

Thursday, March 29 2012

You are in: [Front Page News Headlines](#) -> Couple wins \$3.87M in condo suit
Management Liability

Couple wins \$3.87M in condo suit



[E-mail This Story](#) [Print This Story](#)

Publication Date:

03/28/2012
Honolulu
Star-
Advertiser
(HI)

Source:

Couple wins \$3.87M in condo suit [The Honolulu Star-Advertiser]

Publication Date

03/28/2012

Source:

Honolulu Star-Advertiser (HI)

Couple wins \$3.87M in condo suit [The Honolulu Star-Advertiser]

March 28--A Maui jury has awarded nearly \$4 million in damages to a Molokai couple who sued their condo association and individual directors for what the couple called a multiyear campaign of intimidation and harassment stemming from the pair's efforts to elect new board members and rid the complex of a repairman who was unlicensed and had a criminal record.

The jury last week awarded Jim and Nancy Bevill of Ke Nani Kai Condominium on Molokai's west side \$3.87 million in general and punitive damages, including individual \$300,000 and \$200,000 assessments against three Ke Nani Kai board members, according to the jury verdict forms.

The award is believed to be the largest ever in Hawaii involving a nonconstruction condo dispute and is unusual for the large punitive damages against individual directors, who typically serve as volunteers.

Experts say the outcome may have implications well beyond Molokai, given that Hawaii has the largest concentration of condominiums of any state in the country and that governance and neighbor-against-neighbor condo disputes here have increased in a sluggish economy.

"I have never seen a case like this," said Hawaii First Inc. President Richard Emery, who has been in the association management business for 22 years.

Several attorneys who specialize in condo law said the Ke Nani Kai verdict brings to mind a landmark case roughly 20 years ago in which directors from Marco Polo, a Honolulu condo complex, were slapped with punitive damages in amounts far less than the Molokai case, sending chills throughout the industry and prompting wholesale resignations of volunteer board members at other condos.

"I'm afraid this could be the same thing," said attorney John Morris, who represented the Ke Nani Kai association but didn't handle the trial.

Keith Hunter, president of Dispute Prevention & Resolution Inc., the state's largest private arbitration and mediation firm, who has been dealing with condo disputes for 30 years, said he doesn't recall any governance-type case resulting in a seven-figure award.

Most disputes are settled confidentially even before going to trial, he said.

In the Ke Nani Kai case, the jury ruled for the Bevills on all 11 counts, finding that the board of directors, the association or their agents or employees engaged in racketeering, civil conspiracy, gross negligence, malicious prosecution, abuse of process, breach of contract and negligent and intentional infliction of

emotional distress, according to the jury documents.

Testimony during an eight-week trial showed that the harassment, including several assaults and death threats, worsened after the Bevills wrote a letter to all Ke Nani Kai homeowners describing crimes being committed on the premises and urging them to elect a new slate of directors, according to Terry Revere, the couple's attorney.

In retaliation the board, acting against the advice of its attorneys, sued the Bevills and another couple in 2007, alleging defamation, Revere said. A judge subsequently ruled that the lawsuit lacked merit and dismissed it.

"It was a gross misuse of the board's discretion to use condominium funds to sue their critics for their political speech," Revere said in a statement.

Attorney John Zalewski, who represented the association and the directors in the trial, did not respond to phone calls and an email seeking comment Monday and Tuesday.

Revere likened what happened at Ke Nani Kai to a Western film by the late director John Ford in which "an isolated town is run by a villain and his collection of thugs."

According to the Bevills' lawsuit, the couple became the target of threats, harassment and intimidation by a resident manager and an unlicensed contractor who was hired by Ke Nani Kai to do work around the complex. A small group of homeowners who controlled the board directed or condoned the abuse, the Bevills alleged.

The verdict included \$500,000 in general damages to compensate the Bevills for the harassment they endured over a six-year period and more than \$3 million in punitive damages to punish the intentional or malicious misconduct, according to Revere.

Phil Schutte and Bruce Blough, who were board members during some of the six-year period, each were assessed \$300,000 in punitive damages, while another director, Mike Preiss, was hit with a \$200,000 assessment, according to the court documents. None are still on the board.

The verdict also included \$190,000 in punitive damages against former resident manager Darrel Borling and \$380,000 against Frank Maurizio, the contractor named in the lawsuit, the documents show.

The former board members either could not be reached for comment or referred questions to Zalewski, while Borling and Maurizio could not be reached.

Several attorneys said insurance policies for condo boards typically do not cover punitive damages, raising the possibility that the defendants could be personally on the hook for such damages if appeal is not successful.

The verdict came roughly two years after a homeowner at Bluestone, a condo complex in Lanikai, was awarded more than \$400,000 in damages and attorney fees for claims that included retaliation by the board's then-president.

Revere, who also represented the Bluestone owner, said the verdict in the Ke Nani Kai case sends a strong message to condo groups.

"If you abuse your owners and engage in anything close to this outrageous conduct that happened here, juries aren't going to stand for it," he said.

(c)2012 The Honolulu Star-Advertiser

Visit The Honolulu Star-Advertiser at www.staradvertiser.com