



DEPARTMENT OF THE ATTORNEY GENERAL

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For Immediate Release
August 22, 2017

News Release 2017-109

PEAMAN RACE LAWSUIT AGAINST STATE DISMISSED

HONOLULU – Attorney General Doug Chin announced that state circuit court Judge Melvin H. Fujino on August 15, 2017, granted the State of Hawaii’s motion to dismiss in *Pagett v. DLNR*.

Hawaii County resident Sean W. Pagett operates a series of races called the “Peaman Races” – events involving both running and swimming – in Kona. Pagett did not get a marine/ocean event permit from the Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR), which is legally required for certain swimming events. Pagett sued the State, seeking a declaratory judgment that DOBOR’s application of an administrative rule, HAR 13-244-19, to cover swimming events was invalid because DLNR was not authorized to promulgate rules governing swimming events. Judge Fujino dismissed the case because plaintiffs cannot file suit directly in the circuit court challenging the application of a rule. Instead, the plaintiffs can only challenge the underlying validity of a rule, which the court held Pagett failed to do.

The State of Hawaii was represented internally by Deputy Attorney General David Day. Pagett was represented by attorney Jason Braswell.

A copy of the court’s order and judgment is attached.

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For more information, contact:

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2017 AUG 15 PM 4: 23

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LIMCOCK CHEW, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

Attorneys for Defendant
Department of Land and Natural Resources,
State of Hawai'i

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

SEAN W. PAGETT,

Plaintiff,

vs.

DEPARTMENT OF LAND AND NATURAL
RESOURCES, STATE OF HAWAI'I,

Defendant.

) CIVIL NO. 17-1-127K
) Declaratory Judgment
)
) ORDER (1) GRANTING IN PART AND
) DENYING IN PART DEPARTMENT OF
) LAND AND NATURAL RESOURCES,
) STATE OF HAWAII'S MOTION TO
) DISMISS FOR LACK OF SUBJECT-
) MATTER JURISDICTION OR,
) ALTERNATIVELY, FOR SUMMARY
) JUDGMENT, FILED JUNE 14, 2017;
) AND (2) DENYING PLAINTIFF'S
) MOTION FOR SUMMARY JUDGMENT,
) FILED JUNE 14, 2017
)
) HEARING:
) Judge: Hon. Melvin H. Fujino
) Hearing Date: July 27, 2017
) Hearing Time: 8:30 a.m.
)
)
)

I hereby certify that this is a full, true and correct
copy of the original on file in this office.


Clerk, Third Circuit Court, State of Hawaii

ORDER (1) GRANTING IN PART AND DENYING IN PART DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII'S MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT, FILED JUNE 14, 2017; AND (2) DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, FILED JUNE 14, 2017

DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII'S MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT, filed June 14, 2017 ("DLNR's Motion"); and PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, filed June 14, 2017, came on for hearing in the above entitled court, the Honorable Melvin H. Fujino presiding, on July 27, 2017.

Jason R. Braswell appeared on behalf of Plaintiff. David D. Day, Deputy Attorney General, appeared on behalf of Department of Land and Natural Resources, State of Hawai'i ("DLNR").

The Court has considered the moving and opposition papers and the arguments of counsel. The Court is fully advised.

NOW THEREFORE, IT IS HEREBY ORDERED that DLNR's Motion is GRANTED IN PART and DENIED IN PART. "Although HRS § 91-7 does not give the circuit court jurisdiction to hear a challenge to the application of a rule, it clearly does provide for attacks on a rule's validity." *Puana v. Sunn*, 69 Haw. 187, 189, 737 P.2d 867, 869 (1987). The Court lacks subject-matter jurisdiction over the Complaint, filed on April 6, 2017, because Plaintiff challenges the application of Hawaii Administrative Rule § 13-244-19, not its validity. Therefore, the Court grants DLNR's Motion to the extent it moves for dismissal of the Complaint for lack of subject-matter jurisdiction. DLNR's Motion is denied in all other respects on the grounds of mootness.

FILED

2017 AUG 15 PM 4: 26

L. MOCK CHEW, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

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State of Hawai'i

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

SEAN W. PAGETT,)	CIVIL NO. 17-1-127K
)	Declaratory Judgment
Plaintiff,)	
)	JUDGMENT
vs.)	
)	
DEPARTMENT OF LAND AND NATURAL)	(No Trial Date Set)
RESOURCES, STATE OF HAWAI'I,)	
)	
Defendant.)	
)	
)	

JUDGMENT

Pursuant to Rules 54(a) and 58 of the Hawai'i Rules of Civil Procedure, final judgment is hereby entered in favor of Defendant Department of Land and Natural Resources, State of Hawai'i and against Plaintiff Sean W. Pagett. Plaintiff's sole claim for a declaratory judgment against Defendant Department of Land and Natural Resources, State of Hawai'i is dismissed without prejudice pursuant to the ORDER (1) GRANTING IN PART AND DENYING IN

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Clerk, Third Circuit Court, State of Hawaii

PART DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII'S
MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION OR,
ALTERNATIVELY, FOR SUMMARY JUDGMENT, FILED JUNE 14, 2017; AND (2)
DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, FILED JUNE 14, 2017.

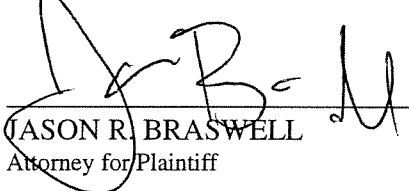
This Judgment disposes of the sole claim asserted in this case. Any claims not identified
are hereby dismissed without prejudice.

There are no remaining claims, parties, or issues.

DATED: Kealahou, Hawai'i, AUG 14 2017.

MELVIN KUINO (SEAL)
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:


JASON R. BRASWELL
Attorney for Plaintiff

SEAN W. PAGETT vs. DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF
HAWAII; CIVIL NO. 17-1-127K; JUDGMENT