

SMITH
PATTEN

221 Main St., Suite 740
San Francisco, CA 94105
v 415-402-0084
f 415-520-0104
www.smithpatten.com

VIA E-MAIL: kirkgiordano@gmail.com

February 12, 2016

Kirk Giordano
2318 Eagle Ave.
Alameda, CA 94501

Re: OPINION LETTER RE:
Hiehie, LLC v. Giordano

Dear Mr. Giordano:

You have asked us to provide you an opinion as to the status and nature of the litigation entitled *Hiehie, LLC v. Giordano* (Circuit Court of the Second Circuit, State of Hawaii, Case # 15-1-0255(1)), including aspects of the Defendants and counsel's handling of the matter. This letter represents our opinion on a number of those issues. Our opinion is based on the materials you have provided to us and our understanding of the laws applicable to you as a California resident.

SMITH PATTEN is primarily a California firm, focused on the application of California and Federal Law. Although I personally have a certain familiarity with Hawaii state law, we are not admitted to practice in the State of Hawaii, and therefore limit our opinions to general principles of law. The opinions set forth herein are based upon our review of the facts and Scope set forth below. Should a change in either the facts or law occur, such changes may implicate our opinions set forth herein.

FACTUAL BACKGROUND

This case involves a land ownership dispute regarding real property, located at 1020 Hiehie Street, Makawao, Hawaii 96768, between you (the current owner) and Hiehie, LLC, a third party claiming to have purchased the right of redemption from the alleged heir to 50% of the subject property. In 1987, Julia K. Martin granted the subject property to Moana Penelope Martin Ramos and Julia Keikioewa Talifolau as tenants in common via a Warranty Deed, recorded October 19, 1987. On August 23, 2013, the County of Maui recorded a Certificate

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of Tax Lien (Doc. # A-49831100), which recorded a lien against the subject property due to the indebtedness of the taxpayers, Moana Ramos and Julia K. Martin.

Plaintiff Hiehie, LLC, the purported assignee for the Estate of Moana Ramos, allegedly purchased Ms. Ramos's one-half share from her daughter, Kimberly Kehaulani Caspillo, for \$10,000. However, there is no recorded deed transferring ownership to Ms. Caspillo or any evidence that Hiehie, LLC obtained Ms. Talifolau's 50% share.

On May 20, 2014, the County of Maui conducted a tax foreclosure pursuant to the lien; you subsequently purchased the property for \$60,000.00. The County thereafter recorded a Tax Deed on July 23, 2014 which conclusively transferred title to you. After your purchase, you invested a significant amount of time and money (approximately \$120,000.00) to rehabilitate the foundation, house, and garage on the subject property. Your efforts were fruitful in successfully obtaining approval for homeowners insurance of the subject property.

Plaintiff Hiehie, LLC initially filed suit against you on or around May 15, 2015.

QUESTIONS

1. What are the ethical ramifications for Attorney – whom purportedly represented the Estate of Moana Ramos – when he formed Hiehie LLC, of which he is member, that became the assignee of Kimberly Caspillo's right of redemption (the purported sole heir of the Estate of Moana Ramos) in a piece of real property purchased by tax deed by Kirk Giordano?
2. Is there a basis to disqualify or take other action against Matson, and if so, what is the procedure?
3. Can someone other than the taxpayer redeem property sold pursuant to a tax deed under Hawaii's redemption statute?
4. What are the weaknesses in Hiehie, LLC's case?
5. Of the available options, what are the risks and benefits?

ANALYSIS

1. ETHICAL RAMIFICATIONS FOR OPPOSING COUNSEL

The first question is what ethical rules apply and what are the potential consequences for the conduct of opposing counsel in this matter.

a. Rules of Professional Conduct

Hawaii Rules of Professional Conduct, Rule 1.8¹, governs "conflict of interest: prohibited transactions." The first portion of Rule 1.8 governs attorneys engaging in business with a client. The comments to the Rule of Professional Conduct give an indication of how a court would apply the rules and what the Hawaii Supreme Court had in mind when it made the rules in the first place.

The comments to Rule 1.8 state that the following requirements apply to "lawyers purchasing property from estates they represent." This appears to apply to Matson. Lawyers representing the administrator of the estate (in the case of an intestate estate), and the facts do not state whether Caspillo was the administrator. If she is the administrator, the rules to follow will apply. If Caspillo was merely an heir, then the Attorney would seem to be unaffected by the client-transaction ethics rules because the Attorney of the Estate does not represent heirs. (The Attorney would have to comply with the regular ethics rules, like informing Caspillo that he is not her attorney and does not represent her interests, etc.) If Caspillo was the administrator, and the Attorney represented her in that capacity, then: (1) the transaction must be fair to Caspillo; (2) the transaction must be communicated to Caspillo; (3) Caspillo must be informed to get other counsel to review the transaction; and (4) Caspillo must consent in writing to the transaction and to the lawyer's role.

Given what appears to be the nature of the relationship between Matson and Caspillo, including drug addiction, rehabilitation, and halfway houses, there appear to be serious questions as to whether Matson could comply with the foregoing requirements. If all of the foregoing requirements are met, then Matson would not have ethical exposure under Rule of Professional Conduct 1.8 for taking an assignment from Caspillo.

The amount allegedly paid by Hiehie and/or Matson to Caspillo, is negligible, given the current value of the property (\$10,000 versus hundreds of thousands). As such, there is an argument to be made that the difference is a gift from Caspillo to Matson, and such gifts may be prohibited under subsection (c) of Rule 1.8.

1 Rule 1.8. CONFLICT OF INTEREST: PROHIBITED TRANSACTIONS.

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner which can be reasonably understood by the client;
- (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in the transaction; and
- (3) the client consents in writing to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

... *Id.*

