

ACT 206

S.B. NO. 2880

A Bill for an Act Relating to the Land Court.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the recent decision by the Hawaii Supreme Court in *Waikiki Malia Hotel, Inc. v. Kinkai Properties Limited Partnership and MNS, Ltd.*, (1993) has created some uncertainty regarding the specificity with which encumbrances must be noted on a certificate of title pursuant to section 501-82, Hawaii Revised Statutes, in order to encumber the registered land which is the subject of the certificate of title.

Section 501-82, Hawaii Revised Statutes, permits the applicant receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value and in good faith, to hold the registered land free from all encumbrances except those noted on the certificate of title and except certain statutorily enumerated encumbrances.

The legislature finds that the intent of section 501-82, Hawaii Revised Statutes, is to preserve the integrity of land registered in accordance with chapter 501, Hawaii Revised Statutes, by recognizing the authority of the certificate of title in determining encumbrances to which registered land is subject. The legislature further finds that it is necessary to clarify the specificity with which an encumbrance must be noted on a certificate of title in order to provide the holder thereof with notice sufficient to encumber the holder's registered land.

SECTION 2. Section 501-82, Hawaii Revised Statutes, is amended to read as follows:

“§501-82 Tenure of holder of certificate of title. (a) Every applicant receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value and in good faith, hold the same free from all encumbrances except those noted on a certificate in the order of priority of recordation, and any of the following encumbrances which may be subsisting, namely:

- (1) Liens, claims, or rights arising or existing under the laws or Constitution of the United States, which the statutes of this State cannot require to appear of record in the registry; provided that notices of liens for internal revenue taxes payable to the United States, and certificates affecting such liens, shall be deemed to fall within this paragraph only if the same are recorded in the bureau of conveyances as provided by chapter 505.
- (2) Unpaid real property taxes assessed against the land and improvements covered by the certificate of title, with interest, penalties, and other additions to the tax, which, unless a notice is filed and registered as provided by county real property tax ordinance, shall be for the period of three years from and after the date on which the lien attached, and if proceedings for the enforcement or foreclosure of the tax lien are brought within the period, until the termination of the proceedings or the completion of the tax sale.
- (3) State tax liens, if the same are recorded in the bureau of conveyances as provided by section 231-33.

- (4) Any public highway, or any private way laid out under the provisions of law, when the certificate of title does not state that the boundary of such way has been determined.
- (5) Any lease, coupled with occupancy, for a term not exceeding one year; provided that the priority of the unrecorded lease shall attach only at the date of the commencement of the unrecorded lease and expire one year from the date or sooner if so expressed.
- (6) Any liability to assessments for betterments, or statutory liability which may attach to land as a lien prior to or independent of, the recording or registering of any paper of the possibility of a lien for labor or material furnished in the improvement of the land; provided that the priority of any such liability and the lien therefor (other than for labor and material furnished in the improvement of the land which shall be governed by section 507-43) shall cease and terminate three years after the liability first accrues unless notice thereof, signed by the officer charged with collection of such assessments or liability, setting forth the amount claimed, the date of accrual, and the land affected, is registered and noted on the certificate of title within such three-year period; provided further that if there are easements or other rights, appurtenant to a parcel of registered land which for any reason have failed to be registered, such easements or rights shall remain so appurtenant notwithstanding such failure, and shall be held to pass with the land until cut off or extinguished by the registration of the servient estate, or in any other manner.
- (7) The possibility of reversal or vacation of the decree of registration upon appeal.

(b) For the purposes of this section, an encumbrance shall be deemed sufficiently noted on a certificate if the notation:

- (1) References a document by name or number which contains an encumbrance; and
- (2) Indicates that the referenced document contains an encumbrance to which the registered land is subject.

(c) If the title of a recorded document indicates that it contains an encumbrance, the assistant registrar shall note the document as an encumbrance on the certificate of title or the new certificate of title issued upon recordation of such document, as applicable."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 21, 1994.)