

ORDER DENYING DEFENDANTS' MOTION
FOR PARTIAL SUMMARY JUDGMENT FILED 12/15/95

Defendants' Motion for Partial Summary Judgment filed December 15, 1995 and their oral motion for Rule 54(b) certification came before the Honorable DANIEL G. HEELY on April 2, 1996. SHERRY P. BRODER, WILLIAM MEHEULA, HAYDEN ALULI, AND KAWIKA LIU appeared on behalf of the Plaintiffs; Plaintiff Trustees CLAYTON H.W. HEE, MOANIKE'ALA AKAKA, ABRAHAM AIONA, and SAMUEL KEALOHA, and Plaintiffs PIA ALULI, JONATHAN KAMAKAWIWO'OLE OSORIO, CHARLES KA'AI'AI, and KEOKI MAKAKAMA LI'ILI appeared; and SONIA FAUST, JOHN WONG, CYNTHIA CHARLTON, and CELIA JACOBY appeared on behalf of the Defendants. The Court, having carefully considered these motions, the memoranda, affidavits, exhibits, records relating thereto, and the arguments of counsel, makes the following findings of fact and conclusions of law:

1. Rule 56(c) of the Rules of Civil Procedure limits the summary judgment remedy to situations when (a) there are no genuine issues of material fact and (b) it is clear that the movant is entitled to judgment as a matter of law.

2. When a court reviews a motion for summary judgment, the evidence must be viewed in the light most favorable to the nonmoving party. Panar v. Americana Hotels, Inc., 65 Haw. 370, 652 P.2d 625 (1982).

3. Plaintiffs' claim in the present case is that Defendants should not be permitted to sell, alienate, or otherwise transfer lands that derive from the "ceded lands"--i.e., the lands that were "ceded" from the Republic of Hawaii to the United States in 1898-- (a) because these lands were illegally taken without compensation

or consent from the Kingdom of Hawaii pursuant to the illegal overthrow in 1893 and (b) because these lands are now part of a public land trust which lists the Native Hawaiian people as one of the principle^{al} beneficiaries of this trust.

4. The United States Congress has issued the following formal findings in the Public Law 103-150 (1993), entitled "To Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawaii, and to Offer an Apology to Native Hawaiians on Behalf of the United States for the Overthrow of the Kingdom of Hawaii," which was signed by President William Clinton on November 23, 1993:

Whereas the Republic of Hawaii also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government;...

Whereas the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebescite or referendum;...

Whereas the Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions;...

This Resolution concludes by acknowledging the historical significance of the "illegal overthrow of the Kingdom of Hawaii on January 17, 1893," recognizing the importance of the ceded lands to the Native Hawaiian people, and urging that efforts be undertaken "to support reconciliation efforts between the United States and the Native Hawaiian people."

5. Recent Hawaii Supreme Court decisions have recognized and reaffirmed that Native Hawaiians have extremely important cultural, religious, social, and economic interests in lands throughout the Hawaiian islands. See, e.g., Public Access Shoreline Hawaii v. Hawaii County Planning Commission, 79 Haw. 425, 903 P.2d 1246 (1995); Pele Defense Fund v. Paty, 73 Haw. 578, 837 P.2d 1247 (1992); Ahuna v. Dept. of Hawaiian Home Lands, 64 Haw. 327, 640 P.2d 1161 (1982).

6. A letter from the former Attorney General to the Chairperson of the Office of Hawaiian Affairs dated September 23, 1994 recognizes the claims of Native Hawaiians that are being asserted in this case with respect to the ceded lands.

7. The Court is persuaded that cases involving American Indians are relevant in demonstrating that Defendants' motion for summary judgment should not prevail. Among the relevant cases are Fort Berthold Reservation v. United States, 390 F.2d 686 (Ct.Cl. 1968); Lane v. Pueblo of Santa Rosa, 249 U.S. 110 (1919); Chippewa Indians v. United States, 301 U.S. 358 (1937); United States v. Creek Nation, 295 U.S. 103 (1935); Pyramid Lake Paiute Tribe v. Morton, 354 F.Supp. 252 (D.D.C. 2973); Shoshone Tribe v. United States, 299 U.S. 476 (1937); and Choate v. Trapp, 224 U.S. 665 (1912).

8. Because the State of Hawaii is the trustee of these ceded lands and has a trust relationship with the Native Hawaiian people, the State has important responsibilities that must be followed in administering this trust corpus. See, e.g., Ahuna, supra.

9. The Court concludes that the present claim is analogous to the claim presented in Kapiolani Park Preservation Society v. City and County of Honolulu, 69 Haw. 569, 751 P.2d 1022 (1988), where the Hawaii Supreme Court in a powerful opinion written by Justice Padgett reaffirmed that the courts must be open to beneficiaries who seek to protect their interests in litigation involving public trusts.

10. The Court further concludes that the present claim must be evaluated in light of the entire sweep of history in Hawaii, because the development of law is an ongoing process; as U.S. Supreme Court Justice Oliver Wendell Holmes explained: "The life of the law has not been logic, it has been experience." O.W. Holmes, The Common Law 1 (1923).

11. If this Court were to grant Defendants' motion for summary judgment, it would close the courthouse door to the beneficiaries of this trust and prevent the persons for whom the trust has been established from challenging the disposition of lands that are their very birthright.

12. The Court notes that Defendants' motion for summary judgment is inconsistent with the State Motto of the State of Hawaii, which is imprinted in the seal of the State of Hawaii and included in each volume of the Hawaii Revised Statutes: "Ua Mau Ke Ea O Ka Aina I Ka Pono." This Court concludes that the life of our land would most assuredly not be filled with righteousness if the beneficiaries of our public land trust were prevented from coming

to court to challenge how their lands are being handled by those responsible for overseeing this trust.

13. With respect to Defendants' request for Rule 54(b) certification, the Court finds and concludes that granting this relief at this time would not be likely to lead to a more speedy resolution of this litigation. See Mason v. Water Resources Intern., 67 Haw. 510, 694 P.2d 388 (1985), and Jenkins v. Cades Schutte Fleming and Wright, 76 Haw. 115, 869 P.2d 1334 (1994).

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Defendants' Motion for Partial Summary Judgment is denied;
- and
2. Defendants' request for certification under Rule 54(b) is denied.

DATED: Honolulu, Hawaii, _____

Judge of the Above-entitled Court