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# Judge lets ranch oust leaseholders

**Residents of a Kailua cooperative can be evicted because their lease has expired**

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A Circuit Court judge ruled yesterday in favor of Kaneohe Ranch Co. in its battle against lessees at the Kailuan cooperative, meaning more than a dozen people will be evicted by Feb. 15.

Tenants were stunned by Judge Glenn J. Kim's decision.

Kim also ruled that the cooperative must close the cesspools that violate U.S. Environmental Protection Agency laws by the same date, and that to appeal the decision, they must post a \$4 million bond.

Sara Way, a wheelchair-bound lessee since 1995, has no idea where she will go.

Way lives on the ground floor of the Kailuan, with two roommates and three cats. She said she purchased her leasehold apartment for about \$74,000, with the belief that she would day be able one to purchase the fee.

In addition, all the equity she paid is gone.

"When Kaneohe Ranch puts us out, they put us out with a big zero -- nothing," she said.

Kaneohe Ranch began eviction proceedings earlier this month, while tenants argued they should have been given an opportunity to buy the fees to their units under the state "right of first refusal law."

The tenants said Kaneohe Ranch intended all along to sell the property to D.R. Horton Schuler, which is building market-rate condos adjacent to the Kailuan and along the stretch of Kailua Road dubbed "apartment row."

Instead, the ranch simply let the lease expire on Dec. 31.

Kim said certain key facts were undisputed -- that the plaintiff, Kaneohe Ranch, owns the property, and that the lease expired on Dec. 31. He said an agreement to sell or buy, with full and complete terms, is a prerequisite to the "right of first refusal" law.

Gerard Jervis, pro bono attorney for the tenants -- the defendants in the case -- said he was disappointed.

"I think we fought the good fight," he said, "but in the next 10 years, some 1,743 units are going to be affected by this. Landlords can have the intent to sell but stand back, do nothing, let the clock run out and circumvent 514(C)."

He said the lessees are hard-working people who will be put out of their homes. The \$4 million bond makes it difficult to file an appeal, he said.

Jervis argued Wednesday that the Kailuan was included in a request for proposals that Kaneohe Ranch put out to developers with the intention of selling it. Only when Kaneohe Ranch realized there was a "right of first refusal" law did it decide not to include it in the D.R. Horton deal, he said.

But Rosemary Fazio of Ashford & Wriston, the ranch's attorney, argued that the state law does not apply since the Kailuan was not included in the sale, and that the ranch faced liability for the cesspool situation.

Mitch D'Olier, president of Kaneohe Ranch, said in a statement yesterday that the court's decision was clear and unambiguous.

"Kaneohe Ranch stands by its many previous offers to assist the remaining shareholders in need of relocation assistance through local real estate brokers and nonprofit entities to meet the deadline set by the court," he said.

But the lessees at the Kailuan are now faced with surrendering their properties -- and being out of a home.

Ken Adams, who bought his unit at the Kailuan 22 years ago, said the state law is useless if it does not apply.

"It's been a David-and-Goliath story and an uphill battle," said Adams. "We're still stunned because we thought we were in the right."

The leasehold owners at the Kailuan have been trying to buy the fee for many years -- even before Chapter 38, a law that allows the city to condemn land on behalf of leasehold owners -- was repealed in 2005.

The equity that a leasehold unit owner pays is gone when the lease expires, according to Michael Pang, president of Monarch Properties.

"The landowner gets the building back, free and clear," he said.

For single-family homes, the landowner is required to pay for improvements that the lessee made at the end of the lease, according to Pang. But this does not apply to multifamily homes like the Kailuan cooperative.

Pang, a witness in the case, said he put together a viable offer to purchase the fee on behalf of the lessees. The offer could have closed before the lease expired, he said, but Kaneohe Ranch decided not to negotiate the deal.

Pang said this decision sets a precedent for thousands of leasehold owners statewide.

"This judge felt the letter of the law was more important than upholding the spirit of the law," said Pang. "What's interesting here is this is the first time a property owner tried to take a property back, went through the process and was successful."

But Pang said the state Legislature should now be compelled to take action.

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