

LAW OFFICES OF MELVIN Y. AGENA
MELVIN Y. AGENA 2632, mel@melagena.com
55 Merchant Street, Suite 1850
Honolulu, Hawai'i 96813
Tel: (808) 536-6647 / Fax: 808-533-4638

LAW OFFICE OF GLENN K. SATO
GLENN K. SATO 2176, gks@satolaw.com
888 Mililani St., Suite 308
Honolulu, Hawai'i 96813
Tel: (808) 537-1625 / Fax: 800-256-9480

LAW OFFICE OF BRYSON CHOW, LLC
BRYSON R. CHOW 8921
bchow@chowlegal.com
841 Bishop Street, Suite 1500
Honolulu, Hawai'i 96813
Tel: (808) 539-1100

Attorneys for Plaintiff

LIPPSMITH LLP
GRAHAM B. LIPPSMITH
g@lippsmith.com
CELENE CHAN ANDREWS 9902,
cca@lippsmith.com
Harbor Court Commercial Tower
55 Merchant Street, Suite 1850
Honolulu, Hawai'i 96813
Tel: (213) 344-1820 / Fax: (213) 513-2495

Electronically Filed
FIRST CIRCUIT
1CC181001748
09-JUN-2021
10:50:03 AM
Dkt. 176 ORDG

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

TOWNSEND N. TAKUSHI AND JOANNE
E. BRYKCZYNSKI LIVING TRUST,
Individually and in their Representative
Capacities and on Behalf of a Class of All
Persons Similarly Situated,

Plaintiffs,

v.

D.R. HORTON, INC.; D.R. HORTON-
SCHULER HOMES, LLC; DOES 1-10; DOE
PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; DOE
GOVERNMENTAL AGENCIES 1-10; and
DOE ASSOCIATIONS 1-10,

Defendants.

CIVIL NO. 18-1-1748-10 GWBC
(Construction Defects)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR CLASS
CERTIFICATION**

HEARING

Date: April 14, 2021

Time: 3:00 pm

Judge: Honorable Gary W. B. Chang

Trial Date: None

PLEASE NOTE CHANGES

ORDER GRANTING PLAINTIFF’S MOTION FOR CLASS CERTIFICATION

This matter having come on for hearing on April 14, 2021 on Plaintiff’s Motion for Class Certification filed herein on March 12, 2021, and Plaintiff appearing by and through their attorneys, Melvin Y. Agena of the Law Offices of Melvin Y. Agena and Graham B. LippSmith and Celene Chan Andrews of LippSmith LLP, and D.R. Horton-Schuler Homes, LLC (collectively “Defendants” or “Horton”) appearing by and through their attorney David M. Louie, Charles W. Gall, Jesse W. Schiel, and Nicholas R. Monlux of Kobayashi Sugita & Goda, LLP.

WHEREAS Plaintiff in the above matter on behalf of the Class and Subclass (as defined below) applied to the Court pursuant to Hawai‘i Rule of Civil Procedure 23 for an Order certifying a proposed Hawai‘i Rule of Civil Procedure 23(b)(3) Class (“the Class”) and Hawai‘i Rule of Civil Procedure 23(b)(3) Subclass (“the Subclass”); and

WHEREAS the Court has read and considered all parties’ memoranda and declarations and has heard argument of counsel.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

Plaintiff’s Motion for Class Certification pursuant to Hawai‘i Rule of Civil Procedure 23 is GRANTED.

Class Certification.

Accordingly, the Court HEREBY ORDERS that the following Class is certified pursuant to HRCP 23(b)(3):

All individuals and entities that own or represent owners of residential homes, condominiums, and townhomes in Hawai‘i sold by Horton¹ and that were built with Hurricane Straps (MAS Straps and/or HD Straps) embedded in their foundations.

The Court also HEREBY ORDERS that the following Subclass is certified pursuant to HRCP 23(b)(3):

All individuals and entities that own or represent owners of residential homes, condominiums, and townhomes in Hawai‘i sold by Horton and that were built with Hurricane Straps (MAS Straps and/or HD Straps) embedded in their foundations and that were constructed with Steel Sill Tracks.

The Class and Subclass exclude (a) judges who have presided over this case; (b) governmental entities and agencies; (c) people Defendants employ or have employed; and (d) Defendants’ affiliates.

Class Findings.

The Court grants this motion on the grounds that the proposed Class and Subclass satisfy the prerequisites for class certification set forth in Hawai‘i Rule of Civil Procedure 23 in that the proposed Class and Subclass definition is precise, objective, and presently ascertainable, and the requirements of Hawai‘i Rule of Civil Procedure Rule 23, and any other applicable laws, appear to be satisfied, in that:

- (1) The numerosity requirement of Hawai‘i Rule of Civil Procedure 23(a)(1) is satisfied because Plaintiff has submitted evidence that the proposed Class exceeds a thousand members.
- (2) The commonality requirement of Hawai‘i Rule of Civil Procedure 23(a)(2) is satisfied because Plaintiff’s allegations are sufficient to establish questions of law or fact common to all class members.

¹ “Horton” refers to Defendants D.R. Horton, Inc. and/or D.R. Horton-Schuler Homes, LLC.

- (3) The typicality requirement of Hawai‘i Rule of Civil Procedure 23(a)(3) is satisfied because the Plaintiff’s claims are typical of the claims of the Class and Subclass.
- (4) The adequacy-of-representation requirement of Hawai‘i Rule of Civil Procedure 23(a)(4) is satisfied. Plaintiff is represented by adequate counsel and no conflict exists between the Plaintiff and the proposed Class. Therefore, Plaintiff’s counsel and Plaintiff will fairly and adequately protect the interests of the Class and Subclass.

The Court further finds that the requirements in Rule 23(b)(3) of the Hawaii Rules of Civil Procedure are satisfied because questions of law or fact will predominate over any questions affecting only individual members and because a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Appointment of Class Representative and Class Counsel.

Pursuant to Hawai‘i Rule of Civil Procedure 23, Plaintiff Townsend N. Takushi and Joanne E. Brykczynski Living Trust is certified and appointed to serve as the Class and Subclass Representative. The Law Offices of Melvin Y. Agena, the Law Office of Glenn K. Sato, and LippSmith LLP are certified and appointed to serve as Class Counsel for the Class and Subclass.

HRS 672E Stay Remains in Effect

This Order does not disturb the HRS Chapter 672E stay that the Court ordered in connection with Defendants’ Motion to Dismiss filed herein on January 19, 2021, which stay shall remain in effect until all the requirements of HRS Chapter 672E are met. The parties may litigate and take discovery on procedural matters. But, unless the parties agree otherwise, the stay on litigating and taking discovery on substantive matters remains in place

gC

PLEASE NOTE CHANGES

until the parties exhaust the HRS 672E requirements.

gc

IT IS SO ORDERED.

Dated: Honolulu, Hawai'i, June 9, 2021.

/s/ Gary W. B. Chang



JUDGE OF THE ABOVE-ENTITLED COURT
HON. GARY W.B. CHANG JUDGE OF THE
CIRCUIT COURT

APPROVED AS TO FORM:

DAVID M. LOUIE, ESQ.
CHARLES W. GALL, ESQ.
JESSE W. SCHIEL, ESQ.
NICHOLAS R. MONLUX, ESQ.

Attorneys for Defendants
DR. HORTON, INC. and D.R. HORTON-SCHULER HOMES, LLC

PLEASE NOTE CHANGES