

H416D (12/15)

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U.S. BANKRUPTCY COURT
DISTRICT OF HAWAII
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MICHAEL B. BOWLE
CLERK U.S. COURT

UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII
1132 Bishop Street, Suite 250, Honolulu, Hawaii 96813

Debtor(s): Leonard George Horowitz

Case No.:
Chapter: 13

Plaintiff(s): Leonard George Horowitz and
Sherri Kane
(Use "et al." for multiple parties)

Adversary Proceeding No.: 16-90015


Defendant(s): Paul J. Sulla, Jr.; Jason Hester;
Stephen D. Whittaker, et.al.

Supplemental Pleading For Injunctive Relief Hearing on April 29, 2016, Pursuant to Bad Faith Filing of Declaration of Paul J. Sulla Jr. Served Untimely [FRBP Rule 7015(d); FRCP Rules 9 and 15(d)] Exhibits "1" to "10"

[Title of Document, e.g., MOTION, APPLICATION, DECLARATION, STATEMENT]

Supplemental Pleading For Injunctive Relief Hearing on April 29, 2016, Pursuant to Bad Faith Filing of Declaration of Paul J. Sulla Jr. Served Untimely [FRBP Rule 7015(d); FRCP Rules 9(b) and 15 (d)]; Exhibits"1" to "10"

Date: 4/23/16


/s/ Leonard George Horowitz
[Print name and sign]

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

<i>In Re: Leonard G. Horowitz</i>)	Adv. No. 16-90015
)	
Debtor.	)	Bankruptcy Case No: 16-00239
	)	(Chapter 13)
<hr/>)	
LEONARD G. HOROWITZ, an)	
individual; and SHERRI KANE, an)	
individual)	
Plaintiffs,	)	SUPPLEMENTAL PLEADING FOR
vs.	)	INJUNCTIVE RELIEF HEARING ON
	)	APRIL 29, 2016, PURSUANT TO
PAUL J. SULLA, JR. an individual;	)	BAD FAITH FILING OF
PAUL J. SULLA JR., ATTORNEY AT	)	DECLARATION BY PAUL J. SULLA,
LAW A LAW CORPORATION, a	)	JR. SERVED UNTIMELY [FRBP Rule
corporation; THE ECLECTIC CENTER	)	7015(d); FRCP Rules 9(b) and
OF UNIVERSAL FLOWING LIGHT-	)	15(d)]; EXHIBITS "1" TO "10".
PAULO ROBERTOSILVA E SOUZA,)	
a Hawaii corporation sole; JASON	)	JUDGE:
HESTER, an individual; THE OFFICE	)	HONORABLE ROBERT J. FARIS
OF OVERSEER, A CORPORATE)	
SOLE AND ITS SUCCESSOR, OVER)	
AND FOR THE POPULAR)	
ASSEMBLY OF REVITALIZE, A	)	Hearing Date: April 29, 2016
GOSPEL OF BELIEVERS; STEPHEN	)	Hearing Time: 2:00 p.m.
D. WHITTAKER, an individual;)	
STEWART TITLE GUARANTY)	
COMPANY; and DOES 1 through 50,)	
Inclusive)	
Defendants)	

**SUPPLEMENTAL PLEADING FOR INJUNCTIVE RELIEF HEARING ON APRIL
29, 2016, PURSUANT TO BAD FAITH FILING OF DECLARATION
BY PAUL J. SULLA, JR. SERVED UNTIMELY**

COMES NOW Bankruptcy “Debtor” and Adversary Proceeding Plaintiffs
LEONARD G. HOROWITZ (hereafter, “HOROWITZ”), and SHERRI KANE
(hereafter, “KANE;”)(together “Plaintiffs”) objecting to Defendant PAUL J. SULLA,
JR.’s (hereafter “SULLA”’s) *unstamped declaration that was never filed with the
court*, titled “**DECLARATION BY PAUL J. SULLA, JR. IN SUPPORT OF
MEMORANDUM IN OPPOSITION TO MOTION FOR PRELIMINARY
INJUNCTION AND EXTENDED STAY**” (hereafter “Declaration”) that was
untimely served upon the Plaintiffs, factually erroneous, and falsely-certified (in
Certificate of Service 4-15-16, Doc. 29.) (**Exhibit 1**)

SULLA mailed Plaintiffs said Declaration on April 15, 2016, attached to a
memorandum in opposition to preliminary injunction that was filed on 4-8-16, Doc.
No. 19-1 (**Exhibit 2**). But this Declaration was never entered into the court,
confusing and burdening the Plaintiffs who are traveling and made to respond to this
fraud or mistake by mail on Saturday April 23, 2016.

SULLA falsely declared under penalty of perjury in his erroneous Certificate
of Service that his law firm office-meter stamped Declaration issued in Hilo, on
April 15, 2016, was served timely upon the Plaintiffs; but that was not true since
SULLA knows and previously pled in his defense of claimed automatic stay
violations that inter-island mail takes two or more days to serve. And, it is a violation
of FRCP Rule 9(b) that the Declaration was exclusively served untimely upon the
Plaintiffs by U.S. Postal Service, and delivered on April 22, 2016, not permitting the
Plaintiffs the standard reasonable time to reply per FRBP Rule 9013-1(c)(2)

SULLA's Declaration also contains new admissions and material evidence of fraud (and crime) material to the Court's awarding Plaintiffs urgently needed injunctive relief, as detailed below. This information supplements Plaintiffs' pleadings in their Reply Memorandum filed April 20, 2016.

This instant pleading is filed pursuant to Federal Rules of Bankruptcy Procedure, ("FRBP") Rule 7015, and Federal Rules of Civil Procedure ("FRCP") Rules 9 and 15(d).

I. Relevant Rules of the Court

FRCP Rule 9 states, under caption "(a) Capacity or Authority to Sue; Legal Existence:"

(1) *In General*. Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) *Raising Those Issues*. To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) **Fraud or Mistake; Conditions of Mind**. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

And FRCP Rule 15(d) states, under section "d," for Supplemental Pleadings:

(d) **Supplemental Pleadings**. On motion and reasonable notice, the court may, on

just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

Accordingly, by FRCP Rule 9(b), and in accordance with FRCP Rule 15(d), the Plaintiffs claim SULLA acted by fraud or mistake in serving said Declaration, reflecting his highly confused and burdensome “condition of mind” that has damaged and prejudiced the Plaintiffs, compounding SULLA’s pattern of malpractices that has caused Debtor HOROWITZ’s bankruptcy and the Plaintiffs’ severe distress and irreparable harm for the past seven (7) years.

II. New Evidence in Declaration Filed in Bad Faith with Unclean Hands.

Plaintiffs allege said Declaration contains new material admissions compounding evidence of SULLA’s bad faith filings in opposition to the Debtor and Plaintiffs’ pleadings for injunctive and monetary relief, reflecting SULLA’s bad faith and unclean hands, including statements made by SULLA illuminating:

(1) SULLA’s concealed conflicting in interest in the subject Property pursuant SULLA’s mortgage “loan” to HESTER dated June 14, 2011, (**Exhibit 3**) and its companion filing by SULLA that same day and time that issued HESTER title to Plaintiffs Property by quitclaim deed transfer from the “Gospel of Believer’s” Defendant, (**Exhibit 4**); neither act legal by reason of GOB’s defective, “altered” and signature-forged, Articles of Incorporation (**Exhibit 5**) exclusively

certified by SULLA on May 26 thru 28, 2009.

SULLA's aforementioned conveyances of secured interests thereby were fraudulent transfers central to the core bankruptcy proceeding and this related Adversary Proceeding. Such misrepresentations void HESTER's standing as a legitimate creditor, and SULLA's misrepresentations thereof, concealing SULLA's own financial interests, and secured Property interests, required to be disclosed to the Honorable Court in consideration of jurisdiction and the injunctive relief required for justice to be administered; and

(2) SULLA's pattern of improperly serving notices, and delaying such to distress and prejudice the Plaintiffs, including improper and severely distressing service of ejectment notices upon the Plaintiffs.

Accordingly, the Plaintiffs bring to the Court's attention SULLA's false claims made in the Declaration pursuant to these matters as follows (referencing **Exhibit 1** and said Declaration locations):

1) **On page 3, Paragraphs 7 and 8**, SULLA defends against facts evidencing his violations of the automatic stay by falsely stating the debtor's bankruptcy was filed on "Thursday March 11, 2014." Obviously, this date is grossly erroneous. The Debtor's bankruptcy petition was filed on March 9th, 2016, and that was on a Wednesday.

SULLA's Declaration, paragraph 8, falsely states: "My office

received notice of Debtor's Bankruptcy on March 14, 2016 and ceased all activity to collect the debt thereafter." The statement is false, because records show SULLA contracted with the State of Hawaii Sheriff's Department to eject the Plaintiffs from their Property the following week of March 21, 2016, compelling Plaintiffs' counsel, Margaret Wille, to intervene, including objecting to Sheriff Kenneth D. Kauwe in her e-mail of March 24, 2016, in which she stated: "Please note that Stephen Whittaker is the attorney of record for Plaintiff Jason Hester. The federal court disqualified attorney Paul Sulla from continuing as the attorney in this case because of his conflict of interest."(**Exhibit 6**)

Accordingly, U.S. Postal Service and e-mail records (filed as evidence in the Plaintiff's April 20, 2016, Reply to SULLA's Opposition) (**Exhibit 7**) show SULLA received his Notice on Saturday morning March 12, 2016; and proceeded hours and days later to violate the automatic stay at least twice to eject the Plaintiffs from the subject Property. SULLA committed at least two violations of the automatic stay by posting, or having his speciously claimed "process server" post: (a) a Writ of Ejectment on HOROWITZ front gate on Saturday evening, March 12, 2016; and (b) directing the State Sheriff to immediately execute HOROWITZ's ejectment from the Property the week of March 21, 2016 while the automatic stay was in effect.

2) Page 3- Paragraph 10. Violation of Attorney Disqualification and Misrepresentations about a Process Server's Involvement.

SULLA's Declaration paragraph 10 states as purported facts:

"10. Defendant Stephen Whittaker had requested that our office serve upon the occupants of the Subject Property the Writ of Ejectment issued in *Hester v. Horowitz et. al.* Civ. No. 14-1-0304 dated March 1, 2016 prior to the actual eviction. My office sent the writ to the process server on March 5, 2016, to serve upon the occupants of the Subject Property in her regular course."

Assuming this statement was true, the service by co-counsel Defendants not only violated 11 USC § 362, but evidences SULLA's continuous representations of (purportedly) HESTER in "0304" wherein SULLA had been disqualified from representing HESTER—a fact well known to WHITTAKER and SULLA.

Consequently, this new statement corroborates the Plaintiffs evidence and pleadings that SULLA, even after being disqualified, has consistently acted to gain the Plaintiffs' ejectment and, thereby, the Property for himself, disregarding laws, rules of the courts, his own disqualification, and the Plaintiffs due process rights.

In fact, SULLA's statement, if it were true, shows that Defendant WHITTAKER violated SULLA's disqualification and delayed (initially) five (5) days to serve Notice of Writ of Ejectment, not on the Plaintiffs as is required under the rules of timely service and due process, but allegedly upon some unnamed (probably non-existing) "process server" for "her" to serve upon the Plaintiffs "in her regular course"—which was six (6) days later, on *Saturday evening*, March 12, 2016, according to Affidavit of Samantha Sparrow, and letter of March 13, 2016,

filed by Plaintiffs' attorney Wille in the 0304 case on March 14, 2016.

It is apparent that SULLA has no copy of Proof of Service by any process server; because: (a) the Writ of Ejectment violation was not accompanied by any Certificate of Service by any process server. The Writ was unprofessionally taped to the Plaintiffs front gate, and left there without obtaining anyone's signature for acknowledgement of Service; and (b) SULLA appears to have served the Writ of Ejectment himself, as is his pattern to do; and then he lied about having had someone else serve it, as SULLA is evidenced having done previously. This allegation is evidenced by the Declaration of Beth Chrisman dated January 31, 2014, pursuant to SULLA having served a "Notice to Vacate" under the guise of a purported process server signed "RDUM;" served exactly like the aforementioned March 12, 2016, "service" of ejectment Notice—that is, taped to the front gate of the Property. That "RDUM" "service" occurred on September 20, 2013.

Later, SULLA filed a bad faith Affidavit of Robert Dukat—a process server that did not sign the "RDUM" signature that appears to have been signed by SULLA (not Dukat) according to the expert analysis performed by forensic document and handwriting authority, Beth Chrisman. (**Exhibit 8**). This "Declaration of Beth Chrisman" also supplements her sworn declaration of June 12, 2015, proving SULLA certified the set of "altered" Articles of Incorporation to manufacture "HESTER's" GOB trust that acted as the "Foreclosing Mortgagee" exclusively administered and certified by SULLA. (**Exhibits 5 and 9**)

Accordingly, SULLA's paragraph 10 statement compounds evidence of

SULLA's pattern of violating the Plaintiffs due process rights, and proves both Defendants WHITTAKER and SULLA have:

(1) acted in a conspiracy under color of law to deprive the Plaintiffs of their civil rights and Property rights; and

(2) violated the automatic stay on the night of March 12, 2016, by threatening the Plaintiffs ejectment using a void Writ of Ejectment (**Exhibit 10**) titled "WRIT OF EJECTMENT: RETURN OF SERVICE ON WRIT OF EJECTMENT" wherein there was never any "RETURN OF SERVICE" attached to the Writ, or ever filed in the State Court; yet said Writ appears to have been stamped by the Clerk of the 0304 Court, compounding the Writ being *void*, and further evidence of foul play in attempted grand larceny.

3) Page 3- Paragraph 10, Conflicts with Paragraph 7 of SULLA's Previous "Declaration of Counsel in Support of Motion for Relief From Automatic Stay" (Dkt 13-1, filed 3/18/16)

SULLA can't seem to keep his stories straight. Contrary to the aforementioned facts proving SULLA contracted with Sheriff Kauwe during the week of March 21, 2016, in SULLA's declaration filed on March 18, 2016, to relieve the automatic stay, SULLA wrote:

"Further, prior to debtor's petition being filed Movant had already retained a professional team including law enforcement, movers, and a process server to assist with enforcement of the Writ which required extensive coordination of schedules with approximately 15 people, all of which have already agreed to a date for enforcement

of the writ of ejectment and Movant should not be required to cancel and reschedule at a much later date at his expense and great personal hardship.”

SULLA not only misrepresents “HESTER’s” “expense and great personal hardship” given the fact that SULLA has exclusively financed HESTER (**Exhibit 3**) and conceals his personal conflicting interest and HESTER’s lack of standing with the Court, (**Exhibit 5**) but also pleads falsely that “15 people” required SULLA’s coordination (as a disqualified lawyer in this ejectment action), whereas: (1) State Sheriffs who exclusively execute such ejectments had no knowledge of such SULLA-administered ejectment on the morning of March 14, 2016, when the Plaintiffs spoke with both the local lieutenant in charge of the Hilo office, and Sheriff Kauwe, both denied knowing anything about SULLA and his ejectment action. It was not until a week later, while the automatic stay was still in effect, that SULLA contracted with Sheriff Kauwe to execute the Writ of Ejectment, as evidenced by **Exhibit 6**.

4) Page 4- Paragraph 12. Defendant Sulla Misrepresents Facts to Belittle the Debtor's Attorney's actions.

To excuse his automatic stay violations, Defendant SULLA belittled

the Debtor's attorney in the State Case "0304," Margaret Wille, alleging that Wille had no reason to file an emergency motion on behalf of the Plaintiffs' in that State case compounding the Debtor's financial damages.

In fact, since SULLA and WHITTAKER violated the Plaintiffs' 14th amendment rights while violating the automatic stay, the Debtors' attorney did what any reasonable and competent lawyer would do to protect her clients from unlawful ejectment, and protect the Debtor's property rights from SULLA's bad faith actions.

III. Authorities on Matters of Omissions, Misrepresentations, and Fraud.

In a case similarly involving securities fraud and bad faith by a nondebtor, *In re Circle K Corp.*, 121 BR 257 - Bankr. Court, D. Arizona 1990, the bankruptcy court held that it "may preliminarily enjoin action against nondebtors but lacks authority to permanently enjoin such litigation." In this case at bar, the Plaintiffs do not seek a permanent injunction, they seek a preliminary injunction against SULLA et. al. Any permanent enjoining of the Defendants' tortious and illegal actions can be, and are being, sought in pending State and federal cases.

In re Nelson, 159 BR 924 - Bankr. Court, D. Idaho 1993, the bankruptcy court granted relief to the debtor in an adversary proceeding in

which the creditor was found to have violated the automatic stay. As in the instant case, the Defendants sought to dismiss the action by summary disposition; but the court judiciously considered material matters, including related matters of fraud and replevin, and denied the Defendants relief.

In a case similar to the instant case wherein the Defendants committed a fraudulent transfer of property relevant to an automatic stay having been relieved, the court *In re Robbins*, 310 BR 626 - Bankr. Appellate Panel, 9th Circuit 2004, vacated the relief of stay, and remanded for further proceedings on the claims and facts. That court noted that “the property subject to the attachment may be encumbered by senior liens which have obtained leave to foreclose [unlike the instant case where there was never leave to foreclose, and, in fact, judicial foreclosure had been denied in Civ. No. 05-1-0196], rendering perfection of the attachment lien an expensive and futile exercise. Or the attachment lien may be the subject of an avoidance (in full or in part) by the debtor under § 522(f), or as a fraudulent transfer by the trustee under § 548. Or there may be an objection to the creditor's claim, which *the bankruptcy court can determine as a contested matter (the result of which may, via preclusion rules, determine whether or not there is a judgment to be entered in the state court)*. [Emphasis added.]

In the instant case wherein the Plaintiffs seek injunctive relief from mounting damages and irreparable harm from Defendants’ co-counsel acting in bad faith as aforementioned, with this new evidence extending a pattern of fraud, the Honorable Court may certainly issue a preliminary injunction

pending further State and federal actions by reason of jurisdiction preclusion doctrines. Neither HESTER or SULLA have standing to claim any creditor interest in the subject Property central to this core proceeding—a Property in which the Debtor maintains substantial equity, and that is fundamental to the reorganization plan.

“While there may be many valid reasons for denying an attachment lien creditor immediate relief from the automatic stay in order to proceed to judgment in state court, the bankruptcy court did not find any of them. . . . To the extent the bankruptcy court based its ruling on the belief espoused by the Trustee that the bankruptcy estate's rights in the fraudulently conveyed property were superior to those of First Federal, it was proper to deny relief only temporarily while the issue was being adjudicated in an appropriate proceeding.” *Id.*

IV. CONCLUSION

In conclusion, SULLA’s new Declaration (of 4-15-16) extends a pattern of deceitful filings to confuse, divert, and defraud the Plaintiffs and the Court to gain SULLA, not HESTER, unjust enrichment. This Declaration was not filed with the Court, but exclusively upon the Plaintiffs, evidencing fraud and/or mistake that includes false pleadings recklessly justifying multiple violations of the automatic stay by SULLA, aided-and-abetted by Defendant WHITTAKER. On Saturday evening March 12, 2016, and a week later, the Defendants acted to execute a defective and void Writ

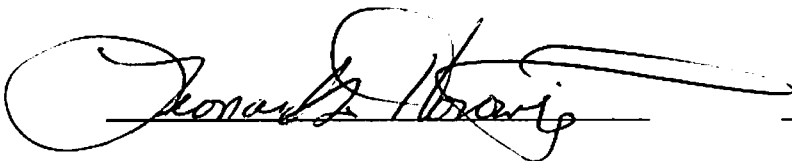
of Ejectment that shows a stamped clerk stamp (in Civ. No. 14-1-0304) falsely authorizing the Plaintiffs ejectment from their Property without “RETURN OF SERVICE ON WRIT OF EJECTMENT.” These facts evidence that after the morning of March 12, 2016, after SULLA received notice of the bankruptcy and automatic stay, SULLA served without any process servers’ certification or signature, the defective and void Writ (**Exhibit 10**) to distress and compel the Debtor and KANE to vacate the Property. This action was followed a week later by SULLA’s additional actions to cause the Sheriff to execute the same Writ while the automatic stay was in effect.

Pursuant to FRCP Rule 9(b) and the Plaintiffs prayer for Injunctive Relief in lieu of Defendants’ pattern of fraud and crime that has financially damaging and severely distressed the Plaintiffs, causing them much irreparable harm, Plaintiffs’ Motion for Injunctive Relief should be granted.

We declare (certify, verify, and state) under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Respectfully submitted,

DATED: April 23, 2016



LEONARD G. HOROWITZ, pro se



SHERRI KANE, pro se