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4330 Kauai Beach Drive, Lihue, HI 96766
February 26, 2026

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII**

In re:

**Association of Apartment Owners of
Kauai Beach Villas,**
Debtor.

Case No. **25-01103 (RJF)**
Chapter 11
Hon. Robert J. Faris

**OBJECTION OF DONALD M. ROY AND DENISE B. ROY TO DEBTOR'S MOTION
TO USE CAPITAL RESERVE FUNDS TO FINANCE BANKRUPTCY PROCEEDINGS.**

We, Donald M. Roy and Denise B. Roy, owners of Unit G-21 at Kauai Beach Villas (the "Association"), hereby submit this formal written objection to any motion, resolution, or proposal by the Board of Directors (the "Board") to use the Association's capital reserve funds to finance, fund, or otherwise support bankruptcy proceedings. This objection is submitted pursuant to Hawaii Revised Statutes Chapter 514B governing condominium associations and the Association's own governing documents, including its Declaration, Bylaws, and House Rules.

I. BACKGROUND

The Association's capital reserve fund is a restricted fund established for the specific purpose of funding the repair, replacement, and maintenance of the Association's common elements and assets. These funds represent the collective financial contributions of all owners and are held in trust for the long-term benefit and preservation of the property. Diverting these funds for purposes outside their designated scope — including to fund bankruptcy proceedings — constitutes a misuse of restricted owner assets.

II. GROUNDS FOR OBJECTION

The undersigned owners hereby object on the following grounds:

A. Improper Use of Restricted Funds

Capital reserve funds are legally restricted for the repair and replacement of common elements as required under H.R.S. § 514B-148. Using these funds to finance bankruptcy proceedings falls outside the scope of any permissible use and constitutes a breach of the Board's fiduciary obligation to the owners. The Association's reserve funds exist solely to protect the physical integrity and long-term value of the property — not to fund legal or administrative proceedings unrelated to property maintenance.

B. Breach of Fiduciary Duty

The Board owes a fiduciary duty to all owners of the Association, including the duty to act in good faith, with due care, and in the best interests of the membership as a whole. Depleting the capital reserve fund for purposes unrelated to property preservation directly harms owners by reducing the Association's financial capacity to address ongoing and critical structural issues — including those already documented in the WJE Engineering Report and prior Board communications. Misappropriating these funds would exacerbate the financial harm already suffered by owners due to the prolonged uninhabitability of Buildings G and H.

C. Lack of Owner Authorization and Transparency

Any proposal to divert reserve funds for an extraordinary purpose of this magnitude requires proper notice, full disclosure, and, in all likelihood, a vote of the ownership. The Board has a well-documented history of failing to respond to owner inquiries, canceling or postponing required meetings, and withholding information regarding the status of structural remediation. Proceeding with this motion without full transparency and meaningful owner participation would compound prior governance failures and may constitute a violation of H.R.S. § 514B-125, which governs owner rights to information and participation in Association decisions.

D. Adverse Impact on Property Values and Remediation Efforts

The Association's capital reserves are critically needed to fund the structural remediation of Buildings G and H, which have been under cease-occupancy orders. Diverting these funds to finance bankruptcy proceedings would directly undermine the Association's ability to restore habitability to affected units, further depressing property values and prolonging harm to all owners. The urgent and ongoing nature of the structural crisis makes the preservation of reserve funds a matter of immediate necessity.

E. Potential Violation of Governing Documents

The Association's Declaration and Bylaws define the permissible uses of the capital reserve fund. Any motion to apply reserve funds to purposes not expressly authorized by the governing documents constitutes a violation of those documents and may expose Board members to personal liability. We demand that the Board provide owners with a full legal opinion addressing the authority — or lack thereof — to use reserve funds in the manner proposed prior to any vote being taken.

III. DEMANDS

In light of the foregoing, the undersigned owners hereby demand the following:

1. That the Board immediately table any motion to use capital reserve funds for bankruptcy-related purposes pending full disclosure to and a vote of the ownership;
2. That the Board provide all owners with a complete written accounting of the current balance and projected use of the capital reserve fund within fifteen (15) days;
3. That the Board provide owners with a written legal opinion from independent counsel regarding the permissibility of the proposed use of reserve funds under Hawaii law and the Association's governing documents;
4. That any special meeting convened to vote on this matter be properly noticed to all owners not fewer than thirty (30) days in advance, in full compliance with H.R.S. § 514B-121 and the Association's Bylaws;
5. That all records, minutes, communications, and financial documents relating to the proposed bankruptcy and the proposed use of reserve funds be made available for owner inspection pursuant to H.R.S. § 514B-154; and
6. That the Board explore all alternative funding mechanisms for any bankruptcy-related expenses before any reserve funds are considered for such purposes.

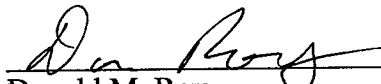
IV. RESERVATION OF RIGHTS

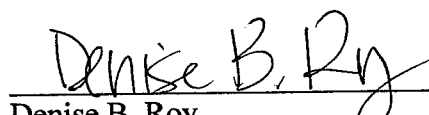
The undersigned expressly reserve all rights and remedies available under Hawaii law, the Association's governing documents, and any other applicable authority, including the right to seek injunctive relief or other legal remedies should the Board proceed with the improper use of capital reserve funds. This objection is not intended to limit the scope of any future legal action and shall be preserved as part of the official record of this matter.

V. CONCLUSION

We urge the Board to act responsibly, transparently, and in strict compliance with its legal obligations to the owners of the Kauai Beach Villas. The capital reserve fund exists to protect the long-term interests of all owners and must not be diverted for purposes that are unauthorized, harmful, and contrary to the Association's governing documents and Hawaii law. We respectfully but firmly object to this motion and demand that the Board take no further action on this proposal without full owner participation and proper legal authorization.

Respectfully submitted,


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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII**

In re:

**Association of Apartment Owners of
Kauai Beach Villas,
Debtor.**

Case No. **25-01103 (RJF)**

Chapter 11

Hon. Robert J. Faris

**OBJECTION OF DONALD M. ROY AND DENISE B. ROY TO DEBTOR'S MOTION
TO SELL PROPERTY PURSUANT TO 11 U.S.C. § 363(h);
REQUEST FOR EVIDENTIARY HEARING; AND DEMAND FOR
ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. § 363(e)**

I. INTRODUCTION

Donald M. Roy and Denise B. Roy ("Objecting Owner") is the fee simple owner of Unit G21 Kauai Beach Villas, Kauai, Hawaii (the "Unit"). Objecting Owner respectfully submits this Objection to any motion by Debtor Association of Apartment Owners of Kauai Beach Villas (the "AOAO" or "Debtor") to sell property — including the Unit or the entirety of the condominium complex — pursuant to 11 U.S.C. § 363(h).

This Objection presents three independent and compounding grounds for denial. First, the Debtor cannot satisfy each of the four statutory elements required under § 363(h), and failure to prove any single element mandates denial. Second, the equitable circumstances surrounding this case — including Objecting Owner's inability to occupy the Unit since purchase despite full financial compliance, the AOAO's failure to respond to pre-purchase inquiries, and the Board's pivot to a sale strategy within approximately three months of Objecting Owner's purchase — render a forced sale fundamentally unjust and preclude equitable relief under the doctrine of unclean hands. Third, viable reorganization alternatives exist, including owner-funded special assessments, that would satisfy the estate's obligations without displacing a fee simple homeowner who has acted in good faith at every stage.

For these reasons, the Motion should be denied. In the alternative, Objecting Owner requests adequate protection pursuant to 11 U.S.C. § 363(e) and an evidentiary hearing before any relief is granted.

II. FACTUAL BACKGROUND

A. Objecting Owner's Purchase and Financial Compliance

Objecting Owner purchased Unit G21 in 2023 for \$330,000.00 as a retirement residence. Since purchase, Objecting Owner has:

- Paid approximately \$19,000.00 per year in AOA maintenance and assessment fees;
- Paid in excess of \$19,000.00 toward prior repair assessments levied by the AOA;
- Remained fully current on all property taxes and insurance obligations;
- Remained fully current on all AOA financial obligations without exception.

To date, Objecting Owner has contributed in excess of \$76,000.00 to the AOA beyond the purchase price of the Unit — funds intended for the maintenance and repair of the very building that the Debtor now seeks to force into sale.

B. The Unit Has Not Been Habitable Since Purchase

Critically, Objecting Owner has been unable to occupy the Unit since purchase due to ongoing and unresolved building conditions. Objecting Owner purchased the Unit in reasonable reliance on the expectation that the condominium regime would continue and that funded repairs would be completed. That expectation has never been fulfilled.

The inability to use and enjoy the Unit — while continuing to pay all assessments and obligations in full — represents a concrete, ongoing, and serious harm that this Court must weigh when evaluating whether the benefit of any forced sale outweighs the detriment to co-owners under § 363(h)(3).

C. Pre-Purchase Non-Disclosure and the AOA's Duty to Respond

Prior to purchase in 2023, Objecting Owner made reasonable attempts to contact both the AOA and its management company regarding the condition and status of the building. Objecting Owner received no substantive response from either party.

Under Hawaii Revised Statutes § 514B-154 and related provisions, an AOA has affirmative disclosure obligations to prospective purchasers regarding material conditions affecting the condominium. To the extent the AOA had actual knowledge of the building's conditions — and its intent to pursue sale rather than repair — the failure to disclose those facts prior to Objecting Owner's purchase may give rise to independent claims against the estate, including breach of fiduciary duty and fraudulent nondisclosure. Objecting Owner expressly reserves all such claims.

D. The Board's Pivot to Sale Arose Within Months of Purchase — A Critical Timeline

Within approximately three (3) months after Objecting Owner's purchase, the Board notified unit owners of its desire to sell the property rather than complete repairs. This timeline is extraordinary and demands scrutiny.

The sequence of events raises the following questions that the Debtor must answer before seeking the extraordinary remedy of § 363(h):

- What did the Board know about the building's condition and the feasibility of repair at the time of Objecting Owner's purchase?
- When did the Board first consider sale as an alternative to repair?

- Were any prospective purchasers — including Objecting Owner — informed of that consideration prior to closing?

Objecting Owner submits that the answers to these questions are material to this Court's assessment of whether the equities favor or oppose a forced sale, and requests that the Debtor be required to address them at an evidentiary hearing.

E. Objecting Owner's Willingness to Fund Repair Through Special Assessment

Objecting Owner has the financial ability and willingness to fund a reasonable special assessment sufficient to complete necessary repairs to the building. Objecting Owner is not seeking to avoid financial responsibility — to the contrary, Objecting Owner is offering to pay again, having already contributed over \$19,000.00, in order to preserve the condominium regime and the right to occupy a home that was purchased in good faith.

Upon information and belief, other unit owners within the complex share this willingness. A reorganization plan funded by owner assessments — rather than forced liquidation — is financially viable and should be explored before any § 363(h) motion is entertained.

III. LEGAL STANDARD UNDER 11 U.S.C. § 363(h)

Section 363(h) of the Bankruptcy Code is an extraordinary remedy that permits a trustee or debtor-in-possession to sell property of the estate and of a co-owner, but only if the court finds all four of the following conditions are satisfied:

1. Partition in kind of such property among the estate and such co-owners is impracticable;
2. Sale of only the estate's undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners;
3. The benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and
4. Such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

11 U.S.C. § 363(h). The burden of proof on each element rests squarely with the Debtor. 11 U.S.C. § 363(p); see also *In re Aughton*, 602 B.R. 689 (Bankr. D. Me. 2019) (debtor bears burden on all § 363(h) elements). Failure to prove any single element requires denial of the motion. Courts have consistently held that § 363(h) must be narrowly construed because it authorizes the involuntary sale of a non-debtor's property. See *Culver, LLC v. Chiu* (*In re Chiu*), 226 B.R. 743 (9th Cir. BAP 2000).

Additionally, even where § 363(h) requirements are facially met, a court sitting in equity retains the authority to deny relief where the movant's own conduct weighs against it. See *In re Persky*, 893 F.2d 15 (2d Cir. 1989) (equitable considerations relevant to § 363(h) analysis).

IV. ARGUMENT

A. The Debtor Cannot Demonstrate That the Benefit to the Estate Outweighs the Detriment to Objecting Owner (§ 363(h)(3))

The balancing test of § 363(h)(3) is the most heavily litigated element and the one where Objecting Owner's circumstances weigh most powerfully against the Debtor.

The concrete and substantial detriment to Objecting Owner includes:

- Permanent loss of a retirement home purchased in good faith in 2023 for \$330,000.00;
- Loss of over \$76,000.00 in maintenance fees and repair assessments already paid;
- Displacement from a property the owner has never been able to occupy due to the AOA's own failure to complete repairs;
- Destruction of long-term retirement planning and financial security;
- Loss of the expectation interest that the condominium regime would continue and that repairs — for which Objecting Owner has already paid — would be completed.

Against this, the Debtor must demonstrate that the net benefit to the estate from a forced sale meaningfully exceeds what could be achieved through a repair-funded reorganization plan. Where a willing co-owner stands ready to fund repairs through special assessment, the incremental benefit of forced sale is diminished — and the detriment to the homeowner remains total. Courts have found this balance dispositive in favor of co-owners. See *In re Aranda*, 535 B.R. 190 (Bankr. W.D. Tex. 2015) (denying § 363(h) motion where detriment to residential co-owner was substantial and alternatives existed).

The Debtor cannot carry its burden on this element.

B. Sale Is Not Necessary to Effectuate Reorganization — Viable Alternatives Exist

Section 363(h) is a remedy of last resort, not a first resort. Before seeking the involuntary sale of fee simple property belonging to a non-debtor co-owner, the Debtor must demonstrate that less drastic alternatives have been genuinely explored and found infeasible. The Debtor cannot make that showing here.

Objecting Owner submits that the following alternatives to forced sale have not been adequately considered:

- Owner-funded special assessments sufficient to cover the repair liabilities, to which Objecting Owner and, upon information and belief, other unit owners are willing to contribute;
- Financing secured by future assessment revenue, which is a well-recognized mechanism for HOA and AOA reorganizations;
- Phased repair funding tied to a confirmed Chapter 11 plan that preserves the condominium regime;
- Amended cost allocation structures that distribute repair liabilities equitably across all unit owners;
- Operational restructuring of the AOA's management and administration to reduce ongoing costs.

An AOA possesses a unique financial tool unavailable to most Chapter 11 debtors: the statutory power to levy assessments on unit owners. See HRS § 514B-143. This power represents a recurring, enforceable revenue stream that can fund a reorganization plan without resort to

liquidation. The Debtor's failure to fully exploit this mechanism before seeking § 363(h) relief weighs heavily against granting the Motion.

C. The AOA's Own Conduct Precludes Equitable Relief — Unclean Hands

A party seeking the extraordinary equitable remedy of § 363(h) must come to the court with clean hands. See *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945) ("He who comes into equity must come with clean hands."). The Debtor cannot satisfy this standard.

The AOA's own conduct directly caused or materially contributed to the circumstances it now uses to justify a forced sale:

- The AOA failed to respond to Objecting Owner's pre-purchase inquiries regarding building conditions, depriving Objecting Owner of material information needed to make an informed purchase decision;
- The AOA accepted Objecting Owner's purchase and continued collecting assessments and maintenance fees— over \$76,000.00 — while the building remained uninhabitable;
- The Board pivoted to a sale strategy within approximately three months of Objecting Owner's purchase, raising serious questions about what the Board knew and when;
- Repairs to the building have halted again, notwithstanding the substantial funds already contributed by Objecting Owner and other owners for that purpose.

A party that fails to maintain its obligations, fails to disclose material conditions to a purchaser, and then seeks court authorization to force that purchaser out of her home at a distressed price should not receive equitable relief. The doctrine of unclean hands bars the Motion on these facts.

D. The Partition Analysis Must Account for the Mixed-Use and Timeshare Structure of the Property

While physical partition of an individual condominium unit may be impracticable in the traditional sense, the mixed-use and timeshare nature of this property creates a materially different legal landscape than a standard residential condominium. The Debtor must specifically address, with evidence, how the timeshare structure affects the partition analysis and whether any alternative partition or separation of interests is available given the property's actual legal structure.

Objecting Owner reserves the right to present expert testimony on this issue at an evidentiary hearing and submits that the Debtor has not met its burden of demonstrating impracticability of partition under the actual facts and structure of this property.

E. Termination of the Condominium Regime as a Predicate to § 363(h) Would Require Separate Legal Process and Owner Consent

To the extent the Debtor or any party contemplates terminating the condominium regime under HRS § 514B-111 as a predicate step to a § 363(h) forced sale, Objecting Owner submits that such termination requires a supermajority vote of unit owners — in most cases 80% or more — which cannot be accomplished through the bankruptcy process alone or over the objection of a sufficient number of dissenting owners.

Objecting Owner and, upon information and belief, a sufficient number of other unit owners are prepared to vote against any proposed termination of the condominium regime. Any attempt to use the bankruptcy proceeding to circumvent the statutory voting requirements of HRS § 514B-111 would be an improper use of § 363(h) and should be denied.

V. DEMAND FOR ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. § 363(e)

In the alternative, should this Court be inclined to grant any relief under § 363(h), Objecting Owner respectfully demands adequate protection of her fee simple property interest pursuant to 11 U.S.C. § 363(e).

Adequate protection, at minimum, must include:

5. An independent appraisal of the Unit and the condominium complex by a qualified appraiser retained by or approved by this Court, at the Debtor's expense, before any sale may proceed;
6. Escrow of sale proceeds attributable to Objecting Owner's interest, in an amount determined by the Court to reflect the full value of the Unit as a fee simple, habitable, going-concern interest — not a distressed liquidation value;
7. Reimbursement to Objecting Owner of all assessments paid during the period in which the Unit was uninhabitable, as a condition of any sale;
8. A finding by the Court, on the record, that the price achieved in any sale constitutes fair value for Objecting Owner's interest.

Objecting Owner expressly reserves the right to challenge any proposed sale price and to present independent valuation evidence at an evidentiary hearing.

VI. REQUEST FOR EVIDENTIARY HEARING

Objecting Owner respectfully requests that this Court schedule an evidentiary hearing before ruling on any § 363(h) motion. The facts material to the § 363(h)(3) balancing test — including the condition of the building, the feasibility of repair financing, the Board's pre-sale deliberations, and the valuation of Objecting Owner's interest — are genuinely disputed and cannot be resolved on the pleadings alone.

At such hearing, Objecting Owner intends to present:

- Testimony regarding the purchase, the pre-purchase non-disclosure, and the Board's pivot to sale;
- Expert testimony on the feasibility of a repair-funded reorganization plan;
- Independent appraisal evidence on the value of the Unit and the property;
- Evidence regarding the willingness and financial capacity of unit owners to fund a special assessment;
- Such other evidence as may be relevant to the Court's determination.

VII. RESERVATION OF RIGHTS

Objecting Owner expressly reserves the right to:

9. Supplement this Objection with additional evidence, expert reports, appraisals, and affidavits;
10. Assert independent claims against the Debtor's estate arising from pre-purchase nondisclosure, breach of fiduciary duty, and the AOA's failure to maintain the building in a habitable condition;
11. Object to any proposed plan of reorganization that includes termination of the condominium regime or any § 363(h) forced sale;
12. Join in or adopt the objections of other unit owners who may file separate objections;
13. Seek appointment of an official Unit Owners' Committee pursuant to 11 U.S.C. § 1102 and request that such committee be granted standing and court-approved legal counsel funded by the estate.

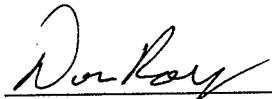
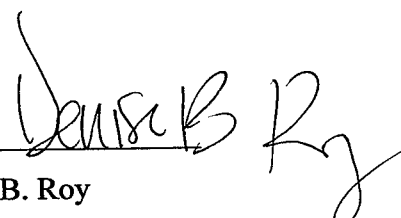
VIII. CONCLUSION

For the foregoing reasons, Objecting Owner respectfully requests that this Court:

14. DENY the Debtor's Motion to sell property pursuant to 11 U.S.C. § 363(h);
15. SCHEDULE an evidentiary hearing to receive evidence on the disputed factual questions relevant to the § 363(h) analysis;
16. In the alternative, ORDER adequate protection of Objecting Owner's fee simple interest pursuant to 11 U.S.C. § 363(e), including independent appraisal and escrow of sale proceeds;
17. ORDER the Debtor to demonstrate, with evidence, that all alternatives to forced sale have been genuinely considered and found infeasible;
18. Grant such other and further relief as this Court deems just and proper.

Dated: February 26, 2026

Respectfully submitted,

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Pro Se