

662 P.2d 211

66 Haw. 362, 662 P.2d 211

(Cite as: 66 Haw. 362, 662.P.2d 211)

HParadise Hui Hanalike v. Hawaiian Paradise Park Corp.
Hawaii, 1983.

Supreme Court of Hawai'i.

PARADISE HUI HANALIKE, a Hawaii non-profit corporation, Cynthia Ann Holmes, Charles Richard Myers, Aimee Mooklar Myers, Carol Ruth Whillidin, Azalee Say Pauloski, John Edward Pauloski, on behalf of themselves and all other persons similarly situated,
Plaintiffs-Appellants,

v.

HAWAIIAN PARADISE PARK CORPORATION, a Hawaii corporation, Albert Joseph Sieman, Grace L. Sieman, Thomas N. Evans, Marion M. Evans, Charles B. Dyer, Alexander G. Wilson, Martha L. Wilson, Clyde Neil Brazier, individually, and as representatives of all other persons similarly situated,

Defendants-Appellees.

No. 8699.

April 25, 1983.

Appeal was taken from judgment of Third Circuit Court, Hawaii County, Paul M. DeSilva, J., in favor of subdivision lot owners in suit brought by nonprofit corporation and certain individual lot owners in subdivision for mandatory injunction requiring the other owners to contribute to maintenance of private roadways in the subdivision. The Supreme Court, Padgett, J., held that where subdivision was created consisting of lots and private roadways servicing them and lot deeds were silent as to any duty to contribute to maintenance of roads, owners of lots abutting roads had legal duty to contribute to necessary road maintenance.

Reversed and remanded.

West Headnotes

111 Judgment 228 => 2S2(1)

228 Judgment

228VI On Trial of Issues

228VI(C) Conformity to Process, Pleadings, Proofs, and Verdict or Findings

228k247 Conformity to Pleadings and Proofs

228k252 Prayer for Relief in General

228k252(1) k. In General. Most Cited

Cases

Where, in equitable action, specific relief prayed for to enforce particular duty is inappropriate, equity should fashion, by decree, appropriate relief.

121 Private Roads 311 => 5

311 Private Roads

311k5 k. Construction and Repair. Most Cited Cases

Where subdivision was created consisting of lots and private roadways servicing them and lot deeds were silent as to any duty to contribute to maintenance of roads, owners of lots abutting roads had legal duty to contribute to necessary road maintenance, and although specific relief of mandatory injunction requiring payments was inappropriate, there was a prayer for general relief and equity could fashion an appropriate decree.

***211 Syllabus by the Court*

1. *362 Where a subdivision is created consisting of lots and private roadways servicing them and the lot deeds are silent as to any duty to contribute to the maintenance of the roads, owners of lots abutting the roads have a legal duty to contribute to necessary road maintenance.

2. Where, in an equitable action, the specific relief prayed for to enforce a particular duty is inappropriate, equity should fashion, by decree, appropriate relief.

*364 Stuart H. Oda, Hilo, for plaintiffs-appellants. Steven K. Christensen, Hilo, for defendants-appellees.

Before LUM, Acting C.J., NAKAMURA, PADGETT and HAY ASHI, JJ., and GREIG, Circuit Judge, assigned by reason of vacancy.

PADGETT, Justice.

This is an appeal from a judgment in favor of the appellees in a suit brought by the appellants for a

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mandatory injunction. We reverse and remand.

*363 Appellant Paradise Hui Hanalike, a Hawaii non-profit corporation, and certain individual lot owners in the Hawaiian Paradise Park subdivision brought an action to require the owners of lots in Increment I of that subdivision to contribute to the maintenance of the private roadways in the subdivision. Increment I contains several thousand lots and the roads in question, **212 apparently, total over a hundred miles in length. The deeds issued to the lot owners in Increment I are silent as to the obligation to contribute to the maintenance of roads.

The court below entered findings of fact and conclusions of law, holding that the lot owners in Increment I, whose deeds did not contain road maintenance clauses, nevertheless had a duty to contribute to road maintenance where their lots abutted on the private subdivision roadways. However, the court dismissed the action because the proposed relief, by way of a mandatory injunction requiring payments to Paradise Hui Hanalike, a non-profit corporation, was inappropriate. The court held that road maintenance by that corporation was ultra vires; that the corporation by-laws deprived out-of-state lot owners of a right to vote for officers and directors of the corporation; and that the proposed means of carrying out the assessments by requiring payments to that corporation were innately unfair.

||1 We agree with the court below that the specific relief of a mandatory injunction requiring payments to the appellant corporation was inappropriate. There was, however, a prayer for general relief and as this court has said:

As Chancellor Hardwicke, quoting "very eminent counsel," said "general relief was the best prayer next to the Lord's Prayer." (*Cook v. Martyn*, 2 Atk. 2, 3, 26 Eng.Rep. 399 [Ch. 1737].)

Lum v. Kwong, 39 Haw. 532.542 (1952).

As the *Lum* case recognized when the specific relief sought from a court having equity powers cannot be granted, appropriate relief will be fashioned by the court. See *Eastern 1. & M v. Patterson. et als.*, 39 Haw. 346.0952).

||2| We hold, as did the court below, that the lot owners whose lots abut on subdivision roads have a legal duty to contribute to necessary maintenance of the roads in the subdivision even though their deeds are silent on the matter. Accordingly, the case is remanded to the circuit court to fashion, by decree, an appropriate remedy to enforce that duty.

Reversed and remanded.

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