

## SUPREME COURT OF HAWAII

# Captain Andy's Sailing, Inc. v. Department of Land & Natural Resources, 113 Haw. 184

150 P.3d 833 (2006) · No. No. 25387 · Decided October 26, 2006

### SUMMARY

The Supreme Court of Hawaii held that HRS § 40-35 provided the exclusive avenue for recovering disputed ocean recreation management area permit fees paid to the State, including fees later determined to be an unconstitutional duty of tonnage. Because that statutory remedy was available, the plaintiff's tort claims were barred under HRS § 662-15(3), and the permit was a revocable license rather than a contract subject to HRS § 661-1. The court also held that any claim under HRS § 40-35 was untimely and affirmed the circuit court's judgment for the defendants.

### CASE DETAILS

|                       |                                                                                                                                                                                                 |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Hawai'i                                                                                                                                                                        |
| WRITING FOR THE COURT | Nakayama, J.; Moon, C.J.; Levinson, J.; Acoba, J.; Duffy, J.                                                                                                                                    |
| JURISDICTION          | Hawaii                                                                                                                                                                                          |
| DECIDED               | October 26, 2006                                                                                                                                                                                |
| DOCKET                | No. 25387                                                                                                                                                                                       |
| DISPOSITION           | affirmed                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | Captain Andy's Sailing, Inc. appealed from the Circuit Court of the First Circuit's judgment granting the defendants' motion for judgment on the pleadings or, alternatively, summary judgment. |
| STANDARD OF REVIEW    | Summary judgment is reviewed de novo. The existence of subject matter jurisdiction is reviewed de novo under the right/wrong standard.                                                          |
| PRECEDENTIAL VALUE    | Published opinion; precedential                                                                                                                                                                 |
| PARTIES               | Captain Andy's Sailing, Inc. v. Department of Land and Natural Resources, State of Hawai'i, Peter T. Young, Mason Young, David Parsons                                                          |

### TOPICS

[administrative law](#)[statutory interpretation](#)[subject matter jurisdiction](#)[summary judgment](#)[remedies](#)

## PRACTICE AREAS

administrative law

constitutional law

statutory interpretation

civil procedure

remedies

## QUESTIONS PRESENTED

1. Whether Hawai'i Revised Statutes § 40-35 applies to disputed ocean recreation management area permit fees and provides the required avenue for recovery.
2. Whether the availability of the remedy under Hawai'i Revised Statutes § 40-35 bars Captain Andy's tort claims under Hawai'i Revised Statutes § 662-15(3).
3. Whether Hawai'i Revised Statutes § 661-1 provides subject matter jurisdiction over Captain Andy's claims on the theory that the ocean recreation management area permit was a contract.
4. Whether Captain Andy's claim under Hawai'i Revised Statutes § 40-35 was timely filed.

## HOLDINGS

1. HRS § 40-35 encompasses the ocean recreation management area permit fees because the statute's reference to moneys representing a claim in favor of the State includes fees as well as taxes.
2. Because HRS § 40-35 provides an alternative remedy for recovery of the disputed fees, HRS § 662-15(3) bars Captain Andy's tort claims.
3. HRS § 661-1 does not provide a basis for subject matter jurisdiction because the ocean recreation management area permit was a revocable governmental license, not a contract.
4. Captain Andy's was time-barred from seeking relief under HRS § 40-35 because it did not commence an action within thirty days after the last permit-fee payment and did not establish that it made the required written and signed protest.

## KEY QUOTATIONS

*“HRS § 40-35, when read together with its legislative history, clearly encompasses the disputed fees in issue such that it was the statute under which relief had to be sought” (150 P.3d at 835)*

*“we agree with the DLNR Defendants' position on appeal and hold that the ORMA permit at issue is a revocable license, rather than a contract.” (150 P.3d at 839)*

*“We therefore hold that CASI is time-barred from seeking relief pursuant to HRS § 40-35.” (150 P.3d at 840)*

## FACTUAL BACKGROUND

Captain Andy's operated the passenger catamaran Hula Kai in the Na Pali Coast ocean recreation management area and obtained commercial operating use permits from the Department of Land and Natural Resources. The permits required payment of a monthly fee or two percent of monthly gross receipts, whichever was greater, and provided that nonpayment would result in automatic expiration or revocation. A federal district court later held that the fee was an impermissible duty of tonnage, but the State refused to refund the \$40,882.52 in fees collected before that ruling. Captain Andy's then brought the state-court action seeking restitution, damages, or a setoff.

## PROCEDURAL HISTORY

Captain Andy's filed a state-court complaint seeking recovery or future setoff of \$40,882.52 in ocean recreation management area permit fees previously declared unconstitutional by a federal district court. The circuit court held that the claims were barred by Hawai'i Revised Statutes § 662-15(3) because Hawai'i Revised Statutes § 40-35 provided an alternative remedy, and entered judgment for the defendants. The Supreme Court of Hawai'i affirmed, although it concluded that the circuit court had relied on incorrect reasoning in part.

## DISPOSITION

affirmed

## CASES CITED

- Captain Andy's Sailing, Inc. v. Johns, 195 F. Supp. 2d 1157 (D. Haw. 2001)
- Figueroa v. State, 61 Haw. 369, 604 P.2d 1198 (1979)
- Yamagata v. State Farm Mut. Auto. Ins. Co., 107 Hawai'i 227, 112 P.3d 713 (2005)
- Hawai'i Community Federal Credit Union v. Keka, 94 Hawai'i 213, 11 P.3d 1 (2000)
- Querubin v. Thronas, 107 Hawai'i 48, 109 P.3d 689 (2005)
- Orthopedic Associates of Hawai'i, Inc. v. Hawaiian Insurance & Guaranty Co., Ltd., 109 Hawai'i 185, 124 P.3d 930 (2005)
- Lester v. Rapp, 85 Hawai'i 238, 942 P.2d 502 (1997)
- 808 Development, LLC v. Murakami, 111 Hawai'i 349, 141 P.3d 996 (2006)
- Application of Rice, 68 Haw. 334, 713 P.2d 426 (1986)
- Territory v. Fung, 34 Haw. 52 (1936)
- Morita v. Public Utilities Commission of the Territory of Hawai'i, 40 Haw. 579 (1954)
- California v. Pacific Railroad Co., 127 U.S. 1, 8 S. Ct. 1073, 32 L. Ed. 150 (1888)
- Public Service Commission, Second District v. Booth, 170 A.D. 590, 156 N.Y.S. 140 (1915)
- City of Dallas v. Gill, 199 S.W. 1144 (Tex. Civ. App. 1917)
- Lee v. Heftel, 81 Hawai'i 1, 911 P.2d 721 (1996)
- State v. Propios, 76 Hawai'i 474, 879 P.2d 1057 (1994)
- State v. Taniguchi, 72 Haw. 235, 815 P.2d 24 (1991)