

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

PINMEI WANG, et al., )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 ZHONG FANG, et al., )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**Electronically Filed**  
**Intermediate Court of Appeals**  
**CAAP-20-0000160**  
**03-JUN-2020**  
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 1CCV-19-0002025  
 1CCV-19-0002037  
 1CCV-19-0002169  
 Various Motions

TRANSCRIPT

of the proceeding held Thursday, February 27, 2020, before the Honorable Dean E. Ochiai, Judge presiding.

APPEARANCES

WEN SHENG GAO Attorney for Plaintiffs

DAVID SQUERI Attorneys for Defendants  
 SOL V. YI (except Hawaii City Plaza, LP  
 & Hawaii Ocean Plaza, LP)

LAHELA KAMALANI-MOE  
 Official Court Reporter  
 CSR 321/RPR  
 First Circuit Court  
 State of Hawaii

1 Thursday, February 27, 2020

P.M. Session

2 --oOo--

3 THE CLERK: Calling Case No. 1CCV-19-2025,  
4 1CCV-19-2037, and 1CCV-19-2169, for:

5 1. Defendants' motion to stay the action and  
6 compel arbitration;

7 2. Defendants' motion to quash summons and set  
8 aside default;

9 3. Defendants' motion to expunge lis pendens;

10 4. Plaintiffs' motion for leave to amend  
11 complaints;

12 5. Motion to stay discovery;

13 6. Plaintiffs' motion for partial summary  
14 judgment for an order of judicial dissociation of California  
15 Investment Regional Center LLC from Hawaii City Plaza, LP  
16 and California Regional Center, LLC, from Hawaii Ocean  
17 Plaza, LP under HRS 425E-603(5); and,

18 7. Motion to dismiss and/or strike duplicative  
19 actions.

20 Appearances, please.

21 MR. GAO: Good morning, Your Honor. Good  
22 afternoon, Your Honor. Sorry. Attorney Wen Sheng Gao on  
23 behalf of Plaintiffs.

24 THE COURT: Thank you.

25 MR. SQUERI: Good morning, Your Honor. David

1 Squeri. Also with me is Sol V. Yi. We represent the  
2 defendants with the exception of Hawaii City Plaza, LP and  
3 Hawaii Ocean Plaza, LP. At this time we're making a special  
4 appearance for the --

5 THE COURT: No special appearance. I told you  
6 you're either in or out. They either have counsel or they  
7 don't today.

8 MR. SQUERI: Your Honor, I believe you said after  
9 today's hearing.

10 THE COURT: After today's hearing?

11 MR. SQUERI: Yes. I believe that's what --  
12 because that's what we filed the motion for is that --

13 THE COURT: Oh, okay. After today's hearing.

14 MR. SQUERI: Yes, sir.

15 THE COURT: And then they gotta be represented  
16 one way or the other.

17 MR. SQUERI: We understand, sir.

18 THE COURT: Okay.

19 MR. SQUERI: Thank you, Your Honor.

20 THE COURT: Some preliminary observations here.  
21 Counsel, there are rules that govern page limitations.  
22 Future violations will result in sanctions being issued by  
23 the court. And there's many violations here today.

24 Next, memos in op must be filed separately, not  
25 one omnibus objection. Because these cases have not yet

1       been consolidated, I expect clear, concise arguments on each  
2       motion separately, not all rolled into one. Future  
3       violations will result in either the court striking and/or  
4       issuing sanctions. Are we all clear? This applies to  
5       everybody.

6                   MR. GAO: Yes, Your Honor.

7                   MR. SQUERI: Yes, Your Honor.

8                   Um, I'm sorry. We -- when we filed these  
9       combined objections and so forth, we were following the  
10      opposing counsel, what had been filed against us.

11                  THE COURT: Well, in the future that's not gonna  
12      happen or I'm just gonna start striking and sanctioning.  
13      Okay. We're gonna sort this out today and move in an  
14      orderly manner with this litigation.

15                  MR. SQUERI: Thank you, Your Honor.

16                  THE COURT: Okay. The first one the court is  
17      going to take up is the motion to strike duplicative actions  
18      and allow only one case, which is 19-2169, to move forward.  
19      Your motion.

20                  MR. SQUERI: Your Honor, I believe that we were  
21      somewhat in the middle of this. Um, we have gone through  
22      many of the arguments in, uh, in our previous hearing and it  
23      was continued to today. I also believe that Mr. Gao brought  
24      forth, when asked by the court why he needed to file these  
25      motions -- uh, these -- I'm sorry, these three complaints

1 that are basically identical, he said because he was trying  
2 to preserve the entry of default. I believe that's what I  
3 recall.

4 And if that's true, Your Honor, then his argument  
5 fails right there because after all these motions have been  
6 filed, he then amended the complaint, and today he's asking  
7 for another amendment of the complaint. So he's left with  
8 absolutely no reason to have three identical complaints in  
9 the same action.

10 And I'd like to point out to Your Honor how much  
11 prejudice, how much burden this has caused my client. When  
12 I'm trying to do stuff, I'm going between all three  
13 complaints because -- because the amount and the number of  
14 plaintiffs are different, the numbers are different on the  
15 individual allegations. So I have to search through all  
16 these different complaints for the same paragraph just  
17 because they're different numbers.

18 This is -- this has been huge, um -- on -- a huge  
19 burden on our client, Your Honor. And it's absolutely --  
20 not only is it against the rules. It's just not needed.  
21 And all it's done is muddled the case and create big  
22 problems.

23 Thank you.

24 THE COURT: Okay. Mr. Gao?

25 MR. GAO: Yes, Your Honor. I think I responded

1 the first motion to strike was late. And under Ko --

2 THE COURT: I'm hearing it.

3 MR. GAO: Yeah.

4 THE COURT: Let's not get into the minutia.

5 Let's talk substance.

6 MR. GAO: Yes, Your Honor. The court has  
7 discretionary power to strike repetitive arguments, matters  
8 in the complaints, in the pleadings. So I think it's more  
9 appropriate just -- just strike those repeated parties for  
10 the three cases. And then in the future I will agree if the  
11 court wanted to keep only first case continue and then we  
12 have to amend the complaint to get all the defendants into a  
13 proper case because with three cases we have three different  
14 set of defendants and different purposes initially. Based  
15 on --

16 THE COURT: It's all arising out of the same two  
17 projects; right?

18 MR. GAO: Same two project but different  
19 plaintiff, different defendants. So the plaintiff came from  
20 --

21 THE COURT: Why would there be different  
22 defendants?

23 MR. GAO: When plaintiff came from China, they  
24 have cause action against a Chinese company Kohan because  
25 that company handle more than half the solicitations. And

1 for the Chinese investor, most of them they had a class  
2 action against that Kohan company in the second case.

3 THE COURT: But this EB-5 --

4 MR. GAO: Yes.

5 THE COURT: -- is just one or two projects;  
6 right?

7 MR. GAO: Yes, Your Honor. And third case  
8 actually had three projects involving. The third case  
9 defendant were comingle with --

10 THE COURT: No. There's still two projects.

11 MR. GAO: There's three projects, Your Honor.

12 THE COURT: Where is the third project?

13 MR. GAO: California, L.A. City Plaza.

14 THE COURT: Why is that action being brought here  
15 then?

16 MR. GAO: Some one of the plaintiff were  
17 initially invested in one of three project but were  
18 transferred back and forth by the defendants and they  
19 actually had no clue which project they are. So the third  
20 project would be L.A. CP. Based on defendants' operation we  
21 had to get indispensable party into the third case. I'm not  
22 -- uh, it's not appropriated for that consideration.

23 I'm sorry, Your Honor. It's complicated case I  
24 admit. In the future we can merge all three cases. We get  
25 more information to do merging to the first case, Your

1 Honor, in the first time hearing.

2 THE COURT: Well, I'm wondering how you gonna get  
3 jurisdiction for the EB-5 project that's in California in  
4 Hawaii court.

5 MR. GAO: The money commingled. And the second  
6 project money all possibly gone to L.A. project. That's why  
7 the plaintiff was transfer from Ocean Project to the L.A.  
8 City projects. In that case the contract was signed here,  
9 the purpose was going to do business here, and the property  
10 was purchased in the state of Hawaii. But the name, money  
11 were transferred to that L.A. CP projects.

12 THE COURT: Okay. Is there any reason why we  
13 don't consolidate them right now?

14 MR. GAO: Uh, Your Honor, I will agree if you  
15 want to consolidate it right now, we can consolidate to the  
16 first case preserving priority for filing dates. And I will  
17 -- also will work on that to --

18 THE COURT: Well, the priorities is something the  
19 plaintiffs gotta work out themselves --

20 MR. GAO: Yes, Your Honor.

21 THE COURT: -- since you're representing all of  
22 them.

23 MR. GAO: Yes, Your Honor. I had more clients  
24 actually that --

25 THE COURT: You gonna have to work it out with



1 your clients as to how to prioritize any settlement or  
2 recovery or whatever --

3 MR. GAO: Yes, Your Honor.

4 THE COURT: -- 'cause I have other cases that had  
5 multiple parties too and I don't prioritize them if they're  
6 represented by counsel. If they decided to all go with one  
7 attorney, they gotta have an agreement among themselves what  
8 the priorities will be. So that's your responsibility, not  
9 the court's, not the defense.

10 MR. GAO: Yes, Your Honor.

11 Um, for this particular case because defendants'  
12 conduct was not -- was not legally and was against no  
13 agreement between the plaintiff, plaintiff have power to  
14 vote to make decision when the property can be sold. And  
15 according to four of the five agreements, plaintiff have  
16 property right to make decision whether the property should  
17 be sold before the completion of the projects.

18 And based on the situation in November 1st  
19 there's going to be a sale without permission, without  
20 consent, without knowledge of all limited partners. So  
21 that's the situation I was asked by the plaintiff to file  
22 first case within 24 hours because if we don't do that, so  
23 we don't have today's case, many things are going to be  
24 meaningless and we gonna get much bigger, much complicated  
25 case in today's case.

1           My client was going to keep the property, keep in  
2 a situation, and even -- even to preserve some opportunity  
3 to reorganize the projects in the state of Hawaii. And the  
4 potential buyer all came from Hong Kong, China, Korea. They  
5 are venture business. They buy and sell. And that will be  
6 a -- totally a mess if that happened.

7           And the -- and the many property actually sold to  
8 investor in March 2019 when defendant demanded additional  
9 funds, about 12 of investor pay full amount of money. And  
10 they are entitled to have the property title. But now it's  
11 still in two pieces.

12           Twelve investor pay full amount of purchase money  
13 for the property based on demand defendant made. But even  
14 got the full amount of money even sold the property,  
15 defendant still want to double -- make a double sale to sell  
16 whole project to another venture company or other couple  
17 venture company at the same time doing the negotiation --  
18 Chinese, Hong, Kong, Korean company at the same time.  
19 That's bad faith.

20           The first case we filed when the situation was  
21 really in a urgent situation. I agree first case, first  
22 complaint wasn't perfect and contain then many statement not  
23 conclusive, just general arguments like breach of contract,  
24 fraudulent. I agree that's imperfect. That's why I need  
25 even the case continue, we probably need to amend the

1 complaint in the future, have court's permission.

2 THE COURT: Well, do we need three separate cases  
3 is what I'm saying or can you just merge everything, all  
4 your claims and causes of action, all your clients into one  
5 big case?

6 MR. GAO: Yeah, into the first case, I will agree  
7 with that.

8 THE COURT: Is that 2169? Is that the one?

9 MR. GAO: Uh, 2025, Your Honor.

10 THE COURT: Okay.

11 Mr. Squeri, does that make sense, we merge  
12 everything into 2025?

13 MR. SQUERI: Your Honor, um, I think he's once  
14 again trying to preserve his entry of default or something  
15 of that nature which by his own admission should be moot at  
16 this time. Our position quite frankly is every time he  
17 amended this complaint and we filed it, that should have  
18 been an amended complaint. So it should have nullified the  
19 complaint beforehand. Therefore the proper one to litigate  
20 on would be the third complaint.

21 And, uh, also the points about this California  
22 entity, I have heard nothing that would make them subject to  
23 the Hawaii laws. The California entities, California entity  
24 doing business in California, there's nothing that says that  
25 it reached out to -- I don't believe that they've reached

1 out to -- I haven't seen any allegation in the complaint  
2 supporting the application of Hawaii's long-arm statute so  
3 that's just a red herring.

4 Um, now, Your Honor, I mean this is his doing.  
5 And it's not as if we did what Mr. Gao would have done and  
6 file a surprise motion and try and get this before the court  
7 so we could, you know, make some action here. We have told  
8 him about this. Before my representation the defendants'  
9 attorney in California had told this about -- to him in  
10 writing and in e-mail. When we took on representation, we  
11 again told him about this. He's been told multiple,  
12 multiple times all the way through.

13 And, um, I would like also the court to take a  
14 look at the prejudice that this three-complaint litigation  
15 has caused in terms of filing for motions and so forth. He  
16 files an opposition in one and then he gets an understanding  
17 of our arguments to the reply and then he uses that to file  
18 oppositions in the other two motion -- in the other two  
19 litigations. That's just -- that's gamesmanship of an  
20 extent I've never seen before quite honestly, Your Honor.

21 Now he created this mess. And if he feels that  
22 the third -- litigating on the third complaint is somehow  
23 troublesome to him, well, that should be his problem because  
24 at the end of the day he's the one who did this, who took  
25 this action, three -- three ident -- nearly identical

1 complaints filed in different courts. Think about how much  
2 burden this has created for you and the judicial system.  
3 Mountains and mountains of paper.

4 Uh, thank you, Your Honor.

5 THE COURT: Okay.

6 MR. GAO: Your Honor, if I may respond to --

7 THE COURT: Yes.

8 MR. GAO: That's -- according to Hawaii Revised  
9 Statutes 658A-4, the argument for arbitration presenting the  
10 court now to present to attorney.

11 THE COURT: We're not talking about arbitration  
12 now.

13 MR. GAO: No, the defendant was talking about  
14 initial communication between when we had the time to get  
15 the case to the court to respond to the complaint back to  
16 November to something like -- the situation wasn't caused by  
17 plaintiffs' side. Was caused by defendants' side.

18 Plaintiff had plenty opportunity to hold  
19 defendant in default, but due to the circumstances in the  
20 transition between commercial funding and China funding, we  
21 couldn't finish that and then we couldn't get a default  
22 judgment, wasn't able to, couldn't do that due to  
23 circumstances. And we wasn't in fault because in the  
24 statutory it say that if you had an arbitration defense, you  
25 need to present to the court, not present to the attorney.

1 And you cannot force attorney of the other side to arbitrate  
2 to somewhere else. You got to present to the court by  
3 motion or by summon, by notice. The defendant was informed  
4 of the procedure. We been following the proceed statute of  
5 the state about arbitration requirement.

6 And I will agree to go into the first case. I  
7 think defendant has been benefitted for the default and  
8 benefitted for the second case also by the merge into the  
9 first case. And we can compromise one way and defendant  
10 will do the same.

11 So we do the first case. The plaintiff was able  
12 to preserve the priority as a creditor under the loan  
13 agreement as a buyer and purchaser of the property under the  
14 property agreement and property reservation agreement. I  
15 think three of the plaintiff have paid full amount of money  
16 to get the property. Cannot be jeopardized by the  
17 defendants' sale and to loss their purchase price.

18 THE COURT: Well, the court waded through all of  
19 this. This is what the court's going to do. I'm going to  
20 grant the motion to strike duplicative actions. The civil  
21 number that will survive is 2169. And that makes me jump  
22 over to Motion No. 3 which is I will grant your motion for  
23 leave to amend and add further plaintiffs and additional  
24 defendants into one case and that will be 2169.

25 So what I'm expecting to see from you, Mr. Gao,

1 is a first amended complaint --

2 MR. GAO: Yes.

3 THE COURT: -- in 2169 that brings all the  
4 plaintiffs in 2025 and 2037 into 2169 and consolidate all  
5 your claims and causes of action in 2169. Okay?

6 MR. GAO: Uh, yes.

7 THE COURT: So, Mr. Squeri, please prepare the  
8 appropriate order stating that. And actually do it twice.  
9 One for the motion to strike duplicative and for the motion  
10 -- his motion for leave to amend which will be the same  
11 order. But henceforth it's all going to be in 2169.

12 MR. SQUERI: Okay. Your Honor, I believe that --

13 THE COURT: Okay. So we've taken care of those.

14 Now motion to quash summons in 2169. Your  
15 motion.

16 MR. SQUERI: Okay. Your Honor, uh, the motion to  
17 quash summons is based upon two things. First of all at the  
18 time we believed in good faith that we had an arbitration  
19 agreement in place and, um, and that any discovery would  
20 take place in arbitration. Um, and we -- um, the -- I'm  
21 sorry.

22 THE COURT: Right. Your allegation is that  
23 there's improper service.

24 MR. SQUERI: I'm sorry?

25 THE COURT: Your allegation is that there is

1 improper service. The quash summons.

2 MR. SQUERI: Yeah. Oh, I'm sorry.

3 THE COURT: I know there's a lot of paper here.

4 MR. SQUERI: There's a lot of paper here, Your  
5 Honor. I'm sorry. The quash summons is just essentially  
6 they just didn't serve correctly. They showed up. They had  
7 their process server show up. And I believe in this case  
8 they -- they, um -- they -- they served, uh, Wei Jiang. And  
9 he's not authorized to set -- accept service on all of these  
10 parties. He's not involved in the, um -- he's not in charge  
11 of the office. There's nothing to indicate that he's in  
12 charge of the office.

13 They just essentially -- and the other motions as  
14 well which are now moot evidence entered shows that Mr. Gao  
15 is in the habit of just showing up and serving whoever  
16 happens to be standing around. We have one motion in place  
17 where they served the secretary as being in charge of the  
18 office. Another one they served a third-party independent  
19 contractor salesman as being in charge of -- this is not at  
20 all in compliance with their duties to serve correctly.

21 Thank you, Your Honor.

22 THE COURT: Okay. Mr. Gao.

23 MR. GAO: Your Honor, in the statute permits I  
24 think we go back to Rule 4(d), Rule 4(d)(1) for the personal  
25 service, I think for the business service was 2 -- uh, Rule



1 4(d)(3). Rule 4(d)(8) for the service on the entity can be  
2 made under the statutes.

3 THE COURT: Yeah, on who though?

4 MR. GAO: Under the statute any person who in  
5 charge of property office at the time making the service.

6 THE COURT: An officer or director. But --

7 MR. GAO: If cannot be found.

8 THE COURT: But the receptionist, I don't know.

9 MR. GAO: Yeah. And we send, according to the  
10 declarations made by the five witnesses, employees' acting  
11 manager. So he's the person had the full power to control  
12 the office and he's a personal assistant of Fang Zhong who  
13 is the CEO, chief of all entities. So he's the person who  
14 can accept service for all entity defendants who registered  
15 at the 1441 Kapiolani, 1700, that office.

16 THE COURT: What does the DCCA say --

17 MR. GAO: DCC --

18 THE COURT: -- as to who the authorized agents  
19 are for these various agencies?

20 MR. GAO: If the agency could not be found, under  
21 the statute service can be served, can be done to the person  
22 who could be found in charge of the property and of all the  
23 office.

24 THE COURT: Well, are the defendants registered  
25 to do business in Hawaii?

1 MR. GAO: Yes, Your Honor, all defendants.

2 THE COURT: Then what does DCCA say is the  
3 authorized person to receive service?

4 MR. GAO: DCCA say for different entity Zhong  
5 Fang, Jiajia Wang, Zhe Fang. And those people not here and  
6 not in the office at that time. They -- they just hide  
7 somewhere and not going to receive. But that's not excuse.  
8 The statute say if we cannot find those people, we still can  
9 serve anyone in charge in the office.

10 THE COURT: Mr. Squeri.

11 MR. SQUERI: Uh, Your Honor, first of all I find  
12 it very interesting that Mr. Gao understood exactly who  
13 needed to be served, but he has not submitted any evidence  
14 whatsoever that attempt was made to serve on these  
15 individuals. Essentially they showed up at the office from  
16 what I gather. From what I've seen in the evidence,  
17 essentially they showed up at the office, served whoever  
18 happened to be there, and, you know, took this shortcut, and  
19 in doing so violated the Rules of Civil Procedure.

20 Um, now it's been shown that in evidence before  
21 the court we submitted a W-2 for Shin -- uh, Wei Jiang, that  
22 he doesn't even work for any of these entities. He works  
23 for one of them. Uh, I'm sorry. California Regional --

24 Which one is it? U.S. Realty Construction Group  
25 I think it was, Your Honor. So he doesn't even work for all

1 of these defendants. And there's nowhere in the statute  
2 that says you can just take a shortcut, that this statute  
3 gives you a shortcut that you can just show up and serve  
4 whoever happens to be standing around the water cooler that  
5 day which is apparently what they did.

6 They knew that Fang and possibly a few others  
7 were the correct people to serve and yet it's interesting  
8 also that when they wanted to do their little invasion of  
9 the clients' office, which they've admitted to -- the  
10 details are in dispute, but they've admitted to in their  
11 amended complaints that they went to Fang's office, they met  
12 with Fang. We say that was an invasion of the office. They  
13 have another opinion, but that's fine.

14 But the point is when they wanted to find Fang,  
15 they could do so, but they couldn't do it when it's time for  
16 service. How does this work, Your Honor? Um, if they could  
17 find Fang on that day, they could find him on another day.  
18 Um, it's not -- the guy is in his office doing work. It's  
19 not as if he's a mystery man that's impossible to find.

20 The process server, when he showed up at the  
21 office, if the proper people weren't there, the best thing  
22 to do was to do what my process server does -- leave his  
23 phone number and say I have legal documents. I'll be back.  
24 And then if you don't get a call, then maybe you come-back a  
25 couple times.

1           And then if you can't effect service, then you  
2 file something saying you can't effect service then maybe  
3 they could serve somebody else. But just to take a shortcut  
4 is indicative to how Mr. Gao has been handling this case.  
5 And once again it's a violation of the Rules of Civil  
6 Procedure based on service and, um, duties owed to this  
7 court and to opposing counsel.

8           Thank you.

9           THE COURT: Mr. Gao.

10          MR. GAO: Your Honor, talking about Rules of  
11 Civil Procedure, Rule 12H clearly say that this motion  
12 already waived, the first motion, initial motion to file  
13 five days earlier for motion to compel and the motion for  
14 improper venue, not motion not supposed to be filed.

15          THE COURT: No. We're talking about service.

16          MR. GAO: Service was -- service defect --  
17 defective service or defective service of procedure and  
18 improper venue Rule 12B2 to 5 if defendant has not raised in  
19 his first motion he has waived in other motions in the  
20 future. The first motion was filed five days earlier in  
21 this case and the motion was barred to raise that question  
22 again.

23          And defendants already serve personal  
24 jurisdiction to this court by first motion. And prior to  
25 the first motion defendant also file opposition to respond

1 to ex-parte motion for injunctive order.

2 THE COURT: We are talking about Rule 4, process.  
3 Basically how the lawsuit gets started. So have you  
4 complied with that rule?

5 MR. GAO: Your Honor, the DCCA registration was  
6 properly entered under the penalty, certify by the person  
7 who filed those documents. Those people were family. And  
8 they filed document with DCCA and indicated principal office  
9 is 1441 Kapiolani Boulevard, Room 1700. And that was in  
10 Exhibit --

11 THE COURT: Yes. They're not disputing that's  
12 the address of the offices.

13 MR. GAO: Uh, when the offices --

14 THE COURT: They're disputing that service did  
15 not comply with Rule 4.

16 MR. GAO: And Rule 4 also clearly say that if  
17 there is the Rule 4(d)(8), the language say any honor in the  
18 service by following the statutes will be sufficient under  
19 Rule 4. The statute for LLC, corporation, or as indicated,  
20 the service may be served by any person who is in charge of  
21 the office at the time of service and if you cannot find  
22 agent or officer. So that's sufficient based on those  
23 statutes under Rule 4(d)(8).

24 THE COURT: Rule 4.3 says "upon a domestic or  
25 foreign corporation or upon a partnership or other

1 unincorporated association which is subject to suit" --

2 MR. GAO: Yes, Your Honor.

3 THE COURT: -- "under a common name by delivering  
4 a copy of the summons and of the complaint to an officer, a  
5 managing or general agent or to any other agent authorized  
6 by appointment or by law to receive service of process."

7 MR. GAO: Yes. Rule --

8 THE COURT: It doesn't say you can just leave it  
9 with the receptionist.

10 MR. GAO: Category 1 and 3 also further rule in 8  
11 -- Rule (d)(8) it says specific to Category 1, individual  
12 service; 3, partnership and corporation is sufficient also  
13 following the other statute. And that's Rule (d)(8).

14 THE COURT: I'm reading (d)(8).

15 MR. GAO: Yes, Your Honor.

16 THE COURT: And it refers to Paragraph 1 and 3.

17 MR. GAO: Creditor to Paragraph 1 or 3 is what we  
18 talking about here.

19 THE COURT: Okay. So, Mr. Squeri --

20 MR. SQUERI: Yes, sir.

21 THE COURT: -- in a roundabout way Mr. Gao is  
22 saying that under HRCF 12H a defense of improper service  
23 must be made first under a Rule 12 motion, and that may not  
24 have been done here.

25 MR. SQUERI: Yes, Your Honor. We filed this

1 under Rule 12 motion. There are other motions filed at the  
2 same time. And in fact we have a case cited in our reply on  
3 Page 10, *Romero v Star Markets*, 82 Hawaii 405, uh,  
4 respondents did not waive their jurisdictional objections by  
5 actively participating in the court's hearing on the merits  
6 of the purported defenses. And we hold that under Hawaii  
7 Rules of Civil Procedure Rule 12B respondent's  
8 jurisdictional defense with their affirmative defense of  
9 accord and satisfaction did not waive their assertion of the  
10 form.

11 Um, and the other defense we would have to this  
12 argument of course, Your Honor, is this was all necessary --  
13 made necessary by Mr. Gao's actions in the fact that we were  
14 filing stuff only to sort of bring a stop to his constant  
15 filing of nonsensical frivolous motions. And -- and, um,  
16 because we knew that that was -- if we didn't -- if we  
17 didn't get stuff on the record immediately, um, he was just  
18 gonna keep going and it was just going to increase the  
19 volume of work.

20 Also we'd like to bring it to the court's  
21 attention that it was heard -- they're being obviously heard  
22 on the same date, and that was scheduled from the beginning  
23 to be heard on the same date as far as I can remember. And,  
24 um, I believe we filed them on the same date. Oh, we filed  
25 them on different dates.

1 THE COURT: So what defendants are you saying  
2 were not properly served?

3 MR. SQUERI: Uh --

4 THE COURT: Was Mr. Fang served?

5 MR. SQUERI: I don't believe any of them were  
6 properly served, Your Honor. None of them were properly  
7 served. That would be our position. We have actually in  
8 our motion on Page 12 and on Page -- on Page 11 and Page 12  
9 we have the arguments mapped out where we oppose the service  
10 of all the -- um, of all the defendants that the plaintiffs  
11 claim have been served.

12 THE COURT: Oh, as for the individuals. Okay.

13 MR. SQUERI: Okay.

14 THE COURT: But what about the corporation --  
15 corporate entities that -- are you using that 1441  
16 Kapiolani, Suite 1700 address?

17 MR. SQUERI: Uh, yes. As we discussed little bit  
18 earlier, Shen Wei is the -- actually I think the name's  
19 reversed here -- Wei Shen is, um -- he's not authorized to  
20 accept service. He's not in charge of the office. And he's  
21 not authorized to accept service under the Hawaii Civil  
22 Rules of Procedure 4. He's not authorized under the, um --  
23 HRS, um, 28-11, 25E-117 that was raised in the objection  
24 simply because, well, first of all he's not authorized as a  
25 manager -- I mean as an agent for service against the



1 corporate entities.

2 And regarding the HRS statutes, it clearly says  
3 if the appropriate party cannot be found. And once again  
4 the plaintiffs have not offered any evidence whatsoever to  
5 support the fact -- to support any argument that they had  
6 searched for the appropriate individual.

7 And once again I brought forth the example that  
8 they were able to find Mr. Fang when they wanted to barge in  
9 on his business and hold him in his conference room and make  
10 demands on him which Mr. Gao has consequently admitted on  
11 the record to violating his ethical duties, but we'll get to  
12 that at another time. When they wanted to do that, they  
13 could find Mr. Fang. But when it came to service, for some  
14 reason they couldn't.

15 Thank you.

16 MR. GAO: Your Honor, um, in response to the --  
17 who Mr. Wei Jiang, I think we can defer to the declarations  
18 we have of witnesses. Five employee told plaintiff he is  
19 the acting manager in Hawaii. He replaced that general  
20 manager who is the son of Zhong Fang who was in charge of  
21 the office here. And he's the person terminated employees  
22 and he was also the person hired one employee back to the  
23 office.

24 And according to his business card he is a  
25 coordinator for three different companies -- Hawaii City

1 Plaza, Hawaii Ocean Plaza, and USA Realty Construction  
2 Corporation, Inc. And his activity, he's a person -- his  
3 role in the business has been well presented as the person  
4 now in charge of that office in the state of Hawaii for that  
5 -- whoever using that office under Zhong Fang's leadership.

6 THE COURT: Mr. Squeri, all the corporate  
7 defendants --

8 MR. SQUERI: Yes.

9 THE COURT: -- are they registered to do business  
10 in Hawaii?

11 MR. SQUERI: I believe so, Your Honor.

12 THE COURT: And who is their authorized agent to  
13 receive service? That is required by DCCA.

14 MR. SQUERI: I believe it's Mr. Fang. Let me --  
15 we have a number of these defendants, Your Honor. Um, we'll  
16 check on the DCCA website, but I believe that it was Mr.  
17 Fang. It certainly wasn't Wei Shin who they served. So  
18 that -- that I can say with confidence.

19 Uh, Wei Shin is a younger employee. I believe  
20 somewhere in his twenties. He was hired by one of the  
21 corporate defendants. He does, you know, basically  
22 assistant type work. He's not a manager. We're not --  
23 we're not talking about somebody who would have -- we'll get  
24 that information for you in a second, Your Honor.

25 THE COURT: So if Mr. Fang is served, are all of

1 the defendants served?

2 MR. SQUERI: Um, I -- I believe that -- I don't  
3 actually -- Your Honor -- I'm sorry -- I don't know right  
4 now. Uh, I believe that's something that the opposing  
5 counsel would need to look into and make the determination  
6 who the proper party is to serve at the time of making  
7 service.

8 THE COURT: And who is Min Hu? Is she a Hawaii  
9 resident?

10 MR. SQUERI: Uh, I don't believe so.

11 MR. SQUERI: She's the wife of Mr. Fang and she  
12 lives in California.

13 THE COURT: And Mr. Fang lives here or in  
14 California?

15 MR. SQUERI: Mr. Fang lives in California, but he  
16 travels here for work regarding the projects.

17 THE COURT: Because let's say I grant your  
18 motion. I will give leave to plaintiffs to seek substitute  
19 service other than personal service if they -- if it appears  
20 to the court that the defendants are ducking service.

21 MR. SQUERI: If it appears to the court that  
22 defendants are ducking service, Your Honor, I would think  
23 that would be the appropriate route to take. However,  
24 there's no ducking service here, Your Honor. He comes --  
25 when he's in Hawaii, he's in his office doing work.

1           Um -- uh, and, you know, it's Mr. Gao's own  
2           inability to cooperate or stipulate or negotiate anything  
3           with counsel that's causing this big problem once again.  
4           I'd like the court just to take notice of that. At every  
5           turn we've been working to have a, you know, adversarial but  
6           cordial relationship as required under the rules, and at  
7           every point we've been sort of pushed back by Mr. Gao.  
8           And that's evident in all the e-mails that we've presented.

9           Um, so if, uh -- if he can show that our clients  
10          are ducking service, then, Your Honor, I think that that's  
11          the appropriate way to go. But our clients aren't ducking  
12          service. But what they do object to is him doing service  
13          incorrectly.

14          And then when their counsel from California calls  
15          him, tries to call him, tries to get information about the  
16          status of the case so that she could hire a Hawaii counsel  
17          and he strong arms her and comes up with fictitious  
18          arguments regarding unauthorized practice of law, that's --  
19          that's where this becomes a problem, Your Honor. And now  
20          he's taking shortcuts in service and he should have to live  
21          with the consequences.

22          MR. GAO: Your Honor, talking about needing  
23          consequences, I will have to say that defendant filed with  
24          DCCA American Immigration found defendant Yu Ja is  
25          registered agent using both the Kapiolani office as her own

1 address.

2 Uh, the second entity, USA Realty Construction  
3 Corporation registration was Jun Fang, the son of Jun Fang.  
4 And if Jun Fang was the director/CEO and use the same  
5 address, 1441, as his and his father's physical address in  
6 the state of Hawaii.

7 California Regional Center registration was Jin  
8 Foo. She declare 1441 is her address in the state of  
9 Hawaii. And Jun Fang declare he is the manager of  
10 California Regional Center and his address in Hawaii is  
11 Kapiolani office.

12 California Investment Regional Center Limited  
13 Liability Corporation, Ming Hu is the registered agent and  
14 Jun Fang is the manager, and both of them using 1441 as the  
15 physical address in the state of Hawaii.

16 HICBA OP 2, they -- all the family using 1441  
17 Kapiolani Boulevard office as their own physical address to  
18 meet the requirement under the state law. The state law say  
19 if you, the corporation, wanted to do a business in the  
20 state of Hawaii, you have to have three requirement. One of  
21 them will be a registered agent reside in the state of  
22 Hawaii. And those, all defendant, individual defendant,  
23 they post as the state of Hawaii resident and they use that  
24 to make the recordation in the DCCA saying they live at that  
25 specific location, they are resident of state of Hawaii, and

1 they get the benefit to do business in the state of Hawaii.

2 So the consequences when we say you gotta eat the  
3 consequences of service at the same address you declare as  
4 your residence addresses in the state of Hawaii. So we will  
5 consider not -- after it's a new case if you doing something  
6 and we serving divorce document, that would be appropriate.  
7 That is your business here. And when you doing same  
8 business related to the litigation so you are estopped to  
9 make argument, they say no, no, not me. I wasn't there.  
10 Not -- that's not fair. So that's consequences so properly  
11 made based on DCCA record.

12 THE COURT: Okay. Court's ready to rule. It  
13 appears to the court that the defendants waived the defense  
14 of insufficient service or improper service of process as it  
15 was supposed to be the first responsive motion pursuant to  
16 the rules. Defense filed their first motion three days  
17 prior to this motion to quash the summons.

18 So, Mr. Gao --

19 MR. GAO: Yes.

20 THE COURT: -- just prepare an order denying this  
21 motion to quash the summons. Okay?

22 MR. GAO: Yes, Your Honor.

23 MR. SQUERI: Your Honor, uh --

24 THE COURT: Yes.

25 MR. SQUERI: -- I don't believe that there's been

1 an entry of default filed in this case. We have Rule 12B  
2 motions filed. Can we have 20 days from the day the order  
3 is filed or entered by the court to answer?

4 THE COURT: Yes. You will have 20 days.

5 So, Mr. Gao --

6 MR. GAO: Yes, Your Honor.

7 THE COURT: -- the court is going to also grant  
8 the motion to set aside the default aspect of it. So you  
9 can put in your order --

10 MR. GAO: Yes, Your Honor.

11 THE COURT: -- I'm denying the motion to quash  
12 the summons, but I'm also denying your request to have an  
13 entry of default --

14 MR. GAO: Okay.

15 THE COURT: -- because now they have an  
16 opportunity to answer because I've said you served them.

17 MR. GAO: Yes.

18 THE COURT: Okay.

19 MR. GAO: Thank you.

20 THE COURT: So there is no -- there's not going  
21 to be an entry of default. The litigation starts now.

22 MR. GAO: Yes, Your Honor.

23 THE COURT: Okay?

24 MR. SQUERI: Just to clarify, um, we have 20 days  
25 from the entry of order to --

1 THE COURT: File your answer or otherwise plead.

2 MR. SQUERI: Thank you, Your Honor.

3 THE COURT: Okay.

4 Okay. Now I've dispensed with leave to amend  
5 because we're going to put everything under 2169.

6 4, the motion to expunge lis pendens.

7 MR. SQUERI: Oh. Your Honor --

8 THE COURT: Yes.

9 MR. SQUERI: -- my associate just brought this to  
10 my attention.

11 THE COURT: Yes.

12 MR. SQUERI: You have granted the motion to amend  
13 the complaint so maybe it should be 20 days from when he  
14 amends the complaint.

15 THE COURT: Okay. Twenty days from when you are  
16 served since I have said service -- you're in already --

17 MR. SQUERI: Okay.

18 THE COURT: -- to answer or otherwise plead for  
19 the next amended complaint, whatever number it's going to  
20 be. It will actually be the first amended complaint to  
21 2169. Okay, Mr. Gao?

22 MR. GAO: Yes, Your Honor.

23 THE COURT: And you're merging in the other two  
24 into 2169.

25 MR. GAO: Yes, Your Honor.



1 THE COURT: Okay?

2 MR. GAO: Yes, Your Honor.

3 THE COURT: Twenty days from that.

4 MR. SQUERI: Okay.

5 THE COURT: Okay.

6 MR. SQUERI: To answer or otherwise plead.

7 THE COURT: Yes.

8 MR. SQUERI: Please put that down. Thank you,  
9 Your Honor.

10 MR. GAO: And, Your Honor, may I ask of the court  
11 to continue the other hearings until we file the complaint,  
12 amended complaint? 'Cause even though it was going to base  
13 on the filed complaint and then --

14 THE COURT: Well --

15 MR. GAO: -- we're now going to do other  
16 discovery.

17 THE COURT: -- I think there are others that are  
18 procedural that I think we need to take up, the lis pendens  
19 for one.

20 MR. GAO: Okay.

21 THE COURT: So let's take up the lis pendens  
22 motion.

23 MR. GAO: Your Honor --

24 THE COURT: That is your motion, Mr. Squeri.

25 MR. SQUERI: Um, to quash lis pendens?

1 THE COURT: Yes.

2 MR. SQUERI: Yes, Your Honor. If I could take a  
3 moment? We are finding the documents.

4 Located. Thank you, Your Honor.

5 THE COURT: Okay. My question to you is do the  
6 EB-5 investors have any claim of right to actual ownership  
7 of the property?

8 MR. SQUERI: Not that I know of. And the  
9 opposing counsel hasn't raised that in his complaint. The  
10 opposing counsel himself has supplied in his opposition the  
11 rule that says that the lis pendens is determined on the  
12 face of the complaint. So it wouldn't be defendants' duty  
13 to look into everything and try and figure out if they could  
14 possibly have any sort of claim. It has to be alleged in  
15 the complaint which quite frankly isn't.

16 MR. GAO: Your Honor, that's why I was trying to  
17 do we continue the case until then complaint --

18 THE COURT: Well, no.

19 MR. GAO: -- amended.

20 THE COURT: We have a blight on title now with  
21 this lis pendens.

22 MR. GAO: Yes.

23 THE COURT: So I -- I don't see a basis to do so  
24 at this time. This is not like a workman's and  
25 materialman's lien in a construction case --

1 MR. GAO: Yes, Your Honor.

2 THE COURT: -- where they're not paid for work  
3 performed and then they put a lis pendens or a lien on the  
4 property. You know, this -- this is an investment group  
5 coming in for the construction of a project as an  
6 investment. It's not even the purchase of a unit.

7 MR. GAO: Not to purchase unit, Your Honor. I  
8 had the lease to purchase unit from the investor.  
9 Sixty-five unit already sold to investor based on their full  
10 agreement. That's the list I get from the --

11 THE COURT: I didn't see anything attached to  
12 your opposition --

13 MR. GAO: No, Your Honor.

14 THE COURT: -- saying that this purchase sale  
15 agreement's in place.

16 MR. GAO: That's why I trying to ask your  
17 permission to do demonstration about how many percentage the  
18 property sold to investors.

19 THE COURT: Well, I think you're gonna have to  
20 perfect your pleadings with your amended complaint.

21 MR. GAO: Yes, Your Honor.

22 THE COURT: Then we can revisit this.

23 MR. GAO: Yes, Your Honor.

24 THE COURT: But at the present time I don't find  
25 a sufficient basis to have a lis pendens on the property.

1 MR. GAO: Your Honor, the complaint did say that  
2 in the complaint four five -- four to five would go to --  
3 back to defendants' motion exhibit, Exhibit A1, A2, A3, A4,  
4 A5. And each exhibit under the proposed compel arbitration  
5 term, the second paragraph, say that the plaintiff can own  
6 the property interest by buying the investment. And with  
7 that percentage you would be considered in the second  
8 agreement as a loan agreement. And loan agreement was  
9 considered as a mortgage.

10 So now the foreclosure action based on the second  
11 complaint--

12 THE COURT: Wait. This is an EB5 investor  
13 agreement.

14 MR. GAO: It's a fraudulent case, Your Honor.  
15 It's abuse EB5. It's not real EB5.

16 THE COURT: Well, what is it? Is it a purchase  
17 agreement or an EB5 agreement?

18 MR. GAO: Based on the advertisement it's a  
19 purchase agreement and loan agreement.

20 THE COURT: You don't get an EB5 just by buying a  
21 condo.

22 MR. GAO: That's correct, Your Honor. The  
23 document we filed that USCIS was described as a after you  
24 make five hundred thousand investment then you authorize the  
25 regional center to sign those document. Those document are

1 EB5 document. Those document never valid exist before the  
2 investor made five hundred thousand investment actually the  
3 loan and deposit for the purchase the property.

4 THE COURT: So what you are you saying, that the  
5 same money being used to purchase the property as well as an  
6 EB5 investment?

7 MR. GAO: That's fraud. That's why there's a  
8 case.

9 THE COURT: Well, that's fraud on two sides.

10 MR. GAO: For the investor didn't know that.  
11 They made a agreement with defendant. They said -- the  
12 advertisement says make five hundred thousand investment,  
13 you get a property. So that's a purchase property. And  
14 then you can make an immigration petition for your family  
15 EB5. And that part was not real but you make five hundred  
16 thousand to purchase and that's --

17 THE COURT: Well, if that part is not real --

18 MR. GAO: That's not real. That's a fraudulent  
19 to the --

20 THE COURT: -- and your clients are saying they  
21 want that --

22 MR. GAO: Yes.

23 THE COURT: -- isn't that immigration fraud also?

24 MR. GAO: Yeah, that's immigration fraud.

25 THE COURT: So -- but your clients are

1 participating in it.

2 MR. GAO: My client, they are innocent. They all  
3 the time. They have good faith investor. They made the  
4 investment based on misrepresentation and they made the  
5 investment -- actually made a deposit to purchase house.  
6 They made deposit to purchase house at the same time.

7 THE COURT: To purchase a house without even  
8 having a visa to come to live in the house? Is that what  
9 they did?

10 MR. GAO: At the same time they provide \$500,000  
11 investment as loan because -- as a loan in the beginning and  
12 then as a deposit for --

13 THE COURT: EB5 is not a loan.

14 MR. GAO: That's correct, Your Honor.

15 THE COURT: EB5 is an investment.

16 MR. GAO: I definitely agree with your point  
17 about investment. We're here we talking about fraud in the  
18 cause of action, in the first cause of action. That's  
19 fraud. That's not EB5. In the initial filed documents  
20 making loan, making purchase, pre -- pre-market purchase and  
21 the defendant created charts how many people get -- buying  
22 those houses. That's not EB5 investment, Your Honor,  
23 initially.

24 And after you make five hundred thousand  
25 investment based on -- based on the arbitration agreement,

1 the defendant so-called arbitration agreement, after you  
2 make five hundred thousand agreement -- uh, investment, the  
3 deal already done. You pay deposit. And then you  
4 authorized. The authorization came up this way. Original  
5 to sign any document needed to file with USCIS, that's fraud  
6 with USCIS. That's a fraud. We feel that's a violation of  
7 federal securities loan.

8 You can't do that way. You already got the  
9 money. You now sold the property. So you say, okay, I'm  
10 gonna sign all the document. You don't have to see it. And  
11 then I will file with --

12 THE COURT: But your complaint --

13 MR. GAO: So that's --

14 THE COURT: -- basically says we did that.

15 MR. GAO: Yes.

16 THE COURT: It's almost like saying you agreed to  
17 participate in the fraud.

18 MR. GAO: They didn't know it. That's why what I  
19 --

20 THE COURT: Ignorance of the law is no excuse.

21 MR. GAO: That's the first time I tried to file  
22 the motion to -- for judicial notice about defendants. They  
23 post it as an immigration expert to investors. They came  
24 here as a tourist mostly in Waikiki and sometimes they came  
25 to Ala Moana mall and they saw an advertisement. They are

1       foreigner. They didn't know the law.

2               And defendant post as immigration consultant,  
3       immigration loan consulting firm, and they say you don't  
4       need to worry about it. We are legal business. And that's  
5       the fraud case we file in the first cause of action. It's  
6       nothing related to EB5 or security law at the beginning.  
7       They just try to get some money because the developer  
8       doesn't have money.

9               Fung Zhong whole family just using -- try to use  
10       the foreigner investment to do the business here. What I  
11       found is not sufficient. We have project like now two  
12       pieces net because Chinese government change the law. They  
13       cannot now free money flow from China to United States and  
14       Congress change the law from five hundred thousand to eight  
15       hundred thousand. Nine hundred thousand. Sorry.

16              So the investor coming down in an Ocean Project.  
17       The Ocean Project now don't have I don't think it's over 20  
18       percent investor. For a 240 million project, defendant  
19       cannot do it.

20              Another situation we have here that defendant  
21       wanted to sell the project to someone else. The AD medium  
22       is not only Ocean Point include many things probably  
23       including in California. The 80 million sale property  
24       doesn't to us the neg -- or buyer to negotiate with them.  
25       And then after they got contacts they would give them more



1 information. No, we are not selling. It doesn't cost 80  
2 million. We selling this, this, this, and then require the  
3 buyer to sign a confidential agreement.

4 That's a secret sale, property and secret, two  
5 ways. And the buyer mostly we identify venture capital, not  
6 deferral. So if the property sold, we don't know what  
7 consequences increase the price and then sold to another --  
8 sold to another buyer and that complicate the case.

9 THE COURT: Mr. Squeri.

10 MR. SQUERI: Thank you.

11 I just would put on the record really clearly  
12 that the only one who's saying that there was immigration  
13 fraud is Mr. Gao saying his clients participated in  
14 immigration fraud. We certainly don't take that position.

15 THE COURT: Well, what were you folks offering,  
16 EB5 partnerships or just selling units?

17 MR. SQUERI: I believe it was an EB5 program.

18 And there was an EB5 contract that he's depen -- uh, Mr. Gao  
19 depended upon in many of his motions and oppositions and so  
20 forth that clearly shows that it was an EB5 program and it's  
21 also alleged in the complaint as an EB5 program.

22 And first of all Mr. Gao's argument that his  
23 clients willingly participated in immigration fraud so  
24 therefore they're entitled to a lis pendens I think should  
25 just fail on many different levels.

1           The second thing is even if what he was saying is  
2 true, it's still not going to give grounds for a lis  
3 pendens. You have to have -- and I've written in our  
4 filings over and over and over and again in every authority that's  
5 been looked at from Tsuchiomiya to now federal court, state  
6 court they all say the same thing about Hawaii. You need a  
7 direct claim to title. You need a mortgage. You need  
8 something that directly links your claim to title.

9           Not, hey, we have action against the other side.  
10 If we win, we may want the property. We may ask the court  
11 for the property. We may ask the court to sell the property  
12 so we can collect on the proceeds. That's not a direct path  
13 to title.

14           This is supposed to, like a partition action, a  
15 mortgage, issue over a mortgage, uh, property used as  
16 security, something that there's a document tying the claims  
17 directly to the title of the property is what's required for  
18 a lis pendens. They clearly time and time again in their  
19 opposition, their first opposition they show that they don't  
20 have that.

21           In their fictitious amending of the complaint  
22 after they looked at our motion, Mr. Gao obviously ran out  
23 and amended the complaint to try and create, fabricate  
24 something that would give him authority for a lis pendens  
25 which fails blatantly on its face. Uh, and then their

1 amended opposition, whenever that was, all of it time and  
2 time again shows what Mr. Gao is attempting to do is  
3 preserve the assets so that they can collect on them and/or  
4 use this as leverage in negotiation.

5 We have, um -- we have briefed this  
6 significantly, Your Honor. And if you need more briefing,  
7 we certainly could supply that. But I don't think that the  
8 law's going to change.

9 MR. GAO: Your Honor, just going to see the  
10 contract, the contract talking about property right and  
11 property interest. The first contract signed by the  
12 plaintiff with defendant immigration agreement EB5 investor.

13 THE COURT: What exhibit are you looking at?

14 MR. GAO: Exhibit No. 9 of the first opposition  
15 -- to plaintiff's opposition to Defendants' motion filed --  
16 the petition was filed on September 30, 2009. And Exhibit  
17 No. -- No. 9.

18 THE COURT: To the arbitration motion?

19 MR. GAO: To the stay arbitration and summons and  
20 set aside default.

21 MR. SQUERI: I'm sorry, Your Honor. We're having  
22 trouble finding them because apparently he filed them in  
23 random order.

24 THE COURT: Yeah. And in the future, Mr. Gao --

25 MR. GAO: Yes.

1 THE COURT: -- the court's going to reject any  
2 filing --

3 MR. GAO: I'm sorry. Yes. Okay.

4 THE COURT: -- with a courtesy copy to the court  
5 --

6 MR. GAO: Yes.

7 THE COURT: -- that does not have tabs. All  
8 exhibits must be tabbed.

9 MR. GAO: Yes, Your Honor. I apologize. My  
10 mistake.

11 THE COURT: In any event --

12 MR. GAO: I can read that.

13 THE COURT: -- at this -- Okay. Go ahead.

14 MR. GAO: I can read that. That Section 10 says  
15 .5 million share of property project company owed by Party B  
16 equal to general 5 of project company. Party B can have  
17 property rights of the project. So in this agreement the  
18 defendants say you had the 0. -- five hundred thousand  
19 investment, you can have served. You can have right.

20 MR. SQUERI: I'm sorry, Your Honor. We're unable  
21 to find it because of the way it's been filed.

22 THE COURT: What docu -- what document are you  
23 looking at so maybe we can find it under some other exhibit.

24 MR. GAO: Exhibit No. 9 --

25 THE COURT: What's it called? What's the

1 document called?

2 MR. SQUERI: Which -- which --

3 MR. GAO: Immigration Agreement for EB5 Investor.

4 THE COURT: What motion is this?

5 MR. GAO: That's our opposition to your motion.

6 MR. SQUERI: Which one?

7 MR. GAO: I file on December -- sorry.

8 MR. SQUERI: Oh, we're going back to the first  
9 one. So we're no longer looking at the amended opposition.  
10 We're going back to the first opposition.

11 MS. YI: December 30?

12 MR SQUERI: December 30.

13 MR. GAO: Which is attached to the exhibit for  
14 opposition.

15 MS. YI: Opposition to what?

16 MR. GAO: To your two motions. Motion to compel,  
17 motion to quash.

18 MS. YI: Oh, he's looking at Exhibit 9 to his  
19 opposition to compel arbitration and quash subpoena.

20 THE COURT: Okay. Thank you, Ms. Yi. Let's find  
21 that.

22 MR. GAO: Yes.

23 THE COURT: Is that the one written in Chinese  
24 and English?

25 MR. GAO: Yes, Your Honor. The Section 10 on

1 Page 11. The title was Party B's Equity Interest.

2 THE COURT: Okay.

3 MR. GAO: And then Party B equity interest,  
4 second line in the middle say Party B can have property  
5 interest, property rights of the project. So agree the  
6 investor have property rights in the project. And then  
7 Section 11 say if the applicant choose to have property  
8 right bought in investment, Party B can freely choose any  
9 due dates.

10 THE COURT: Where is the Party A's signature on  
11 this? I'm sorry, Party B's signature on this? I see Mr.  
12 Zhang's signature, but I don't see a Party B signature.

13 MR. GAO: Oh. Party B, WPM. Her signature was  
14 just I guess three letters. In the Page --

15 THE COURT: I'm looking on Page 14. I don't see  
16 a signature line.

17 MR. GAO: In Page 14 signature was Chinese  
18 character 2016-6-22. That was her signature in Chinese at  
19 Wang PinMei.

20 THE COURT: That says "beneficiary attorney  
21 line."

22 MR. GAO: Beneficiary attorney, um, Party B.  
23 Okay. The whole section is about Party B. From the top it  
24 says ID and also had a signature on top. She signed twice  
25 in this section.

1 THE COURT: Well, I can't tell that that's a  
2 signature line from this agreement --

3 MR. GAO: Um --

4 THE COURT: -- because Mr. Fang's signature is at  
5 a line that says signature.

6 MR. GAO: Yes. You can see that, Mr. Fang's  
7 signature. The agreement made by Mr. Fang who agree that  
8 plaintiff has a property right in the --

9 MR. SQUERI: Your Honor, which --

10 MR. GAO: -- in the project.

11 MR. SQUERI: I just want to know what number he  
12 read into that because we've just been able to locate the  
13 documents. The document wasn't -- this document is new to  
14 us.

15 THE COURT: It's Page -- it's called Page --  
16 well, immigration agreement to re: EB5 investor document  
17 Page 14 out of 14.

18 MR. SQUERI: Page -- I'm sorry?

19 THE COURT: 14 out of 14.

20 MR. SQUERI: Okay. Thank you.

21 MR. GAO: And then we go the next agreement.  
22 That was a known agreement after Page 14.

23 THE COURT: Yes.

24 MR. GAO: And go Page second Paragraph 2-2 say  
25 that interest -- annual interest of one percent never been

1 paid. And then he say interest calculation measured five  
2 year loan. Interest will be calculated. And then go down  
3 to Items Paragraph 3 or third provision saying mortgage for  
4 the loan. So the \$500,000 in this document was considered  
5 as a mortgage with security interest as a 0.5 percent equity  
6 to the project.

7 We go to next agreement. Is supervision  
8 management agreement. It doesn't really helpful, but next  
9 agreement, agreement to equity. This one get pre-sale  
10 agreement. On Page 2 of 4 it says if would have seen that  
11 housing is five hundred thousand found the difference in  
12 cash to the investor. The definition actually consider the  
13 five hundred thousand as deposit after the time closing if  
14 not property being completed then they can be found or they  
15 can add more additional money. And he say the property can  
16 be sold freely after property ownership is transferred on  
17 Paragraph 2.

18 And we go to next agreement I think is  
19 reservation agreement. On Page 5 identify specific Unit 14F  
20 and square feet is 812 and lanai is 102 square feet;  
21 bedroom, two; bathroom, two; House A, Numbers A. And then  
22 purchase price 620 means only about \$120 short. That's the  
23 time Mr. Fang in March 19 made demand for additional  
24 payment. I think the investor paid the differences. And  
25 that's why in the purchase chart they post 09.



1           So says about 12 houses already sold to. And  
2 then those 12 investor, three of them is plaintiff in this  
3 case. They had to pay full amount of money to purchase the  
4 property in Hawaii City projects. And some of them might  
5 have Hawaii Ocean projects. And 4 to 5 agreement talking  
6 about property purchases and the loan mortgage as security  
7 not entitle the plaintiff to do lis pendens under S, uh, Chu  
8 Minaya.

9           The case that say you attach the title concern  
10 property interest, title, and possession. And then if the  
11 property already completed, my client can claim only one  
12 unit. But now it's a whole piece of land, Your Honor. It's  
13 not possible to divide. You can lien to certain unit. You  
14 can just file a general lis pendens under that purchase  
15 agreement.

16           THE COURT: Okay. Mr. Squeri.

17           MR. SQUERI: Your Honor, first of all I'm not  
18 sure I totally understand Mr. Gao's argument. But none of  
19 this appears in his complaints. The lis pendens, you're  
20 supposed to look at the complaint, and he's supposed to  
21 determine -- Mr. Gao is supposed to determine whether he  
22 could file a lis pendens based on his allegations of his  
23 complaint. He failed to do so.

24           And he's -- time and time again he's come on  
25 record as saying he's just trying to preserve the assets in

1 case they win. Uh, and now at this late hour he's pulled  
2 some sort of argument that we're unfamiliar with, but  
3 nevertheless it's not in the complaint. It hasn't been  
4 alleged. There are no claims based upon this -- what Mr.  
5 Gao is discussing.

6 We've also put before the court that Mr. Gao's  
7 actions here are creating a great deal of burden for my  
8 client and they're actually counter -- they're counter to  
9 the interest of their clients because if they want to be  
10 bought out here, the only way that's going to happen is if  
11 the projects are able to borrow money and have, you know,  
12 money to replace the investment so that they could buy out  
13 the limited partners.

14 And they can't get a development loan because --  
15 and we've supplied a letter to this court as an exhibit  
16 where it's shown that they can't get title insurance so they  
17 can't offer the property as security so they can't get a  
18 loan so they can't buy out the limited partners. It's  
19 creating this circle, this vortex that's actually working  
20 against his clients' interest. But Mr. Gao doesn't  
21 unfortunately see it that way.

22 Now getting back to the lis pendens, the lis  
23 pendens was supposed to be filed if they alleged a direct  
24 title, a direct link to title. And they failed to do that.  
25 And if Mr. Gao amends his complaint and comes up with an

1 argument that -- that -- that, uh, unlike his first attempt  
2 to do so, comes out with an argument that actually supports  
3 a lis pendens, he can file it again after the amended  
4 complaint is filed. But at this point in time this lis  
5 pendens is unlawful and improper and it should be removed  
6 from the -- expunged from the record, expunged from the  
7 record of the Bureau of Conveyances.

8 Thank you.

9 THE COURT: Okay. The court's ready to rule.  
10 The court's going to find that the lis pendens currently  
11 filed is premature so the court is going to expunge it and  
12 order it removed from whatever agency it has been filed at.  
13 This is not to say that as the case progresses and there is  
14 a good base -- a good faith basis in which to file a lis  
15 pendens the court would not entertain a motion to have a lis  
16 pendens filed, but at this time it's extinguished.

17 Prepare the appropriate order, Mr. Squeri. Okay.

18 MR. SQUERI: Thank you, Your Honor.

19 THE COURT: All right.

20 MS. YI: I'm sorry, Your Honor. So your -- you  
21 just said that the court will entertain a motion to file a  
22 new lis pendens.

23 THE COURT: You don't have to put that in the  
24 order.

25 MS. YI: Okay.

1 THE COURT: But I'm currently granting your  
2 motion to expunge the lis pendens --

3 MS. YI: Okay.

4 THE COURT: -- but it will be without prejudice.  
5 It's for the current lis pendens in play. In the future if  
6 they're able to show at some point in this case that they're  
7 entitled to file a lis pendens, the court may entertain a  
8 request from the plaintiffs to do that.

9 MS. YI: Oh, okay. Thank you, Your Honor.

10 THE COURT: Okay. Like if it turns out it's not  
11 an EB5, strictly a purchase thing or something.

12 MS. YI: Okay. Thank you. Just wanted to  
13 clarify.

14 THE COURT: Okay. Thank you.

15 Okay. So we are at Motion 5 which is the motion  
16 to compel arbitration. Your motion. I've got to tell you,  
17 Mr. Squeri, the court reviewed the document in question.

18 MR. SQUERI: Um-hmm.

19 THE COURT: It's not that clear. We're talking  
20 about applying Hawaii law but yet having the arbitration  
21 take place in California. Yeah. It's not as clear as the  
22 court usually see these arbitration clauses.

23 MR. SQUERI: I assure you, Your Honor, I had no  
24 role in drafting that position.

25 THE COURT: And I don't fault you for it. You're

1 a litigation attorney.

2 MR. SQUERI: Yes. Well, but, um, the -- the  
3 documents of this transaction were -- once again I got just  
4 to lay some background, this issue of filing in the courts  
5 is once again creating a big block to my client attracting  
6 investment, attracting loans so that he can eventually buy  
7 out these troublesome limited partners and get on with the  
8 project. Now I have reporters calling me and we have  
9 articles in the -- um, in the newspaper and in PBN talking  
10 about the troubled state.

11 There is no troubled state. There's a few  
12 disgruntled limited partners. But because this has been  
13 filed in a public forum, it's creating a whirlwind of  
14 trouble and now we have -- I just got this today. It, um --  
15 and I wasn't able to file it, but I got news that somebody  
16 who advance purchased one of the condos has heard about the  
17 litigation and now they want out of their contract which we  
18 consider tortious interference with contractual  
19 relationship. But he'll figure that out at another time.

20 It's -- Mr. Gao and his actions that are creating  
21 a lot of trouble for the project. And itself the project  
22 haven't failed as Mr. Gao is so fond of putting in his  
23 motions and his filed documents, but Mr. Gao is doing  
24 everything he can to make it fail.

25 And the reason they have the arbitration clause

1 is because if there's a problem, it goes to California, goes  
2 in private arbitration, and it gets worked out there where  
3 it can be privately done without creating these excess, uh,  
4 issues. Instead what we have here is not only were these  
5 three complaints -- now we're done to one thankfully --  
6 complaints that were filed in the public forum, we have  
7 evidence -- not evidence. I'm not going to go that far --  
8 but very strong reason to suspect that Mr. Gao is actually  
9 reaching out to, um, to investors and telling them, you  
10 know, hey, you should sue or soliciting them to sue the  
11 projects. So, you know, if the projects do fail, chances  
12 are it's going to be because of Mr. Gao and his actions here  
13 today. Not today, in this, uh -- in this matter.

14 So what we're simply trying to do, Your Honor,  
15 is enforce the arbitration agreement and have this rectified  
16 in arbitration in California as agreed upon in the  
17 documents. Now they're claiming in their opposition all  
18 sorts of fraudulent documents and fraudulent signings  
19 whatsoever. The EB5 agreement that Mr. Gao I believe has  
20 just depended upon in the previous motion a few moments ago  
21 says that in filing of these documents and so forth that Mr.  
22 -- that the general partner Mr. Fang has a right to sign for  
23 them in these agreements and they are to receive a copy.

24 If something went wrong and they didn't receive a  
25 copy, then they should have said something. Hey, we didn't

1 receive a copy. They should have -- when they gave -- when  
2 they signed that EB5 agreement, they ratified everything  
3 that was signed in their name. And if they didn't get  
4 copies, then they should be estopped for reasons that they  
5 didn't bother to ask for copies and say, hey, I never got my  
6 copy. Let me see a copy here. They should be estopped from  
7 claiming it's fraudulent because it can't be fraudulent when  
8 they gave permission to sign.

9 Thank you.

10 THE COURT: Mr. Gao.

11 MR. GAO: Your Honor, I think lot of argument  
12 from Mr. Squeri is simply inappropriate to do. But anyway  
13 we still go back to the merit of the case. The arbitration  
14 agreement that's fabricate to file with USCIS, first the  
15 timing, it was filed after five hundred thousand money  
16 already taken away from the investor. That's a violation of  
17 statutory law. You cannot get the money first and then tell  
18 them, their son, some suspicious agreement we're going to  
19 sign for you. That's fraudulent in any respect of multiple  
20 laws -- immigration law, security law, business practice  
21 law.

22 It got to be owners to tell the investor. Under  
23 good faith and fair dealing provision you need to disclose,  
24 full disclose to the investor when the investor requirement  
25 was, what kind of investment you're going to make. That's

1       why I say in this case the five agreement already signed,  
2       basic purchase agreement and loan agreement at the same  
3       time. So if you may not, I'm going to file immigration, EB5  
4       immigration petition for you.

5               And investor didn't know that's illegal, but the  
6       developer knows. They knew that's illegal because they did  
7       once in California and they tried to do it again in the  
8       state of Hawaii.

9               The timing was inappropriate. We have -- the  
10      developer got all the money and then say I'm going to sign  
11      agreement for you and now we going through arbitration. I  
12      don't think that's enforceable in that first instance. And  
13      an authorization was required under the security law. You  
14      need to perform under specific circumstances. As an  
15      attorney you could get an agency.

16              In this case the CISC is an agent so listing  
17      investment for foreigners as an advertiser. I mean so  
18      advisor in security loan. The advisor cannot sign the  
19      agreement on behalf of investor without proper attorney.  
20      And the signature was fabricated based on defendant Ju  
21      Fang's own declarations. He say he signed that.

22              And two agreements actually used that. In the  
23      first case, the first agreement they use to so-called  
24      arbitration was partnership agreement. If there's a real  
25      partnership agreement, the principal agreement is provide to



1 the investor at the first instant, not after you make five  
2 hundred thousand deposit or loan.

3 The partnership agreement was back to 2016. Each  
4 partnership agreement was preprinted, presigned by Fang and  
5 authorization that's fabricated and forged. That's only for  
6 purpose. That's the -- they say for the purpose for filing  
7 EB5 application with USCIS, that's a forgery document.  
8 Federal law perjury, fraud in the immigration documents.

9 And, Your Honor, okay, so the first arbitration  
10 agreement only presented once. After we made arguments  
11 saying no, we didn't sign it, so they didn't use that the  
12 second and third cases. So not only sold once. And in the  
13 second and third cases the second arbitration agreement was  
14 used as a substitution agreement, not security, no  
15 requirement, strictly not agreement needed disclosed to the  
16 investor before their sign any -- they make any decision for  
17 the investment.

18 What we got the subsequent agreement go to three  
19 parties -- CIRC, the regional center investor, and Ocean  
20 Project for the one project. And for the other project only  
21 reach three parties -- investor, CIRC, and Ocean Project.  
22 Even -- even we assume those agreement are valid, but we  
23 cannot reach, cannot cover the current we raised as a fraud  
24 because as you told, we can buy a house, get a green card,  
25 and get a loan as an interest, security mortgage, whatever.

1 That's against the individual people, they host. The scheme  
2 of EB-5 investment, that's not covered by the binding  
3 arbitration agreement.

4 I don't think we need to go any further for this  
5 one even many created now outdated -- security fraud,  
6 immigration fraud, and then application of business funds,  
7 nothing related to agreement. That was doing investment in  
8 that moment, that time. And the duty already met. The  
9 plaintiff investor they already provided five hundred  
10 thousand before the contract even created.

11 I don't think that's arbitration agreement. And  
12 then I don't think any binding effect to the investor. They  
13 already made investment before defendant sign those  
14 documents and authorization was illegal under violation of  
15 multiple federal state laws. Even the state security law  
16 say they cannot employ a scheme to defraud investor without  
17 dealing and true concealment just like that.

18 Thank you, Your Honor.

19 THE COURT: Okay.

20 MR. SQUERI: Your Honor, I just would like to  
21 remind the court that these arguments don't really -- no law  
22 has been supplied, evidence hasn't been supplied. This is  
23 just conjecture. And, um, just Mr. Gao has this habit of  
24 visualizing things and just assuming that they are true and  
25 this seems to be part of -- part of that.

1           Uh, if he wanted to make these arguments, he  
2           should have referenced the law, the applicable law in his  
3           opposition. He should have been prepared to make these  
4           arguments, not to just come here and say, oh, it's a  
5           violation of federal law. He hasn't shown us where, how  
6           this is true. He just sort of surmises it and comes up with  
7           it.

8           He -- Mr. Gao once again wants us to take action,  
9           or in this case not take action, based upon nothing more  
10          than his opinion. Um, I don't -- if you look at the  
11          evidence that's been produced, I think the evidence is far  
12          in our favor. And I think that if they're gonna make  
13          arguments based upon their being a limited partner, then  
14          they have to admit that the documents that make them a  
15          limited partner are valid and exist.

16          They can't take action as a limited partner on  
17          one hand and then say, well, the documents are invalid and  
18          should not be, uh -- I don't know -- should not be looked at  
19          when it's convenient for them. And that's essentially what  
20          I feel is going on today, Your Honor, uh, the projects to  
21          protect their interest and -- have, uh, implemented an  
22          arbitration provision and we request that the court uphold  
23          the arbitration provision and that this be rectified,  
24          resolved, in the proper forum.

25          Thank you.

1           THE COURT: Okay. The court is not clear as to  
2 whether or not the arbitration, the contract that or the  
3 alleged contract that has the arbitration provision was even  
4 signed by the party who is the investor in this case 'cause  
5 for one I don't see a signature line for the investor. And  
6 nothing is in English. The court cannot discern whether or  
7 not they understood what it was that they were signing.

8           And the provisions of the arbitration clause at  
9 this point in the court's viewpoint do not generate a level  
10 playing field for all parties. On one hand the arbitration  
11 agreement talks about using Hawaii law. On the other hand  
12 talk about using Triple A. There's not even a Triple A  
13 office here in Hawaii. And then it talks about the venue  
14 being in California applying Hawaii law when the projects  
15 are here, the developer corporations are registered here,  
16 the investment contemplated by the EB-5 is here.

17           So at this point the court is denying the motion  
18 for a stay and to compel arbitration.

19           MR. SQUERI: Your Honor --

20           THE COURT: Yes.

21           MR. SQUERI: -- would the court consider  
22 deferring arbitration in Honolulu, Hawaii? I believe that  
23 under the court rules the court has authority to do so.

24           THE COURT: I'll deny it at this point.

25           Let's see what the final complaint says. Once

1 everybody's in the case, you can revive the motion. So I'm  
2 denying it without prejudice.

3 MR. SQUERI: Thank you, Your Honor.

4 THE COURT: I have done that in the past where  
5 venue was someplace in the east coast; contracts, witnesses,  
6 everything was in Hawaii. I upheld the arbitration clause  
7 but, exactly as you had said, the court found that the  
8 appropriate venue is here.

9 MR. SQUERI: Okay. Your Honor, and, um, I would  
10 like to request, um -- I guess this is kind of almost like a  
11 motion in limine -- um, if Mr. Gao has stood on the premise  
12 that the agreements are false, um, they're illegal under  
13 law, he's come on record as making these statements, then he  
14 should be estopped from making any claim that his clients  
15 are limited partners because either they're -- either the  
16 agreements are valid and they're limited partners or the  
17 agreements are invalid and they're not limited partners,  
18 And then they have some issue regarding the money that they  
19 allege was paid. But you can't have both.

20 THE COURT: Well, we'll see what the amended  
21 complaint says and then we can take it from there.

22 MR. GAO: And, Your Honor, if I can respond to  
23 that 'cause new civil of procedure alternative complaint --

24 THE COURT: You can. But ultimately --

25 MR. GAO: Yes.

1 THE COURT: -- you gonna have to decide what  
2 horse you're gonna ride.

3 MR. GAO: Yes, that's after --

4 THE COURT: You either going to be an EB-5 fraud  
5 plaintiff or a purchaser who was defrauded.

6 MR. GAO: That's --

7 THE COURT: And it's pretty hard to say both  
8 because if you say both -- if you say purchaser and yet  
9 you're claiming EB-5 status -- then ICE is going to get  
10 involved.

11 MR. GAO: I think this case, Your Honor, one  
12 reason I think the first time I told defense counsel the  
13 time --

14 THE COURT: Okay. Well, anyhow that's the  
15 court's ruling at this point.

16 MR. GAO: Yes.

17 THE COURT: So you can prepare the appropriate  
18 order denying without prejudice, the short form.

19 MR. GAO: Okay.

20 THE COURT: Okay. Now sixth motion for partial  
21 summary judgment, given what we've talked about, at this  
22 point --

23 MR. GAO: Your Honor, for --

24 THE COURT: -- my law clerk has reminded me  
25 there's Part 2 which is quash the subpoena for the bank

1 records. Right?

2 MR. SQUERI: Yes, Your Honor.

3 THE COURT: Okay. What is it you want to quash  
4 because I would think plaintiffs are entitled to take a look  
5 at bank records that are germane to this case.

6 MR. SQUERI: Your Honor, yes, sir, under the  
7 Rules of --

8 THE COURT: So what parameters are you seeking to  
9 draw around this subpoena?

10 MR. SQUERI: That's the issue. There are no  
11 parameters. And that's why we've moved to quash the  
12 subpoena. First of all we wanted to sort out the  
13 arbitration issue beforehand before everybody invested a lot  
14 of time and money. But, um, we want him to draw up  
15 parameters that are acceptable.

16 Here he says give us every single document,  
17 everything you have pertaining to this company including  
18 things that don't pertain to these projects or don't pertain  
19 to the plaintiffs. That's the issue here is that it's way  
20 overblown. It's -- sorry -- overbroad. Sorry. My  
21 apologies, Your Honor. It's way overbroad. He needs to  
22 define exactly what he's looking for.

23 We supplied the law that says Hawaii Supreme  
24 Court -- we believe it's the Hawaii Supreme Court -- said  
25 that, you know, subpoenaing them should not be a fishing

1 expedition, and that's exactly what this smells like. Just  
2 define it and if it's acceptable, we're not going to object  
3 because that's, you know, that's discovery.

4 It's not my first time here. Not my first time  
5 with discovery issues, Your Honor. As you know I know, you  
6 know, because I've been before you many times, um, we don't  
7 have an objection to legitimate discovery. But the way Mr.  
8 Gao is going about it, once again he's taking shortcuts.  
9 Define -- define the discovery so it meets the goals of the  
10 litigation as required under the rules. And he's free to do  
11 his discovery, but right now as the subpoena stands it's way  
12 too broad.

13 THE COURT: This is what the court's inclined to  
14 do at this point. Mr. Gao --

15 MR. GAO: Yes, Your Honor.

16 THE COURT: -- I'll allow you to get bank records  
17 of all deposits made by all of the named plaintiffs --

18 MR. GAO: Yes, Your Honor.

19 THE COURT: -- to the defendants.

20 MR. GAO: Yes.

21 THE COURT: I don't know how you folks accounted  
22 for it, if each plaintiff had their own account in which --  
23 like a client trust account where each client has money  
24 in/money out. I'm not -- I have no idea. But at this point  
25 you need to account for all the money that came in from Mr.



1 Gao's clients and where that money went.

2 MR. SQUERI: Service legitimate discovery aimed  
3 at that goal and that's the way litigation goes. But he's  
4 giving us every document including documents related to  
5 these companies that don't pertain to these projects, that  
6 don't pertain to the plaintiffs. That's the issue. That's  
7 -- that's where we have an objection.

8 THE COURT: Well, I think he wants to see that  
9 deposits made by his clients were actually put into the bank  
10 someplace and not just put someplace else.

11 MR. SQUERI: Yes, Your Honor. But the subpoena  
12 that he served the bank doesn't reflect that. That might be  
13 his intent, but it doesn't reflect that. And it wasn't  
14 served on us. It's not like a discovery -- um, a discovery  
15 request where we can tell or tailor the response. He sent  
16 it to the bank so that the bank's going to be obligated to  
17 fulfill that very overbroad subpoena.

18 All we're asking for is that the subpoena be  
19 quashed and he can issue a new one. He can limit it.  
20 That's acceptable. And according to the rules of discovery,  
21 not take his usual shortcuts but do it the right way and  
22 fine.

23 THE COURT: Let me ask do these projects have  
24 discrete bank accounts?

25 MR. SQUERI: I'm sorry, Your Honor. I don't know

1 that. That's beyond my scope of knowledge at this point.

2 THE COURT: Okay. At this point then -- and I  
3 probably will expand it later -- you can issue subpoenas to  
4 the bank to show that funds from your clients went in and  
5 then in the course of discovery we're gonna have to find out  
6 or at least you'll find out what accounts your clients'  
7 money went in.

8 MR. GAO: Your Honor, um, I don't mean to respond  
9 you haven't any chance to speak up for that motion. I think  
10 Rule 26 says the plaintiff have a broad scope to do  
11 discovery as long as use to lead to admissible evidence. In  
12 this case, the fraudulent case, my client also had  
13 derivative actions, not on behalf of LP.

14 THE COURT: I get it. That's why I'm saying at  
15 this point in time you can subpoena the bank --

16 MR. GAO: Yes, Your Honor.

17 THE COURT: -- for all deposit records from each  
18 and every one of your clients going to the defendants. That  
19 way when you see the back side of the check, you'll know  
20 what accounts they went into. And at that point we can take  
21 the next step which will be to subpoena those particular  
22 accounts for monies that came out and where the monies went.  
23 But we don't even know what accounts your clients' checks  
24 went into; right? Do you know?

25 MR. GAO: Um, yes, Your Honor. We probably have

1 that record.

2 THE COURT: So you know already what accounts  
3 your clients' money went into?

4 MR. GAO: Yeah. Some of it went to projects,  
5 some went to American Immigration funds, and some funds went  
6 to the --

7 THE COURT: Well, I don't have subpoena power for  
8 any banks in California, but I do have here.

9 MR. GAO: Yeah, that's all we do. Here. Owner  
10 then has bank account in state -- in Bank of Hawaii. And my  
11 client was, um -- they were started to do investment things  
12 in 2000 -- in later 2015. And then Fang totally I think  
13 working on behalf of all the investor here, about 40 --  
14 forty thousand. And for the investor, I think on behalf of  
15 the investor, on behalf of all investor we had the wider  
16 scene --

17 THE COURT: Okay. What I said is we're gonna  
18 take it in steps. Right now you're entitled to subpoena the  
19 bank --

20 MR. GAO: Yes.

21 THE COURT: -- for all records of your clients'  
22 deposits, and that way you'll know exactly where your  
23 clients' money went.

24 MR. GAO: I do have those already, Your Honor.

25 THE COURT: You do have that already?

1 MR. GAO: Yes.

2 THE COURT: All your clients?

3 MR. GAO: My client, almost all. That's why we  
4 go to the Bank of Hawaii. We didn't go to other bank  
5 because the most money --

6 THE COURT: And they all going to one account?

7 MR. GAO: Uh, mostly to the bank HIOP has one.  
8 SKB has one account. American Escrow Company has one  
9 account there. And USA has one account here in the state of  
10 Hawaii. Bank of Hawaii. Sorry, Your Honor. That's why we  
11 only subpoena Bank of Hawaii. We didn't go to other bank.

12 THE COURT: Okay. Then as to Bank of Hawaii --

13 MR. GAO: Yes.

14 THE COURT: -- you can subpoena records for  
15 deposits and disbursements out of that account from January  
16 2015 to the present.

17 MR. GAO: Okay.

18 THE COURT: From -- and what -- do you have the  
19 number of the account right now you can tell me?

20 MR. GAO: I do have that number, uh, but I don't  
21 have here. In my office.

22 THE COURT: Okay. You have one account you can  
23 subpoena?

24 MR. GAO: Uh, yes, one account for each. Okay.

25 So my client, the transaction occurred --

1           THE COURT: Well, how many accounts? That's why  
2 I asked you is it one account for all of your clients?  
3 Their deposits went into one account or they went into  
4 several different accounts?

5           MR. GAO: They went to several different account  
6 belong to several different defendants, Your Honor. Not  
7 supposed to be that way because you made investment. You  
8 solicited the fund from the investor so you're going to  
9 invest in this project. The funds go to American  
10 Immigration Funds.

11           THE COURT: Okay. I tell you what. We're going  
12 to have a discovery conference on this. We will put this on  
13 the side.

14           MR. GAO: Sure.

15           THE COURT: I'll give you a date. You come to  
16 court prepared to tell me what accounts you want to go after  
17 and then we're going have a discovery conference and I'll  
18 decide yes or no.

19           MR. GAO: Your Honor, that's actually prohibited  
20 to the subpoena to my understanding.

21           THE COURT: The court has jurisdiction over  
22 discovery. You're subpoenaing records under the Hawaii  
23 Rules of Civil Procedure.

24           MR. GAO: Yes.

25           THE COURT: And you can only get documents and

1 information --

2 MR. GAO: Yes.

3 THE COURT: -- that may lead to the discovery of  
4 admissible evidence. I determine that.

5 MR. GAO: Yes, Your Honor.

6 THE COURT: You don't want to do it my way, don't  
7 do it.

8 MR. GAO: Your Honor, if I can't do that way, uh,  
9 I would just take much longer time to do the discovery.

10 THE COURT: You told me you already know what  
11 accounts the money went into.

12 MR. GAO: Yes.

13 THE COURT: You come in here, discuss with me.  
14 If I agree with you, I'll say go ahead and subpoena those  
15 accounts. But if you have no idea what you're going after,  
16 I'm not going to let you just go fish.

17 MR. GAO: Not fish, Your Honor.

18 THE COURT: Then what's so hard about we have a  
19 discovery conference?

20 MR. GAO: Your Honor, that's a straightforward,  
21 uh, right to information under statute.

22 THE COURT: You haven't even articulated to me  
23 what accounts you want to subpoena. Who do you think signs  
24 off on the subpoena?

25 MR. GAO: I know court can sign the subpoena, but

1 discovery --

2 THE COURT: Mr. Gao, you have a choice.

3 MR. GAO: Yes, Your Honor.

4 THE COURT: Do it my way or you cannot do it.

5 What do you want to do? Answer me now.

6 MR. GAO: Your Honor, uh, of course do it your  
7 way.

8 THE COURT: Then we'll do a discovery conference.

9 Carrie, can we have a date, please.

10 MR. GAO: Yes.

11 MR. SQUERI: Your Honor, um, if I may, I have a  
12 suggestion. Um, there's an upcoming motion by Mr. Gao  
13 regarding the deposition of Wei Shin, and you might want to  
14 do the discovery conference afterwards in case there's any  
15 questions that arise during that motion as well so we could  
16 have it all together.

17 THE COURT: Well, I think in order to depose your  
18 client, he may need to take a peek at money coming in and  
19 money going out.

20 MR. SQUERI: Okay. The second thing I would like  
21 to mention is if -- before discovery conference if we could  
22 maybe have briefings or we could have -- just so we get the  
23 information from Mr. Gao in advance so that we can verify.

24 THE COURT: The discovery conference is going to  
25 be limited as to the scope of the subpoenas --

1 MR. SQUERI: Okay.

2 THE COURT: -- on Bank of Hawaii. And if you  
3 don't know what accounts you have, I can't help you.

4 MR. SQUERI: Valid point, Your Honor.

5 THE COURT: Okay. So if he's attempting to  
6 subpoena accounts that bear no relationship to your clients,  
7 I'm not going to let him invade some third-party's account.

8 MR. SQUERI: Understood, Your Honor.

9 THE COURT: Okay. It's going to be just very  
10 limited discovery conference.

11 So how soon can we have one, Carrie?

12 THE CLERK: Um, you want it next week?

13 THE COURT: Sure.

14 THE CLERK: That's, uh, March 2nd. Too soon?

15 THE COURT: No.

16 THE CLERK: Okay. March 2nd at 8:30.

17 THE COURT: March 2, 2020, 8:30 A.M. Discovery  
18 conference only as to the subpoena that you want to send out  
19 to Bank of Hawaii.

20 MR. GAO: Yes, Your Honor.

21 THE COURT: And you need to come to me with the  
22 account numbers --

23 MR. GAO: Yes, Your Honor.

24 THE COURT: -- and how those account numbers  
25 relate to them.



1 MR. GAO: Okay.

2 THE COURT: Okay?

3 MR. GAO: Sure.

4 THE COURT: And if it matches up, go ahead.

5 MR. GAO: Okay.

6 THE COURT: All right?

7 MR. GAO: Yes.

8 THE COURT: What's next on our list here?

9 MR. GAO: Your Honor, I can't make it March 2nd.  
10 I had an appointment -- I have an interview.

11 THE COURT: You want to move quickly, that's as  
12 soon as I can give you a date. Why don't you shuffle  
13 something else.

14 MR. GAO: 'Cause I already had it scheduled. And  
15 I can't change it. I really apologize.

16 THE CLERK: March 30th, 9:30.

17 MR. GAO: Okay. March 30th.

18 MR. SQUERI: Can we look up one moment, Your  
19 Honor? We'd like to look up on our end.

20 THE COURT: Okay.

21 MR SQUERI: Thank you.

22 March 3rd? Yeah, we're good, Your Honor.

23 THE COURT: Okay. March 3rd, 9:30. And that  
24 takes care of that motion.

25 Motion 6 is a motion for partial summary

1 judgment. I think we're too early for that because the new  
2 complaint has not even been filed. So let me deny that  
3 without prejudice. You're free to refile once -- you don't  
4 even know what the new complaints gonna say so it's really  
5 difficult to rule on an SJ now.

6 MR. SQUERI: But it's his motion, Your Honor.

7 THE COURT: Oh, I'm sorry.

8 You're gonna have to file a new complaint too,  
9 Mr. Gao, your amended complaint that brings together  
10 everybody on your side and all of your claims and causes of  
11 action. So I will deny your motion for partial summary  
12 judgment at this point without prejudice. Once we get  
13 pleadings perfected, both sides can file motions as they see  
14 fit. But right now we're going back to the starting line  
15 with a new complaint.

16 Okay. And 7, motion to stay discovery.

17 MS. YI: Your Honor, if I may, the motion to stay  
18 discovery also has to do with the deposition of Wei Shin as  
19 well. It's, um -- that's the subject of the motion that's  
20 due for hearing on March 5th.

21 THE COURT: Okay.

22 MR. SQUERI: Um, if you're inclined to grant it,  
23 if you can grant it until then or continue it until March  
24 5th. Whichever Your Honor prefers.

25 THE COURT: Yeah. Let's keep it at March 5th.

1 And then we'll discuss it on March 3rd too as a part of our  
2 discovery conference. Okay.

3 MS. YI: Okay. Thank you, Your Honor.

4 THE COURT: And that may render it moot.

5 Okay. So I think we've covered everything.

6 Okay. Thank you for coming, Counsel.

7 MR. SQUERI: Thank you, Your Honor.

8 MR. GAO: Thank you, Your Honor.

9 MS. YI: The motion to stay discovery was today,  
10 and we requested that because the subject matter is similar  
11 to be continued to the 5th.

12 THE COURT: We have something on the 5th?

13 MS. YI: Yes, we have something on the 5th.

14 THE COURT: Okay. Let's move it to the 5th. It  
15 was -- my bad. It was on today's calendar, but we will at  
16 your suggestion move it to the 5th.

17 MR. SQUERI: Okay, Your Honor.

18 THE COURT: In the meantime we're going to have  
19 our little discovery conference. So okay. Thank you.

20 MR. SQUERI: Thank you.

21 THE COURT: Okay. Thank you, everyone.

22 MR. GAO: Thank you.

23 MR. SQUERI: Thank you, Your Honor.

24 THE COURT: And we're off the record.

25 (Proceeding concluded.)

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I, Lahela Kamalani-Moe, Official Court Reporter, First Circuit Court, State of Hawaii, certify the foregoing Pages 1 through 75 comprise a full, true, and correct transcript to the best of my ability (as I am not a Chinese language interpreter) of the proceeding held on February 27, 2020, before the Honorable Dean E. Ochiai, judge presiding.

/s/L.Kamalani-Moe - CSR/RPR - June 2, 2020.