010**

Plaintiff's Motion for Summary Judgment Re Quieting Title as to Heirs of Kekuanu (k) ("Plaintiff's Motion") came on for hearing before the Honorable Greg K. Nakamura on April 1, 2010 at 8:00 a.m. Present at the hearing were Philip J. Leas, Esq. for Plaintiff KEAHI YOUNG, who was also present, Francis Hogan, Esq. for Defendants SAMUEL KAMELAMELA, JOHN KAMELAMELA, KAREN KAMELAMELA, CYD KAMELAMELA and SAMUEL KAMELAMELA, Jamae Kawauchi, Esq. for Defendants CHARLES A. K. KAMOHAI and RUDOLPH KAMOHAI, and Pro Se Defendants GARY G. KUIKAHI, HARRY KUIKAHI, KIM KUIKAHI, LANA LANCASTER and COLBURN V. OHIA. No other parties made an appearance. Parties made their arguments and the Court took the Motion under advisement.

Defendant Pro Se Colburn V. Ohia's Motion for Amended Summary Judgment ("Ohia's Motion") came on for hearing on April 20, 2010 at 8:30 a.m. Present at the hearing were W. Keoni Shultz, Esq. for Plaintiff KEAHI YOUNG, who was also present, Jamae Kawauchi, Esq. for Defendants CHARLES A. K. KAMOHAI and RUDOLPH KAMOHAI, and Pro Se Defendants GARY G. KUIKAHI and COLBURN V. OHIA. No other parties made an appearance. Parties made their arguments and the Court took the Motion under advisement.

A further hearing was held before the Honorable Greg K. Nakamura on June 24, 2010 at 9:30 a.m. Present at the hearing were W. Keoni Shultz, Esq. for Plaintiff KEAHI YOUNG, who was also present, Jamae Kawauchi, Esq. for Defendants CHARLES A. K. KAMOHAI, and RUDOLPH KAMOHAI, who was also present, and Pro Se Defendants GARY G. KUIKAHI and COLBURN V. OHIA. No other parties made an appearance.

Based upon the records and files in this matter and the arguments made and heard at the hearings, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant Pro Se Colburn V. Ohia's Motion for Amended Summary Judgment filed March 11, 2010 is DENIED.

Based upon the records and files in this matter and the arguments made and heard at the hearings, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion for Summary Judgment Re Quieting Title as to Heirs of Kekuanu (k) filed March 4, 2010 is GRANTED.

IT IS HEREBY ORDERED that Royal Patent Grant No. 1017, issued to KEKUANU (k) also known as KEKUANUU (k), on December 25, 1852, containing an area of 81.4 acres, more or less, situate at Kanekiki, Kapoho, Puna, Island, County and State of Hawaii, within the lands identified as Tax Map Key No. (3) 1-4-003-002 and Tax Map Key No. (3) 1-4-005-017 be partitioned and sold as follows:

FINDINGS OF FACT

Based on the record and files herein, the Court finds as follows:

1. This case covers all of those certain parcels of land described in and covered by Royal Patent Grant No. 1017, issued to KEKUANU (k) also known as KEKUANUU (k), on December 25, 1852, containing an area of 81.4 acres, more or less, situate at Kanekiki, Kapoho, Island, County and State of Hawaii, within the lands identified as Tax Map Key No. (3) 1-4-03-2 ("Parcel 2") and Tax Map Key No. (3) 1-4-05-17 ("Parcel 17") (Parcels 2 and 17 are collectively "Grant 1017"). Grant 1017 is owned and vested in the following persons as co-tenants in the following shares:

SAMUEL L. KAMELAMELA	1/8
SAMUEL KAMELAMELA	1/32
JOHN KAMELAMELA	1/32

KAREN KAMELAMELA	1/32
CYD LEI KAMELAMELA	1/32
PLAINTIFF	1110/3456
COLBURN V. OHIA	1/8
ALBERT N. OHIA	1/8
ALMA OSYIN	30/576
LUCY K. KUIKAHI	66/3456
HARRY A. KUIKAHI III	66/20736
GARY G. KUIKAHI	66/20736
LARRY K.F. LOA	66/20736
LANA R. LANCASTER	66/20736
KIM K. KUIKAHI	66/20736
KALAUNANI M. KUIKAHI	66/20736
LU CRISTOBAL (w)	114/82944
HERBERT H. MAJAMAY SR. HEIRS	114/82944
NICHOLAS VOLKOV	114/580608
CLAYTON VOLKOV	114/580608
HILTON BERIDO	114/580608
NEAL BERIDO-NITTA	114/580608
ROSALINE TAKATA	114/580608
SANDRA BERIDO	114/580608
GALE ROSA	114/580608
EMILY GALARIO aka ROSITA GALARIO	114/82944
LORI MAE KUOHA	114/41472
ALFRED KEAHILIAU LORILLA	114/41472
AUA WANA	342/46656
KALIA WANA	342/46656
ROSE WANA	342/46656
RUDOLPH LANUI KAMOHAI	1/18

2. The land comprising Grant 1017 is largely unimproved lowland rainforest located just north of and partially covered by the 1960 Kapoho lava flow where it enters the ocean north of Cape Kumukahi.

3. Grant 1017 consists of Parcel 2 (61.3 acres more or less) and Parcel 17 (22.35 acres more or less) and the current applicable tax maps are annexed hereto as Exhibits "A" and "B."

4. The March 1937 survey map of William M. Kamau, annexed hereto as Exhibit "C", reflects the subdivision of Grant 1017 into six 10.23 acre lots and one 20 acre lot. This subdivision is also shown on the tax maps. See Exhibits "A" and "B."

5. The family of Defendants SAMUEL L. KAMELAMELA, SAMUEL KAMELAMELA, JOHN KAMELAMELA, KAREN KAMELAMELA, and CYD LEI KAMELAMELA (collectively the "Kamelamelas") have occupied and used Parcel 17 and paid the taxes on the same for over 80 years. In addition, the Kamelamelas' great grandparent acquired a two acre portion of Grant 1018 which is included in Parcel 2 and which allows Grant 1017 access to the public highway.

6. The portion of Grant 1017 within Parcel 17 is susceptible to partition in kind from the rest of Grant 1017 upon condition that an easement, conforming to County of Hawaii subdivision standards, for access and utilities serving Parcel 2 be reserved along the southern border of Parcel 17 as depicted on Exhibit "D" and described in Exhibit "E" annexed hereto. The Kamelamelas wish to be allocated all of Parcel 17 and are willing to agree to the reservation of that easement in favor of the lots in Parcel 2.

7. If any of the foregoing findings would more properly be classified as a conclusion of law, it shall be treated as a conclusion of law.

CONCLUSIONS OF LAW

1. Haw. Rev. Stat. § 668-1 provides in pertinent part:

When two or more persons hold or are in possession of real property . . . as tenants in common. . . any one or more of such persons may bring an action. . . for a partition of the property, according to the respective rights of the parties interested therein, and for a sale of the same or a part thereof if it appears that a partition cannot be made without great prejudice to the owners. The several circuit courts shall have power, in any action for partition, to proceed according to the usual practice of courts of equity in cases of partition, and according to this chapter in enlargement thereof.

Haw. Rev. Stat. § 668-1 (emphasis added).

2. Haw. Rev. Stat. § 668-7 provides in pertinent part:

The court shall have power. . .

(4) To cause the property to be equitably divided between the parties according to their respective proportionate interests therein, as the parties agree, or by the drawing of lots;

(5) To set apart any particular portion or portions of land to any particular party or parties who by prior occupation or improvement or otherwise may be equitably entitled thereto, and make any proper adjustment or equalization thereof by the sale of other portions and the application of the proceeds for such purpose, or as a condition of any such particular allotment to require payment by the parties of any value of the portion set apart to them in excess of their proportionate interest in the value of the whole property;

(6) To divide and allot portions of the premises to some or all of the parties and order a sale of the remainder, or to sell the whole, where for any reason partition in kind would be impracticable in whole or in part or be greatly prejudicial to the parties interested, and by judgment or judgments to invest the purchaser or purchasers with title to any property sold, and use the proceeds to equalize the general partition;

Haw. Rev. Stat. § 668-7.

3. As provided in Haw. Rev. Stat. § 668-7(6), the Court may allot part of Grant 1017 to some owners and order the sale of the remaining portions of Grant 1017.

4. Given the Kamelamelas' long-standing connection to Parcel 17, their belief that they owned the same, their willingness to agree to the reserved easement over Parcel 17 to serve the lots in Parcel 2, the absence of prejudice to other parties, and the Kamelamelas' desire to retain Parcel 17, it is just and equitable to award Parcel 17 to the Kamelamelas subject to the easement for access and utilities serving the lots in Parcel 2 along the southern border of Parcel 17 as depicted on Exhibit "D" and described in Exhibit "E" annexed hereto. Accordingly, the Commissioner shall convey Parcel 17 to the Kamelamelas as tenants in common subject to the easement as aforesaid in the following shares:

Parcel 17

SAMUEL L. KAMELAMELA	1/2
SAMUEL KAMELAMELA	1/8
JOHN KAMELAMELA	1/8
KAREN KAMELAMELA	1/8
CYD LEI KAMELAMELA	1/8

5. After satisfaction of the Kamelamelas' interests by allotting them Parcel 17, fee simple title to the balance of Grant 1017, comprised of Parcel 2, is vested in the following persons in the following shares as tenants in common:

Parcel 2

PLAINTIFF	370/864
COLBURN V. OHIA	1/6
ALBERT N. OHIA	1/6
ALMA OSYIN	10/144
LUCY K. KUIKAHI	22/864
HARRY A. KUIKAHI III	22/5184
GARY G. KUIKAHI	22/5184
LARRY K.F. LOA	22/5184
LANA R. LANCASTER	22/5184
KIM K. KUIKAHI	22/5184
KALAUNANI M. KUIKAHI	22/5184
LU CRISTOBAL (w)	38/20736
HERBERT H. MAJAMAY SR. HEIRS	38/20736
NICHOLAS VOLKOV	38/145152
CLAYTON VOLKOV	38/145152
HILTON BERIDO	38/145152
NEAL BERIDO-NITTA	38/145152
ROSALINE TAKATA	38/145152
SANDRA BERIDO	38/145152
GALE ROSA	38/145152
EMILY GALARIO aka ROSITA GALARIO	38/20736
LORI MAE KUOHA	38/10368
ALFRED KEAHILIAU LORILLA	38/10368
AUA WANA	114/11664
KALIA WANA	114/11664
ROSE WANA	114/11664
RUDOLPH LANUI KAMOHAI	2/27

6. Given the large number of owners of Parcel 2, the lack of prior occupancy to connect any of the owners to any particular lot(s) within Parcel 2 and the need to convert some

or all of the lots to cash to pay the costs of the case and to satisfy the interests of owners, there is no basis to allocate particular lots within Parcel 2 to particular owners. In case different owners wish to end up with any one or more of the lots comprising Parcel 2, the fair way to determine who should get which lot is to allow competing owners to bid for the desired lot at auction.

7. Accordingly, partition in kind of the lots within Parcel 2 is not feasible nor fair and equitable; and a Commissioner shall be appointed to sell each of the lots within Parcel 2 at public auction. The constituent lots within Parcel 2 shall be sold with the benefit of and subject to the easement for access and utilities along the westerly 50 feet of five of the six constituent lots as depicted on Exhibit "D" and described in Exhibit "F" annexed hereto and also together with the easement for access and utilities along the southerly border of Parcel 17 described in Exhibit "E" annexed.

8. If any of the foregoing conclusions would more properly be classified as a finding of fact, it shall be treated as a finding of fact.

ORDER

IT IS HEREBY ORDERED THAT:

1. Plaintiff's Motion is GRANTED, subject to the terms of this Order.
2. Aaron Chung, Esq., whose address is 234 Waianuenue Ave. #105, Hilo, HI and telephone number is 935-0033 is hereby appointed Commissioner of this Court and is authorized and directed to sell each of the six individual lots within Parcel 2 at a public auction.
3. The Commissioner shall disclose to prospective buyers that there is no modern survey of Grant 1017 or for any of the six lots within Parcel 2.
4. The Commissioner is hereby authorized and directed:

(a) to confirm with the County of Hawaii that the six subdivided lots in Parcel 2 are legal lots based on the March 1937 survey map and will be assigned their own Tax Map Key Numbers;

(b) to confirm with the County of Hawaii the width required for the easement for access and utilities serving the lots in Parcel 2 along the southern border of Parcel 17 as depicted on Exhibit "D" and described in Exhibit "E" annexed hereto.

(c) to publish notice of the sale of the six lots within Parcel 2 containing a brief description of the property to be sold, in a newspaper having a general circulation in the County of Hawaii, State of Hawaii, at least once in each of four (4) consecutive weeks, the first publication to be not less than thirty days prior to the date of sale;

(d) to sell each of the lots within Parcel 2 without an upset price to the highest bidder at the public auction with ten percent (10%) of the sale price payable to the Commissioner in cash or cashier's check at the time of the auction, which amount shall be subject to forfeiture if the purchaser fails to close the purchase as ordered by the Court, and the balance payable to the Commissioner in cash or cashier's check concurrently with delivery of documents transferring title to the purchaser, the sale being subject to confirmation by this Court, and free and clear of any and all claims, rights, title and interest of any person whatsoever, including all parties to this action and all persons claiming by, through or under them; prior to closing the bidding of the six lots, the Commissioner shall reopen the bidding as to any of the six lots sold upon the request of any interested qualified bidder willing to bid more than the last high bid;

(e) to file a report with this Court after the auction sale of the lots within Parcel 2;

(f) to execute and deliver documents transferring title to the lots within Parcel 2 to the purchaser or designee after confirmation of the sale by this Court subject to and

benefiting from an easement for access and utilities as shown on the map attached hereto as Exhibit "D" and the easement descriptions attached hereto as Exhibits "E" and "F" (the width of said easement across Parcel 17 and the description of the same within Exhibit "E" being dependent on the Commissioner's determination of the width required for that easement);

(g) to execute and deliver documents transferring title to Parcel 17 to the Kamelamelas subject to the aforementioned easement for access and utilities benefiting the lots in Parcel 2 as shown on the map attached hereto as Exhibit "D" and the easement description attached hereto as Exhibit "E" (the width of said easement across Parcel 17 and the description of the same within Exhibit "E" being dependent on the Commissioner's determination of the width required for that easement)

(h) to disburse the sale proceeds according to further orders of this Court;

(i) any party holding an interest in Grant 1017 as recognized by this Order is hereby authorized to bid for any of the lots within Parcel 2 at the public auction, and for any party (other than the Kamelamelas) holding a 1/10 or greater interest in Grant 1017 as recognized by this Order, no deposit shall be required at the auction for the first of the lots purchased by that party, and payment toward the sale price may be made by offset to the extent of the party's undivided interest in the net sales proceeds;

(j) The County of Hawaii Planning Department, Department of Public Works and all other relevant governmental agencies are encouraged to facilitate the Commissioner's efforts to partition Grant 1017 both in kind and by sale in the manner set forth in this Order.

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DATED: Hilo, Hawaii, OCT - 11th TMC, 2010.

GREG K. NAKAMURA

JUDGE OF THE ABOVE-ENTITLED COURT

Approved as to Form:



MICHAEL W. GIBSON

Attorney for Cyd Kamelamela (w), Samuel
Lani Kamelamela, John Kamelamela, Karen
Kamelamela and Samuel Kamelamela

Keahi Young, Trustee of the Priscilla C. Young Trust v. Kumukoa (w), aka Emily Kumukoa Keakuanu Ohia, et al; Civil No. 08-1-0087; **ORDER (1) GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT RE QUIETING TITLE AS TO HEIRS OF KEKUANU (K) FILED MARCH 4, 2010 and (2) DENYING DEFENDANT PRO SE COLBURN V. OHIA'S MOTION FOR AMENDED SUMMARY JUDGMENT FILED MARCH 11, 2010; EXHIBITS "A"- "F"; Third Circuit Court (Hilo Division)**

JAMAE K. K. KAWAUCHI
Attorney for Charles A. K. Kamohai and
Rudolph Lanui Kamohai

COLBURN V. OHIA

GARY G. KUIKAHI

Keahi Young, Trustee of the Priscilla C. Young Trust v. Kumukoa (w), aka Emily Kumukoa Keakuanuu Ohia, et al; Civil No. 08-1-0087; **ORDER (1) GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT RE QUIETING TITLE AS TO HEIRS OF KEKUANU (K) FILED MARCH 4, 2010 and (2) DENYING DEFENDANT PRO SE COLBURN V. OHIA'S MOTION FOR AMENDED SUMMARY JUDGMENT FILED MARCH 11, 2010; EXHIBITS "A"- "F"; Third Circuit Court (Hilo Division)**

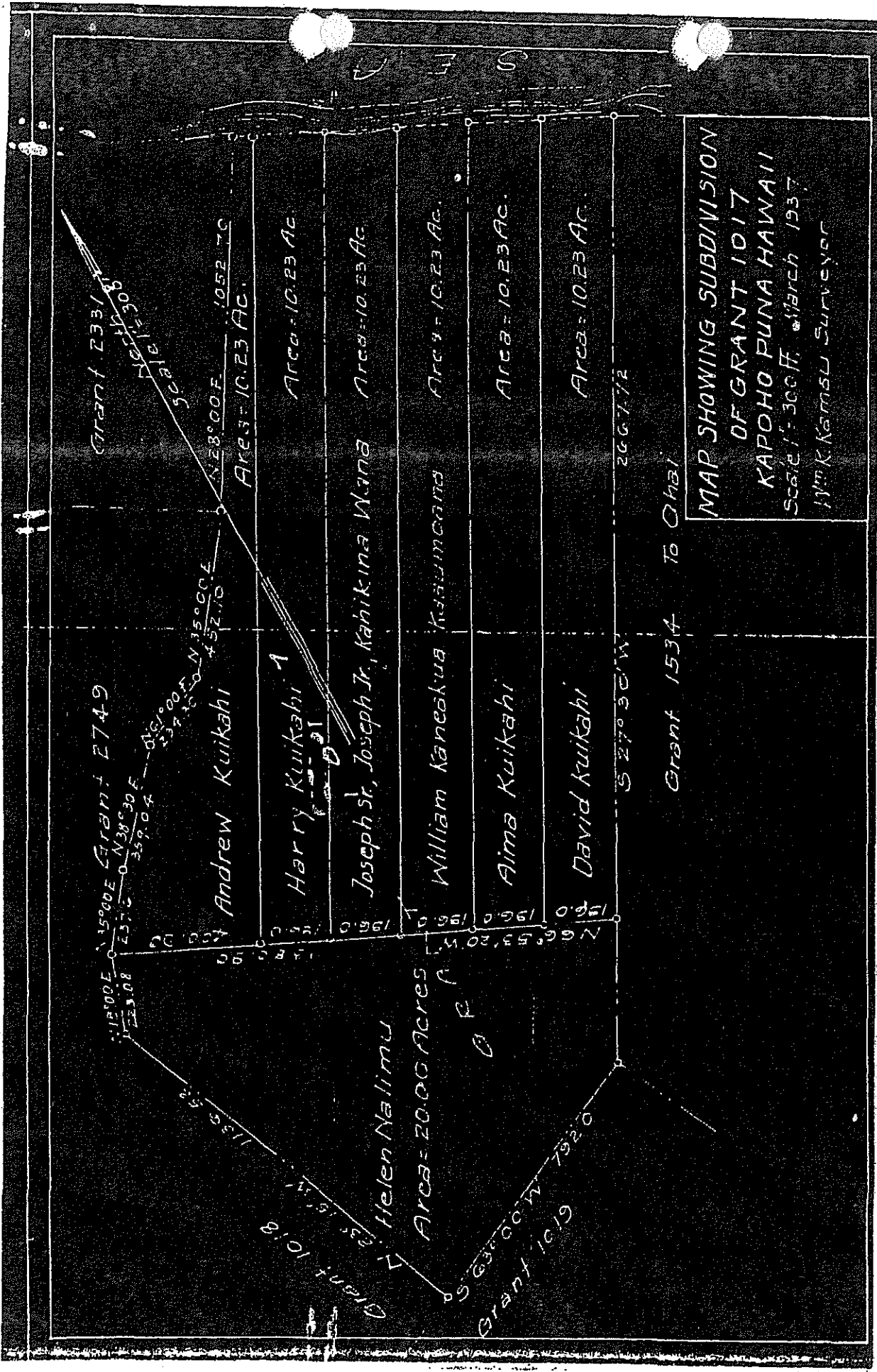
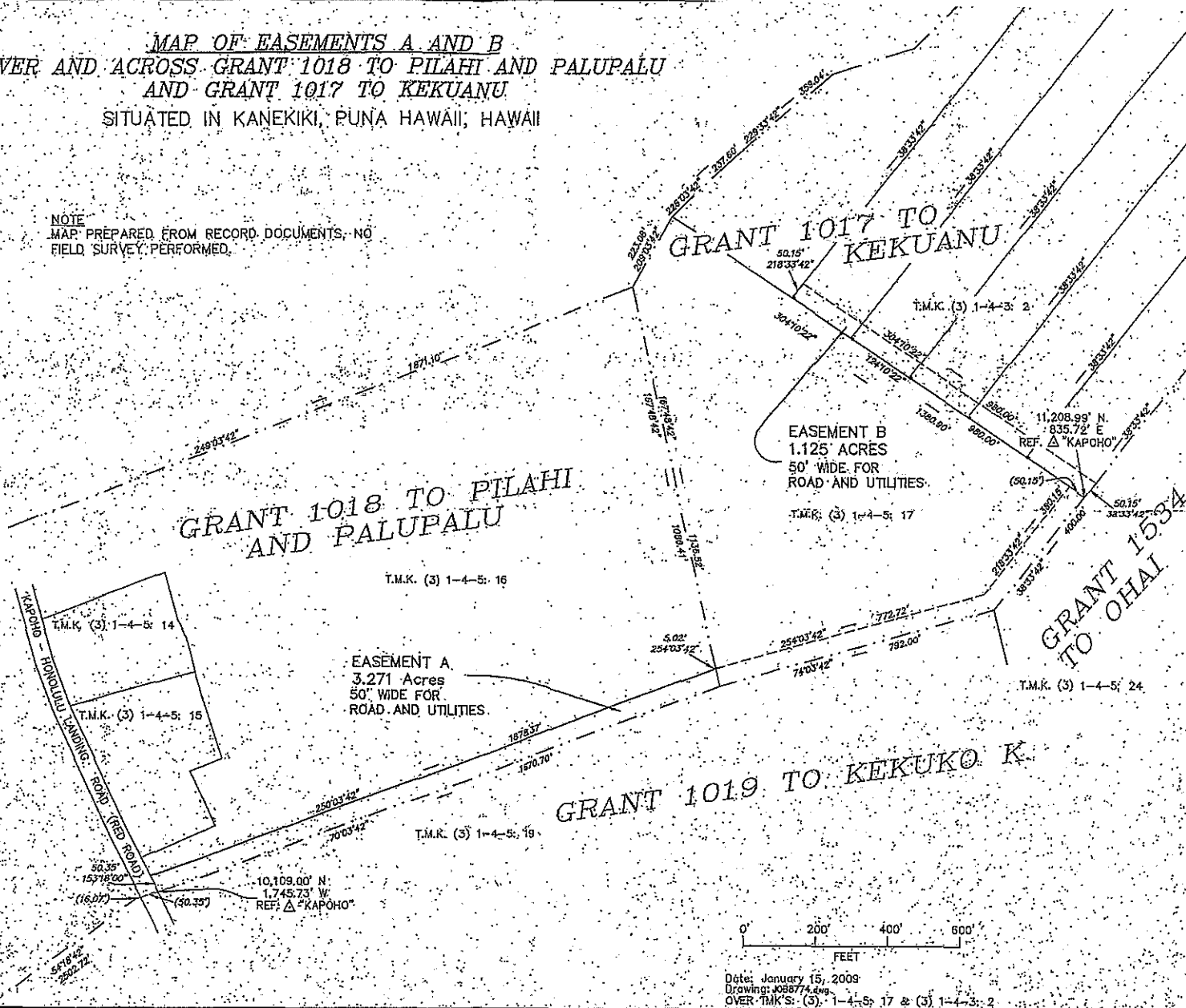


EXHIBIT C

**MAP OF EASEMENTS A AND B
OVER AND ACROSS GRANT 1018 TO PILAHI AND PALUPALU
AND GRANT 1017 TO KEKUANU
SITUATED IN KANEKIKI, PUNA HAWAII, HAWAII**

NOTE
MAP PREPARED FROM RECORD DOCUMENTS; NO
FIELD SURVEY PERFORMED.

TRUE NORTH
SCALE: 1" = 200' FL.

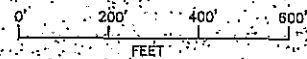


This work was prepared by me
or under my direct supervision

Niels Christensen

Niels Christensen
Licensed Professional Land Surveyor
License Number: 8017

The Independent Hawaii Surveyors, LLC
P.O. Box 577
Hon. HI 96701
Phone 808 952-0360
Fax 808 954-0360
www.independenthawaii.com



Date: January 15, 2009
Drawing: 408677.dwg
OVER T.M.K.'S: (3) 1-4-5: 17 & (3) 1-4-5: 2

EASEMENT A

OVER AND ACROSS

A PORTION OF GRANT 1018 TO PILAHI AND PALUPALU

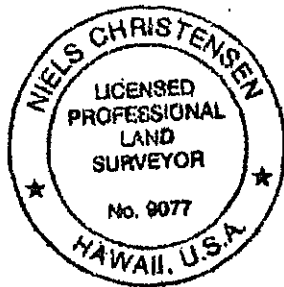
AND A PORTION OF GRANT 1017 TO KEKUANU

Land situated at Kanekiki, Puna, Island of Hawaii, Hawaii

Beginning at the south corner of this easement, also being on the east side of the Kapoho-Honolulu Landing Road and on the north boundary of Grant 1019 to Kekuko K., the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPOHO" being 10,109.00 feet North and 1,745.73 feet West and thence running by azimuths measured clockwise from true South:

1. 153° 18' 00" 50.35 feet along the east side of the Kapoho-Honolulu Landing Road;
2. 250° 03' 42" 1678.37 feet along other lands of Grant 1018 to Pilahi and Palupalu;
3. 254° 03' 42" 777.74 feet along other lands of Grant 1018 to Pilahi and Palupalu and Grant 1017 to Kekuanu;
4. 218° 33' 42" 380.15 feet along other lands of Grant 1017 to Kekuanu;
5. 304° 10' 22" 50.15 feet along same;
6. 38° 33' 42" 400.00 feet along Grant 1534 to Ohai;
7. 74° 03' 42" 792.00 feet along Grant 1019 to Kekuko K.;
8. 70° 03' 42" 1670.70 feet along same to the point of beginning and containing an area of 3.271 Acres, more or less.

Legal description prepared from record documents, no field survey performed.



A handwritten signature in cursive script that reads "Niels Christensen".

Niels Christensen
Licensed Professional Land Surveyor 9077
The Independent Hawaii Surveyors
P. O. Box 577
Hilo, Hawaii 96721

EASEMENT B

OVER AND ACROSS

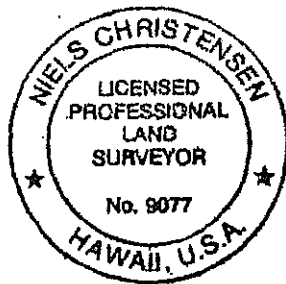
A PORTION OF GRANT 1017 TO KEKUANU

Land situated at Kanekiki, Puna, Island of Hawaii, Hawaii

Beginning at the south corner of this easement, also being on the north boundary of Grant 1534 to Ohai, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPOHO" being 11,208.99 feet North and 835.72 feet East and thence running by azimuths measured clockwise from true South:

1. 124° 10' 22" 980.00 feet along other lands of Grant 1018 to Pilahi and Palupalu;
2. 218° 33' 42" 50.15 feet along same;
3. 304° 10' 22" 980.00 feet along same;
4. 38° 33' 42" 50.15 feet along Grant 1534 to Ohai to the point of beginning and containing an area of 1.125 Acres, more or less.

Legal description prepared from record documents, no field survey performed.



Niels Christensen
Licensed Professional Land Surveyor 9077
The Independent Hawaii Surveyors
P. O. Box 577
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