

Paul J. Sulla, Jr. (SBN 5398)
Attorney at Law
P.O. Box 5258
Hilo, HI 96720
Telephone: 808/933-3600
Email: psulla@aloha.net
Attorney for Plaintiff JASON HESTER

FILED

2018 JUN 22 AM 8:30

CLERK
COURT

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
FOR THE STATE OF HAWAII

JASON HESTER,

Plaintiff

v.

LEONARD G. HOROWITZ,

Defendant.

CIVIL NO.: 17-1-407
(Other Civil Action)
Fmrly Civ. No. 1-CC-16-1-1442
(venue changed to 3rd Cir.) and
USDC Haw. Civ. No. 1:1777-cv-14-LEK
(remanded)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER GRANTING
PETITIONER'S MOTION FOR
JUDGMENT ON THE PLEADINGS, OR
IN THE ALTERNATIVE, FOR
SUMMARY JUDGMENT ON
AMENDED PETITION TO EXPUNGE
DOCUMENTS RECORDED IN THE
BUREAU OF CONVEYANCES OF THE
STATE OF HAWAII**

Hearing Date: June 1, 2018

Hearing Time: 8:00 a.m.

Judge: Hon. Henry T. Nakamoto

Trial Date: None set

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING
PETITIONER'S MOTION FOR JUDGMENT ON THE PLEADINGS, OR IN THE
ALTERNATIVE, FOR SUMMARY JUDGMENT ON AMENDED PETITION TO
EXPUNGE DOCUMENTS RECORDED IN THE BUREAU OF CONVEYANCES OF
THE STATE OF HAWAII**

1

EXHIBIT "1"

I hereby certify that this is a full, true and correct
copy of the original on file in this office.

Clerk, Third Circuit Court, State of Hawaii pg. 1

Plaintiff JASON HESTER submits the following proposed Findings of Fact and Conclusions of Law following a hearing held on June 1, 2018 before the Honorable Henry T. Nakamoto, Judge of the above-entitled Court. Attorney Paul J. Sulla, Jr. appeared on behalf of the Plaintiff, who was present, and pro se Defendant Leonard G. Horowitz appeared by phone. No other parties or attorneys appeared at trial in this matter. The Court, having considered the testimony and exhibits of the parties at hearing and the arguments of counsel, being fully advised in the premises and for good cause therefore, hereby finds, concludes and orders as follows:

FINDINGS OF FACT

1. To the extent that any of the following Findings of Fact shall be determined to be Conclusions of Law, they shall be deemed as such.
2. Plaintiff Jason Hester is a natural person and a resident of Hawaii County, Hawaii.
3. Defendant Leonard G. Horowitz is a natural person and is now a resident of Las Vegas, Nevada, but was previously a resident of the County of Honolulu, Hawaii.
4. The Nonconsensual Common Law Liens which are the subject of this lawsuit were filed in the State of Hawaii Bureau of Conveyances affecting the subject real property parcels located at Kalapana-Pahoa Road, Pahoa, Hawaii County, Hawaii 96778-7924 (the "Subject Properties") which bear the tax map keys of TMK (3) 1-3-001-043 and TMK (3) 1-3-001-049 and this Court has jurisdiction and venue over this matter.
5. On or about October 6, 2013, Respondent caused to be filed with the State of Hawaii Bureau of Conveyances a nonconsensual common law lien, entitled "AFFIDAVIT OF FIRST LIEN OF \$7,500,000.00 ON REAL PROPERTY TMK: (3) 1-3-001-043 and 049," recorded as Document No. A-5300768 (hereinafter "10/03/2013 Lien").

6. On or about June 6, 2016 at 3:29 p.m., Respondent caused to be filed with the State of Hawaii Bureau of Conveyances a document entitled "Affidavit of Leonard G. Horowitz (Lis Pendens on Real Property)", recorded as Document No. A-60010681, (hereinafter "06/06/2016 Lien"), affecting the Subject Properties.

7. At the time of the filing of the Petition, these TMKS were owned solely by the Petitioner, Jason Hester, and title to said properties has been quieted by Final Judgement in Civ. No. 14-1-304, dated December 30, 2015, from the Third Circuit Court.

8. Petitioner Jason Hester continues to hold an interest in the subject property as a member of Halai Heights, LLC, the current title holder.

9. Neither the 10/03/2013 Lien and 06/06/2016 Lien were accompanied by a certified order from a state or federal court authorizing their filing.

10. Both liens affecting the Subject Properties include claims that are false and/or misleading.

11. No statutory, other legal authority, or order of the court is claimed or mentioned in the document to authorize the filing of these liens.

12. On or about March 14, 2014, Respondent Horowitz filed a similar lien against properties belonging to Plaintiff's counsel and his son. In Civ. No. 14-1-0173, Plaintiff's counsel and his son filed a Petition in the Third Circuit Court of the State of Hawaii to expunge that lien, resulting in a final judgment in favor of the Petitioners and expungement of the lien.

CONCLUSIONS OF LAW

To the extent that any of the following Conclusions of Law shall be determined to be Findings of Fact, they shall be deemed as such.

1. This Court has jurisdiction of the parties and subject matter of this action, and venue is proper in this Circuit.

2. In Count I, Plaintiff states a claim for relief for violation of H.R.S. § 507D.

3. Pursuant to H.R.S. § 507D-5(b):

Any claim of nonconsensual common law lien against a private party in interest shall be invalid unless accompanied by a certified court order from a state or federal court of competent jurisdiction authorizing the filing of consensual common law lien.

4. No certified court order from any state or federal court accompanied the Subject Liens.

5. The 10/03/2013 Lien and the 06/06/2016 Lien are nonconsensual common law liens on the Subject Properties within the meaning of Haw. Rev. Stat. § 507D, as neither document states a claim under a specific statute for which a lien is allowed, neither document was not consented to by Petitioner, and no court allowed for the filing of such liens.

5. The 10/03/2013 Lien and the 06/06/2016 Lien constitute "Liens" within the meaning of Haw. Rev. Stat. § 507D-2 and are a clouds on title and encumbrances on the Subject Properties.

6. This Court finds that the 10/03/2013 Lien and the 06/06/2016 Lien are both invalid and of no legal effect. Respondent did not have legal authority to vest any right, title or interest to the Subject Properties, which Respondent does not own, and these documents Respondent recorded or caused to be recorded were without authority or basis in law or fact.

7. Pursuant to H.R.S. § 507D-7, the Circuit Court find both the 10/03/2013 Lien and the 6/6/16 Lien invalid and hereby orders the registrar to expunge the instruments purporting to create them.

8. This court finds that the filing of the 10/03/2013 Lien was frivolous and filed with no legal basis whatsoever, merely with the intent to harass Petitioner and prevent him from selling the Subject Properties and to punish Jason Hester, who is adverse to Respondent in separate legal matters.

9. This court finds that the filing of the 06/06/2016 Lien was frivolous and filed with no legal basis whatsoever, merely with the intent to harass Petitioner and prevent him from selling the Subject Properties and to punish Jason Hester, who is adverse to Respondent in separate legal matters.

10. There exists no material issues of fact regarding the filing of the two liens.

11. Because the filing of the purported liens are frivolous and because these are subsequent violations of HRS § 507D by the Respondent against Petitioner and his counsel, Petitioner is entitled to an award of \$10,000.00 which represents \$5,000.00 for each invalid lien filed, pursuant to H.R.S. § 507D-7(a) plus attorneys' fees and costs.

12. Because the filing of the Liens were frivolous and because there exists a prior violations of HRS § 507D by the Respondent, Petitioner is entitled to injunctive relief against Respondent Horowitz to preclude further filings of any kind with the registrar for a period of five years pursuant to H.R.S. § 507D-7(b).

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the "Affidavit of Leonard G. Horowitz (Lis Pendens on Real Property)", recorded as Document No. A-60010681 shall be expunged, stricken and released from the Bureau of Conveyances as an encumbrance on the Property, *nunc pro tunc*;

2. That the "AFFIDAVIT OF FIRST LIEN OF \$7,500,000.00 ON REAL PROPERTY TMK: (3) 1-3-001-043 and 049," recorded as Document No. A-5300768 shall be expunged, stricken and released from the Bureau of Conveyances as an encumbrance on the Property, *nunc pro tunc*;

3. Any and all other documents which are recorded in the Bureau of Conveyances by Respondent subsequent to the filing of this Petition which affect the Subject Properties and are filed without a basis in law or fact are also hereby expunged, *nunc pro tunc*;

4. Respondent shall pay Petitioner his actual damages, costs and reasonable attorneys' fees;

5. The 10/03/2013 Lien, 06/06/2016 Lien, and any other documents filed in the Bureau of Conveyances by Respondent subsequent to the filing of this Petition are hereby deemed frivolous;

6. This Order shall act as an injunction prohibiting Respondent from further filings of any kind with the State of Hawaii Bureau of Conveyances Registrar for a period of five years from the date of this Order pursuant to H.R.S. § 507D-7(b); and

7. There is no just reason for delay and this order shall be considered a judgment against Respondent Leonard G. Horowitz.

DATED: Hilo, Hawaii, JUN 22 2018

HENRY T. NAKAMOTO (SEAL)

JUDGE OF THE ABOVE-ENTITLED COURT

Hester v. Horowitz, Civ. No. 17-1-407

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PETITIONER'S MOTION FOR JUDGMENT ON THE PLEADINGS, OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT ON AMENDED PETITION TO EXPUNGE DOCUMENTS RECORDED IN THE BUREAU OF CONVEYANCES OF THE STATE OF HAWAII

Paul J. Sulla, Jr. (SBN 5398)
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Email: psulla@aloha.net
Attorney for Plaintiff JASON HESTER

FILED
CIRCUIT COURT OF THE
THIRD CIRCUIT
STATE OF HAWAII

2018 JUL 26 PM 2:32

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

CLERK T. KRATKE

FOR THE STATE OF HAWAII

JASON HESTER,

Plaintiff

v.

LEONARD G. HOROWITZ,

Defendant.

CIVIL NO.: 17-1-407

(Other Civil Action)

Fmrly Civ. No. 1-CC-16-1-1442

(venue changed to 3rd Cir.) and

USDC Haw. Civ. No. 1:1777-cv-14-LEK

(remanded)

FINAL JUDGMENT

Hearing Date: June 1, 2018

Hearing Time: 8:00 a.m.

Judge: Hon. Henry T. Nakamoto

Trial Date: None set

FINAL JUDGMENT

In accordance with Rule 58 of the Hawaii Rules of Civil Procedure, and pursuant to the Court's **ORDER GRANTING PETITIONER'S MOTION FOR JUDGMENT ON THE PLEADINGS, OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT ON AMENDED PETITION TO EXPUNGE DOCUMENTS RECORDED IN THE BUREAU OF CONVEYANCES OF THE STATE OF HAWAII** filed herein, Summary Judgment is hereby entered in favor of Petitioner as to the **AMENDED PETITION TO EXPUNGE DOCUMENTS RECORDED IN THE BUREAU OF CONVEYANCES OF THE STATE OF HAWAII** herein.

1

EXHIBIT "2"

I hereby certify that this is a full, true and correct copy of the original on file in this office.

Clerk, Third Circuit Court, State of Hawaii

JS Exhibits pg. 7

GOOD CAUSE APPEARING THEREFORE, it is hereby ordered, adjudged and decreed:

1. The Plaintiffs' **MOTION FOR JUDGMENT ON THE PLEADINGS, OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT ON AMENDED PETITION TO EXPUNGE DOCUMENTS RECORDED IN THE BUREAU OF CONVEYANCES OF THE STATE OF HAWAII** is granted.

2. That the "AFFIDAVIT OF FIRST LIEN OF \$7,500,000.00 ON REAL PROPERTY TMK: (3) 1-3-001-043 and 049," recorded on or about October 6, 2013 in the Bureau of Conveyances for the State of Hawaii as Document No. A-5300768 be expunged, stricken and as an encumbrance on the Property, *nunc pro tunc*.

3. That the "Affidavit of Leonard G. Horowitz (Lis Pendens on Real Property)" recorded on or about June 6, 2016 in the Bureau of Conveyances for the State of Hawaii as Document No. A-60010681 be expunged, stricken and as an encumbrance on the Property, *nunc pro tunc*.

4. That the "AFFIDAVIT OF FIRST LIEN OF \$7,500,000.00 ON REAL PROPERTY TMK: (3) 1-3-001-043 and 049," recorded on or about October 6, 2013 in the Bureau of Conveyances for the State of Hawaii as Document No. A-5300768 is found to be frivolous.

5. That the Affidavit of Leonard G. Horowitz (Lis Pendens on Real Property)" recorded on or about June 6, 2016 in the Bureau of Conveyances for the State of Hawaii as Document No. A-60010681," is found to be frivolous.

6. That any and all other documents which are recorded in the Bureau of Conveyances by Respondent subsequent to the filing of the subject Petition which affect the

Subject Properties and are filed without a basis in law or fact are also hereby expunged, *nunc pro tunc*;

7. That because the filing of the above liens are frivolous and because these are subsequent violations of HRS § 507D by the Respondent against Petitioner and his counsel, Petitioner is entitled to an award of \$10,000.00 which represents \$5,000.00 for each invalid lien filed, pursuant to H.R.S. § 507D-7(a) plus attorneys' fees and costs;

8. That Respondent shall pay Petitioner his costs and reasonable attorney fees in the amount of \$24,707.00 in fees and \$292.74 in costs for a total of \$24,999.74.

9. Total monetary judgment award under this judgment equals **\$34,999.74**.

10. That this Order shall act as an injunction prohibiting Respondent from further filings of any kind with the State of Hawaii Bureau of Conveyances Registrar for a period of five years from the date of this Order pursuant to H.R.S. § 507D-7(b); and

11. That this Court expressly directs that said Summary Judgment is entered as a Final Judgment in favor of Petitioner Jason Hester and against Respondent Leonard Horowitz as there is no just reason for delay pursuant to Rule 54(b) of the Hawaii Rules of Civil Procedure.

DATED: Hilo, Hawaii, JUL 26 2018, 2018.

HENRY T. NAKAMOTO (SEAL)

JUDGE OF THE ABOVE-ENTITLED COURT

Sulla v. Horowitz, CIVIL NO. 17-1-407, Third Circuit Court, State Of Hawaii
"FINAL JUDGMENT"

I hereby certify that this is
a true copy from the records
of the Bureau of Conveyances,

K. T. K.
Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

September 09, 2016 3:29 PM

Doc No(s) A-60960740



1 1/1 OFC
B-32865326

/s/ LESLIE T. KOBATA
ACTING REGISTRAR

Conveyance Tax: \$675.00

orig.

Regular System

After Recordation, Return by Mail (X) Pickup () To:

Paul J. Sulla, Jr.
PO Box 5258
Hilo, HI 96720

TOTAL NO. OF PAGES:

TITLE OF DOCUMENT:

WARRANTY DEED

PARTIES TO DOCUMENT:

GRANTOR: **JASON HESTER**, an individual, whose address is PO Box 748, Pahoa,
HI 996778

GRANTEE: **HALAI HEIGHTS, LLC**, a Hawaii limited liability company, whose
mailing address is P.O. Box 5258, Hilo, HI 96720

PROPERTY DESCRIPTION:

TAX MAP KEY: (3) 1-3-001-043/049

EXHIBIT "3"

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

JASON HESTER, an individual, whose mailing address is PO Box 748, Pahoa, Hawaii 96778, hereinafter referred to as the "**Grantor**", for and in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration paid by **HALAI HEIGHTS, LLC**, a Hawaii Limited Liability Company, whose mailing address is PO Box 5258, Hilo, Hawaii 96720, hereinafter referred to as "**Grantee**", receipt whereof is hereby acknowledged, does hereby grant, sell and convey unto the Grantee, all of said interest in that certain real property as particularly designated on the tax maps of the Third Taxation District, State of Hawaii, as **Tax Map Key (3) 1-3-001-043/049**, more particularly described in **Exhibit "A"** attached hereto and made a part hereof, subject to the encumbrances noted therein.

TOGETHER WITH ALL and singular the buildings, improvements, rights, tenements, easements, privileges, and appurtenances thereunto belonging, appertaining or held and enjoyed in connection therewith.

TO HAVE AND TO HOLD the same unto the Grantee, **as Tenant in Severalty**, and the Grantee's successors and assigns in fee simple forever.

AND THE SAID GRANTOR does hereby covenant with the Grantee that the Grantor is lawfully seised in fee simple of said granted premises and that the said premises are free and clear of all encumbrances made or suffered by said Grantor, except as aforesaid, and except for assessments for real property taxes. And the said Grantor further covenants and agrees that the Grantor has good right to sell

and convey the said premises in the manner aforesaid; that Grantor will **WARRANT AND DEFEND** the same unto the Grantee against the lawful claims and demands of all persons claiming by or through said Grantor, except as mentioned herein.

IT IS MUTUALLY AGREED that the terms "Grantor" and "Grantee," as and when used hereinabove or herein below shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, corporations or partnerships, and their and each of their respective successors in interest, heirs, executors, personal representatives, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more grantors, or by two or more grantees, all covenants of such parties shall be and for all purposes deemed to be their joint and several covenants.

IN WITNESS WHEREOF, the Grantor has executed these presents on the 6 day of September, 2016.

GRANTOR



JASON HESTER

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 10th day of September 2016, before me personally appeared **JASON HESTER**, GRANTOR, to me known to be the person described in and who executed the foregoing instrument, entitled Warranty Deed, dated September 6, 2016 consisting of 8 pages in the Third Circuit, and acknowledged that **HE** executed the same as **HIS** free act and deed.

Gloria Emery

Print Name: Gloria Emery
Notary Public, State of Hawaii
My commission expires: July 18, 2018



EXHIBIT "A"

-PARCEL FIRST:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 5005 to J. E. Elderts) situate, lying and being at Kamaili, District of Puna, Island and County of Hawaii, State of Hawaii, being LOT 15-D-1, being a portion of Lot 15, of the "Kamaili Homesteads" and thus bounded and described as per survey dated January 29, 2004:

Beginning at the west corner of this parcel of land, on the north boundary of Lot 2, Grant 4330 to C. L. Wight, and on the east side of Pahoa-Kalapana Road (Emergency Relief Project No. ER 4(1)), the coordinates of said point of beginning referred to Government Survey Triangulation Station "HEIHEIAHULU" being 6,281.64 feet north and 16,203.34 feet east and running by azimuths measured clockwise from true South:

1. 197° 55' 15" 958.02 feet along Pahoa-Kalapana Road (Emergency Relief Project No. ER 4(1));
2. 239° 28' 30" 326.15 feet along Pahoa-Kalapana Road (Emergency Relief Project No. ER 4(1)) and Lot 19, Grant 5661 to Chas. Elderts;
3. 304° 03' 30" 220.00 feet along Lot 19, Grant 5651 to Chas. Elderts;
4. 347° 21' 30" 54.00 feet along Lot 15-D-2 (Government Road);
5. 334° 00' 250.69 feet along Lot 15-D-2 (Government Road);
6. Thence along Old Pahoa-Kalapana Road and Remnant "A" (Portion of Old Pahoa-Kalapana Road) on a curve to the right with a radius of 1016.74 feet, the chord azimuth and distance being:
20° 16' 17" 719.46 feet;

7. 40° 59' 30" 275.69 feet along Remnant "A" (Portion of Old Pahoa-Kalapana Road);
8. 114° 43' 30" 494.98 feet along Lot 2, Grant 4330 to C. L. Wight to the point of beginning and containing an area of 16.276 acres, more or less.

-PARCEL SECOND:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 5005 to J. E. Elderts) situate, lying and being at District of Puna, Island and County of Hawaii, State of Hawaii, being REMNANT "A", being a portion of Old Pahoa-Kalapana Road at Kamaili and thus bounded and described:

Beginning at the southwest corner of this parcel of land, being also the south corner of Lot 15-D, portion of Grant 5005 to J. E. Elderts, and the northwest corner of Grant S-23,403 to AMFAC, on the north boundary of Lot 2, Grant 4330 to C. L. Wight, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Heiheiahulu" being 6,074.61 feet north and 16,652.94 feet east, and running by azimuths measured clockwise from true South:

1. 220° 59' 0" 275.69 feet along Lot 15-D, portion of Grant 5005 to J. E. Elderts;
2. Thence along Lot 15-D, portion of Grant 5005 to J. E. Elderts, on a curve to the left with a radius of 1016.74 feet, the chord azimuth and distance being:
208° 29' 45" 439.98 feet;
3. 286° 00' 50.00 feet along the remainder of Old Pahoa-Kalapana Road;
4. Thence along Lot 15-B and Lot-A, portions of Grant 5005 to J. E. Elderts, on a curve to the right with a radius of 1066.74 feet, the chord azimuth and distance being:
28° 29' 45" 461.62 feet;

5. 40° 50' 30" 261.10 feet along Lot 15-A, portion of Grant 5005 to J.E. Elderts;
6. 114° 43' 30" 52.08 feet along Grant S-23,403 to AMFAC to the point of beginning and containing an area of 36,140 square feet or 0.830 acre, as shown on Final Plat approved by Hawaii County Planning Director on January 27, 2004 as subdivision Number 7763

BEING THE PREMISES ACQUIRED BY QUITCLAIM DEED

GRANTOR: THE OFFICE OF OVERSEER, A CORPORATE SOLE AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaii corporation sole

GRANTEE: JASON HESTER, an individual

DATED: June 9, 2011

RECORDED: Document No. 2011-093772

SUBJECT TO THE FOLLOWING:

1. FINAL JUDGMENT

AGAINST: Leonard G. Horowitz, Sherri Kane, individually, Medical Veritas International, Inc. and Royal Bloodline of David, a Washington non-profit corporation

IN FAVOR OF: Jason Hester, individually

DATED: December 29, 2015

FILED: Circuit Court of the Third Circuit, State of Hawaii, #14-1-304

RECORDED: Document No. _____

2. AFFIDAVIT OF LEONARD G. HOROWITZ

DATED: June 6, 2016
RECORDED: Document No. A-60010681 on
June 6, 2016

3. NOTICE OF INVALID LIEN

AGAINST: Leonard G. Horowitz
IN FAVOR OF: Jason Hester, individually
REGARDING: Affidavit of Leonard G. Horowitz
RECORDED: Document No. A-60190688 on
June 24, 2016

END OF EXHIBIT "A"

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS



THE DIRECTOR'S OFFICIAL CERTIFICATION
APPEARS ON THE BACK OF THE FIRST PAGE OF THE
ATTACHED DOCUMENT.

(The name must contain the words Limited Liability Company or the abbreviation L.L.C. or LLC)

II

The mailing address of the initial principal office is:
PO BOX 5258, HILO, HI 96720 USA

III

The company shall have and continuously maintain in the State of Hawaii a registered agent who shall have a business address in this State. The agent may be an individual who resides in this State, a domestic entity or a foreign entity authorized to transact business in this State.

- a. The name (and state or country of incorporation, formation or organization, if applicable) of the company's registered agent in the State of Hawaii is:
PAUL J SULLA

(Name of Registered Agent)

(State or Country)

- b. The street address of the place of business of the person in State of Hawaii to which service of process and other notice and documents being served on or sent to the entity represented by it may be delivered to is:

106 KAMEHAMEHA AVE, HILO, HI 96720 USA

IV

The name and address of each organizer is:

PAUL J SULLA

~~PO BOX 5258~~, PO BOX 5258, HILO, HI 96720 USA

EXHIBIT "4"

Exhibits pg. # 9

02/01/201648616

FILED 02/01/2016 04:04 PM
Business Registration Division
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
State of Hawaii

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Business Registration Division
335 Merchant Street
Mailing Address: P.O. Box 40, Honolulu, Hawaii 96810
Phone No. (808) 586-2727

Internet FORM LLC-1
0201201648616 7/2010



ARTICLES OF ORGANIZATION FOR LIMITED LIABILITY COMPANY
(Section 428-203 Hawaii Revised Statutes)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned, for the purpose of forming a limited liability company under the laws of the State of Hawaii, do hereby make and execute these Articles of Organization:

I

The name of the company shall be:
HALAI HEIGHTS LLC

(The name must contain the words Limited Liability Company or the abbreviation L.L.C. or LLC)

II

The mailing address of the initial principal office is:
PO BOX 5258, HILO, HI 96720 USA

III

The company shall have and continuously maintain in the State of Hawaii a registered agent who shall have a business address in this State. The agent may be an individual who resides in this State, a domestic entity or a foreign entity authorized to transact business in this State.

- a. The name (and state or country of incorporation, formation or organization, if applicable) of the company's registered agent in the State of Hawaii is:
PAUL J SULLA

(Name of Registered Agent)

(State or Country)

- b. The street address of the place of business of the person in State of Hawaii to which service of process and other notice and documents being served on or sent to the entity represented by it may be delivered to is:

106 KAMEHAMEHA AVE, HILO, HI 96720 USA

IV

The name and address of each organizer is:

PAUL J SULLA

~~PO BOX 5258~~, PO BOX 5258, HILO, HI 96720 USA

Exhibits pg. # 10

02/01/201648616

I HEREBY CERTIFY that this is a true and correct copy of the official record(s) of the Business Registration Division.



Carlene P. Awas-Calden

DIRECTOR OF COMMERCE AND
CONSUMER AFFAIRS

DATE December 22, 2016

V

The period of duration is (check one):



At-will



For a specified term to expire on: _____

(Month Day Year)

VI

The company is (check one):

a. Manager-managed, and the names and addresses of the initial managers are listed in paragraph "c",
and the number of initial members are: 2

b. Member-managed, and the names and addresses of the initial members are listed in paragraph "c".

c. List the names and addresses of the initial managers if the company is Manager-managed, or
List the names and addresses of the initial members if the company is Member-managed.

PAUL J SULLA

PO BOX 5258, HILO, HI 96720 USA

VII

The members of the company (check one):



Shall not be liable for the debts, obligations and liabilities of the company.



Shall be liable for all debts, obligations and liabilities of the company.

Shall be liable for all or specified debts, obligations and liabilities of the company *as stated below*, and have consented in writing to the
adoption of this provision or to be bound by this provision.We certify, under the penalties set forth in the Hawaii Uniform Limited Liability Company Act, that we have read the above statements. I am authorized to
sign this Articles of Organization, and that the above statements are true and correct to the best of our knowledge and belief.

01

FEBRUARY 2016

Signed this

day of

PAUL J SULLA

(Type/Print Name of Organizer)

PAUL J SULLA

(Signature of Organizer)

(Type/Print Name of Organizer)

(Signature of Organizer)

Exhibits pg. # 12

cc: Margaret Wille, Esq.
Steven Whittaker, Esq.

2016 MAR -4 PM 2: 07

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

L. MOCK CHEW, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

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

Plaintiff,

vs.

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

Defendants,

and

PHILIP MAISE

Intervenor.

LEONARD GEORGE HOROWITZ,
JACQUELINE LINDENBACH HOROWITZ,
AND THE ROYAL BLOODLINE OF DAVID,

Counterclaimants,

vs.

JASON HESTER, OVERSEER THE
OFFICE OF OVERSEER, A CORPORATE
SOLE AND HIS SUCCESSORS,
OVER/FOR THE POPULAR ASSEMBLY

Civil No. 05-1-196

FIFTH AMENDED FINAL
JUDGMENT

Jury Trial: February 12-14, 2008
February 20-21, 2008

JUDGE RONALD IBARRA

I hereby certify that this is a full, true and correct
copy of the original on file in this office:

L. Mock Chew
Clerk, Third Circuit Court, State of Hawaii

OF REVITALIZE, A GOSPEL OF)
BELIEVERS,)
)
Counterclaim Defendant.)
_____)

FIFTH AMENDED FINAL JUDGMENT

This matter comes before the above-referenced Court pursuant to the Order Dismissing Appeal for Lack of Appellate Jurisdiction, E-filed into CAAP-15-0000658 on January 20, 2016 by the Intermediate Court of Appeals ("ICA"). The ICA in its January 20, 2016 Order, decided the Fourth Amended Final Judgment does not satisfy the requirements for an appealable judgment under HRS § 641-1(a), HRCP Rule 58, or the holding in Jenkins v. Cades Schutte Fleming & Wright, Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

On October 24, 2007, the *Order Granting Intervenor's Motion To Strike and/or Dismiss, With Prejudice Counterclaim/Cross Claim Against Intervenor Philip Maise Filed July 25, 2007, Filed On August 24, 2007*, was filed. On February 12, 2008 a jury trial in this matter commenced, finishing February 21, 2008. Pursuant to the *Order Awarding Attorney's Fees and Costs* filed March 25, 2008; the *Findings of Facts, Conclusions of Law, and Order Denying Decree of Foreclosure against all Defendants*, filed April 2, 2008; 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; The *Second Amended Final Judgment* filed December 11, 2009; The *Third Amended Final Judgment* filed September 12, 2013 and The *Fourth Amended Final Judgment* Filed June 19, 2015;

This Court Having fully reviewed the record and files herein, and for good cause shown;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I. That Final Judgment on the Complaint for foreclosure filed June 15, 2005 is hereby entered pursuant to HRCP Rule 58 as follows:

a. As to the waste claims for unlicensed business activities and additions to the home or construction of buildings on the property, judgment is entered in favor of Defendants Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David and against Plaintiff, Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers.

b. As to the claim for breach of contract/covenant for failure to keep property insurance, judgment is entered in favor of the Plaintiff, Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers and against Defendants Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David; Defendants Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David are required to obtain property insurance.

c. As to the claims for conspiracy by Defendant Horowitz, Defendant Royal Bloodline of David and co-conspirator Intervenor Phillip Maise, to deprive Plaintiff of receipt of mortgage payments and defrauding plaintiff, judgment is entered in favor of the Defendants Leonard George Horowitz, Jacqueline Lindenbach Horowitz, Defendant The Royal Bloodline of David, and Intervenor Phillip Maise and against Plaintiff, Jason

Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers.

d. As to the claim for trespass to chattels based on destruction of Plaintiff [Lee's] trailer, judgment is entered in favor of Plaintiff, Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers and against Defendants Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David, and Judgment for damages of \$400.00 is entered in favor of Plaintiff, Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers and against Defendant Leonard Horowitz and the Royal Bloodline of David.

e. As to the claim for fraud and misrepresentation against Defendant Leonard Horowitz and the Royal Bloodline of David for changing the DROA (deposit receipt offer and acceptance), judgment is entered in favor of Plaintiff, Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers and against Defendants, Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David.

f. As to the claim for foreclosure, judgment is entered in favor of Defendants, Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David and against Plaintiff, Jason Hester Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of

Revitalize, A Gospel of Believers, but equitable relief was granted requiring Defendants to carry insurance.¹

II. **IT IS FURTHERED ORDERED** that Final Judgment on the Defendants' Counterclaims filed July 6, 2006 is hereby entered pursuant to HRCP Rule 58 as follows:

a. As to Defendants, Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David, Counterclaims filed July 6, 2006, Claim A, for Misrepresentation and Fraud; Judgment is entered in favor of Plaintiff/Counterclaim Defendant Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers and against Defendants/Counterclaimants Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David as Defendants/Counterclaimants. The Jury's award to the Defendants in the amount of \$200,000 is VACATED.²

b. As to the Defendants Counterclaim filed July 6, 2006, Claim B, for Abuse

¹ Foreclosure was requested on the basis that Defendants committed waste on the property, failed to keep insurance on the property, conspiracy, trespass to chattels, and for fraud/misrepresentation, not because of default on the promissory note and mortgage. The equities involved with the timely payment, property improvements, balloon payment, and misleading statements by plaintiff, make foreclosure unjust. Foreclosure having been denied the request for a joint and several deficiency judgment was not necessary nor the appointment of a commissioner.

² Pursuant to the Jury's verdict on February 21, 2008, the count for fraud and misrepresentation, judgment was entered in favor of the Defendants and against Plaintiff, but this relief was vacated by the Order Granting Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on the issue of Defendants' July 6, 2006 Counterclaim for fraud and Misrepresentation filed October 15, 2008, the Third Amended Final Judgment filed September 12, 2013, and The Fourth Amended Final Judgment Filed June 19, 2015, as a result, the \$200,000.00 award to Defendants, Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David was VACATED.

of Process and Malicious Prosecution; Judgment is entered in favor of Plaintiff/Counterclaim Defendant Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers and against Defendants/Counterclaimants Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David.

III. **IT IS FURTHERED ORDERED** that Final Judgment is hereby entered pursuant to HRCP Rule 58 as follows:

a. Pursuant to the *Order Awarding Attorney's Fees and Costs*, filed on March 25, 2008, judgment is entered in the sum of nine hundred and seven dollars and ninety-eight cents (\$907.98) for attorney fees and costs in favor of Defendants, Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David and against Plaintiff, Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers.

IV. **IT IS FURTHER ORDERED:** that Final Judgment is hereby entered pursuant to HRCP Rule 58 as follows:

a. Pursuant to *Order Granting Intervenor's Motion To Strike And/Or Dismiss, With Prejudice Counterclaim/Cross Claim Against Intervenor Philip Maise Filed July 25, 2007, Filed On August 24, 2007 Filed October 24, 2007*; The Counterclaim/Crossclaim filed by Defendant Jason Hester, Overseer the Office of Office of Overseer, A Corporate

Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers Against Intervenor Philip Maise filed July 25, 2007 is DISMISSED.

V. **IT IS FURTHER ORDERED:** that Final Judgment is hereby entered pursuant to HRCP Rule 58 as follows:

a. Philip Maise's Complaint In Intervention filed October 27, 2005 is DISMISSED.³

VI. All other claims, counterclaims, and cross-claims are dismissed.

DATED: Kealakekua, Hawai'i; MAR - 3 2016

/s/ Ronald Ibarra (seal)
The Honorable Ronald Ibarra

³ Foreclosure having been denied, Intervenor Maise's complaint in intervention, filed October 27, 2005 is moot.

THE ORIGINAL OF THE DOCUMENT
RECORDED IN THE
STATE OF HAWAII

BUREAU OF CONVEYANCES

DATE JAN 14 2005 TIME 002
DOCUMENT NO. 2005-009276

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (XX) Pickup () To:

Office of the Corporation Counsel (GT)
County of Hawai'i
101 Aupuni Street, Suite 325
Hilo, Hawai'i 96720

Total Pages: 5

Tax Map Key (3)1-3-001 (Road)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That, the COUNTY OF HAWAII, a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is 25 Aupuni Street, Hilo, Hawai'i 96720, hereinafter called the "Grantor," in consideration of the sum of ONE DOLLAR (\$1.00) and other valuable consideration to it paid by THE ROYAL BLOODLINE OF DAVID, a Washington nonprofit corporation, whose mailing address is P. O. Box 1739, Newport, Washington 99156, hereinafter called the "Grantee," the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns, in fee simple forever, the following real property:

EXHIBIT "6"

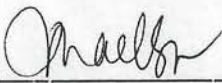
All of that certain piece or parcel of land situate at Kamā'ili, District of Puna, Island and County of Hawai'i, State of Hawai'i, being Remnant "A," more particularly described in Exhibit "A" and delineated on Exhibit "B," all of which are attached hereto and made a part hereof by reference.

TO HAVE AND TO HOLD the same, together with all rights, improvements, easements, privileges and appurtenances thereunto belonging or in anywise appertaining, or held and enjoyed therewith, unto the Grantee, its successors and assigns, forever.

AND the Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that it is seised in fee simple of the above-described premises; that the same is free and clear of and from all encumbrances, except as aforesaid; that it has good right to sell and convey the same as aforesaid; and that it will, and its successors and assigns will, WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, the said Grantor has caused these presents to be executed this 3rd day of December, 2004.

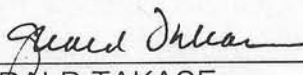
COUNTY OF HAWAII

By 

HARRY KIM DIXIE KAETSU
Its ~~Mayer~~ Managing Director

rmc
rmc

APPROVED AS TO FORM
AND LEGALITY:


GERALD TAKASE
Assistant Corporation Counsel
County of Hawai'i

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 3rd day of December, 2004, before me personally appeared DIXIE KAETSU, to me personally known, who, being by me duly sworn, did say that she is the Managing Director of the County of Hawai'i, a municipal corporation of the State of Hawai'i; that the seal affixed to the foregoing instrument is the corporate seal of said County of Hawai'i; that the foregoing instrument was signed and sealed in behalf of the County of Hawai'i by authority given to said Mayor of the County of Hawai'i by Section 5-1.3(g) of the County Charter, County of Hawai'i (2000), as amended, and assigned by the Mayor to the Managing Director pursuant to Section 6-1.3(h) of the County Charter; and said DIXIE KAETSU acknowledged said instrument to be the free act and deed of said County of Hawai'i.

Virginia M. Tolentino
VIRGINIA M. TOLENTINO
Notary Public, State of Hawai'i

My commission expires: 4/22/2005



Old Pahoa-Kalapana Road

REMNANT "A"

Being a Portion of Old Pahoa-Kalapana Road
at Kamaili, Puna, Island of Hawaii, Hawaii

Beginning at the southwest corner of this parcel of land, being also the south corner of Lot 15-D, Portion of Grant 5005 to J. E. Elderts, and the northwest corner of Grant S-23,403 to AMFAC, on the north boundary of Lot 2, Grant 4330 to C. L. Wight, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Heiheiahulu" being 6,074.61 feet North and 16,652.94 feet East, and running by azimuths measured clockwise from True South:

1. 220° 59' 30" 275.69 feet along Lot 15-D, Portion of Grant 5005 to J. E. Elderts;
2. Thence along Lot 15-D, Portion of Grant 5005 to J. E. Elderts, on a curve to the left with a radius of 1016.74 feet, the chord azimuth and distance being:
208° 29' 45" 439.98 feet;
3. 286° 00' 50.00 feet along the remainder of Old Pahoa-Kalapana Road;
4. Thence along Lot 15-B and Lot 15-A, Portions of Grant 5005 to J. E. Elderts, on a curve to the right with a radius of 1066.74 feet, the chord azimuth and distance being:
28° 29' 45" 461.62 feet;
5. 40° 59' 30" 261.10 feet along Lot 15-A, Portion of Grant 5005 to J. E. Elderts;
6. 114° 43' 30" 52.08 feet along Grant S-23,403 to AMFAC to the point of beginning and containing an area of 36,140 square feet or 0.830 acre, as shown on Final Plat approved by Hawaii County Planning Director on January 27, 2004 as Subdivision Number 7763.



Engineering Division
Department of Public Works
County of Hawaii

Ronald M. Matsumura

4/30/04

Expiration Date of the License

Aupuni Center
101 Pauahi Street, Suite 7
Hilo, Hawaii 96720-4224
January 29, 2004

Tax Map Key: (3rd Div.) 1-3-01 (Road)

Electronically Filed
Intermediate Court of Appeals
CAAP-16-0000162
26-JUL-2018
01:46 PM

NOS. CAAP-16-0000162 AND CAAP-16-0000163

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

CAAP-16-0000162

JASON HESTER, Overseer of the Office of Overseer,
a corporate sole and his successors, over/for the Popular
Assembly of Revitalize, a Gospel of Believers,
Plaintiff/Counterclaim Defendant/Appellee,

v.

LEONARD G. HOROWITZ and THE ROYAL BLOODLINE OF DAVID,
Defendants-Counterclaim-Plaintiffs/Appellants,

and

JACQUELINE LINDENBACH HOROWITZ,
Defendant/Counterclaim-Plaintiff/Appellee,

and

PHILIP MAISE, Intervenor-Appellee,

and

JOHN DOES 1-10, JANE DOES 1-10, DOE ENTITIES 1-10, DOE
PARTNERSHIPS 1-10, DOE GOVERNMENTAL UNITS 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 05-1-0196)

CAAP-16-0000163

JASON HESTER, an individual,
Plaintiff/Counterclaim-Defendants/Appellee,

v.

LEONARD G. HOROWITZ, an individual and
SHERRI KANE, an individual
Defendants/Counterclaim-Plaintiffs/Appellants,

and

THE ROYAL BLOODLINE OF DAVID, a Washington Corporation Sole,
Defendant/Appellant,

and

MEDICAL VERITAS INTERNATIONAL, INC., a California
non-profit corporation, JOHN DOES 1-10, JANE DOES 1-10,
DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10,
DOE ENTITIES 1-10 and DOE GOVERNMENTAL UNITS 1-10,
Defendants

EXHIBIT "7"

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 14-1-0304)

ORDER OF CONSOLIDATION

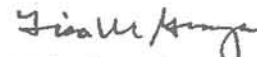
(By: Ginoza, Chief Judge, for the court¹)

Upon review of the record filed in Appeal Nos. CAAP-16-0000162 and CAAP-16-0000163, it appears that the appeals are related to each other and therefore pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 3(b), Appeal Nos. CAAP-16-0000162 and CAAP-16-0000163 are consolidated under Appeal No. CAAP-16-0000162.

IT IS FURTHER ORDERED that the appellate clerk shall assign the merit panel in Appeal No. CAAP-16-0000162 to the consolidated appeal. A copy of this order shall be filed in each of the aforesaid appeals, but thereafter, documents related to these appeals shall be filed by all parties in Appeal No. CAAP-16-0000162.

DATED: Honolulu, Hawai'i, July 26, 2018.

FOR THE COURT:


Chief Judge

¹ Considered by Ginoza, Chief Judge, Fujise and Leonard, JJ. The merit panel in CAAP-16-0000162 is Ginoza, Chief Judge, Fujise and Leonard, JJ. The merit panel in CAAP-16-0000163 is Fujise and Leonard, JJ, and the former Chief Judge Craig H. Nakamura, who retired as the Chief Judge of the Intermediate Court of Appeals effective February 28, 2018.

Electronically Filed
Intermediate Court of Appeals
CAAP-16-0000162
06-APR-2017
08:45 AM

NO. CAAP-16-0000162

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

JASON HESTER, Overseer of the Office of of Overseer,
a corporate sole and his successors, over/for the Popular
Assembly of Revitalize, a Gospel of Believers,
Plaintiff/Counterclaim Defendant/Appellee,

v.

LEONARD GEORGE HOROWITZ and THE ROYAL BLOODLINE OF DAVID,
Defendants-Counterclaim-Plaintiffs/Appellants,
and

JACQUELINE LINDENBACH HOROWITZ,
Defendant/Counterclaim-Plaintiff/Appellee,
and

PHILIP MAISE, Intervenor-Appellee,
and

JOHN DOES 1-10, JANE DOES 1-10, DOE ENTITIES 1-10, DOE
PARTNERSHIPS 1-10, DOE GOVERNMENTAL UNITS1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 05-1-0196)


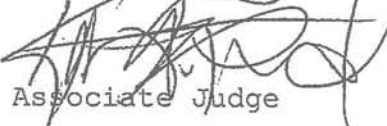
ORDER DENYING THE JANUARY 7, 2017 MOTION

(By: Fujise, Presiding Judge, Leonard and Ginoza, JJ.)

Upon consideration of "[Defendants/Counterclaimants-
Appellants' Leonard G. Horowitz, et al.'s] Motion to Join Paul J.
Sulla, Jr. and Halai LLC as Parties," filed on January 7, 2017,
the papers in support and in opposition, and the record,

IT IS HEREBY ORDERED that the motion is denied.

DATED: Honolulu, Hawai'i, April 6, 2017.


Presiding Judge

Associate Judge


Associate Judge

EXHIBIT "8"

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

JASON HESTER,

Plaintiff,

vs.

LEONARD G. HOROWITZ,

Defendant.

CIV 3CC171000407

COPY

TRANSCRIPT OF PROCEEDINGS

before the Honorable Henry T. Nakamoto , Judge, Second
Division, presiding on Friday, June 1, 2018.

- 1) Defendant's Motion to Dismiss
- 2) Defendant's Motion to Sanction Paul Sulla.
- 3) Petitioner's Motion for Judgment or for Summary
Judgment

APPEARANCES:

PAUL SULLA, Attorney
For Plaintiff

LEONARD G. HOROWITZ (via telephone)
Defendant Pro Se

REPORTED BY: Audrey Tanouye, CSR 225
Official Court Reporter, State of Hawaii
Audrey S. Tanouye, CSR 225
Official Court Reporter, State of Hawaii

EXHIBIT "9"

1 FRIDAY, JUNE 1, 2018

8:13 O'CLOCK A.M.

2 --000--

3 THE CLERK: Calling case C-17-1-407, Jason Hester
4 versus Leonard Horowitz. Defendant's Motion to Dismiss,
5 Defendant's Motion to Sanction Paul Sulla. Petitioner's
6 Motion for Judgment or for Summary Judgment.

7 Please note your appearance.

8 MR. SULLA: Attorney Paul Sulla for Plaintiff Jason
9 Hester.

10 THE COURT: Good morning.

11 MR. SULLA: Good morning, Your Honor.

12 THE COURT: We have anyone on the phone? If you can
13 please --

14 MR. HOROWITZ: Leonard Horowitz for the respondent.

15 THE COURT: Okay, if you could speak up. Or I don't
16 know if you're on speakerphone, but we're having a hard
17 time hearing you. Can you please state your name again.

18 MR. HOROWITZ: Yes, my name is Leonard Horowitz.

19 THE COURT: Okay. Thank you.

20 I know we have several motions before the Court this
21 morning. First of all, I can -- maybe I'm not taking them
22 in the order they're filed. But regarding Defendant's
23 Motion to Dismiss, Mr. Horowitz, you have anything further
24 to add?

25 MR. HOROWITZ: Yes, Your Honor.

Audrey S. Tanouye, CSR 225
Official Court Reporter, State of Hawaii

1 I would like to discuss a more recent filing and
2 approval of the orders for setting time for certified
3 service by mail. I object vehemently. And I submitted it
4 to the Court. I pray that you received it perhaps
5 yesterday. I sent it overnight.

6 Because of the newer violations that I can
7 articulate, there are at least five violations that are of
8 the Rule 7.2, RCCA Rule 7.2 in that administration. And
9 so under the circumstances, I could for the Court, go into
10 more detail about what the current situation is and why
11 fundamentally I urge the Court to dismiss this case
12 without prejudice in Mr. Sulla's behalf pending file
13 determinations in the other cases that are intimately
14 connected. Ultimately that would permit due process. Mr.
15 Sulla would have every opportunity to bring this case
16 again.

17 But alternatively it makes no sense whatsoever. It
18 really deprives me of my right to due process if you have
19 the other Third Circuit Court staying this matter, which
20 has the same Parties, same property, same period of
21 transactions, all on appeal. Both cases on appeal. And
22 on top of that, federal *Seabright* court case wherein the
23 situation -- the process is also stayed.

24 So for in essence us to proceed in this case, it
25 would be in effect violating some case law. And I made

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Official Court Reporter, State of Hawaii

1 that case law known to the Court in my filing. Most
2 recent filing.

3 And that the *Thomas versus Bible*, a court is
4 generally precluded from reconsidering an issue that has
5 already been decided by the same or a higher court in an
6 identical case. Again, the facts of the same proceedings,
7 same parties, same procedures, transactions, same property
8 indicates this would be appropriate under the
9 circumstances.

10 And then based on the orders of May 18th being void
11 by substantial defects in process. And on top of that the
12 rules of the Hawaii Rules of service or Hawaii Revised
13 Statutes 634-23 and 634-24, upon which the orders to
14 continue this -- in my allegations and my evidence, and
15 malicious prosecution -- to continue this under those
16 statutes also doesn't make sense ultimately because Mr.
17 Sulla has dispossessed me of my home. My only residence.
18 My servable residence and address is stolen. It has been
19 stolen by Mr. Sulla. And essentially, without getting
20 into the details of that, in essence Mr. Sulla has created
21 his own dilemma here of not being able to serve me.

22 I travel extensively, I am currently in Las Vegas.
23 Mr. Sulla has had numerous opportunities to serve me over
24 the past two years. He could have easily done what he had
25 done in two previous cases, that is, serve me in the

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Official Court Reporter, State of Hawaii

1 courthouse. He made the April 6th hearing date. I
2 attended, he did not. The Court knows this. And he could
3 have easily hired his process server to serve me at that
4 time.

5 Likewise, to petition to the Court his affidavit
6 stating that he's done due diligence in administering his
7 intents to serve me is bogus. So the simple reason is
8 that I think internationally my events are scheduled, my
9 public appearances are scheduled. Mr. Sulla could have
10 easily assigned his process server to serve me at one of
11 my numerous public presentations. He's failed to do that
12 over the past two years. He's known that this matter
13 should have been served properly two years ago.

14 And so it's ridiculous to continue this under the
15 circumstances. And under the circumstances of procedural
16 defects and violations precluding my rights, and in terms
17 of also the ongoing cases, it is most prudent to have the
18 Court simply suspend this cases and dismiss it without
19 prejudice. And that's my position.

20 THE COURT: Mr. Sulla, specifically regarding the
21 issue of the service -- order allowing service?

22 MR. SULLA: Your Honor, there's a current order that
23 you granted authorizing service by certified mail, and
24 that it be nunc pro tunc regarding the date when that they
25 received, and was served. I mean this matter was filed in

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1 2016. At that time it was moved by the Defendants to
2 federal court, wherein they filed a bunch of motions to
3 try to determine why they should stay in federal court.
4 Court found there is no diversity, then moved to the --
5 remanded to First Circuit Court where they appeared again
6 by phone and claimed they were there, and not there. We
7 went and tried to serve. We spent a lot of time sending
8 letters and notices. We did get certified mail on them.

9 And we moved it back here, and then we were again --
10 because I missed the date on April 6 because of a error in
11 my office. What did happen is we did go and we tried to
12 serve him at the new address that they claimed they were
13 living at in Las Vegas. Only to find out that was only a
14 mail forwarding address and everything was forwarded back
15 to Hawaii. And that's the return that we made to the
16 Court and the Court granted the order for the service, and
17 the fact that they have been served. So that point is
18 actually moot at this stage.

19 THE COURT: Okay. And regarding the Motion to
20 Dismiss?

21 MR. SULLA: Well regarding the Motion to Dismiss,
22 Your Honor, they -- this action is based on 507D, which is
23 because of filing of a improper invalid lien,
24 nonconsensual lien. Now the facts are very clear and
25 already stated, originally we filed it because of the

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Official Court Reporter, State of Hawaii

1 lien that they filed in June of 2016 wherein they were
2 complaining, just like he is today, that we should put
3 everything together. We had just got a final judgment on
4 quiet title in this matter. Took a while to get the quiet
5 title, but we received it. And upon that time, Mr.
6 Horowitz decided he would file this affidavit alleging
7 that, "I'm going to appeal this case and therefore
8 everybody watch out, because I've appealed it."

9 Well we know that appeal isn't stayed unless there
10 is a stay granted. And they did not grant the stay.
11 Therefore there should be no right to file a lien to say
12 that I filed an appeal. It's not a statute, it's not
13 authorized by the Court. So basically this is really a
14 violation of 507D, it's just complaining about a case and
15 making up allegations. That -- there is an appeal going,
16 but that has no right to be a lis pendens, or an
17 affidavit, or consensual lien, or whatever he put on
18 record which of course clouds the title.

19 When I did this matter and had to remand it here,
20 after remanded here, after it was moved, venue was here; I
21 found that there was another lien on record that I hadn't
22 seen on the same title in October 2013. And this lien the
23 reason -- probably I forgot it, was because it costs \$125
24 to get copies of the 125 pages long. And it goes on and
25 on and on about title, and claims, and complaints. And

Audrey S. Tanouye, CSR 225
Official Court Reporter, State of Hawaii

1 essentially there was an underlying case before the quiet
2 title action that removed the jury award. And I think
3 that's what they were complaining about. It's hard to say
4 cause, like I say, 125 page lien that was unauthorized
5 again. No court proceeding pending. He just filed on it
6 just to mess the title up, and which is completely a
7 violation.

8 And there's no right to have it held, so that it's
9 heard together. We've had this heard -- held together now
10 -- these parties have been fighting since 2009.

11 So we're asking that the case proceed and be heard.
12 We're moving for summary judgment today, or judgment on
13 the pleadings based on the other facts. But we believe
14 we've satisfied all the elements of the complaint to be
15 able to have this remedied.

16 THE COURT: Okay. Mr. Horowitz, anything further
17 regarding your Motion for Sanctions to -- against Mr.
18 Sulla?

19 MR. HOROWITZ: Yes, Your Honor.

20 Mr. Sulla has falsely stated that the stay was not
21 granted in the 0304 case. That's false. It was granted.
22 Unfortunately by that time I had been so damaged
23 financially that I could not afford the bond that was
24 requested.

25 So there was absolutely good cause that the Court

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1 ruled with regard to the alleged crimes that Mr. Sulla
2 committed, the allegations that are in the
3 lis pendens that he doesn't -- that he failed to mention,
4 includes documented public records and evidence of there
5 being forgery of the assignment of the mortgage, the
6 assignment of the note; into a sham based church that Mr.
7 Sulla had placed Mr. Hester as the strawman to protect him
8 to indemnify him against any litigation. As you see now,
9 Mr. Sulla masquerades behind Mr. Hester.

10 And in fact it is an outrageous violation of the
11 Court's integrity to have Mr. Sulla continue this charade
12 in violation of Rule 19B, which requires him to disclose
13 his conflicting interest and be a party as a named and
14 principal Plaintiff.

15 And on top of that, the Rules of the Circuit Court
16 of Hawaii 26B requires because he's attempting by this
17 action to collect by selling the property, flipping it,
18 which he has it currently for sale. So that essentially
19 he's required in filing this case to get your permission
20 under rule -- rules of the Circuit Court 26B that
21 precludes attorney sureties from advancing these kinds of
22 litigations.

23 So even gross violation of all of these facts, and
24 it is sick and sad reality, that he's been permitted to
25 continue this continuing abuse of process, persuading

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1 judges to do what he says he needs to have done according
2 to law, where he's omitting and misrepresenting those laws
3 and the facts in the case.

4 They're also -- I must tell you that over the past
5 24 hours I've been informed that Mr. Sulla is under
6 criminal investigation by the police. And a decision will
7 be made shortly by the prosecutor to continue this case.
8 Because another point of fact of great material interest
9 is that when Mr. Sulla filed this particular amended
10 petition, he included a property that he knew he did not
11 own.

12 And that further the basis of his lawsuit, his
13 contention that Mr. Hester owns anything, is false because
14 of the warranty deed that was determined recently by the
15 County of Hawaii to have been a forgery. And so as of 24
16 hours ago, I was alerted by the police as a victim of
17 crime and I am covered thereby under the Hawaii Victim's
18 Protection Act. And that I understand that both the
19 County as well as I am considered by the police as
20 victims.

21 I understand that Mr. Sulla was contacted by the
22 police, he refused to give a statement which may amount to
23 an obstruction of justice on top of first degree felony,
24 forgery, and second degree theft which is being brought
25 under the Complaint. So in essence Mr. Sulla wants to

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1 engage this court in similar proceedings. And it's
2 appalling and I'm grossly opposed to it. And I'm not going
3 to sit by watching this thing. I'm going to do everything
4 in my power to bring justice to this situation.

5 THE COURT: Mr. Horowitz, anything further regarding
6 the Motion for Judgment on the Pleadings or summary
7 judgment?

8 MR. HOROWITZ: Yes. Your Honor, again, I object
9 vehemently to proceeding to judgment on the pleadings. I
10 object because the Court has no jurisdiction.

11 The Court very simply has no jurisdiction because
12 proper service and the pleadings have not been -- have not
13 been administered. And that even -- even if we were
14 to presume that the orders of May 18 are not void by the
15 serious defects in procedure, even if we were to assume
16 that, I still have not been served. So to continue on
17 judgment of the pleadings is an absurdity.

18 THE COURT: Okay. Mr. Sulla, anything further?

19 MR. SULLA: Well, Your Honor, given the propensity
20 you have on appeal for this matter, since he's appealed an
21 earlier one, I'd like to be able to continue the
22 statements so that the record is at least balanced.

23 There is no crimes here. And as to sanctions goes,
24 there's no -- there's no real statute that he's claiming
25 sanctions under. It's just his wish. He's had been

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1 complaining about crimes and forgeries and everything else
2 for a long time and goes to the police quite regularly.
3 In fact, he's been to Mitch Roth 14 times. He's been to
4 the DEA. He's been to the FBI. He's been to the Board of
5 Bar Overseers. I might have left something out that he'll
6 fill in. But all of this time now for years and years
7 this has been going on. So this is the same story.

8 As to the facts before the Court, there's no grounds
9 for sanctions that have been asserted.

10 So I'm going to go on to the Motion for Judgment on
11 the pleadings. And this, Your Honor, involves the two
12 involuntary liens that were put on. I just spoke to the
13 one in 2016, one in 2013, which were nonconsensual. There
14 was no consent, no statute, no court order that would
15 allow them, they have no right to file them.

16 And beyond that, he is -- had been found guilty
17 earlier doing these same exact violation of 507D in a
18 separate action, a frivolous action that's attached to my
19 pleadings to demonstrate that this is frivolous and this
20 should be sanctioned by order that he not be able to file
21 anything more on the registry for five years. And that we
22 get penalty for this. We already received a penalty from
23 the last one which amounted to I think it was \$7,000 and
24 then we appealed it -- he had to appeal it. And then we
25 had to go and appeal the case, we got another \$7,000 from

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1 the Appeals Court. And so I expect that's going to happen
2 again. There is no basis for his claims. Everything he's
3 arguing and brings up and asserts is irrelevant, moot, or
4 incorrect. Generally a lot of alternate facts here.

5 But the record of the court is clear so there's
6 nothing that's before the Court of a factual basis other
7 than the issues that he's filed these liens, he had no
8 consent, he won't refuse -- refuse them. And he brings up
9 a lot of defenses which lies in personal service is now
10 moot. Jurisdiction is also moot. He talks about forgery
11 but there's -- the exhibit don't make any sense. There's
12 no basis for it, there's no law there.

13 And he's been to the police and apparently trying
14 again on a new deed. But we'll take that as it goes
15 along. He's trying to relitigate prior proceedings which
16 are irrelevant.

17 He claims that I as an attorney is a bad man and all
18 this other allegations which are irrelevant. I move to
19 strike those allegations. He claims he has defenses to
20 this, but there's nothing meritorious or coherent that's
21 been presented by this defendant. Other than the fact
22 that he wants to hurt my clients, and by indirectly his
23 attorney also, since he's been doing that now for the last
24 five years.

25 The foreclosure -- well, this matter arises from a

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1 nonjudicial foreclosure that happened because the note --
2 term of the note expired and there was no payment. Any
3 allegations to the other are contrary or not supportable.

4 He claims a lis pendens complies with section 234-1
5 because he lives there or whatever. It's his property or
6 -- it's not. He's consenting to it -- but that's
7 ridiculous because he doesn't have title.

8 The appeals are currently active. There was no
9 stays. There are no final judgments to merit a case;
10 that's not true. There is a final judgment, quiet title
11 has taken place. My client does have standing.

12 And anything that he claims against me is
13 irrelevant, it's moot, and should be stricken. Most of
14 the exhibits he has should also be stricken as they are
15 not properly presented.

16 Your Honor, I believe that my client is entitled to
17 have these liens -- these bogus defamatory liens removed.
18 We're entitled to receive the amount that Court would deem
19 just for our efforts and our attorney fees. And we would
20 like an order so that we can clear the title and be able
21 to move this property, if the volcano doesn't get it
22 first.

23 Thank you.

24 THE COURT: Okay. So Court has reviewed this
25 matter. Reviewed the records and files in this matter. I

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1 note there was an objection to the service. The Court
2 will note that it granted the request on Motion to Serve
3 by Certified Mail nunc pro tunc to the date -- I believe
4 it was December -- December 16th.

5 And I will also note that the Court, not finding
6 good cause to dismiss this matter, because although this
7 matter -- underlying matter may be on appeal, there was a
8 quiet title determination. There is no stay. And as Mr.
9 Horowitz indicated, that he was not able to come up with
10 the bond or get a supersedeas bond to have this stay. So
11 therefore the Motion to Dismiss is denied.

12 Also the Court has reviewed the Motion for Sanctions
13 against attorney Paul Sulla. Court will note that the
14 Court does not find that there is any cause to sanction
15 Mr. Sulla. And also that there was noncompliance with
16 Rule 11. If there was any reason, there is no compliance
17 with said rule.

18 Court also reviewed the Motion for Judgment on the
19 pleadings and/or for summary judgment. Finds that there
20 are no material issues of fact regarding the filing of the
21 two liens. The Court is granting the Motion for Summary
22 Judgment regarding the liens.

23 The Court will issue the -- also order the sanction
24 as allowed by statute, which is \$5,000 for each of the
25 filings. A total of \$10,000. And Court will also grant

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1 Plaintiff its reasonable attorney's fees and cost.

2 And, Mr. Sulla, you draft an order and you can
3 submit your declaration regarding the fees and costs
4 within two weeks from today.

5 And, Mr. Horowitz, can therefore send a response one
6 week after that.

7 Thank you.

8 MR. SULLA: Thank you, Your Honor.

9 (8:36 a.m.)

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5 And, Mr. Horowitz, can therefore send a response one
6 week after that.

7 Thank you.

8 MR. SULLA: Thank you, Your Honor.

9 (8:36 a.m.)

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1 STATE OF HAWAII)
2 COUNTY OF HAWAII)
3 _____)
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5

6 I, AUDREY TANOUYE, CSR 225, an Official
7 Court reporter for the Third Circuit Court, State
8 of Hawaii, hereby certify that the foregoing
9 was transcribed to the best of my ability from the
10 proceedings recorded by FTR for the above-entitled cause.
11

12
13 Dated this 5th day of September, 2018.
14

15 OFFICIAL COURT REPORTER
16

17 
18 /s/ Audrey S. Tanouye
19 AUDREY S. TANOUYE, CSR 225
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Audrey S. Tanouye, CSR 225
Official Court Reporter, State of Hawaii

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

JASON HESTER, an individual
Plaintiff,

v.

LEONARD G. HOROWITZ, an Individual;
Defendant/Counterclaimant

) **CIV. NO. _____**

) **Formerly: 16-1-1442-07 VLC**

) **(HRS § 507D-4 Petition to**

) **Expunge Lis Pendens;**

) **Counterclaim: Conspiracy to l**

) **Deprive Civil Rights and Religious**

) **Freedoms; 42 USC §§ 1981, 1985,**

) **1988 2000 bb and 2000h-2)**

) **ANSWER and AFFIRMATIVE DEFENSE;**

) **DECLARATION OF LEONARD G.**

) **HOROWITZ; NOTICE OF SERVICE;**

) **CERTIFICATE OF SERVICE [HRC**

) **RULES 7(a)(b); 8(a)(b) and (c); 9(b);**

) **15(2)] and 19(a);**

) **JUDGE: _____**

) **HEARING: _____**

) **TIME: _____**

ANSWER and AFFIRMATIVE DEFENSE

NOW COMES Defendant LEONARD G. HOROWITZ (hereafter, "HOROWITZ"), upon removing this case, and pursuant to HRCP RULES 7(a)(b); 8(a)(b) and (c); 9(b); 15(2)] and 19(a); hereby Answers JASON HESTER's (hereafter "HESTER's") "Petition to Expunge Documents Recorded in the Bureau of Conveyances of the State of Hawaii" brought by pending Third Party

Defendant PAUL J. SULLA, JR. pursuant to "Affidavit of Paul J. Sulla, Jr." attorney, dated July 26, 2016, served by mail upon HOROWITZ December 21, 2016, requiring an Answer by January 11, 2017, thus this Answer is timely. (**Exhibit 1**)

I. OVERVIEW OF ANSWER AND AFFIRMATIVE DEFENSE

The Petition to Expunge is a "sham litigation" compounding a string of malicious prosecutions aimed at converting the subject Property (hereafter, the "Property") to attorney Paul J. Sulla Jr.'s (hereafter, "SULLA's") possession.

The "AFFIDAVIT OF LEONARD G. HOROWITZ" filed by the Respondent was not a "nonconsensual lien," but a dutiful assertion of rights and public notice to prevent more damage and distress for anyone else who might be uninformed as a good faith buyer who might become involved in the protracted litigations.

According to HRS § 507D-4 SULLA and his predecessor-in-interest and "virtual representative," Seller and Mortgagee Cecil Loran Lee, (hereafter, "Lee") committed a series of fraudulent transfers of the subject Property (hereafter, the "Property"). This series of fraudulent transfers culminated by SULLA committing the fraudulent transfer of the title from Petitioner HESTER to SULLA's corporate shell, HALAI HEIGHTS, LLC (hereafter, "HLLC"), at the precise time HESTER's standing and validity of title was in dispute and pending final determination in the ICA in cases CAAP 15-000162 and 163.

Not only does HRS 651C-8(d)(1) provide authorization and justification for a lien to be published, but the a slew of case law permits a defrauded Mortgagor and Property owner to oppose the fraud and invalidity of the transfers in courts of law.

A. HRS 651C-8(d)(1) Authorizes and Justifies Respondent's Filing of AFFIDAVIT OF LEONARD G. HOROWITZ.

HRS § 651C-8(d)(1) permits "A lien on or a right to retain any interest in the asset transferred" that in this case is the Property that was fraudulently transferred originally on January 15, 2004 from SULLA's virtual representative, Seller Cecil Loran Lee (hereafter, "Lee") to good faith buyer HOROWITZ to evade judgment creditors previously defrauded by Lee, including Phillip Maise. Subsequently, Lee also became HOROWITZ/RBOD's judgment creditor prior to the time Lee and SULLA fraudulently transferred title from Lee to HESTER's predecessor-in-interest, "THE OFFICE OF OVERSEER, A CORPORATE SOLE AND ITS SUCCESSOR, OVER AND FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS" to evade releasing the Mortgage on the subject Property.

A "nonconsensual lien" (as defined in HRS § 507D-4) "(1) Is not provided for by a specific statute," But under these circumstances HRS § 651C-8(d)(1) provided HOROWITZ with the right to file the public notice. HOROWITZ also believed he had suffered sufficiently to warn others not to engage as he had by reason of Lee's fraudulent concealments, similar to SULLA's fraudulent concealments and fraudulent transfers. Shy of a duty to warn prospective buyers about SULLA's fraud and litigation encumbrances, ethically this is proper nonetheless. *Pan-Alaska Fisheries, Inc. v. Marine Const. & Design Co.*, 565 F.2d 1129, 1134 (9th Cir.1977), provides that liability attaches to "[o]ne who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property." HRS § 651C-8(d) states likewise, "Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation." Thus, by statute, HOROWITZ's public notice also alerted potential buyers that even a "good-faith

transferee” as HOROWITZ had been, must labor through litigation to be compensated “to the extent of the value given the debtor”—in this case SULLA.¹

Nor was HOROWITZ’s Lis Pendens filing “frivolous.” HRS § 507D-4 defines “frivolous” as “without any basis in law or fact.” Just the fact that this Petition was filed falsely by concealed real party in interest SULLA precludes it being “frivolous.” SULLA’s material fraudulent concealment is evidenced by Exhibit 2—a Judicial Notice filed recently in the Intermediate Court of Appeals to alert the court to SULLA’s concealed conflicting interest and claimed ownership of the Property through his recently registered company, HHLLC. Fraud is a “basis in law and fact” deserving of alerting the public and the courts concerning SULLA’s criminal concealments and Property conversion scheme. SULLA’s fraud and concealed surety interest voids this Petition, or otherwise acts as a fraud upon the court. This precludes the Court’s capacity to grant Petitioner the relief requested; akin to filing a claim for which relief cannot be granted.

Quoting from MATTER OF 2003 AND 2007 ALA WAI BLVD., 944 P. 2d 1341, 1348 - Haw: Intermediate Court of Appeals 1997:

[i]f the intent and purpose of the law pertaining to the registration of land titles is to be preserved, the integrity of certificates of title must be scrupulously observed and every subsequent purchaser of registered land who takes a certificate of title for value, **except in cases of fraud to which he is a party**, is entitled under the provisions of [HRS §] 501 to hold the same free from all encumbrances except those noted on the certificate and the statutory encumbrances enumerated. [Emphasis added.] *In re Bishop Trust Co.*, 35 Haw. 816, 825 (1941).

¹ SULLA, after all, is charged with multiple torts and crimes for which HOROWITZ is currently seeking compensatory, special, and punitive damages, along with approximately \$300,000 in fees and costs compounding since 2004 for which SULLA is liable as Lee’s “virtual representative” and estate fiduciary, complicit with Lee in the crimes of securities fraud and theft under color of law.

This is precisely the precluding exception in the instant case as well. SULLA took the “certificate of title for value” in a case “of fraud to which he is a party.” Exhibit 2 shows SULLA directed HESTER to execute a “Warranty Deed” to the Property to HLLC, that SULLA recorded in the land court concealing SULLA’s real party interest and series of fraudulent transfers by which HESTER presumably acquired his interest and title. These facts, no doubt, invalidate the “integrity of [the] certificate of title” so that “every subsequent purchaser” could not be assured of the integrity of the instrument. Accordingly, the public notice HOROWITZ filed satisfied this public duty to assure the “integrity” of the security “scrupulously” in accordance with the law. *Id.*

Summarily, Defendant’s Notice of Pending Litigation was a good faith public notice evidencing Petitioner’s fraud and engagement in ongoing litigations. The public notice served a public duty to alert citizens and potential buyers against being defrauded and embroiled in protracted litigation. This is certainly not “frivolous” as the Petitioner contends; nor was it a nonconsensual lien by definition in law. The ongoing litigations encumber the Petitioner’s alleged and contested interest, standing, and colored title encumbering the Property. These are not “frivolous” matters that would justify the Petitioner’s complaint under HRS § 507D-4. The Petition satisfies the elements of a “sham litigation.”²

² “Sham litigation” is defined by the United States Supreme Court following an appeal in *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, 508 US 49 – Supreme Court 1993 (at 54), considering one of two types of “abuse of . . . judicial processes”: either “misrepresentations . . . in the adjudicatory process” or the pursuit of “a pattern of baseless, repetitive claims” instituted “without probable cause, and regardless of the merits.” 944 F. 2d, at 1529 (quoting *California Motor Transport Co. v. Trucking Unlimited*, 404 U. S. 508, 513, 512 (1972)). The Supreme Court recognized “that recourse to agencies and courts should not be condemned as sham until a reviewing court has “discern[ed] and draw[n]” the “difficult line” separating objectively reasonable claims from “a pattern of baseless, repetitive claims . . . which leads the factfinder to conclude that the administrative and judicial processes have been abused.” 404 U. S., at 513. Our recognition of a sham in that case signifies that the institution of legal proceedings “without probable

B. DEFRAUDED MORTGAGOR'S ARE FURTHER AUTHORIZED BY CASE LAW TO OPPOSE FRAUD IN COURTS OF LAW, AS NOTICE OF "AFFIDAVIT OF LEONARD G. HOROWITZ" CONVEYS.

A large body of case law affirms the defrauded Respondent's right and duty to publicly notice unwitting third parties of the risk of engaging in protracted litigation in this case, by publishing "AFFIDAVIT OF LEONARD G. HOROWITZ."

In *Ocwen Loan Servicing LLC v. Lum* 2015 WL 1808955 at 4 (US Dist. 2015), the court made clear that the conveyance is void and passes no title if the document is found to have been forged including by alteration, as SULLA's filing of the transferee's Articles of Incorporation are, according to analysis of FBI-trained forensic document and handwriting expert, Beth Chrisman, attached to the AFFIDAVIT OF LEONARD G. HOROWITZ shown in Petitioner's Exhibit "A". (**Exhibit 1** hereto attached)

In *Ocwen Loan Servicing LLC*, the Court pointed out that the mortgage related document is void, unless the mortgagor has been lax in investigating "red flags", where there are irregularities involving the related documentation – including, for example, an altered written instrument. Thus, common law makes it clear that Respondent was responsible to seek and find irregularities such as forgery, invalidating the contract for subsequent colored title transferees; and third parties should be noticed that redress can involve recovery from even a bona fide purchaser of the subject property.

And as further explained by the Vermont Supreme Court in *US Bank Nat.*

cause" will give rise to a sham if such activity effectively "bar[s] . . . competitors from meaningful access to adjudicatory tribunals and so . . . usurp[s] th[e] decisionmaking process." *Id.*, at 512. Primary cite: *PROFESSIONAL REAL ESTATE INVESTORS, INC. V. COLUMBIA PICTURES INDUSTRIES, INC.*, 508 US 49 – SUPREME COURT 1993 (AT 59)

Ass'n v. Kimball 190 Vt. 210, 220, 27 A, 3d 1094-1095 (2011), in a case with mortgage irregularities, specifically involving the assignment of the note as seen in the instant case, as where the assignee mortgagee is unable to demonstrate possession of the note at the time of the complaint, the assignment is void and the assignee's case subject to dismissal "if only to provide a clear incentive to plaintiffs to see that the issue of standing is properly addressed before any complaint is filed."³ In the instant case, HESTER has no standing at all to file the Petition, and never did have standing to stand in the shoes of the Mortgagee and Note holder Lee.

Further, contrary to the position taken by SULLA, where there is credible evidence of irregularities, a third party – here the Mortgagor/Respondent – has standing to challenge the standing of a successor mortgagee based on a challenge to the validity of the assignment. As explained in *Bank of America N.A. v. Hill*, 136 Haw 372, 362 P.3d 805 (Haw. 2015), when the question of standing concerns an assignment from the original mortgagee, a third party to that assignment has standing to challenge the validity of the assignment under certain circumstances such as where there is credible evidence that the assignee mortgagee did not exist at the time of the assignment. This defect in the chain-of-title also arises in the instant case. See also *Billete vs Deutsche Bank National Trust Company*, 2013 WL 2367834, at 5 (D. Haw. 2013) (not reported in F. Supp.) In *Billete*, as in the instant case, the mortgagee-assignee argued the borrower did not have standing to invalidate the assignment and that the action was simply an effort to forestall the related ejectment action that was based on a subsequent non-judicial foreclosure, granting title to the mortgagee-assignee. In rejecting that argument, the Court explained that "liberally construed, the factual allegations in the

³ In *Kimball* the Court rejected the contention that the mortgagee-assignee could subsequently cure the absence of the a timely endorsement to the promissory note reasoning that "standing is determined at the commencement of the action". *Id* at 216.

Complaint regarding the execution of the Assignment approximately six months after HCL's dissolution are sufficient to support Plaintiff's claim that the Assignment, and therefore the subsequent foreclosure and ejectment, were invalid". Id. at 7. (emphasis added) In the instant case, SULLA administered the assignments of Mortgage and Note on May 15, 2009, but the assignee, "Gospel of Believers," did not even legally exist until SULLA filed its Articles of Incorporation two weeks later, on May 26 and 28, 2009 as the Chrisman forensic analysis details. (Petition **Exhibit 1**, Exhibit "A")

Accordingly, the Respondent had full right and duties to file the contested
AFFIDAVIT OF LEONARD G. HOROWITZ.

II. FACTUAL BACKGROUND IN PROTRACTED LITIGATION

This case raises federal questions of religious freedom and unfair competition between three "religious" organizations vying for a one-of-a-kind ("sacred") geothermal property on the Big Island of Hawaii (hereafter, the "Property").

In related ongoing cases in State and federal courts, civil rights and due process rights have been denied Respondent HOROWITZ and his ministry—THE ROYAL BLOODLINE OF DAVID (hereafter, "RBOD")—resulting in Petitioner HESTER's claim to hold (slandered) title to the Property. The Respondent has been illegally dispossessed and ejectment from his exclusive residence as a result of the Petitioner's fraudulent concealments, including concealing the real party interest of SULLA.

SULLA slandered title to the Property by manufacturing multiple alleged sham parties: (1) The Office of Overseer, A Corporate Sole and Its Successor, Over and For the Popular Assembly of Revitalize, a Gospel of Believers, (hereafter "GOB") and (2) Plaintiff HESTER as "Successor Overseer" of GOB; and (3) SULLA's shell

corporation, HHLLC. SULLA is alleged to have concocted for Property theft what federal tax investigators call a “Vertical Abusive Trust Beneficiary Scheme” wherein SULLA became the beneficiary of a series of fraudulent transfers of HOROWITZ’s Mortgage, Note, and deeds.

In 2004, Plaintiff HOROWITZ and his Judeo-Christian sole corporation purchased the Property he considered spiritually “sacred” and commercially valuable because of its active steam vents and lava-heated steam water, saunas and bathing pools. The Seller, Cecil Loran Lee, a predicate felon, repeatedly used the Property to bait defrauded “Inn” buyers. County of Hawaii officials and law enforcers were well aware of Lee’s criminal record, indictment for drug trafficking from the Property that is centrally located within the multi-billion dollar Big Island marijuana, methamphetamine, and dimethyltryptamine (“DMT”) trades *at the time County officials established a “special relationship” with HOROWITZ/RBOD*. The County of Hawaii established a contract with HOROWITZ/RBOD granting a portion of a county road remnant in exchange for a piece of the subject Property to permit HOROWITZ et. al. access to their Property and neighboring lots. Subsequently, Lee became a judgment debtor to many defrauded people, including HOROWITZ/RBOD during three litigations.

In the July 22, 2008 Final Judgment in Civ. No. 05-1-0196, HOROWITZ/RBOD et. al., prevailed on the matter of Lee’s judicial foreclosure on the Mortgage, and consistent with the jury verdict, HOROWITZ et. al. was awarded \$200,000 in damages. HOROWITZ used this award, plus another \$154,204.13, to pay off the Mortgage on February 27, 2009. He then repeatedly requested a Release of Mortgage and clear deed, but Lee and his privities-in-interest evaded Hawaii’s mortgage release law and simultaneously committed a series of fraudulent transfers of the void Mortgage and Note into a newly formed GOB “church.” Administering this action in

May, 2009, while Lee was on his death bed in Arizona, Hawaii attorney SULLA photocopied Lee's signature(s) and "robosigned" GOB's incorporation papers to establish a sham trust by which SULLA controlled GOB's \$350,000 in "false debt." This "false debt" purportedly remained secured by the Property by reason of SULLA's fraudulently verified Mortgage and Note Assignments from Lee to GOB.

Evidence from public records and sworn affidavits obtained by HOROWITZ show GOB is part of a large drug and real estate money laundering and racketeering enterprise directed by SULLA who acts as the "king pin" having registered THE ECLECTIC CENTER OF UNIVERSAL FLOWING LIGHT-PAULO ROBERTO SILVA E SOUZA (hereafter, "ECU").

Summarily, as Lee was dying, SULLA saw an opportunity to acquire the Property for his own "religious" uses and unjust enrichment. SULLA is alleged to have masterminded a scheme to steal the Property. Aided-and-abetted by Lee and HESTER, SULLA exclusively administered the series of securities transfers and non-judicial foreclosure fraud culminating in SULLA (through HHLLC), not Lee or HESTER, possessing the Property following a second foreclose action. The second foreclosure proceeded by "power of sale" under color of HRS 667-5 despite the Mortgage having been voided by the February, 2009 payment in full.

SULLA conducted his non-judicial foreclosure (hereafter, "NJF") auction in violation of res judicata doctrine, inter alia, while the judicial foreclosure case was still under appeal. Following SULLA's NJF, SULLA leveraged his judgment proof "sham plaintiffs"—GOB and HESTER—to maliciously prosecute HOROWITZ/RBOD, tying-up these Buyers and their interstate tourist trade in constant litigations between 2009 and the present time.

SULLA's excuse for doing all this was that the \$200,000 jury award to Defendants used as a credit in the final balloon payment on the Mortgage was vacated ten months later in a Second Amended Final Judgment.

Subsequently, SULLA and his co-counsel, STEPHEN D. WHITTAKER (hereafter, "WHITTAKER") persuaded the willfully-blind State judge Ronald Ibarra (hereafter, "IBARRA") (in Civ. No. 14-0304) to preclude HOROWITZ/RBOD right of standing to defend against summary disposition. It didn't matter to IBARRA that HOROWITZ co-signed the Note as an "Individual" and RBOD guarantor. Nor did it matter that IBARRA knew HOROWITZ had paid timely all the money required, and had established substantial equity in the Property as IBARRA ruled himself in the Fourth and Fifth Amended Final Judgments. Quiet Title and Writ of Ejectment was unlawfully granted to HESTER nonetheless, and were levered by SULLA in a "joint action" with State Sheriff PATRICK SNIFFEN (hereafter, "SNIFFEN"). SNIFFEN ejected the victims of SULLA's crimes from their Property on July 6, 2016. Neither SNIFFEN nor SULLA cared that SULLA had been disqualified from acting in that "0304" case by the Honorable federal Judge Richard L. Puglisi.

In filing this instant Petition, SULLA neglected the fact that he exclusively:

- (1) administered all the alleged fraudulent securities transfers while HESTER's standing was under appeal in State ICA cases 16-1-000162 and 16-1-000163;
- (2) acted as a self-appointed "personal representative" of Lee's estate to circumvent probate and defraud HOROWITZ et. al.;
- (3) acquired possession of the Property (as mentioned) by a "joint action" with State officer SNIFFEN on July 6, 2016, ejecting HOROWITZ et. al. from their Property;
- (4) violated his disqualification from acting under disguise of HESTER while the 0304 case is pending final disposition;

(5) violated RCCH Rule 26(b) by filing this Complaint without leave of the Court; and

(6) concealed his conflicting real party interests.

Although pled by HOROWITZ for years, SULLA's real party interest was confirmed on September 9, 2016, upon SULLA's execution of the "Warranty Deed" from HESTER giving SULLA's shell corporation HHLLC exclusive (colored) title to the Property.

Meanwhile, HOROWITZ's rights have been repeatedly violated and precluded by State and Federal law enforcers who claim SULLA's felonies are "civil matters." State court officers and justices in every case have precluded HOROWITZ civil rights to due process on the merits. Federal Judge Seabright and BK court Justice Faris have both delayed trials by erroneously smearing HOROWITZ as a "forum shopper" following his decade of involuntary servitude—paying for, maintaining, and securing a Property precluded from commercial usage or even HOROWITZ's enjoyment' and all while SULLA committed a series of vexatious litigations to deprive HOROWITZ of his Fourteenth Amendment rights. The federal court delays and dismissals are now shown to have favored SULLA's racketeering enterprise. The courts have thus contributed to the social scourge of illegal drug commerce on the Big Island and elsewhere.

Law enforcers are alleged to have repeatedly neglected their duties in response to HOROWITZ's complaints to the point that remedies are now only available under 42 USC § 1988 *et seq.*⁴ to vindicate rights deprived.

⁴ 42 USC § 1988 (a) **Statement of equal rights**

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white

Beginning in January, 2004, through 2016, HOROWITZ filed eighteen (18) criminal complaints with law enforcers at State, County and Federal levels pursuant to the suffering of continuous harassment, extortion, libel, and theft. HOROWITZ's complaints were consistently neglected or dismissed by officials who falsely justified their neglect of duty, inaction, and withdrawal by either falsely claiming the crimes were "civil matters," or that criminal evidence was insufficient despite prima facie evidence of securities fraud, forgeries, wire fraud, and first degree theft.

Concealed real-party SULLA's filing of this instant Petition to remove HOROWITZ's lis pendens from the public records completes SULLA's attempt to get away with grand larceny. All the while, State and federal law enforcers have remained willfully blind to HOROWITZ's victimization, including those to be named as Third Party Defendants in this case.

The Defendant seeks compensation for damages of many millions of dollars to be presented at trial--damages stemming from religious persecution, malicious prosecution, protracted deprivation of civil rights and Property rights, insolvency and dissolution of the RBC) ministry, losses in HOROWITZ's bankruptcy and ejectment, unfair competition, negligence (breach of duty), and racketeering. The Property's wrongful conversion by SULLA, aided-and-abetted by the Defendants alleged negligence and willful blindness, damaged HOROWITZ's family, career, ministry, businesses and prospective economic advantage from deprived commerce throughout a dozen years.

citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

III. ANSWER

A-1. The Defendant *denies* Plaintiff's paragraph 1. The State Court does not have jurisdiction over the claims in this case on the basis of 42 U.S. Code § 1988 - Proceedings in vindication of civil rights, wherein this case arises from violations of Defendants' civil rights and property rights by concealed attorney surety, Sulla, in "joint action" with State agents. Moreover, "Removal of civil actions" statute 28 U.S. Code § 1441, in this case exercised, precludes State court jurisdiction in these matters giving rise to federal questions.

A-2. Defendant denies by reason of the paragraph above Plaintiff's paragraph 2.

A-3. Defendant denies Plaintiff's paragraph 3. Mr. Hester's residence and standing is questioned and invalid, respectively.

A-4. Defendant denies Plaintiff's paragraph 4. HOROWITZ exclusively established a habitual "after residence" in Hawaii exclusively to protect his rights and interests from being deprived in this matter involving Sulla's alleged theft scheme.

HOROWITZ is domiciled in California (and originally Idaho). "An after acquired domicile cannot be used to establish jurisdiction or choice in law." *Black's Law Dictionary* (Eight edition, 2004, p. 523.)

A-5. Defendant partly admits Plaintiff's paragraph 5 and objects to the omission of certain road remnants and adjacent lots subject to this litigation, Defendants rights, and Plaintiffs' infringements.

A-6. Defendant admits Plaintiff's paragraph 6.

A-7. Defendant denies Plaintiff's paragraph 7.

A-8. Defendant denies Plaintiff's entire "Background Facts" section as it omits and misrepresent material facts in dispute.

A-9. Defendant denies each of the Plaintiffs' claims, but for facie evidence attached hereto as Exhibit "B" proving this Complaint was filed by attorney Paul Sulla in bad faith, as a "sham litigation"⁵ triggering a "sham exception".⁶ Plaintiff HESTER is a "sham plaintiff" and Sulla strawman. The attorney surety, who filed this Complaint in an effort to defraud the honorable Court by, inter alia, concealing SULLA's real party interest SULLA, as proven by Exhibit "B" failed to obtain the required leave of the Court in compliance with RCCH Rule 26(b) that states:

"(b) Who may not be surety. No attorney or other officer or employee of the court shall become surety on any bond or undertaking in any action or proceeding in this court, unless authorized by the court.

A-10. A "surety" is defined by *Black's Law Dictionary* (Eight edition, 2004, p. 1482) A "1. A person who is primarily liable for the payment of another's debt or the performance of another's obligation. . . ; the surety is directly liable." Concealed surety SULLA is "a person who is primarily liable for the payment of" Plaintiff HESTER's debt and performance of HESTER's obligation to release the Mortgage and convey the Deed free and clear of all liens or encumbrances to HOROWITZ in compliance with the res judicata case and foreclosure denied ruling by the Third Circuit Court in the res judicata case of Hester v. Horowitz et. al, Civ. No. 05-1-0196 (Exhibit "C") currently under appeal in ICA Case No. 16-1-000162, not in-so-far-as the denied foreclosure being contested by the parties, but the outstanding debt

⁵ *Black's Law Dictionary* (Eight edition, 2004, p. 1407) defines "sham" as "1. Something that is not what it seems; a counterfeit. 2. A person who pretends to be something that he or she is not; a faker."

⁶ Id. "sham exception" is defined as "[a]n exception to the *Noerr-Pennington* doctrine whereby a company that petitions the government will not receive First Amendment protection or an exemption from the antitrust laws if its intent in petitioning the government is really an effort to harm its competitors rather than to obtain favorable governmental action."

to Horowitz owed by SULLA and his shell corporation HALAI HEIGHTS, LLC, to HOROWITZ pursuant to SULLA's predecessor-in-interests, original Plaintiff Cecil Loran Lee, and nominal party, "Substitute Plaintiff," and SULLA strawman, HESTER; in addition to fees and costs in assumpsit compounding over twelve years owed by SULLA to HOROWITZ but for SULLA having acted without probate court order in Lee's place, as Lee's "personal representative" in these matters since May, 2009, and through Plaintiff HESTER as a nominal party to extend malicious prosecution and sham litigations damaging and severely distressing Defendant HOROWITZ and his associates-in-interest.

A-11. Given the clear and convincing in Exhibits "B" and "C", including Motion to Join Paul J. Sulla, Jr. as the proper party along with his shell corporation, Halai Heights, LLC, proceeding in the res judicata case Civ. No. 05-1-0196 under ICA Appeal No. 16-1-00162, SULLA has obviously filed this instant Complaint in "bad faith" and in criminal *and* civil contempt of court. Accordingly, reasonable attorneys fees and costs should be granted to the pro se Defendant under HRS § 607-14, 42 USC 1988(b) and (c), and common law precedent.⁷

A-12. Given the exhibited irrefutable evidence of SULLA having filed this Complaint concealing his own real party interests, abusing thereby his license directly before this Honorable, the Defendant justifiably moves the Court to issue sua sponte, or after hearing SULLA's defense, criminal contempt of court pursuant to violation of HRS §710-1077(c).

⁷ Guardian Trust Co. v. Kansas City S. Ry., 28 F.2d 233, 240-41 (8th Cir. 1928), rev'd on other grounds, 281 U.S. 1 (1930). See "bad faith" exception, in Sprague v. Ticonic Nat'l Bank, 307 U.S. 161, 166-67 (1939), an award of attorney fees is justified when a party engages in a continual pattern of evasion and obstruction, Fairley v. Patterson, 493 F.2d 598, 606 (5th Cir. 1974); Bell v. School Bd., 321 F.2d 494, 500 (4th Cir.1963) (en banc), or where the plaintiff was forced into unnecessary litigation, even if the defendant ultimately prevailed, McEnteggart v. Cataldo, 451 F.2d 1109, 1112 (1st Cir. 1971), cert. denied, 408 U.S. 943 (1972); Marston v. American Employers Ins. Co., 439 F.2d 1035, 1042 (1st Cir. 1971).

A-13. Along with granting Defendant fees and costs, the Defendant also requests the honorable Court, by its rules and contempt powers, to provide notice to federal law enforcers and State disciplinarians to defend the integrity of the judicial system as per HRPC Rules 3.1; 3.3(a)(1)(2)(3) and (4) 8.4(b)(c); and Cannon Rules 1.1, 1.2, and 2.5(b)(d).

A-14. The difference between civil and criminal contempt has been detailed by THE SUPREME COURT OF THE STATE OF HAWAII in the case of *RAYMOND L. LEMAY, JR., CYNTHIA J. LEMAY, and RAYMOND L. LEMAY, III, v. RICHARD B. LEANDER, JR.*, (NO. 22284; APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT(S.P. NO. 97-72); MARCH 8, 2000); and by that precedent the Court may direct its contempt powers to levy both civil and criminal fines to compensate the Respondent for damages, fees, and costs.

A-15. Defendant, Intervenor, and Third Party Plaintiffs are preparing a detailed submission of Counterclaims as required under HRCF Rule 9(b) and Federal RICO provisions, and plan to file said Counterclaims following removal to the federal venue.

III. AFFIRMATIVE DEFENSES

I. Failure To State A Claim for which relief can be granted.

I-1. HESTER who had no "prudential standing" to obtain relief. (*Deutsche Bank v. Williams*, and *Oregon v. Legal Servs. Corp.*, 552 F.3d 965, 971 (9th Cir. 2009)). HESTER never legally became a holder in due course of valid Title. HRCF Rule 12(b)(6) permits dismissal of a complaint that fails "to state a claim upon which relief can be granted."

II. Failure To Join Proper Party

II-1. The Complaint fails to name real party and proper party PAUL J. SULLA, JR., (hereafter, "SULLA") as evidenced by Exhibits "B" and "C."

II-2. The Complaint must be dismissed for failure to join proper party. *Bank of Hawaii v. James J. Brown, et. al.*, (No. 23793 from Civ. No. 93-5028; Sept. 18, 2002). In addition to Rule 19 requirements. HRCP Rule 41(b) provides for "**Involuntary dismissal . . .**:" [f]or failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. . . . Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits." Exhibit "I")

II-3. The Complaint also fails to name SULLA's two "church" corporations that have adverse interests in, and unfairly competes against the Defendant for, the Property. The first Sulla misrepresented in previous litigations as the "foreclosing party" and holder-in-due-course of the slandered Title, namely THE OFFICE OF OVERSEER, A CORPORATE SOLE AND ITS SUCCESSOR, OVER AND FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS (hereafter, "GOB").

II-4. The other concealed corporation, THE ECLECTIC CENTER OF UNIVERSAL FLOWING LIGHT-PAULO ROBERTO SILVA E SOUZA (dba as "Sky of Hawai'I" and/or "Ce'u' do Hawai'I 'spiritual community';" a.k.a., and publicly known as the Big Island "Ayahuasca Church" is owned and directed by SULLA and his son, PAUL J. SULLA, III. That "church" competes unfairly for possession of the Property that is rich in commercial value consistent with SULLA's commercial interests.

II-5. Exhibit "D" charts SULLA's real estate, alleged illegal drug manufacturing and money laundering "religious" enterprise, showing persons requiring joinder as Third Party Defendants, and other associated with them in alleged racketeering.

III. The Unconscionable Bargain

III-1. Property Seller Lee defrauded HOROWITZ during the sale of the Property as ruled by the Ibarra Court the res judicata case Civ. No. 05-1-0196. Defendant alleges the initial contract satisfied the elements of an "unconscionable bargain" as defined in *Balough v. Balough*, The Supreme Court of Hawaii (SCWC-11-0001074; Aug. 7, 2014)

III-2. "Unconscionability encompasses two principles: one-sidedness and unfair surprise. Lewis, 69 Haw. At 502, 748 P.2d 1366. One-sidedness (i.e., substantive unconscionability) means that the agreement "leaves a post-[contract] economic situation that is unjustly disproportionate." *Id.* Unfair surprise (i.e., procedural unconscionability) means that "one party did not have full and adequate knowledge of the other party's financial condition when the agreement was executed," (*Id.*) as in this instant case wherein Lee, SULLA's predecessor-in-interest, failed to disclose the Property title was encumbered and unmarketable, stemming from a federal lien for drug trafficking.

IV. Election of Remedies

IV-1. The proper party, SULLA, in privity with Lee, elected both judicial and non-judicial foreclosures, losing the first, and conducting the second in the name of a sham ecclesiastical corporation. Judicial foreclosure was denied, and the non-judicial foreclosure outcome is being appealed in ICA Cases 16-1-000162 and 0163.

IV-2. "If . . . a plaintiff has unequivocally and knowledgeably elected to proceed on one of the remedies he or she is pursuing, he or she may be barred recourse to the other.

The doctrine acts as a bar precluding a plaintiff from seeking an inconsistent remedy as a result of his or her previous conduct or election. *Cieri v. Leticia Query Realty, Inc.*, 80 Hawai'i 54, 71, 905 P.2d 29, 46 (1995) . . . The purpose of the election of remedies doctrine 'is not to prevent recourse to any remedy, or to alternative remedies, but to prevent double recoveries or redress for a single wrong.' 25 Am.Jur.2d Election of Remedies § 3 at 665 (2004) (footnotes omitted)."

IV-3. Extrapolating a decision in *Exotics Hawaii-Kona, Inc. v. Du Pont De Nemours & Co., et. al.*, referencing *Morse/Diesel, Inc. v. Fid. & Deposit Co. of Maryland*, 768 F.Supp. 115, 117 (S.D.N.Y.1991), "[P]laintiffs had made an unequivocal and knowledgeable election of [judicial] remed[y] to affirm the [Mortgage] agreements and pursue an action for [alleged default]. However, the plaintiff [in this instant case, HESTER] apparently [seeks] to recover [the same] damages based upon what [Lee] would have been able to recover in [his suit against HOROWITZ/RBOD] . . . They cannot have it [multiple] ways, i.e., [elect to collect by judicial foreclosure, and then when that didn't work, by NJF, both for a contrived default on the Mortgage denied by the Ibarra Court that ruled (Exhibit "J," pg. 86): "The remedy of foreclosure is denied but equitable relief has been granted"] and now sue again for the same Property claiming "frivolous" filing of lis pendens.

V. Res Judicata

V-1. The Complaint is a sham litigation contrived to circumvent *res judicata* doctrine, the *res judicata* case outcome, and collaterally attack HOROWITZ's public notice of pending litigation(s) encumbering the Property.

V-2. "Under the law of Hawaii: The doctrine of *res judicata* basically provides that '[t]he judgment of a court of competent jurisdiction is a bar to a new action in any court

between the same parties or their privies concerning the same subject matter, and precludes the re-litigation not only of issues which were actually litigated in the first action, but also of all grounds of claim and defense which might have been properly litigated in the first action but were not litigated or decided.” Quoted from: *Albano v. Norwest Financial Hawaii, Inc.* U.S. Court of Appeals, Ninth Circuit, No. 99-16109, March 30, 2001; referencing, *Ellis v. Crockett*, 51 Haw. 45, 55, 451 P.2d 814, 822 (1969) (citations omitted). (Emphasis added.)

V-3. The instant Petition compounds SULLA’s pattern of fraud commenced in the first filed case, and extended over a series of other malicious prosecutions and vexatious litigations, here concealing his own real party interests and chain of title administration.

V-4. In Hawaii the doctrine of *res judicata* is applied in a robust way. That is based upon the Hawaii Supreme Court’s insistence that parties should be spared unnecessary vexation, expense, and inconsistent results; □that judicial resources shall not be wasted; □and that the “legal efficacy” of final judgments shall not be undermined, but rather that final determinations “by competent tribunals shall be accepted as undeniable legal truth.” *Id.* at 57, 451 P.2d at 822. Thus, while everyone is given the opportunity to present a case, that is “limited to one such opportunity.” *Id.*

V-5. Quoting from *Albano* (Op. cit.) “[T]he courts of Hawaii ask three questions when they seek to determine whether *res judicata* should apply to a case. Two of those questions are: □“Was there a final judgment on the merits? Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?” *Morneau v. Stark Enters., Ltd.*, 56 Haw. 420, 424, 539 P.2d 472, 475 (1975)[; and] ‘Was the issue decided in the prior adjudication identical with the one presented in the action in question?’ Actually, when applied in the context of claim preclusion in Hawaii, this means that when a claim concerns the same subject matter, the doctrine

applies if the issues “could have been raised in the earlier state court actions.”

Pedrina v. Chun, 97 F.3d 1296, 1301 (9th Cir.1996);

V-6. In fact, all three elements are satisfied in this instant case, since: 1) SULLA’s Petition seeks to expunge the Defendant’s civil rights and property rights ruled equitable and just in the first filed “0196” case’s Final Judgment(s); 2) SULLA and his sham Plaintiff here, HESTER, were both in privity with Lee in the prior adjudication; and 3) the issue of fraudulent foreclosure by parties in privity with Lee is required by the instant Petition to be re-litigated here for justice in law and equity to prevail against a continuing pattern of crime and fraud committed by SULLA and Lee.

V-7. SULLA’s main contention is that HOROWITZ/RBD defaulted on payments after the Second Amended Final Judgment was filed by the Ibarra Court vacating HOROWITZ’s \$200,000 jury award used as a credit in the final “balloon” payment ten months earlier; but contention could have been, and should have been, raised on appeal, or before the trial court, not in multiple collateral attacks on the res judicata case final judgments. Lee had, after all, pled and was denied the same argument, claiming HOROWITZ/RBD defaulted on making timely payments. The Court declared otherwise in all final judgments.

VI. Insufficiency of Process

VI-1. Plaintiff’s Petition seeks to secure free and clear title to Defendants’ property. “The due process clauses of the United States and Hawai’i Constitutions hold that, “[n]o person shall be deprived of life, liberty, or property without due process of law.” Haw. Const. art. I, § 5; U.S. Const. amend. XIV, § 1. (Quoted from: *Romero v. Star Markets, Ltd.* 922 P2d 1018 (1996) 82 Haw. 405.)

VI-2. Between May 15, 2009, and May 3, 2010, Plaintiff and SULLA proceeded to violate HRS §§ 667 et seq; 445 et seq; Rule 10b-5, Rules and Regulations of the Exchange Act, 17 C.F.R. § 240.10b-5 (1990). *Nakamoto v. Hartley*, 758 F. Supp. 1357 (D. Haw. 1991) and numerous other laws, and committed fraud in the factum with SULLA's "virtual representative" Lee, as evidenced by: (1) falsely warranted securities Assignments wrongfully issued and untimely administered into the sham GOB "Foreclosing Mortgagee" formed on May 29, 2009 with SULLA's "robosigned" Articles of Incorporation bearing Lee's photocopied signature(s) and altered date(s); and (2) the sham Plaintiff cast a "fictitious bid" as a "fictitious bidder" to defraud the Defendants, the State of Hawaii, and the courts, on behalf of the "fictitious GOB 'church,'" by direction of the auctioneer, concealed surety, and exclusive real party of interest, SULLA.

VI-3. These alleged facts are corroborated by discovery evidence filed in ongoing appeals case ICA CAAP 16-1-000162.

VII. UNIFORM FRAUDULENT TRANSFER ACT (HRS § 651C-4)

VII-1. Plaintiff's Petition and claims of "HESTER's ownership" predicated upon Plaintiff's illegal and void NJF and subsequent fraudulent transfers of the deed is a *fraud upon the court* in violation of Haw. Const. art. I, § 5; U.S. Const. amend. XIV, § 1, and the fairness principle defended by the U.S. Supreme Court's ruling in *Gelfert v. National City Bank*, 313 U.S. at 233 (1941).

VII-2. With HESTER being SULLA's shill, SULLA being the exclusive real party of interest as HESTER's mortgagee, and Lee being SULLA's "virtual representative," it was predictable and predicted in court filings in Civ. No. 05-1-0196 to assume that SULLA would "flip" the Property to himself for little to no money, which weighs

heavy against the “fairness principle” defended in *Gelfert*. (*Id.*)

VII-3. HRS § 651C-4 states: “(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation: (1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor: (A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction.”

VII-4. The Petition’s single claim must be dismissed for this fact alone. The chain of records in the res judicata case prove indisputably that the Complainants’ “virtual representative” Lee committed fraud in the factum with the complicit Complainants by fraudulently issuing, fraudulently warranting, and fraudulently Assigning HOROWITZ’s Mortgage and Notes to the sham GOB “church” on May 15, 2009, (before the corporation legally existed) at the same time SULLA filed Notice of Appeal opposing the Amended Final Judgment in Civ. No. 05-1-0196 (Exhibit “S”; on May 21, 2009) to evade five (5) judgment creditors owed more than \$400,000.00 at that time (including fees and costs in assumpsit).

VII-5. Moreover, the Complainant(s) made the fraudulent transfers without paying HOROWITZ et. al., “a reasonably equivalent value in exchange for the transfer or obligation and the debtor: was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction.”

VII-6. In *Bank of Hawaii v. Kunimoto* (19 1981 10 20), Judge Moon et al. ruled that when a judgment creditor is defrauded in violation of HRS § 651C, as is documented as having occurred to damage HOROWITZ in this case, and the opposing party continues to hinder, delay, or defraud the victim and court(s) (now for more than six [6] years) by engaging in conduct which is in violation of 651C; resulting in severe distress, and immediate and irreparable harm to the defrauded party, this activity “should not be tolerated.”

VIII. Statute of frauds (HRS § 656-1; HRCP 8(c))

VIII-1. HRS § 656-1 Case Note reads: “Where no real property interest was transferred to owner by virtue of owner's redemption of property at IRS tax sale, statute of frauds inapplicable. 84 H. 360 (App.), 934 P.2d 1.”

VIII-2. Alternatively, this Petition was brought “[w]here . . . real property interest was transferred to [falsely alleged GOB “church”] owner[s] [and later, to HESTER as individual, and later again to SULLA’s own HALAI HEIGHTS, LLC,] by virtue of owner’s redemption of property at [SULLA’s wrongful NJF auction, by reason of the aforementioned fraudulent Assignments. Thus,] “statute of frauds . . . [is] applicable.” 84 H. 360 (App.), 934 P.2d

VIII-3. Moreover, the Petitioner made the fraudulent transfers without paying HOROWITZ “a reasonably equivalent value in exchange for the transfer or obligation.” *Id.*

VIII-4. HRS § 651-1 Case Note reads Statute of frauds must be pleaded as affirmative defense, as is pled here, under HRCP 8(c). 45 H. 1, 361 P.2d 374.

IX. Breach of contract

IX-1. Plaintiff/SULLA's "virtual representative" Seller Lee breached his contracts with Buyer HOROWITZ/RBOD (including the purchase and sale agreement terms [DROA] and the Agreement for Closing Escrow [AFCE]). The trial jury and court ruled in "0196" that Lee's misrepresentations regarding the sale caused HOROWITZ's damages.

IX-2. SULLA/HESTER and Lee subsequently breached the Mortgage Contract and HRS § 506-8 provisions by evading service of notices to Release the Mortgage following the payment on February 27, 2009. This payment complied with the Ibarra court's Order. between March, 2009 and June, 2010, and even thereafter, as evidenced by. Exhibits "L" thru "N," including the Complaint For Conveyance to compel the Mortgage Release filed in this Court on May 21, 2009, Civ. No. 09-1-0178.

IX-3. SULLA/HESTER's NJF, Quitclaim Deeds, and claimed "ownership" of the Property is *void* but for the aforementioned *breaches of contracts*.

X. Laches defense

X-1. Plaintiff waited a long, *long* time to file this claim. Assuming, arguendo, that Plaintiff knew the Title was slandered as early a March 19, 2010, as inferred by his *outrageously published inability to warrant the free and clear title at auction during the NJF* on April 20, 2010; verified by Notice of Sale in Mortgagee's Affidavit, (Exhibit "Z") then a Circuit Court Complaint to challenge or quiet title could have, and should have, been filed at that time, NOT FOUR YEARS LATER!

X-2. This unwarranted delay caused Defendants damages, and prejudiced the

Defendants through premeditated expirations of statutes of limitations on certain Counterclaims.

X-3. Plaintiffs' lapse and untimely filing of this Complaint in the proper court prejudiced the Defendants' ability to defend against this malicious prosecution as time went on and their financial resources were exhausted.

XI. Failure to mitigate damages

XI-1. Plaintiff acted tortuously and criminally to make Defendants damages worse, and refused to act reasonably to minimize the damages.

XI-2. Defendants met with HESTER and SULLA on several occasions to settle this dispute to mitigate damages, but the Complainants refused Defendants equitable offers.

XII. Unjust enrichment

XII-1. Plaintiff and SULLA seeks unjust enrichment.

XII-2. Plaintiff and SULLA seeks to recover more than what was allegedly owed.

XII-3. Defendants invested approximately \$1.2 million into the Property in Mortgage payments and real property improvements, which Plaintiff(s) seek to possess for "THE SUM OF TEN DOLLARS (\$10.00) and other valuable consideration."

XII-4. Plaintiff(s) seek(s) unjust enrichment prohibited by statutes and case law.

XIII. Illegality

XIII-1. SULLA knowingly, willfully, maliciously, and recklessly acted and conspired

with Lee and HESTER to evade at least five (5) known judgment creditors in violation of HRS § 651C, including HOROWITZ/RBD, as evidenced by the chain of records and previous dates the Complainants committed the fraudulent Assignments (i.e., transfers) of the fully paid Mortgage and Notes, that is, May 15-28, 2009—PRECISELY WHEN SULLA FILED CIVIL APPEAL NO. 29841 ON MAY 21, 2009 TO APPEAL THE \$200,000.00 JURY AWARD AND COMMENCE THE CONSPIRATORS SCHEME TO DEFRAUD THE IBARRA COURT USING A “SUBSTITUTE PLAINTIFF” FICTIONAL “CHURCH”—PRIMA FASCIE EVIDENCE OF FRAUDULENT TRANSFER WITH SCIENTER! (See: Exhibits “O” thru “S” and Ibarra Court Hoohiki’I Record, Exhibit “UUU”, Exhibit pg. 699.)

XIII-2. SULLA/HESTER (and Carey) later maliciously prosecuted the Defendants to steal their Property in criminal contempt of the Ibarra court Final Judgments, and in contempt actions dismissed by the Freitas Court twice for the same lacking jurisdiction. (Exhibits “I,” “J” and “GG”)

XIII-3. SULLA issued multiple fraudulent (falsely warranted) securities instruments and forged documents to convert the Property to his own eventual possession, using HESTER as a shell, and the GOB “church” as a front, consistent with a “vertical abusive trust beneficiary scheme.”

XIII-4. SULLA committed mail fraud, wire fraud, extortion, theft of Title, criminal trespass, terroristic threatening, defamation and libel to unfairly compete for the Property, and forgery on securities instruments to convert properties—acts damaging the Defendants/Counterclaimants in violation of RICO prohibitions consistent with a RICO enterprise (as evidenced in Exhibits “MMM”, “TTT” and

XIV. Unclean Hands

XIV-1. Plaintiff's Complaint was filed with "unclean hands," and is, thus, barred from obtaining relief.

XIV-2. Under the doctrine of "unclean hands," it is expressed that "he who comes into equity must come with clean hands [.]'" (*7's Enters., Inc. v. Del Rosario*, 111 Hawai'i 484, 494, 143 P.3d 23, 33 (2006)); and Whether a party "engaged in iniquitous (i.e., grossly unfair and morally wrong) conduct is primarily a question of fact[.]" *Shinn v. Edwin Yee, Ltd.*, 57 Haw. 215, 230, 553 P.2d 733, 743 (1976).

XIV-3. In fact, Plaintiff came into equity—claimed "ownership" of HOROWITZ/RBD's Property—by fraudulent Assignments of Mortgage and Promissory Notes to evade judgment creditors, and then unlawful NJF by power-of-sale by unlicensed auctioneer, SULLA. Thus, this Complaint for Quiet Title derives from the Title being slandered by securities fraud and the crime of theft.

XV. Plaintiff Lacks Standing to Bring Complaint

XV-1. HESTER lacks standing to Quiet Title, because he acquired his "color of title" from the sham GOB "church" that was not validly Assigned the Mortgage and Notes; thus lacked "prudential standing" to foreclosure or gain legal Title by power of sale. *Deutsche Bank v. Williams*, and *Oregon v. Legal Servs. Corp.*, 552 F.3d 965, 971 (9th Cir. 2009).

XVI. Unconscionability

XVI-1. Plaintiff's Complaint is an unconscionable malicious prosecution based entirely on fraud and crime.

XVI-2. Plaintiff's claim of "ownership" of the Property is unconscionable and outrageous. *Lewis v. Lewis*, 69 Haw. at 502, 748 P.2d at 1366 ("The principle is one of the prevention of oppression and unfair surprise[.]").

XVI-3. This Complaint is an "unfair surprise" since, among other things, SULLA filed it as a concealed surety with adverse interests in the Mortgage, and conflicting interests in the Property, in violation of RCCH Rule 26(b); and this compounds a decade of "surprises" by SULLA and Plaintiff's "virtual representative" Lee, extending outrageous duress to financial damage and severely distress HOROWITZ et. al., and steal the Property.

XVI-4. "Whether particular circumstances are sufficient to constitute . . . duress is a question of law, although the existence of those circumstances is a question of fact." *Gruver v. Midas Int'l Corp.*, 925 F.2d 279, 2828 (9th Cir. 1991) citing Oregon law on economic duress).

XVII. Statutory Compliance

XVII-1. Plaintiff's Complaint, and its antecedent actions by Plaintiff and SULLA et. al., violates numerous statutes prohibiting fraud and crime, extending more than a decade.

XVII-2. Defendants have repeatedly relied on the justice system and multiple attorneys following statutory laws to defend against Plaintiff/SULLA's actions to steal the Property.

XVII-3. In particular, the Defendants have relied: (1) on Misprision of felony statute Title 18 USC § 4; and (2) Execution of public duty statute HRS § 703-303(2)(a)(b)(c) and (e); and HRS § 634F-1 and 2, acting in good faith by reason of "Public

Participation in Government.”

XVII-4. To comply with laws, SULLA and HESTER cannot be rewarded and enriched.

XVIII. Restraint of Trade

XVIII-1. Plaintiff’s Complaint, and its antecedent actions by Plaintiff and SULLA et. al., compounds more than a decade of Restraint of Trade.

XVIII-2. Plaintiff’s purported “church” and SULLA’s purported “church” have competed unfairly against HOROWITZ/RBD to secure and commercialize the Property.

XVIII-3. SULLA’s conflicting interests, evidenced in Exhibit “WWW,” best explain manner and means by which SULLA has acted illegally as agent for Plaintiff and “virtual representative” Lee, to steal the Property, defame HOROWITZ/RBD, and financially damage the Defendants.

XIX. Contempt of Court

XIX-1. Plaintiff’s Complaint filed by SULLA, and its antecedent actions in two previous courts, all focused on claims of HESTER’s “ownership” by reason of SULLA’s NJF, including: (1) Civ. No. 3RC-11-1-662; and (2) 3RC 14-1-466; were each filed in criminal contempt of the Ibarra Court Final Judgments in Civ. No. 05-1-0196 DENYING Foreclosure for good causes ruled.

XX. Attorney Malpractices Prohibited by Hawaii Rules of Professional Conduct

XX-1. Plaintiff’s Complaint was filed by attorney SULLA in “bad faith” and

"unclean hands;" and violates, inter alia, HRPC Candor Rule 3.3, HRCP Rule 4.1 for Honesty; HRPC anti-crime Rule 8.4 (by neglecting/omitting the Final Judgments in Civ. No. 05-1-0196); and Cannon 22, entitled "Candor and Fairness.

XX-2. As reviewed in *Sawyer* 360 I/S/ 622 (1959) THE U.S. Supreme Court discussed misconduct in reference to Bar attorneys and Canon 22. It reads:

"The conduct of the lawyer before the Court and with other lawyers should be characterized by candor and fairness."

"It is not candid or fair for the lawyer knowingly to misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a textbook, or, with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed, or in argument to assert as a fact that which has not been proved, or, in those jurisdictions where a side has the opening and closing arguments, to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely."

"It is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes."

XX-3. Nothing SULLA has filed with the courts since entering in May, 2009, allegedly on behalf of his "clients" in this case, has been forthright or legal, as everything sources from this attorney's efforts to defraud the Defendants and the courts using fraudulent Assignments of Mortgage and Promissory Notes that he issued and/or certified May thru September, 2009. (Exhibits "O" thru "T")

Respectfully submitted.



DATED: Honolulu, HI, January 11, 2017

LEONARD G. HOROWITZ, In pro per

Hester v. Horowitz, et. al. Declaration of Leonard G. Horowitz pursuant to Removal of 16-1-1442-07 VLC. ANSWER & AFFIRMATIVE DEFENSE in CASE CIV. NO. 16-1-1442-07 VLC.