

NO. 27407

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

THE SIERRA CLUB, a California non-profit corporation registered to do business in the State of Hawai'i; MAUI TOMORROW, INC., a Hawai'i non-profit corporation; and the KAHULUI HARBOR COALITION, an unincorporated association, Plaintiffs-Appellants

vs.

THE DEPARTMENT OF TRANSPORTATION OF THE STATE OF HAWAI'I; RODNEY HARAGA, in his capacity as Director of the DEPARTMENT OF TRANSPORTATION OF THE STATE OF HAWAI'I; BARRY FUKUNAGA, in his capacity as Director of Harbors of the DEPARTMENT OF TRANSPORTATION OF THE STATE OF HAWAI'I and HAWAI'I SUPERFERRY, Defendants-Appellees

APPEAL FROM THE SECOND CIRCUIT COURT (CIV. NO. 05-1-0114)

ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

Upon consideration of the appellate briefings, the record, and oral argument,

IT IS HEREBY ORDERED that the July 12, 2005 judgment of the circuit court of the second circuit in this case is reversed. The Hawai'i Department of Transportation's determination that the improvements to the Kahului Harbor, on the Island of Maui, are exempt from the requirements of Hawai'i Revised Statutes (HRS) chapter 343 (Supp. 2004) was erroneous as a matter of law, and we therefore instruct the circuit court to enter summary judgment in favor of Plaintiffs-Appellants the Sierra Club, Maui Tomorrow,

2007 AUG 23 PM 3:04
F. N. RIMANDO
CLERK OF APPELLATE COURTS
STATE OF HAWAII

FILED

Inc., and the Kahului Harbor Coalition on their claim as to the request for an environmental assessment. Flint v. MacKenzie, 53 Haw. 672, 673, 501 P.2d 357, 358 (1972).

IT IS FURTHER ORDERED that this case is remanded to the circuit court for such other and further disposition of any remaining claims as may be appropriate.

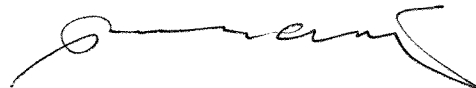
We retain concurrent jurisdiction to enter an opinion and judgment that will follow.

DATED: Honolulu, Hawai'i, August 23, 2007.



Steven H. Levinson

Hania C. Nakayama



Karoo E. Dully, Jr.