

NO. 28822

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

COUNTY OF HAWAI'I, a municipal corporation,  
Plaintiff/Counterclaim Defendant-Appellee

vs.

C&J COUPE FAMILY LIMITED PARTNERSHIP,  
Defendant/Counterclaimant-Appellant

and

ROBERT NIGEL RICHARDS, TRUSTEE UNDER THE MARILYN  
SUE WILSON TRUST; MILES HUGH WILSON; JOHN DOES 1-100;  
JANE DOES 1-100; DOE PARTNERSHIPS 1-100; DOE  
CORPORATIONS 1-100; DOE ENTITIES 1-100; and DOE  
GOVERNMENTAL UNITS 1-100, Defendants

K. HAMAKADO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2009 MAY 22 AM 9:40

FILED

C&J COUPE FAMILY LIMITED PARTNERSHIP,  
Third-Party Plaintiff-Appellant

vs.

1250 OCEANSIDE PARTNERS aka HOKULI'A,  
Third-Party Defendant-Appellee  
(CIV. NO. 00-1-0181K)

COUNTY OF HAWAI'I, a municipal corporation,  
Plaintiff/Counterclaim Defendant-Appellee

vs.

C&J COUPE FAMILY LIMITED PARTNERSHIP,  
Defendant/Counterclaimant/Cross Claimant-Appellant

and

1250 OCEANSIDE PARTNERS aka HOKULI'A,  
Defendant/Cross Claim Defendant-Appellee

and

ROBERT NIGEL RICHARDS, TRUSTEE UNDER THE MARILYN  
SUE WILSON TRUST; MILES HUGH WILSON; JOHN DOES 1-100;

JANE DOES 1-100; DOE PARTNERSHIPS 1-100; DOE  
CORPORATIONS 1-100; DOE ENTITIES 1-100; and  
DOE GOVERNMENTAL UNITS 1-100, Defendants  
(CIV. NO. 05-1-015K)

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APPEAL FROM THE THIRD CIRCUIT COURT  
(CIV. NOS. 00-1-0181K; 05-1-015K)

ORDER GRANTING IN PART AND DENYING IN PART  
DEFENDANT-APPELLANT'S MOTION FOR RECONSIDERATION  
AND ORDER OF AMENDMENT

(By: Moon, C.J., Nakayama, Acoba, and Duffy, JJ.,  
and Circuit Judge Chan, assigned by reason of vacancy)

Upon consideration of the motion for reconsideration  
filed on May 1, 2009 by Defendant-Appellant C&J Coupe Family  
Limited Partnership, requesting that this court review its  
opinion filed on April 21, 2009, and the record herein,

IT IS HEREBY ORDERED that the motion for  
reconsideration is granted in part, and the aforesaid opinion  
shall be amended as follows (deletions are bracketed and  
additions are double underscored):

**Line 5 from the top of page 4:**

awarded [\$25,370.55] 25,676.21 in fees and  
\$1,206.35 in costs.

**Line 15 from the top of page 21. Move footnote 11 from page  
35, to the end of line 15 on page 21, and renumber all subsequent  
footnotes consecutively.**

**Line 4 from the top of pages 25:**

requirement. The phrase regarding fees and costs in HRS § 101-27 states that the award shall include "the defendant's costs of court, a reasonable amount to cover attorney's fees paid by the defendant in connection therewith, and other reasonable expenses[.]" (Emphasis added.) That portion of the statute is essentially a list of items that are to be included in the damage award. Thus, the phrase "and other reasonable expenses," (emphasis added), assumes that the previous items listed are also types of reasonable expenses. Appellant's argument that it must be granted all costs "actually incurred," regardless of reasonableness, renders the term "other" superfluous. See *Carlisle v. One (1) Boat*, 119 Hawai'i 245, 255, 195 P.3d 1177, 1187 (2008) (stating that "[i]t is a cardinal rule of statutory construction that courts are bound, if rational and practicable, to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all the words of the statute." (emphasis

added)). Hence, under the plain language of the statute, costs, attorney's fees, and other expenses are all subject to a reasonableness requirement.<sup>8</sup>

The County's argument that "11,845 pages . . . is a

**The last line of footnote 8 on the bottom of page 25:**

case where the movant showed that those [costs] expenses were reasonable.

**Lines 1-2 from the bottom of page 29 to lines 1-4 from the top of page 30:**

original amount. Furthermore, [although] Appellant protests that the contested 6/17/08 and 6/23[4]/08 entries, regarding the County's motion to transfer, "were incurred in the course of the Condemnation 1 appeal. [[,]]" [it appears that those entries had to do with the County's motion to transfer to this court, a motion upon which] Although the County prevailed on that motion, it appears that Appellant has properly included attorneys' fees incurred in defending the motion

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<sup>8</sup> Furthermore, although Appellant had termed its photocopying expenses as "costs," to say that \$2,369.00 in photocopying costs qualify as "costs of court" under HRS § 101-27 is not persuasive. HRAP Rule 39 is entitled "civil costs" and refers to "costs," not "costs of court." A review of the statutory materials using the term "costs of court" reveals that that term is typically limited to costs actually paid to the court, and, therefore, Appellant's photocopying costs are more properly considered "other reasonable expenses," leaving no doubt that those costs are subject to a reasonableness requirement.

to transfer in its Request, inasmuch as such fees are encompassed under HRS § 101-27 as part of "all such damage as may have been sustained by the defendant by reason of the bringing of the proceedings" in Condemnation 1. Therefore, those entries will [also] be [excluded from] included in the [final amount] fee award.

**Line 3 from the top of footnote 10 on page 35:**

successful appeal of Condemnation 1: [06/17/08  
32.50, 06/23/08 260.00,]

**The first entry under "Award" on page 35:**

[24,278.04] 24,570.54

**The third entry under "Award" on page 35:**

[1,092.51] 1,105.67

**The second entry in the "Total Fees" row on page 36:**

[25,370.55] 25,676.21

**Line 8 from the top of page 37:**

[\$25,370.55] 25,676.21 in attorneys' fees and  
\$1,206.35 in costs from the

IT IS FURTHER ORDERED that the motion for reconsideration is denied in all other respects.

An amended opinion is being filed concurrently with this order, incorporating the foregoing amendments. The Clerk of the Court is directed to provide a copy of this order and a copy of the amended opinion to the parties and notify the publishing

agencies of the changes. The Clerk of the Court is further instructed to distribute copies of this order of amendment to those who received the previously filed opinion.

DATED: Honolulu, Hawai'i, May 22, 2009.

Kenneth R. Kupchak,  
Robert H. Thomas,  
Mark M. Murakami, and  
Christi-Anne H. Kudo  
Chock (Damon Key Leong  
Kupchak Hastert), on the  
motion for defendant-  
appellant C&J Coupe  
Family Limited Partnership.



Kenneth R. Kupchak



Robert H. Thomas

