

Bond Case Briefs

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ZONING - HAWAII

Kellberg v. Yuen

Supreme Court of Hawai'i - January 22, 2014 - P.3d - 2014 WL 235461

Subdivision neighbor brought action against numerous county defendants, alleging they mistakenly approved seven-lot subdivision even though property consisted of only six lots. The Circuit Court denied county defendants' motions to dismiss and granted neighbor's motion for partial summary judgment and remanded to the county Board of Appeals to consider neighbor's petition for appeal of planning director's decision. After the Board of Appeals dismissed the petition and affirmed, the Circuit Court denied neighbor's motion for an injunction and granted county defendants' motion for summary judgment. Neighbor appealed, and the Intermediate Court of Appeals determined that subject matter jurisdiction was lacking, vacated the Circuit Court judgment, and remanded for order of dismissal. Neighbor applied for certiorari review.

The Supreme Court of Hawaii held that:

- Planning Director's subdivision approval was the Director's final, appealable decision;
- Director's letter to neighbor in which he acknowledged mistake in subdivision approval did not constitute a separately appealable final decision;
- Doctrine of exhaustion of administrative remedies did not apply to failure to timely appeal the final decision; and
- Neighbor's failure to appeal Board's decision on remand did not constitute a failure to exhaust administrative remedies.