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NO. 26666

IN THE SUPREME COURT OF THE STATE OF HAWAII

KA WAIHONA O KA NA'AUAO, Ho'opio DeCambra, Poka Laenui, Jeannette Ka'uluwehi, Kenneth Ka'uluwehi, Stella Pihana-Young, Dixie Padello, Mona Bernardino, Ku'ulei Weathington, and Leimana Kahikina, individually and as members of the board of directors of Ka Waihona O Ka Na'auao, Cherienne Akau, and Kim Ha'upu individually and as members-elect to the board of directors of Ka Waihona O Ka Na'auao, Mauna'ala Burgess, Carl 'Imiola Young, Jody Pihana, Puanani Burgess, Judy Oponui, Will Joseph Weathington, and Cameron-Joseph Auhoon, Plaintiffs-Appellants,

vs.

STATE OF HAWAII BOARD OF EDUCATION, through its Chairman Herbert Watanabe, STATE OF HAWAII DEPARTMENT OF EDUCATION, through its Superintendent of Education, Patricia Hamamoto, Alvin Parker, Glenn Philhower, Chrissy Pilila'au, Fran Villareal, Wayne Hirakawa, Opu Seminavage, Zana Hughes, and Bill Sutkus, Defendants-Appellees.
(CIV. NO. 03-1-0800)

KA WAIHONA O KA NA'AUAO, a 21st Century Charter School; Ho'opio DeCambra, Poka Laenui, Jeannette Ka'uluwehi, Kenneth Ka'uluwehi, Stella Pihana-Young, Dixie Padello, Mona Bernardino, Ku'ulei Weathington, and Leimana Kahikina, individually and as members of the local school board of Ka Waihona O Ka Na'auao, a 21st Century Charter School; Cherienne Akau, and Kim Ha'upu, individually and as members-elect to the local school board of Ka Waihona O Ka Na'auao, a 21st Century Charter School; Mauna'ala Burgess, Carl 'Imiola Young, Jody Pihana, Puanani Burgess, Judy Oponui, Will Joseph Weathington, and Cameron-Joseph Auhoon, Plaintiffs-Appellants,

vs.

ALVIN PARKER, GLENN PHILHOWER, CHRISTINA PILILA'AU, FRANCES VILLAREAL, WAYNE HIRAKAWA, EUGENE SEMINAVAGE, ZANA HUGHES, and BILL SUTKUS, Defendants-Appellees,

and

JOHN DOES 1-50; DOE PARTNERSHIPS 1-50; DOE CORPORATIONS 1-50; and DOE ENTITIES 1-50, Defendants.
(CIV. NO. 03-1-1137)

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NOS. 03-1-0800 and 03-1-1137)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Plaintiffs-Appellants Ka Waihona O Ka Na'auao ("Ka Waihona Corp."), Poka Laenui ("Laenui"), Ho'opio DeCambra ("DeCambra"), Jeanette Ka'uluwehi, Kenneth Ka'uluwehi, Stella Pihana-Young, Dixie Padello, Mona Bernardino, Ku'ulei Weathington, and Leimana Kahikina, individually and as members of the board of directors of Ka Waihona Corp., Cherienne Akau, and Kim Ha'upu individually and as members-elect to the board of directors of Ka Waihona O Ka Na'auao, Mauna'ala Burgess, Carl 'Imiola Young, Jody Pihana, Puanani Burgess, Judy Opunui, William Joseph Weathington, and Cameron-Joseph Auhoon; and Plaintiffs-Appellants Ka Waihona O Ka Na'auao, A 21st Century Charter School ("21st Century Charter School"); DeCambra, Laenui, Jeanette Ka'uluwehi, Kenneth Ka'uluwehi, Stella Pihana-Young, Dixie Padello, Mona Bernardino, Ku'ulei Weathington, and Leimana Kahikina, individually and as members of the board of directors of 21st Century Charter School; Cherienne Akau, and Kim Ha'upu individually and as members-elect to the board of directors of 21st Century Charter School, Mauna'ala Burgess, Carl 'Imiola Young, Jody Pihana, Puanani Burgess, Judy Opunui, William Joseph Weathington, and Cameron-Joseph Auhoon, appeal from the first circuit court's¹ June 10, 2004 judgment in favor of all the defendants, State of Hawai'i Board of Education ("BOE"), through its Chairman Herbert Watanabe, State of Hawai'i Department of Education ("DOE"), through its Superintendent of Education, Patricia Hamamoto, Alvin Parker ("Parker"), Glenn Philhower,

¹ The Honorable Sabrina S. McKenna presided.

Chrissy Pilila'au, Frances Villareal, Wayne Hiraakawa, Opu Seminavage, Zana Hughes, and Bill Sutkus, and against all the plaintiffs on all claims in Civil Nos. 03-1-0800 and 03-1-1137.

Two cases, which have been consolidated, arose after the BOE allegedly interfered with 21st Century Charter School by directing an election ("DOE-run election") for its Local School Board. In the first case, Ka Waihona Corp. et al., which contracted with the BOE to establish a charter school, sued the Defendants-Appellees for breach of contract, fraud, and collusion. In the second case, 21st Century Charter School et al. sought a cease and desist order against the individuals elected in the DOE-run election to prevent them from sitting on 21st Century Charter School's Local School Board.

On appeal, Plaintiffs-Appellants argue that the circuit court erred by concluding that: (1) the charter was issued to a local school board and not to a non-profit corporation, even though Ka Waihona Corp., a non-profit corporation, submitted the Detailed Implementation Plan ("Contract"), and thereby received the charter and therefore has standing to bring its breach of contract claim against the BOE; (2) Ka Waihona Corp. did not comply with the Contract to run the charter school and was not "organizationally viable," despite its subsidiary, 21st Century Charter School, establishing an eleven-member Local School Board; (3) "[Hawai'i Revised Statutes] [§] [302A-]1186(b)² did not

² HRS § 302A-1186(b) (Supp. 2002) provides in pertinent part that the BOE must:

initiate an independent evaluation of each new [charter school] annually . . . to assure organizational viability and compliance with applicable state laws, statewide student content and performance standards, and fiscal accountability; Upon a determination by the board that student achievement within a [charter school] does not meet the student performance standards,
(continued...)

prohibit the [BOE] from doing something less than revoking the charter," although this level of authority contradicts the purpose of autonomous charter schools; (4) the BOE-directed election for 21st Century Charter School's Local School Board was consistent with state law governing charter schools, inasmuch as it breached the Contract and thereby violated state statutes governing charter schools; (5) the individuals elected in the DOE-run election are members of the 21st Century Charter School's Local School Board, although the election was illegal; and (6) 21st Century Charter School did not contract with Parker although the Chairman of 21st Century Charter School's Board of Directors signed the contract.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that:

(1) The charter school's charter was issued to the local school board of Ka Waihona O Ka Na'auao, inasmuch as the charter states that the BOE granted "the duly organized local school board of Ka Waihona O Ka Na'auao" responsibility "to operate as a public charter school";

(2) Nevertheless, Ka Waihona Corp., a non-profit

²(...continued)

or that the [charter school] is not fiscally responsible, a [charter school] shall be placed on probationary status and shall have one year to bring student performance into compliance with statewide standards and improve the school's fiscal accountability. If a [charter school] fails to meet its probationary requirements, or fails to comply with any of the requirements of this section, the board, upon a two-thirds majority vote, may then deny the continuation of the [charter school].

(Emphases added.)

In 2006, HRS Chapter 302A, part IV, subpart D (HRS §§ 302A-1181 to -1192) was repealed by 2006 Haw. Sess. L. Act 298, § 3. The legislature simultaneously enacted HRS Chapter 302B (HRS §§ 302B-1 to -16), which is entitled "Public Charter Schools."

corporation, which contracted with the BOE to establish 21st Century Charter School, has suffered an injury in fact from the DOE-run election inasmuch as it violated the Contract, and therefore, it has standing³ to assert a breach of contract claim against the BOE;

(3) 21st Century Charter School breached the Contract and was "not organizationally viable" as defined by Hawai'i Revised Statutes ("HRS") § 302A-1186(b),⁴ inasmuch as it did not establish a fifteen-member Local School Board in accordance with its charter;

(4) HRS § 302A-1186(b) did not prohibit the BOE from doing something less than revoking the charter;

(5) The BOE was statutorily authorized to direct the DOE-run election under HRS § 302A-1186(b), inasmuch as it was "reasonably necessary"⁵ in order for the BOE to ensure that 21st

³ The United States Supreme Court has stated that in order to establish standing, "the plaintiff must have suffered an 'injury in fact'-an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual or imminent.'" Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)) (citations omitted) (emphasis added).

⁴ HRS § 302A-1186(b) provides in pertinent part:

For the purposes of this subsection, "organizational viability" means that a new century charter school:

- (1) Has been duly constituted in accordance with its charter;
- (2) Has a local school board established in accordance with law and its charter;
- (3) Employs sufficient faculty and staff to provide the necessary educational program and support services and to operate the facility in accordance with its charter; and
- (4) Maintains comprehensive records regarding students, employees, and complies with federal and state health and safety requirements.

(Emphases added.)

⁵ The legislature granted the BOE the authority to discontinue charter schools and act as "reasonably necessary" to assure that the charter school was organizationally viable. See Haole v. State, 111 Hawai'i 144, 152, 140 P.3d 377, 385 (2006) ("An administrative agency's authority includes those implied powers that are reasonably necessary to carry out the powers expressly (continued...)

Century Charter School was "organizationally viable" and established according to its charter;⁶

(6) Inasmuch as the DOE-run election was "reasonably necessary" to assure that the Local School Board was established with fifteen members, the individuals elected in the DOE-run election are members of the Local School Board; and

(7) 21st Century Charter School was not a party to the \$40,000 contract between Parker and the Local School Board,⁷ and therefore does not have standing to claim that Parker breached the contract. Therefore,

IT IS HEREBY ORDERED that the circuit court's June 10, 2004 final judgment is affirmed.

DATED: Honolulu, Hawai'i, December 13, 2007.

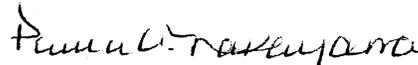
On the briefs:

Poka Laenui (Hayden Burgess)
for Plaintiffs-Appellants

Holly T. Shikada and
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Deputy Attorneys General
for Defendants-Appellees



Steven H. Levinson



James E. Duddy, Jr.

⁵(...continued)

granted. The reason for implied powers is that, as a practical matter, the legislature cannot foresee all the problems incidental to carrying out the duties and responsibilities of the agency.").

⁶ Although Hawaii's charter schools are uniquely autonomous, the legislature intended to require each charter school to be organizationally viable or risk losing its charter "to ensure [charter schools'] ongoing viability." Sen. Conf. Comm. Rep. No. 138, in 2002 Senate Journal, at 1010-11.

⁷ The Second Local School Board does not have standing to sue Parker for breach of the Parker-contract because it evolved into the Post-election Local School Board which presently acts as the functioning and permanent Local School Board. Rather, the presently functioning Local School Board, the Post-election Local School Board, has standing to bring suit against Parker for breaching the Parker-contract.