

FAX MEMORANDUM

To : Mahealani Ventura-Oliver, fax no. (808) 243-2234
From : Eric Aaron Lighter, fax no. (808) 985-9239
Date : April 25, 2009

Aloha,

I send this transmission as a co-defendant in Betsill, et al. v. Oliver, et al., Civ. 09-0077, HI 2 nd Cir., with the goal of hopefully codifying what is known and thereby attempting to further understand the meaning of circumstances surrounding said litigation. Enclosed is the Declaration of Eric Aaron Lighter dated today. Said declaration may only be used in Court proceedings in or related to said Civ. 09-0077. I insist on promptly receiving a complete copy of any use of said declaration, which use must be accompanied with a copy of this Fax Memorandum.

Sincerely,


Eric Aaron Lighter
encl.

DECLARATION OF ERIC AARON LIGHTER

I, ERIC AARON LIGHTER, declare and aver under penalty of perjury that I am competent to testify regarding, I have personal knowledge of, and the following which I attest is true and accurate to the best of my knowledge.

Late April 24, 2009, I received a facsimile copy of the notarized Declaration of Mahealani Ventura-Oliver ("Mahealani"), dated and acknowledged on April 23, 2009, which is re-stated accurately to the best of my knowledge herebelow.

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"I, MAHEALANI VENTURA-OLIVER, declare and aver under penalty of perjury that I am competent to testify regarding, and I have personal knowledge of, the following which I attest is true and accurate to the best of my knowledge.

Alexander M. Birch was a native of Richmond, West Virginia, became a denizen of Ko Hawaii pae aina and died on royal patented land on Maui as a resident of Maui on August 21, 1854. The 1835 employment records of Rev. Chamberlain show Alexander being employed as a carpenter for the building of the Wainee Church in Lahaina. Alexander was given the Hawaiian name of Kamana, which means carpenter. At least one known deed with Alexander as a party used his Hawaiian name.

On February 1, 1855, probate was opened for A.M. Birch, In re: Birch, Probate No. 44.

On or about December 5, 1855, the Clerk of the 2 nd Circuit Court accepted a \$1,000 bond for Probate 44.

Alexander M. Birch had three wives and no divorces. There were six children.

Henry Birch was the eldest, and his mother Kamoalau was married to A.M. Birch first. Her marriage has been recently certified. Henry Birch was born in 1832 and died in March 13, 1913 with heirs, he is buried in a family cemetery adjoining family lands.

The marriage records of Rev. E. W. Clark, Honolulu, 1848-1864, page 54 of)-32, from Vital Statistics Collection Series 223, show that Alexander, aka Kamana, married Henry's mother Kamoalau Kaanamoku, aka Moalaala, on February 8, 1949. "Moalaala" is an English version of Kamoalau. A deed in re: widow of Kamana Birch, Aluli for a small parcel in Lahaina used Alexander's Hawaiian name Kamana. This is apparently the same small house lot sold through Probate no. 44 which was used to pay off Alexander's debts.

The second wife Kahai, aka Kahae, had five children, all of whom died without currently living and/or any heirs. She opened probate for all six children. The only evidence she was his "wife" is (a) her statement in the Probate no. 44 Petition that she is such, and (b) her five children. Using the Westernized standard that the below discussed Betsill, et al. applied, this second "wife" had five illegitimate children with Alexander. The only legitimate child was Henry, by marriage and by law. The third wife had no children. Kahai open probate for Alexander, wherein she claimed to be his widow, The petition reports in a reference by a supporting witness name Ua'ua'u that Alexander Birch had six children, rather than the five as set forth by Kahai.

Except for a court approved sale of a small house and some personal property sold to pay debts in 1856, the probate had no distribution and was never closed. T.H. Napela was the Court appointed personal representative.

The next to the last entry in the Probate 44 file is a "chatty" letter dated August 2, 1861 that disclosed the allegation that three of Kahai's children purportedly wanted to sell undefined interests in the probated lands but without prior notice or Court approval. Said letter was not recorded, and was not recordable. Said letter was not signed by the other

three children or any wife of A.M. Birch. A year later, outside of probate approval, three quitclaim deeds were granted by the rouge children to Wailuku Agriculture (via its predecessor, Wailuku Sugar Co.).

The last entry in the Probate No. 44 file is a request by three of the children requesting a court appointed Commissioner to partition certain lands. No official was appointed by the Court, no partition occurred, no orders signed, and the three rouge children had to sign their own void deeds for a part of the un-partitioned lands whose title still remains intact in the still open and bonded Probate No. 44.

Proper court procedures were not followed concerning the 1861 "chatty" letter. Procedural requirement for selling properties is discussed in E.K. Lipoa by her guardian J.D. Robinson v. J.I. Dowsett, et als., 3 Haw. 625, 626-27 (1875). That case recognized the requirement of obtaining authority to transfer real property held in an estate and the necessity of a subsequent deed conveying the property being signed by the administrator of the estate. In Estate of Kamaipiialii, 19 Haw. 163, 166-67 (1908), the Court recognized the responsibility of the circuit courts to monitor the conscientious administration of estates and recognized that sales of real property held within an estate must be conducted by order and sale. The importance of having an order of distribution was recognized in Estate of Spitz, 24 Haw. 649, 654 (1919).

The 1861 "chatty" letter was never recorded, and when signed, there was a requirement that deeds be filed of record, "The statute, which is clear and positive, says: That all leases, deeds, etc., shall be recorded: and that no conveyance of real estate not recorded within thirty days after its execution, shall be valid as against a subsequent deed of the same estate, previously recorded." Burick v. Disher, 1 Haw. 114, 115 (1852).

Prior to 1835 the Kingdom of Hawaii allowed common law marriage and protected the inheritance rights of the offspring. 1830, Kaahumanu decrees that anyone married in the old ways (ho'ao) are considered legally married by law. There was no limitation on child's rights to inherit from a natural father. Kaahumanu decrees intact in 1832 when Henry is born.

In 1835 the Kingdom of Hawaii laws continued to protect said offspring, but encouraged formal marriage.

On December 24, 1839, the Prime Minister, Kekauluohi, and the Sovereign Kamehameha III, issued a direct deed to A.M. Birch. The heirs have the original deed. This same year a Hawaiian Bill of Rights is decreed, securing property to persons.

In 1840 Constitutional laws are promulgated, keeping in place kanawai dating from 1833 to 1840. Chapter I: all heirs inherit without distinction, except land agents.

The Laws of 1842, Chapter X, give illegitimate children the same inheritance rights as legitimate children; same ratified the 1830 Edict of Kaahumanu.

In 1844, all branches of the Constitutional government ratify and promulgate all laws in legislative session, and to which the justices are to give effect.

The 1846 statute laws created and passed by Legislature in respect to Title to lands.

On August 21, 1849, Land Commission Award 781 was issued to A.M. Birch for at least certain Wailuku, Maui lands.

In 1850, an Act to create the Judiciary is passed and includes statutes of descent and distribution.

In 1852, a new Constitution is written and the statute on descent and distribution is added. The law as substantially re-enacted in the Civil Code of 1859, differs from this in no material degrees. 1853, the above laws are not changed.

On August 21, 1854 A.M. Birch died. The governing law at the time of death give illegitimate children the same inheritance rights as legitimate children, Keelikani v. James Robinson, 2 Haw. 522, 528 (1862), Kale Aihonua v. Ahi, et al., 6 Haw. 410-11 (1883), Hawaiian Kingdom Civil Code, Chapter XXXII, Section 1447.

Henry Birch had no notice of or participation in Probate No. 44, and any judgment therefrom is therefore void, Mossman v. Hawaiian Government, 10 Haw. 421, 424 (1896), and even if there were a judgment it would not affect Henry Birch and his heirs, Mikalemi v. Luau, 6 Haw. 47, 49 (1871). Section 1448 of the Civil Code of the Hawaiian Kingdom required real propert of an intestate decedent to "be divided equally among the intestate's children". The 1861 "chatty" letter had no authority to convey the interest of Henry Birch since he was not a party thereto, Moran v. Guerreiro, 97 Haw. 354, 372, 37 P.3d 603, 612 (2001).

In 1866, pursuant to King Kalakaua becoming a Christian, the Kingdom law enforced inheritance rights of only offspring of married couples.

On March 31, 1883 and September 24, 1883, King Kalakaua issued Royal Patents to A.M. Birch based Court Decree of title (palapala hoolo) no. 781. In 1874, a Act supporting some 1866 Kalakaua decrees and/or Legislative Act in upholding the rights of children born out of wedlock, the Court in Kalakaua v. Parke, 8 Haw. 632 (1878) recognized that polygamy was common in Hawaii, and affirmed the inheritance rights of illegitimate children born after 1866.

However, A.M. Birch died in 1854, and only the laws at the time of death are applicable, Paulo v. D. Malo, 4 Haw. 536, 537-38 (1882), Estate of Kailikanoa, 3 Haw. 459, 461 (1871), Estate of Hannah Maughan, Deceased Intestate, 3 Haw. 262-67 (1871).

In 1907, the Territory of Hawaii enforced inheritance rights to offspring regardless of the marriage status of the mother, thereby repudiating any inheritance restrictions from the (a) 1866 decrees and/or Legislative Act, and (b) the 1874 Act, as related to inheritance.

In sum, the full title to the subject Waiehu properties reverted back to the estate of Birch even if the 1861 "chatty" letter somehow affected title, since said letter was never unrecorded (let alone within the required thirty days, Burdick, supra, at 115):

- 12-24-1839 Deed to Alexander from the Sovereign
- 8-21-1849 Land Commission Award to Alexander
- 8-2-1861 Bogus "chatty" letter from three rouge children
- 3-31-1882 Royal Patent 7584 granted to Alexander
- 9-24-1883 Royal Patent 7690 granted to Alexander.

Kingdom legislation of 1860 and 1872 converted the Royal Patent from a deed to a quitclaim, Smith v. Hamakua Mill Co., 15 Haw. 648, 661-62 (1904). However, the 1939 deed to Alexander Birch made the Land Commission Award and Royal Patents merely redundant.

Even under Hawaii statehood law, a Royal Patent "shall be in the name of the person to whom the original award was made, even though the person is deceased, or title to the real estate thereby granted has been alienated; and all land patents so issued shall inure to the benefit of the heirs and assigns of the holder of the original award." Hawaii Revised Statutes, Section 172-11.

On June 30, 1925, the Maui Boundary Commission confirmed boundaries for Wailuku Agribusiness' quitclaim deed, but expressly stated that "no inquiry or determination" was made regarding any heirs or their interests, nor was it even "sought".

On or about 2003 a Texas real estate developer, Betsill, et al., bought by quitclaim

deed Wailuku Agriculture's interest in about 500 acres of the subject Royal Patents. Subsequently, Betsill, et al. subdivided the land and sold parcels by warranty deeds. Full title insurance for the warranty deeds was unavailable, resulting in years of litigation.

Betsill, et al. falsely claimed in the litigation that Probate 44 completed its distribution and was closed, based on the "research" of a title researcher in Honolulu who did not go to Maui to review Probate 44, nor was qualified to do so.

The living heirs are Juanita Schmitt and her two brothers. Juanita's daughter is Mahealani Ventura-Oliver, whose ex-husband is John. Juanita's ex-husband is August. Juanita's two brothers waived their interests to Juanita.

On March 11, 2005 a Development Agreement and transfer of Royal Patents were recorded in favor of Diamond Credit Bureau, Inc. and Eric Lighter ("DCBI") were recorded. Then and subsequently, notarized interests of the Juanita (and her brother Gilbert), August, Mahealani Ventura-Oliver were obtained by DCBI, confirming the Development Agreement and transfer of Royal Patents to DCBI.

Said Development Agreement and transfer of Royal Patents were recorded March 11, 2005 as (a) Document no. 2005-0493446, entitled Confirmation of Development Agreement, and (b) Document nos. 2005-049334-5, entitled Confirmation of Warranty Grant of Royal Land Grant and Patent.

Assignment of Interests were recorded May 16, 2005 as Document no. 2005-097318 for Gilbert Schmitt (Power of Attorney recorded as Document no. 2005-097316), and Document no. 2005-097317 for Juanita Ventura, fka Juanita Schmitt.

DCBI is a holder in due course in it Royal Patents interests purchase, and victim of Betsill, et al.'s alleged fraud on the Birch heirs, the Courts, and DCBI.

On December 26, 2006, the Hawaii Supreme Court expressly ruled in a 2004 case that the issues of the heirship of Henry Birch and the effect of the August 2, 1861 "chatty" letter, are undecided,

Betsill, et al. never named DCBI as a party until just a few months before the six year statute of limitations for fraud expires, for claims Mahealani, et al. have against Betsill, et al. The attorney for Betsill, et al. is also a plaintiff in the recent suit.

80% of the stock in DCBI is owned by Hawaiian Colony Hotel Corporation, which sold the development rights to the likely portal site into Waikiki for the oncoming mass transit rail system.

During litigation aimed at thwarting efforts by Mahealani and John to defend their interests in Probate No. 44, Betsill, et al. obtained a default judgment for about \$250,000 against Mahealani and John purportedly based upon Betsill, et al. loss of the ability to spend some \$250,000 on a grading permit Betsill, et al. lost because they had uninsurable title, etc., i.e. they were supposedly damaged due the loss of an expense they did not have to pay?

Betsill, et al. used said judgment to foreclose and seize the residence of Mahealani and John, even while allegedly sending mail to that residence Mahealani and John were removed from under "writ of possession" and "writ of judgment", Betsill, et al. admitted in court that they did not buy their residence and currently are not the owners.

There are certain other lands in said Probate No. 44 that have not been litigated and whose title remains in Probate No. 44, passing only a muniment by patent definition.

Over the last approximately four (4) year period nether Mahealani nor any other Birch heirs have not had any contact with DCBI or Eric Lighter. Instead of pursuing the Development Agreement with DCBI, Mahealani alleges that she has had to defend herself from malicious and various attacks by Betsill, et al.

In addition, Mahealani alleges that:

- a. she has labored to establish contacts with and has promoted literacy for the community of Hawaiian on a charity gift basis only;
- b. she has never assisted anyone to or recommend that anyone disobey any law of the United States, or State of Hawaii, or County of Maui;
- c. although she believes that the legal requisites of an "overthrow" [of the Kingdom of Hawaii] never took place, to her knowledge she never intended to, conspired to, or participated in any form of a violation of any law of the United States, or State of Hawaii, or County of Maui, and encourages positive correction;
- d. she has always stressed that everyone should pay their taxes, mortgages and property taxes, and contractual obligations with respect to those real parties in interests;
- e. she has always stressed that the existing and current courts are the only workable route to redress claims held by the court;
- f. that as a service to the community of Hawaiians, she has attempted to entertain Kingdom of Hawaii court procedure and/or actions in order to prove that fact;
- g. that she proved that fact indeed, Judge Cardoza awarded her Summary Judgment on lands in Waiehu and Judge Joel August awarded her the return of costs and fees, when East Maui Irrigation Co. Ltd. could not dispute her Title Examination;
- h. she has finally come to a crossroads and must now vigorously pursue the DCBI Development Agreement in view of the attacks by Betsill, et al. allegedly increasing in malicious viciousness;
- i. That based upon information and belief, she alleges that Betsill, et al. (including the attorney for same) has/have given false testimony to law enforcement officials and related, including Internal Revenue Service Criminal Investigation Division ("IRS-CID") Special Agents, for the purpose of illegally attempting to close Probate No. 44 through even more intense false testimony than ever before;
- j. that she, on behalf of herself and the heirs of Alexander Birch, has already pledged up to \$3 million of the DCBI contract plus the current value of the \$1,000 bond for Probate No. 44 plus all accrued interest thereon;
- k. that said pledge is to cover for any alleged and proven damages she has caused, any taxes due from any of the heirs of Alexander Birch, and any attorneys fees already incurred."

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 End of restated Declaration of Mahealani Ventura-Oliver, dated April 23, 2009
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There is seemingly a disturbing nexus between this matter concerning the unlikely appearance of IRS-CID noted above and DCBI attorney, Dr. Wing C. Ng, C.P.A. To see the nexus, first see that certain Assignment filed March 16, 2009 as Document No. 2009-0391162 and states in relevant part,

"c. On May 27, 2008, as seen in said UCC-1 [Document nos. 2008-122546 and 2008-123405 filed July 31, 2008 and August 1, 2008 respectively], said \$250,000.00 plus mortgage interest was transferred to herein Assignor as the initial payment on the purchase of Assignors interests and claims in the Hawaiian Colony Hotel.

On June 3, 2008, that transaction was reported to the Internal Revenue Service ("IRS") by Dr. Wing C. Ng, C.P.A., Esq., as \$250,000.00 income to Assignor herein [said Document 2009-0391162 codified the \$350,000 additional down payment on the Waikiki hotel development rights interests and/or claims, also reported on a federal tax return]. On July 23, 2008, [composite concrete home and