

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
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2013 AUG 11 10:10 AM
OFFICE OF THE
COUNTY COUNSEL

RECEIVED

August 1, 2013

MEMORANDUM

TO: G. Riki Hokama, Chair
Policy and Intergovernmental Affairs Committee

FROM: Richard B. Rost *RBR*
Deputy Corporation Counsel

SUBJECT: Litigation Matters - Settlement of Claims and Lawsuits
(PIA-1)
Kay Burke v. County of Maui
Civil No. 09-1-0127(1)

Our Department requests the opportunity to discuss potential settlement of this case before the Policy and Intergovernmental Affairs Committee. A settlement conference with the Court is scheduled for September 13, 2013, and the Court would prefer that this matter be heard before that time.

It is anticipated that an executive session may be necessary to discuss questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee.

Copies of the complaint and the proposed resolution are enclosed. Our department would also like to request that a representative of the Department of Public Works be present at the meeting to answer any questions that may arise.

Thank you for your anticipated assistance.

RBR/jcm
Enclosures
cc. David Goode, Director, Dept. of Public Works

Resolution

No. _____

AUTHORIZING SETTLEMENT OF
KAY BURKE V. COUNTY OF MAUI,
CIVIL NO. 09-1-0127(1)

WHEREAS, Plaintiff Kay Burke filed a lawsuit in the Second Circuit Court, Civil No. 09-1-0127(1), against the County of Maui, claiming she suffered physical injuries when she tripped and fell on January 24, 2009, due to a defect in a sidewalk adjacent to South Kihei Road in Kihei, Maui, Hawaii, and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of this case by way of a negotiated settlement or Offer of Judgment; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms set forth in an executive meeting before the Policy and Intergovernmental Affairs Committee; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a negotiated settlement or Offer

Resolution No. _____

of Judgment by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby approves settlement of this case under the terms set forth in an executive meeting before the Policy and Intergovernmental Affairs Committee; and

2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County of Maui in this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. That it hereby authorizes the Director of Finance of the County of Maui to satisfy said settlement of this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Director of Public Works, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



RICHARD B. ROST
Deputy Corporation Counsel
County of Maui

Served on MML
2/26/09 at 10 AM

FILED

2009 FEB 23 PM 1:24

Of Counsel:
SHIM & CHANG

ROY K. S. CHANG #1733-0
HARVEY M. DEMETRAKOPOULOS #5033-0
333 Queen Street, Suite 900
Honolulu, Hawaii 96813
Telephone No. (808) 524-5803

C. CASIL, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

Attorneys for Plaintiff
KAY L. BURKE

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
STATE OF HAWAII

KAY L. BURKE,)
)
) Plaintiff,)
)
) vs.)
)
) COUNTY OF MAUI; JOHN DOES 1-)
) 10; JANE DOES 1-10; DOE)
) CORPORATIONS 1-10; DOE)
) PARTNERSHIPS 1-10; ROE "NON-)
) PROFIT" CORPORATIONS 1-10;)
) and ROE GOVERNMENTAL ENTITIES)
) 1-10,)
)
) Defendants.)
)
)
)

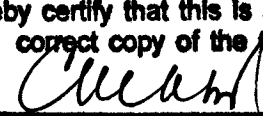
CIVIL NO. 09-1-0127 (1)
(Other Non-Motor Vehicle Tort)

COMPLAINT; SUMMONS

2009 FEB 26 AM 11:43
TECHNICAL SERVICES DIVISION
COURT CLERK

COMPLAINT

COMES NOW Plaintiff KAY L. BURKE, by and through her attorneys, Shim & Chang, and for causes of action against the Defendants above-named alleges and avers as follows:

I hereby certify that this is a full, true and correct copy of the Original.

Clerk, Second Circuit Court

1. Plaintiff KAY L. BURKE (hereinafter, Plaintiff BURKE) was at all times pertinent herein a resident of the County of Maui, State of Hawaii.

2. Defendant COUNTY OF MAUI (hereinafter "Defendant County") is a municipal corporation organized and existing under the laws of the State of Hawaii with its principle place of business in the County of Maui, State of Hawaii.

3. Plaintiff has diligently and in good faith attempted to ascertain names and identities of possible Defendants JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10, ROE "NON-PROFIT" CORPORATIONS 1-10, and ROE GOVERNMENTAL ENTITIES 1-10, whose identities are presently unknown to Plaintiff. Plaintiff researched property tax maps and could not locate any other entity that may be responsible for the condition of the sidewalk in question. Due to the inability to conduct discovery prior to filing suit, the identity of other DOE Defendants whose conduct may have been a legal cause of Plaintiff's injuries and damages remain unknown to Plaintiff. Plaintiff has been unable to determine who else may be legally and/or contractually liable for the incident. Once this litigation is commenced, Plaintiff will, through discovery, obtain the necessary facts and information from Defendants

and will thereafter amend the filings herein and/or identify the appropriate persons or entities as DOE defendants as needed.

4. Defendants JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10, ROE "NON-PROFIT" CORPORATIONS 1-10 and ROE GOVERNMENTAL ENTITIES 1-10, are sued herein under fictitious names for the reasons that:

(a) their true names and identities are presently unknown to Plaintiff; and/or

(b) they employed, contracted with, controlled, and/or are in some way responsible for the conduct, acts and/or omissions of defendants; and/or

(c) they were in some manner engaged in the activities alleged herein and/or were in some manner acting by or on behalf of defendants, and/or were in some manner responsible for the injuries or damages to Plaintiff; and/or

(d) they manufactured, designed, distributed, sold, or placed in the market a product which was defective and presented an unreasonable danger which caused injuries or damages to Plaintiff; and/or

(e) they owned, constructed, designed, built, operated, repaired, inspected, maintained, and/or

controlled a premises, land, area, or product thereon which presented an unreasonable risk of harm and caused injuries or damages to Plaintiff; and/or

(f) they knew or, with reasonable care, should have known of the danger and were negligent in creating or allowing such dangerous condition to exist, for creating a public nuisance, for failing to give Plaintiff any warning of the dangerous condition, for failing to correct the dangerous condition, and for failing to protect Plaintiff; and/or

(g) they violated laws, standards, codes, warranties, and/or ordinances and are therefore negligent, strictly liable, liable for breach of express and/or implied warranties, and are negligent per se; and/or

(h) their acts or omissions were a legal or factual cause of Plaintiff's accident, injuries and/or damages.

5. On or about January 24, 2009, Plaintiff Burke was walking on the sidewalk fronting the Maui Vista Condominium, when she tripped and fell on an uneven portion of the sidewalk. Plaintiff sustained bodily injuries as a result of her fall.

6. The accident and injuries to Plaintiff occurred in the County of Maui, State of Hawaii.

7. At the time of the accident, the sidewalk was in a hazardous and defective condition and presented an unreasonable risk of harm to users of the sidewalk.

8. The negligence of defendants, and each of them, was a legal and factual cause of Plaintiff's accident, injuries and/or damages.

9. Defendants, and each of them, owned, operated, maintained, designed, approved, leased, constructed and/or controlled said premises.

10. Defendants engaged in a mode of operation where the risk of harm was foreseeable, and failed to take reasonable measures to prevent the harm and/or to protect Plaintiff. Defendants by their mode of operation caused or contributed to the creation of the unreasonable risk of harm.

11. Defendants, jointly and/or severally had a duty to:

(a) design, construct, maintain and provide a safe premises and sidewalk;

(b) not create or allow to exist an unreasonable risk of harm;

(c) inspect the premises;

(d) remove, remedy, guard and/or warn of any defects or hazards;

(e) protect the public, its patrons, workers, invitees, and guests.

(f) warrant safe premises and products that are fit for a particular purpose;

(g) not create a public nuisance;

(h) not violate any laws, codes or ordinances.

(i) protect Plaintiff from injury;

(j) prevent a foreseeable risk of injury to Plaintiff;

(k) lessen the extent and severity of an injury to Plaintiff;

(l) not enhance an injury to Plaintiff;

(m) prevent others in their control from causing harm to Plaintiff or creating a risk of harm to Plaintiff; and

(n) anticipate another person's actions or that a person may encounter the harm created by Defendant.

12. Defendants, jointly and severally breached all or some of the duties and warranties set forth above, and are thereby negligent, negligent per se, and/or grossly negligent.

13. Defendants are also vicariously liable for the negligent acts of their employees, agents and/or contractors on the basis of respondeat superior.

14. Plaintiff has and will further sustain special and economic damages in an amount to be determined at trial.

15. Plaintiff has and will further sustain general and non-economic damages in an amount to be determined at trial.

16. The total amount of all damages incurred by or on behalf of Plaintiff is in excess of the minimum jurisdictional requirements of the Circuit Court.

17. Plaintiff makes a claim for reimbursement or subrogation on behalf of any entity that has paid benefits pursuant to law for any injuries sustained by Plaintiff and caused by Defendant(s). This includes, but is not limited to any statutory workers' compensation claims or statutory State of Hawaii Department of Human Services claims. These claims for reimbursement or subrogation are made in equity and pursuant to statutory law.

Plaintiff demands judgment against Defendants, jointly and severally, as follows:

(a) General and non-economic damages as are proven at the time of trial.

(b) Special and economic damages as are proven at the time of trial.

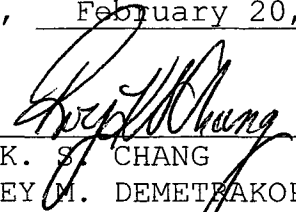
(c) Damages equal to any and all amounts paid by a statutory lienholder or entity having a statutory right of reimbursement or subrogation.

(d) Prejudgment interest from the date of the accident.

(e) Reasonable attorneys fees and litigation costs.

(f) Such other relief as may be deemed just and equitable under the premises.

DATED: Honolulu, Hawaii, February 20, 2009 .



ROY K. S. CHANG
HARVEY M. DEMETRAKOPOULOS
Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

KAY L. BURKE,)	CIVIL NO. _____
)	(Other Non-Motor Vehicle Tort)
Plaintiff,)	
)	
vs.)	SUMMONS
)	
COUNTY OF MAUI; JOHN DOES 1-)	
10; JANE DOES 1-10; DOE)	
CORPORATIONS 1-10; DOE)	
PARTNERSHIPS 1-10; ROE "NON-)	
PROFIT" CORPORATIONS 1-10;)	
and ROE GOVERNMENTAL ENTITIES)	
1-10,)	
)	
Defendants.)	
)	
)	

SUMMONS

STATE OF HAWAII:

To the above-named Defendants:

You are hereby summoned and required to serve upon ROY K. S. CHANG or HARVEY M. DEMETRAKOPOULOS, Plaintiff's attorney, whose address is 333 Queen Street, Suite 900, Honolulu, Hawaii 96813, an answer to the Complaint which is herewith served upon you, within 20 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint. This Summons shall not be personally delivered

between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Wailuku, Hawaii, FEB 23 2009 2009.

/sgd/ C. CASIL (seal)

CLERK OF THE ABOVE-ENTITLED COURT