

**Electronically Filed  
Supreme Court  
SCWC-30110  
28-JUN-2013  
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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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RICHARD NELSON III, KALIKO CHUN, JAMES AKIONA, SR.,  
SHERILYN ADAMS, KELII IOANE, JR., and CHARLES AIPIA (deceased),  
Respondents/Plaintiffs/Appellants,

vs.

HAWAIIAN HOMES COMMISSION, THE DEPARTMENT OF HAWAIIAN HOME LANDS,  
JOBIE MASAGATANI, in her official capacity as Chair of the  
Hawaiian Homes Commission, IMAIKALANI P. AIU, PERRY ARTATES,  
LEIMANA K. DAMATE, GENE ROSS DAVIS, JEREMY KAMAKANEOALOHA  
HOPKINS, MICHAEL P. KAHIKINA, IAN LEE LOY, and  
RENWICK V. I. TASSILL, in their official capacities  
as members of the Hawaiian Homes Commission,  
Respondents/Defendants/Appellees,

and

KALBERT K. YOUNG, in his official capacity as the  
State Director of Finance, and the STATE OF HAWAI'I,  
Petitioners/Defendants/Appellees.

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SCWC-30110

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(ICA NO. 30110; CIV. NO. 07-1-1663-08)

JUNE 28, 2013

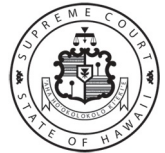
CONCURRING OPINION BY POLLACK, J.

I agree that Plaintiffs satisfied the three  
requirements of the private attorney general doctrine. However,

Plaintiffs seek attorneys' fees pursuant to HRS § 661-1(1) and HRS Chapters 632 and 673, which are not implicated in this case. Additionally, Plaintiffs have not raised any other basis for an award of attorneys' fees.<sup>1</sup> See, e.g., HRS § 602-5(a)(6).<sup>2</sup> I also do not believe that the record reflects that Plaintiffs sufficiently raised the issue of whether attorneys' fees are incidental to the underlying claim(s) in this case. Accordingly, I concur in the result reached by the majority.

DATED: Honolulu, Hawai'i, June 28, 2013.

/s/ Richard W. Pollack



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<sup>1</sup> See Taomae v. Lingle, 110 Hawai'i 327, 333 n.14, 132 P.3d 1238, 1245 n.14 (2006) (declining to address plaintiffs' untimely claims for attorneys' fees based on court's inherent equitable powers and HRS § 602-5(7), presently numbered HRS § 602-5(a)(6) (Supp. 2012), and denying request for fees on such grounds).

<sup>2</sup> "[T]he inherent power of the supreme court is codified in HRS § 602-5(7) [presently § 602-5(a)(6)], which acknowledge[]s this court's jurisdiction and power to make and award such judgments . . . and do such other acts and take such other steps as may be necessary to carry into full effect the powers which are or shall be given to it by law or for the promotion of justice[.]" Farmer v. Admin. Dir. of the Court, 94 Hawai'i 232, 241, 11 P.3d 457, 466 (2000) (quotation marks and brackets omitted). See, e.g., CARL Corp. v. State, Dep't of Educ., 85 Hawai'i 431, 460, 946 P.2d 1, 30 (1997) (recognizing and awarding attorneys' fees based on court's inherent powers "to create a remedy for a wrong even in the absence of specific statutory remedies, and to prevent unfair results") (quotation marks omitted).