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NO. CAAP-12-0001024

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII

HOVEY B. LAMBERT, TRUSTEE UNDER THAT HOVEY B. LAMBERT TRUST, an unrecorded revocable living Trust Agreement dated April 5, 2002,	CIVIL NO. 09-1-2529
Plaintiff-Appellee,	APPEAL FROM THE ORDER GRANTING PLAINTIFF'S MOTION TO ALLOW OVER-BIDDING TO CONFIRM SALE, TO ACCOUNT FOR AND DIRECT REIMBURSEMENT OF EXPENSES AND ATTORNEY'S FEES AND TO DISPURSE NET PROCEEDS Filed October 25, 2012
vs.	
WAHA(K), et.al.,	
Defendants-Appellees.	FIRST CIRCUIT COURT
and	HON. RHONDA A NISHIMURA Judge
LESIELI TEISINA,	
Defendant-Appellant,	
and	
PENISIMANI TEISINA,	
Intervenor-Appellant,	
and	
MALTBIE K. NAPOLEON,	
Party-In-Interest-Appellee,	
and	
DOE DEFENDANTS 24-80; AND ALL WHOM IT MAY CONCERN,	

Defendants.)
)
______________________________________)

Party-In-Interest-Appellee Maltbie K. Napoleon's Brief

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Certificate of Service

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Party-In-Interest-Appellee Maltbie K. Napoleon's Brief

I. Introduction

1. This case concerns both a kuleana parcel, R.P. 1303, within a portion of land of William Charles Lunalilo, L.C.A. 8559B, Apana 35, Laie, Oahu. This Defendant's appearance is prompted by Plaintiff's newspaper publication in the filing of the instant case, Circuit Court, Hovey B. Lambert, Trustee, under the Hovey B. Lambert Trust, an unrecorded Revocable Living Trust Agreement dated April 5, 2002 v. Waha(k), et.al., Civil No. 09-1-2529-10 (RAN), whereby, Defendant's presentment of facts and evidence by affidavit's are undisputed. In this instant case, the Plaintiff's failed to 'join issue' and create triable issues, in law, denying Defendant's right to trial.
2. Party-In-Interest-Appellee Maltbie K. Napoleon, a Hawaiian subject, native tenant, claims an undivided vested interest in all lands of Hawaii as a matter of Hawaiian law.
3. Party-In-Interest-Appellee Maltbie K. Napoleon, asserts the Circuit Court of the First Circuit, State of Hawaii does not proceed in accordance with the laws of the Hawaiian Kingdom, nor in the administration of the laws of occupation by the Occupant State, the United States Military. As such, these proceedings are illegal until done in accordance with Article 43, 1907 Hague Conventions IV, and the laws of the Hawaiian Kingdom.

<u>II. Statement of Facts</u>

4. Party-In-Interest-Appellee, Maltbie K. Napoleon, filed his answer under the Constitution of the United States, Article VI, clause 2; "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.", and i.e. an executive agreement, the *Lili`uokalani assignment* (January 17, 1893), and *Restoration agreement* (December 18, 1893), whereby, Plaintiff's Order Granting Plaintiff's Motion to Allow Overbidding to Confirm Sale, to Account for and Direct Reimbursement of Expenses and Attorney's Fees and Disburse Net Proceeds, filed 25 Oct 2012, in its policies are "inconsistent with, or impairs the policy or provisions of, a treaty or of an international compact or agreement." and i.e. an executive agreement, the *Lili`uokalani assignment* (January 17, 1893) and *Restoration agreement* (December 18, 1893).

5. Plaintiff-Appellee's *acquiesce* to the validity of the *Lili`uokalani assignment* and *Restoration agreement*s but fraud this court by failure to comply.

6. Plaintiff-Appellee's *acquiesce* to the validity of the United States formal recognition of the Hawaiian Kingdom as an independent and sovereign State since December 19, 1842 by President John Tyler, but fraud this court by failure to comply. A certified copy of the United States formal recognition, Defendant's Opposition to Plaintiff's Motion for Summary Judgment, Exhibit "A", filed 20 Dec 2011.

7. Plaintiff-Appellee's *acquiesce* to the admission, their title is based on a chain of events within the domain of the Hawaiian Kingdom, but fraud this court by failure to comply to Hawaiian law.

8. Plaintiff-Appellee's admit, Plaintiff's order denies Defendant's right to property and trial and is a violation of Defendant's civil rights under the *Lili`uokalani Assignment*, (Executive Documents on Affairs in Hawaii: 1894-95, *U.S. House of Representatives, 53rd Congress*). A certified copy of the *Lili`uokalani Assignment*, Defendant's Opposition to Plaintiff's Motion for Summary Judgment, Exhibit "B", filed 20 Dec 2011.

9. Plaintiff-Appellee's admit, the Plaintiff's Order, in its policies are "inconsistent with, or impairs the policy or provisions of, a treaty or of an international compact or agreement." and i.e. an executive agreement, the *Restoration agreement* (December 18, 1893), (Executive Documents on Affairs in Hawaii: 1894-95, *U.S. House of Representatives, 53rd Congress*). A certified copy of the *Restoration agreement,* Defendant's Opposition to Plaintiff's Motion for Summary Judgment, Exhibit "C", filed 20 Dec 2011.

10. Plaintiff-Appellee's *acquiesce* to the admission, Congressional laws have no extra-territorial effect in Hawaii, except under personal supremacy, Congress can neither solely annex a foreign state nor can it legislate and establish courts in the territory of a foreign state. A certified copy of the fact that Congressional laws have no extra-territorial effect in Hawaii, Defendant's Opposition to Plaintiff's Motion for Summary Judgment, Exhibit "D", filed 20 Dec 2011.

11. Plaintiff-Appellee's *acquiesce* to the admission, title to parcel 33 is defective as the freehold estate of inheritance, namely the fee-simple title remains vested in J. Lua Kahi.

12. Plaintiff-Appellee's admit, attorney's PHILIP J. LEAJ and LORI K. AMANO, are not competent attorney's under Hawaiian Law.

4. Plaintiff-Appellee's admit, the Circuit Court, State of Hawaii is not a competent tribunal lawfully constituted under Hawaiian Law.

5. Plaintiff-Appellee's *acquiesce* to the admission, Defendant is a Hawaiian subject, native tenant, with 1/3 claim of undivided vested interest duly constituted.

6. Plaintiff-Appellee's admit, Defendant is a native tenant, third-party beneficiary under the *Lili'uokalani assignment.*

7. Plaintiff-Appellee's *acquiesce* to the admission, since August 12th 1898, the Hawaiian Kingdom has been under a prolonged occupation, disguised as if it were an incorporated territory of the United States.

8. Plaintiff-Appellee's *acquiesce* to the admission, on October 10, 1894, J. Mott-Smith, Trustee for the Estate of William Charles Lunalilo, violated his allegiance to the Hawaiian Kingdom, when he signed an oath of allegiance to the Republic of Hawaii, of record in Oaths book 32, #150, Hawaiian Kingdom Archives. A certified copy of the oath of allegiance to the Republic of Hawaii, Defendant's Opposition to Plaintiff's Motion for Summary Judgment, Exhibit "E", filed 20 Dec 2011.

9. Plaintiff admit, in light of the current U.S. occupation of Hawaii, Plaintiff's, have notice under Title:42, section: 1986, knowledge of law and the neglect or failure

by not correcting or stopping the violation of civil rights under treaty, *Lili'uokalani assignment,* and Article 9 of the Hawaiian Constitution (1864), which provides that "No person shall…be deprived of life, liberty, or property without due process of law.", under the law of nations in section 24 page: 8.

10. Plaintiff-Appellee's *acquiesce* to the admission, said acts constitute violations of the Lili`uokalani assignment, the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and for allowing PHILIP J. LEAS, W. KEONI SHULTZ, LORI K. AMANO and Ms. RHONDA A. NISHIMURA to maliciously, prosecute and deny Defendant a jury trial, for adhering to Hawaiian Kingdom laws, which by definition constitutes a **"war crime"** under Title 18 U.S.C. §2441(c)(1).
11. Party-In-Interest-Appellee has filed in the instant case, Circuit Court, Hovey B. Lambert, Trustee, under the Hovey B. Lambert Trust, an unrecorded Revocable Living Trust Agreement dated April 5, 2002 v. Waha(k), et.al., Civil No. 09-1-2529-10 (RAN), filed after the transmission of the record and are not currently included in the record on appeal. On 10 Dec 2012, Party-In-Interest-Appellee filed a motion to vacate, set-aside and/or reconsider the order of October 25, 2012; on 8 Feb 2012, Party-In-Interest-Appellee filed an Affidavit of Maltbie Napoleon, Exhibit "A"; on 24 Apr 2012, Party-In-Interest-Appellee filed a motion to dismiss Plaintiff's Complaint of October 26, 2009; on 5 Jul 2012, Party-In-Interest-Appellee filed a memorandum in opposition to Patricia Chinn's motion for entry of final judgment as to the Kuleana Parcel, et.al.
12. Party-In-Interest-Appellee's evidence of exhibit's and affidavits, on record, is undisputed, whereby, Defendant is denied his right to a fair and regular trial,

which constitutes a war crime under the Geneva Convention, IV and this court has ignored this Defendant's denial's four times. As such, Defendant believes Ms. RHONDA A. NISHIMURA is BIAS against the Defendant and therefore Defendant denies Ms. RHONDA A. NISHIMURA'S jurisdiction because of BIAS, whereby, any and all orders or judgments by Ms. RHONDA A. NISHIMURA are null and void.

III. Arguments

A. Subject Matter Jurisdiction Under Treaty.

13. The burden of establishing this jurisdiction is on the party asserting that a cause is within the court's power to act. *See Kokkonen v. Guardian Life Ills. Co. of Am.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994).
14. Party-In-Interest-Appellee, Maltbie Napoleon is a subject of the Hawaiian Kingdom, an alien. As such, Party-In-Interest-Appellee, alleges an injury suffered by Plaintiff-Appellee, when he was denied a fair and regular trial. And also allege a violation of international law—failure to administer Hawaiian Kingdom law in violation of the *Lili`uokalani assignment* when Party-In-Interest-Appellee was prosecuted and ordered to pay cruel and unusual penalties.
15. The assignment is an executive agreement between Queen Lili`uokalani of the Hawaiian Kingdom and President Cleveland of the United States under his sole authority in foreign relations. The U.S. Supreme Court affirmed that executive agreements entered into between the President and a sovereign nation does not require ratification from the U.S. Senate to have the force and effect of a treaty; and executive agreements bind successor Presidents for their faithful execution.

See United States v. Belmont, 301 U. S. 324 (1937). *See also Foster v. Neilson*, 27 U.S. (2 Pet.) 253, 314 (1829) (Marshall, C.J.) ("A treaty is in its nature a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished, especially so far as its operation is infra-territorial; but is carried into execution by the sovereign power of the respective parties to the instrument. In the United States a different principle is established. Our constitution declares a treaty to be the law of the land. It is consequently, to regarded in courts of justice as equivalent to an act of the legislature, whenever it operates itself without the aid of any legislative provision."); *Taylor v. Morton*, 23 F. Cas. 784, 785 (C.C.D. Mass. 1855) (No. 13,799) (Curtis, Circuit Justice), aff'd, 67 U.S. (2 Black) 481 (1862) (treaties are "contracts, by which [sovereigns] agree to regulate their own conduct" and, under the Constitution, "part of our municipal law"); *Goldwater v. Carter*, 617 F.2d 697, 705 (D.C. Cir.), *vacated*, 444 U.S. 996 (1979) ("a treaty is *sui generis*. It is not just another law. It is an international compact, a solemn obligation of the United States and a 'supreme Law' that supersedes state policies and prior federal laws. For clarity of analysis, it is thus well to distinguish between treaty-making as an international act and the consequences which flow domestically from such act. In one realm the Constitution has conferred the primary role upon the President; in the other, Congress retains its primary role as lawmaker."); Westel Woodbury Willoughby, *The Constitutional Law of the United States* §317a, at 577 (2d ed. 1929) ("Treaties entered into by the United States may be viewed in two lights: (1) as constituting parts of the supreme law of the land, and (2) as compacts between the

United States and foreign Powers."). Other landmark cases on executive agreements are *United States v. Pink*, 315 U.S. 203 (1942) and *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003). In *Garamendi* (p. 397), the Court stated, "Specifically, the President has authority to make 'executive agreements' with other countries, requiring no ratification by the Senate or approval by Congress." According to Justice Douglas, executive agreements "must be read not as self-contained technical documents, like a marine insurance contract or a bill of lading, but as characteristically delicate and elusive expressions of diplomacy." *See U.S. v. Pink*, 315 U.S. 203, 241 (1942). President Cleveland, in his message to Congress, acknowledged the assignment of executive authority in the following manner: "When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety had in a manner…declared it to exist. It was neither a government de facto or de jure. …Nevertheless, this wrongful recognition by our Minister placed the Government of the Queen in a position of most perilous perplexity. On the one hand she had possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. …In this state of things if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position against lawful authority. …Accordingly, some hours after the recognition of the provisional government by the United States Minister,

the palace, the barracks, and the police station, with all the military resources of the country, were delivered up by the Queen…and that she yielded her authority to prevent collision of armed forces and loss of life and only until such time as the United States, upon the facts being presented to it, should undo the action of its representative and reinstate her in the authority she claimed as the constitutional sovereign of the Hawaiian Islands." *See Defendant's Opposition to Plaintiff's Motion for Summary Judgment, Exhibit "B", p. 453-454, filed 20 Dec 2011.* The *Lili`uokalani assignment* is evidence of the continued existence of the Hawaiian Kingdom as an independent state, and also the basis of Respondent-Appellant's alien standing despite the overthrow of its government. *See Defendant's Opposition to Plaintiff's Motion for Summary Judgment, Exhibit "B", filed 20 Dec 2011. See also David Keanu Sai, A Slippery Path Towards Hawaiian Indigeneity*, J.L. & Soc. Challenges (Fall 2008), 68-133, at 72-76, hereinafter referred to Sai. In *Klinghoffer*, the Court "limited the definition of 'state' to 'entit[ies] that ha[ve] a defined territory and a permanent population, [that are] under the control of [their] own government, and that engage in, or ha[ve] the capacity to engage in, formal relations with other such entities.'" *See Klinghoffer v. S.N.C. Achille Lauro*, 937 F.2d 44, 47 (2d Cir. 1991). The Hawaiian Kingdom possessed all four attributes prior to the intervention of U.S. troops on January 16, 1893. Although the Hawaiian government was illegally overthrown, it did not equate to an overthrow of the Hawaiian Kingdom as a sovereign and independent State. Professor Hoffman emphasized that a government "is not a State any more than a man's words are the man himself," but "is simply an expression of the

State, an agent for putting into execution the will of the State." *See Frank Sargent Hoffman, The Sphere of the State or the People as a Body-Politic* (1894), at 19. Professor Wright also concluded that, "international law distinguishes between a government and the state it governs." *See Quincy Wright, The Status of Germany and the Peace Proclamation*, 46 (2) Am. J. Int'l L. (April 1952): 299-308, at 307. "A state may continue to be regarded as such even though, due to insurrection or other difficulties, its internal affairs become anarchic for an extended period of time;" *see R. 3rd For. Rel. L.U.S.,* §901 (1987), Reporter's Note 2, §201; and "Military occupation, whether during war or after an armistice, does not terminate statehood." *See id.,* Reporters Note 3. Accordingly, a sovereign State would continue to exist despite its government being overthrown by military force. Two contemporary examples illustrate this principle of international law, the overthrow of the Afghan government (Taliban) in 2001 and the Iraqi government in 2003. The former has been a recognized sovereign State since 1919, and the latter since 1932. Professor Dixon explains: If an entity ceases to possess any of the qualities of statehood…this does not mean that it ceases to be a state under international law. For example, the absence of an effective government in Afghanistan and Iraq following the intervention of the USA did not mean that there were no such states, and the same is true of Sudan where there still appears to be no entity governing the country effectively. Likewise, if a state is allegedly 'extinguished' through the illegal action of another state, it will remain a state in international law. *See Martin Dixon, Textbook on International Law* (6th ed. 2007), 119.

B. The Order Is Misleading And Violation of the *Lili'uokalani Assignment*.

16. Plaintiff's Order is misleading as Plaintiff's assumes, (1) to be a representative of the Hawaiian Kingdom which Plaintiff's ARE NOT, and (2) have authority to enforce a foreign statute under U.S. jurisdiction. At no time throughout the pleadings have Plaintiff's provided any evidence that Defendant is not a Hawaiian subject by *jus sanguinis*, being an alien, and that the *Lili'uokalani assignment*, being a treaty, does not exist or has been superseded by a subsequent agreement. The *Lili'uokalani assignment* (January 17th 1893) and the *Agreement of restoration* (December 18th 1893) were both predicated on the uncontested and undisputed sovereignty of the Hawaiian Kingdom and the violation of Hawai'i's sovereignty by the U.S. diplomat and troops on January 16th and 17th 1893. In fact, the Hawaiian Kingdom had a diplomat accredited to the United States and maintained a Legation in Washington, D.C., as well as maintaining Consul-Generals in the cities of New York and San Francisco, and Consulates in the cities of Philadelphia, San Diego, Boston, Portland, Port Townsend and Seattle; and the U.S. Executive had a diplomatic representative accredited to the Court of Hawai'i and maintained a Legation and Consulate in the city of Honolulu.
17. The Court cannot deny the Executive's recognition of Hawaiian sovereignty, *see Defendant's Opposition to Plaintiff's Motion for Summary Judgment, Exhibit "B", filed 20 Dec 2011,* especially in light of recent decisions by an International Tribunal and 9th Circuit Court of Appeals that affirmed the Executive's recognition. See *Larsen v. Hawaiian Kingdom*, 119 ILR 566, 581 (2001), where the Permanent Court of Arbitration in The Hague stated "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the

United States of America, the United Kingdom, and various other States;" the 9th Circuit Court, in *Kahawaiola`a v. Norton*, 386 F.3rd 1271 (2004), also acknowledged the Hawaiian Kingdom's status as "a co-equal sovereign alongside the United States;" and in *Doe v. Kamehameha*, 416 F.3d 1025, 1048 (2005), the Court stated that, "in 1866, the Hawaiian Islands were still a sovereign kingdom." Once recognition of the Hawaiian Kingdom as an independent State was granted by the Executive, Professor Oppenheim asserts that it "is incapable of withdrawal" by the recognizing State. *See Lassa Oppenheim, International Law: A Treatise,* vol. I (3d. 1920), at 137. Professor Schwarzenberger also asserts, that "recognition estops the State which has recognized the title from contesting its validity at any future time." *See Georg Schwarzenberger, Title to Territory: Response to a Challenge*, Am. J. Int'l L., 51, no. 2 (1957): 308-324, at 316. Professor Craven opines, that Hawaiian sovereignty "may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States." *See Matthew Craven, Continuity of the Hawaiian Kingdom*, 1 Hawn. J.L. & Politics 508-544, 512 (Summer 2004). Since the "political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch," see *Japan Whaling Association v. American Cetacean Soc.*, 478 U.S. 221, 230 (1986); the political question doctrine cannot be invoked whereby the Executive already afforded recognition of a foreign state and its government because recognition does not present a controversy "which revolve around policy choices and value

determinations." According to Professor von Glahn, "recognition of new states…[is] a political act with legal consequences." See *Gerhard von Glahn, Law Among Nations* (6th, 1992), at 85; see also *Marjorie M. Whiteman, Digest of International Law*, vol. 2 (1963) at 5-13, 21, 24-26. In fact, President Cleveland acknowledged that the Hawaiian Kingdom government on January 17th 1893 "was undisputed and was both the *de facto* and the *de jure* government." See House Ex. Doc. 47, 53d Cong., 2d Sess. (Ser. No. 3224), p. 451 (1893) (hereinafter, "Cleveland Message"). The President also stated: "The law of nations is founded upon reason and justice, and the rules of conduct governing individual relations between citizens or subjects of a civilized state are equally applicable as between enlightened nations. The considerations that international law is without a court for its enforcement, and that obedience to its commands practically depends upon good faith, instead of upon the mandate of a superior tribunal, only give additional sanction to the law itself and brand any deliberate infraction of it not merely as a wrong but as a disgrace. A man of true honor protects the unwritten word which binds his conscience more scrupulously, if possible, than he does the bond a breach of which subjects him to legal liabilities; and the United States in aiming to maintain itself as one of the most enlightened of nations would do its citizens gross injustice if it applied to its international relations any other than a high standard of honor and morality. On that ground the United States cannot properly be put in the position of countenancing a wrong after its commission any more than in that of consenting to it in advance. On that ground it can not allow itself to refuse to redress an injury inflicted through an

abuse of power by officers clothed with its authority and wearing its uniform; and on the same ground, if a feeble but friendly state is in danger of being robbed of its independence and its sovereignty by a misuse of the name and power of the United States, the United States can not fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparation." Cleveland's Message at 456. In *Jones v. United States*, 137 U.S. 202, 212 (1890), according to the Supreme Court in *Jones*, "Courts of justice are bound to take judicial notice of the territorial extent of the jurisdiction exercised by the government whose laws they administer, or of its recognition or denial of the sovereignty of a foreign power, as appearing from the public acts of the legislature and executive, although those acts are not formally put in evidence, nor in accord with the pleadings." *Jones* at 202. Therefore, sovereignty over the Hawaiian Islands is not a political question and the Court is bound to take judicial notice of Hawaiian sovereignty "from the public acts of the legislature and executive" *prior* to January 17th 1893. Once the executive has afforded recognition of Hawai'i's sovereignty, the recognizing State, which includes this Court, the Congress and the Executive, is estopped "from contesting its validity at any future time." See *Schwarzenberger*, supra. Accordingly, the Court is not only estopped from denying the existence of the Hawaiian Kingdom as a State, without "reference to a valid demonstration of legal title" under international law—Congressional Acts notwithstanding, but also must ensure that the Executive faithfully executes the *Lili'uokalani assignment*, being a sole executive agreement, whereby the Plaintiff is a third party beneficiary. The U.S. Constitution provides that the President "shall take Care

that the Laws be faithfully executed," see Article II, sec. 3, U.S. Const., and that "all [executive agreements] made…under the Authority of the United States [President], shall be the supreme Law of the Land." See Article VI, clause 2, U.S. Const; see also *U.S. v. Belmont* (1937), *U.S. v. Pink* (1942), and *American Insurance Association v. Garamendi* (2003).

18. The Court's decision is in error as the Court's apparent reluctance to take judicial notice of Hawaiian sovereignty has more to do with the "public acts of the legislature and executive" *after* July 7th 1898, when the Congress enacted a Joint Resolution to unilaterally annex and seize the Hawaiian Islands, 30 U.S. Stat. 750 (1898) at the height of the Spanish-American War; two years later enacted An Act to Provide a Government for the Territory of Hawaii, 31 U.S. Stat. 141 (1900); and fifty nine years later enacted An Act to Provide for the Admission of the State of Hawaii into the Union, Pub. L. No. 86-3, 73 U.S. Stat. 4 (1959). In *The Apollon*, 22 U.S. 362, 370 (1824), the Supreme Court emphatically stated, the "laws of no nation can justly extend beyond its own territory [for it would be] at variance with the independence and sovereignty of foreign nations." And in *U.S. v. Belmont*, 301 U.S. 324, 332 (1937), the Supreme Court reiterated "our Constitution, laws and policies have no extraterritorial operation, unless in respect of our own citizens." These Congressional acts cannot be considered to have challenged the sovereignty of the Hawaiian State or called it into question, because "Congressional resolutions on concrete incidents are encroachments upon the power of the Executive Department and are of no legal effect." Since August 12th 1898, the Hawaiian Kingdom has been under a prolonged occupation,

disguised as if it were an incorporated territory of the United States, and according to Professor Marek, "a disguised annexation aimed at destroying the independence of the occupied State, represents a clear violation of the rule preserving the continuity of the occupied State." *See Krystyna Marek, Identity and Continuity of States in Public International Law* (1968), at 110.

19. Sole executive agreements do not provide Congress with any extraterritorial force and effect over the territory of any foreign state, which includes the Hawaiian Kingdom.

C. Plaintiff's Order Denies Defendants' Civil Rights Of Third Party beneficiaries under the Lili`uokalani Assignment.

20. Plaintiff's order is in error as it denies Defendants' rights to property and trial under the *Lili`uokalani assignment,* and committed in violation of the law of nations or a treaty of the United States"—in this case an executive agreement. Justice Sutherland stated "our Constitution, laws and policies have no extraterritorial operation unless in respect of our own citizens." *See U.S. v. Belmont*, 301 U.S. 324, 332 (1937). Justice Field stated, in *Ross v. McIntyre*, 140 U.S. 453, 464 (1890), "The Constitution can have no operation in another country." Accordingly, the U.S. Constitution cannot be invoked as a defense to Defendant's claim, unless the defense can clearly show that the Hawaiian Kingdom was ceded under recognized principles of international law and therefore incorporated as part of the domain of the United States. Plaintiff's have provided no such evidence of cession, that would have succeeded the *Lili`uokalani assignment* and *Restoration agreement.* Rather Plaintiff's are relying on state of Hawaii authority, State v. Fergerstrom, State v. Kaluau, and

State v. Lorenzo, which assumes the Hawaiian Kingdom was ceded in the first place, which it was not. Constitutional protections of the civil rights of third party beneficiaries under the Lili`uokalani assignment, include, but are not limited, to the right to, "life, liberty, and the right of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness (Hawn. Const., art. 1)"; the right to "worship God according to the dictates of their own consciences (Hawn. Const., art. 2)"; the right to "freely speak, write, and publish their sentiments on all subjects, being responsible for the abuse of that right, and no law shall be enacted to restrain the liberty of speech, or of the press, except such laws as may be necessary for the protection of His Majesty the King and the Royal Family (Hawn. Const., art. 3)"; the right "to assemble, without arms, to consult upon the common good, and to petition the King or Legislative Assembly for redress of grievances (Hawn. Const., art. 4)"; the right to the "writ of Habeas Corpus belongs to all men, and shall not be suspended, unless by the King, when in cases of rebellion or invasion, the public safety shall require its suspension (Hawn. Const., art. 5)"; the right that no "person shall be subject to punishment for any offense, except on due and legal conviction thereof, in a Court having jurisdiction of the case (Hawn. Const., art. 6)"; the right that no "person shall be held to answer for any crime in which the right of trial by Jury has been heretofore used, it shall be held inviolable forever, except in actions of debt or assumpsit in which the amount claimed is less than Fifty Dollars (Hawn. Const., art. 7)"; the right that no "person shall be required to answer again for an offense, of which he has been duly convicted, or of which he has been duly acquitted upon

a good and sufficient indictment (Hawn. Const., art. 8)"; the right that no "person shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law (Hawn. Const., art. 9)"; the right that no "person shall sit as a judge or juror, in any case in which his relative is interested, either as plaintiff or defendant, or in the issue of which the said judge or juror, may have, either directly or through a relative, any pecuniary interest (Hawn. Const., art. 10)"; that "involuntary servitude, except for crime, is forever prohibited in this Kingdom; whenever a slave shall enter Hawaiian Territory, he shall be free (Hawn. Const., art. 11)"; that every "person has the right to be secure from all unreasonable searches and seizures of his person, his house, his papers, and effects; and no warrants shall issue, but on probable cause, supported by oath or affirmation, and describing the place to be searched, and the persons or things to be seized (Hawn. Const., art. 12)." With regard to the civil rights of resident aliens, the Hawaiian Supreme Court stated that foreign nationals in the Islands "rely on the numerous treaty provisions which secure them all the civil rights which subjects have 'to enjoy their property in as full and ample a manner as subjects.' —American Treaty, Article 8. 'Full and perfect protection in regard to their property and the same right as native subjects.' —British Treaty, Article 8. 'The same protection as regards their properties as native subjects,' etc. —Bremen Treaty, Article 2." See *Bankruptcy of S.C. Allen*, 6 Hawai`i 146, 147 (1875). Therefore, by virtue of the Lili`uokalani Assignment, Hawaiian subjects or citizens or subjects of any foreign State while within Hawaiian territory are third party beneficiaries that have enforceable

rights, and it is the duty of the Federal government, by its President, to acknowledge and protect these rights as if it were the Hawaiian Kingdom government itself. In *Kolovrat v. Oregon*, 366 U.S. 187 (1961), the court enforced a Yugoslav citizen's right under the U.S.-Serbia treaty to inherit personal property located in Oregon; in *Clark v. Allen*, 331 U.S. 503 (1947), the court enforced a German citizen's right to inherit property in California; in *Bacardi Corp. of American v. Domenech*, 311 U.S. 150 (1940), the court enforced a foreign trademark owner's rights under Pan-American Trade-Mark treaty; in *Nielson v. Johnson*, 279 U.S. 47 (1929), the court enforced a Danish citizen's right under U.S.-Denmark treaty to be free of discriminatory taxation; in Jordan v. Tashiro, 278 U.S. 123 (1928), the court enforced the U.S.-Japan treaty allowing Japanese citizens to conduct trade in the United States; in *Cheung Sum Shee v. Nagle*, 268 U.S. 336 (1925), the court held that U.S.-China treaty prevented mandatory exclusion of wives and minor children of Chinese merchants under Immigration Act of 1924; in *Hauenstein v. Lynham*, 100 U.S. 483, (1879), the court enforced a treaty assuring Swiss citizen's right to inherit property in Virginia; and in Society for Propagation of the v. New Haven, 21 U.S. (8 Wheat.) 464 (1823), the court enforced the 1873 treaty with Great Britain preventing Town of New Haven from seizing lands held under a British corporation. As such, the Court's Order Granting Plaintiff's Motion to Allow Overbidding to Confirm Sale, to Account for and Direct Reimbursement of Expenses and Attorney's Fees and Disburse Net Proceeds, filed 25 Oct 2012, is in error as it denies Defendant's right to property and trial under the *Lili`uokalani assignment* and *Restoration agreement.*

D. Plaintiff Cannot Claim Title As Property Is Open Bonded Probate Estate.

21. Plaintiff has no title to a portion of 8559B Apana 26, Laie, is **open bonded estate** which Defendant, beneficiary, has no accounting or distribution. Based on the constitutional laws of Hawaii Pae Aina, the Kanawai gave procedural requirements for selling properties belonging to the heirs during open probate proceedings as discussed in, E.K. Lipoa by her guardian J.D. Robinson v. J.I. Dowsett, et.als., 3 Haw. 625, 626-27 (1875). That case recognized the requirement of obtaining authorization to transfer real property or interests held in an estate and the necessity of a subsequent deed conveying the property being signed by the administrator of the estate. In Burick v. Disher, 1 Haw. 114, 115 (1852), the court affirmed statutes of the nation by upholding an 1822 law by King Kauikeauoli, in that all leases, deeds, etc., *shall be recorded*: and that no *conveyance* of real estate not recorded within thirty days after it's execution, shall be valid as against a subsequent deed of the same estate, previously recorded. On January 17, 1893, certain individuals calling themselves the "committee of safety" committed the crime of treason by taking over the government of the Hawaiian Kingdom, and forcibly removed Queen Lili'uokalani and her cabinet from office. All appointed positions deriving their authority from the office of the monarch, which include the Registrar of the Bureau of Conveyances under Chapter XXVI, section 1249, Civil Code, and the Notary Publics under Chapter XXVI, section 1266, Civil Code, were all cancelled and rendered void. Equity 344 and all probate proceedings and conveyances arising after the 17th day of January, 1893, were not capable of being recorded in accordance with Chapter XXVI of the Civil

Code of the Hawaiian Islands, leaving all probate matters **open** and **bonded**. As a consequence of the 17th day of January, 1893, certain Trustees for the Estate of William Charles Lunalilo stand contrary to law and subject to criminal proceedings. On October 10, 1894, J. Mott-Smith, Trustee for the Estate of William Charles Lunalilo, violated his allegiance to the Hawaiian Kingdom, when he signed an oath of allegiance to the Republic of Hawaii, of record in Oaths book 32, #150, Hawaiian Kingdom Archives, *see Defendant's Opposition to Plaintiff's Motion for Summary Judgment, Exhibit "E", filed 20 Dec 2011*. In light of the current U.S. occupation of Hawaii, all conveyances arising after the 17th day of January, 1893, were not capable of being recorded in accordance with Chapter XXVI of the Civil Code of the Hawaiian Islands, whereby, all probate proceedings are **open bonded estate**.

E. Plaintiff's admit Title To Parcel 33 is Defective As The Freehold Estate Of Inheritance, Namely The Fee-Simple Title Remains Vested In J. Lua Kahi.

22. On January, 28 1848, Ka Buke Kakau Paa p. 22, Kamehameha III to Charles Kanaina for William Charles Lunalilo, includes the Ahupuaa of Laie. *See Defendant's Opposition to Plaintiff's Motion for Summary Judgment, Exhibit "C", filed 20 Dec 2011*. In 1848 William Charles Lunanilo, was awarded certain lands in Hawai'i's first land division known as the Ka Mahele. In order to obtain a fee simple title, a commutation to the government was paid for their interest, and a Royal Patent issued as provided by the Board of Land Commissioners. On August 27, 1850, the King in Privy Council passed a resolution that converted William Charles Lunalilo's freehold estate not of inheritance, namely his life estate grant, 8559B Apana 36, into an inheritable estate, namely a fee simple title,

without division or commutation. The King's "private feudatory right" of inheritance having been extinguished. The record shows by a certain deed of March 30, 1868, Bk. 25 at 250, George Nebeker conveyed said portion of parcel to J. Lua. The record also shows by a certain deed of March 28, 1898, Bk. 181 at 91, J. Lua Kahi conveyed said portion of parcel to Saderaka Lua (k) a 4/7 interest in parcel 33. On the 11th day of September, 1894, J. Lua Kahi, violated his allegiance to the Hawaiian Kingdom, when he signed an oath of allegiance to the Republic of Hawaii, of record in Oaths book 43, #44, Hawaiian Kingdom Archives. *See Defendants Amended Answer Exhibit "E", filed 19 Oct 2010.* Successors of the Provisional Government established by the "committee of safety" these individuals committed the act of "high treason", section 1, ChapterVI of the Hawaiian Penal Code. As such, J. Lua Kahi fell under the treason statute of "…adhering to the enemies thereof, giving them aid and comfort, the same being done by a person owing allegiance to this kingdom.", which in consequence voids the lease. J. Lua Kahi remains subject to criminal proceedings of a competent tribunal under the laws of the Hawaiian Kingdom. Consequently, after the 17th day of January, 1893, all appointed positions deriving their authority from the office of the monarch, which include the Registrar of Conveyances under Chapter XXVI, section 1249, Civil Code, and the Notary Publics under Chapter XXVI under section 1266, Civil Code, were cancelled and void. All conveyances arising after January 16, 1893, were not capable of being recorded in accordance with Chapter XXVI of the Civil Code of the Hawaiian Islands. In light of the current U.S. occupation of Hawaii, Plaintiff's title is

defective as the freehold estate of inheritance, namely the fee-simple title to this particular piece or parcel of property remains vested in J. Lua Kahi and any and all conveyances done after the 17th day of January, 1893, being recorded or unrecorded, are void and without merit. J. Lua Kahi remains subject to criminal proceedings of a competent tribunal under the laws of the Hawaiian Kingdom.

F. In Light Of The Current U.S. Occupation Of Hawaii, Plaintiff's Attorney's PHILIP J. LEAJ and LORI K. AMANOAre Not Competant Attorney's Under Hawaiian Law.

23. Title 1. Chapter II. §6. Of the Civil Code of the Hawaiian Islands, states in pertinent part; "The laws are obligatory upon all persons whether subjects of this kingdom or citizens or subjects of any foreign State, while within the limits of this kingdom,…" Laws Governing Practicing Attorneys in the Hawaiian Islands. Section IX, Chapter 1, of the Third Act of Kamehameha III, empowered the Courts of record to examine and admit attorneys into their respective bars. Since that enactment, the Hawaiian Legislature further defined this section under section 1065, chapter XXI, title 4, of the Compiled Laws, 1884, to wit: "The Supreme Court shall have power to examine and admit as prosecutioners, in the courts of record, such person, being Hawaiian subjects, of good moral character, and having taken the prescribed oath of office, as said court may find qualified for that purpose. Section 1969, chapter XXI, title 4, aforesaid, prescribes the oath as follows, "____, being duly sworn, deposes that he will support the Constitution and laws of the Hawaiian Islands, and faithfully discharge the duties of attorney, counselor, solicitor and proctor, in the courts of this Kingdom, to the best of his ability." Plaintiff's Attorney's PHILIP J. LEAJ and LORI K. AMANO, claims to

be a practicing attorney in the Hawaiian Islands, and having been admitted into the bar by the Supreme court of Hawaii, you swore the following oath, to wit: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of Hawaii, and that I will at all times conduct myself with the Hawaii Rules of Professional Conduct. As an officer of the courts to which I am admitted to practice, I will conduct myself with dignity and civility towards judicial officers, court staff, and my fellow professionals…" By this oath and admittance into the bar, PHILIP J. LEAJ and LORI K. AMANO, is not a competent practitioner of law in the Hawaiian Islands under section 1065, chapter XXI, title 4, aforesaid, and cannot claim any more competency than the state of Hawaii and its political subdivisions can claim sovereign authority without standing in contravention of Hawaiian Law and in violation of the Treaty between the United States and the Hawaiian Kingdom, 1850 and the Hague Convention, Laws of War. PHILIP J. LEAJ and LORI K. AMANO cannot exercise American municipal law in the Hawaiian Islands nor over its subjects.

G. In Light Of The U.S. Occupation Of Hawaii, The Circuit Court, State of Hawaii Is Not A Competent Tribunal Lawfully Constituted Under Hawaiian Law.

24. The Judiciary department was established by the Third Act of Kamehameha III to organize the Judiciary department of the Hawaiian Islands, and it had been determined by section 1 of that act that "…in order to conduct with greater certainty and system, the several judicial functions specified in the constitution, and required by the exigencies of this kingdom, by the treaties with other powers heretofore made and hereafter entered into, and by the general usage and comity

of nations, there shall be styled the Judiciary Department of the Hawaiian Islands." Since the establishment of this department, it had also gone through lawful evolution by the Hawaiian Legislature and is clearly defined in title 4 of the Compiled Laws of 1884. Section 870, chapter XIV, title 4, specifically defines the First Circuit Court, which consist of the Island of O'ahu, whose seat of justice shall be at Honolulu. By an Act 1874 Chapter IX, Legislation revised and then amended in 1876 Chapter VI, the Civil Code to abolish the office of circuit judge for the island of O'ahu. Title 5. Of the Civil Code provides the LAWS AFFECTING DOMESTIC RELATIONS. The circuit court, State of Hawaii is not a competent tribunal lawfully constituted under section 870, chapter XIV, title 4, aforesaid, but is merely a subdivision of the State of Hawaii, having puppet character under international law, which can claim no authority without standing in violation of the Treaty with the Hawaiian Islands, 1850, and in contravention of the, so stated statutes of the Compiled Laws of the Hawaiian Islands 1884. The circuit court, state of Hawaii, cannot interfere with existing rights and obligations of Hawaiian subjects as American municipal law has no effect within the territorial domain of the Hawaiian Kingdom.

IV. Conclusion

Plaintiff-Appellee's petition and admissions of fact and affidavits of record, have manifestly requested the Court to act outside it's constitutional limitations of it's administrative authority, and unlawfully intrude upon, and in effect seize political control over an Executive Agreement entered into between President Grover Cleveland and Queen Lili'uokalani to restore the Hawaiian Kingdom Government, a usurpation that is

in direct violation of the constitutional authority to enter into international agreements with foreign States exclusively in the hands of the Executive Branch of the Federal government, specifically, the President of the United States. This Executive Agreement acknowledges that the only law to be applied in the Hawaiian Islands is Hawaiian Kingdom law and not U.S. law via the State of Hawaii. Because the Hawaiian Islands have been under prolonged occupation since the Spanish-American War on August 12, 1898, Plaintiff-Appellee's petition and Court orders is also a violation of Article 43, 1907 Hague Convention, IV, whereby, the only governmental authority authorized to administer Hawaiian Kingdom law in the territory of the Hawaiian Kingdom, which includes the Island of Oahu, is a U.S. military government and not a civilian government. For the above stated reasons, Plaintiff's Appeal from the Order Granting Plaintiff's Motion to Allow Overbidding to Confirm Sale, to Account for and Direct Reimbursement of Expenses and Attorney's Fees and Disburse Net Proceeds, filed 25 Oct 2012, should be denied.

Dated __________ ________________________________

Maltbie Napoleon

NO. CAAP-12-0001024

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII

HOVEY B. LAMBERT, TRUSTEE UNDER THAT HOVEY B. LAMBERT TRUST, an unrecorded revocable living Trust Agreement dated April 5, 2002,

Plaintiff-Appellee,

vs.

WAHA(K), et.al.,

Defendants-Appellees.

and

LESIELI TEISINA,

Defendant-Appellant,

and

PENISIMANI TEISINA,

Intervenor-Appellant,

and

MALTBIE K. NAPOLEON,

Party-In-Interest-Appellee,

and

DOE DEFENDANTS 24-80;
AND ALL WHOM IT MAY CONCERN,

CIVIL NO. 09-1-2529

APPEAL FROM THE ORDER GRANTING PLAINTIFF'S MOTION TO ALLOW OVER-BIDDING TO CONFIRM SALE, TO ACCOUNT FOR AND DIRECT REIMBURSEMENT OF EXPENSES AND ATTORNEY'S FEES AND TO DISPURSE NET PROCEEDS
Filed October 25, 2012

FIRST CIRCUIT COURT

HON. RHONDA A NISHIMURA
Judge

)
Defendants.)
____________________________________)

Certificate of Service

I certify that the following instrument, ORDER GRANTING PLAINTIFF'S MOTION TO ALLOW OVERBIDDING, TO CONFIRM SALE, TO ACCOUNT FOR DIRECT REIMBURSEMENT OF EXPENSES AND ATTORNEY'S FEES AND TO DISBURSE NET PROCEEDS, filed October 25, 2012, et.al., Party-In-Interest-Appellee Maltbie K. Napoleon Opening Brief, Certificate of Service, was duly delivered by hand or mailed, to the following:

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____
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