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Intermediate Court of Appeals
CAAP-15-0000658
09-DEC-2015
05:01 PM

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Defendants/Counterclaimants
Leonard G. Horowitz and
the Royal Bloodline of David

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII

ICA No. CAAP-15-0000658

JASON HESTER, OVERSEER THE
OFFICE OF OVERSEER, A
CORPORATE SOLE AND HIS
SUCESSORS, OVER/FOR THE
POPULAR ASSEMBLY OF
REVITALIZE, A GOSPEL OF
BELIEVERS.

Plaintiff – Counter-defendant -
Appellee,

v.

LEONARD G. HOROWITZ, THE
ROYAL BLOODLINE OF DAVID,
JACQUELINE G. LINDENBACH,
JOHN DOES, 1-10, JANE DOES 1-10,
DOE ENTITIES 1-10, DOE
PARTNERSHIPS 1-10, DOE
GOVERNMENTAL UNITS 1-10.

Defendants-Counterclaimants -
Appellants

and PHILIP MAISE,
Defendant - Intervenor

) Civ. No. 05-1-0196
) THIRD CIRCUIT COURT
) (Foreclosure) (Appeal of
) Fourth Amended Final Judgment)
)
)
) APPELLANTS' OPENING BRIEF
) [HRAP Rules 28 and 32];
) EXHIBITS "1" TO "16";
) DECLARATION OF
) MARGARET WILLE;
) CERTIFICATE OF SERVICE.
)
)

APPELLANTS' OPENING BRIEF

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COMES NOW Defendant/Counterclaimant-Appellants LEONARD GEORGE HOROWITZ and the ROYAL BLOODLINE OF DAVID (hereafter collectively referred to as "Appellant-Defendants" or "Defendants"), by and through their attorney, MARGARET WILLE, pursuant to Rules 28 and 32 of the Hawaii Rules of Appellate Procedure (HRAP), filing this Opening Brief.

1. THE PROPERTY. The subject property is a parcel of land and improvements thereon located on Kalapana Highway, Pahoa, Hawaii. ROA Part 1, Doc. No. 001, pg. 68.

II. PARTIES AND PERSONA

Defendant-Appellant **ROYAL BLOOD OF DAVID ("RBOD")**, the named Mortgagor, is an ecclesiastic sole corporation, the only member being **Leonard G. Horowitz**, incorporated October 31, 2001, in the State of Washington. ROA Part 1, Doc. No. 1, at 68. RBOD RBOD was dissolved on September 19, 2012 due to insolvency resulting from this litigation. ROA Part 3, Doc. No. 0371, at 309. Prior to dissolving, all of RBOD's interest in the subject Property was transferred to Defendant Horowitz and Sherri Kane, by quitclaim deed on July 11, 2012. ROA Part 3, Doc. No. 0379, at 613 ¶ 2.

Defendant-Appellant **LEONARD G. HOROWITZ**, an individual, currently resides on the subject Property, which he purchased in January of 2004 as RBOD. He was the sole member of RBOD and was a signatory on the promissory note for the \$350,000 mortgage on the subject Property. As of July 11, 2012, he, as an individual, is the co-successor of RBOD's interest in the Property by way of the aforementioned quitclaim deed from RBOD to Defendant Horowitz and Sherri Kane. ROA Part 3, Doc. No. 0379, at 613 ¶ 2.

Former Plaintiff **CECIL LORAN LEE, "Lee"**, (deceased as of June 27, 2009), an individual, was the seller and original mortgagee of the subject property. ROA Part 3, Doc. No. 0379, at 612 ¶ 2.

"Substitute Plaintiff-Appellee **JASON HESTER AS OVERSEER OF THE**

OFFICE OF OVERSEER, A CORPORATE SOLE AND ITS SUCCESSOR, OVER AND FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS

(hereafter “HESTER” or “OVERSEER HESTER”): This ecclesiastical corporation, incorporated on May 28, 2009, with Lee as the Overseer and Hester as the Successor Overseer, was set up by Attorney Paul J. Sulla, Jr. to transfer any remaining interest Lee had in the Mortgage and subject Property to Jason Hester in anticipation of the death of gravely ill Lee. Plaintiff Lee died on June 27, 2009 in Arizona with his family. Upon Lee’s death Hester became the Overseer, and as such, the successor in interest to whatever interest Lee may have remaining in the mortgage of the subject Property. ROA Part 2, Doc. No. 325B at 677-(685)-710. In the July 16, 2009 Motion for Substitution and accompanying Declaration of Attorney Paul Sulla, Hester was said to be Lee’s “nephew,” which claim, upon investigation, was found to be false. ROA Part 3, Doc. No. 0379, at 531 and 536. He was later claimed to be a "grand nephew."--another questionable claim. ROA Part 3, Doc. No. 0380 at 640 ¶ 3. Hester was also neither an heir nor the personal representative of Lee. ROA Part 2, Doc. No. 0347, at 1130 ¶ "c"(with evidence from investigator’s "Comprehensive Report" showing lack of blood kinship between Lee and Hester on pg. 1271 thru 1283); Part 3, Doc. No. 371 at 129, ¶ 10. On August 31, 2009 the Court granted the Motion for Substitution, substituting Plaintiff Lee with Substitute Plaintiff “Overseer” Hester. ROA Part 2, Doc. No. 0329, pp. 782-783. More recently on June 14, 2011, Overseer Hester transferred whatever interest he had in the property by quitclaim deed to himself as an individual, while simultaneously transferring a security mortgage interest in the Property to Attorney Paul Sulla. *ROA Part 2, Doc. No. 0353, pp.1527 (referenced Exhibits 27 and 28), 1740-1764; and* ROA Part 2, Doc. No. 347, pg. 1128 ¶¶ 65-66 (referencing Mortgage Exhibit 28 on pg. 1325).

ATTORNEY PAUL J. SULLA Jr: Attorney Sulla currently has a mortgage security interest in the subject Property. He was the attorney for gravely-ill Plaintiff Lee and thereafter for Substitute Plaintiff Jason Hester. Attorney Sulla has been the only “face” of Substitute Plaintiff Hester in this case. Sulla alone has signed and submitted all declarations rather than have Hester testify or submit any affidavits or declarations. ROA Part 3, Doc. No. 381, pp. 647-649, and the record in its entirety. On June 14, 2011, at the same time that Hester as the Overseer of Gospel of Believers transferred his claimed interest in the subject mortgage to himself as an individual,

Hester also transferred a mortgage security interest in the subject Property to Attorney Sulla in exchange for a "loan" of \$50,000.00. ROA Part 2, Doc. No. 0353, pp.1527 (referenced Exhibits 27 and 28), 1740-1764; and ROA Part 2, Doc. No. 347, pg. 1128 ¶¶ 65-66, referencing Mortgage Exhibit 28 on pg. 1325.

Defendant-Intervenor-Appellee **PHILIP MAISE**: In 2006 Philip Maise prevailed in two suits for fraud and misrepresentation against this same seller-mortgagee Lee, relating to an attempted sale by Lee of the same subject property to Philip Maise claiming concealment of a federal lien on the property related to outstanding federal drug trafficking charges against Lee. ROA Part 1 Doc No. 113, pg. 1254, lines 12-14. Pursuant to a Garnishment Order issued by Judge Nakamura Defendants Horowitz was required to make monthly mortgage payments and the final balloon payment to Maise rather than to Mortgagee Lee. ROA Part 3, Doc. No. 0370 at 88; Doc. No. 0371 at 220-268; Doc. No. 0379 at 486, 489-90, 495, 605; Doc. No. 0381 at 647-49; ROA Part 1, Doc. No. 013, pp. 291-295 (Motion to Intervene as Co-defendant).

Defendant **JACQUELINE LINDENBACH HOROWITZ** is the former wife of Leonard G. Horowitz. Pursuant to the May 27, 2014, Idaho CV-2011-0001409 Court Order, she no longer has an interest in this matter. ROA Doc. No. 0371 at 399 - 404.

III. STATEMENT OF THE CASE

A. Introduction.

This case involves an attempted foreclosure by Plaintiff Jason Hester's predecessor original Plaintiff seller-mortgagee Cecil Loran Lee of the subject Property purchased in January of 2004 by Defendant-Appellants Leonard G. Horowitz and Jacqueline Lindenbach Horowitz in the name of The Royal Blood of David (hereafter collectively referred to as "Defendants" or "Defendant Horowitz") ROA Part 1, Doc. No. 001, pg. 68.

In the July 22, 2008 Final Judgment Defendants prevailed on the matter of the foreclosure (foreclosure denied) and, consistent with the jury verdict, were awarded \$200,000 in damages. Exhibit 1 Findings of Fact, Conclusions of Law, and Order Denying Foreclosure Against All Defendants, ROA Part 1, Doc. No. 220, pg. 3454-3459; Exhibit 2 Final Judgment, ROA Part 1, Doc. No. 247, pg. 3460-3462. Amended Final Judgment dated February 23, 2009 ROA Part 2,

Doc. No. 308, pp. 443-445.¹ That damages award to Defendants was subsequently vacated in the Second Amended Final Judgment. ROA Part 2, Doc. No. 336, pp. 990-993.²

B. Summary of the Errors Raised in this Appeal:

Without having first made the prerequisite Motion for Judgment As A Matter of Law (MJML) at the close of the evidence and prior to submission of the case to the jury, original Plaintiff Lee filed a MJML following the filing of the jury verdict. In that post verdict MJML, Plaintiff Lee sought to reverse the Court's judgment with respect to Defendants' Counterclaim for misrepresentation and fraud, and to vacate the jury award of \$200,000 to Defendants. Despite Defendant's attorney having argued in his opposition that Plaintiff failed to comply with the prerequisite of having first filed the MJML timely prior to submission of the case to the jury, the Court erroneously dismissed the MJML "without prejudice", rather than "with prejudice". When Plaintiff resubmitted this MJML following entry of the Final Judgment, thereafter the Court granted the MJML reversing the Court's prior determination of Defendants' Counterclaim for Misrepresentation and Fraud, previously in Defendants' favor and now in Plaintiff's favor, but did not reverse its express determination and Final Judgment with respect to the damages award in favor of Defendants. Amended Final Judgment. ROA Part 1, Doc. No. 209, pg. 2543-2560; Part 2, Doc. No. 308, pg. 443-445. Plaintiff also sought to reverse this damages award to Defendants in his March 5, 2009, HRCPL Rule 59(e) Motion to Alter or Amend the Amended Final Judgment. On April 27, 2009, the Court summarily denied that Motion to Alter or Amend. ROA Part 2, Doc. No. 317, pp. 549-550. However in the later filed Motion to Correct Order pursuant to HRCPL Rule 60(b) the Court did vacate its prior award of \$200,000 damages to Defendants, based on the rationale of having previously granted Plaintiff's MJML. Second Amended Final Judgment. ROA Part 2, Doc. No. 336, pg. 990-993; Third Amended Final Judgment. ROA Part 2, Doc. No. 0357, pp. 1862-1864; Fourth Amended Final Judgment ROA Part 3, Doc. No. 0376, pp.

¹ A copy of the Court's Finding of Fact and Conclusions of Law dated April 2, 2008, is attached as **Exhibit 1**, the Final Judgment dated July 22, 2008 is attached as **Exhibit 2**, and the Amended Final Judgment dated February 23, 2009 is attached as **Exhibit 3**.

² The Second Amended Final Judgment dated December 11, 2009 attached as **Exhibit 4**.

³ The Third Amended Final Judgment dated September 12, 2013 is attached as **Exhibit 5**, and the Fourth Amended Final Judgment dated December 11, 2013 is attached as **Exhibit 6**.

The other question at issue in this appeal is the question of Substitute Plaintiff Jason Hester's standing. Following original Plaintiff Lee's death in June of 2009, Jason Hester, as the Overseer of the Office Of Overseer, A Corporate Sole And Its Successor, Over And For The Popular Assembly Of Revitalize, A Gospel Of Believers, became the substitute Plaintiff as the successor-mortgagee -- although this substitution was based on Declarant Attorney Sulla's claim of Hester being Lee's nephew - which was later found to be a false claim of kinship, and on the incorporation of the Gospel of Believers with Hester as its Overseer -- despite the later determined unauthentic signature of Lee and other irregularities in the incorporation of the Gospel of Believers. ROA Part 3, Doc. No. 0371 at 111 and 114; Doc. No. 0379, at 487, 531, 536; and Doc. No. 0380 at 640 and 647-49.

C. Background. The subject property was advertised as a Bed and Breakfast inn with a steady clientele. The original price was \$550,000, \$200,000 down payment, and a 5-year mortgage in the amount of \$350,000. ROA Part 1, Doc. No. 220, pg. 3455. Prior to the closing, Seller-mortgagee Lee requested Defendant Horowitz advance him \$85,000. Lee had been very cooperative and helpful up to that point and in exchange for the advance committed to help Defendants on the Bed and Breakfast operation including with improvement projects on the property such as with the siting and building of a swimming pool. Yet, soon after Plaintiff Horowitz advanced the \$85,000, Lee became antagonistic and uncooperative. ROA Part 1, Doc. No. 066, pg. 786. Only days before the closing Lee demanded more money for a road remnant that Lee had previously represented would be part of the existing sale agreement. ROA Part 2, Doc. No. 347, pg. 1117, ¶ 20. In order not to lose the now non-refundable deposit, Horowitz agreed to an additional unsecured promissory note for \$25,000 to secure the contested the road remnant and cooperation from Lee. ROA Part 1, Doc. No. 005, pp. 157-158) and ROA Part 1, Doc. No. 066, pg. 790.

Shortly after the closing Horowitz learned Philip Maise and his partner Didier Flament were involved in a legal action against Lee resulting from Lee's attempt to sell this same subject property to Maise while concealing a federal lien on the property relating to federal drug

³ The Third Amended Final Judgment dated September 12, 2013 is attached as **Exhibit 5**, and the Fourth Amended Final Judgment dated June 19, 2015, is attached as **Exhibit 6**.

charges against Lee. ROA Part 3, No. 371, pg. 133 ¶¶ 6 and 7. Rather than cooperating and assisting Horowitz with the improvements, Lee began undermining Horowitz's Bed and Breakfast operation including filing a complaint with the County Planning Department that Horowitz was operating an unpermitted commercial business and thereafter the property insurance company that had previously insured the same business and property for Seller Lee to cancelled its policy. ROA Part 1, Doc. No. 066, pg. 787. At the same time clients who had booked their stay at the Bed and Breakfast while Lee was still the owner operator arrived expecting amenities that had been promised by Lee but were not available. On several occasions Horowitz had to refund deposits made in advance to Lee. ROA Part 3, pg. 841, ¶ Nos. 78 – 81 and 97 - 104. After Defendants' property insurance policy was cancelled they were unable to obtain another insurance policy given that the property was located in a Lava 1 High Risk Zone and they were unable to continue using the property as a Bed and Breakfast business, causing severe financial distress. ROA Part 3, Doc. No. 371, pg. 128 ¶¶ 4 and 5. Meanwhile Horowitz continued to make the monthly mortgage payments of \$2333.33. ROA Part 3, Doc. No. 371, pg. 128 ¶ 4;

D. Plaintiffs' Complaint and Defendants' Counterclaims; The Agreement for Closing Escrow

A year-and-a-half into the mortgage, on June 15, 2005, Plaintiff Lee filed for judicial foreclosure NOT based on failure to make monthly mortgage payments, but based on claims of failure to obtain prior permission for improvements on the property (even though Lee had promised to cooperate in the construction of improvements) and failure to maintain property insurance (even though it was Plaintiff Lee's actions that resulted in the insurance cancellation) ROA Part 1, Doc. No. 066, pg. 785 ¶ 11; and Exhibit 1 (Findings of Fact, Conclusions of Law, and Order Denying Foreclosure Against All Defendants) ROA Part 1, Doc. No. 220, pg. 345

The other significant claim made in Plaintiff Lee's Complaint was that Defendant Horowitz had conspired with Philip Maise, here Intervenor Maise, against Plaintiff to prevent his receipt of the monthly mortgage payments (even though it was on the basis of Judge Nakamura's garnishment order against Plaintiff Lee that required Defendant Horowitz to make the mortgage payments to Intervenor Maise rather than to Plaintiff Lee. ROA Part 2, No. 280, pp. 79-122; ROA Part 3, Doc. No. 371, pg. 128 ¶ 4. The garnishment order resulted from Maise's successful litigation against Lee for fraud in a prior attempted sale of the same property based on Lee's non-

disclosure of a federal lien on the property resulting from outstanding drug trafficking charges against Lee. ROA Part 1, Doc. No. 066, pg. 786 ¶ 1; Part 2, Doc. No. 314, pp. 481 ¶¶ 6 thru 8; Part 2, Doc. No. 280, pp. 79-122; Part 3, Doc. No. 0371 at 264-268.

In response, Defendant filed Counterclaims wherein he explained:

10. Defendants Horowitz and RBD has made additions to the home and constructed out buildings, which were originally built or started by Plaintiff Lee.

11. Defendant Horowitz and RBD obtained insurance on the property, which specifically indicated the Mortgage that's referred to hereinabove. Lee made statements to the Insurance Company, which led to the cancellation of the insurance policy. Plaintiff Lee then used the cancellation of the insurance as a basis for filing the complaint against Horowitz for breach of the provisions of the Mortgage.”

ROA Part 1, Doc. No. 066, pg. 786.

Defendants' Counterclaims did include a claim for “Misrepresentation and Fraud”. Defendant, inter alia, pointed to Plaintiff Lee's false promises to assist and cooperate with the property improvements such as with regard to a swimming pool and without need for Seller's approval. In the Counterclaims, Defendants also pointed to an indemnification agreement “Agreement for Closing Escrow” that Defendants' attorney Glenn Hara (now Circuit Court Judge Hara) helped draft to protect Defendants from bogus claims of non-compliance with the Mortgage. ROA Part 1, Doc. No. 066, pg. 786; Part 2, Doc. No. 347, pg. 1119, ¶¶ 26-27.⁴

E. The Jury Verdict Regarding Defendants' Counterclaim For Misrepresentation and Fraud; The Award Of Damages To Defendants; The Altered “Agreement for Closing Escrow”

⁴ There were two different versions of that “Agreement for Closing Escrow” submitted by the Parties, each arguing the other had altered the document. The Jury concluded that Defendants had altered the agreement but found there was no resulting injury to Plaintiff. Given that the Jury concluded there was no resulting injury to Plaintiff, Defendant has refrained from appealing that issue. Defendant Horowitz however vehemently disagreed with the Jury's conclusion and believes by comparison of the two versions it is obvious which is the authentic and which is the altered version of the documents. Horowitz had expected his former attorney Glenn Hara to testify on his behalf on this issue, but Hara then was unavailable to testify. The version submitted by Defendant Horowitz containing indemnifying language (which was identical to the “Certified True Original” document submitted by the Escrow Company) is in the record at ROA Part 1 Doc. No. 005, pp. 157-158; and the version submitted by Plaintiff Lee omitting the foreclosure indemnifying language is in the record at ROA Part 1, Doc. No. 005, pp. 155-156.

The case was heard by a jury and the Jury Verdict was filed on February 21, 2009. Specifically with regard to Defendants' Counterclaim for fraud and misrepresentation, Jury Question No. 9 asked: "Did Plaintiff Cecil Loran Lee commit fraud or misrepresentation regarding the sale of the property?" The Jury responded "Yes".⁵ ROA Part 1, Doc. 200, pp. 2417.

And Jury Question No. 10 asked: "Was Plaintiff's fraud or misrepresentation regarding the sale of the property a legal cause of Defendants' losses?" The Jury answered: "Yes".

Regarding damages the Special Verdict Form asked: "What amount of damages, if any, do you award Defendants?" The Jury responded "\$200,000.00". ROA Part 1, Doc. 200, pg. 2414-2418 at pg. 2418.

Both parties also claimed the other had altered Defendants' "Agreement for Closing Escrow." The Jury concluded it was Defendant who had altered the document but concluded the alteration was not the cause of Plaintiff's losses. ROA Part 1, Doc. 200, pp. 2416.

With regard to Plaintiff's claim of conspiracy between Defendant Lee and Philip Maise, the Jury found there was no conspiracy and with regard to Plaintiff's waste claims the Jury found in favor of Defendants. ROA Part 3, Doc. No. 376, pg. 475, ¶ "c".

F. Plaintiffs' Motions For Judgment As A Matter Of Law, The Court's Findings Of Fact And Conclusions Of Law, The Final Judgment

At no time during the jury trial and before submission of the case to the jury did Plaintiffs make a Hawaii Rules of Civil Procedure (HRCPP) Rule 50(a) Motion for Judgment as a Matter of Law (MJML). ROA: Record in its entirety.

On March 11, 2008, approximately three weeks after the February 21, 2008 Jury Verdict, Plaintiff Lee filed a HRCPP Rule 50 Motion for Judgment as a Matter of Law or Alternatively New Trial arguing: 1) that "Defendants were not legally entitled to have the claim for fraud or misrepresentation with respect to plaintiff's sale of the property"; and 2) that the Special Verdict Form submitted to the Jury improperly included the following question "Did Plaintiff Cecil Loran Lee commit fraud or misrepresentation regarding the sale of the property?" Plaintiff Lee also argued:

In the instant case the jury's finding that Plaintiff committed fraud or misrepresentation as to the evidence contradicts the manifest weight of the

⁵ A copy of the Jury's Special Verdict form showing all of the Jury's Answers is attached as Exhibit 7.

evidence and the jury's award of \$200,000 in general damages is against the manifest weight of the evidence. ROA Part 1, Doc. No. 209, pg. 2556.

In his Motion, Plaintiff requested: 1) the Court reverse or vacate the jury finding that Plaintiff committed fraud with, or misrepresentation with, respect to the sale of the subject property; and, 2) the Court reverse or vacate the Jury award of damages to Defendants of \$200,000. (*at page 14 of July 29, 2008 motion.*) ROA Part 1, Doc. No. 209, pg. 2556.⁶

On March 24, 2008 Defendant opposed Plaintiff's HRCF Rule 50 MJML motion *inter alia*, based on Plaintiff's non-compliance with the HRCF Rule 50 prerequisite of having filed a HRCF Rule 50(a) Motion for Judgment as a Matter of Law at the close of the evidence and before the case is submitted to the Jury. ROA Part 1, Doc. No. 215, pp. 2682-2685. Defendant clearly argued:

The Plaintiff failed to move for a Judgment NOV at the time the special verdict of the jury was announced as is required by the Rules for the assertion of an NOV action. The procedural requirements of this particular rule are not only not met but they are not even mentioned in the body of his motion or memorandum. ROA Part 1, Doc. 215, pg. 2684.

On April 2, 2008, the Court filed its Findings of Fact and Conclusions of Law Denying Foreclosure Against All Defendants, including the following findings of fact:

5. At the time of purchase Plaintiff represented to Defendants that the property could be used as a bed and breakfast. This later turned out to be untrue.
6. Defendants engaged in commercial use of the property for their ministerial purposes and as a consequence, their insurance on the property was terminated. Defendants were advised by Bank of Hawaii insurance on March 31, 2004, that the dwelling fire policy would be cancelled on April 23, 2004 (receive into evidence as Plaintiff's Exhibit P-7). A Notice of Policy Termination or Cancellation was sent to Defendants from Island Insurance Companies on March 19, 2004 (receive into evidence as Plaintiff's Exhibit P-9). Defendants failed to obtain insurance or maintain insurance on the property since the date of April 23, 2004, and during Trial provided no proof that the property was insured.
7. Defendants cannot obtain insurance on the property because it is located in a lava zone.

⁶ Plaintiff also asked that if the Court denies its Motion For Judgment As A Matter Of Law Or Alternatively New Trial, that the \$200,000 damage award be subtracted from the amount due on the Mortgage. ROA Part 1, Doc. No. 209, pg. 2557, ¶ 3.

8. Defendants constructed a pool and other structures on the property and modified existing structures. Defendants failed to obtain Plaintiff's written consent for the new construction and modification of the existing structure in violation of the terms and conditions of the mortgage.
9. Defendants' modifications improved the subject property by painting, landscaping, and updates to the structure. Exhibit 1 at pp 5-6, ROA Part 1, Doc. No. 220, pg. 2713-2714.

On June 13, 2008 the Court denied without prejudice Plaintiff's March 11, 2008 Motion For Judgment As A Matter Of Law Or Alternatively New Trial because Plaintiff's Motion was "filed prior to entry of Judgment under Haw. R. Civ. Pro. 59."⁷ ROA Part 1, Doc. No. 240, pp. 2809-2810.

On June 26, 2008 Plaintiff filed a "Notice Of Resubmission Of Plaintiff's Motion For Judgment As A Matter Of Law Or Alternatively New Trial On Issue Of Defendant's July 6th, 2006 Counterclaim For Fraud And Misrepresentation", which was a re-filing of Plaintiff's Motion filed on March 11, 2008. On July 9, 2008 Defendant again opposed Plaintiff's Motion For Judgment As A Matter of Law Or Alternatively New Trial. ROA Part 1, Doc. No. 243, pp. 2953-2957. On July 9, 2008 Defendants filed an Opposition to several of Plaintiff's Motions that included, *inter alia*, opposition to Plaintiffs' Notice of Resubmission of Plaintiffs Motion for judgment as a Matter of Law or Alternatively New Trial repeating that the motion was "untimely and without merit" and because it "does not respond to what the Court asked [Plaintiff's attorney] Mr. Phelan to do [which was to comment on the Court's draft Findings of Fact and Conclusions of Law]". ROA Part 1, 2954-2956.

On July 17, 2008 the Court filed an Order "Withdrawing Notice of Resubmission of Plaintiff's Motion For Judgment As A Matter Of Law Or Alternatively New Trial On Issue Of Defendant's July 6th, 2006 Counterclaim for Fraud and Misrepresentation filed on June 26,

⁷ A copy of the Court Order is attached as **Exhibit 8**. This June 13, 2008 Court Order Denying Plaintiff's Motion For Judgment As A Matter Of Law Or Alternatively New Trial On Issue Of Defendant's July 6th, 2006 Counterclaim For Fraud And Misrepresentation" was mislabeled by the Court as "Order Denying Plaintiff's Motion To Alter Or Alternatively New Trial On Issue Of Defendants' July 6, 2006 Counterclaim For Fraud And Misrepresentation". Plaintiffs' motion was a "Motion For Judgment As A Matter Of Law Or Alternatively New Trial On Issue Of Defendant's July 6th, 2006 Counterclaim For Fraud And Misrepresentation" as is discussed in the body of this June 13, 2008 Court Order. ROA Part 1, Doc. No. 240, pp. 2809-2810.

2008”, allowing Plaintiff to withdraw the Motion “without prejudice.” ROA Part 1, Doc. 245 at pp. 3113-3114. The Court noted that Plaintiff Cecil Loran Lee “orally withdrew his June 26, 2008 Resubmission Of Plaintiff’s Motion For Judgment As A Matter Of Law Or Alternatively New Trial On Issue Of Defendant’s July 6th, 2006.” ROA Part 1, Doc. 245 at pp. 3113-3114.

On July 22, 2008 the Court entered its Final Judgment. With respect to damages, consistent with the Jury Verdict, the Court awarded Defendants’ \$200,000 in damages, stating:

Pursuant to jury’s verdict, judgment for monetary damages is entered in favor of Defendants HOROWITZ in the amount of TWO HUNDRED THOUSAND DOLLARS and NO/100 (\$200,000.00 and against Plaintiff LEE. ROA Part 1, Doc. 247 at pp. 3140-3142.

A week after the filing of the Final Judgment, on July 29, 2008, Plaintiff again re-filed his March 13, 2008 MJML “Notice Of Resubmission Of Plaintiff’s Motion For Judgment As A Matter Of Law Or Alternatively New Trial On Issue Of Defendant’s July 6th, 2006 Counterclaim For Fraud And Misrepresentation”. ROA Part 1, Doc. 248 at pp. 3143-3160.

G. Court Order Granting Plaintiff’s Motion For Judgment As A Matter Of Law, Denial Of Defendants Motion For Attorneys Fees Other Than For Nominal Costs, The Amended Final Judgment; Defendant Payment of the Final Balloon Payment

On Oct. 15, 2008, the Court granted Plaintiffs’ MJML on the issue of Defendants’ Counterclaim for Misrepresentation and Fraud, but did not reverse its Judgment on the matter of the award of \$200,000 damages to Defendants. The Court stated:

Plaintiff’s Motion For Judgment As A Matter Of Law Or Alternatively New Trial On Issue Of Defendant’s July 6th, 2006 Counterclaim For Fraud And Misrepresentation is GRANTED and judgment in favor of Plaintiff and Counterclaim Defendant shall be entered in favor of Plaintiff and Counterclaim Defendant shall be entered on the issue of Defendants’ Counterclaim for Fraud and Misrepresentation as Defendants and Counterclaimants’ failed to plead fraud or misrepresentation as to the sale of the property with particularity.⁸ ROA Part 2, Doc. No. 271, pg. 3573-3574.

With regard to the issue of damages however, the Court did not reverse its Final

⁸ A copy of the Court Order Granting Plaintiff’s Motion For Judgment As A Matter Of Law Or Alternatively New Trial On Issue Of Defendant’s July 6th, 2006 Counterclaim For Fraud And Misrepresentation is attached as **Exhibit 9**.

Judgment with respect to the award of \$200,000 in damages to Defendants.⁹ Plaintiff did not seek an amendment of this October 15, 2008 Motion on the grounds of not having also reversed on the issue of the award of damages to Defendants. ROA in its entirety.

On February 2, 2009, Plaintiff submitted a Proposed Amended Final Judgment which proposed not only reversing its prior determination of Defendants' Counterclaim but also vacating the \$200,000 award of damages to Defendants. ROA Part 2, Doc. No. 307, pg. 433.

On February 23, 2009 the Court filed its Amended Final Judgment reversing its determination with regard to Defendants' Counterclaim for Fraud and Misrepresentation, and now found against Defendants and in favor of Plaintiff on the issue of Defendants' counterclaim for misrepresentation and fraud. **Exhibit 3** and ROA Part 2, Doc. No. 308, pp. 443-445) The Court however, contrary to Plaintiff's proposed Amended Final Judgment, still awarded Defendants' damages in the amount of \$200,000. With regard to the Counterclaim of Misrepresentation and Fraud, the Amended Final Judgment stated:

"As to the allegation of fraud, paragraph 13 of the Complaint for Foreclosure filed June 15, 2006, pursuant to the Order Granting Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on Issue of Defendant's July 6th 2006 Counterclaim for Fraud and Misrepresentation, filed on October 15, 2008, judgment is entered in favor of Plaintiff LEE against Defendants HOROWITZ." Exhibit 3 pg. 2, ¶ 4

With regard to the award of damages, the Amended Final Judgment stated:

Pursuant to jury's verdict, judgment for monetary damages is entered in favor of Defendants HOROWITZ in the amount of TWO HUNDRED THOUSAND DOLLARS and NO/100 (\$200,000.00) and against Plaintiff LEE. Exhibit 3 pg. 2, ¶ 3.

At about the same time, by February 27, 2009, Defendants had paid the remainder of the principal due on the mortgage, \$150,000, along with the remaining interest due, \$4204.13, for a total payment in the amount of \$154,204.13. (\$350,000 original mortgage less the \$200,000

⁹ On that same date, October 15, 2008, the Court filed its Order Denying Defendants And Counterclaimant's Motion For Attorney's Fees And Costs, based on equitable relief already provided by the Final Judgment. The Court Order stated: "IT IS HEREBY ORDERED. Defendants and Counterclaimant's Motion for Attorney's Fees and Costs filed on August 6, 2008 is DENIED as although foreclosure was not granted other equitable relief was granted," which Order is attached as **Exhibit 10**. (Emphasis added.) ROA Part 1, Doc. No. 0269, pp. 3570.

credit for the \$200,000 award of damages equals the remainder of \$150,000). Again, that balloon payment was made to Intervenor Maise based on his outstanding garnishment order against Plaintiff Lee.¹⁰ ROA Part 3, Doc. No. 0370 at 88 ¶ 4; Doc. No. 0371 at 220-268; Doc.

After making the aforementioned final balloon payment, from March through June of 2009, Defendants then repeatedly requested from Plaintiff Lee and his lawyer Paul Sulla, a confirmation of a final accounting and release of the Mortgage, but Defendants repeated requests were evaded and ignored. ROA Part 2, Doc. No. 347, pp. 1121, ¶¶ 34-35; and pp. 1191-94; ROA Part 2, Doc. No. 351, pg. 1468 ¶¶ 7-8; ROA Part 2, Doc. No. 353, pg. 1510-1511, ¶ 23; See also Footnote 11.

H. Plaintiff Lee's HRCF Rule 60(a) "Motion for Correction of Judgment" and HRCF Rule 60(b) "Motion to Modify Order."

On March 5, 2009, pursuant to HRCF 59(e), Plaintiff Lee also filed a Motion to Alter or Amend the Amended Final Judgment to vacate the damages award, arguing that the Court's October 16, 2008 Judgment As a Matter of Law "had the direct effect of vacating the jury award of money damages . . ." Doc 322. In their March 19, 2009 Memorandum in Opposition, Defendants pointed out that "The Motion to amend the Order of the Court and the findings of the jury have been . . . denied *multiple* times." ROA Part 2, Doc. No. 312, pg. 472.¹¹

¹⁰ In 2003 (Intevenor) Philip Maise had prevailed in a suit for fraud and misrepresentation against this same Cecil Loran Lee, relating to the attempted sale by Lee of the same Property to Maise, concealing a federal lien for drug trafficking. Exhibit 1 Findings of Fact, Conclusions of Law; ROA Part 3, Doc. No. 0370 at 87-88; Doc. No. 0371 at 220-268; and Doc. No. 0381 at 647-49; ROA Part 2, Doc. No. 0353, pp. 1625-1635. (The April 27, 2005 Court Order by Judge Greg Nakamura in Maise v. Lee, Civ. No. 01-01-0444 is attached as **Exhibit 11**) (as the Court stated on page 11 of its Order, on Exhibits pg. 46 "... for Lee having 'caused evidence to be fabricated.'")

¹¹ On March 19, 2009, Defendants also filed a Motion to Compel Compliance with the terms of the Mortgage to release the Mortgage, in light of the Mortgage Note having been paid by February 27, 2009. ROA Part 2, Doc. No. 313, pp. 478-522. On April 27, 2009 the Court denied Defendants' Motion to Compel compliance. ROA Part 2 Doc. 317 pp. 549-550.

On April 27, 2009, the Court summarily denied Plaintiff's Motion to Alter or Amend the Amended Final Judgment refusing to vacate the award of \$200,000 in damages to Defendants. ROA Part 2, Doc. No. 318, pp. 550.¹²

On May 21, 2009, Plaintiff filed a "Motion for Correction of Judgment" pursuant to HRCF Rule 60(a) "Clerical Mistakes". Plaintiff argued it was a clerical mistake that the Court included on the Special Verdict form the question whether Plaintiff committed fraud, which question the Jury answered in the affirmative, and likewise a clerical mistake that the jury instructions included instructions pertaining to Defendants' fraud claim, and likewise a clerical error that the Amended Final Judgment retained the jury award of \$200,000 in damages to Defendants. ROA Part 2, No. 321, pp. 589.¹³ The Motion was supported by Attorney Paul Sulla's Memorandum (without any Declaration or Affidavit). On June 15, 2009, the Court denied Plaintiff's Motion for Correction of Judgment, stating "Plaintiff filed Notice of Appeal on May 21, 2009, and therefore the Court no longer has jurisdiction."¹⁴ ROA Part 2, Doc. No. 324, pg. 661.)

Again on June 19, 2009, and only days before Lee's death on June 27, 2009, Attorney Sulla purportedly on behalf of Lee filed a HRCF Rule 60(b) "Motion to Modify Order" in another attempt to vacate the jury award to Defendants of \$200,000,00, arguing that when the Court granted Plaintiff-Appellants HRCF Rule 50 Motion for Judgment as a Matter of Law, the damages award was vacated. Plaintiff also claimed the Court retained jurisdiction of the case under HRCF Rule 60(a) to correct a clerical error despite the case having been appealed, claiming the case had not been "docketed" ROA Part 2, Doc. No. 325, pp. 662-673.¹⁵ On July 16, 2009, Defendants filed their Opposition to Plaintiff-Appellees Motion to Modify the Judgment to vacate the Jury Award in their Opposition, again arguing that there was no error made by the Court, pointing out that "The Motion to amend the Order of the Court and the

¹² A copy of the Court's Order Denying Plaintiff's Motion to Alter or Amend the Amended Final Judgment filed on April 27, 2009, is attached as **Exhibit 12**.

¹³ HRCF Rule 60(a) provides relief from judgment for "Clerical Mistakes". HRCF Rule 60 "Relief From Judgment or Order" is set forth in its entirety at Appendix.

¹⁴ A copy of the Court's "Order Denying Plaintiff's Motion for Correction of Judgment" is attached as **Exhibit 13**.

¹⁵ HRCF Rule 60(b) provides relief from judgment for " Mistakes; Inadvertence; Excusable Neglect"; Newly Discovered Evidence; Fraud". HRCF 60 is set forth in its entirety at Appendix.

findings of the Jury have already been denied. Not only have they been denied but they have been denied multiple times”. (ROA Part 2, Doc. No. 325C at page 2, pp. 711-716.)

Yet on July 29, 2009, the Court granted Plaintiff Lee/Hester’s Rule 60(b) motion:

IT IS HEREBY ORDERED that the Plaintiff’s Motion to Modify Order Haw. R. Civ. P. 60(b) filed June 19, 2009, is GRANTED. The court acknowledges the trial court retains jurisdiction to amend its own judgments under HRCF Rule 60(a) even after a notice of appeal is filed, until an appeal is docketed. The Order of June 15, 2009 is hereby modified and DENIES Plaintiff’s Rule 60(a) Motion for Correction of Judgment filed May 21, 2009, because Plaintiff sought a more substantive change than correction of a clerical error under HRCF R. 60(a).”¹⁶ ROA Part 2, Doc. No. 326, at 721.

I. The Substitution of Original Plaintiff Cecil Loran Lee by Substitute Plaintiff Jason Hester As Overseer of GOB

Meanwhile on May 26 and 28, 2009, a month prior to original Plaintiff Mortgagee Lee’s death, and ten months after the Final Judgment in this case, Attorney Paul Sulla on behalf of Plaintiff Lee, created the Office Of Overseer, A Corporate Sole And Its Successor, Over And For The Popular Assembly Of Revitalize, A Gospel Of Believers, a corporate church entity, with original Plaintiff Lee named as the Overseer and Jason Hester named as the Successor Overseer. ROA Part 2, Doc. No. 325B, pp. 677-679; Articles of Incorporation pp. 686-694. But ten days before this Incorporation, on May 15, 2009, Lee assigned the subject Mortgage and Notes to this Gospel of Believers, even though it was not yet incorporated. ROA Part 2, Doc. No. 325B, pp. 695-703. The Articles of Incorporation for Gospel of Believers then subsequently filed with the State of Hawaii in two parts, on two dates, the first fax-stamped May 26, 2009, and the second fax-stamped May 28, 2009 (See the altered page “8”).¹⁷ See ROA Part 2, Doc. No. 325B, pg. 692 dated May 26, 2009, and ROA page 694 in Articles of Incorporation pp. 686-694.

On July 16, 2009, attorney Paul Sulla then filed a Motion for Substitution on behalf of Jason Hester as Overseer of GOB supported solely by a Declaration signed by Declarant

¹⁶ A copy of the Court’s “Order Granting Plaintiff’s Motion to Modify Order” is attached as **Exhibit 14**.

¹⁷ Defendant also later raised questions about the authenticity of this document given that the pages with the signatures contained one or more unauthentic signatures of Cecil Loran Lee. Evidence that this document had been “altered,” and did not contain authentic signatures, was later confirmed by forensic document examiner Beth Chrisman, who declared the document “as not authentic.” ROA Part 3, Doc. No. 379, pg. 569, lines 1-3.

Attorney Sulla (without any Declaration or Affidavit of Jason Hester)¹⁸. ROA Part 2, Doc. No. 325B, pp. 677-679. The Motion for Substitution and accompanying Declaration by Attorney Sulla relied upon the representation of Jason Hester as Lee's "nephew" – which claimed kinship relationship was determined to be *false* – and upon the later-determined questionable assignment of the subject mortgage.¹⁹ ROA Part 2, Doc. No. 347, pg. 1126 ¶ 59, referencing Exhibit 23, pp. 1271-1283, Prior to the revelation of the irregularities in the mortgage Assignment, ~~and~~ the inaccuracy of the representation of Hester as the nephew of Lee, and the "not authentic" incorporation papers of the Substitute Plaintiff, on August 9, 2009 the Court granted Plaintiffs' *non-hearing motion* Application for Substitution ROA Part 3, Doc. No. 0371 at 111 and 114; Doc. No. 0379, at 487, 531, 536; and Doc. No. 0380 at 640 and 647-49.

J. The Second, Third, and Fourth Amended Final Judgments:

On December 22, 2009, the Court filed its Second Amended Final Judgment, vacating Defendant-Appellants' \$200,000.00 jury award. The Court stated as follows:

5. The \$200,000 jury award in favor of Defendants and against Plaintiff Lee for fraud was vacated by the Order Granting Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on the Issue of Defendant's July 6, 2006 Counterclaim for Fraud and Misrepresentation filed October 15, 2008. It was erroneously reinstated by this court's Amended Final Judgment filed February 23, 2009. It is clarified that there is no award for \$200,000 for the claim of fraud as this court found that it was not plead with particularity and struck the claim for fraud on October 15, 2008, thereby eliminating the jury's finding which was that Plaintiff Lee committed fraud or misrepresentation with the sale of the property, and this fraud was the cause of Defendants' damages and therefore the jury awarded special damages of \$200,000." **Exhibit 4**, ROA Part 2, Doc. No. 336, pp. 992-993, footnote 5.²⁰

¹⁸ A copy of the Court's Order For Substitution of Plaintiff filed August 31, 2009 is attached as **Exhibit 15**.

¹⁹ Upon investigation, Defendant Horowitz submitted evidence that there *does not appear to be any kinship relationship* between Hester and Lee. ROA Part 2, Doc. No. 0347, pp. 1123 ¶ 45 and 1130 ¶¶ "c" and "d". See Private Investigator Christopher Baker's Report entitled "Comprehensive Report" showing no blood relationship between Plaintiff Lee and "Substitute Plaintiff" Hester, ROA, Part 2, Doc. No. 347, pp. 1271-1283.

²⁰ Actually the Court made no express determination or mention of vacating the award of damages in its October 15, 2008 Order.

On December 29, 2009, Defendant Horowitz appealed the Second Amended Final Judgment to the Intermediate Court of Appeals, including with respect to the Circuit Court's vacation of the award of damages to Defendants. ROA at Part 2, Doc. No. 0338, pp. 1005-1006. The Appellate Court dismissed the appeal for lack of jurisdiction based on "Hawaii Revised Statute § 641-1(a), HRCF Rule 54(b), and the holding in *Jenkins*." ROA Part 2, Doc. 346, pp. 1105-1108. On September 12, 2013, the Circuit Court filed a Third Amended Final Judgment, now including an express determination as to Defendant-Counterclaimants Counterclaim for Fraud and Misrepresentation.²¹ Exhibit 5. ROA Part 2, Doc. 357, pp. 1862-1864. On October 4, 2013 Defendants appealed that Third Amended Final Judgment, again including seeking reversal of the vacation of the damages award. ROA Part 3, Doc. No. 376, pp. 1865-1870. On January 29, 2014, the Intermediate Court of Appeals dismissed the appeal again for lack of jurisdiction because although the Third Amended Final Judgment expressly set forth the determination of Defendant-Counterclaimants' Claim for Fraud and Misrepresentation, it did not on its face resolve the remaining claims. Exhibit 5, ROA Part 3, Doc. No. 346, pp. 67-70.

On March 25, 2015 Attorney Sulla on behalf of Substitute Plaintiff Hester, submitted a proposed Fourth Amended Final Judgment by *ex parte* letter. ROA Part 3, Doc. No. 0369 at 73. Defendants opposed the *ex parte* communication and the Court directed attorney Sulla to file a Motion to bring this Fourth Amended Final Judgment properly before the Court. ROA Part 3, pp. 784-785. On June 19, 2015, without such motion having been filed, the Court filed its Fourth Amended Final Judgment.²² **Exhibit 6**. ROA Part 3, Doc. No. 376, pp. 473-478.

On June 29, 2015, Defendants filed a Motion for Reconsideration or in the Alternative for a New Trial.²³ ROA Part 3, Doc. No. 379, pp. 483-491. On August 6, 2015 the Court filed an order denying Defendants' Motion for Reconsideration.²⁴ ROA Part 3, Doc. No. 0382, pg. 653-

²¹ The Third Amended Final Judgment amended the Second Amended Final Judgment without any reference to the vacation of damages award.

²² The Fourth Amended Final Judgment expressly states: "The Jury's award to Defendants in the amount of \$200,000 is vacated." Exhibit 6 at pg. 6.

²³ As part of the Motion for Reconsideration, Defendants submitted a sworn Declaration from forensic document and handwriting expert Beth Chrisman dated June 12, 2015, concluding that the General Certification signature pages of the Articles of Incorporation of Substitute Plaintiff Hester's GOB Church "are not authentic in nature but have been duplicated, transferred and altered". ROA Part 3, Doc. No. 0379, pg. 569, lines 1-3.

²⁴ A copy of the Order Denying Defendants' Motion for Reconsideration is attached **Exhibit 16**.

655. Within 30 days of that filing, on September 4, 2015, Defendants appealed the Circuit Court's Fourth Amended Final Judgment with regard to the Court's vacation of their damage award of \$200,000, and on the jurisdictional issue of Substitute Overseer Hester's standing. ROA Part 3, Doc. No. 383, pg. 694. The Circuit Court's denial of foreclosure in Defendants' favor has not been cross-appealed by Substitute Plaintiff Overseer Hester.²⁵

IV. SUMMARY OF HOW EACH OF THE ORIGINAL CLAIMS AND COUNTERCLAIMS WERE DETERMINED IN THE FOURTH AMENDED FINAL JUDGMENT

The determinations of Plaintiffs' Claims and Defendants' Counterclaims in the Fourth Amended Final Judgment are as follows:

1. As to Plaintiffs claim for foreclosure: Judgment in favor of Defendants: Foreclosure denied. Exhibit 6 at pg. 4, ROA at Part 3, Doc. No. 0376, pg. 660-665.

2. As to Plaintiff's claim for breach of contract/covenant to keep property insurance: Judgment in favor of Plaintiff-Appellees. Exhibit 6 at pg. 3, ROA Part 3, Doc. No. 0376 pg. 660-665. *[The Court however did not foreclose on the subject property: "But equitable relief was granted requiring Defendants to carry insurance [if available]". As explained in the Court's April 2, 2008 Finding of Fact and Conclusions of Law: "Defendants cannot obtain insurance on the property because it is located in a lava zone."]* Exhibit 1, pg. 4, ¶ 7.

3. As to Plaintiffs' claim of fraud and misrepresentation: Judgment in favor of Plaintiffs. Exhibit 6 at pg 6. *[In contrast, in the July 22, 2008 Final Judgment the Court instead stated "As to the allegation of fraud, . . . pursuant to the jury's verdict, judgment is entered in favor of Defendants HOROWITZ against Plaintiff LEE as the jury found the fraudulently altered Agreement for Closing was not the legal cause of Plaintiff LEE's [l]osses."* Exhibit 6 at pg 3.

²⁵ Defendant-Appellants note that if Plaintiff-Appellee Hester prevails in this action it is expected Attorney Paul Sulla will acquire the subject Property based on his security interest in the property and mortgage "loan" arrangement with Plaintiff Hester, ROA Part 3, Doc. No. 0371 at 109 and 148-167; Doc. No. 381 at 649. See Bureau of Conveyances Doc. No(s). 2011-083772 and 2011-083773, both dated June 14, 2011. Document No. 2011-083772 is the Bureau of Conveyances recording of the quitclaim deed from Jason Hester as Overseer of Gospel of Believers to Jason Hester as an individual. Document No. 2011-083773 is the Bureau of Conveyances recording of Attorney Paul Sulla's mortgage "loan" to Hester transferring a mortgage security interest in the subject property from individual Jason Hester to Attorney Paul Sulla. For this reason it appears at this time the real party in interest is Paul Sulla, and that his shill, Jason Hester, is but the nominal Substitute Plaintiff.

ROA at Part 3, Doc. No. 0376, pg. 660-665²⁶

4. As to Plaintiff's waste claims for unlicensed business activity and additions to the home or construction of buildings on the property: Judgment in favor of Defendants. Exhibit 6 at pg. 3., ROA Part 3, Doc. No. 376, pg. 660-665.

5. As to Plaintiff's claim for conspiracy against Defendant-Appellants and Intervenor Philip Maise regarding payment of mortgage payments: Judgment in favor of Defendants and Intervenor. Exhibit 6 at pg. 3, ROA Part 3, Doc. No. 376, pg. 660-665

6. As to Plaintiff's claim for trespass to chattel based on destruction of Plaintiff [Lee's] trailer. Judgment in favor of Plaintiff in the amount of \$400. Exhibit 6 at pg. 3-4, ROA Part 3, Doc. No. 376, pg 660-665.

7. As to Defendant's counterclaim for fraud and misrepresentation: Judgment in favor of Plaintiffs. Exhibit 6 at pg. 5, ROA at Part 3, Doc. No. 376, pg. 660-665. *[As found by the Jury and as set forth in the Finding of Fact and Conclusions of Law and in the Final Judgment, this claim was originally decided in Defendants favor, and is now at issue in this appeal.]*

8. As to Defendant's claim for damages: Award vacated. Exhibit 6 at pg. 5, ROA at Part 3, Doc. No. 376, pg. 660-665. *[[As found by the Jury and as set forth in the Finding of Fact and Conclusions of Law and in the Final Judgment and in the Amended Final Judgment this claim was originally decided in Defendants favor, and is now at issue in this appeal.]*

9. As to Defendant's counterclaim for Abuse of Process and Malicious Prosecution: Judgment in favor of Plaintiff. Exhibit 6 at pg. 5, ROA Part 3, Doc. No. 376, pg. 660-665. *[Defendants continue to believe strongly the Court also erred with respect to this fact-based issue.]*

10. As to attorneys fees and costs: Judgment in favor of Defendants in the amount of \$907.98. Exhibit 6 at pg. 5, ROA Part 3, Doc. No. 0376 pg. 660-665. *[Defendants believe the Court denied their full request for attorneys fees, as of December 9, 2008, in the amount of over \$132,000, in light of having been awarded \$200,000 in damages; which award, however, was then vacated and is now the subject of this appeal.]*

²⁶ Although Defendant Horowitz disagrees emphatically with the finding that Defendants altered the Agreement for Closing Escrow –Addendum to the DROA, because, the Jury found there was no resulting injury to Plaintiff, this issue is not being appealed.

V. POINTS OF ERROR

A. FIRST POINT OF ERROR: THE INADEQUACY OF PLAINTIFFS' RULE 50 MOTION FOR JUDGMENT AS A MATTER OF LAW

[“The lower court erred in granting Plaintiff-Appellee’s motion to vacate the award to Defendants for \$200,000.00 in damages that was based on the Court’s grant of Plaintiff Appellees’ Motion for a Judgment as a Matter of Law reversing the Jury Verdict and the Final Judgment in favor of Defendant-Appellants on their Counterclaim for Fraud and Misrepresentation. [Hawaii Rule of Civil Procedure Rule 50 “Judgment as a Matter of Law”].

1. Plaintiff did not make a HRCF Rule 50(a) MJML at the close of the evidence prior to the case being submitted to the jury. ROA in its entirety.

2 On March 11, 2008, Plaintiff first made a HRCF Rule 50 MJML motion, that is, subsequent to the February 21, 2008 Jury Verdict.

3. On March 24, 2008, Defendant opposed Plaintiff’s post-verdict HRCF Rule 50 MJML motion *inter alia*, based on Plaintiff’s non-compliance with the HRCF Rule 50 prerequisite of having timely filed a HRCF Rule 50(a) Motion for Judgment as a Matter of Law. ROA Part 1, Doc. No. 215, pp. 2682-2685.

4. On June 13, 2008 the Court erred when it denied Plaintiff’s March 11, 2008 Motion for Judgment as a Matter of Law “without prejudice” rather than “with prejudice”.

5. On June 26, 2008, Plaintiff filed a Notice Of Resubmission Of Plaintiff’s Motion For Judgment As A Matter Of Law Or Alternatively New Trial On Issue Of Defendant’s July 6th, 2006 Counterclaim For Fraud And Misrepresentation. In this motion Plaintiff argued the Court had erroneously included “Defendants’ claims for fraud and misrepresentation . . . on the Special Verdict Form, despite the grave failure to place Plaintiff o[n] notice of said counterclaims.” On July 9, 2008, Defendants filed an Opposition that included an opposition to Plaintiffs’ re-filed Motion for judgment as a Matter of Law or Alternatively New Trial.

6. Following the July 22, 2008 entry of the Final Judgment, on July 29, 2008, Plaintiff for the second time resubmitted his March 11, 2009 filed Motion For Judgment As A Matter Of Law Or Alternatively New Trial.

7. On October 15, 2008, the Court granted Plaintiff’s Motion For Judgment As A Matter Of Law Or Alternatively New Trial “. . .for failure to plead fraud or misrepresentation as to the sale of

the property with particularity.” Just as in March of 2008 when Plaintiff first filed his MJML, the Court again now in October of 2008, erred by not denying Plaintiff’s MJML.

8. Consequently on January 23, 2009, the Court inappropriately amended its Final Judgment, stating as follows:

“Plaintiff’s Motion for Judgment as a Matter of Law or Alternatively New Trial on Issue of Defendant’s July 6th Counterclaim for Fraud and Misrepresentation is GRANTED . . . as Defendants and Counterclaimants’ failed to plead fraud or misrepresentation as to the sale of the property with particularity.” ROA Part 2, Doc. No. 308, pp. 443-445.

9. Following several unsuccessful motions to also reverse the Court’s damage award to Defendants, on June 19, 2009, and only days before his death on June 27, 2009, Plaintiff Lee filed a HRCF Rule 60(b) “Motion to Modify Order” in another attempt to vacate the jury award to Defendants of \$200,000,00, arguing that when the Court granted Plaintiff-Appellants HRCF Rule 50(b) Motion for Judgment as a Matter of Law, the damages award should also have been vacated. Although Plaintiff had already appealed the case, Plaintiff argued that the Circuit Court retained jurisdiction under HRCF Rule 60(a) after the filing of the appeal but prior to an appeal being “docketed” to correct a clerical error. ROA Part 2, Doc. No. 325, pp. 662-673.²⁷ On July 16, 2009 Defendants filed their Opposition to Plaintiff-Appellees Motion to Modify the Judgment to vacate the Jury Award in their Opposition, again arguing that there was no error made by the Court, pointing out that the Motion to amend the Order of the Court and the findings of the Jury have already been denied: “Not only have they been denied but they have been denied multiple times”. (at page 2 of Opposition; ROA Part 2, Doc. No. 325C, pp. 711-716.)

10. On July 29, 2009, the Court granted Plaintiff Lee/Hester’s Motion to Modify Order:

IT IS HEREBY ORDERED that the Plaintiff’s Motion to Modify Order Haw. R. Civ. P. 60(b) filed June 19, 2009, is GRANTED. The court acknowledges the trial court retains jurisdiction to amend its own judgments under HRCF Rule 60(a) even after a notice of appeal is filed, until an appeal is docketed. The Order of June 15, 2009 is hereby modified and DENIES Plaintiff’s Rule 60(a) Motion for Correction of Judgment filed May 21, 2009, because Plaintiff sought a more substantive change than correction of a clerical error under HRCF R. 60(a).” ROA Part 2, Doc. No. 326, at 721.

²⁷ HRCF Rule 60(b) provides relief from judgment for “ Mistakes; Inadvertence; Excusable Neglect”; Newly Discovered Evidence; Fraud”. HRCF 60 is set forth in its entirety in the Appendix..

8. On December 11, 2009, the Court filed its Second Amended Judgment, vacating the Jury award of damages to Defendants. ROA Part 2 Doc. No. 342, pg. 721-722.

9. As a consequence of the Court's failure to deny Plaintiff's March 13, 2008 MJML with prejudice and, following the re-filing of that motion post Final Judgment, correspondingly the Court erroneously granted Plaintiff's MJML on October 15, 2008. Thereafter on July 29, 2009, based on having granted Plaintiff's MJML, the Court erred in granting Plaintiff's Motion to Modify Order vacating the damages award of \$200,000 to Defendants.

10. Based on Plaintiff's failure to comply with the requirements of HRCF Rule 50(a), this Appellate Court is asked to reverse the Circuit Court's Fourth Amended Final Judgment and reinstate the damages award of \$200,000 to Defendants.

11. Given that after subtracting that \$200,000 damages award credit on the \$350,000 mortgage, and subtracting Defendants' February 2009 balloon payment of \$150,000 paid by Defendants along with outstanding interest in February 2009, the remaining balance due on the note and mortgage is zero, and for this reason Defendant-Appellants ask that the lower court be directed to make the appropriate arrangements for release of the mortgage.

B. SECOND POINT OF ERROR: SUBSTITUTE PLAINTIFF HESTER DOES NOT HAVE STANDING TO STAND IN THE SHOES OF ORIGINAL PLAINTIFF SELLER-MORTGAGEE LEE

Whether the lower court erred in granting Plaintiff-Appellee's motion for substitution of Plaintiff Cecil Loran Lee by Substitute Plaintiff Jason Hester as the Successor Overseer The Office Of Overseer, A Corporate Sole And Its Successor, Over And For The Popular Assembly Of Revitalize, A Gospel Of Believers ("GOB") [Standing of Jason Hester].

1. Following original Plaintiff Lee's death, the Court granted the Application for Substitution of Jason Hester as the Overseer of the Gospel of Believers as the Substitute Plaintiff.

2. The proposed substitution and standing of Jason Hester as the Overseer of Gospel of Believers, was however based on the allegation that Jason Hester was Cecil Loran Lee's nephew, which was later found to be false, and the assignment of the subject mortgage to Gospel of Believers; which assignment was later determined to have been made *prior* to the incorporation of Gospel of Believers, and which incorporation documents contained one or more unauthentic signatures and unauthentic dates.

3. Defendants brought to the Court's attention on several occasions that Jason Hester was not the "nephew" of Plaintiff Lee: (1) on April 26, 2013 in Defendants' Motion to Void or Amend Final Judgments Due to Fraud Upon the Court, and Order Declaratory Relief to Quiet Title. ROA Part 2, Doc. No. 347, pg. 1130 ¶ "c", pg. 1133, ¶ 82; 1139, Exhibit 18 reference, and Exhibit 18, pp. 1271-1283; and (2) in Defendants' Motion for Sanctions and Injunctive Relief in Reply to Paul J. Sulla Jr.'s Proposed "Fourth Amended Final Judgment," ROA Part 3. Doc. No. 371, pg. 129, ¶ 10; (3) ROA Part 2, pg 1481 ¶¶ 25-29 in ROA Part 2, Doc. No. 352, and further (4) Defendant raised the issue of standing and brought to the Court's attention the irregularities with regard to the assignment of the subject mortgage to Overseer Lee on June 29, 2015, in his Memorandum on Motion for Reconsideration or in the Alternative for New Trial. ROA Part 3, ROA Doc. No. 379, pg. 487, footnote 4.

4. Had these irregularities and inaccurate information been known at the time the Motion for Substitution, this Substitution made without any Declaration, Affidavit, or testimony by Hester, would have been opposed, and given that the burden of proof was on Plaintiff to establish that Hester was a "proper party", this Motion for Substitution would likely have been denied.

5. Because a party's standing is jurisdictional and may be reviewed at any time, this Court is asked to now assess whether Substitute Plaintiff Jason Hester has standing, or alternatively remand this issue to the trial judge for an evidentiary hearing.

VI. STANDARDS OF REVIEW

A. REVIEW OF A GRANT OF A MOTION FOR JUDGMENT AS A MATTER OF LAW:

The appellate court reviews a lower court's grant of a Motion for Judgment as a Matter of Law *de novo*. See *Tortu v. Las Vegas Metropolitan Police Department* 556 F. 3d 1075, 1081 (9th Cir. 2009)

B. REVIEW OF THE JURISDICTIONAL QUESTION OF STANDING: Standing is a question of jurisdiction and reviewed *de novo*. See e.g. *Mottl v. Miyahira*, 95 Haw. 381, 388, 23 P.3d 716, 723 (2001) ("Thus, the issue of standing is reviewed *de novo* on appeal.")

VII. ARGUMENT

A. ISSUE: Whether, Even Assuming Defendants' Counterclaim For Misrepresentation And Fraud Was Not Pled With Sufficient Particularity, The Court Erred In Reversing Its Award Of Damages To

Defendants By Granting Plaintiff's Motion For Judgment As A Matter Of Law, In Spite Of Plaintiff's Failure To Make A Timely HRCF Motion For Judgment As A Matter Of Law At The Close Of The Evidence Prior To The Case Going To The Jury, And, On That Basis, Erred In Its Subsequent Vacation Of Defendants' Damages Award.

1. APPLICABLE LEGAL FRAMEWORK: HRCF 50(b) in relevant part provides:

(b) Renewing motion for judgment after trial; alternative motion for new trial. If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after entry of judgment - and may alternatively request a new trial or join a motion for a new trial under Rule 59. . . .²⁸

Hence HRCF Rule 50(b) is available only as a renewing motion from a HRCF Rule 50(a) Motion for Judgment as a Matter of Law made at the close of all the evidence before the case is referred to the jury. It is not an independent motion. See e.g. *State by Atty. Gen. v. Midkiff*, 55 Haw. 190, 191-92, 516 P.2d 1250, 1252-53 (1973) (referring to a Motion For Judgment Notwithstanding the Verdict, which is now called a Motion for Judgment as a Matter of Law). As the Court in *Tortu v. Las Vegas Metropolitan Police Department* 556 F. 3d 1075, 1081 (9th Cir. 2009) (addressing the parallel Federal Rule of Civil Procedure Rule 50(b)), in which the court explained:

As explicitly stated in the Rule, a Rule 50(b) motion may be considered only if a Rule 50(a) motion for judgment as a matter of law has been previously made. Further, the advisory committee notes to Rule 50 explicitly emphasized this requirement in the 1963 amendments: "A motion for judgment notwithstanding the verdict will not lie unless it was preceded by a motion for a directed verdict made at the close of all the evidence." Fed.R.Civ.P. 50 advisory committee's note on 1963 amendments (emphasis added). Later, the notes to the 1991 amendments reiterated this requirement. "This provision retains the concept of the former rule that the post-verdict motion is a renewal of an earlier motion made at the close of the evidence. A post-trial motion for judgment can be granted only on grounds advanced in the pre-verdict motion." Fed.R.Civ.P. 50 advisory committee's note on 1991 amendments. The Rule itself, as well as these amendments, explicitly require a previous motion to be made before submission to the jury. . . . As Rule 50 and its notes clearly instruct, we strictly construe the procedural

²⁸ HRCF Rule 50 is set forth in its entirety in the Appendix.

requirement of filing a Rule 50(a) motion before filing a jury, as a prerequisite to a post verdict Rule 50(b) is important. As stated in the notes explaining the Federal Rule of Civil Procedure:

The purpose of this requirement is to assure the responding party an opportunity to cure any deficiency in that party's proof that may have been overlooked until called to the party's attention by a late motion for judgment. Fed. Rule 50(b) motion.

See e.g. *Benson vs. Allphin* 786 F2d 268 (7th Cir. 1986) (“the motion for directed verdict at the close of all the evidence provides the nonmovant an opportunity to do what he can to remedy the deficiencies in his case ...”) ²⁹

2. RELEVANT FACTS: Defendant’s first Counterclaim was entitled “Misrepresentation and Fraud” (Exhibit 7 at pg. 5-6. ROA Part 1, Doc. No. 066, pg. 786.) and included representations concerning the sale of the property that were false, including that Lee “would cooperate with the construction of improvements without the Seller’s approval” and “would cooperate in the building of a swimming pool.” Defendants’ Counterclaims explained that:

10. Defendants Horowitz and RBD has made additions to the home and constructed out buildings, which were originally built or started by Plaintiff Lee.

11. Defendant Horowitz and RBD obtained insurance on the property, which specifically indicated the Mortgage that’s referred to hereinabove. Lee made statements to the Insurance Company, which led to the cancellation of the insurance policy. Plaintiff Lee then used the cancellation of the insurance as a basis for filing the complaint against Horowitz for breach of the provisions of the Mortgage.”

The jury considered the issue of whether Plaintiff committed fraud or misrepresentation with regard to the sale of the property. Specifically, Jury Question No. 9 asked: “Did Plaintiff Cecil Loran Lee commit fraud or misrepresentation regarding the sale of the property?” The Jury responded “Yes”. And Jury Question No. 10 asked: “Was Plaintiff’s fraud or misrepresentation regarding the sale of the property a legal cause of Defendants’ losses?” The Jury answered “Yes”. Regarding damages, the jury was asked: “What amount of damages, if any, do you award

²⁹ Hence, for example, if the moving party made a Rule 50(a) Motion for Judgment as a Matter of Law for a claim of fraud because the nonmoving party’s fraud claim in its complaint or counterclaims was not plead with sufficient particularity, the nonmoving party could have sought to cure the challenge by making a motion to conform the complaint to the evidence presented at the trial.

Defendants?": The Jury responded "\$200,000.00". (**Exhibit 7** and ROA Part 1, Doc. 200, pg. 2417-2418.

At the time of the trial and prior to submission of the case to the Jury at no time did Plaintiff make a Motion for Judgment as a Matter of Law (hereafter MJML). ROA in its entirety. It was only subsequent to the February 21, 2008, Jury Verdict that on March 11, 2008, Plaintiff Lee filed his HRCF Rule 50 Motion for Judgment as a Matter of Law or Alternatively New Trial on Issue of Defendant's July 6, 2006 Counterclaim for Fraud and Misrepresentation (and did so without specifying whether it was a Rule 50(a) or Rule 50(b) motion). ROA Part 1, Doc. No. 209, pp. 2543-2560.

Defendants in their March 24, 2008 Opposition to Plaintiff's Motion for Judgment As a Matter of Law or Alternatively New Trial, *inter alia*, argued Plaintiff's motion for NOV [MJML] does not comply with the requirement in Rule 50 for a post verdict MJML, because Plaintiff did not comply with the prerequisite for moving for a HRCF Rule 50(b) motion, of having timely moved for a MJML pursuant to HRCF Rule 50(a), that is, by moving for a MJML at the close of the evidence prior to the case going to the jury. As stated in Defendants' Opposition Memorandum:

The Plaintiff failed to move for a Judgment NOV [MJML] at the time the special verdict of the jury was announced as is required by the Rules for the assertion of an NOV action. The procedural requirements of this particular rule are not only not met but they are not even mentioned in the body of his motion or memorandum. This lengthy diatribe is a total waste of the Court's time, Intervenor's time and the time of the undersigned Counsel. ROA Part 1, Doc. No. 215, pg. 2684.

On April 2, 2008 the Court filed its Findings of Fact, Conclusions of Law, and Order Denying Foreclosure Against All Defendants **Exhibit 1** ROA Part 1, Doc. No. 220, pg. 2713-2714. With regard to the issue of fraud and misrepresentation, the Court stated:

"5. At the time of purchase Plaintiff represented to Defendants that the property could be used as a bed and breakfast. This later turned out to be untrue."

"6. Defendants engaged in commercial use of the property for their ministerial purposes and as a consequence, their insurance on the property was terminated. Defendants were advised by Bank of Hawaii insurance on March 31, 2004, that the dwelling fire policy would be cancelled on April 23, 2004 (receive into evidence as Plaintiff's Exhibit P-7). A Notice of Policy Termination or Cancellation was sent to Defendants from Island Insurance Companies on March 19, 2004 (receive into evidence as Plaintiff's Exhibit P-9). Defendants failed to

obtain insurance or maintain insurance on the property since the date of April 23, 2004, and during trial provided no proof that the property was insured.”

“7. Defendants cannot obtain insurance on the property because it is located in a lava zone.

“8. Defendants constructed a pool and other structures on the property and modified existing structures. Defendants failed to obtain Plaintiff’s written consent for the new construction and modification of the existing structure in violation of the terms and conditions of the mortgage.”

“9. Defendants’ modifications improved the subject property by painting landscaping, and updates to the structure.” Exhibit 1 at 3-4, ROA Part 1, Doc. No. 220, pg. 2713-2714.

On June 13, 2008, the Court denied without prejudice Plaintiff’s March 11, 2008 Motion For Judgment As A Matter Of Law Or Alternatively New Trial On Issue Of Defendant’s July 6th, 2006 Counterclaim For Fraud And Misrepresentation because Plaintiff’s Motion was “filed prior to entry of Judgment under Haw. R. Civ. Pro. 59.”³⁰

On June 26, 2008, Plaintiff filed a Notice Of Resubmission Of Plaintiff’s Motion For Judgment As A Matter Of Law Or Alternatively New Trial On Issue Of Defendant’s July 6th, 2006 Counterclaim For Fraud And Misrepresentation. This motion was the same Motion as was filed on March 13, 2008. On July 9, 2008, Defendants filed an Opposition to several motions that included, *inter alia*, opposition to Plaintiffs’ Notice of Resubmission of Plaintiffs Motion for judgment as a Matter of Law or Alternatively New Trial based it being “untimely and without merit” and because it “does not respond to what the Court asked [Plaintiff’s attorney] Mr. Phelan to do [which was to comment on the Court’s draft Findings of Fact and Conclusions of Law]”. ROA Part 1, 2954-2956. On July 17, 2008, the Court filed an Order “Withdrawing Notice of Resubmission of Plaintiff’s Motion For Judgment As A Matter Of Law Or Alternatively New Trial On Issue Of Defendant’s July 6th, 2006 Counterclaim for Fraud and Misrepresentation filed on June 26, 2008”, allowing Plaintiff to withdraw the Motion “without prejudice.” ROA Part 1, Doc. 245 at pp. 3113-3114.

³⁰ Note this June 13, 2008 Court Order is mislabeled as “Order Denying Plaintiff’s Motion To Alter Or Alternatively New Trial On Issue Of Defendants’ July 6, 2006 Counterclaim For Fraud And Misrepresentation”. Plaintiffs’ March 11, 2008 motion was a “Motion For Judgment As A Matter Of Law Or Alternatively New Trial On Issue Of Defendant’s July 6th, 2006 Counterclaim For Fraud And Misrepresentation” as is discussed in the text of this June 13, 2008 Court Order. ROA Part 1, Doc. No. 240, pp. 2809-2810

On July 22, 2008 the Court filed its Final Judgment. With respect to damages the Court upheld the Jury award for \$200,000.00 stating:

Pursuant to jury's verdict, judgment for monetary damages is entered in favor of Defendants HOROWITZ in the amount of TWO HUNDRED THOUSAND DOLLARS and NO/100 (\$200,000.00) and against Plaintiff LEE.³¹

A week later, on July 29, 2008, Plaintiff re-filed his Notice Of Resubmission Of Plaintiff's Motion For Judgment As A Matter Of Law Or Alternatively New Trial On Issue Of Defendant's July 6th, 2006 Counterclaim For Fraud And Misrepresentation" pursuant to HRCF Rules 50 and 59. ROA Part 1, Doc. No. 248, pg. 3143. This resubmitted motion was initially filed on March 13, 2008 and on June 26, 2008. ROA Part 1, Doc. No. 209, pg. 2543 and Doc. No. 241, pg. 2811.

Reversing its previous denials, on October 15, 2008, the Circuit Court granted Plaintiffs' HRCF Rule 50 Motion for a Judgment as a Matter of Law. This October 15, 2008 Order reversed the Court's July 22, 2008, Final Judgment on the issue of whether Plaintiffs committed fraud on the grounds that "Defendants and Counterclaimants' failed to plead fraud or misrepresentation as to the sale of the property with particularity." The Court did not however reverse the award of damages. ROA Part 3, Doc. No. 0382, pp. 678-680. Plaintiff did not seek an amendment of this October 15, 2008 Motion on the grounds of not having also reversed on the issue of the award of damages to Defendants.

Thereafter, on February 23, 2009, the Court amended it's Final Judgment:

"As to the allegation of fraud, paragraph 13 of the Complaint for Foreclosure . . . pursuant to the Order Granting Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on the issue of Defendant's July 6th, 2006 Counterclaim for Fraud and Misrepresentation, **filed** on October 15, 2009, judgment is entered in favor of Plaintiff LEE and against Defendants HOROWITZ." **Exhibit 3** Amended Final Judgment ROA Part 2, Doc. No. 308, pp. 443-445, ¶ 4.

The Court did not however modify or vacate its award of damages to Defendants.

³¹ The Court also found: "4. As to the allegation of fraud, paragraph 13 of the Complaint for Foreclosure filed June 15, 2005, pursuant to the jury's verdict, judgment is entered in favor of Defendants HOROWITZ against Plaintiff LEE as the jury found the fraudulently altered Agreement for Closing was not the legal cause of Plaintiff LEE's losses."

On March 5, 2009, pursuant to HRCF Rule 59, Plaintiff filed a “Motion to Alter and Amend Final Judgment”, moving for the Court to vacate the award of damages to Defendants. ROA Part 2, Doc. No. 310, pg. 447. On, March 19, 2009 Defendants filed their opposition (Doc. No. 312, pg. 471). On April 27, 2009, the Court summarily denied the Motion to Alter or Amend Final Judgment. **Exhibit 11**, ROA Part 2, Doc. No. 318, pg. 551.

Again on May 21, 2009 Plaintiff filed a “Motion for Correction of Judgment” pursuant to HRCF Rule 60(a) “Clerical Mistakes seeking to vacate the award of damages.” (ROA Part 2, Doc. No. 321, pg. 589) Plaintiff’s Motion was opposed by Defendants on June 9, 2009 (ROA Part 2, Doc. No. 322, pg. 649.), and denied by the Court on June 15, 2009 noting that Plaintiff had filed an appeal in this case on May 21, 2009. (ROA Part 2, Doc. No. 324, pg. 660.)

Then on June 19, 2009, Attorney Paul Sulla purportedly on behalf of Plaintiff Lee filed another motion, now under HRCF Rule 60(b) entitled “Motion to Modify Order Haw. R. Civ. P. 60(b),” filed only a few days before Plaintiff Lee’s death on June 27, 2009. (ROA Part 2, Doc. No. 325, pg. 662.) This time the Court reversed its previous orders and modified its previous June 15, 2009 HRCF Rule 60 Order, now instead granting Plaintiff Lee’s “Motion to Modify Order Haw. R. Civ. P. 60(b),” thereby vacating the Court’s previous award of \$200,000.00 damages to Defendants:

IT IS HEREBY ORDERED that the Plaintiff’s Motion to Modify Order Haw. R. Civ. P. 60(b) filed June 19, 2009, is GRANTED [vacating the award of damages]. The court acknowledges the trial court retains jurisdiction to amend its own judgments under HRCF Rule 60(a) even after a notice of appeal is filed, until an appeal is docketed. The Order of June 15, 2009 is hereby modified and DENIES Plaintiff’s Rule 60(a) Motion for Correction of Judgment filed May 21, 2009, because Plaintiff sought a more substantive change than correction of a clerical error under HRCF R. 60(a).” ROA Part 2, Doc. No. 326, at 721.

3. DISCUSSION: Even assuming Defendants’ Counterclaim for misrepresentation and fraud was not pled with sufficient particularity, the lower court erred in granting Plaintiffs’ post verdict HRCF Rule 50 Motion For Judgment as a Matter of Law. Plaintiff never made a HRCF Rule 50(a) MRML motion at the close of the evidence prior to submission of the case to the jury, and instead first made a MJML on March 11, 2008, that is, subsequent to the filing of the jury verdict on February 21, 2008. Having failed to comply with the prerequisite of having made a Motion for Judgment as a Matter of Law HRCF Rule 50(a) at the close of the evidence in the trial by

jury, Plaintiff was precluded from making a post judgment HRCF Rule 50 motion. All of Plaintiff's repeated post-verdict MJMLs should have been denied, regardless of whether they were made before or after the Final Judgment was filed.

Defendants' Opposition filed on March 24, 2008 to the MJML (ROA Part 1, Doc. No. 0215, pp. 2683-1684) made clear that Plaintiff had not complied with the requirements under HRCF Rule 50 for making a post-verdict MRML.

As argued in Defendants' Opposition, at that point the Court should have denied Plaintiff's March 11, 2008, original MJML with prejudice. Likewise, all of Plaintiff's Notices of Resubmission of the MJML should have been denied "with prejudice", regardless of whether they were filed before or after the filing of the Final Judgment. YET on October 15, 2008, the Court instead granted Plaintiffs' MJML. In doing so the Court ignored that a post-verdict MJML is only a renewing motion that must have been precedent by a MJML made prior to submission of the case to the jury.³² In other words, the Court improperly treated a Rule 50 MJML as a

³² It should also be noted that although Defendants' admit the counterclaim "Misrepresentation and Fraud" could have been written with more particularity, it is questionable this rationale for granting a MJML was appropriate – even had a pre-verdict MJML been timely made. The standard for granting a MJML is "... giving to the plaintiff's evidence all the value to which it is legally entitled, and indulging every legitimate inference which may be drawn from the evidence in plaintiff's favor, it can be said that there is no evidence to support a jury verdict in his favor." *Lussier v. Mau-Van Dev., Inc.*, 4 Haw. App. 359, 372, 667 P.2d 804, 815 (1983) (citations omitted) In this case there was sufficient notice to the Plaintiff of Defendants (Counterclaimants') fraud and misrepresentation issues relating to the sale of the property; sufficient evidence presented for the jury to decide, as it did, that Plaintiff Lee committed fraud. In fact, the sale was replete with Lee's fraud and misrepresentations first in order to obtain and retain the \$85,000 non-refundable deposit based on promises of cooperation including with regard to improvement on the property. The Plaintiff pledged, but failed to, treat Defendants amiably and to cooperate in construction of the pool and other constructions to improve the Property. (ROA Part 1. Doc. No. 001, pg. 93; Doc. No. 066, pg. 786 ¶ 2) Plaintiff also falsely warranted that the Property was "free of encumbrances," obviously not true as evidenced by Maise's intervention, encumbrances and liens on the Property. In fact Lee's filing of the Complaint in this case against the Defendant for mortgage incidentals such as failure to obtain permission to continue construction on improvements underway at the property that had been sold as a Bed & Breakfast, as well as for failure to maintain insurance on the Bed & Breakfast operation in a Lava 1 zone resulting from complaints Lee himself had made. (ROA Part 1 Doc No. 001, pp. 1254; Part 1 Doc No. 001, pp. 187-193; Part 1, Doc. No. 0146, pp. 1583-1608) Maise corroborated the Defendants evidence and testimony that Lee had a pattern of defrauding buyers, concealing encumbrances and liens, and selling the same Property to Maise without

appropriate post-Final Judgment motion.

It was on the basis of the Court's October 15, 2008 Order granting Plaintiff's resubmitted "Motion For Judgment As A Matter Of Law Or Alternatively New Trial On Issue Of Defendant's July 6th, 2006 Counterclaim For Fraud And Misrepresentation", that the lower Court, thereafter eventually erred in granting Plaintiff's HRCF Rule 60(b) "Motion to Modify Order" to vacate Defendants' award of \$200,000 in damages.

Accordingly this Appellate Court is asked to find that the lower Court erred in granting Plaintiff's MJML, and, therefore, erred in vacating the award of \$200,000 in damages to defendants. By reversing the lower Court on the issue of the \$200,000 damage award to Defendants, effectively, the amount of the final payment due on the subject Mortgage would be reduced by that \$200,000.00, leaving a final principal payment due of \$150,000 on the original \$350,000 Mortgage. Given that Defendant paid the full remainder due on the mortgage of \$150,000, along with the outstanding interest in February of 2009, this matter should be either dismissed with prejudice, or remanded to the Circuit Court so that appropriate arrangements can be made for the Mortgage Deed on the subject Property to be released to Defendant-Appellants.

B. ISSUE: Whether Substitute Plaintiff Overseer Hester Has Standing To Stand In The Shoes Of Original Plaintiff Lee, As The Successor Mortgagee

1. APPLICABLE LEGAL FRAMEWORK: Standing, as a matter of jurisdiction, may be raised at any time including on appeal. *See e.g. Mortgage Electronic Registration Systems, Inc. v Wise* 130 Haw 11, 17, 304 P.3d 1192, 1198 (2013) ("A lack of standing could have been raised at any time.") *See also Kaho'ohanohano v. State*, 114 Haw. 302, 324, 162 P.3d 696, 718 (2007) ("...standing is a jurisdictional issue that may be addressed at any stage of a case. . . .") (citations omitted) "[Standing] is the doctrine that a plaintiff must assert its own legal rights and may not assert the legal rights of others." *In re Veal*, 450 BR 897 – Bankr. Appellate Panel (9th Cir. 2011). Standing is a requirement of the plaintiff, and not of a defendant defending against the claims raised by the plaintiff. In a foreclosure case the plaintiff must have sufficient interest in the mortgage to have suffered an injury from the default, and must prove the right to assert

disclosing a federal lien for marijuana trafficking. (ROA Part 1 Doc No. 113, pg. 1254). (ROA Part 1, Doc. No. 0199, pg. 2413).

another's property interest. *Deutsche Bank v. Williams* 2112 WL1081174 (Civil No. 11-00632 (D. Haw. March 29, 2012) (not reported in F. Supp. 2d).

Pursuant to HRCP Rule 17 "Parties Plaintiff Defendant; Capacity" "Every action shall be prosecuted in the name of the real party in interest." In the event of death of a party, HRCP 25 "Substitution of Parties" subsection (a) (1) provides: "If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper party". Ordinarily the "proper party" is the decedent's court appointed personal representative. *Roxas v. Marcos*, 89 Haw. 91, 117-122, 969 P.2d 1209, 1135-1240 (1998) ("... we hold, as a general rule, that an heir of an undistributed estate, who has not been judicially appointed as the personal representative of a decedent's estate, is not a 'proper party' for substitution pursuant to HRCP Rule 25(a)(1).") Even an heir who has not been appointed as the personal representative is generally not a "proper party" for purposes of substitution under HRCP 25(a)(1). *Id.* 89 Haw at 122, 969 P.2d at 1240.

2. RELEVANT FACTS: Plaintiff Lee died on June 27, 2009. ROA Part 2, Doc. No. 325B at 677-(685)-710. The Court granted Plaintiff's Application for Substitution on August 9, 2009. Exhibit 14. The July 2009 Application for Substitution of Plaintiff Lee by Substitute Plaintiff Jason Hester was supported by Attorney Paul Sulla's Declaration which referred to Jason Hester as Lee's nephew – a claim of kinship that was later established to be false.³³ Attorney Sulla's Declaration also relied on a questionable assignment of the subject Mortgage from Plaintiff Lee to the Gospel of Believers, with Hester as Gospel of Believer's Successor Overseer. At the time of the attempted assignment on May 15, 2009, Gospel of Believers as a corporate entity did not yet exist, that is, Gospel of Believers was not yet incorporated with the State and the assignment void ab initio. Further, Gospel of Believer's subsequent incorporation, registration with the State on May 28, 2009, was based on incorporation documents that were "not authentic". The Articles

³³ Moreover, at the time of the substitution of Lee by Hester, Hester was not a Court appointed personal representative nor an heir of the Estate of Cecil Loran Lee. It was more than two-and-a-half years following Lee's death and the Substitution of Plaintiff Lee by Substitute Plaintiff Hester, that in February 2012, attorney Sulla filed with the Court a probate application (3LP09-1-0166) for Jason Hester to be appointed the personal administrator for The Estate of Cecil Loran Lee. At that time Hester was instead represented as Lee's "Grandnephew," according to attorney Sulla based on information he obtained from "talk[ing] to his mother's grandmother." However, upon investigation, Defendants submitted evidence that there does not appear to be *any* kinship relationship between Hester and Lee. ROA Part 2, Doc. No. 0347, pg. 1130 ¶¶ "c" and "d".

of Incorporation contained one or more unauthentic signatures of Lee along with an altered date, as was later established including by a handwriting expert's analysis, submitted by the Defendants on June 29, 2015, in Motion for Reconsideration or in the Alternative For New Trial.³⁴ ROA Part 3, Doc. No. 379, pg. 569, lines 1-3.

On April 26, 2013 in his "Motion to Void or Amend Final Judgments Due to Fraud Upon the Court, and Order Declaratory Relief to Quiet Title", Defendant Horowitz pointed out that Plaintiff was falsely representing his kinship relationship to original Plaintiff Lee, and that the May 2009 Assignment of Lee's interest in the subject Property to Gospel of Believers *falsely warranted* that: (a) no one other than Lee held any secured interest in the Mortgage, Notes and Property, in doing so omitting any mention of Defendants RBOD –Horowitz's Mortgage interest; and (b) that there was no default on the Mortgage, even though Lee had spent the previous four years in court pleading the opposite—that Horowitz had defaulted on the Mortgage. ROA Part 2, Doc. No. 0347, pp. 1124 ¶¶ 47-49

3. DISCUSSION: As made clear in *Roxas v. Marcos*, 89 Haw. 91, 117-122, 969 P.2d 1209, 1135-1240 (1998) there is a high bar to any proposed substitution of a deceased party by another who has not already been appointed the personal representative. In light of the: (1) false declaration that Hester was Lee's nephew, (2) unauthentic signature(s) and altered incorporation papers, (3) untimely assignments of the mortgage from Lee to Gospel of Believers, the question of Jason Hester standing should be addressed. Given these facts, it is difficult to imagine that Hester, as Overseer of Gospel of Believers, or as an individual, has a legitimate interest or equity in the Mortgage or Property.³⁵

Really, who is Jason Hester? Substitute Plaintiff Hester has never filed an affidavit, not even a declaration, and has never testified in Court. ROA - in its entirety. Instead Hester appears

³⁴ Evidence that this document had been "altered," and did not contain authentic signatures, was confirmed by forensic document examiner Beth Chrisman, who declared the document "as not authentic." ROA Part 3, Doc. No. 379, pg. 569, lines 1-3.

³⁵ Defendant-Appellants point out the recording in the Bureau of Conveyances Doc. No(s). 2011-083772 and 2011-083773, both dated June 14, 2011. Doc. No. 2011-083772 is the Bureau of Conveyances recording of the quitclaim deed from Hester as Overseer to Hester as an individual. Document No. 2011-083773 is the Bureau of Conveyances recording of Attorney Paul Sulla's mortgage "loan" to Hester transferring a mortgage security interest in the subject property from individual Jason Hester to Attorney Paul Sulla.

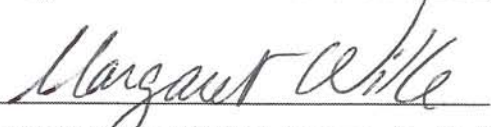
to be a judgment-proof shill continuing Plaintiff Lee's convoluted scheme to defraud the court and Defendants out of their money and the Property.³⁶ As mentioned above, it is Secured Party Attorney Paul Sulla who is positioned to take possession of the Property if Plaintiff Hester prevails in this case, by way of Attorney Sulla later foreclosing on Plaintiff Hester, most likely for some alleged incidental such as failure to pay taxes.³⁷

VIII. CONCLUSION

For the above reasons, this Court is asked to reverse the lower court's vacation of Defendants' award of \$200,000 damages. Given that the subject mortgage was for \$350,000, that sum would be reduced by the \$200,000 damage award, which along with the \$150,000 balloon payment in principal made by Defendant Horowitz in February of 2009 (plus outstanding interest) means the mortgage was paid off in full as of February 2009 [$\$350,000 - \$200,000 - \$150,000 = 0$ remainder due on the \$350,000 Mortgage].

For the reasons stated above, this Court is also asked to address whether Plaintiff Jason Hester as Overseer of the Gospel of Believers, or as an individual, has standing to stand in the shoes of original Plaintiff Cecil Loran Lee, as successor mortgagee, or alternatively this Appellate Court may remand the issue of standing to the lower court for an evidentiary hearing.

Dated: Waimea, HI, 96743 Dec. 9, 2015


MARGARET WILLE, Attorney for Defendant-
Appellants Leonard G. Horowitz And The Royal
Bloodline Of David

Hester et al vs Horowitz; et al, ICA No. CAAP-15-0000658 *Appellants Opening Brief*

³⁶ The Court is asked to take note of the 2014 filed case *Hester vs Horowitz and Kane*, Civ. No. 14-1-0304, which is a quiet title action based on a 2010 non-judicial foreclosure action commenced by Attorney Sulla on behalf of Plaintiff Hester, as an individual, concerning payment of the same mortgage for the same property involving the same parties or their privies while this judicial action is still pending. Defendants Horowitz and Kane have asked the Circuit Court to stay that proceeding pending the outcome of this earlier filed judicial foreclosure case.

³⁷ Given that on June 14, 2011, Jason Hester as Overseer of the Gospel of Believers conveyed whatever interest he claims in the subject mortgage to himself as an individual and simultaneously conveyed a mortgage security interest in the subject property to Paul Sulla, consideration should be given to substituting Plaintiff Hester as Overseer of Gospel of Believers with Jason Hester as an individual, and also considering whether Attorney Paul Sulla should be joined as an indispensable Party.

APPENDIX

1) Rule 17. PARTIES PLAINTIFF AND DEFENDANT; CAPACITY.

(a) Real party in interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in its own name without joining with it the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000.)

2) Rule 25. SUBSTITUTION OF PARTIES.

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district. Unless the motion for substitution is made not later than 120 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(Amended May 15, 1972, effective July 1, 1972; further amended July 26, 1990, effective September 1, 1990; further amended December 7, 1999, effective January 1, 2000.)

3) Rule 50. JUDGMENT AS A MATTER OF LAW IN JURY TRIALS; ALTERNATIVE MOTION FOR NEW TRIAL; CONDITIONAL RULINGS.

(a) Judgment as a matter of law.

(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party

with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

(2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

(b) Renewing motion for judgment after trial; alternative motion for new trial. If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after entry of judgment - and may alternatively request a new trial or join a motion for a new trial under Rule 59. In ruling on a renewed motion, the court may:

- (1) if a verdict was returned:
 - (A) allow the judgment to stand,
 - (B) order a new trial, or
 - (C) direct entry of judgment as a matter of law; or
- (2) if no verdict was returned:
 - (A) order a new trial, or
 - (B) direct entry of judgment as a matter of law.

(c) Granting renewed motion for judgment as a matter of law; conditional rulings; new trial motion.

(1) If the renewed motion for judgment as a matter of law is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered shall be filed no later than 10 days after entry of the judgment.

(d) Same: Denial of motion for judgment as a matter of law. If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000; further amended effective January 3, 2000.)

4) Rule 59. NEW TRIALS; AMENDMENT OF JUDGMENTS.

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the State. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for motion. A motion for a new trial shall be filed no later than 10 days after entry of the judgment.

(c) Time for serving affidavits. When a motion for new trial is based on affidavits, they shall be filed with the motion. The opposing party has 10 days after service to file opposing affidavits, but that period may be extended for up to 20 days, either by the court for good cause or by the parties' written stipulation. The court may permit reply affidavits.

(d) On court's initiative; notice; specifying grounds. No later than 10 days after entry of judgment the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial, for a reason not stated in the motion. When granting a new trial on its own initiative or for a reason not stated in a motion, the court shall specify the grounds in its order.

(e) Motion to alter or amend judgment. Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

(Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000.)

5) Rule 60. RELIEF FROM JUDGMENT OR ORDER.

(a) Clerical mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(Amended December 7, 1999, effective January 1, 2000; further amended May 30, 2006, effective July 1, 2006.)

STATEMENT OF RELATED CASES

- 1) *Philip B. Maise v. Cecil Loran Lee*, Civ. No. 01-01-0444 (Fraud and Misrepresentation in the sale of the property) (Appellate No. 28012; 2008, Haw. App. Lexis 225; Decided April 30, 2008). Decided in Maise's favor. Award of approximately \$178,000, resulted in Nakamura Court Garnishment Orders on August 4, 2005 and February 24, 2009, encumbering the subject mortgage. Garnishment Orders resulted from Maise's successful litigation against Lee for fraud in a prior attempted sale of the same property based on Lee's non-disclosure of a federal lien on the property resulting from outstanding drug trafficking charges against Lee.
- 2) *Lee v. Maise* Civ. No. 05-1-0235 (Fraud) Filed July 29, 2005, and Final Judgment filed Oct. 25, 2006, in Maise's favor; resulted in an additional award to Maise of approximately \$35,000.00. .
- 3) *Horowitz et. al. vs. Lee*, Civ. No. 04-1-0339 (Breach of Contract) filed Oct. 14, 2004. Dismissed without prejudice for Plaintiff pro se to obtain licensed counsel. (Contrary to Plaintiff Lee's position in the instant case, in this 2004 Breach of Contract case Plaintiff Lee submitted as true and correct the version of the Agreement for Closing Escrow submitted by Defendant Horowitz, that Lee here claimed was fraudulently altered by Defendant Horowitz.)
- 4) *Horowitz et. al. vs. Lee*, Civ. No. 09-1-0178 (Compliance with Mortgage Release) and conveyance of title following balloon payment, filed on-or-about, May 21, 2009. Lee evaded service and the case was dismissed.
- 5) *Hester vs. Royal Bloodline of David*, Civ. No. 3RC-11-1-662 (Eviction Complaint) filed 6-21-11; dismissed 2-13-12, for lack of jurisdiction over title dispute.
- 6) *Hester vs. Horowitz et al.*, Civ. No. 3RC 14-1-466 (Ejectment) filed 4-25-14; dismissed 8-11-14, for a second time for lacking jurisdiction.
- 8) *Hester vs. Horowitz et. al.*, Civ. No. 14-1-0304 (Quiet Title; Summary Ejectment). Plaintiff prevailed in oral minute order; Defendant has requested stay pending appeal in the instant case.
- 9) *Probate of Cecil Loran Lee* 3LP09-1-0166, heard on December 11, 2009, at which Mr. Sulla reported as making "Statement regarding assets known to him that Cecil Lee Doesn't own anymore. Due to foreclosure, no judgment can be enforced and Mr. Lee is certainly out of it."
- 10) *Horowitz and Kane vs. Sulla Jr. et. al.*, (Malicious Prosecution) Civ. No. 15 00186 JMS-BMK, stayed pending final outcome of Civ. No. 05-1-0196 and Civ. No. 14-1-0304.
- 11) *Sulla Jr. and Sulla, III vs. Horowitz* Civ. No. 3CC14-1-000173, (Non-consensual commercial liens) decided in Plaintiff's favor, now under appeal, No. CAAP 15-0000094.
- 12) *Sulla, Jr. and Sulla, III vs. Horowitz and Kane*, Civ. No. 12-1-0417 filed July 20, 2012 (Defamation) SLAPP lawsuit in which Defendants prevailed upon dismissal without prejudice on August 28, 2014.