**1:16-CV-00549-DKW-KSC**

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF HAWAII**

**Bankruptcy Appeal**

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# APPELLANT'S OPPOSITION TO APPELLEE'S MOTION TO DISMISS

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HONORABLE JUDGE
DERRICK K. WATSON
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF HAWAII**

**1:16-CV-00549-DKW-KSC**

LEONARD G. HOROWITZ
Appellant-debtor,
vs.

PAUL J. SULLA, JR. an individual; PAUL J. SULLA JR., ATTORNEY AT LAW A LAW CORPORATION, a corporation
Defendants

**APPELLANT'S REPLY IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS [FRAP Rule 27(a)(3)]; EXHIBITS "1" THRU "6"; DECLARATION OF LEONARD G. HOROWITZ; CERTIFICATE OF SERVICE**

JUDGES: HONORABLE DERRICK K. WATSON (KEVIN S. CHANG)

## APPELLANT'S REPLY IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS

COMES NOW Appellant LEONARD G. HOROWITZ, (hereafter, "Horowitz," or "Appellant") pro se, filing this Motion in Opposition to Appellee's Motion to Dismiss, filed 1/24/17, in accordance with FRAP Rule 27(a)(3).

**I. Appellee diverts from facts and errors in dispute, and "stonewalls" to conceal his first degree theft by dismissing rather than answering Appellant's allegations.**

Appellee Paul J. Sulla, Jr. (hereafter, "Sulla") filed Motion to Dismiss to consummate First Degree Theft, rather than answering in compliance with FRCP Rule 8(b)(2). This ploy extends Appellee's pattern of "stonewalling." (*Companion Health Services, Inc. v. Kurtz*, 675 F. 3d 75, 85, 87 - Court of Appeals, 1st Circuit 2012, and *Estate of Amaro v. City of Oakland*, 653 F. 3d 808, 814 - Court of Appeals, 9th Circuit, 2011).

**A. Appellee falsely claims the Appeal is "unclear" and "confusing" as diversion.**

Appellee defends stating the Appellant's Opening Brief ("OB") was "unclear" and "confusing." *To the contrary*, the substance of Appellant's express points of error are sufficiently clear to require express answers to comply with Rule 8(b)(2).

The issues raised in the OB were *clear enough* to enable Sulla to address the following six (6) questions and points of error:

1. **Did Sulla violate the Automatic Stay?** And was this question substantively addressed in court; or where material facts and due process neglected in violation of the Appellant's rights?

2. **Did Sulla violate his Disqualification Order issued by Judge Puglisi?** Likewise, was this question substantively addressed in court, or where material facts and due process neglected in violation of the Appellant's rights?

3. **Did the BK Court err in "harboring" Sulla by asserting a "Rule 11" preclusion?** The holding by the court that Appellant had not complied with the "safe harbor" of rule 9011(c)(1)" is alleged to be clearly erroneous. (This point on appeal requires a two part analysis, as the *OB* (p. 35-38) explained:

   (a) Was Sulla required by the Appellant's filings "to withdraw [his] position" that creditor Jason Hester had valid standing to petition the court to

lift the Stay? and

(b) Was FRBP Rule 9011(c)(1)(A) violated, since this law clearly provides an exception to the 21-day "safe harbor" stating it "shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b)." Subdivision "(b)" precludes favoring false representations to the court, and required Sulla to have performed "an inquiry reasonable under the circumstances" before concluding that Hester had valid interests and standing to plead for relief of the automatic Stay. Sulla is alleged to have violated all the above.

In other words, was it within the court's jurisdiction, and not an abuse of discretion or clearly erroneous, to have denied the Motion to Show Cause based on a Rule 11 "safe harbor" provision, given Sulla's history of fraudulently concealing Hester as Sulla's "sham plaintiff"—evidenced by Sulla's set of *forged* and *altered* documents he verified by perjury to conceal his interests and represent Hester's *purported* entitlements? (OB pp. 15-16)

**4. Did Sulla's alleged forgery, perjury, and fraud upon the court, and failure to file any opposition to the Motion to Show Cause, permit precluding a sanctions hearing on the Motion? Alternatively, was the Appellant's right to adjudication on the merits and due process denied?**

**5. Did the court err by vicariously answering for Sulla in lieu of Sulla not answering for himself; and did the court-precluded hearing on Motion evidence bias and injustice?**[1] And finally,

**6. Was the court's neglect of the Appellant's claim to rights secured by the "Crime Victims' Rights Act," and denial of the Appellant-victim-witness's due process on the Motion to Show Cause, in error?**

The OB requires Appellee to Answer the substance of the Appellant's allegations.

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[1] To sustain a claim of this kind, there must be an "extremely high level of interference" by the trial judge which creates "a pervasive climate of partiality and unfairness." *United States v. DeLuca*, 692 F.2d 1277, 1282 (9th Cir. 1982). *See also* Laurins, 857 F.2d at 537 ("A judge's participation [in the trial] justifies a new trial only if the record shows actual bias or leaves an abiding impression that the jury perceived an appearance of advocacy or partiality.")

Instead of answering, Appellee's Motion diverts to frivolous, reckless, and false technical arguments. Sulla's "stonewalling" is reminiscent of his sanctioned performance in *Takaba v. Commissioner* 119 T.C. 285, 295, 2002 WL 31818000. ("Mr. Sulla recklessly raised a frivolous argument . . . We find that Mr. Sulla was reckless.")

Appellant alleges that Sulla knowingly administered both forged and fraudulently-warranted securities—Appellant's Mortgage and Note (**Exhibit 3**)—to *steal* the Appellant's property using a judgment-proof strawman named Hester to conceal Sulla's real party interest, and indemnify Sulla against liability. Hester's "standing" to request relief of Stay was based on *void* securities. (OB 15-16) This factual allegation is tacitly admitted by Sulla's "silence." *United States ex rel. Bilokumsky v. Tod*, 263 US 149, 1923. "Conduct which forms a basis for inference is evidence. Silence is often evidence of the most persuasive character."

Hester's interest and standing is based on said "Fraudulent Assignments" of Mortgage and Note (i.e., securities) to a sham "church." (OB 15-16) Sulla also conceals the church was not legally-incorporated at the time of the Assignments. Sulla administered these assignments to the "Gospel of Believer's" entity on May 26 and 28, 2009. (**Exhibit 4**) *Billete v. Deutsche Bank Nat. Trust Co.,* 2013 WL 2367834, at 7 (D. Haw. May 29, 2013) (unpublished) (If the corporate entity did not exist at the time of the assignment it would be *void* and the subsequent non-judicial foreclosure and ejectment would be invalid.)

Evidencing fraud and crime, that church's registration was administered exclusively by Sulla using a set of "altered" and forged Articles of Incorporation. (OB p. 15-16) See e.g. OCWEN LOAN SERVICING, LLC v. LUM, et. al., Civil No. 13–00497 LEK–KSC, April 20, 2015. (no title passes if the document is found to have been forged including by alteration); *Skaggs v. HSBC Bank USA, N.A.* 2010 WL 5390127 (US Dist. Haw.2010) (Unpublished) (mortgage note may be void even against a holder of due course based on fraud); *Deutsche Bank v Maraj* 18 Misc. 3d 1123, 2008 WL 253926 (N.Y. Sup. 2008)(in which the court refers to such discrepancies as a "Kansas City Shuffle"; and tax investigators refer to this as "a vertical abusive trust beneficiary scheme." Appellant accurately reported in the OB p. 16, "Sulla positioned himself as Hester's financier and 'Mortgagee' to flip the Property to Sulla's enterprise." Indeed, on September 6, 2016, Sulla covertly conveyed the Property to himself from Hester by a Warranty Deed to Sulla's Halai Heights, LLC that Sulla formed on February 1, 2016 to consummate his million-dollar property theft. (**Exhibit 2**)

These allegations are clear. They are the basis for the Opening Brief's allegations, intimately intertwined with the aforementioned points of error on appeal. Sulla stonewalling feigns "confusion." Sulla's diversion operates as a "failure to deny" the allegations where *a responsive pleading is required* according to FRCP Rule 8(b)(6).[2] Accordingly, **Sulla tacitly admits to committing the following**

[2] FRCP Rule 8(b)(6) states:

**crimes**: (1) securities fraud; (2) perjury; (3) forgery; (4) contempt of court; (5) wire fraud; and (6) first degree theft of real property based on the clear and convincing evidence in **Exhibits 2** through **4**.

The material facts and public record evidenced here, and the Appellant's "silence" by evasion (In *Bilokumsk Op. cit.),* preclude the Honorable Court from granting Appellee's Motion. *Rowland v. Novus Financial Corp.*, 949 F. Supp. 1447 - Dist. Court, D. Hawaii 1996. "Summary judgment shall be granted where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c)."

**B. Appellee's false claim that the Appeal is "untimely" is a ploy.**

Sulla *falsely states* (in Motion p. 1) that besides being "unclear", the Appeal is "untimely. . . . The Notice of Appeal . . . pertains to the September 16, 2016 Order in ECF Dkt# 138," ***Not so***, the **Notice of Appeal pertains to the *Motion to Show Cause*** denied by the BK court. That is a completely different "Memorandum Decision", Dkt #139. (**Ex 1, p. 5**) Sulla's diversionary ploy is intended to hoodwink the Court and prejudice the Appellant. The subject of the Appeal is evidenced by **Exhibit 1, p. 2**—the "Notice of Appeal and Statement of Election" filed October 4, 2016, with its attached cover page of the "Motion to Show Cause for Violations of

(6) *Effect of Failing to Deny.* An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

Automatic Stay, Defying Disqualification Order, and Bad Faith Pleadings in Judgment Creditor Paul J. Sulla, Jr.'s Objection to Confirmation of Amended Plan of Debtor (Dkt #87)," is the Matter on Appeal. That express cover page was directly position between the Notice of Appeal and a copy of the contested "MEMORANDUM OF DECISION ON DEBTOR'S ALLEGED MISCONDUCT BY PAUL J. SULLA, JR." (Dkt. #139, **Ex 1, p. 5**) So there is *no mistaking what this Appeal is about*, especially for a forty-year veteran lawyer savvy-enough to steal a million dollar estate under color of law.

And if that "bait-the-Court-n-switch-the-Order-being-appealed" wasn't sufficiently deceptive to cause the Court's confusion, Sulla blames the confusion on the pro se Appellant. Sulla compounds his contempt by stating on page 4 of his Motion:

> "the actual Motion for Reconsideration **Dkt #150**, the Order on which is currently the primary matter being appealed, is not in the Record on Appeal. It is impossible for this Court to overturn an Order denying reconsideration of another Order when the **Motion for Reconsideration**—which was supposed to provide the Court a basis for reconsideration—**is wholly absent from the Record on Appeal**." (Emphasis ***not*** added.)

*Since when is a Motion an Order?* Sulla's "slight-of-hand" baits the Court to look away from where Sulla doesn't want the Court to look—at the substance of the Appeal—the "MEMORANDUM OF DECISION ON DEBTOR'S ALLEGED MISCONDUCT BY PAUL J. SULLA, JR"; and its precipitating "Motion to Show Cause for Violations of Automatic Stay, Defying Disqualification Order, and Bad Faith Pleadings in Judgment Creditor Paul J. Sulla, Jr.'s Objection to Confirmation of Amended Plan of Debtor"

Accordingly, Sulla intentionally misdirects the Court to look a *two decoys*:

(1) "the September 16, 2016 Order in ECF Dkt# 138" (**Ex 1, p. 38**) that is, Judge Faris's "Memorandum of Decision Regarding Plan Confirmation;" and

(2) the October 31, 2016, "Order Denying Debtor's Motion to Reconsider" that Sulla states is "the Order on which is currently the primary matter being appealed," and "is not in the Record on Appeal", which are two falsehoods.

**Exhibit 1, p. 11.** shows the "Order Denying Debtor's Motion to Reconsider" signed 9/29/16. It's "not in the Record on Appeal," Sulla confusingly pleads about this Order's precipitating Motion that is NOT the basis for this Appeal. Sulla recklessness here evidences Sulla's protection "racket" modus operandi. He pleads recklessly to stonewall, to conceal his modus operandi in abusing processes and maliciously prosecuting his victims for real estate conversion. That's part of his *enterprise*. (OB 35)

Sulla's "untimeliness" argument is moot—*Poof*! *Gone!*—with FRBP 8002(b) and the appearance of that 9/29/16 filed "Order Denying Debtor's Motion to Reconsider." (**Ex 1, p. 11.**) That Order preceded the Appellant's Notice of Appeal (10/4/16) ***by just five (5) days***. The Appeal, therefore, is not "untimely."

Sulla misdirects the Court to view his untimeliness argument through FRBP Rule 8002(a)(1) (on M p. 2); *willfully blind* to the next section "(b)" that states very clearly what Sulla hides—FRBP 8002(b) —the time-extending permit to file an appeal following a motion. It states:

"(b) Effect of a Motion on the Time to Appeal.

(1) *In General*. If a party timely files in the bankruptcy court any of the following

motions, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(A) to amend or make additional findings under Rule 7052, whether or not granting the motion would alter the judgment;

(B) to alter or amend the judgment under Rule 9023;

(C) for a new trial under Rule 9023; or

(D) for relief under Rule 9024 if the motion is filed within 14 days after the judgment is entered.

Certainly, a 40-year veteran attorney would know "b" follows "a." And in this case, "b" reset "a", permitting another 14-days for Appellant's timely filing of his Notice of Appeal. Sulla knew that Appellant had pending motion(s) in the related Adversary Proceeding, and also had filed Motion to Reconsider on 9/26/16 within 14- days of the 9/19/15 dismissal, and 9/16/16 Memo Decision on the Motion to Show Cause. Had Sulla actually been confused, he could have easily performed an "inquiry reasonable under the circumstances" on any of the "missing" documents available through Pacer. Regardless, Sulla would still be facing what Sulla pleads to have the Court completely neglect—the real "primary matter being appealed"—the "Motion to Show Cause" and aforementioned errors.

Sulla's stonewalling presumes the Honorable Court can be fooled by "flim flam" diversions and omissions. Sulla pleads to cause the Court to neglect the record, rules, and issues raised in this Appeal—so Sulla can evade showing cause for his alleged violations of the Stay, his disqualification violations, and fraudulent property conversion using Hester as a "sham creditor" leveraging a legally void state court judgment.

Sulla's similar stonewalling in state courts have caused the Appellant's bankruptcy; financially damaging Horowitz millions of dollars, severely distressing the Appellant since 2009, stealing the Appellant's house, commercial property, life savings, and livelihood as a public health expert benefitting society. Sulla has brought the Appellant's professional career to a standstill repeatedly during the past seven years, causing substantial irreparable harm, destroying the doctor's Judeo-Christian ministry and precluding the doctor's internationally valued contributions to consumer health and safety. Horowitz, who pleads pro se here, had five (5) licensed lawyers prove impotent in obtaining relief against Sulla's pattern of frivolous, fraudulent, and reckless pleading as he demonstrates in this Motion.[3]

Pursuant to ordering justice against such a "flim flam man", the court in *US V. NATHANSON*, 948 F. SUPP. 2D 1055 – DIST. COURT, CD CALIFORNIA 2013, wrote: "I don't think the guidelines really reflect the impact on the victims and the mental distress and their torment of this offense and how they lost their money." "Mr. [Sulla]'s crimes were terrible and incredibly serious ones. Over the course of many years he took advantage and betrayed the trust of [many] people for a loss in the millions of dollars. . . . [T]he punishment has to fit the crime." *Id.*

Sulla's crimes in this case include forgery, perjury, securities fraud, wire fraud,

[3] Appellants' legal fees alone near $500,000.00 in Sulla-instigated or continued cases.

and first degree theft (*OB 5*) after being indicted by regulators in *United States vs. Arthur Lee Ong*, Cr. No. 09-00398 DAE, "Superseding Indictment" (July 28, 2010) (*OB 30*); as well as disciplined in *Takaba*, only to repeat offenses in *United States vs. Bruce Robert Travis*, U.S. Court of Appeals, Ninth Circuit. No. 10-15518; (March 10, 2010)(2007) (*OB 30*).

**C. Appellee's supplemental objections are frivolous, reckless, and defamatory.**

**(a) The Brief is not beyond the *word limit.***

Sulla's supplemental objections are frivolous, reckless, and defamatory, beginning with his statement that "the Opening Brief is over the page limit by 13 pages. For this he cites FRBP Rule 8015(a)(7)(A), stating "the Opening Brief 'must not exceed 30 pages." But here again, Sulla exercises his "reckless myopia," oblivious to the damage he causes to the Appellant and integrity of the legal profession. The very next clause "(7)(B)" states very clearly:

> (B) *Type-volume limitation.*
> (i) A principal brief is acceptable if:
> • it contains no more than 14,000 words; . . .

The Appellant verified in his "Certificate of Compliance" (*OB 44*) that "there are 13,932 words in this brief," and Horowitz even attached a screenshot of that measure on pg. 45, to prove it.

Moreover, careful examination of Sulla's Motion's font size evidences the use of 12-point font throughout. FRAP "Rule 27 Motions" specifies a required 14-point font size in keeping with Rule 32(a)(5), that clearly states: "(5) *Typeface.* . . . A

proportionally spaced face must be 14-point or larger." Perhaps font size is a substantive issue, but for Sulla having stolen Horowitz's house using 12-point font.

**(b) The points of error cited in the OB are clear enough for Sulla to Answer**

Sulla repeats his "confusion" defense often in the Motion. He claims the points of error raised by the Horowitz are "incoherent and impossible to formulate a coherent response." Yet Sulla neglects to: (a) cite where in the OB he became "confused," (b) file for more definite statement or more specific allegations; and (c) cite any case law in support of dismissal for defendant's "confusion."

On motion for summary disposition wherein "confusion" is raised, "[T]he court must determine whether, assuming the truth of the plaintiff's allegations, the [lawyer]'s conduct violated clearly established law. Because the former option of demanding more specific allegations of intent places no burden on the defendant-official, the district judge may choose that alternative . . ." *Crawford-El v. Britton*, 523 US 574, 598 - Supreme Court 1998. Moreover, Sulla presents a classic case of "stonewalling" as explained in *Companion Health Services, Inc. (Op. cit.)* "The district court had supportably found that [government defendants] had themselves engaged in a deliberate pattern of stonewalling with the aim of frustrating effective discovery and the progress of the case." Default judgment was ruled there to be "an appropriate sanction" for defendants who "engaged in a pattern of obstruction or stonewalling." *See SNET,* 624 F.3d at 147-48 (emphasizing importance of pattern of

prolonged obstruction in the determination of default judgment as an appropriate sanction). Similarly, Sulla's *pattern* is evident in this case and instant Motion. He presents a sufficient number of reckless misrepresentations and diversions recording a "pattern of prolonged obstruction" compounding seven years of employing these same tactics in multiple courts to deprive the Appellant of his civil rights and real property. The 9th Circuit in *Estate of Amaro* (Op. cit.) expanded judicial aversion to stonewalling, equating it to the doctrine of equitable estoppel in a civil rights case against stonewalling law enforcers.

In the instant case, the manner and means by which Sulla stonewalls is a classic example of equitable estoppel doctrine in a 1983 civil rights case that the Appellant has pending against Sulla in the administratively stayed matter of CV 15 00186JMS-BMK. No reasonable law-abiding person would be able to know all the "true facts" Sulla has hidden in his bag of torts, crimes, and seeming-immunity, as evidenced in this case wherein the BK court granted Hester with no valid standing whatsoever the relief Sulla requested. Sulla pleads for similar immunity in this Court.

**(c) This appeal is not mooted by the bankruptcy dismissal, and remedies can be crafted by the Court either on remand or otherwise.**

Sulla states without citing case law (M, p. 7) that since "[t]he underlying bankruptcy and adversary proceeding matters have both been dismissed . . . this appeal is moot. Even if the Court were to accept Appellant's arguments and remand this matter to the Bankrupcy Court, there is no Motion to Re-Open the Bankruptcy

and there would be no bankruptcy case left for the Bankruptcy Court to re-hear the Motions on appeal in  As such, for judicial economy, this appeal should be dismissed." Sulla adds, " [T[o the extent that this appeal is untimely, this Court lacks jurisdiction to hear it. To the extent that this underlying case has been dismissed, the property at issue has been transferred and the debtor dispossessed, any specific action beyond sanctions is not something this Court can redress."

Controverting Sulla's reckless assertions, the Honorable Court maintains jurisdiction by reason of the *timeliness* of this Appeal pursuant to FRBP 8002(b); and by virtue of Sulla having defrauded the BK court and trustee by perjury. Sulla fraudulently concealed Sulla's own conflicting interest in the Property, while feigning Hester's standing and interests. The corrupted BK court's dismissal without *valid* personal jurisdiction over Hester is *void.* The OB (p. 31) states: "The Motion to Show Cause also sought to compel Sulla to show cause for falsely alleging Hester's standing, interest, and the court's jurisdiction over Hester.")("A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court." See *Long v. Shorebank Development Cor*p., 182 F.3d)

Accordingly, this Appellate Court has jurisdiction to do more than sanction Sulla, which is one remedy requested in this Appeal. And what is an equitable

sanction for a million-dollar Property theft? Sulla's lacking candor neglected to disclose the Property had "been transferred" to Sulla by Sulla under the guise of Sulla's Halai Heights, LLC, limited liability company.[4] (**Exhibit 2**) What is a suitable sanction for this fraudulent concealment?

The Motion to Show Cause and OB raised the issue of Sulla having defrauded the BK trustee to neglect his avoidance powers, "such as 11 U.S.C. § 558," (OB, p. 33), neglect statutes of frauds, neglect avoiding the transfer of the Appellant's property to Sulla (through Hester); and neglect his duty intertwined with the relief the defrauded court granted Sulla by lifting the Stay.

Contrary to the BK court's errors, *the Appellant remains a judgment creditor*, and Hester a judgment debtor, and Sulla the liable real party in interest. Sulla's liability for the outstanding judgment debt owed Horowitz derives from the final judgments in Civ. No. 05-1-0196. This debt is pending final disposition in the ongoing State appellate case, CAAP 16-000162, wherein Appellant has moved for Sulla to be joined. Summarily, Sulla is liable for his privies, Hester (and the property seller, Lee in that case) for judgment debt to Horowitz that derives from a $200,000 jury award Horowitz obtained in 2008 *erroneously vacated.* Add interest, fees, and costs in assumpsit exceeding $500,000, still due and owing, plus sanctions requested in this Appeal pursuant to Sulla's stay violations, and the BK court's relief of stay

[4] Exhibit 2 provides a copy of the Motion for Judicial Notice filed by the Appellant on 1/12/17 containing the "warranty deed" transfer from Hester to Sulla that Sulla issued and administered to secure his fraudulently concealed conflicting interests from the Appellant, the BK court, and this Appellate Court too.

for "Hester" was clearly erroneous, unjust, and inequitable.

The lifting of stay, in effect, authorized Sulla to deprive the Appellant of his property and due process rights—issues raised in this instant Appeal focusing on the Motion to Show Cause for Sulla's perjury in causing this lifting of stay. The Appellant has the right and duty to retain and regain his Property as part of his estate—rights secured by the First and Fourteenth Amendments. These federal questions weigh in the balance of this Appeal regardless of the matters advancing in state.

*In re Wood*, 123 BR 881 - Dist. Court, D. Hawaii 1991, the court found a 'false oath' under 11 U.S.C. § 727(a)(4) and denied a discharge. That being the preclusive power of a "false oath," it is reasonable to presume this Honorable Court maintains the same avoidance power given Sulla's "false oath" upon which the stay was lifted and the Appellant's Property converted by Sulla.

As in the case at bar, this District Court in *In re Wood*, added that, "[t]he subject matter of a false oath is 'material,' and . . . bears a relationship to the bankrupt's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property." *Id.* Accordingly, this Court can declare Sulla's "false oath" material, and make the Appellant whole.

Much like Sulla's diversions, fraudulent concealments of his real party interest, stonewalling, obstruction of justice, and related judicial estoppel in this case at bar, in *In re Chalik* the "false oath" dealt with "the omission of facts." "The analogy to a refusal to testify is direct. Both involve failing to proffer material facts

when specifically called upon to do so." Sulla's "silence"—refusing to Answer clear allegations—is material to justice being administered in this Court.

In this case at bar, avoidance of transfer is an equitable remedy justified by the facts, case law and statutes. Appellee's refusal to answer, "did result in prejudice to creditors by causing delay and the consequent further dissipation of assets of the estate." *Id.* It is this "dissipation of assets of the estate" that the Appellant pleads to correct.

Finally, pursuant to Sulla's "mootness defense" (M. p. 8), no event has occurred while this case is pending on appeal that makes it impossible to grant Horowitz "any effective relief whatever". *Church of Scientology of California v. United States*, 506 U.S. 9, 12, 113 S. Ct. 447, 449, 121 L. Ed. 2d 313 (1992) Also made clear by the court in *Muckleshoot Indian Tribe v. U.S. Forest Serv.,* 177 F.3d 800, 815 (9th Cir. 1999) the "[c]onveyance of property to another does not moot a case." *Tinoqui-Chalola Council of Kitanemuk & Yowlumne Tejon Indians v. U.S. Dep't of Energy*, 232 F.3d 1300, 1305 (9th Cir. 2000) (the sale of property in and of itself does not render a case moot, even where the status quo can not be reinstated). Moreover, in the case of a sale or conveyance, where all parties or their privies to the transactions are before the Court, the appellate court can remand with instructions to order a transfer back to a party; *Burbank Anti-Noise Grp. v. Goldschmidt*, 623 F.2d 115, 116 (9th Cir. 1980). A case is not mooted or abated by the dissolution of the corporate defendant. *Walling v Reuter* 321 US 671, 673-677, 64 S. Ct. 828 (1944) Similarly, the fact that a defendant is insolvent does not moot a claim for damages.

See 13C. Federal Practice and Procedure, C. Wright, A. Miller & E. Cooper, § 3533.3, p. 3 (3rd ed 2008) As explained by the Court in *In re Thomas H. Gentry Revocable Trust*, 138 Haw. 158, 172, 378 P.3d 874, 888, *reconsideration denied,* 138 Haw. 50, 375 P.3d 1288 (2016), a party claiming mootness has a heavy burden and a case is not moot even if the outcome in another judicial proceeding may be affected.

In reversing the Intermediate Court of Appeals on the mootness issue, the court in *In re Thomas H. Gentry* concluded: 1) Appellant's appeal was not a invalid collateral attack on the later filed related case that would be affected; 2) That if necessary a process could be brought to vacate or amend the other adjudication based on the merits of this appeal; and 3) The court could grant relief because the property was still within the control of the same persons. Further, the Court in *City Bank v. Saje Ventures II,* 7 Haw. App. 130, 133, 748 P.2d 812, 814-815 (1988) acknowledged there are exceptions to mootness when: 1) the opposition is based on jurisdictional grounds *(as in the instant case wherein Hester's alleged standing and interest is void);* and 2) when the purchaser at the public sale is the mortgagee himself *(as in the instant case wherein Sulla directed Hester to bid at the foreclosure auction).* At this stage in this litigation those involved are still before the court in some capacity or another, such that no unaffiliated third party would be harmed; and further, based on the "Fraudulent Assignments" of Mortgage and Note to GOB being *void*, (OCWEN LOAN, *Op. cit.*) even if there were a transfer to a bona fide third party, that transfer

would not prevent the property from being returned to Horowitz.

**(d) Contrary to Appellee's allegations, the pro se Appellant's Opening Brief is substantially compliant with the rules.**

Sulla's Motion (pp. 8-9) claims that throughout the OB there are 'facts' that are asserted but unsupported in the record, but Sulla fails to cite any expressly. Instead, his hearsay states: "The number of incendiary unsupported 'facts' set forth in Appellant's brief are too numerous to note but are obvious from a quick reading of the brief."

Sulla's stonewalling is unpersuasive. Each of the facts pled and exhibits attached to the OB were part of the ROA and properly referenced. There is no basis for dismissing this Appeal based on Sulla's assertion that he might be prejudiced by adjudicating the merits on the facts and evidence presented. This includes Sulla's "Fraudulent Assignment" of Appellant's Mortgage to the sham "Gospel of Believer's" ("GOB") "church attached here as **Exhibit 3**; and the forged and altered (i.e., "robosigned") Articles of Incorporation Sulla faxed to the State of Hawaii, Department of Commerce and Consumer Affairs in two parts, on 5/26/2009 and 5/28/2009, stamped by the government as 05/29/200920052, analyzed by FBI-trained forensic document and handwriting expert, Beth Chrisman in **Exhibit 4.**

**(e) Contrary to Appellee's incidental arguments, this Appeal and Appellant's Opening Brief are: (1) not imprecisely referenced in the record; (2)**

**interlocutory requiring leave; (3) frivolous; (4) incomplete; or (5) vexatious.**

Sulla fails to state where in the OB Appellant imprecisely referenced the ROA. He argues in Motion (page 9) the Court lacks jurisdiction because this is an "interlocutory" appeal, contradicting his statements on page 4, acknowledging the case was dismissed, and therefore the appeal was untimely (as refuted above pursuant to FRBP 8002(b)). Accordingly, this appeal is not interlocutory.

First degree theft of real property and Appellant's damages in the millions of dollars is not a "frivolous" matter, as Sulla argues (p. 10)

Sulla states (on page 11) "The Appellant is vexatious . . . Enough is enough."

Appellee's statements reflect his wanton, malicious, and oppressive indifference to the Appellee's suffering severe distress and massive financial losses from Sulla's criminal actions and stonewalling. Besides causing the Appellant's bankruptcy, and severe restrictions on Appellant's previously good credit, Sulla caused the 65-year-old Appellant to suffer ejectment from his exclusive residence, confiscated Horowitz's personal possessions, family-made fixtures, gardens, agricultural and aqua-cultural produce growing for nearly a decade, and virtually Horowitz's entire life savings. Sulla caused the Appellant to suffer loss of enjoyment of life on the Big Island of Hawaii, where Sulla caused the Appellant to be humiliated, shamed, and defamed in the Hilo and Puna communities. The Appellee similarly smears Horowitz here in his Declaration (p. 14) to prejudice the Court. Contrarywise, Sulla spent three (3) years unsuccessfully litigating against Horowitz

to censor his Internet publications vetting Sulla's criminal actions in Civ. No. 12-1-0147. That SLAPP lawsuit was *dismissed* in Horowitz's favor. Sulla also filed an unsuccessful vexatious litigation motion against Horowitz in Civ. No. 05-1-0196 to deprive *Defendant* Horowitz of equal rights and access to courts. The "0196" Court *dismissed* Sulla's motion, ruling: "The PLTF's arguments are largely conclusory and based on hearsay . . . The motion . . . is DENIED."(**Exhibit 5**) And finally, to divert from Sulla's theft of Horowitz's house, Sulla disparages Horowitz as a "professional conspiracy theorist," neglecting Horowitz's numerous international awards as an author and documentary filmmaker, including "Best Film—2016" in London and Geneva competitions.

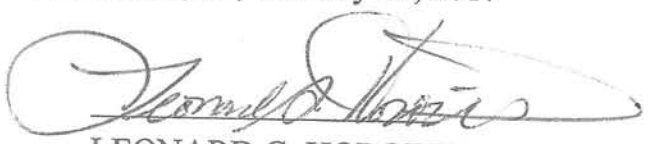
## II. CONCLUSION

The Appellee's Motion to Dismiss must be *denied*, by reason of material facts in dispute concealed by Sulla's "silence" and "stonewalling." Sulla should pay the costs he generated beginning with the $3,900 billing by Appellant's attorney, for minimally thirteen (13) hours of work pursuant to Sulla's uncontroverted (un-answered) violations of the Stay. Sulla should also be compelled to comply with FRCP Rule 8(b)(2), in answering the substance of the Appellant's allegations regarding the May 15, 2009 "Fraudulent Assignments" of Appellant's Mortgage and Note into GOB, and administration of GOB's incorporation by Sulla on May 26 and May 28, 2009, or otherwise be sanctioned.

The Appellant also requests that the Honorable Court grant relief pursuant to 18 U.S. Code § 3771(6) "The right to full and timely restitution as provided in law."

Respectfully submitted:

DATED: Honolulu, HI; January 30, 2017



LEONARD G. HOROWITZ,
Appellant, In propria persona

LEONARD G. HOROWITZ, pro se
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Honolulu, HI 96836
Email: editor@medicalveritas.org
310-877-3002

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF HAWAII**

**1:16-CV-00549-DKW-KSC**

| | |
|---|---|
| LEONARD G. HOROWITZ<br>Appellant-debtor,<br>vs.<br><br>PAUL J. SULLA, JR. an individual; PAUL J. SULLA JR., ATTORNEY AT LAW A LAW CORPORATION, a corporation<br>Defendants | **DECLARATION OF LEONARD G. HOROWITZ**<br><br>JUDGES: HONORABLE DERRICK K. WATSON (KEVIN S. CHANG) |

## DECLARATION OF LEONARD G. HOROWITZ

I, LEONARD G. HOROWITZ, under pain of perjury of law, do hereby state and declare as follows:

1) I am an individual over the age of twenty-one (21) years, a resident of the State and County of Honolulu.

2) I am a pro se litigant in this appellate action.

3) The facts set forth in the accompanying Appellant's "Opposition to Appellee's Motion to Dismiss" the Appeal are true to the best of my knowledge and belief.

4) **Exhibit 1** is a true and correct copy of Appellee's July 16, 2008 non-hearing Motion for Substitution of Plaintiff. (ROA V2, Doc. 244, p. 913)

5) **Exhibit 2** is a true and correct copy of the August 31, 2009, Order for Substitution of Plaintiff. (ROA V2, Doc. 329, p. 2310)

6) **Exhibit 3** is a true and correct copy of the December 11, 2009, Probate court record in 3LP09-1-000166 (Submitted in Notice of Judicial Notice of New Discovery).

7) **Exhibit 4** is a true and correct copy of the September 6, 2016, WARRANTY DEED from HESTER to HALAI HEIGHTS (Judicial Notice Requested in Motion dated January 6, 2017).

8) **Exhibit 5** is a true and correct copy of the February 1, 2016, Articles of Organization of HALAI HEIGHTS (Judicial Notice Requested in Motion dated January 6, 2017).

9) **Exhibit 6** is a true and correct copy of the December 30, 2015 Final Judgment in the related case Hester v Leonard Horowitz et al, Civ. 14-1-0304 [CAAP 16-0000163] (Judicial Notice Requested in Motion dated January 6, 2017)

10) I declare that this font size is 14-point, as I have used throughout the attached Reply in compliance with FRAP "Rule 27 Motions" and Rule 32(a)(5); I verify the word count in the attached "Reply in Opposition" is 5,193 words, below the permitted 5,200 limit set by FRAP Rule 27(d)(2)(A), exclusive of caption on page 1, signature and this Declaration.

11) I further attest to Appellee having wrongly used 12-point font size throughout his Motion in violation of FRAP Rule 32(a)(5).

FURTHER DECLARANT SAYETH NAUGHT

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

Dated January 30, 2017: Honolulu, HI 96836.

LEONARD G. HOROWITZ, in Pro per
Appellant, Debtor and Creditor

## INDEX TO EXHIBITS "1" THROUGH "6"

In Support of Appellants' Opposition
to Paul J. Sulla, Jr.'s Motion to Dismiss

**Ex: Title:** **Page No.:**

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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF HAWAII**

**1:16-CV-00549-DKW-KSC**

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|---|---|
| LEONARD G. HOROWITZ<br>Appellant-debtor,<br>vs.<br><br>PAUL J. SULLA, JR. an individual; PAUL J. SULLA JR., ATTORNEY AT LAW A LAW CORPORATION, a corporation<br>Defendants | **Appeal from**<br>**Bankruptcy Case No: 16-00239**<br>(Chapter 13)<br><br>**CERTIFICATE OF SERVICE**<br><br>JUDGES: HONORABLE DERRICK K. WATSON (KEVIN S. CHANG) |

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 30th day of January, 2017, I served a true and correct copy of the foregoing *Appellant's Opposition to Appellee's Motion to Dismiss; Exhibits "1" thru "6" and Declaration of Leonard G. Horowitz*, by the method described below to:

PAUL J. SULLA, JR #5398
Attorney at Law
106 Kamehameha Avenue, Ste. 2A
Hilo, HI 96720
808-933-3600
psulla@aloha.net

*attorney for JASON HESTER and REVITALIZE, GOSPEL OF BELIEVERS*

___X___ US MAIL

Dated January 30, 2017: Honolulu, HI 96836.

LEONARD G. HOROWITZ, in Pro per
Appellant, Debtor and Creditor