

Article URL: <http://starbulletin.com/2008/01/17/business/story02.html>
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Vol. 13, Issue 17 - Thursday, January 17, 2008

Kailuan case to be decided tomorrow

STORY SUMMARY »

A Circuit Court judge is expected to render a decision tomorrow that will determine whether a dozen or so leasehold apartment owners in Kailua will be evicted from their homes.

Gerard Jervis, attorney for the leasehold owners at the **Kailuan Inc.** cooperative, argued in court yesterday that they were denied the right to purchase the fee to their homes under Hawaii's "right of first refusal" law.

Landowner **Kaneohe Ranch Co.** intended all along to sell the property to **D.R. Horton** Schuler Division, which is redeveloping adjacent walk-ups into market-rate condos, said Jervis.

But Kaneohe let the lease for the property expire on Dec. 31, without giving the leasehold owners the opportunity.

Rosemary Fazio, attorney for Kaneohe Ranch, said that the Kailuan was not included in the sale, and Kaneohe Ranch therefore had no obligation to give the leasehold owners the right to purchase the fees. Furthermore, the ranch faces fines and liability for non-complying cesspools from the U.S. Environmental Protection Agency. Therefore, Kaneohe Ranch wants tenants out of the building to take care of the situation, in addition to a \$4 million bond for staying beyond the expiration date.

FULL STORY »

By **Nina Wu**

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More than a dozen leasehold apartment owners will learn tomorrow whether they will be evicted from their homes at the Kailuan as a Circuit Court judge weighs their arguments.

If the owners are evicted -- the case is believed to be a first for Hawaii -- it is expected to set a precedent for other leasehold owners throughout the state.

Castle Family Inc., the parent of Kaneohe Ranch, brought the matter to court by filing a motion for a temporary restraining order, preliminary injunction and writ of ejectment against the **Kailuan Inc.**, a cooperative.

The lease for leasehold owners at the Kailuan Inc. cooperative expired on Dec. 31.

Gerard Jervis, a pro bono attorney for the tenants, and Rosemary Fazio of **Ashford & Wriston**,

attorney for landowner Kaneohe Ranch, presented their cases well into late afternoon hours yesterday.

Judge Glenn Kim said he will render a decision at 2:30 p.m. tomorrow.

Jervis argued that Kaneohe Ranch's intention all along was to sell the Kailuan to a developer, given that the property was earlier included in a request for proposals brokered by **Eastdil**.

Kaneohe Ranch circumvented the state "right of first refusal" law (Hawaii Revised Statutes 514C) by not giving the Kailuan Inc. owners the first opportunity to purchase the land beneath their apartments.

Kaneohe Ranch in 2006 selected **D.R. Horton** Schuler Division as the developer for market-rate condos to replace what are now rundown walkups on Kailua Road, referred to as "apartment row."

The question is whether a lessor can let a lease expire with the intention of selling a property to a third party without first offering tenants the "right of first refusal" under state law.

Jervis argued in his closing statement that they should indeed have been informed of Kaneohe Ranch's intention to sell the Kailuan, and been given the opportunity to purchase the fee to their units.

"These people are working people, your honor," he said. "This is their home."

Fazio maintained, however, that the Kailuan was not included in the sale of "apartment row" to D.R. Horton, which would have triggered the right-of-refusal law.

Nor was a formal written offer ever put together by the leasehold owners at the Kailuan even though they had ample opportunity over all these years.

She said Kaneohe Ranch, as the lessor, faced fines and liability for an Environmental Protection Agency mandate requiring the immediate closure of a large capacity cesspool.

Kaneohe Ranch president Mitch d'Olier -- the first witness to testify -- said it did not include the Kailuan in its sale to D.R. Horton.

Originally, Kaneohe Ranch intended to develop the area itself, but then decided to offer the opportunity to private developers. Kaneohe Ranch wants to demolish the property and redevelop it, incorporating a pedestrian walkway at "apartment row."

Kaneohe Ranch offered leasehold tenants \$10,000 to move out by a certain time, and hired two brokers as well as Catholic Charities to help them relocate.

Michael Pang, president and principal broker of **Monarch Properties**, testified yesterday that he put together a viable offer, with backing by a lender, and presented this to Kaneohe Ranch on Dec. 18.

He was waiting for d'Olier to call back the next day with a purchase price, but instead was told negotiations were off. He said the deal could have been closed by the end of December.

"I'm pretty confident we could have done it," said Pang.

Fazio said this should have come as no surprise, given that Kaneohe Ranch was consistent in its position of not intending to sell the property.

Sara Way, a disabled tenant who uses a wheelchair, has lived at the Kailuan since 1995 and isn't ready to move anytime soon. She says she did not want help from Catholic Charities in finding a

new apartment because: "I already have a home."

Way said if she and the other tenants get evicted, then it will be the first day the law will have been ignored by Kaneohe Ranch. She doesn't plan to budge.

"I love being near the beach and I love the space that I have," said Way. "I love my yard, and my garden, the neighbors and the serenity that I have there."

If she had been given the opportunity to purchase the fee to her apartment, Way said she would have done it. "Absolutely," she said.

The Kailuan has 18 units total in three walkup buildings -- with 12 two-bedrooms and six three-bedrooms.

Kailuan cooperative spokesman James Severson, a longtime owner, estimated about seven of the units are still occupied.

Severson, the third and final witness to testify yesterday afternoon, detailed the co-op's efforts to work with the EPA in resolving the cesspool issues. The Kailuan invested significant time and money -- at least \$10,000 -- to hire an engineer to close the cesspools, and was acting in good faith with the EPA to resolve the issues. It even offered to indemnify Kaneohe Ranch from its liability.

But hookup to the county sewer system was unexpectedly delayed because a vault was in the way. The delays are beyond the co-op's control.

To date, the cesspools have not been closed.

Kaneohe Ranch also seeks a \$4 million bond from the Kailuan Inc. for the loss of use of the property as tenants remain on the premises beyond the expired lease.

The dozen or so tenants, meanwhile, are holding on to hope that they can still negotiate the purchase of fees to their homes.

"We expect that the judge is going to see the illegality of what Kaneohe Ranch is doing to us," said Severson. "We hope he will allow us to gather more information to prove there was an intent to sell the property."