

# STEPHEN D. WHITTAKER

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May 9, 2022

Kona Gardens Estates Service Corp.  
92-1329 Prince Kuhio #4 PMB #104  
Captain Cook, HI 96704

By email, also, to [konagardenestates@gmail.com](mailto:konagardenestates@gmail.com)

Re: *"STATEMENT" Sent to Michael Smith Dated April 17, 2022*

Gentlemen:

I have been engaged by Michael Smith to address the matter of your issuing a "Statement" dated April 17, 2022, purporting to represent an outstanding balance owed by my client in connection with his property in the subdivision and his role as a former member of the Board of Directors. The purpose of this letter is to point out the insufficiency of your billing and the illegality of your demand for payment of association expenses that were never an obligation of Mr. Smith. We will close with our request that you refrain yourselves from further threats of liens and cease and desist from sending false and alarming nonsense Invoices and Statements to Mr. Smith for charges he clearly does not owe.

The specific Statement I address with this letter is dated April 17, 2022, but it includes charges from as long ago as April 1, 2010. The most remarkable of the charges you purport to place on my client's account date from that first billing and include the remarkable sum of \$34,229.00 for "attorneys fees Liens". You offer the explanation, "the garbage location was not part of the road system or attached to KGE in any way therefore legal expenses violated bylaws and articles", but you fail to connect the claim to Mr. Smith or to demonstrate just how you believe you can shift the corporation's liability to my client. If it has anything to do with Mr. Smith's volunteer work as an officer and director of KGE Service Corp. the claim is clearly barred.

Please be reminded that the governing document for Kona Gardens Estates Service Corp., the "General Plan Restrictions, Articles and By-Laws", dated November 21, 1975, includes, as an inducement to service on the Board, complete indemnity with respect to Board members' work for the corporation. The following is quoted from Section IX of the Articles:

No director or officer of the corporation shall be liable to the corporation for any loss or damage suffered by it on account of any action or omission by him as such director or officer, unless such director or officer shall, with respect to such action or omission, be or have been guilty of wilful misconduct in the performance of his

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duties as such director or officer.

The Statement we dispute with this letter is not the first time Mr. Smith has had to answer for inappropriate charges posted to his account by the Board of Directors and its agents. On June 2, 2021, Mr. Smith wrote to the attorney retained by KGE Service Corp., Mr. Alan H. Tuhy, to dispute his May 10, 2021, demand for \$590.72, presented to my client as a "collection fee". The reasons that false charge was rejected were set forth in Mr. Smith's June 2, 2021, letter to Mr. Tuhy, copied to the Board of Directors of KGE Service Corp. and will not be repeated herein.

Just for the record, be informed that the Statute of Limitations has long since barred any claim that KGE Service Corp. may have against my client for attorneys' fees incurred through April of 2010. Hawaii Revised Statutes §657-1 provides, in part, "The following actions shall be commenced within six years next after the cause of action accrued, and not after: (1) *Actions for the recovery of any debt founded upon any contract, obligation, or liability, . . . .*" Similarly, your attempt to recover for attorneys' fees in the amount of \$3,288.00 dating from 2015 are barred by the same six year Statute of Limitations.

Our objections to your misdirected and untimely demands for attorneys' fees notwithstanding, be advised my client does not dispute one line item in your April 17, 2022 Statement, that being the April 1, 2022 entry for this year's road maintenance charges. Be informed that Mr. Smith will pay that with a check from him directly to KGE Service Corp. in care of Associa Hawaii.

At various places in your communications and billing Statements you use the word "lien" or "liens", presumably to communicate a threat to lien owners' properties for unpaid charges. You should know that the filing of a lien without legal right constitutes slander of title, and, as discussed herein, KGE Service Corp. has no legal right to make the claims it does against Mr. Smith. If, in addition to making unworthy claims, the Board of Directors has made the additional mistake of placing a lien on Mr. Smith's property, it is guilty of slander of title. With our rejection of your demand for payment we include our own demand that you affirm, in writing, that you have not placed an unworthy lien on Mr. Smith's property. Failure to do so may result in Mr. Smith initiating an action for slander of title and damages.

Thank you for your anticipated attention and cooperation.

Very truly yours,

A handwritten signature in black ink that reads "Stephen D. Whittaker". The signature is written in a cursive, flowing style with a large initial 'S' and 'W'.

Stephen D. Whittaker

cc: Michael Smith