

FILED

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2016 JAN 11 PM 3:56

L. KITAOKA, CLERK  
THIRD CIRCUIT COURT  
STATE OF HAWAII

Attorney for:  
Defendants/Counterclaimants  
Leonard G. Horowitz, Sherri Kane, and  
the Royal Bloodline of David

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAII

JASON HESTER, an individual  
Plaintiff/Counterclaim  
Defendant

v.

LEONARD G. HOROWITZ,  
et. al.

Defendants/Counterclaimants

) CIV. NO. 14-1-0304  
) (Quiet Title)  
)  
) **NOTICE OF HEARING** on  
) DEFENDANTS' MOTION TO STAY  
) JUDGMENT PENDING DISPOSITION  
) OF DEFENDANTS' POST  
) JUDGMENT MOTIONS 1) DEFENDANTS'  
) RESUBMITTED MOTION TO STAY  
) JUDGMENT PENDING FINALITY IN  
) RELATED ACTION CIV. NO. 05-1-0196;  
) AND 2. DEFENDANTS' MOTION FOR  
) RECONSIDERATION AND  
) ALTERNATIVELY FOR A NEW  
) TRIAL, [HRCP RULE 59(a)]  
) and  
) DEFENDANTS' RESUBMITTED MOTION  
) FOR STAY PENDING FINALITY IN  
) RELATED ACTION CIV. NO. 05-1-0196  
) [HRCP RULE 62(b)];  
) and  
) DEFENDANTS' MOTION FOR  
) RECONSIDERATION OR  
) ALTERNATIVELY FOR A NEW  
) TRIAL, [HRCP RULE 59(a)];  
)  
) JUDGE: Honorable Ronald Ibarra  
) Hearing date: Feb 26 2016  
) Hearing time: 8:30 AM

## NOTICE OF HEARING

TO:

STEPHEN D. WHITTAKER  
Attorney at Law  
73-1459 Kaloko Drive  
Kailua Kona, HI 96740  
808-960-4536

*Attorney for Jason Hester/Gospel of Believers*

YOU ARE HEREBY NOTIFIED that the undersigned has filed with the above-captioned court

- Defendants' Motion For Stay Pending Disposition Of Defendants' Post Judgment Motions 1) Defendants' Motion For Stay Pending Finality In The Related Action Civ. No. 05-1-0196 (now on appeal as CAAP 15-0000658), and 2) Defendants' Motion For Reconsideration Or Alternatively For New Trial; and
- Defendants' Resubmitted Motion For Stay Pending Finality In The Prior Filed Related Action Civ. No. 05-1-0196 now on appeal as CAAP 15-0000658, originally submitted on October 5, 20015; and
- Defendants' Motion For Reconsideration Or Alternatively For New Trial,

with associated filings; and a hearing on this motion is scheduled on the captioned date and time. Any response to this motion must be filed and served no later than 10 days after the service date indicated on the attached Certificate of Service. However, pursuant to Rule 6(e) of the Hawai'i Rules of Civil Procedure, if the motion is served by mail, any response to said motion must be filed and served no later than 12 days after the service date indicated on the attached Certificate of Service.

DATED: Waimea, HI, 96743 January 11, 2016

  
MARGARET WILLE, Attorney for Defendants

Jason Hester, Plaintiff v. Leonard G. Horowitz et al, Defendants; *NOTICE OF HEARING*

Margaret (Dunham) Wille #8522  
Attorney at Law  
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Kamuela, Hawaii 96743  
Tel: 808-854-6931  
[margaretwille@mac.com](mailto:margaretwille@mac.com)

Attorney for:  
Defendants

**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
KONA DIVISION, STATE OF HAWAII**

L. KITACKA, CLERK  
THIRD CIRCUIT COURT  
STATE OF HAWAII

2016 JAN 11 PM 4:01

FILED

JASON HESTER, an individual )  
Plaintiff, )  
v. )

LEONARD G. HOROWITZ, an )  
individual; SHERRI KANE, an )  
individual; MEDICAL VERITAS )  
INTERNATIONAL, INC, a )  
California nonprofit corporation; )  
THE ROYAL BLOODLINE OF )  
DAVID, a Washington Corporation )  
Sole; JOHN DOES, 1-10, JANE )  
DOES 1-10, DOE ENTITIES 1-10, )  
DOE PARTNERSHIPS 1-10, DOE )  
GOVERNMENTAL UNITS 1-10. )  
Defendants )

CIV. NO. 14-1-0304  
(Other Civil Action)

DEFENDANTS' MOTION FOR  
STAY [HRCF 62(b)] PENDING  
THE DISPOSITION OF  
DEFENDANTS' POST  
JUDGEMENT MOTIONS: (1)  
DEFENDANTS' MOTION FOR  
STAY OR FOR DISMISSAL  
PENDING FINALITY IN THE  
PRIOR FILED RELATED ACTION  
[HRCF 62(b)], AND OF 2)  
DEFENDANTS' MOTION FOR  
RECONSIDERATION OR  
ALTERNATIVELY FOR NEW  
TRIAL [HRCF 59(a)];  
MEMORANDUM IN SUPPORT OF  
MOTION; DECLARATION OF  
ATTORNEY MARGARET WILLE

Hearing date

Hearing time:

*Feb 26 2016*  
*8:30 AM*

JUDGE: Honorable Ronald Ibarra



**DEFENDANTS' MOTION FOR STAY [HRCP 62(b)] PENDING THE  
THE DISPOSITION OF DEFENDANTS' POST JUDGMENT MOTIONS:  
(1) DEFENDANTS' RESUBMITTED MOTION FOR STAY PENDING FINALITY  
FINALITY IN THE RELATED ACTION CIV. NO. 05-1-0196 [HRCP 62(b)], and  
2) DEFENDANTS' MOTION FOR RECONSIDERATION OR  
ALTERNATIVELY FOR NEW TRIAL [HRCP 59(a)]**

COMES NOW Defendants/Counterclaimants LEONARD G. HOROWITZ, SHERRI KANE, and THE ROYAL BLOODLINE OF DAVID (RBOD)<sup>1</sup>, hereafter collectively referred to as Defendants, by and through their attorney MARGARET WILLE, pursuant to Hawaii Rules of Civil Procedure (HRCP) Rule 62(b) moves this Court to stay Judgment (execution of the Final Judgment dated December 30, 2015), pending disposition Of Defendants' Post Judgment Motions :1) Defendants' Motion For Stay Pending Finality in the Related Action CIV. NO.05-1-0196 [HRCP 62(b)], and 2) Defendants' Motion For Reconsideration Or Alternatively For New Trial. [HRCP 59(a)].

HRCP Rule 62(b) allows a stay of execution of the judgment or of any proceedings to enforce a judgment pending the disposition of post judgment motions and when justice so requires.

First Defendants are here asking the Court for a Stay pursuant to HRCP 62(b) to allow the Court to rule on Defendants' resubmitted Motion for Stay Pending Finality in the prior filed related action, Civ. No. 05-1-0196, that is now on appeal as CAAP 15-0000658<sup>2</sup>, and maintain the status quo without threat of a Writ of Ejectment being issued against Defendants' current occupancy of the subject property.

In the event the Court rules favorably on this resubmitted Motion for Stay Pending Finality in the Prior Filed Related Action Civ. No. 05-1-0196, then it is unnecessary to rule on the Motion for Reconsideration Or Alternatively For New Trial at this time. Defendants ask the court to give serious consideration to this option.

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<sup>1</sup> MEDICAL VERITAS INTERNATIONAL, INC.(MVI) is a California based non-profit that was RBOD's lessee of the subject property. Given its limited interest in the subject property at this time, MVI is no longer pursuing this action.

<sup>2</sup> Plaintiff's Brief is due on January 18, 2016, in response to Defendants' Opening Brief.

In the event the Court does not rule favorably on Defendant's Motion for Stay Pending Finality in the Prior Filed Related Action Civ. No. 05-1-0196, then the Court is asked to rule on Defendants' Motion For Reconsideration Or Alternatively For New Trial under HRCP 59(a) while maintaining the status quo and without threat of a Writ of Ejectment against Defendants' current occupancy of the subject property.


Further, in the event the Court rules against Defendants with regard to their Motion For Reconsideration Or Alternatively For New Trial, Defendants ask that the Court to at minimum grant a stay effective for at least 30 days following entry of the Court's Order, or for such time period as the Court deems appropriate, so that Defendants' may request a Stay from this Court pursuant to HRCP Rule 62(d) "Stay upon appeal", in order to file an appeal to the Intermediate Court of Appeals, to maintain the status quo without threat of a Writ of Ejectment being issued against Defendants' current occupancy of the subject property.

Defendant Horowitz and RBOD prevailed in defeating foreclosure against Plaintiff Jason Hester and his predecessors-in-interest, in the judicial foreclosure case Civ. No. 05-1-0196 involving the same property and the same series of transactions relating to the same mortgage. Civil No. 05-1-0196 is now under appeal from the Fourth Amended Final Judgment to restore the vacated jury award of \$200,000 to Defendants. Defendants' arguments in favor of a Stay of Judgment Pending Disposition of Defendants' Post Final Judgment Motions are set forth in the accompanying Memorandum in Support of Stay of Judgment Pending Disposition of Defendants' Post Final Judgment Motions. Further, Defendants' arguments in favor of staying this action based pending finality of the prior filed judicial foreclosure action that is now on appeal CAAP 15-0000658, are more fully set forth in the accompanying Motion and Memorandum in Support of the Motion for a Stay Pending Finality in Civ. 05-1-0196. Likewise Defendants arguments in favor of their Motion For Reconsideration Or Alternatively For New Trial are set forth the accompanying Motion and Memorandum In Support of Motion For Reconsideration Or Alternatively For New Trial and other associated documents.

Defendants ask that any security be waived pending the Court's ruling on these post judgment motions.

This motion is also made pursuant to HRCP 7(b) "Motions and Other Papers", HRCP Rules 59, 60 and 62 as well as Rules 3, 7, 7.1, and 7.2 of the Rules of the Circuit Court of the State of Hawaii, and is based upon and supported by the Declaration of Attorney Margaret Wille, all exhibits attached hereto, and the record in this case.

DATED: Waimea, HI 96743 January 11, 2016

  
\_\_\_\_\_  
MARGARET WILLE, Attorney for Defendants

Hester vs Horowitz et al Civ. 14-1-0304, *Defendants' Motion For Stay [HRCP 62(B)] Pending The Disposition Of Defendants' Post judgment Motions*



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Attorney for:  
Defendants

**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
KONA DIVISION, STATE OF HAWAII**

JASON HESTER, an individual	)	CIV. NO. 14-1-0304
Plaintiff,	)	(Other Civil Action)
v.	)	
	)	MEMORANDUM IN SUPPORT OF:
LEONARD G. HOROWITZ, an	)	
individual; SHERRI KANE, an	)	DEFENDANTS' MOTION TO
individual; MEDICAL VERITAS	)	STAY JUDGMENT [HRCP 62(b)]
INTERNATIONAL, INC, a California	)	PENDING THE DISPOSITION OF
nonprofit corporation; THE ROYAL	)	DEFENDANTS POST JUDGEMENT
BLOODLINE OF DAVID, a	)	MOTIONS: (1) DEFENDANTS'
Washington Corporation Sole; JOHN	)	RESUBMITTED MOTION FOR STAY
DOES, 1-10, JANE DOES 1-10, DOE	)	PENDING FINALITY IN RELATED
ENTITIES 1-10, DOE	)	ACTION CIV. NO. 05-1-0196
PARTNERSHIPS 1-10, DOE	)	[HRCP 62(b)]; and (2) DEFENDANTS'
GOVERNMENTAL UNITS 1-10.	)	MOTION FOR RECONSIDERATION
Defendants	)	OR ALTERNATIVELY FOR NEW
	)	TRIAL [HRCP 59(a)];

Hearing date \_\_\_\_\_  
Hearing time: \_\_\_\_\_  
JUDGE: Honorable Ronald Ibarra

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO STAY  
JUDGMENT PENDING THE DISPOSITION OF DEFENDANTS' POST  
JUDGMENT MOTIONS [HRCP 62(b)]**

This Memorandum is in support of Defendants' Motion To Stay Judgment  
Pending The Disposition Of Defendants' Post Judgment Motions [HRCP 62(b)]: (1) Defendants'

Resubmitted Motion For Stay Pending Finality In Related Action Civ. No. 05-1-0196 [HRCP 62(B)]; And (2) Defendants' Motion For Reconsideration Or Alternatively For New Trial [HRCP 59(a)].

Hawaii Rule of Civil Procedure (HRCP) 62(b) provides for a Stay of Execution of a Judgment pending the disposition of post judgment motions. Specifically HRCP Rule 62(b) in relevant part states:

**(b) Stay on Motion for New Trial or Other Motion.** In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for the making of or amendment to the findings or for additional findings made pursuant to Rule 52(b), or when justice so requires in other cases until such time as the court may fix.<sup>1</sup>

In discussing the same Rule 62 under the Federal Rules of Civil Procedure, the Ninth Circuit has explained how to determine whether to grant a Rule 62(b) motion:

As the term “may” denotes, the decision whether or not to grant a stay is within the Court's discretion. *U.S. for Use and Benefit of Larkin v. Platt Contracting Co.*, 324 F.2d 95 (1st Cir.1963). Although it appears no court in the Ninth Circuit has ever expressly considered what factors should be used to determine whether or not a stay would be appropriate under Rule 62(b), this Court finds it proper to consider the same factors used to determine whether or not to stay an action under Rule 62(c). Under Rule 62(c), “While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an

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<sup>1</sup> As explained in *United States v. Moyer*, No. C 07-00510 SBA, 2008 WL 3478063, at \*5 (N.D. Cal. Aug. 12, 2008): Under Federal Rule of Civil Procedure 59(e), “A motion to alter or amend a judgment must be filed no later than 10 days after the entry of the judgment.” Under Federal Rule of Civil Procedure 60(b):

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; ... (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; ...

Fed.R.Civ.P. 60(b). Generally, a post-order motion requesting a substantive change in an order, as opposed to a clerical change, is considered a Rule 59(e) motion, if filed within ten days of entry, otherwise it is considered a Rule 60(b) motion. *Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 898–99 (9th Cir.2001).



injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights." Fed.R.Civ.P. 62(c). In determining whether to grant a stay under this rule, courts consider four factors:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Hilton v. Braunskill*, 481 U.S. 770, 776, 107 S.Ct. 2113, 95 L.Ed.2d 724 (1987). In the Ninth Circuit, courts employ a sliding scale to govern this determination: At one end of the continuum, the moving party is required to show both a probability of success on the merits and the possibility of irreparable injury. At the other end of the continuum, the moving party must demonstrate that serious legal questions are raised and that the balance of hardships tips sharply in its favor. *Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir.1983) (internal citations omitted). Under the sliding scale theory, a party "need not demonstrate that he [or she] will succeed on the merits, but must at least show that his [or her] cause presents serious questions of law worthy of litigation." *Topanga Press, Inc. v. City of Los Angeles*, 989 F.2d 1524, 1528 (9th Cir.1993), *cert. denied*, 511 U.S. 1030, 114 S.Ct. 1537, 128 L.Ed.2d 190 (1994).

#### 1) Likelihood of Success on the Merits of the Pending Post Judgment Motion:

Based on the test stated by the Ninth Circuit, the test is for likelihood of success on the merits is not a question of will the Party's motion be successful, but instead whether the Party demonstrates that the cause of the motion presents "serious questions of law worthy of litigation". Certainly that standard is met in the instant case based on:

a) Motion for Stay Under Rule 62(b) pending finality in the related action Civ. No. 05-1-0196, based on the Prior Pending Action Rule. Given that Civ. No. 05-1-0196 and the instant case involve the same property, the same nucleus of facts, the same parties or their privies, and the same purpose – reacquisition or sale of the property, the initial case being an action judicial foreclosure, and the instant case being quiet title based on a non-judicial foreclosure action, b) serious questions relating to the Court's refusal to vacate the default judgment for the corporate Defendant RBOD based on the BDM criteria; c) the serious question of Plaintiff Hester's standing based on his repeated misrepresentations not just to Defendants, but also to the Court (e.g. representing Hester to be Lee's nephew –which was not true); d) serious questions regarding non-compliance by Plaintiff with the notice requirements under HRS 667-5 in the non-

judicial foreclosure action; and serious questions concerning misrepresentations by Plaintiff in this quiet title action and the non-judicial foreclosure upon which it is based.

2. Irreparable harm to moving party if Court fails to grant the stay: Refusal to grant this stay will irreparably harm Defendants because the property at issue is their home for more than the past decade. They have paid out in capital and interest payments over half a million dollars for the property, and have spent well over that amount in property improvements and other property related costs, and as well were successful in the judicial foreclosure wherein foreclosure was denied and wherein attorneys fees were denied. Pursuing reversal of the subsequent vacation of Defendants' jury awarded damages of \$200,000 has been very costly to them financially as well as health-wise.

3) Balancing of Interests: Whether issuance of the stay will substantially injure other parties' interests in the property. With regard to Plaintiff Hester – his claimed interest is based on a non-monetary conveyance and has never lived at this property nor made improvements in the property, and was not a close relative or close friend of Seller-mortgagee Lee. And in fact Plaintiff Hester is never likely to acquire the property as it will most likely be foreclosed upon by Attorney Paul Sulla, based on Plaintiff Hester's non-compliance with the terms of Sulla's loan to Hester.

4) The public interest. The public interest abhors foreclosure – especially in a case where the Seller-mortgagee made misrepresentations to the mortgagor Defendant Horowitz, including that the property was advertised as a on-going Bed and Breakfast/Inn with grandfathered zoning, and the foreclosure action began based on incidental issues relating to maintenance of insurance (despite being in a Lava I Hazard Zone) and failure to obtain advance written permission for improvements made on the property - irrespective of the timely monthly mortgage payments.

Defendants are also likely to prevail on one or more of the following questions raised: whether the Court should have reversed the default judgment against Royal Blood of David, an ecclesiastical corporation, in light of the case law discussed in the accompanying memorandum;

whether the Court erred in denying Defendants' motion to Amend their original Answer even though there had been no responsive pleading prior to that motion despite HRCF Rule 15(a) that provides that a party may amend their pleadings once as a matter of course;


whether the Court erred in not requiring Plaintiff to substantiate compliance with the notice requirements of HRS § 667-5 in the underlying non-judicial foreclosure action;

whether the Court erred in not considering the standing issue of Plaintiff Hester to stand in the shoes of original Seller-Mortgagee Lee despite Plaintiff Hester having misrepresented his kinship relationship with Lee and despite the irregularities in the assignment documents, as were presented to the Court;

whether the Court erred in failing to consider Defendants' Counterclaims, in particular their Counterclaim for fraud and misrepresentation.

All four factors considered, grant of a stay pending the disposition of Defendants' post judgment motions is appropriate in this case.

Dated. Waimea HI. 96743 ~~January~~ January 11, 2016

A handwritten signature in cursive script, appearing to read 'Margaret Wille', written over a horizontal line.

MARGARET WILLE, Attorney for Defendants



Jason Hester Plaintiff v. Leonard G. Horowitz et al, Defendants/Counterclaimants; CIV. NO 14-1-0304,  
*MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO STAY PENDING THE  
DISPOSITION OF DEFENDANTS' POST JUDGMENT MOTIONS [HRCP 62(b)]*

**Margaret (Dunham) Wille #8522**

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Attorney for:

Defendants/Counterclaimants

Leonard G. Horowitz, Sherri Kane and

the Royal Bloodline of David, et. al.

**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
KONA DIVISION, STATE OF HAWAII**

JASON HESTER, an individual  
Plaintiff/Counterclaim Defendant

v.

LEONARD G. HOROWITZ, an  
individual; SHERRI KANE, an  
individual; MEDICAL VERITAS  
INTERNATIONAL, INC, a  
California nonprofit corporation; THE  
ROYAL BLOODLINE OF DAVID, a  
Washington Corporation Sole; JOHN  
DOES, 1-10, JANE DOES 1-10, DOE  
ENTITIES 1-10, DOE  
PARTNERSHIPS 1-10, DOE  
GOVERNMENTAL UNITS 1-10.

Defendants/Counterclaimants

) CIV. NO. 14-1-0304

) (Quiet Title)

)

)

) **DECLARATION OF ATTORNEY**

) **MARGARET D. WILLE OF**

) **MEMORANDUM IN SUPPORT**

) **OF MOTION FOR STAY OF JUDGMENT**

) **PENDING THE DISPOSITION OF**

) **DEFENDANTS' POST JUDGMENT**

) **MOTIONS**

)

)

)

JUDGE: Honorable Ronald Ibarra

**DECLARATION OF ATTORNEY MARGARET D. WILLE  
IN SUPPORT OF MEMORANDUM IN SUPPORT OF MOTION FOR  
STAY OF JUDGMENT PENDING THE DISPOSITION OF  
DEFENDANTS' POST JUDGMENT MOTIONS**

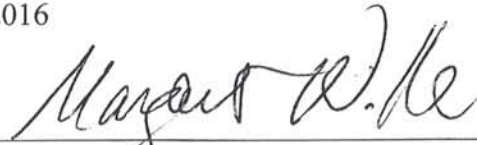
I, MARGARET (DUNHAM) WILLE, under pain of perjury of law, do hereby state and declare as follows:

- 1) I am an individual over the age of twenty-one (21) years, a resident of the State and County of Hawai'i.
- 2) I am licensed to practice law before the Courts of Hawai'i.
- 3) As of June 29, 2015, I have been the attorney for Defendant-Appellants LEONARD G. HOROWITZ, SHERRI KANE, and THE ROYAL BLOODLINE OF DAVID and am representing these Defendants in the appeal of the Circuit Court's Fourth Amended Final Judgment dated June 19, 2015.
- 4) I declare that the Statements contained in the accompanying Motion and Memorandum of Support are true and correct to the best of my knowledge.

FURTHER DECLARANT SAYETH NAUGHT

This Declaration is based upon my personal knowledge and I am competent to testify as to the truth of the statements contained herein.

Dated: Waimea Hawaii: January 11, 2016

Signed:   
MARGARET (DUNHAM) WILLE  
Attorney for Defendants

Jason Hester, Plaintiff v. Leonard G. Horowitz et al, Defendants, Civ. No. 14-1-0304,  
*Declaration of Attorney Margaret Wille*



Margaret (Dunham) Wille #8522  
Attorney at Law  
65-1316 Lihipali Road  
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Tel: 808-854-6931  
[margaretwille@mac.com](mailto:margaretwille@mac.com)

Attorney for: Defendants

**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
KONA DIVISION, STATE OF HAWAII**

JASON HESTER, an individual	)	CIV. NO. 14-1-0304
Plaintiff,	)	(Other Civil Action)
v.	)	
	)	
LEONARD G. HOROWITZ, an	)	NOTICE OF RESUBMISSION OF
individual; SHERRI KANE, an	)	DEFENDANTS' MOTION TO
individual; MEDICAL VERITAS	)	STAY JUDGMENT PENDING
INTERNATIONAL, INC, a	)	FINALITY IN RELATED ACTION
California nonprofit corporation;	)	CIV. NO. 05-1-0196 NOW ON
THE ROYAL BLOODLINE OF	)	APPEAL [HRCP RULE 62(b)]
DAVID, a Washington Corporation	)	
Sole; JOHN DOES, 1-10, JANE	)	JUDGE: Honorable Ronald Ibarra
DOES 1-10, DOE ENTITIES 1-10,	)	
DOE PARTNERSHIPS 1-10, DOE	)	HEARING DATE <u>Feb 26, 2016</u>
GOVERNMENTAL UNITS 1-10.	)	HEARING TIME <u>8:30 AM</u>
Defendants	)	
	)	
	)	

**NOTICE OF RESUBMISSION OF DEFENDANTS' MOTION TO STAY  
JUDGMENT PENDING FINALITY IN RELATED ACTION  
CIV. NO. 05-1-0196 NOW ON APPEAL [HRCP RULE 62(b)]**

COMES NOW Defendants-Counterclaimants LEONARD G. HOROWITZ, SHERRI KANE, and THE ROYAL BLOODLINE OF DAVID (RBOD)<sup>1</sup>, hereafter collectively referred to as Defendants, by and through their attorney MARGARET WILLE, moving this Court to stay

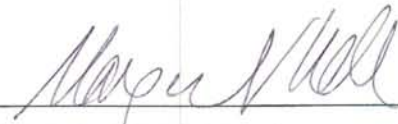
<sup>1</sup> MEDICAL VERITAS INTERNATIONAL, INC.(MVI) is a California based non-profit that was RBOD's lessee of the subject property. Given its limited interest in the subject property, MVI is no longer pursuing this action.

Execution and Judgment of Possession of the Final Judgment dated December 30, 2015 pursuant to Hawaii Rules of Civil Procedure (HRCPP) Rule 62(b) pending disposition of Defendants' Resubmitted Motion To Stay Judgment Pending The Outcome In Civ. No. 05-1-0196 now on appeal before the Intermediate Court of Appeals, CAAP-15-0000658, as previously titled "Defendants' Motion for Stay or For Dismissal Prior to Entry of Final Judgment".

HRCPP Rule 62(b), at the discretion of the Court, allows for a stay under certain circumstances including when "justice so requires". Defendants are here asking the Court to rule on Defendants' above-referenced motion pending the outcome on appeal in the related judicial foreclosure case Civ. No. 05-1-0196 involving the same parties or their privies, the same property, the same series of transactions and mortgage compliance, without execution of Judgment, as provided for in Rule 62(b) so as to maintain the status quo – in light of this Court having ruled contrary to the ruling in the instant case, and in light of the arguments raised by Defendants supporting reconsideration or alternatively a new trial on the merits of this case.

Defendants' resubmitted Motion is attached as Exhibit 1.

DATED: Waimea, HI 96743 January 11, 2016

  
MARGARET WILLE, attorney for Defendants

Hester Vs. Horowitz. CIV. NO. 14-1-0304, Notice of Resubmission of *Defendants' Motion To Stay Judgment Pending Finality in Related Action Civ. No. 05-1-0196 Now On Appeal* [HRCPP 62(b)]

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Tel: 808-854-6931  
[margaretwille@mac.com](mailto:margaretwille@mac.com)

Attorney for:  
Defendants

**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
KONA DIVISION, STATE OF HAWAII**

JASON HESTER, an individual  
Plaintiff,

v.

LEONARD G. HOROWITZ, an  
individual; SHERRI KANE, an  
individual; MEDICAL VERITAS  
INTERNATIONAL, INC, a  
California nonprofit corporation;  
THE ROYAL BLOODLINE OF  
DAVID, a Washington Corporation  
Sole; JOHN DOES, 1-10, JANE  
DOES 1-10, DOE ENTITIES 1-10,  
DOE PARTNERSHIPS 1-10, DOE  
GOVERNMENTAL UNITS 1-10.  
Defendants

CIV. NO. 14-1-0304  
(Quiet Title)

**DEFENDANTS' MOTION FOR  
STAY OR FOR DISMISSAL  
PRIOR TO ENTRY OF FINAL  
JUDGMENT [HRCP 62(b)];  
MEMORANDUM IN SUPPORT;  
AFFIDAVIT OF LEONARD G.  
HOROWITZ (w/Exhibits "A"-"M");  
DECLARATION OF ATTORNEY  
MARGARET WILLE; EXHIBITS  
"A" - "J"; NOTICE OF HEARING;  
CERTIFICATE OF SERVICE**

JUDGE: Honorable Ronald Ibarra

HEARING DATE: 10.30.15  
HEARING TIME: 9 AM

**DEFENDANTS' MOTION FOR STAY OR FOR DISMISSAL  
PRIOR TO ENTRY OF FINAL JUDGMENT [HRCP 62(b)]**

HENRIETTA CHONG, CLERK  
THIRD CIRCUIT COURT  
STATE OF HAWAII

2015 OCT -5 PM 3:59

FILED



This copy  
omits the  
rest of the Resubmitted  
Motion for stay  
dated 10.5.15

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Attorney for:  
Defendants

**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
KONA DIVISION, STATE OF HAWAII**

JASON HESTER, an individual  
Plaintiff,

v.

LEONARD G. HOROWITZ et al  
Defendants

CIV. NO. 14-1-0304  
(Other Civil Action)

**MOTION FOR  
RECONSIDERATION OR  
ALTERNATIVELY FOR NEW  
TRIAL [HRCF RULE 59(a)];  
MEMORANDUM IN SUPPORT  
OF MOTION; EXHIBITS 1-8  
AFFIDAVIT OF LEONARD G.  
HOROWITZ; DECLARATION OF  
ATTORNEY MARGARET  
WILLE**

Hearing date: Feb 26, 2016  
Hearing time: 8:30 AM

JUDGE: Honorable Ronald Ibarra

L. KITAOKA, CLERK  
THIRD CIRCUIT COURT  
STATE OF HAWAII

2016 JAN 11 PM 3:58

FILED

**MOTION FOR RECONSIDERATION OR ALTERNATIVELY FOR NEW TRIAL**

COMES NOW Defendants/Counterclaimants LEONARD G. HOROWITZ,  
SHERRI KANE, and THE ROYAL BLOODLINE OF DAVID (RBOD) by and through  
their attorney MARGARET WILLE, move this Court, pursuant to Hawaii Rules of Civil  
Procedure (HRCF) Rule 59(a) for reconsideration or alternatively for a new trial.  
Pursuant to Rule 59(a) reconsideration or a new trial is allowed at the discretion of the

Court “for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the State”.

The final Judgment in this August 11, 2014 filed action was entered on December 30, 2015. This case was decided against Defendants in the August 28, 2015 Order Granting In Part and Denying in Part Plaintiff’s Motion for Summary Judgment. That decision followed from several errors, including the following:

1) the Court’s refusal to vacate the default judgment against corporate defendant RBOD in its May 27, 2015 Denial of Defendants Motion to Vacate Default Judgment which followed from the September 17, 2014 Entry of Default Against Defendants Medical Veritas International Inc. and the Royal Blood of David (RBOD), and the concomitant error in not recognizing the independent standing of Defendants Leonard Horowitz and Sherri Kane as successors in interest to RBOD (which effectively brought the action to a halt);

2) the Court’s February 13, 2015 oral denial of Defendants’ January 26, 2015 Motion requesting to amend their Answer and Join Indispensible Party Paul J. Sulla, Jr. and Herbert M. Ritke, despite HRCF Rule 15’s mandate that “A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served” ;<sup>1</sup>

3) the Court’s partial grant of summary judgment despite substantial remaining factual issues including:

a) whether or not Plaintiff complied with the requirements for a non-judicial foreclosure proceeding, including compliance with the notice requirements of HRS 667-5 regarding notice of the amount in default and the amount owed to cure;

b) whether or not Plaintiff Hester has standing as successor assignee of the subject mortgage to deceased seller-mortgagee Cecil Loran Lee, by way of being the Successor Overseer of the ecclesiastical entity to which Lee assigned the mortgage interest in the subject property, and the successive assignment of the mortgage from that ecclesiastical entity to Jason Hester as an individual, and the successive conveyance of the property as a security interest from individual Jason Hester to Attorney Paul Sulla; and

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<sup>1</sup> Whereas the Court orally denied this motion it was not issued in a written order. Defendants did thereafter bring this omission to the Court’s attention.



c) whether Plaintiff's misrepresentations and fraud render the Court's decision void.

Defendants move this court to consider this Motion subject first to consideration of Defendants' accompanying resubmitted Motion for a Stay Pending Finality in the Related Action of Civ. No. 050100196, now under appeal before the Intermediate Court of Appeals as ICA No. CAAP-15-0000658, as more fully explained in the accompanying Memorandum in support of this Motion.

This Motion is made pursuant to HRCP 7(b), 59(a) and Rule 60(b) as well as Rules 3, 7, 7.1, and 7.2 of the Rules of the Circuit Court of the State of Hawaii supported by the Declaration of Attorney Margaret Wille, the Memorandum in support of this Motion and the record in this case.

DATED: Waimea, HI 96743 January 11, 2015

A handwritten signature in black ink, appearing to read 'Margaret Wille', is written over a horizontal line.

MARGARET WILLE, Attorney for Defendants.