

Topic: Standard of care for record keepers?

Question by: Tung Chan

Jurisdiction: Hawaii

Date: January 28, 2015

Jurisdiction	Question(s)
	Anyone have a standard that creates some accountability but less than a full on reasonable care tort? Anyone have a standard they like that might help us?
Manitoba	
Corporations Canada	
Alabama	
Alaska	
Arizona	
Arkansas	
California	
Colorado	
Connecticut	
Delaware	
District of Columbia	
Florida	
Georgia	
Hawaii	
Idaho	
Illinois	
Indiana	
Iowa	

Jurisdiction	Question(s)
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Kansas	
Kentucky	
Louisiana	
Maine	
Maryland	
Massachusetts	
Michigan	
Minnesota	
Mississippi	
Missouri	
Montana	
Nebraska	
Nevada	
New Hampshire	
New Jersey	
New Mexico	
New York	
North Carolina	
North Dakota	
Ohio	
Oklahoma	
Oregon	
Pennsylvania	
Rhode Island	

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South Carolina	
South Dakota	
Tennessee	
Texas	
Utah	
Vermont	
Virginia	
Washington	
West Virginia	
Wisconsin	
Wyoming	

Additional comments:

Hi Tung,

FWIW, I think whole idea is a very bad one. However, if some legislation is inevitable, I suggest working off Hawaii’s law on when the government can be estopped.

“[t]he application of the doctrine of equitable estoppel against the government is not favored.” Turner v. Chandler, 87 Hawai‘i 330, 333, 955 P.2d 1062, 1065 (App.1998) (citations omitted). However, this court has also stated that the doctrine “is fully applicable against the government if it is necessary to invoke it to prevent manifest injustice.” State ex rel. Kobayashi v. Zimring, 58 Haw. 106, 126, 566 P.2d 725, 737 (1977) (internal quotation marks and citation omitted).

.... the plaintiffs cannot be deemed to have “wilfully caused [the defendants] to erroneously believe a certain state of things,” Potter, 89 Hawai‘i at 419, 974 P.2d at 59, upon which the defendants relied to their detriment.

Office of Hawaiian Affairs v. Hous. & Cmty. Dev. Corp. of Hawaii (HCDCH), 117 Haw. 174, 203, 177 P.3d 884, 913 (2008) rev'd and remanded on other grounds sub nom. Hawaii v. Office of Hawaiian Affairs, 556 U.S. 163, 129 S. Ct. 1436, 173 L. Ed. 2d 333 (2009) [I suspect that this case may have a lot of political baggage, but it was the first that came to hand.]

So, the private right of action will succeed only if the plaintiff proves each of the following elements:

- The agency willfully caused the plaintiff to erroneously believe a certain state of things.
- The plaintiff reasonably relied on the erroneous belief.
- Granting relief is necessary to prevent manifest injustice.

Happy to discuss further if you'd like, either on or off list.

Regards,

Dan Kleinberger

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Full text of email:

Aloha everyone,

Our legislature is proposing to create a new standard where government agencies must use "reasonable care" in their record keeping and if they don't, the public can sue us for monetary damages. It's basically creating a tort for private action. The legislature is willing to back down from this rather extreme position but only if there is another acceptable proposal that increases the accountability of agencies in their care of public records. So they want something more than zero and less than a "reasonable care" tort.

Anyone have a standard that creates some accountability but less than a full on reasonable care tort? Anyone have a standard they like that might help us?

Any thoughts, seriously ANY, would be much appreciated.

Thanks,

Tung

Tung Chan

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