

This case arises out of a failed project for the construction of 1,200 units of affordable workforce housing in Waikoloa Village on the Big Island. After soliciting proposals in September of 2004, the County of Hawai'i in early 2005 awarded the project to UniDev, LLC, a Maryland-based firm experienced in developing affordable housing and institutionally affiliated real estate projects for municipalities, universities, health care systems and other not-for-profit and for-profit sponsors. Although UniDev established a local affiliate (UniDev Hawaii, LLC), opened offices in Honolulu and Hilo, and worked diligently on the project for more than four years, County officials repeatedly changed the size and scope of the project, refused to authorize steps necessary to obtain financing and proceed with construction, threw up one obstacle after another and otherwise delayed the project until the global financial markets collapsed and it became impossible to obtain the financing needed for the project. Finally, in April of 2009, the County canceled the project and terminated UniDev without ever paying the substantial fees UniDev is entitled to under the parties' contracts.

Knowing it was going to be sued by UniDev for its unlawful actions, on July 1, 2009, the County filed a preemptive lawsuit in which it asserted bogus claims against UniDev for submitting false demands for payment and for fraudulently inducing the County to provide financing for the project, in an attempt to divert blame for the failure of the project away from itself. UniDev eventually filed an answer in which it denied the County's baseless charges and also filed counterclaims against the County for not paying UniDev more than \$3 million in fees. Most recently, on August 2, 2010, UniDev filed a motion to transfer the lawsuit out of court and into private mediation and, if necessary, arbitration, based on the dispute resolution provisions of the parties' contracts.

In connection with that motion (which is set to be heard on September 13, 2010), UniDev submitted a declaration from Craig Dougall, who, at the time the project was canceled, was the chief executive officer of the non-profit company that had been set up to take over responsibility for the project from the County. In his declaration, Mr. Dougall describes in detail the intimate involvement of various County officials in the County's sustained effort to sabotage the project. All of this was done, it appears, to get rid of UniDev and allow the County to award contracts to the favored constituents currently building a much smaller and much less desirable housing project in Waikoloa.

DECLARATION OF CRAIG DOUGALL

I, Craig Dougall, declare:

1. From June of 2006 until March of 2008, I worked for UniDev, LLC (“UniDev”) in Hawai‘i as a Project Manager on the Waikoloa Workforce Housing Project (“the Project”); and from March of 2008 until May 15, 2009, after the Project was terminated, I worked as the Chief Executive Officer (“CEO”) of Waikoloa Workforce Housing, LLC (“WWH”), a non-profit entity that was set up in July 2006 and was intended to take over from the County of Hawai‘i (“the County”) the executive management of the Project and make the development more independent of the County. Based on this work, I have personal knowledge of the facts stated in this Declaration, which I know are true.

2. The Project involved the planning, design and construction of approximately 1,200 affordable homes on land owned by the County in Waikoloa Village, which is located in the South Kohala District of the Island of Hawai‘i. These homes were to be sold or rented to people employed primarily by local resorts and hotels and also by other low- and moderate-income employees in both the public and private sector. The County issued a request for proposals for the Project in September 2004 and awarded the Project to UniDev in early 2005. UniDev was to act as the owner’s (i.e., initially the County’s and later Hawai‘i Island Housing Trust’s) representative as to all aspects of the Project from pre-development through construction to marketing and sales.

3. When I joined UniDev as a Project Manager in June of 2006, I lived and worked in Honolulu, where UniDev had its offices. As Project Manager, I participated in design meetings and planning meetings and had primary responsibility for the financial modeling, which involved analysis of how different mixtures of housing units affected the overall finances for the Project. From the beginning, I had regular contact with several County officials, including Housing Administrator Ed Taira, Development Director Rex Jitchaku, Finance Director Bill Takaba, Deputy Finance Director Nancy Crawford, and Deputy Planning Director Brad Kurakawa.

4. In July of 2006, shortly after I became Project Manager, the County conveyed the land on which the Project was being built to HIHT, which then leased the land to WWH. At the same time, the County assigned its contracts concerning the Project, including the Development Services Agreement (“DSA”) it had with UniDev, to WWH. It is my understanding these

changes were contemplated by the DSA and were made, in part, to remove the County from the executive management of the Project and to have WWH, as a supposedly independent entity, take over that responsibility, and also, in part, to limit the County's liability for the Project.

5. Even after WWH took over the County's contracts for the Project, however, County officials remained intimately involved in controlling and managing the Project. This involvement included the following:

a. County officials, either Ed Taira or Rex Jitchaku (or both), continued to attend all weekly design meetings and Project meetings between UniDev and WWH. They often interrupted these meetings with questions and comments about the scope and feasibility of the Project, the validity of the various financing options for the Project, the design plans and the roles of UniDev and other participants in the Project. They also changed the size and scope of phases of the Project and the housing unit mixture frequently and demanded that UniDev prepare multiple *pro formas* to analyze the financial impacts of these changes. I prepared all of these *pro formas*, which numbered at least twenty-five in one year alone, but all this turned out to be a futile exercise because Mr. Taira later in mid-2008 said the County was not relying on the numbers in the *pro formas* and was going to go ahead with the Project, regardless of the accuracy of the numbers, in order to boost the local economy, and to expend the funds appropriated by the County Council. In fact, I believe no one from the County ever understood private development in general or took the time to read and understand the *pro formas* in particular or understood how the Project could remain affordable.

b. As one of the essential steps in lining up infrastructure financing and also the subsequent mortgage financing that would later be taken out by the Federal National Mortgage Association ("Fannie Mae") for buyers of homes in the Project, UniDev's outside counsel prepared a sample ground sub-lease between WWH and prospective home buyers. In January 2007, I forwarded the sample ground sub-lease to Patsy O'Toole, the County's lawyer for County housing matters, for review. Since Ms. O'Toole did not have the expertise to review the sub-lease, she requested that special counsel be obtained to review it. I was informed that Ed Taira denied her request, however, and the required sample ground sub-lease could not be submitted to prospective infrastructure financiers, mortgage lenders or Fannie Mae. Without an approved form of sub-lease, it was impossible to get any final financing commitments from any of these sources.

c. The County was insisting that UniDev have a greater presence in Hilo, so I moved from Honolulu to Hilo in January of 2007. After I moved, Ed Taira told me that UniDev was “probably not going to survive” on the Project and that I better start looking for a new job. When Keith Kato resigned as the CEO of WWH because of conflicts of interest, Michael Sumja, one of the members of WWH’s board, offered me the position, which I accepted in March 2008. Even though Peter Hendricks was officially the chairman of WWH’s board, Mr. Sumja was the *de facto* leader who made the decisions and initiated most of the important votes. Mr. Sumja told me he needed to be able to trust that I was working to complete the Project as the County desired, not as UniDev had proposed. I gave him my assurance that I would work in the interests of the Project, and not Unidev.

d. In late 2007, Keith Kato (who also develops low-income housing on the Big Island and was chairman of WWH’s board at the time, as he does to this day), Rex Jitchaku and Ed Taira halted all design work for vertical construction. Messrs. Kato, Jitchaku and Taira did not like the housing designs because they considered them “too Californian,” even though this housing style had been an important factor in the County’s selection of UniDev to do the Project. Additionally, the design expenditures were significant at the time, and the County wanted to curtail project expenditures. In addition, Mr. Taira, and other County officials (notably Nancy Crawford) did not believe that affordable workforce housing should have all the amenities contemplated by UniDev’s proposal; he repeatedly articulated the view that the rectangular houses built with tin roofs on 8-foot plates, which is standard for the Big Island. He used the phrase “square footage under roof” which is a euphemism for simple, rectangle design. One immediate effect of the stoppage of design work (which must have been known to Mr. Kato because he is also a low-income housing developer, and was a for-profit developer prior to that) was to eliminate the possibility of obtaining precise construction estimates as well as financial commitments from prospective lenders, because design work must be completed at least through design development drawings to obtain a valuation based on construction costs, which a lender needs before it can commit to finance the development. Another effect of halting the design work was to delay actual construction on the Project for almost one year. Significantly, it also resulted in a loss of overall Project momentum, and caused some friction within the Project team, who were led to believe the Project was seamlessly moving forward. When work is halted, sub-contractors (like the architects) pull resources off the project and assign them to other projects,

resulting in further delays when the project “gets going” again.

e. In early 2008, changes to the DSA between UniDev and the County were negotiated, and the Amended and Restated Development Services Agreement (“ADSA”) was signed by UniDev and WWH on February 21, 2008. County officials, including Ed Taira and Julie Mecklenberg, who had replaced Patsy O’Toole as counsel for the County for County housing, were actively and frequently involved in the negotiation of the various changes that were made and even insisted that certain of them be made.

6. After I took over as CEO of WWH, County officials continued their control and management of the Project. This involvement included the following:

a. Ed Taira or Rex Jitchaku (or both) attended the monthly meetings of WWH’s board, regularly offered substantive input on the issues being discussed and occasionally suggested how the board should vote. In fact, at the meeting on June 3, 2008, when the board was discussing potential termination of UniDev, Ed Taira became threatening with board members, insisting it was time to terminate UniDev for convenience, which he thought was a provision of the contract between WWH and UniDev. He was very upset when our counsel advised him that this provision had been removed.

b. Ed Taira would telephone me or send me e-mails, sometimes from his personal e-mail account, on a daily basis, with instructions on how to proceed with the Project, even down to what I considered to be minutiae. I never begrudged him this role, as it appeared that both UniDev and WWH had allowed this involvement for some time prior to my becoming CEO of WWH. For example, on one occasion when we were reviewing design plans, Mr. Taira instructed me to get the electrical engineer to change the placement of light switches from inside the room where the lights were to outside that room, because he likes to be able to turn on the lights to a room before he enters it. On another occasion, he instructed me to take the hips and valleys out of the roofs to simplify the roof designs.

c. Ed Taira also regularly reviewed and edited letters I had prepared and then sent out on behalf of WWH. In fact, because of Mr. Taira’s continuous and systematic involvement in the Project, I decided to relocate WWH and UniDev’s shared office space from the Hilo Lagoon Centre to the block immediately adjacent to the Office of Housing and Community Development, where Mr. Taira had his office.

d. At a Project meeting in November of 2008, Mike Curzan, the Chief Executive

Officer of UniDev, gave a presentation on a rent-to-own program that could have been used as a financing alternative to the purchase of a new home with a traditional mortgage loan. Due to the then-current financial crisis, credit conditions had forced many prospective home buyers out of the market. UniDev's proposed rent-to own program, which would have gone into effect only if prospective buyers did not qualify to buy a home immediately, was an effort to bridge the gap by putting people into homes, improving their credit rating, and then qualifying them to buy the homes when credit conditions returned to normal. Ed Taira, Bill Takaba, Nancy Crawford and other County officials attended this meeting, as did representatives of UniDev, Hawaiian Dredging Construction Co. and other contractors and subcontractors on the Project, and a court reporter, who recorded the meeting stenographically. The County officials refused even to consider the rent-to-own option presented by Mr. Curzan and stated that it could not be used as a method for financing home purchases in the Project.

e. At the WWH board meeting in December of 2008, Julie Mecklenberg, counsel for the County on County housing matters, showed up with a copy of the Development Financing Agreement among the County, WWH and HIHT, and insisted that the County be allowed to attend the meeting. The board acquiesced and allowed County officials to attend. Leah Yanagi, who temporarily succeeded Ed Taira as Acting Housing Administrator, and Jeremy McComber, who was a Development Specialist, then came to the meeting.

7. During the 2008 campaign for Mayor of the County of Hawai'i (after which Billy Kenoi was elected to succeed Harry Kim), the County decided to terminate UniDev's involvement in the Project. Ed Taira wanted to terminate UniDev for convenience, as the original DSA had permitted, but the ADSA allowed only termination for cause. Mr. Taira was furious when he learned that the termination for convenience provision had been deleted when the DSA was amended and, together with our counsel, Nathan Natori, instructed me to document reasons to terminate UniDev for cause. Therefore, starting in July 2008 and continuing to February 2009, when UniDev was terminated, I sent a series of letters to UniDev describing various alleged breaches or defaults by UniDev under the ADSA or other project guidelines. Nathan Natori, a lawyer who worked for WWH and for the County on other matters, wrote most of the text of the letters, with input from me; Ed Taira reviewed and edited them; and then I or WWH's Chairman, Pete Hendricks, signed and sent them to UniDev. Most of the breaches or defaults were, in my view, technical and not material, and they could have been worked out if the

parties wanted to work them out. Nevertheless, my instructions were to document as many instances of breach or default as possible so as to provide cause for the County and WWH to terminate UniDev.

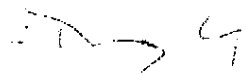
8. In March of 2009, I attended a meeting with Mayor Kenoi in which he told me his staff had informed him the Project was not affordable and was being terminated, even though no one had read or understood the *pro formas*. The County later instructed me, as the CEO of WWH, to terminate UniDev. I therefore sent UniDev a letter dated April 19, 2009, in which I instructed UniDev to cease all work on the Project and to submit its final invoices to WWH. I also instructed UniDev to send copies of its final invoices to the County.

9. At a construction meeting on the Project site on May 15, 2009, my last day on the Project, Steve Arnett, the Housing Administrator who had replaced Ed Laira, and Julie Mecklenberg asked me to sign a change order to the infrastructure contract with Isemoto Contracting Co., to authorize construction of a security fence, and some other smaller items. The change order was needed to avoid governmental procurement requirements. I told him I could not do sign without the approval the WWH board, since our only source of funds was the County, which had already terminated us, and whose approved budget we had already expended. At that point, Ms. Mecklenberg dismissed me from the meeting.

10. During the entire time I worked on the Project, both as a Project Manager for UniDev and as the CEO of WWH, I observed that the County was always involved in and usually in charge or control of every aspect of the Project. The County set up WWH, funded WWH, approved our budgets, approved our expenditures, approved our staffing plan, approved our office space and budget, approved payments to vendors, provided the funds for us to pay vendors, and, significantly interviewed, appointed and paid the board members, and used it as a middle-man to carry out its plans for the Project. WWH exercised no independent decision-making authority on the Project.

I declare under the penalty of perjury according to the laws of the State of Hawaii that the foregoing is true and correct.

Executed on this 30th day of July, 2010, in MANILA, Philippines.



CRAIG DOLGOFF