

Whether the Claim Properly Characterized The Source of Water

The claim contains an ambiguity or possibly a mischaracterization on the water source for the appurtenant right.

A claimant to an appurtenant right must establish that the surface water was taken directly from the stream, or from an auwai that was connected to a stream, at the time of the original conversion of the property to fee simple title.

Claims based on surface water taken from a privately owned distribution system and not from a stream, especially a distribution system that did not exist at the time of the original fee simple conversion, does not establish an appurtenant right to surface water delivered through a privately owned distribution system.

Accordingly, factual and legal questions exist on whether the subject claim for appurtenant rights derives from a diversion that existed at the time of the original fee simple conversion from a stream or an auwai that was then connected to a stream.

In addition, factual and legal questions exist as to whether applicant is required to hold a stream diversion works permit and/or a stream channel alteration permit and whether there is a right to use a privately owned distribution system if the surface water is being diverted through that privately owned distribution system.

Rights Claimed May be Subject to Public Utilities Commission Regulation

The claim asserts a right to use surface water that reaches the claimant's property through a distribution system owned by Wailuku Water Company, LLC

The ability of Wailuku Water Company, LLC to deliver water through that distribution system is the subject of a proceeding pending before the State of Hawaii Public Utilities Commission ("PUC").

Any determination by the Commission on Water Resource Management on claims in which the surface water is delivered through use of the distribution system owned by Wailuku Water Company, LLC must include a condition that the delivery of the surface water is subject to applicable terms, conditions, rules, regulations, decisions, orders, tariffs, and actions of the PUC (collectively "PUC Regulation")

Accordingly, factual and legal questions exist on whether the subject claim for appurtenant rights may be subject to PUC Regulation.

Were Appurtenant Water Rights Extinguished

Appurtenant rights to surface water are created at the time the original conversion to fee simple land. While an appurtenant right to surface water cannot be transferred separately and apart from land to which it attaches, the right can be extinguished.

The appurtenant right to surface water is extinguished if the Grantor of the property transfers the property and either reserves the right to the Grantor or transfers the property without transferring the appurtenant right.

The conveyance document in the chain of title to the subject property contain language to the following effect:

EXCEPTING, RESERVING AND GRANTING, however, unto Grantor, its successors and assigns, all water and water rights (surface and ground water) within or appurtenant to the Property, including the right to develop and utilize the same; provided, however, that in the exercise of said rights, Grantor, its successors and assigns, shall not have the right to drill for water or otherwise disturb the surface of the land or any improvements thereon.

Accordingly, factual and legal questions exist as to whether an appurtenant right has been extinguished.

21
245



R-415 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
AUG 21, 2002 08:01 AM
Doc No(s) 2002-146581



65 3/9 Z6

/s/ CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES
CONVEYANCE TAX: \$10200.00

LAND COURT SYSTEM | REGULAR SYSTEM
Return by Mail () Pickup () To: - -

CGM, LLC
P O BOX 1237
KAMUELA HI 96743

TGOH: 200107798 -S
TGES: A1-204-1649
MARK RENSCHEN

Tax Key: (2) 3-3-002-001 Total No. of Pages: 105
(Lot A-2)

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

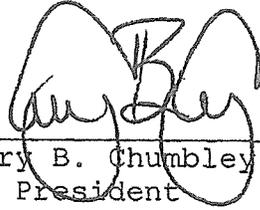
That WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, whose address is 255 East Waiko Road, Wailuku, Hawaii 96793, hereinafter called the "Grantor," in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor paid by CGM, LLC, a Hawaii limited liability company, whose address is P. O. Box 1237, Kamuela, Hawaii 96743, hereinafter called the "Grantee," the receipt whereof is hereby acknowledged, does hereby grant and convey unto the Grantee as a tenant in severalty, all of Grantor's

and permitted assigns, according to the context hereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.

This instrument may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Grantor and Grantee have executed these presents on this 21st day of August, 2002.

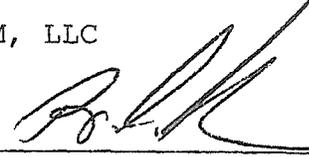
WAILUKU AGRIBUSINESS CO., INC.

By 
Avery B. Chumbley
Its President

By 
J. Alan Kugle
Its Chairman of the Board

Grantor

CGM, LLC

By 
Brian A. Anderson
Its Manager

25. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : SUBDIVISION AGREEMENT (AGRICULTURAL USE)
DATED : July 26, 2002
RECORDED : Document No. 2002-133340
PARTIES : WAILUKU AGRIBUSINESS CO., INC., and the COUNTY OF MAUI

26. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : SUBDIVISION AGREEMENT (LARGE LOTS)
DATED : July 26, 2002
RECORDED : Document No. 2002-133341
PARTIES : WAILUKU AGRIBUSINESS CO., INC., and the COUNTY OF MAUI

27. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : DEFERRAL OF SUBDIVISION REQUIREMENTS AGREEMENT
DATED : July 29, 2002
RECORDED : Document No. 2002-133862
PARTIES : WAILUKU AGRIBUSINESS CO., INC., and the DEPARTMENT OF WATER SUPPLY OF THE COUNTY OF MAUI

28. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, RESERVATIONS AND RESTRICTIONS
DATED : Aug 21, 2002
RECORDED : Document No. 2002-146579 ,

The foregoing includes, but is not limited to, matters relating to rights and easements for irrigation ditches, reservoirs, water facilities, drainage, water, farming, access, blanket easements, waterline, etc.



R-413 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
AUG 21, 2002 08:01 AM
Doc No(s) 2002-146579



/s/ CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

45 1/9 Z6

Return by Mail () Pickup () To:

CGM, LLC
P O BOX 1237
KAMUELA HI 96743

TGOH: 200107798 - 5
TGES: A1-204-1649
MARK RENSCHEN

Total Page: 45

Tax Map Key: (2) 3-3-002:01 (portion)

DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS, RESERVATIONS AND RESTRICTIONS

(c) Drainage Easement. For the benefit of Wailuku, its successors and assigns, there shall be reserved unto Wailuku, its successors and assigns a perpetual easement over through, and across the Property, and appurtenant to Wailuku's Land, or appropriate portions thereof, as necessary to accommodate drainage from or across Wailuku's Land in its currently existing and/or natural pattern and flow to its natural place of entry upon and through the Property. Purchaser assumes all liability for damage to persons or property caused by or resulting from the flow of drainage from, over, through or across the Property, from Wailuku's Land in their currently existing and/or natural pattern and flow to its place of entry upon the Property or any interference therewith, and agrees to and shall indemnify, defend and hold harmless Wailuku, its successors and assigns from and against any liability, claim, demand, action or suit arising out of or in connection with such drainage (except loss, liability, claims and/or expenses caused by the negligence, willful act or misconduct of Wailuku).

(d) Water Reservation. For the benefit of Wailuku, its successors and assigns, there shall be reserved unto Wailuku, its successors and assigns all water and water rights (surface and ground water) within or appurtenant to the Property, provided, however, that in the exercise of such rights, Wailuku, its successors and assigns, shall not have the right to drill for water or otherwise disturb the surface of the Property or any improvements thereon (with the exception of the maintenance of the Irrigation Ditches as herein defined) or take other action that unreasonably interferes with the development or use of the Property for residential purposes. The right to water herein includes the right to acquire all of the ground water which is subterranean of the Property; provided, however, that any well field which is developed by Wailuku, its successors or assigns, to capture such ground water shall not be located on the Property.

(e) Farming Reservation. For the benefit of Wailuku, its successors and assigns, there shall be reserved unto Wailuku, its successors and assigns, as appurtenant to the lands which are located adjacent or in the vicinity of the Property and which are now owned or used or hereafter acquired and used by Wailuku, its successors and assigns (collectively the "Land"), the unrestricted right to engage in any type of farming operation, including, but not limited to, open burning, percolating, evaporating, fertilizing, milling, generating power, water diversion, plowing, grading, storing, hauling, spraying pesticides, irrigating, crop dusting, and all other activities incidental to the planting, farming, harvesting and processing of agricultural products and by-products, which operations may from time to time cause noxious emissions such as noise, smoke, dust, light, heat, vapor, odor, chemicals, vibration, and other nuisances to be discharged or emitted over and upon the Property. Purchaser, for itself, and any person or entity claiming through it and their respective successors and assigns, further acknowledges and agrees that Wailuku, its successors and assigns, shall not be held liable for any nuisance, personal injury, illness or other loss, damage or claim which is caused by or related to such operation and/or use of the Land.

Declaration and the Purchase Agreement, the provisions of this Declaration shall control.

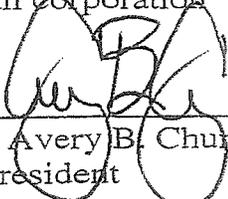
Wailuku and Purchaser have executed this Declaration as of the Effective Date.

WAILUKU AGRIBUSINESS CO., INC.,

CGM, LLC, a Hawaii limited liability

a Hawaii corporation

Company

By: 
Name: Avery B. Chumbley
Title: President

By: 
Name: Brian A. Anderson
Title: Manager

By: 
Name: J. Alan Kugle
Title: Chairman of the Board



R-416 STATE OF HAWAII
 BUREAU OF CONVEYANCES
 RECORDED
 AUG 21, 2002 08:01 AM
 Doc No(s) 2002-146582



12 4/9 26

/s/ CARL T. WATANABE
 ACTING
 REGISTRAR OF CONVEYANCES
 CONVEYANCE TAX: \$1.00

LAND COURT SYSTEM | REGULAR SYSTEM
 Return by Mail () Pickup () To:

CGM, LLC
 P O BOX 1237
 KAMUELA HI 96743

ACCOM -
 TGOH: 200107798 -S
 TGES: A1-204-1649
 MARK RENSCHEN

Tax Key: (2) 3-3-02:01 (portions) Total No. of Pages: 12
 (Additional Parcels)

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

That WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, whose address is 255 East Waiko Road, Wailuku, Hawaii 96793, hereinafter called the "Grantor," for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor paid by CGM, LLC, a Hawaii limited liability company, whose address is P. O. Box 1237, Kamuela, Hawaii 96743, hereinafter called the "Grantee," the receipt whereof is hereby acknowledged, does hereby give, grant,

convey, release and forever quitclaim unto the said Grantee, as a tenant in severalty, all of the Grantor's right, title and interest in and to the real property described in Exhibits "A-1" through "A-3" attached hereto and by this reference incorporated herein; subject, however, to all encumbrances noted on said Exhibits "A-1" through "A-3".

EXCEPTING AND RESERVING, HOWEVER, unto Grantor, its successors and assigns, all water and water rights (surface and ground water) within or appurtenant to the Property; provided, however, that in the exercise of said rights, Grantor, its successors and assigns, shall not have the right to drill for water or otherwise disturb the surface of the land or any improvements thereon or take other action that unreasonably interferes with the development or use of the Property for residential purposes.

TO HAVE AND TO HOLD the same, together with any improvements thereon and the rights, easements, privileges, and appurtenances thereunto belonging or appertaining unto the Grantee, forever.

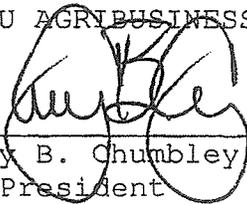
It is understood and agreed that the term "property" shall be deemed to mean and include the property specifically described in Exhibits "A-1" through "A-3", all buildings and improvements thereon (including any personal property described

in Exhibits "A-1" through "A-3") and all rights, easements, privileges and appurtenances in connection therewith, that the terms "Grantor" and "Grantee", as and when used hereinabove or hereinbelow shall mean and include the masculine or feminine, the singular or plural number, individuals, trustees, or corporations, and their and each of their respective successors in interest, heirs, representatives, administrators and permitted assigns, according to the context thereof, and the use herein of the singular in reference to a party shall include the plural and the use of a pronoun of any gender shall include all genders. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall be and for all purposes deemed to be joint and several.

IN WITNESS WHEREOF, the Grantor has executed this instrument as of the 21st day of August, 2002.

WAILUKU AGRIBUSINESS CO., INC.

By


Avery B. Chumbley
Its President

By


J. Alan Kugle
Its Chairman of the Board

Grantor



R-417

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
AUG 21, 2002 08:01 AM

Doc No(s) 2002-146583



26 5/9 Z6

/s/ CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES
CONVEYANCE TAX: \$1.00

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup () To:

CGM, LLC
P O BOX 1237
KAMUELA HI 96743

Accom
TGOH: 200107798 -5
TGES: A1-204-1649
MARK RENSCHEN

Tax Key: (2) 3-3-02:01 (portions)
(Roadway Lots)

Total No. of Pages: 26

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

That WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, whose address is 255 East Waiko Road, Wailuku, Hawaii 96793, hereinafter called the "Grantor," for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor paid by CGM, LLC, a Hawaii limited liability company, whose address P. O. Box 1237, Kamuela, Hawaii 96743, hereinafter called the "Grantee," the receipt whereof is hereby acknowledged, does hereby give, grant, convey,

release and forever quitclaim unto the said Grantee, as a tenant in severalty, all of the Grantor's right, title and interest in and to the real property described in Exhibits "A-3" through "A-12" attached hereto and by this reference incorporated herein; subject, however, to all encumbrances noted on said Exhibits "A-3" through "A-12".

EXCEPTING AND RESERVING, HOWEVER, unto Grantor, its successors and assigns, all water and water rights (surface and ground water) within or appurtenant to the Property; provided, however, that in the exercise of said rights, Grantor, its successors and assigns, shall not have the right to drill for water or otherwise disturb the surface of the land or any improvements thereon or take other action that unreasonably interferes with the development or use of the Property for residential purposes.

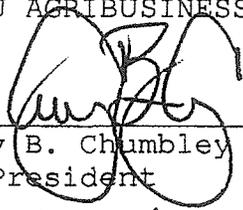
TO HAVE AND TO HOLD the same, together with any improvements thereon and the rights, easements, privileges, and appurtenances thereunto belonging or appertaining unto the Grantee, forever.

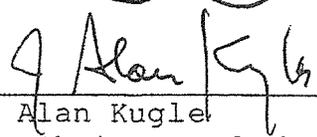
It is understood and agreed that the term "property" shall be deemed to mean and include the property specifically described in Exhibits "A-3" through "A-12", all buildings and improvements thereon (including any personal property described

in Exhibits "A-3" through "A-12") and all rights, easements, privileges and appurtenances in connection therewith, that the terms "Grantor" and "Grantee", as and when used hereinabove or hereinbelow shall mean and include the masculine or feminine, the singular or plural number, individuals, trustees, or corporations, and their and each of their respective successors in interest, heirs, representatives, administrators and permitted assigns, according to the context thereof, and the use herein of the singular in reference to a party shall include the plural and the use of a pronoun of any gender shall include all genders. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall be and for all purposes deemed to be joint and several.

IN WITNESS WHEREOF, the Grantor has executed this instrument as of the 21st day of August, 2002.

WAILUKU AGRIBUSINESS CO., INC.

By 
Avery B. Chumbley
Its President

By 
J. Alan Kugler
Its Chairman of the Board

Grantor