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Electronically Filed
THIRD CIRCUIT
3CCV-21-0000188
25-JUN-2021
03:14 PM
Dkt. 1 CMPS

Counsel for Plaintiff PUALANI ESTATES
AT KONA COMMUNITY ASSOCIATION

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PUALANI ESTATES AT KONA)	CIVIL NO. _____
COMMUNITY ASSOCIATION, a Hawaii)	(Declaratory/Injunctive Relief) (Kona)
nonprofit corporation)	
)	
Plaintiff,)	COMPLAINT; SUMMONS
vs.)	
)	
)	
DEE ANN WUNSCHHEL, an individual; JOHN))	
DOES 1-10; JANE DOES 1-10; DOE)	
PARTNERSHIPS 1-10; DOE)	
GOVERNMENTAL AGENCIES 1-10 and)	
DOE ENTITIES 1-10,)	
)	
Defendants.)	
)	
)	

COMPLAINT

COMES NOW, PUALANI ESTATES AT KONA COMMUNITY ASSOCIATION, a Hawaii non-profit corporation, Plaintiff in the above-captioned civil action, by and through its counsel, JUNG & VASSAR, P.C., and for complaint and causes of action against Defendant DEE ANN WUNSCHHEL, an individual, alleges and avers as follows:



PARTIES

1. Plaintiff PUALANI ESTATES AT KONA COMMUNITY ASSOCIATION, (“Plaintiff” or “Association”) is a Hawaii non-profit corporation and Planned Community Association, whose mailing address is c/o Hawaiiana Management Company, Ltd., 74-5620 Palani Road, Suite 215, Kailua-Kona, Hawaii 96740.

2. Defendant DEE ANN WUNSCHEL (“Wunschel”) is an individual whose mailing address is 75-320 Omilo Place, Kailua-Kona, Hawaii 96740, and the owner of real property described as Tax Map Key No. (3) 7-5-041-051, having a street address of 75-320 Omilo Place, Kailua-Kona, Hawaii 96740 (“Subject Property”).

3. Based upon information and belief, John Does 1-10; Jane Does 1-10; Doe Partnerships 1-10; Doe Governmental Agencies 1-10 and Doe Entities 1-10 (collectively, “DOE DEFENDANTS”) are persons or entities who may be liable to Plaintiff for injuries or damages described herein, and whose names, identities, and capacities are presently unknown to Plaintiff or its counsel. Plaintiff will identify DOE DEFENDANTS, and each of them, when and if their names and capacities are ascertained.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to Sections 603-21.5(3), 603-21.9, 603-36 and 632-1 of the Hawaii Revised Statutes since the subject property and parties are located, and the claims arose, in the County and State of Hawaii.

COMMON AVERMENTS

5. Based upon information and belief, Wunschel owns the Subject Property, and the Subject Property is subject to the Pualani Estates at Kona Community Association Declaration of Covenants, Conditions, Restrictions and Easements Dated October 20, 2003 (“CC&Rs”) and the Bylaws of the Association.

6. Pursuant to the provisions of Hawaii Revised Statute (“HRS”) § 421J-8, upon the proper request of a member, the Association Board may provide the names and physical addresses of Association members to another Association member for purposes of soliciting votes or proxies or provide information to other Association matters. Unless specifically authorized by an Association member, neither the Association Board nor Hawaiiiana is authorized to disclose to any third parties, including other Association members, the private and confidential email addresses of Association members.

7. Haw. Rev. Statute § 421J-8 provides as follows:

The association shall use good faith efforts to keep an accurate and current list of the names and addresses of association members. If the list is not provided directly to members, the association shall develop a reasonable procedure by which owners may solicit votes or proxies or provide information to other owners with respect to association matters. The board may require members to furnish the association with an affidavit stating that the use of the list is requested in good faith for the protection of the association, its members or both.

8. A List of the names and physical addresses of all Association members are kept and maintained in the offices of the Association management company, Hawaiiiana Management Company, Ltd. (“Hawaiiiana”). All lot and homeowners within the Pualani Estates at Kona Subdivision are members of the Association.

9. The private and confidential email addresses of all Association members are provided to the Association on a confidential basis by Association members and kept, stored and maintained on a List in confidence by Hawaiiiana for the use of the Association Board of Directors solely for the purpose of communicating official Association communications with Association members. Some, but not all, of the Association Board also have access to the confidential and private email addresses of Association members.

10. When submitting their private email addresses to Hawaiiiana, each Association member checks a box on a Pualani Estates Owner Data Sheet that states “The Board of Directors has my permission to use my email address solely for the purpose of sending Association communications to me via email.”

11. On or about January 26, 2021, upon her request, Wunschel was provided with a list of names and physical mailing addresses of Association members by Hawaiiana Management Company, Ltd. Hawaiiana did not provide Wunschel with a copy of the List of the confidential and private email addresses of the Association members.

12. From sources unknown, on or about January 30, 2021 Wunschel illegally and wrongfully obtained a copy of the Association's List of the private and confidential email addresses of all of the members of the Association.

13. On February 26, 2021, March 12, 2021, and April 9, 2021, Wunschel sent emails to Association members, using the members' confidential email addresses, stating therein, her personal negative opinion of the Association Board.

14. On or about April 8, 2021, Counsel to the Association provided Ms. Wunschel with a written notice to cease and desist from her use of members' confidential and private email addresses, demanded the return of the email addresses to the Association Board and requested the name of the person or persons who provided her with the confidential and private email addresses of the Association members.

15. Wunschel has not agreed to cease and desist from using the Association members' email addresses to disseminate information to Association members and has failed to disclose to the Association Board the true name(s) of the person(s) who provided her the confidential and private email addresses of the Association members.

COUNT I

(Wrongful Conversion and Taking)

16. Plaintiff realleges and incorporates by reference herein the averments contained in paragraphs 1 through 15 of this Complaint.

17. Plaintiff is the lawful owner of the Confidential List of its members' private and confidential email addresses. Plaintiff also has a duty to protect and ensure that these private and confidential email addresses are not illegally disseminated to unauthorized persons and remain private and confidential.

18. Wunschel has wrongfully acquired and converted the Plaintiff's property rights to the List of its homeowners' personal email addresses for her own personal use.

19. The aforesaid actions of the Defendant constitute a wrongful use, taking and conversion of the Plaintiff's property for which the Plaintiff is entitled to Declarative and Injunctive Relief and the return of Plaintiff's List of Association members' personal and confidential email addresses and all copies thereof.

COUNT II
(Wrongful Continuous Use of Emails/ Invasion of Privacy)

20. Plaintiff incorporates by reference herein the averments contained in paragraphs 1 through 19 of this Complaint.

21. Wunschel continues to unlawfully and wrongfully convert, keep and use the Plaintiff's property including the Association members' email addresses even after Plaintiff's counsel requested that: (1) she cease and desist in such use; (2) return to the Association all members' email addresses in her possession, custody and control; and (3) identify the person or persons who provided her with the members' personal and private email addresses.

22. Wunschel's actions have resulted in the loss of the exclusive and confidential property rights of the Association and has violated the privacy rights of the Association's members. As a direct result thereof, Plaintiff is entitled to Declaratory and Injunctive relief resulting from Wunschel's wrongful and continued possession and use of Plaintiff's List of the Association's members confidential and private email addresses.

COUNT III
(Declaratory/Injunctive Relief)

23. Plaintiff incorporates by reference herein the averments contained in paragraph 1 through 22 of this Complaint.

24. As provided in HRS § 632-1, an actual controversy exists as to whether Defendant Wunschel illegally obtained, converted and used the private property (private email addresses) of the Plaintiff Association members.

25. Pursuant to the provisions of Haw. Rev. Statute § 632-1 and Rule 57 of the Hawaii Rules of Civil Procedure, this Court has jurisdiction to enter a judgment declaring that Wunschel's acquisition and unauthorized use of the Association's members personal and private email addresses is a violation of law and the privacy of Association members.

26. Plaintiff is entitled to injunctive relief requiring Defendant Wunschel to: (1) cease and desist from using the Association members private email addresses; (2) return to the Association all copies of the Association members' private email addresses in her possession, custody and control; and (3) disclose the name of the person or persons who provided the personal email addresses of Association members to her.

WHEREFORE, Plaintiff PUALANI ESTATES AT KONA COMMUNITY ASSOCIATION prays for judgment in its favor and against Defendant DEE ANN WUNSCHEL as follows:

1. That this Court enter an Order and Judgment declaring that Defendant Wunschel's acquisition and conversion of Association members' private and confidential list of email addresses is in violation of law, the Association Rules and Regulations and a violation of the right of privacy of the Pualani Estates at Kona Community Association members.

2. That this Court issue a permanent injunction enjoining Defendant Wunschel from any further use of the Pualani Estates at Kona Community Association homeowners' email addresses and the return to the Association Board of all copies of those email addresses in her possession, custody and control.

3. That Defendant Wunschel shall disclose to the Association Board the name of the person or persons who provided her with the private email addresses of the Association members.

4. Award the Association its attorneys fees and costs incurred in bringing this civil action; and

5. For such other and further relief as this Court deems proper and just.



DATED: Kailua-Kona, Hawaii, June 25, 2021.

Respectfully submitted,

JUNG & VASSAR, P.C.
A Law Corporation

/s/ Francis L. Jung

FRANCIS L. JUNG
DAVID H LAWTON
CAROL MONAHAN JUNG
Counsel to Plaintiff PUALANI ESTATES
AT KONA COMMUNITY ASSOCIATION

<p align="center">STATE OF HAWAI'I CIRCUIT COURT OF THE THIRD CIRCUIT</p>	<p align="center">SUMMONS TO ANSWER CIVIL COMPLAINT</p>	<p align="center">CASE NUMBER</p>
<p>PLAINTIFF</p> <p>PUALANI ESTATES AT KONA COMMUNITY ASSOCIATION, a Hawaii nonprofit corporation,</p>		<p align="center">VS.</p> <p>DEFENDANT(S)</p> <p>DEE ANN WUNSCHHEL, an individual; JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE GOVERNMENTAL AGENCIES 1-10 and DOE ENTITIES 1-10,</p>
<p>PLAINTIFF'S NAME & ADDRESS, TEL. NO.</p> <p>Pualani Estates at Kona Community Association c/o Hawaiiana Management Company, Ltd. 74-5620 Palani Road, Suite 215 Kailua-Kona, Hawaii 96740</p>		
<p>TO THE ABOVE-NAMED DEFENDANT(S)</p> <p>You are hereby summoned and required to file with the court and serve upon</p> <p>Jung & Vassar, P.C. 75-5722 Kuakini Highway, Suite 100, Kailua-Kona, Hawaii 96740 [Phone: (808) 326-4852]</p> <hr/> <p>plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.</p> <p>THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.</p> <p>A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.</p>		
<p>The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at: http://www.courts.state.hi.us</p>	<p align="center">Effective Date of 28-Oct-2019 Signed by: /s/ Cheryl Salmo Clerk, 3rd Circuit, State of Hawai'i</p> 	
 <p>In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office on HAWAII- Phone No. 808-961-7424, TTY 808-961-7422, FAX 808-961-7411, at least ten (10) working days prior to your hearing or appointment date.</p>		