



350 WARD AVENUE, #106-8
HONOLULU, HAWAII 96814

May 3, 2024

Ms. Lara P. Deguzman
Arbitration Administrator
Court Annexed Arbitration Program
First Circuit Court
State of Hawaii
777 Punchbowl Street, 4th Floor
Honolulu, Hawaii 96813-5093

Re: Civil Number I-CCV-24-0000003
Marjorie J. Walsh et. al. -v- MMI Realty Services, Inc.

Dear Ms. Deguzman:

On April 23, 2024 your office e-mailed the parties in the above captioned matter to advise that the Arbitrator Elect, Jonathan L. Ortiz, Esq., had disclosed a possible conflict. Just over an hour later the attorney for the Defendant, Randall Y. Kaya, Esq., e-mailed to say, "MMI has no objection based on the disclosure of past representation against MMI years ago."

The Plaintiffs in this action, Marjorie J. Walsh and Craig W. Walsh, hereby **OBJECT** to the appointment of Mr. Ortiz based upon his recent disclosure.

As indicated in our earlier objection and appeal of Mr. Ortiz's appointment, the Plaintiffs do not know Mr. Ortiz so these comments are not meant to be personal in any way.

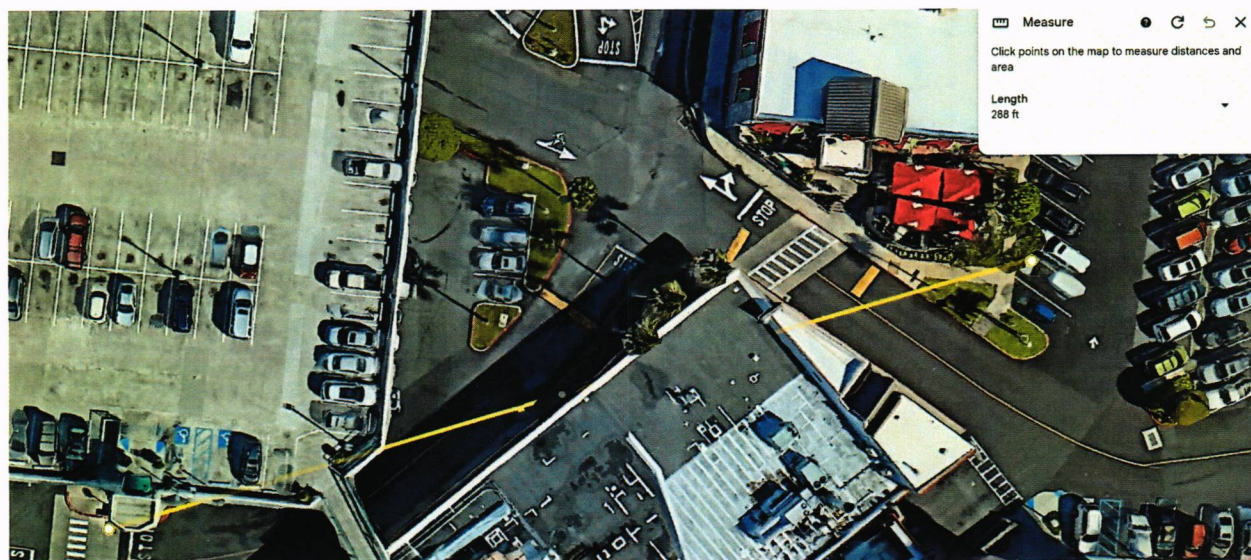
Mr. Ortiz disclosed, "I represented Chili's at Kahala Mall in a 2014 lawsuit. MMI was a party to that lawsuit. The lawsuit was settled." Mr. Kaya also dismisses this possible conflict as being "years ago." An inference could be drawn that the Plaintiff in this 2014 lawsuit filed the Complaint, and the case was "settled" soon thereafter.

We have reviewed the Court record for I-CC-14-1000050 – Mary Jo Romano -v- Pacific Meritage LLC dba Chili's Grill & Bar (hereafter **Chili's**), MMI Realty Services, Inc. (hereafter **MMI**), and Kahala Center Company (hereafter **Kahala**). These paper documents, including an

eight-page expert's report from Applied Cognitive Sciences, indicate that Ms. Romano, the Plaintiff, tripped on an "elevated seam"¹ in the Kahala Mall parking lot, fell, and as a result "the long bone leading to the base of [her] fifth toe was broken at its base. This necessitated the patient requiring a cast for a period of two months."²

Ms. Romano's fall occurred on December 28, 2012. Her lawsuit was filed in the First Circuit Court on January 9, 2014 – coincidentally almost a decade before the Walsh action was filed on January 2, 2024. Mr. Ortiz represented **Chili's** and Mr. Kaya's firm (the Law Offices of Leslie R. Kop) represented **MMI**. The attorneys in the Kop offices are all employees of First Insurance Company of Hawaii Ltd., and Mr. Kaya's name is shown (along with others in his office) on all pleadings filed by his office in the Romano case, and in the eCourt Kokua system.

Both Ms. Romano's fall and Marjorie Walsh's fall occurred in the Kahala Mall parking lot, managed then as now by **MMI**. The two falls occurred (according to Google Maps) 288 feet apart:



On January 28, 2014 **MMI** (through the Kopp offices) filed an answer and a crossclaim against **Chili's**. On March 24, 2014 **Chili's** (through Mr. Ortiz's firm) filed a crossclaim against **MMI**. At this stage **MMI** and **Chili's** were both interested in denying liability for Ms. Romano's injury or minimizing any award or decision in her favor.

Interrogatories were exchanged, a pre-trial hearing was held, witness statements were provided, and expert reports obtained. Several of the expert reports made their way to the

¹ Page 1 of the October 1, 2014 letter from Applied Cognitive Sciences (1CC-14-1000050, Dkt 48). For the sake of convenience, as this document is not available electronically on the eCourt Kokua system, we have attached a copy from the Court record.

² Letter from Dr. John Magauran dated November 21, 2014 in 1CC-14-1000050.

Court record. Ms. Romano gave her deposition on December 3, 2014. A trial date was scheduled for April 6, 2015.

In the “Responsive Pre-Trial Statement”³ -- signed by Mr. Ortiz on June 9, 2014 -- he wrote:

1. The Complaint and Cross-Claim [by MMI] fail to state a claim upon which relief can be granted.
2. Plaintiff was contributorily negligent and/or her comparative fault exceeds that of all others.
3. Plaintiff has failed to mitigate her injuries or damages, if any.
4. Plaintiff’s claims are barred by her failure to name an indispensable party or parties to these proceedings under and pursuant to Rule 19 of the Hawaii Rules of Civil Procedure.
5. If Plaintiff was injured or damaged as alleged, said injuries or damages were the result of Defendants MMI and KAHALA’s negligence or other legal fault, and Defendant CHILI’S was not negligent or in any way at fault.
6. If Defendant CHILI’S is found to be liable to Plaintiff, Defendant CHILI’S is entitled to indemnity and/or contribution from Defendants MMI and KAHALA and each of them.
7. If Plaintiff is entitled to recovery, her right of recovery is against Defendants MMI and KAHALA and not against Defendant CHILI’S.
8. If Defendant CHILI’S is in some way negligent, the negligence of Defendant CHILI’S was merely passive and secondary, whereas the negligence of Defendants MMI and KAHALA were primary and active, and accordingly, Defendant CHILI’S is entitled to indemnification from Defendants MMI and Kahala

At some point the Romano case was put into the CAAP program and a CAAP hearing was held on December 4, 2014. The Arbitration Award was signed on December 15, 2014 and provided to the parties on December 18, 2014. On January 13, 2015 Michael A. Lorusso, Esq. of the Kopp Office wrote to Judge Gary W. B. Chang that “I am pleased to inform the Court that the parties have reached a settlement of any and all claims.” The Romano case was dismissed with prejudice on February 13, 2015.

While Mr. Kaya dismisses the Romano lawsuit as “years ago,” the Plaintiffs maintain that the fact that it *was* years ago makes the Romano claim *more* interesting. The similarity between the 2012 and 2023 falls in the Kahala Mall parking lot under the management of MMI, demonstrates that MMI still fails to follow standards for safe walking surfaces (including parking lots) – including appropriate maintenance and, when appropriate, hazard barriers or warnings. Please simply compare the comments on “Violations of Guidelines and Standards”

³ 1-CC-14-1000050, Dkt 35

in the attachment (pages 4 and 5) and comments on “Risk Management” (pages 5 and 6) with the Complaint in our litigation. We are currently in discussions with Applied Risk Management about retaining their services to provide an expert report in our litigation.

In conclusion, it is easy to dismiss the 2014 litigation as “settled” (per Mr. Ortiz) or “years ago” (per Mr. Kaya). In our view, it is not easy to ignore the fact that Mr. Ortiz and Mr. Kaya’s firm ***represented defendants in a lawsuit involving a trip and fall – resulting in substantial injuries – in the Kabala Mall parking lot.*** Are we to expect that, contrary to his signed statement on June 9, 2014 (*supra*) and his years of practice representing defendants in personal injury and premises liability claims, Mr. Ortiz is now able to be completely unbiased in this matter?

Quoting from *Commonwealth Coatings -v- Continental Cas.*, 393 U.S. 145 (1968):

“This rule of arbitration and this canon of judicial ethics [33d Canon of Judicial Ethics] rest on the premise that any tribunal permitted by law to try cases and controversies not only must be unbiased, ***but also must avoid even the appearance of bias.*** [emphasis added]”

We respectfully ask that our objection to Mr. Ortiz as an arbitrator in this matter, based upon his disclosure, be confirmed.

Yours sincerely,



Craig W. Walsh



Marjorie J. Walsh

Copy (via e-mail) to Mr. Randall Kaya and Mr. Jonathan Ortiz