

Of Counsel:
ASHFORD & WRISTON

WAYNE NASSER 1097-0
MICHAEL W. GIBSON 1382-0
Alii Place, Suite 1400
1099 Alakea Street
P.O. Box 131
Honolulu, Hawaii 96810
Telephone: (808) 539-0400

Attorneys for Defendants

The Estate of James Campbell, Deceased,
W. H. McVay and P. R. Cassiday,
Trustees Under the Will and of
the Estate of James Campbell, Deceased,
acting in their fiduciary and not in
their individual capacities, Herbert
C. Cornuelle and F. E. Trotter

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
	)	(Declaratory Judgment/
Plaintiff,	)	Injunction)
)	
vs.	)	DEFENDANTS THE ESTATE OF
	)	JAMES CAMPBELL, DECEASED,
WILLIAM PATY, in his capacity as)	)	W. H. McVAY AND P. R.
Chairman of the Board of Land )	)	CASSIDAY, TRUSTEES UNDER THE
and Natural Resources, State of )	)	WILL AND OF THE ESTATE OF
Hawaii, MOSES KEALOHA, DOUGLAS )	)	JAMES CAMPBELL, DECEASED,
ING, LEONARD ZALOPANY, JOHN )	)	ACTING IN THEIR FIDUCIARY AND
ARISUMI and HERBERT ARATA, in )	)	NOT IN THEIR INDIVIDUAL
their capacity as members of the )	)	CAPACITIES, HERBERT C.
Board of Land and Natural )	)	CORNUELLE AND F. E. TROTTER'S
Resources; The Estate of JAMES )	)	MEMORANDUM IN OPPOSITION TO
CAMPBELL, Deceased, FRED E. )	)	PLAINTIFF PELE DEFENSE FUND'S
TROTTER, W.H. McVAY, P.R. )	)	MOTION FOR AN ORDER
CASSIDAY, and HERBERT C. )	)	COMPELLING DISCOVERY AND FOR
CORNUELLE, in their fiduciary )	)	SANCTIONS; CERTIFICATE OF
capacity as Trustees under the )	)	SERVICE
Will of James Campbell,))	
Deceased; TRUE ENERGY GEOTHERMAL))	
CORP., TRUE GEOTHERMAL DRILLING))	
CO., and MID-PACIFIC GEOTHERMAL))	
INC.,))	
)	
Defendants.)	

HEARING:

DATE: June 23, 1993 (WED)

TIME: 7:45 a.m.

JUDGE: HON. RIKI MAY AMANO

Trial: July 19, 1993 (MON)

DEFENDANTS THE ESTATE OF JAMES CAMPBELL, DECEASED,
W. H. McVAY AND P. R. CASSIDAY, TRUSTEES UNDER THE WILL
AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED,
ACTING IN THEIR FIDUCIARY AND NOT IN THEIR INDIVIDUAL CAPACITIES,
HERBERT C. CORNUELLE AND F. E. TROTTER'S
MEMORANDUM IN OPPOSITION TO PLAINTIFF PELE DEFENSE FUND'S
MOTION FOR AN ORDER COMPELLING DISCOVERY AND FOR SANCTIONS

I. INTRODUCTION

Defendants The Estate of James Campbell, Deceased, W. H. McVay and P. R. Cassidy, Trustees Under the Will and of the Estate of James Campbell, Deceased, acting in their fiduciary and not in their individual capacities, Herbert C. Cornuelle and F. E. Trotter ("Campbell Estate") oppose Plaintiff Pele Defense Fund's Motion for an Order Compelling Discovery and for Sanctions. The primary basis for the motion is the failure to produce the Sublease between Campbell Estate and Defendant True Geothermal Energy Co. ("True").

On May 27, 1993, Judge Riki May Amano in a letter ordered counsel for True to "block out appropriate portions (of the Sublease) and arrange to have the Sublease delivered to Plaintiff no later than 9:00 a.m. Friday, May 28, 1993." Counsel for Plaintiff was instructed in the same letter from Judge Amano to "prepare an appropriate order." The Sublease was not turned over and no order has been filed. Instead True has filed a motion to reconsider her decision and Plaintiff has only recently submitted a proposed order pursuant to Judge Amano's instructions. Campbell Estate is caught in the middle. If True had not decided

to seek reconsideration of the discovery decision, Campbell Estate would have no objections to disclosing the Sublease as ordered by Judge Amano. However, due to True's motion to reconsider, Campbell Estate has refused Plaintiff's requests to turn over the Sublease and now finds itself the subject of a motion to compel and for sanctions.


II. ARGUMENT

Plaintiff's motion is premature. Hawaii Rules of Civil Procedure, Rule 37(a) states that "the discovering party may move for an order compelling an answer, or a designation or an order compelling inspection in accordance with the request." The request for an order compelling discovery is appropriate only where there has been a failure to respond to a discovery request. In this instance, True has filed a timely motion for reconsideration of Judge Amano's informal decision. Technically, no order has been filed from which to seek reconsideration. The situation that exists is a good faith disagreement over a Judge's decision.

The courts are given broad discretion in determining sanctions to be imposed. Wong v. City and County of Honolulu, 66 Haw. 689 (1983). The court may require either party to pay the other side's reasonable expenses in obtaining an order granting or denying a motion to compel discovery. Only where there has been a failure to comply with an order can the court impose sanctions such as those requested by Plaintiff. There has been no order and there was a timely motion to reconsider.

For all the reasons set forth above it is respectfully requested that Plaintiff Pele Defense Fund's Motion for An Order Compelling Discovery and for Sanctions be denied.

DATED: Honolulu, Hawaii; June 18, 1993.


WAYNE NASSER
MICHAEL W. GIBSON
Attorneys for Defendants
The Estate of James Campbell,
Deceased, W. H. McVay and P. R.
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CORP., TRUE GEOTHERMAL DRILLING)	
CO., and MID-PACIFIC GEOTHERMAL)	
INC.,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date set forth below a true and correct copy of the foregoing document was duly served upon the following parties at their last known respective addresses, by depositing the same in the United States mail, first class postage prepaid, as follows:

ALAN T. MURAKAMI, ESQ.
PAUL N. LUCAS, ESQ.
1164 Bishop Centre
1164 Bishop Street, Suite 1205
Honolulu, Hawaii 96813

STEVEN C. MOORE
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302


YUKLIN ALULI, ESQ.
415-C Uluniu Street
Kailua, Hawaii 96734

Attorneys for Plaintiff
PELE DEFENSE FUND

GARY B. K. T. LEE, ESQ.
STEPHANIE A. REZENTS, ESQ.
Kendall Building, 8th Floor
888 Mililani Street
Honolulu, Hawaii 96813

Attorneys for Defendants
TRUE GEOTHERMAL ENERGY CO.,
TRUE GEOTHERMAL DRILLING CO.,
AND MID-PACIFIC GEOTHERMAL INC.

DATED: Honolulu, Hawaii; JUNE 18, 1993.



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