LEONARD G. HOROWITZ, in pro per
P. O. Box 75104
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 Appellant-debtor, vs. PAUL J. SULLA, JR. an individual; PAUL J. SULLA JR., ATTORNEY AT LAW A LAW CORPORATION, a corporation Defendants	**Bankruptcy Case No: 16-00239** (Chapter 13) Related Case: Adv. No. 16-90015 (Chapter 13) **APPELLANT'S MOTION FOR RECONSIDERATION OF DISMISSAL PURSUANT TO DENIED DUE PROCESS, OMISSIONS OF FACTS AND ALLEGED STAY VIOLATIONS DURING WEEK OF MARCH 21, 2017, AND NEGLECT OF RULE 9011(c)(1)(A) "SAFE HARBOR" EXCEPTION [FRAP Rules 40]; DECLARATION OF LEONARD G. HOROWITZ; EXHIBITS "1" THRU "6"; CERTIFICATE OF SERVICE** JUDGES: HONORABLE DERRICK K. WATSON (and KEVIN S. CHANG)

APPELLANT'S MOTION FOR RECONSIDERATION OF DISMISSAL PURSUANT TO DENIED DUE PROCESS, OMISSIONS OF FACTS AND ALLEGED STAY VIOLATIONS DURING WEEK OF MARCH 21, 2017, AND NEGLECT OF RULE 9011(c)(1)(A) "SAFE HARBOR" EXCEPTION

COMES NOW Appellant LEONARD G. HOROWITZ, (hereafter, "Horowitz") filing a "Motion for Reconsideration" of ORDER DISMISSING APPEAL, (hereafter, ODA") filed April 11, 2017, pursuant to FRAP Rules 40, and 27(d)(2)(B).

I. STANDARD OF REVIEW

"The law is well settled in the Ninth Circuit that a successful motion for reconsideration must . . . demonstrate reasons why the court should reconsider its prior decision. . . . [And] set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision. *Great Hawaiian Financial Corp. v. Aiu,* 116 F.R.D. 612, 616 (D.Hawai`i 1987) (citations omitted). In this case, the Court is asked to reconsider by reason of: (1) "the discovery of new evidence not previously available;" and (2) "the need to correct clear or manifest error in law [and] fact, to prevent manifest injustice." *Id.* The District of Hawaii has implemented these standards in Local Rule 220-11." *Donaldson v. Liberty Mut. Ins. Co*., 947 F. Supp. 429 - Dist. Court, D. Hawaii 1996. These justifications secure and supplement jurisdiction in this Court, and are pled sequentially as follows:

II. REASONS FOR RECONSIDERATION

Reasons for reconsideration include: A. Deprived Due Process; B. Omissions of: (a) Judicially Noticed Facts/Records, (b) Alleged Stay Violations the Week of March 21, 2016; and (c) Rule 9011(c)(1)(A) "false representation" exception to "safe harbor" policy; C. failure to provide case law controverting the case law provided by Horowitz pursuant to Sulla's federal Disqualification Order in the intertwined subject ejectment actions; and D. Jurisdiction is proper since the "final order" was issued in a form misapprehended by the Court as "final."

A. Dismissal Without Adjudication on the Merits Deprives Due Process

The Court states in "ORDER DISMISSING APPEAL" (**Exhibit 1**) that this appeal is interlocutory, which boggles the mind of this reasonable pro se litigant and offends Honorable Court, both justifiably misapprehending the "finality" of this case, for the following reasons:

(a) Horowitz previously filed an interlocutory appeal in this case that was *dismissed* for being interlocutory (untimely); thus, for economy required by the Appellant's bankruptcy, Horowitz; (b) awaited a "final order" by the Bankruptcy Court ("BKC") dismissing the case. This was first Noticed by Judge Faris on September 16, 2016, in "Memorandum Decision Regarding Plan Confirmation" (**Exhibit 2**) in which Judge Faris clearly states on page 7 "I will dismiss this case." (c) *That* dismissal Order issued in "Order Denying Confirmation and Dismissing Case" filed September 19, 2016 (**Exhibit 3**); and (d) In lieu of no further express filing of "Final Order" by the BKC, any reasonable person would believe that those two September 16 and 19, 2016 filings comprised the "final order," except for the fact: (e) Horowitz filed a timely Motion for Reconsideration of Order Denying Motion to Show Cause or In the Alternative Removal of Pending Claims" on September 26, 2016. That the BKC was Denied three days later, on September 29, 2016. (Dkt # 150) This Appeal was filed five days later, on October 4, 2016.

Accordingly, it is unreasonable and certainly unjust to Dismiss Horowitz's Appeal on the basis of not having filed "technically" timely. "Here, the court finds that [Horowitz's] delay in filing his notice of appeal amounts to excusable neglect." (*US v. Lii*, Dist. Court, D. Hawaii 2017) caused by ambiguity issued by the BKC.

Corroborating Horowitz's reasonable assumptions for which the Court may accommodate technicality in the interest of justice, efficiency, and economy, this Honorable Court noted on pp. 12-13 of the instant ORDER DISMISSING APPEAL, (**Exhibit 1**) "As of the date of this Order, no final decree or judgment has entered in the Chapter 13 case, although the case was dismissed on September 19, 2016." This apparent oversight of the BKC is clearly no fault of Horowitz's, and Horowitz should not be either prejudiced or further burdened financially by having to file another appeal if and when the BKC issues an unmistakable "final order."

"New Evidence" of such is shown in **Exhibit 4**--another "Final Decree" issued synchronously and presumably in direct response this Court's ODA. It gives a *threatening* **"WARNING: CASE CLOSED on 04/11/2017"** notice:

> Final Decree. It appearing that the estate of the above-named debtor(s) has been fully administered, or that the case otherwise may be closed, the trustee appointed in this case, if not already discharged, is hereby discharged as the trustee of this estate and this case is closed.
> SO ORDERED. /s/Robert J. Faris, U.S. Bankruptcy Judge.

Justification for such a threat is questioned. Is the BKC threatening the pro se litigant or Honorable District Court? Any reasonable person would find this **"WARNING"** alarming, clearly confusing, and distressing. Some might perceive the message as extortionate. Wouldn't a simple "NOTICE: CASE CLOSED" suffice? What contingency does this "Final Decree" express? Will someone retaliate if the Appellant files anything more? Will he be sanctioned for pleading for his civil rights? What message does this **"WARNING"** send to this Court?

In fact, contrary to the BKC's above quotation, "the estate of the above-named debtor(s) [have not] been fully administered. . ." The estate has been STOLEN (i.e,

"converted") by organized crimes administered by Appellee Sulla, as evidenced in Horowitz's pleadings and exhibits filed with the BKC and this Court.

By what measure of justice would any court choose a condition of mind permitting willful blindness to new evidence of white collar organized crimes damaging a Judeo-Christian ministry, religious persons, and society? Judicially Noticed public records are being Dismissed by the courts repeatedly to protect Sulla's con-artistry, evidencing "qualified immunity" for his widely known racketeering enterprise. Horowitz's Affidavit(s) verify Sulla's theft; a Declaration by Counsel Margaret Wille affirms Sulla's Stay violation(s), (**Exhibit 5**); and a Declaration by FBI-trained expert forensic document and handwriting expert, Beth Chrisman, detailing Sulla's robosigning, (forgery, date alteration(s), and page alterations) manufacturing his "Foreclosing Mortgagee's" incorporation paperwork wired by Sulla to the State to commit fraudulent foreclosure by which Horowitz's estate was converted. By what measure of justice would any reasonable court claim, especially by threatening "**WARNING",** the crime victim's losses were "fully administered" in accordance with the Fourteenth Amendment that states:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Section 2

By Dismissing this Appeal under the aforementioned confusing and threatening circumstances, and for the reasons stated, this Court evidences that either: (1) the BKC committed an administrative error in neglecting timely due process, and issuance of a bonifide "final order;" or (2) the BKC committed a blatant railroading and stonewalling of Horowitz to further delay the trial sought on the

merits, extending malicious prosecution by manufactured "jurisdictional preclusion;" to exhaust Horowitz's bankruptcy recovery, cause distress and attrition; all favoring Sulla's widely known crime enterprise and magnifying the impression of impropriety the "WARNING . . . Final Decree" delivered.

The instant ODA has, in effect, deprived Horowitz of his "equal protection of the laws," deprived Horowitz of his property, and deprived Horowitz of his estate without due process of law.

And it is unreasonable and irresponsible to deprive this pro se litigant of his Appeal under these imposed confusing, threatening, and distressing circumstances. By right of laws and precedent, "we start from the proposition that complaints prepared by pro se parties must be construed liberally, and we have a duty to ensure that 'pro se litigants do not lose their right to a hearing on the merits of their claim due to ignorance of technical procedural requirements.'" *In re Nordeen*, 495 BR 468 - Bankr. Appellate Panel, 9th Circuit 2013, quoting *Balistreri v. Pacifica Police Dep't,* 901 F.2d 696, 699 (9th Cir.1988). As stated by the Supreme Court in *Estelle v. Gamble,* 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). This Appeal was filed by Horowitz because his "right to a hearing on the merits of [his] claim" was DENIED, not for "ignorance of technical procedural requirements," but for incomprehensible favor given to fellow Bar Member, thief, and drug dealer Sulla.

Thus, Horowitz did not appeal the dismissal of the *bankruptcy*, per se. No reasonable law abiding citizen having put faith in a BKC to administer Congressional mandates to secure debtors' estates, having been so railroaded, stonewalled, damaged, distressed, and irreparably harmed, would plead to remain

in that abusive environment. Rather, Horowitz expressly appealed for his "right to [that] hearing on the merits of [his] claim[s]".

B. Omissions of Fact

The Court, in the ODA, (**Exhibit 1**) omits facts most substantive to this Appeal, including: (1) Judicially Noticed Records including New Discoveries, (2) Alleged Stay Violations the week of March 21, 2016; and (3) Rule 9011(c)(1)(A) "false representation" exception to "safe harbor" policy.

(1) Judicially Noticed New Discoveries in Public Records

The Honorable Court correctly states in footnote 1 (ODA, p. 2), pursuant to Horowitz's Motion for Judicial Notice, "these documents pre-date the bankruptcy court order at issue in this appeal, none of them was presented to the bankruptcy court for consideration."

However, there are two problems raised by this justification for neglecting this *New Evidence* in public records: (1) the Court's related explanation (p. 2) erroneously presumes Horowitz did not raise the issue of Sulla having concealed his conflicting interests and malicious intent to convert the Property during the BKC proceedings; when, in fact, it was. (OB, pp. 14-15) And the ejectment action was, and still is, pending final determination in State; and Horowitz's ejectment and loss of the Property by Sulla's illegal conversion was the most important objection repeatedly and "venomously" (in the words of Judge Faris) raised in the case.

But equally important, the presumed "tardiness" of filing this *newly discovered evidence* is clearly erroneous. The Court's justification neglects that fact that any

reasonable person could not have, and would not have, *discovered* this new evidence in public records before September 16, 2016, when the BKC issued its "final order." (**Exhibit 3**) This can be known by the fact that the main *new evidence discovered* and attached to the Judicial Notice is the "WARRANTY DEED dated **September 6, 2016**. On that date, Sulla converted the title from his strawman, JASON HESTER, as an individual, to HALAI HEIGHTS, LLC—Sulla's company. **It is unreasonable and prejudicial to presume Horowitz could have, or should have, discovered this new evidence *within ten (10) days* of Sulla's covert transaction. That is, Sulla's *secret* sale of the subject Property to himself (in the name of HALAI HEIGHTS, LLC) was concealed from the courts and from Horowitz**. (**Exhibit 4**) Accordingly, it is ludicrous, prejudicial, and damaging for the Court to require this new evidence to have been filed within ten days of its secret manufacture.[1]

Clearly, this newly discovered evidence encourages reconsideration of the ODA, especially since this evidenced corroborates, beyond any reasonable doubt, the BKC's false presumption that Sulla was honestly and legally representing the "Foreclosing Mortgagee," and not his own concealed conflicting interests violating Cannon 10 of the ABA Canons of Professional Ethics that states:

> Canon 10. Acquiring Interest in Litigation. The lawyer should not purchase any interest in the subject matter of the litigation which he is conducting.

[1] The actual date of discovery of Sulla's Warranty Deed and sale to his private company, Halai Heights, LLC, was on-or-about Christmas, 2016, within days of Sulla having served Horowitz another complaint by certified mail on December 22, 2016. Sulla filed in the First Circuit to expunge Horowitz's Affidavit of Lis Pendens from State records. Sulla filed purportedly for "Hester," concealing Sulla's own interest and September 6, 2016, recorded title conversion. Sulla's Complaint compelled a fresh online search, resulting in the newly discovered evidence Judicially Noticed by Motion.

Accordingly, the Honorable Court's misapprehension here, and aforementioned omissions, precludes fairness and deprives Horowitz of due process and justice. For these reasons, and the timely filing of this New Evidence permitted during an appeal, Op. cit. *Great Hawaiian Financial Corp*., a reversal and adjudication on the merits of Horowitz's Appeal is required for justice to be served.

(2) Alleged Stay Violations Week of March 21, 2016

The Court's ODA completely neglects Horowitz's detailed pleadings, corroborated by attorney Margaret Wille's Declaration.[2] (**Exhibit 5**) The pleadings, Declaration, and the Court correspondence Wille submitted by email to the sheriff (attached as Exhibits to her Declaration) also evidence Stay violations by Sulla during the week of March 21, 2016. As noted in Wille's Declaration she estimated that approximately one hour of her time (at a fee rate of $300 per hour) was spent reviewing this matter with Horowitz in the context of discussion of Horowitz's proposed pleadings.

Sulla's AB likewise neglects to answer to these allegations and the clear and convincing evidence of Wille's aforementioned correspondence to the Court to preclude Sulla's ejectment actions that week, during the Stay.

By omitting or neglecting these material facts evidencing Sulla's violations of the Automatic Stay March 21-24, 2016, the courts are clearly giving the "impression of impropriety;" since Sulla's covert Property conversion is steeped in fraud and crime, clearly and convincingly evidenced by in Horowitz's OB.

In contrast, quoting the Court on page 7 of the ODA, "The bankruptcy court

[2] A signed original copy is pending receipt from Attorney Wille, pursuant to the Clerk's request stating insufficiency of the e-filing signature originally filed with the Court.

explained that 'the only conduct during the relevant period that might amount to a stay violation was the affixing of the writ of ejectment to the front gate of the Property [on March 12, 2016], presumably by a process server acting for Sulla.' 9/16/16 Order at 2-3."

The BKC, and this Court, gave no explanation whatsoever for disregarding the records evidencing Sulla's actions to eject Horowitz (et. al.) during the week of March 21, 2016, verified by Horowitz's Affidavit, corroborated by Wille's Declaration with the Court correspondence documents submitted to the Sherriff attached thereto.(**Exhibit 6**) This evidence clearly and convincingly demonstrated Sulla's actions during that week that *did* "amount to a stay violation." And Sulla tacitly admitted the same by failing to answer to this express allegation.[3]

By omitting and neglecting the compelling evidence of a March 21-24 violation, plus Sulla's tacit admission(s)[4] thereof, the courts are not only administering damaging injustice, and not only giving an "impression of impropriety" that a reasonable person would find troubling, but a reasonable person would conclude that the courts' favor for Sulla aids-and-abets Sulla's commission of multiple felonies and alleged racketeering enterprise.

[3] Sulla's Stay violation(s) March 21-24 was(were) tacitly admitted by Sulla, since his AB neglects to deny his express, solidly-evidenced, ejectment actions that week that compelled Horowitz's lawyer, Margaret Wille, to intercede to protect Horowitz and his Property rights. (OB, p. 3 ; Dkt # 97-4. See: E-mail to Sheriff Kauwe and Invoice from Attorney Wille in **Exhibit 5**)

[4] Horowitz pled in his Reply Brief, FRCP Rule 8(b)(2) and (6) ["Failing to Deny" by "Responding to the Substance" of Horowitz's allegations]). By "failing to deny"—that is, exercising "silence"—Sulla tacitly admits *willful* Stay violations with malicious intent. Sulla's "silence" also admits to defrauding the Court to convert possession of the Property to himself.

Purposeful omissions and misrepresentations to deceive people is fraud; and Sulla's "[c]onduct which forms a basis for inference is evidence." "Silence is often evidence of the most persuasive character." U.S. Supreme Court in *United States ex rel. Bilokumsky v. Tod*, 263 US 149, 154 (1923). Silence by clear omissions, neglect of pleadings, avoiding evidence, and precluding arguments of Stay violation(s), is apparent in the BKC's "Order Denying Motion to Reconsider" filed Sept. 29, 2016 (**Exhibit 6**). Most objectionable, the BKC, and now this Court too, neglected Sulla's ejectment actions during the week of March 21, 2016.

(3) Rule 9011(c)(1)(A) "false representation" exception to "safe harbor."

The ODA additionally and completely neglects Horowitz's objections to the BKC's *excusing of Sulla from responding to Horowitz's Motion to Show Cause*. The BKC precluded an "Evidentiary Hearing" requested on the issues raised pursuant to **Rule 9011(c)(1)(A),** as Horowitz pled in his OB (p. 21). A reasonable person would perceive from this second obvious omission, supplementing neglect of the March 21 week violation(s), more impropriety. That court-neglected exception to Rule **9011** clearly states with emphasis added in the relevant part:

> (A) *By Motion*. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected***, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b).*** If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

Horowitz filed that separate Motion to Show Cause in compliance with Rule 7004, and filed evidence and allegations that Sulla violated "subdivision (b)" (OB pp. 35-38) that states in pertinent parts:

> (b) Representations to the Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, . . .
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Horowitz alleged, and well-evidenced, felony conversion of his estate Property by Sulla. (OB, p. 15) Horowitz filed objections to Sulla's "Fraudulent Assignments" of Horowitz's Mortgage and Note into a not-yet-legally existing sham "church." Horowitz objected to Sulla's filing of those "Fraudulent Assignments" with the State (OB p. 19). Horowitz showed Sulla's forgeries of the Seller's signature(s)—cut and pasted into Sulla's incorporation paperwork to manufacture the "Foreclosing Mortgagee." Sulla exclusively verified by Affidavit these fraudulent documents as "true and correct." Perjury, forgery and fraud for grand larceny is certainly not "warranted by existing law." **These facts, and solidly evidenced issues, are "Representations to the Court" triggering subsection "b" of Rule 9011**.

Accordingly, by neglecting the facts and evidentiary exhibits, and providing

Sulla a "safe harbor" contrary to the express wording of Rule 9011, a reasonable person would construe the Honorable Court as complicit in "safe harboring" a criminal, and aiding-and-abetting Sulla's solidly evidenced crimes.

Reiterating the BKC's ruling, in Horowitz's OB pleading:

> **(1) The court erred by ruling** Dr. Horowitz is "not entitled to any remedy under the rule, . . . because he has not complied with the "safe harbor" of rule 9011(c)(1). The safe harbor provides that a party may not file a motion for sanctions under the rule unless the party serves an unfiled copy of the motion on the alleged wrongdoer and gives the wrongdoer 21 days to correct the alleged wrong. There is no indication that Dr. Horowitz complied with the safe harbor, so sanctions are not available under rule 9011."
>
> **The above quote by the court errs by neglecting Fed. R. Civ. P. § 11(c)(1)(A) that grants exception to the "safe harbor" since Mr. Sulla, "after receiving the motion," and with substantial time permitted, "refused to withdraw [his] position" or "acknowledge candidly that [he] does not currently have evidence to support a specified allegation."[5]**

C. Failure to provide case law controverting the case law provided by Horowitz pursuant to Sulla defying his federal Disqualification Order in the subject ejectment actions.

The ODA states no case law whatsoever under its conclusion "Disqualification Not Warranted," and simply quotes the BKC court that erroneously-represented the

[5] ". . . Sulla was served the [subject] Motion, had plenty of time to answer, neglected to do so, and the court not only neglected the material facts, fraud, and crimes alleged; not only neglected to perform an "inquiry reasonable under the circumstances" of alleged foreclosure fraud and wrongful conversion by Sulla made known to the court; and not only vicariously answered for Sulla, but also neglected the clear language of Fed. R. Civ. P. § 11(c)(1)(A); and also neglected the Rule 9011(b) "safe harbor" preclusion. That is, Sulla's bad faith 'Representations to the Court' related to his concealed real party interest. This "fraudulent concealment" and Hester's invalid standing, precluded the 'safe harbor.'"

Summarily, Mr. Sulla had far more than 21 days required by the "safe harbor." In fact, he had 2.5 months to reply to service of Motion *served by the Bankruptcy Court Clerk by e-service on 6/30/2016*. (Dkt # 100) The hearing was held on September 15, 2016.

instant case as "unrelated" to the Disqualification of Sulla in the ejectment case. In other words, the bankruptcy case, and State Civ. No. 14-1-0304 ejectment case in which Sulla was Disqualified by federal magistrate Judge Puglisi, are *intimately-intertwined foreclosure/ejectment actions pending final disposition, and are most proximal to Horowitz's bankruptcy and Reorganization Plan*.

This Court erroneously stated in its ODA (p. 8) "Horowitz argued unsuccessfully before the bankruptcy judge that Sulla violated the district court's unrelated order by appearing in this bankruptcy case." This statement is prejudicial and clearly erroneous on two counts. First, oral argument "before" Judge Faris was prejudicially precluded (for which the BKC apologized, but never remedied the due process violation [OB pp. 10-11]). Second, the instant case is not "unrelated" to the Disqualification Order. In fact, the ejectment action and Property conversion is central to this case; AND central to the Stay violation(s); AND is the same ejectment action and Property conversion adjudicated in the Disqualification case—Civ. No. 14-1-0304; Civ. No. 14-0413 JMS-RLP.

Sulla is required by case law, the Motion, and due process, to show cause for his alleged contempt of court. Sulla has yet to show cause for his defiance of Judge Puglisi's Disqualification Order that is intimately-intertwined with Sulla's ejectment action during the week of March 21st.

Under these circumstances, it is unreasonable, and even deceptive, to grant Sulla immunity from having to show cause for defying the subject Disqualification. The BKC's justification for excusing Sulla is un-convincing. The BKC's statement, "[t]he fact that one court disqualified Mr. Sulla does not require all courts to do so," is controverted by case law provided below.

III. Argument

The Honorable Court's acceptance of the BKC's reason given to defy Judge Puglisi's Disqualification of Sulla in the Stay-violating ejectment action is contrary to *stare decisis* doctrine and *In re Ball,* (Op. cit at 597):

> Generally, the doctrine of *stare decisis* provides that "when the court has once laid down a principle of law as applicable to a given state of facts, it will adhere to that principle and apply it in future cases where the facts are substantially the same." Russell Moore, *Stare Decisis* 4 (1958). The *stare decisis* principle has long been "a corner-stone of the common law," Jeffrey Brookner, *Bankruptcy Courts and Stare Decisis: The Need for Restructuring,* 27 U.Mich.J.L.Ref. 313, 313 (1993), and continues to thrive.

The "given state of facts" are substantially the same between this bankruptcy case and the ejectment action, since both cases deal with the same Property, same series of transactions, same parties-in-interest or their privies, and the same convert conversion committed by Sulla. The BKC's erroneous justification, accepted by this Court, defies *In re Ball* and *stare decisis* doctrine. These rulings also defy the Model Rules of Professional Conduct, Rule 8.5 helps secure consistency of rulings between jurisdictions.

"It is the duty of the district court to examine the charge[s]".[6] In the instant case, the "charges against Sulla include his March 21-24, 2017 Stay violations; concealed conflicting interests; Fraudulent Assignments of Horowitz's Mortgage and Note (i.e., securities fraud); unlawful debt collection practices to possess the Property or gain unjust enrichment; and defiance of Sulla's Disqualification Order.

[6] *In re Coordinated Pretrail Proceedings, Etc*. 658 F. 2d 1355 (OB p. 6, footnote 5) also citing the Ninth Circuit in *Gas-A-Tron, supra*, 534 F.2d at 1325 and *Woods v. Covington Cty. Bank, supra*, 537 F.2d at 813 (quoting Third Circuit in *Richardson v. Hamilton International Corp.,* 469 F.2d 1382 (1972).

The Court's reconsideration of these matters, re-examination and "inquiry reasonable under the circumstances," is required since the "court . . . is authorized to supervise the conduct of the members of its bar. The courts, as well as the bar, have a responsibility to maintain public confidence in the legal profession. This means that a court may disqualify an attorney for not only acting improperly but also for failing to avoid the appearance of impropriety." *Op. cit. Richardson.* "Every lawyer owes a solemn duty . . . to strive to avoid not only professional impropriety but also the appearance of impropriety."*Id*. In the instant case, the ODA unjustly, and unjustifiably, provides Sulla with a "safe harbor" and vicarious immunity against prosecution on all charges.

Contrary to remaining misconception, and the courts' inferences, Horowitz did not move for Sulla's Disqualification in this case, because Sulla's Disqualification was already secured by *stare decisis* doctrine, and it was the BKC's duty (not Horowitz's duty) to police itself.[6] In this Appeal, Horowitz simply sought compensation for damages from Sulla's Stay violation(s); and also to compel Sulla to Answer to allegations of Stay violations, evidence of foreclosure fraud, and criminal contempt of court. Horowitz should not be deprived of due process to adjudicate these meritorious claims, but for the courts' reluctance to prosecute a thief licensed to practice law.

It is the Court's duty upon *de novo* review to reverse the BKC's errors, especially rulings that violate Bankruptcy Code § 362(a)(3). This Congressional mandate protects debtors from, "any act to obtain possession of property of the estate or of property from the estate or to *exercise control over property of the*

estate. . . .” during the Stay period. (Emphasis added.) Section 362(h) adds: “An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.”

The actual damages requested, a pittance compared to the total damages, plus deserved punitive damages, are most reasonable, especially given the fact that Sulla violated the Stay *and* ABA ethics Canon 10. Hence, Horowitz argues and evidences, res ipsa loquitur, Sulla committed *willful* violations of ethics rules, laws, *and* the Automatic Stay, and to neglect fair and just compensation is shameful.

Given that Sulla currently holds title to the Property (in the name of HHLLC), is it unreasonable to presume his ethics violation(s) did not encompass his *willful* Stay violation(s). Accordingly, Horowitz seeks to recover actual damages, including costs and attorneys’ fees, and punitive damages, since the automatic stay extends to any exercise of control over property of the estate that Sulla committed during the week of March 21, 2016. *Norton Bankr. Code Pamphlet* 209 (1990-91 ed.), quoted in *In re Abrams*, 127 BR 239 - Bankr. Appellate Panel, 9th Circuit 1991.

The two cases, *In re Abrams* and *Knaus,* 889 F.2d at 775, concur—the failure to fulfill the duty to turn over property of the estate to the Trustee during the Stay period constitutes a prohibited attempt to "`exercise control over property of the estate' in violation of the automatic stay." *Id.* at 775. “That interest in the real property became property of the estate when the Plaintiff filed bankruptcy and was protected from creditors by the automatic stay. 11 U. S.C. § 362(a).” *Miller v.*

McDougal Bros. Investments, Bankr. Court, D. Oregon 2008. Horowitz never abandoned the Property, even after the bankruptcy case closed, the Property continues to remain Property of the estate and subject to administration by the Trustee at this time, pending final determinations by this Court. *Id*. citing *Cusano v. Klein*, 264 F.3d 936, 945-946 (9th Cir. 2001)(internal citations omitted).

By erroneously dismissing this Appeal, by reason of purported untimeliness and/or lacking jurisdiction, and without a hearing or fair adjudication on the merits, the Court is neglecting the aforementioned case law, the Trustee's responsibilities, the Court's duty, and prejudicing Horowitz's re-possession of his Property required to comply with 18 U.S.C. § 3771.

Sulla's AB advances two main fraudulent defenses against these claims, remedies and the precedent established in *In re Abrams*: (1) that the Property was never part of Horowitz's estate to be secured and/or repossessed by the Trustee pursuant to, inter alia, 11 U.S.C. §§ 550 and 558, statutes of frauds and avoidance powers; and (2) if Sulla had violated § 362, then Sulla's violation(s) was(were) not willful, thus not susceptible to 362(h) sanction.

However, again, Sulla's AB is steeped with omissions, misrepresentations, and diversions from required responsive pleading. Accordingly, Sulla tacitly admits willful wrongdoing the week of March 21, 2016 (according to uncontroverted evidence and FRCP Rule 8(b)(2) and (6)) including purposeful Stay violation(s) for first degree theft.

The BKC's backing of Sulla, effectively "harboring" Sulla, and precluding adjudication on the merits, plus acting with no jurisdiction over Hester, and dismissing this case without a trial or hearing on the Motion, all damaging Horowitz, additionally defies the U.S. Supreme Court's (1971) holding in *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 US 388. This precedent condemns federal officers who violate "[t]he right of the people to be secure in their . . . houses . . . against unreasonable . . . seizures . . . ." *Id*. In the instant case, Judge Faris permitted Sulla to unreasonably seize Horowitz's exclusive residence under color of law. In *Bell* v. *Hood,* 327 U. S. 678 (1946), the Supreme Court held liable "a federal agent acting under color of his authority . . . for damages consequent upon his unconstitutional conduct." The BKC's accommodation of Sulla's blatant misrepresentations, omissions, and criminal conversion, shames justice and unreasonably multiplies processes at the expense of the parties, legitimate creditors, and taxpayers.

Even if Sulla were to argue his right to the Property to justify his willful violations of ethics rules and laws, including § 362(a)(3), "[w]hether the party believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' or whether compensation must be awarded. *Bloom,* 875 F.2d at 227 (citation omitted). A violation of the stay is thus willful when a creditor acts intentionally with knowledge of the bankruptcy. *Accord Knaus,* 889 F.2d at 775. Excerpt from *In re Abrams*, 127 BR 239, 243 - Bankr. Appellate Panel, 9th Circuit 1991. By the third week of March, 2016, Sulla irrefutably knew the Stay was in effect, and willfully acted during that time to eject Horowitz from the Property.

Accordingly, even if the Court, upon de novo review, were to rule insufficiency of evidence to hold Sulla accountable for Stay violation(s) on Saturday night, March 12, 2016, then compensation for Attorney Wille's fees of $300, plus punitive damages, are still due for Sulla's willful violation(s) of the Stay during the third week in March.

IV. CONCLUSION

Horowitz has demonstrated multiple reasons why the court should reconsider its Dismissal. The Court is asked to reconsider by reason of Horowitz's provision of: (1) "discovery of new evidence not previously available" that could not have been discovered more timely; and (2) "the need to correct clear or manifest error in law [and] fact, to prevent manifest injustice." *Op cit. Great Hawaiian Financial Corp.* The "strongly convincing" facts and laws aforementioned are compelling reasons for reconsideration. These include: A. Deprived Due Process; B. Omissions of: (a) Judicially Noticed Records, (b) Alleged Stay Violations the week of March 21, 2016; and (c) Rule 9011(c)(1)(A) "false representation" exception(s) to "safe harbor" policy. Horowitz has also objected to the Court's failure to provide case law controverting *stare decisis* case law provided pursuant to Sulla's federal Disqualification Order. And Horowitz argued convincingly that the Disqualification case and this case are *intimately intertwined*. Finally, Horowitz has clearly and convincingly documented that Jurisdiction is proper before this Court since the "final order" was issued, albeit not in a form customarily filed by

the BKC, but recognizable nonetheless by the Honorable Appellate Court as "final."

Under the circumstances, and given the Court's prudent analysis of the Record, the parties' pleadings, and this Reconsideration Motion, relief in favor of Horowitz is proper in accordance with reason, justice, rules, ethics, case law, and statutes. At minimum, Horowitz should be awarded $300 for Sulla's Stay violation(s) the week of March 21, 2016, and punitive damages for solidly evidenced contempt. Whatever additional relief the Court rules is appropriate under the circumstances is appreciated by the Appellant, and many others concerned about this case.

Respectfully submitted. Dated: Honolulu, HI: April 21, 2017

Signed: _____

LEONARD G. HOROWITZ, Appellant pro se

LEONARD G. HOROWITZ, in pro per
P. O. Box 75104
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 Appellant-debtor, vs. PAUL J. SULLA, JR. an individual; PAUL J. SULLA JR., ATTORNEY AT LAW A LAW CORPORATION, a corporation Defendants	**Bankruptcy Case No: 16-00239** (Chapter 13) Related Case: Adv. No. 16-90015 (Chapter 13) **DECLARATION OF LEONARD G. HOROWITZ In Support of Motion to Reconsider** JUDGES: HONORABLE DERRICK K. WATSON (and KEVIN S. CHANG)

DECLARATION OF LEONARD G. HOROWITZ

Leonard G. Horowitz (hereafter "Horowitz," "me," "I," or "my"), 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, and currently reside in the State Hawai'i, in Honolulu (part time), under the duress of Paul J. Sulla, Jr.

2. I am a victim of the injustices discussed in the attached Motion; and I am, therefore, legally domiciled in California, since Hawaii is my "after acquired residence."

3. I exist as a resident of Hawaii under virtual involuntary servitude, since I am compelled by the misdeeds of the local courts to litigate cases to regain my life-savings that has been stolen from me by Sulla and the corrupted courts.

4. I am not a lawyer, and not licensed to practice law before the Courts of Hawai'i. I am a pro se litigant.

5. In this case, I plead as a bankrupted debtor/victim of Paul J. Sulla, Jr.'s organized crimes, after filing for bankruptcy on March 9, 2016, and at the same time filed related Adversary Proceeding 16-90015. Both cases have been wrongfully dismissed, and my estate Property has been vicariously ceded to Sulla by the court(s) without my having been granted a "trial on the merits" following nearly eight (8) years of bankrupting litigations.

6. I declare that the attached **"MOTION FOR RECONSIDERATION"** contains true and correct pleadings to the best of my knowledge and belief.

7. I declare that Exhibit "1" is a true and correct copy of the "ORDER DISMISSING APPEAL, filed on April 11, 2017.

8. I declare that Exhibit "2" is a true and correct copy of the "MEMORANDUM OF DECISION REGARDING PLAN CONFIRMATION" filed by Judge Faris on September 16, 2016 in Bankruptcy Case No. 16-BK-00239.

9. I declare that Exhibit "3" is a true and correct copy of the "ORDER

DENYING CONFIRMATION AND DISMISSING CASE," filed on September 19, 2017, in Bankruptcy Case No. 16-BK-00239.

10. I declare that Exhibit "4" is a true and correct copy of threatening Notice, boldly captioned, "**WARNING: CASE CLOSED on 04/11/2017**" that I received by e-mail from the BK Court on that date, the same day this Appeal was Dismissed.

11. I declare that Exhibit "5" is a true and correct copy of the "Declaration of Attorney Margaret Wille", who is my attorney in ongoing State cases Civ. No. 05-1-0196 and Civ. No. 14-1-0304.

12. I declare that Exhibit "6" is a true and correct copy of the E-mails sent by attorney Margaret Wille to Sheriff Kenneth D. Kauwe, on March 24, 2016 to avert further Stay violations.

13. I declare that Exhibit "7" is a true and correct copy of the "ORDER DENYING DEBTOR'S MOTION TO RECONSIDER" issued by Judge Faris on September 29, 2016, in by bankruptcy case.

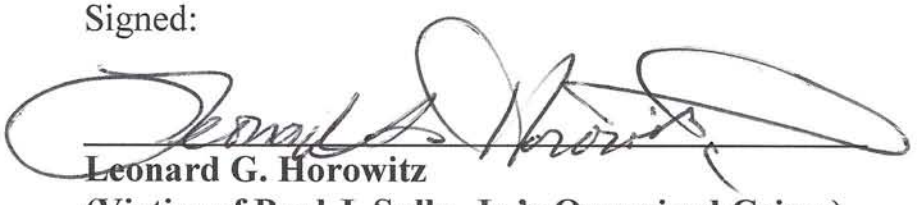
14. This Affidavit is based upon my personal knowledge and I am competent to testify as to the truth of the statements contained herein.

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: Honolulu, Hawai'i April 21, 2017

Signed:



Leonard G. Horowitz
(Victim of Paul J. Sulla, Jr.'s Organized Crime)

INDEX TO EXHIBITS "1" THROUGH "7"

In Support of Appellant's Motion for Reconsideration

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

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

LEONARD G. HOROWITZ, Appellant, vs. PAUL J. SULLA, JR., *et al.*, Appellees.	CV. NO. 16-00549 DKW-KSC Bankr. No. 16-00239 Adv. No. 16-90015 **ORDER DISMISSING APPEAL**

INTRODUCTION

Appellant Leonard G. Horowitz, proceeding pro se, filed an interlocutory appeal from a bankruptcy court order denying his motion for reconsideration of the earlier denial of his motion seeking attorneys' fees and sanctions against Appellee Paul J. Sulla, Jr. Horowitz and Sulla have for years engaged in protracted litigation in multiple venues concerning a real property dispute. In the present appeal, Horowitz contends that the bankruptcy judge erred by finding no misconduct on the part of Sulla, an attorney, for violation of the automatic stay and denying his request for Sulla's disqualification.

Because Horowitz fails to make a threshold showing of any apparent need for immediate review of the bankruptcy court's interlocutory order, the Court denies leave to file an interlocutory appeal pursuant to 28 U.S.C. § 158(a)(3) and Federal

Rule of Bankruptcy Procedure 8004. Appellees' Motion to Dismiss is accordingly GRANTED. Horowitz's Motion for Judicial Notice is DENIED.[1]

BACKGROUND

I. Bankruptcy Proceedings

Horowitz is the debtor in the underlying Chapter 13 bankruptcy proceeding initiated on March 9, 2016. *See* Bankr. No. 16-00239, Dkt. No. 1. Sulla is a creditor. Horowitz and Sherri Kane were also Plaintiffs in a bankruptcy adversary proceeding involving Sulla, Adv. No. 16-90015, and Horowitz was a party in

---

[1]Horowitz asks the Court to take judicial notice of "newly discovered evidence." This evidence consists of six documents publicly filed at the State of Hawaii Bureau of Conveyances and in the State courts. Although all of these documents pre-date the bankruptcy court order at issue in this appeal, none of them was presented to the bankruptcy court for consideration. *See* Civ. No. 16-00549, Dkt. No. 10. Courts sitting in an appellate capacity typically will not consider issues raised for the first time on appeal when the bankruptcy court had no opportunity to consider them. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 269 n.9 (2010) ("We need not settle that question, however, because the parties did not raise it in the [bankruptcy] courts below."); *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975, 984 (9th Cir. 2001) (holding that court would not consider issue raised for the first time on appeal absent exceptional circumstances). Nor will courts consider facts and documents available but not presented below. *See Oyama v. Sheehan (In re Sheehan)*, 253 F.3d 507, 512 n.5 (9th Cir. 2001); *Kirschner v. Uniden Corp. of Am.*, 842 F.2d 1074, 1077–78 (9th Cir. 1988). Horowitz offers no explanation for his failure to offer any of these previously available public documents into the bankruptcy court record. Accordingly, his tardy request is denied.

numerous other federal and state cases involving the same persons and/or property.[2] In the Adversary Proceeding, Horowitz sought monetary and injunctive relief regarding real property located at 13-3775 Pahoa-Kalapana Road, Pahoa, Hawaii 96778 (the "Property"). Horowitz and Kane alleged an assortment of misconduct on the part of Sulla, Sulla's client Jason Hester, and the judges who presided over several state court lawsuits, among others. *See* Complaint, Adv. No. 16-90015, Dkt. No. 2.

Horowitz acquired the Property in 2004, but lost it via nonjudicial foreclosure to Hester in 2010. *See* Complaint, Adv. No. 16-90015. In 2014, Hester filed a quiet title action against Horowitz and others, which eventually resulted in the state court issuing a writ of ejectment against Horowitz and Kane on March 1, 2016. *See Hester v. Horowitz*, Civ. No. 14-1-0304, on appeal as Case No. CAAP-16-000163. About a week later, on March 9, 2016, Horowitz filed for bankruptcy protection. On April 15, 2016, the bankruptcy court granted relief from the automatic stay to

---

[2]*See, e.g., Horowitz v. Sulla*, Civ. No. 15-00186 JMS-BMK; *Horowitz v. Sulla*, Civ. No. 16-00433 DKW-KSC (D. Haw. Sept. 30, 2016) (denying motion to withdraw reference); *Hester v. Horowitz*, Civ. No. 05-1-0196, on appeal as Case No. CAAP-16-0000162; *Hester v. Horowitz*, Civ. No. 14-1-0304, on appeal as Case No. CAAP-16-000163. *See also Horowitz v. Sulla*, Civ. No. 17-00014 LEK-KSC (D. Haw. Feb. 17, 2017) (remanding case to state court); *Horowitz v. Sulla*, Civ. No. 13-00500 HG-BMK (D. Haw. Mar. 17, 2014) (dismissing case with prejudice); *Hester v. Horowitz*, Civ. No. 14-00413 JMS (D. Haw. Jan. 8, 2015) (remanding case to state court); *Sulla v. Horowitz*, Civ. No. 12-00449 SOM-KSC (D. Haw. Oct. 4, 2012) (remanding case to state court).

permit enforcement of the writ. *See* 4/15/16 Order Granting Relief, Bankr. No. 16-00239, Dkt. No. 32.

Several Defendants moved in bankruptcy court for dismissal of the Adversary Proceeding and alternatively asked the bankruptcy court to abstain pursuant to 28 U.S.C. § 1334(c). The bankruptcy court granted the motion, and on July 26, 2016, denied the motion for reconsideration, concluding that discretionary abstention was justified because Plaintiffs' Adversary Complaint improperly sought to overturn final judgments of Hawaii state courts. *See* Adv. No. 16-90015, Dkt. Nos. 104 and 111.

Following the bankruptcy court's denial of confirmation of his initial and second Chapter 13 plans, Horowitz filed a third plan on August 5, 2016. Bankr. No. 16-00239, Dkt. No. 115. In a September 16, 2016 Order, the bankruptcy court denied the third plan and dismissed the Chapter 13 case. *See* 9/16/16 Mem. Decision Regarding Plan Confirmation, Bankr. No. 16-00239, Dkt. No. 138. The bankruptcy judge based his decision on the following conclusions:

> It is abundantly clear that Dr. Horowitz filed this case in order to secure a forum in which he can litigate and attack state court decisions against him and in favor of Mr. Sulla, Mr. Sulla's client, and others. All of Dr. Horowitz's papers and oral presentations are filled to the brim with argument, accusations, and invective concerning the foreclosure of property in which Dr. Horowitz had an interest, the state court proceedings that validated it, and cases brought by Dr. Horowitz in federal district

> court to attack it. According to his schedules, Dr. Horowitz's most valuable asset by far is his legal case against Sulla et al.
>
> * * * *
>
> Simply put, Dr. Horowitz has no need for relief under chapter 13. He has filed this case for the sole purpose of mounting a collateral attack on adverse state court decisions. Considering the totality of the circumstances, Dr. Horowitz has not carried his burden of proving that he filed this case and his plan in good faith.
>
> * * * *
>
> It is hard to imagine how Dr. Horowitz could propose a confirmable plan that would also serve his overriding goal of relitigating his dispute with Sulla et al. in this court. Therefore, this case should not be prolonged any further and is dismissed.

9/16/16 Mem. Decision Regarding Plan Confirmation, Bankr. No. 16-00239 at 5.

That same day, the bankruptcy court issued an Order to Show Cause why the Adversary Proceeding should not be dismissed, based on the dismissal of the underlying bankruptcy case. *See* 9/16/16 OSC, Adv. No. 16-90015, Dkt. No. 122. The bankruptcy court thereafter dismissed the Adversary Proceeding on October 14, 2016. *See* Adv. No. 16-90015, Dkt. Nos. 128 (Order of Dismissal) and 129 (Final Judgment).

On September 19, 2016, the bankruptcy court entered an Order Denying Confirmation and Dismissing Case. *See* Bankr. No. 16-00239, Dkt. No. 143.

II. Issues On Appeal To District Court

A. Memorandum Of Decision On Alleged Misconduct By Sulla

On September 16, 2016, the same day it issued its Memorandum of Decision Regarding Plan Confirmation, the bankruptcy court also issued a Memorandum of Decision on Debtor's Alleged Misconduct by Paul Sulla, Jr. *See* 9/16/16 Order, Bankr. No. 16-00239, Dkt. No. 139. That order denied Horowitz's Motion to Show Cause for Violations of Automatic Stay, Defying Disqualification Order and Bad Faith Pleadings in Judgment Creditor Paul Sulla, Jr.'s Objection to Confirmation of Amended Plan of Debtor ("Motion To Show Cause"), filed on June 27, 2016, in the Chapter 13 case. *See* Bankr. No. 16-00239, Dkt. No. 97. The bankruptcy court found that Sulla (1) did not violate the automatic stay; (2) should not be disqualified from representing Hester in the bankruptcy matter; and (3) is not liable to Horowitz for sanctions under Federal Rule of Civil Procedure 11 or its bankruptcy counterpart.

1. No Violation Of The Automatic Stay

The bankruptcy court observed that Horowitz commenced his Chapter 13 case on March 9, 2016—shortly after the state court issued the writ of ejectment on March 1, 2016. On March 11, 2016, the Bankruptcy Noticing Center mailed notice of the bankruptcy filing to Hester and Sulla. At some point prior to 7:24 p.m. on March 12, 2016, a copy of the writ of ejectment was taped to the front gate of the

Property. *See* 9/16/16 Order at 2. On March 18, 2016, Sulla filed a motion for relief from the automatic stay to permit enforcement of the writ of ejectment, which the bankruptcy court granted on April 15, 2016. On June 10, 2016, the writ of ejectment was enforced and Horowitz was evicted from the property. *See* 9/16/16 Order at 2-3.

For purposes of Horowitz's Motion To Show Cause, the relevant time period was between March 9, 2016 and April 15, 2016. The bankruptcy court explained that "the only conduct during the relevant period that might amount to a stay violation was the affixing of the writ of ejectment to the front gate of the Property, presumably by a process server acting for Sulla." 9/16/16 Order at 2-3. The bankruptcy judge concluded that this conduct did not amount to a violation of the automatic stay. Citing a controlling Ninth Circuit decision, *In re Perl*, 811 F.3d 1120 (9th Cir. 2016), involving similar facts, the bankruptcy judge found no stay violation.[3] *See* 9/16/16 Order at 3-4. Moreover, the bankruptcy judge concluded that, even if there had been a violation, Horowitz did not establish that the violation

---

[3]In that case, a state court issued a writ of possession in a California unlawful detainer action. Before the writ was served, however, the debtor filed a bankruptcy petition. The creditor enforced the writ despite the bankruptcy stay and locked the debtor out of the premises with the debtor's possessions still inside. The debtor argued that the creditor violated the automatic stay, but the Ninth Circuit held that the enforcement of the writ did not violate the stay because the pre-petition issuance of the writ terminated the debtor's interest in the property. *See* 811 F.3d at 1130. The bankruptcy court reasoned that, although *Perl* is based on the pre-petition effect of a writ of possession under California law, the same result would likely "apply to a writ of ejectment under Hawaii law." *See* 9/16/16 Order at 3-4.

was willful by proving that Sulla had actual knowledge of the bankruptcy filing when the writ was affixed to the gate. *See* 9/16/16 Order at 4 ("A violation is 'willful' if the creditor knew of the automatic stay and its actions that violate the stay were intentional.") (quoting *Eskanos & Adler, P .C. v. Roman (In re Roman)*, 283 B.R. 1, 7–8 (B.A.P. 9th Cir.), *aff'd*, 309 F.3d 1210, 1215 (9th Cir. 2002)).

Further, even if there had been a willful violation, the bankruptcy judge concluded that (1) Horowitz failed to establish that the posting of the writ on the front gate caused him to suffer any quantifiable injury; and (2) it would not (except perhaps in extreme circumstances not present here) support an order prohibiting Sulla from objecting to confirmation of a plan. *See* 9/16/16 Order at 4.

2. Disqualification Not Warranted

Horowitz sought Sulla's disqualification based upon a prior ruling by a federal magistrate judge in a different matter, in which Sulla was a necessary witness on several of the claims before the district court. Horowitz argued unsuccessfully before the bankruptcy judge that Sulla violated the district court's unrelated order by appearing in this bankruptcy case. *See* 9/16/16 Order at 5. The bankruptcy judge instead concluded that "[t]he fact that one court disqualified Mr. Sulla does not require all courts to do so. Further, there is no reason to think, [that] Sulla's testimony will be necessary in this bankruptcy case, [because, in] a separate order

entered concurrently with this order, I have dismissed this bankruptcy case for reasons unrelated to any testimony Mr. Sulla might be able to give." 9/16/16 Order at 5.

3. Horowitz Did Not Comply With Fed.R.Bankr.P. 9011

Last, the bankruptcy judge rejected the request for sanctions because Horowitz did not comply with the safe harbor provision of Federal Rule of Bankruptcy Procedure 9011(c)(1). *See* 9/16/16 Order at 5. Although Horowitz invoked Federal Rule of Civil Procedure 11 at the beginning of his motion, he did not discuss the rule elsewhere in his request for sanctions. Because Horowitz did not serve an unfiled copy of the motion or give the target of the motion 21 days to correct the alleged misconduct, the bankruptcy judge found that he failed to comply with the requirements of Federal Rule of Bankruptcy Procedure 9011. "There is no indication that . . . Horowitz complied with the safe harbor, so sanctions are not available under rule 9011." 9/16/16 Order at 5.

B. Order Denying Motion For Reconsideration

Horowitz filed a Motion for Reconsideration on September 26, 2016. *See* Bankr. No. 16-00239, Dkt. No. 148 ("Mot. for Recon."). The Motion for Recon alternatively sought removal of pending claims "of alleged automatic stay violations requiring due process, intertwined with remaining claims in the Adversary

Proceeding, to bring long-overdue [sic] trial on the merits." Mot. for Recon. at 2. Horowitz argued that the bankruptcy court's denial of his Motion To Show Cause violated his due process rights and "unreasonably, inequitably, unjustly and un-Constitutionally helped Sulla convert the estate Property to Sulla/Hester in violation of, inter alia, 42 U.S.C. § 1981." Mem. in Supp. of Mot. for Recon. at 17. According to Horowitz, "[i]n this spirit of judicial corruption, the [bankruptcy] [c]ourt's Orders reflect abstinence from 'good behavior' in the face of prima facie evidence of Sulla's forgery(ies) of . . . signatures, perjury, false filings with the State, and wire fraud contributing to real Property conversion." Mem. in Supp. of Mot. for Recon. at 17.

The bankruptcy judge denied the Motion for Recon on September 29, 2016. *See* 9/29/16 Order, Bankr. No. 16-00239, Dkt. No. 150. The Order Denying Debtor's Motion to Reconsider noted that Horowitz sought relief under Federal Rule of Civil Procedure 60, made applicable by Federal Rule of Bankruptcy Procedure 9024. *See* 9/29/16 Order at 1. Because Horowitz did not specify which subsection of Rule 60(b) formed the basis for his reconsideration request, the bankruptcy court considered each of them, concluding that "there is no support for relief from the [9/16/16] order under any provision of Rule 60(b)(1)–(5)." 9/29/16 Order at 2. The bankruptcy court also specifically found that—

> There is no newly discovered evidence that could not have been or was not raised in the underlying motion. The facts stated in the reconsideration motion were also raised numerous times in various motions before this court as well as in the state court actions where debtor lost title to the property. Furthermore, there are no unusual or extraordinary circumstances that would justify relief under Rule 60(b)(6).

9/29/16 Order at 2. On these bases, the bankruptcy court denied the Motion for Recon.

The instant appeal followed.

C. Horowitz's Appeal To District Court

Horowitz's Notice of Appeal, filed on October 4, 2016, erroneously lists the "judgment, order, or decree appealed from" as his "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." *See* Notice of Appeal and Statement of Election, Civ. No. 16-00549, Dkt. No. 1-1; Bankr. No. 16-00239, Dkt. No. 157. Attached to the Notice of Appeal are the following exhibits: (1) the first page of Horowitz's Motion To Show Cause (Ex. 1); (2) the bankruptcy court's Memorandum of Decision on Debtor's Alleged Misconduct by Paul J. Sulla, Jr. (Ex. 2); (3) the bankruptcy court's Order Denying Debtor's Motion to Reconsider (Ex. 3); (4) the Notice of Dismissal of Chapter 13 case and bankruptcy court certificate of notice, dated September 19,

2016 (Ex. 4); and (5) a district court order in *Hester v. Horowitz*, Civ. No. 14-00413 JMS-RLP (D. Haw. Jan. 5, 2015) (Ex. 5).

In his Designation of the Record on Appeal and Statement of Issues, Horowitz states that he is appealing the bankruptcy court's Memorandum of Decision on Debtor's Alleged Misconduct by Paul J. Sulla, Jr. (Bankr. No. 16-00239, Dkt. No. 139), "and the court's simultaneous filing of Memorandum Decision Regarding Plan Confirmation [(Bankr. No. 16-00239, Dkt. No. 138)] based substantially on the alleged misconduct of Mr. Sulla;" and Order Denying Debtor's Motion to Reconsider (Bankr. No. 16-00239, Dkt. No. 150). Civ. No. 16-00549, Dkt. No. 3-3 at 2.[4] Horowitz's Notice of Appeal did not include a motion for leave to file an interlocutory appeal or otherwise seek leave of court to appeal from the denial of his Motion To Show Cause. As of the date of this Order, no final decree or judgment

---

[4]Just as confusing, Horowitz's Opening Brief states that he is—

> appealing from the U.S. Bankruptcy Court in Honolulu, Hawaii, and the Honorable Judge Robert J. Faris's Memorandum of Decision on Debtor's Alleged Misconduct By Paul J. Sulla, Jr. of September 16, 2016 (Exhibit 1; Dkt. # 139); and the court's simultaneous filing of Memorandum Decision Regarding Plan Confirmation (Exhibit 2; #138), pursuant to matters of alleged misconduct of attorney-debtor-in-privity, and alleged creditor, Paul J. Sulla, Jr. . . . involving conversion of the Appellant's principal residence; and Order Denying Debtor's Motion to Reconsider (Exhibit 3, Dkt. # 150) filed by the court September 29, 2016.

Horowitz Opening Br. at 1-2, Civ. No. 16-00549, Dkt. No. 5.

has entered in the Chapter 13 case, although the case was dismissed on September 19, 2016.

III. Appellees' Motion to Dismiss

On January 24, 2017, Sulla, individually and as a professional law corporation, filed a Motion to Dismiss listing the following procedural and substantive grounds for dismissal—

> 1) the Notice of Appeal is unclear; as it pertains to the September 16, 2016 Order in ECF Dkt #138, it is untimely;
>
> 2) The Opening Brief is over the page limit by 13 pages;
>
> 3) The Opening Brief is incoherent and impossible to formulate a coherent response to;
>
> 4) No points of error are designated as such so it is unclear what, exactly, the points of error are that are being litigated;
>
> 5) The underlying bankruptcy and adversary proceeding matters have both been dismissed;
>
> 6) The matter is moot and this court lacks jurisdiction to hear the Appeal;
>
> 7) Appellant's Opening Brief is not substantially compliant with the governing rule of procedure because it includes facts not properly cited to the Record on Appeal;
>
> 8) The Opening Brief fails to show where in the Record Appellant objected to the Points of Error raised and thus those objections have been waived;

9) The Appeal is Interlocutory and there is no accompanying Motion for Leave to File Appeal as required by Rule 8004;

10) The appeal is frivolous;

11) The Record on Appeal is incomplete; and,

12) The Appellant is vexatious.

Mot. to Dismiss, Civ. No. 16-00549, Dkt. No. 12 at 1-2. Horowitz opposes the motion. *See* Civ. No. 16-00549, Dkt. No. 14.

DISCUSSION

I. The Appeal Is Dismissed

Having considered the arguments raised in the parties' submissions, the designated record on appeal, as well as additional matters in the Chapter 13 case and Adversary Proceeding below, the Court grants the Motion to Dismiss. Because the issues on appeal do not involve a controlling question of law as to which there is a substantial ground for difference of opinion, and because an immediate appeal would not materially advance the ultimate termination of the litigation, leave of court is denied to consider Horowitz's interlocutory appeal pursuant to 28 U.S.C. §158(a)(3) and Bankruptcy Rule 8004.

A. Whether The Appeal Is Moot

As a preliminary matter, the Court addresses Sulla's claim that the appeal is moot because both the Chapter 13 case and related Adversary Proceeding have been

dismissed, the Property has been transferred, and Horowitz has been dispossessed. *See* Mot. to Dismiss at 7-8. Two other appeals stemming from the Chapter 13 case and Adversary Proceeding have also been dismissed.[5] The instant appeal, however, is not moot based upon the dismissal of the underlying bankruptcy case, Adversary Proceeding, or disposition of the Property or other assets of the bankruptcy estate.

The test for mootness of an appeal is whether the appellate court can give the appellant any effective relief if the appeal is decided in favor of appellant. *Motor Vehicle Cas. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 677 F.3d 869, 880 (9th Cir. 2012). Here, the dismissal orders entered by the bankruptcy court would not render moot the relief sought if the appeal were decided in favor of Horowitz, including actual damages, costs and attorneys' fees for violations of the automatic stay, Rule 9011 sanctions, or Sulla's disqualification. *See, e.g., In re Davis*, 177 B.R. 907, 911 (B.A.P. 9th Cir. 1995) ("The weight of authority suggests that the dismissal of a bankruptcy case does not render moot an action for damages based on a willful violation of the automatic stay during the pendency of the bankruptcy case."); *Johnson v. Smith (In re Johnson)*, 575 F.3d 1079, 1083 (10th Cir. 2009) ("It is particularly appropriate for bankruptcy courts to maintain

---

[5] *See* BAP Case No. HI-16-1110, dismissed as moot Oct. 17, 2016, Bankr. No. 16-00239, Dkt. No. 162; and BAP Case No. HI-16-1132, dismissed as interlocutory July 18, 2016, Adv. No. 16-90015, Dkt. No. 106.

jurisdiction over § 362(k)(1) proceedings because their purpose is not negated by dismissal of the underlying bankruptcy case."). "Imposition of damages for willful violation of the automatic stay serves an important purpose even after the underlying bankruptcy case has been dismissed; it provides compensation for and punishment of intentionally wrongful conduct." *In re Davis*, 177 B.R. at 911 (citations omitted).[6]

As a result, Horowitz's appeal is not moot.

B. Leave To Appeal An Interlocutory Order Is Denied

Generally, an interlocutory order like those at issue here may be appealed only with leave of the district court. *See* 28 U.S.C. § 158(a)(3). "An interlocutory order is one which does not finally determine a cause of action but decides only an intervening matter, and which requires further steps to be taken for the cause of action to be adjudicated on the merits." *In re Eleccion*, 178 B.R. 807, 808 (B.A.P. 9th Cir. 1995).[7] The relevant statute, 28 U.S.C. § 158, provides as follows:

> (a) The district courts of the United States shall have jurisdiction to hear appeals

---

[6]In analogous circumstances, sanctions proceedings may continue despite the termination of the underlying case. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395–98, (1990) (voluntary dismissal of a lawsuit does not deprive the district court of jurisdiction over a motion for sanctions under Federal Rule of Civil Procedure 11).

[7]*See also Travers v. Dragul (In re Travers)*, 202 B.R. 624, 625 (B.A.P. 9th Cir. 1996) ("To become final, the order must end the litigation or dispose of a complete claim for relief, leaving nothing for the court to do but execute the judgment.").

> (1) from final judgments, orders, and decrees;
>
> (2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and
>
> (3) with leave of the court, from other interlocutory orders and decrees;
>
> and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

28 U.S.C. § 158(a).[8]

The bankruptcy court order appealed from here is not a "final judgment, order, [or] decree," for purposes of Section 158(a)(1). Rather, it is an "interlocutory order" that requires "leave of the court" in order to proceed. To be clear, Horowitz does not seek to appeal the entirety of the underlying bankruptcy case, only the matters resolved by the September 29, 2016 Order relating to his Motion To Show Cause—whether Sulla violated the automatic stay, should be

---

[8]The repetition of the phrase "with leave of the court, from . . . interlocutory orders and decrees" in Section 158(a)(3) and again in the text immediately below appears to be an error introduced by the Bankruptcy Reform Act of 1994. *See In re Gugliuzza*, --- F.3d ---, 2017 WL 1101094, at *3 n.4 (9th Cir. Mar. 24, 2017) ("In the 1994 Act, Congress amended this provision to add the language of what is now § 158(a)(1)–(3), which includes the phrase: 'with leave of the court, from other interlocutory orders and decrees,' *see* Bankruptcy Reform Act of 1994, Pub. L. No. 103–394, § 102, 108 Stat. 4106, 4108. This redundancy does not affect the subsection's meaning.").

disqualified, and is subject to Rule 9011 sanctions.[9] Because the September 29, 2016 Order is interlocutory, leave of court is required under Section 158(a)(3).

Under Federal Rule of Bankruptcy Procedure 8004(a), to appeal from an interlocutory order of a bankruptcy court under Section 158(a)(3), a party must file with the notice of appeal a "motion for leave to appeal." *See* Fed.R.Bank.P. 8004(a)(2); *see also* Fed.R.Bank.P. 8004(b) (setting forth required contents of motion for leave to appeal). Horowitz did not file the required motion for leave to appeal either with the notice or at any subsequent time. Under Rule 8004(d), however, "[i]f an appellant timely files a notice of appeal under this rule but does not include a motion for leave, the district court or BAP may . . . treat the notice of appeal as a motion for leave and either grant or deny it." Because Horowitz timely filed his Notice of Appeal on October 4, 2016, the Court, in its discretion, treats the Notice of Appeal as a motion for leave pursuant to Rule 8004(d).

In considering whether to grant leave to appeal, courts generally "loo[k] to the standards set forth in 28 U.S.C. § 1292(b), which concerns the taking of

---

[9]The Court considers the issues addressed in both the bankruptcy court's September 29, 2016 Order Denying Debtor's Motion for Reconsideration, Bankr. No. 16-00239, Dkt. No. 150, and also the September 16, 2016 Memorandum of Decision on Debtor's Alleged Misconduct by Paul J. Sulla, Jr., Bankr. No. 16-00239, Dkt. No. 139. *See In re JSJF Corp.*, 344 B.R. 94, 100 (B.A.P. 9th Cir. 2006) (Permitting appeal to be taken from both the order denying the motion for reconsideration and the underlying order even though the notice of appeal only designated the motion for reconsideration as the order from which the appeal was taken.).

interlocutory appeals from the district court to the court of appeals." *In re Roderick Timber Co.*, 185 B.R. 601, 604 (B.A.P. 9th Cir. 1995); *see also In re Belli*, 268 B.R. 851, 858 (B.A.P. 9th Cir. 2001).[10] The relevant question under Section 1292(b) is "whether the order on appeal involves a controlling question of law as to which there is a substantial ground for difference of opinion and whether an immediate appeal may materially advance the ultimate termination of the litigation." *Roderick*, 185 B.R. at 604. Applying that standard here, the Court finds that leave to appeal is not merited.

First, Horowitz fails to show that the bankruptcy court orders involve a controlling question of law. In fact, he falls short of making any showing that the orders involve a "question of law" at all. *Cf. In re Novatel Wireless Secs. Litig.*, 2013 WL 6055270 (S.D. Cal. Nov. 19, 2013) (Observing that "a number of other courts have stated the term [question of law] means a 'pure question of law' rather than a mixed question of law and fact or the application of law to a particular set of facts."). Further, under Ninth Circuit authority, a "controlling question of law" is one where "resolution of the issue on appeal could materially affect the outcome of litigation in the [bankruptcy] court." *In re Wilson*, 2014 WL 122074, at *2 (N.D.

---

[10]Because a bankruptcy adversary proceeding is akin to an ordinary federal civil action, when considering motions for leave to appeal interlocutory orders, district courts look to the standards set forth in 28 U.S.C. § 1292. *See In re Belli*, 268 B.R. 851, 854–55 (B.A.P. 9th Cir. 2001).

Cal. Jan. 10, 2014) (citation omitted). The issues raised by Horowitz's Motion To Show Cause and Motion for Recon are merely collateral to the issues to be determined in the underlying bankruptcy proceedings, which, in any event, have since been dismissed without plan confirmation. That is, whether Sulla violated the automatic stay or should be disqualified from representing Hester would not materially affect the outcome of Horowitz's Chapter 13 bankruptcy case.

Second, there is no serious question that the controlling law is clear and well-established with respect to the issues raised in this appeal. "To determine if a 'substantial ground for difference of opinion' exists under § 1292(b), courts must examine to what extent the controlling law is unclear." *Couch v. Telescope, Inc.*, 611 F.3d 629, 633 (9th Cir. 2010). "Courts traditionally will find that a substantial ground for difference of opinion exists where 'the circuits are in dispute on the question and the court of appeals of the circuit has not spoken on the point, if complicated questions arise under foreign law, or if novel and difficult questions of first impression are presented.'" *Id.* The Court has located none of these possible "substantial grounds" in the instant appeal.

Finally, it does not appear likely that granting leave will increase the chances of a quick end to this litigation. Rather, "an interlocutory appeal might well have the effect of delaying [and prolonging] the resolution" of debtor's bankruptcy

proceedings. *Shurance v. Planning Control Int'l, Inc.*, 839 F.2d 1347, 1348 (9th Cir. 1988).

Moreover, "[u]nder the final judgment rule, a party ordinarily must raise all claims of error in a single appeal following final judgment on the merits. This rule was designed to prevent piecemeal litigation, conserve judicial energy and eliminate delays caused by interlocutory appeals." *In re Eleccion*, 178 B.R. at 809 (citations omitted). "Under the practical test of finality used in the context of bankruptcy proceedings, the need for immediate review, rather than whether the order is technically interlocutory, is emphasized." *In re Eleccion*, 178 B.R. at 809 (citations omitted). As no final decree or judgment has entered in the Chapter 13 case, and there is no ostensible need for immediate review of this matter, leave to file an interlocutory appeal pursuant to Section 158(a)(3) and Bankruptcy Rule 8004 is DENIED.

II. No Other Bankruptcy Orders Are Properly Before The Court

Although not entirely clear based upon the voluminous pleadings, to the extent Horowitz seeks to appeal certain additional bankruptcy orders not listed in the Notice of Appeal (Dkt. No. 1)—including the bankruptcy court's September 16, 2016 Memorandum of Decision Regarding Plan Confirmation, *see* Bankr. No. 16-00239, Dkt. No. 138; or its September 19, 2016 Order Denying Confirmation and

Dismissing Case, *see* Bankr. No. 16-00239, Dkt. No. 143—the appeal is without leave of court, untimely and/or premature, and the Court is without jurisdiction over these matters.

First, Horowitz did not list any other orders in his Notice of Appeal.[11] He did, however, attach several other orders as Exhibits to the Notice of Appeal, including the bankruptcy court's September 19, 2016 Notice of Dismissal of the Chapter 13 case. *See* Civ. No. 16-00549, Dkt. No. 1-1, Ex. 4. His Designation of Record on Appeal also expressly states that Horowitz appeals from:

> the U.S. Bankruptcy Court in Honolulu, Hawaii, and the Honorable Judge Robert J. Faris's MEMORANDUM OF DECISION ON DEBTOR'S ALLEGED MISCONDUCT BY PAUL J. SULLA, JR. of September 16, 2016 (Exhibit 1; Dkt # 139); and the court's simultaneous filing of MEMORANDUM DECISION REGARDING PLAN CONFIRMATION (Exhibit 2, Dkt #138) based substantially on the alleged misconduct of Mr. Sulla; and ORDER DENYING DEBTOR'S MOTION TO RECONSIDER (Exhibit 3, Dkt # 150) filed by the court September 29, 2016.

Civ. No. 16-00549, Dkt. No. 3-3 at 2 (emphasis added). The September 16, 2016 Memorandum of Decision Regarding Plan Confirmation, however, was not attached

---

[11] As noted previously, the Court considers the issues addressed in both the bankruptcy court's September 29, 2016 Order Denying Debtor's Motion for Reconsideration, Bankr. No. 16-00239, Dkt. No. 150, and also the September 16, 2016 Memorandum of Decision on Debtor's Alleged Misconduct by Paul J. Sulla, Jr., Bankr. No. 16-00239, Dkt. No. 139, even though the Notice of Appeal only designated the date of the Order Denying Debtor's Motion for Reconsideration. *See In re JSJF Corp.*, 344 B.R. 94, 100 (B.A.P. 9th Cir. 2006).

to the Notice of Appeal, as required by Rule 8003(a)(3)(B). Even assuming that appeals of these orders could be taken as of right under Rule 8003—without leave of court—Horowitz failed to list them on his October 4, 2016 Notice of Appeal, as required by Rule 8003(a)(3). *See In re Clark*, 2014 WL 5646640, at *6 (B.A.P. 9th Cir. Nov. 4, 2014), *aff'd*, 662 F. App'x 544 (9th Cir. 2016) ("[T]the appellant is required to designate in the notice of appeal the specific judgment or order appealed from in the particular concerned case.").[12]

Second, under Federal Rule of Bankruptcy Procedure 8002(a), Horowitz had fourteen days from the entry of a final order or judgment in which to file a notice of appeal.[13] To the extent he seeks to appeal either the September 16, 2016

---

[12]"[I]f a litigant files papers in a fashion that is technically at variance with the letter of a procedural rule, a court may nonetheless find that the litigant has complied with the rule if the litigant's action is the functional equivalent of what the rule requires." *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 316–17 (1988). This liberal principle of construction is not without limits, however, and does not excuse noncompliance with the rules, especially here, where nothing listed in the Notice of Appeal gives any indication that Horowitz sought to appeal any order relating to the plan confirmation in the Chapter 13 case. *See Smith v. Barry*, 502 U.S. 244, 248 (1992); *In re Clark*, 2014 WL 5646640, at *6–*7.

[13]Rule 8002(a) states in relevant part:

> (1) Fourteen-day period
> Except as provided in subdivisions (b) and (c), a notice of appeal must be filed with the bankruptcy clerk within 14 days after entry of the judgment, order, or decree being appealed.
>
> (2) Filing before the entry of judgment
> A notice of appeal filed after the bankruptcy court announces a decision or order--but before entry of the judgment, order, or decree--is treated as filed on the date of and after the entry.

Memorandum of Decision Regarding Plan Confirmation or the September 19, 2016 Notice of Dismissal, his appeal was not filed within fourteen days thereof and is untimely. "[T]he failure to timely file a notice of appeal is a jurisdictional defect barring appellate review." *In re Wiersma*, 483 F.3d 933, 938 (9th Cir. 2007) (citation and quotation marks omitted); *see also In re Mouradick*, 13 F.3d 326, 327 (9th Cir. 1994) ("The provisions of Bankruptcy Rule 8002 are jurisdictional; the untimely filing of a notice of appeal deprives the appellate court of jurisdiction to review the bankruptcy court's order.").[14]

Accordingly, the Court is without jurisdiction to consider any additional bankruptcy court orders not properly before it on appeal.

III. Summary

Having considered the relevant district court record (Civ. No. 16-00549), the Chapter 13 bankruptcy record (Bankr. No. 16-00239), and Adversary Proceeding

---

[14]On the other hand, to the extent he seeks instead to appeal the entirety of the Chapter 13 case, his appeal appears premature. "A final judgment is one that fully adjudicates the issues before the court and 'clearly evidences the judge's intention that it be the court's final act in the matter.'" *In re Nguyen*, 2010 WL 6259976, at *6 (B.A.P. 9th Cir. Apr. 12, 2010) (quoting *In re Slimick*, 928 F.2d 304, 307 (9th Cir. 1990)). As of the date of this Order, judgment has not entered in the Chapter 13 bankruptcy proceeding, Bankr. No. 16-00239. Also, although the trustee filed a Final Report and Account pursuant to 11 U.S.C. § 1302(b)(1) and Rule 5009, there has been no final decree entered discharging the trustee. *See* 1/5/17 Trustee's Final Report & Account, Bankr. No. 16-00239, Dkt. No. 169.

record (Adv. No. 16-90015), the Court concludes that the instant interlocutory appeal should be dismissed.[15]

CONCLUSION

Based on the foregoing, Appellees' Motion to Dismiss is hereby GRANTED. Dkt. No. 12. The Clerk's Office is directed to close the case.

IT IS SO ORDERED.

DATED: April 11, 2017 at Honolulu, Hawai'i.

Derrick K. Watson
United States District Judge

[15]Because the Court dismisses this appeal as interlocutory, it does not reach the balance of the issues raised in Appellees' Motion to Dismiss.

Date Signed:
September 16, 2016

SO ORDERED.

Robert J. Faris
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re	Case No. 16-00239
LEONARD GEORGE HOROWITZ,	Chapter 13
Debtor.	Docket No. 115

MEMORANDUM OF DECISION REGARDING PLAN CONFIRMATION

Dr. Horowitz commenced this chapter 13 case on March 9, 2016. After the court denied confirmation of his initial and second chapter 13 plans, Dr. Horowitz timely filed a third plan[1] on August 5, 2016. The standing chapter 13 trustee and creditor Paul J. Sulla, Jr., object to confirmation.

Although Dr. Horowitz has corrected some of the problems with his first two plans, his third plan remains fatally defective. Therefore, I will deny confirmation of

[1]Dkt. # 115.

the plan. Further, because this is his third unsuccessful attempt to confirm a plan, and it is highly unlikely that he could resolve the problems identified below, I will dismiss this chapter 13 case.

In order to confirm a chapter 13 plan, the court must determine that all applicable requirements of sections 1325(a) and (b) are met.[2] The court has an independent obligation to ascertain that all of those requirements are met, even if no party in interest objects.[3] Dr. Horowitz, as the chapter 13 proponent, has the burden of proving that he has met all of the requirements for plan confirmation.[4]

Dr. Horowitz must prove (among other things) that "the plan has been proposed in good faith and not by any means forbidden by law"[5] and that "the action of the debtor in filing the petition was in good faith."[6]The court must examine the plan and the filing of the case in light of the totality of the circumstances. The relevant circumstances include "(1) whether the debtor misrepresented facts, unfairly manipulated the Bankruptcy Code or otherwise proposed the plan in an inequitable manner; (2) the history of the debtor's filings and dismissals; (3) whether the debtor

---

[2] Unless specified otherwise, all chapter, code, and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, and the Federal Rules of Bankruptcy Procedure, Rules 1001–9037.

[3] *United Student Aid Funds, Inc., v. Espinosa*, 559 U.S. 260, 277-78 (2010).

[4] *Meyer v. Hill (In re Hill)*, 268 B.R. 548, 552 (9th Cir. BAP 2001).

[5] § 1325(a)(3).

[6] § 1325(a)(7).

intended only to defeat state court litigation; and (4) whether the debtor's behavior was egregious."[7] Courts should examine a debtor's intentions and the legal effect of confirmation in light of the spirit and purposes of chapter 13.[8] Other factors to be considered include, but are not limited to:

1. The amount of the proposed payments and the amounts of the debtor's surplus;

2. The debtor's employment history, ability to earn, and likelihood of future increases in income;

3. The probable or expected duration of the plan;

4. The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;

5. The extent of preferential treatment between classes of creditors;

6. The extent to which secured claims are modified;

7. The type of debt sought to be discharged, and whether any such debt is dischargeable in Chapter 7;

---

[7] *Drummond v. Welsh (In re Welsh)*, 465 B.R. 843, 851 (9th Cir. BAP 2012), *aff'd*, 711 F.3d 1120, 1129 (9th Cir. 2013); *see also HSBC Bank USA, Nat'l Ass'n, as Indenture Tr. of the Fieldstone Mortg. Inv. Tr., Series 2006-1 v. Blendheim (In re Blendheim)*, 803 F.3d 477, 499 (9th Cir. 2015).

[8] *Fid. & Cas. Co. of N.Y. v. Warren (In re Warren)*, 89 B.R. 87, 93 (9th Cir. BAP 1988) (*citing Chinichian v. Campolongo (In re Chinichian)*, 784 F.2d 1440, 1444 (9th Cir. 1986)).

8. The existence of special circumstances such as inordinate medical expenses;

9. The frequency with which the debtor has sought relief under the Bankruptcy [Code];

10. The motivation and sincerity of the debtor in seeking Chapter 13 relief; and

11. The burden which the plan's administration would place upon the trustee.[9]

Some of these factors would support a good faith determination. For example, the plan duration is normal; Dr. Horowitz does not seek a "superdischarge" of debt that he could not discharge in chapter 7; this is Dr. Horowitz's first bankruptcy filing; and there is no indication that this plan would impose undue administrative burdens on the trustee.

Others are difficult to evaluate on this record. For example, the trustee asserts that Dr. Horowitz may have undervalued a parcel of real estate and certain intellectual property. Dr. Horowitz vigorously disagrees. It is not possible to resolve this factual conflict without more evidence.

The factors that are most important in this case, however, militate strongly

---

[9] *In re Warren*, 89 B.R. at 93.

against a good faith determination. It is abundantly clear that Dr. Horowitz filed this case in order to secure a forum in which he can litigate and attack state court decisions against him and in favor of Mr. Sulla, Mr. Sulla's client, and others. All of Dr. Horowitz's papers and oral presentations are filled to the brim with argument, accusations, and invective concerning the foreclosure of property in which Dr. Horowitz had an interest, the state court proceedings that validated it, and cases brought by Dr. Horowitz in federal district court to attack it. According to his schedules, Dr. Horowitz's most valuable asset by far is his legal case against Sulla et al.

Also according to his schedules, Dr. Horowitz has only three creditors apart from Sulla et al. Two of them (his domestic and business partner and his former attorney) are apparently willing to accept any payment scheme that Dr. Horowitz proposes, so he does not need the protection of chapter 13 to address those claims. The only other claim is a credit card balance of $150.31, an amount he could pay in full out of cash on hand.

Simply put, Dr. Horowitz has no need for relief under chapter 13. He has filed this case for the sole purpose of mounting a collateral attack on adverse state court decisions. Considering the totality of the circumstances, Dr. Horowitz has not carried his burden of proving that he filed this case and his plan in good faith.

This determination means that I need not consider the trustee's other

objections to plan confirmation. I reject, however, Dr. Horowitz's attack on the trustee's good faith and his conduct. The trustee has accurately pointed out that some aspects of Dr. Horowitz's plan cannot be reconciled with his schedules and that Dr. Horowitz has not devoted his entire projected disposable income to the payment of unsecured creditors under the plan. This is exactly what a chapter 13 trustee is supposed to do.[10] Even if Dr. Horowitz could correct these defects, it is the chapter 13 trustee's job to point them out. Further, contrary to Dr. Horowitz's assertion, a chapter 13 trustee has no duty to attempt to recover property for the estate.[11]

The trustee couples his objection to confirmation with a request for dismissal of the case. The local bankruptcy rules authorize this procedure to seek dismissal of a chapter 13 case due to "unreasonable delay by the debtor that is prejudicial to creditors."[12] It is hard to imagine how Dr. Horowitz could propose a confirmable plan that would also serve his overriding goal of relitigating his dispute with Sulla et al. in this court. Therefore, this case should not be prolonged any further and is dismissed.

Counsel for the trustee shall submit a proposed order in the usual form.

END OF ORDER

---

[10] *See* § 1302(b)(2)(B).

[11] *Compare* § 1302(b)(1) *with* § 704(a)(1).

[12] LBR 3015-3(e); § 1307(c)(1).

Date Signed:
September 19, 2016

SO ORDERED.

Robert J. Faris
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF HAWAII

In re LEONARD GEORGE HOROWITZ, Debtor.	Case No. 16-BK-00239 (Chapter 13) ***Hearings:*** Date: September 15, 2016 Time: 9:30 a.m. Judge: Hon. Robert Faris

ORDER DENYING CONFIRMATION AND DISMISSING CASE [RE: DKT. #115]

A hearing on Confirmation of Debtor's third Chapter 13 Plan (Dkt. #115) took place as captioned above. Confirmation was opposed by Creditor Paul J. Sulla, Jr., (dkt. #122), and by Trustee. Trustee's Objection to Confirmation was also combined with a Motion to Dismiss under LBR 3015(e). Dkt. #127. Debtor appeared *pro se*; Creditor Paul J. Sulla, Jr., appeared telephonically; and Bradley R. Tamm, appeared on behalf of the Standing Trustee, who was also present.

For those reasons articulated in this Court's Memorandum of Decision Regarding Plan Confirmation (dkt. #138), and good cause appearing therefore:

IT IS HEREBY ORDERED that the objections are sustained, confirmation denied, and this bankruptcy case dismissed.

END OF ORDER

Submitted by: Attorneys for Standing Trustee Howard M.S. Hu: BRADLEY R. TAMM (JD 7841), Bradley R. Tamm LLLC, P.O. Box 3047, Honolulu HI 96802, Tel: (808) 206-1120, e-mail: btamm@hawaiiantel.net

Exhibit 3

H9022 (12/15)

Information to identify the case:

Debtor 1	**Leonard George Horowitz** Name	**United States Bankruptcy Court** **District of Hawaii**
Debtor 2 (Spouse, if filing)	Name	Case number: **16-00239** Chapter: **13**

NOTICE OF ENTRY OF ORDER OR JUDGMENT

NOTICE IS GIVEN THAT:

The court entered the following order or judgment on the date below,

Order Denying Confirmation and Dismissing Case (related document(s)115 Amended Chapter 13 Plan, 127 Trustee's Objection to Confirmation of Plan). Date of Entry: 9/19/2016. (LL)

The order or judgment may be viewed at the Clerk's Office. It may also be viewed online using PACER, the federal judiciary's electronic records system. Information about obtaining and using a PACER account is available at the court website, www.hib.uscourts.gov.

Date: September 19, 2016

Michael B. Dowling
Clerk

Clerk's Office:
1132 Bishop Street, Suite 250
Honolulu, Hawaii 96813
(808) 522-8100
www.hib.uscourts.gov

From: **Sherri Kane** sherrikane@gmail.com
Subject: Fwd: 16-00239 Final Decree
Date: April 11, 2017 at 3:29 PM
To: Leonard Horowitz len15@mac.com

SK

---------- Forwarded message ----------
From: <BKECF_LiveDB@hib.uscourts.gov>
Date: Tue, Apr 11, 2017 at 2:50 PM
Subject: 16-00239 Final Decree
To: courtmail@hib.uscourts.gov

*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30-page limit do not apply.**

United States Bankruptcy Court

District of Hawaii

Notice of Electronic Filing

The following transaction was received from LL entered on 4/11/2017 at 2:50 PM HST and filed on 4/11/2017

Case Name: Leonard George Horowitz
Case Number: 16-00239
WARNING: CASE CLOSED on 04/11/2017
Document Number: 171

Docket Text:
Final Decree. It appearing that the estate of the above-named debtor(s) has been fully administered, or that the case otherwise may be closed, the trustee appointed in this case, if not already discharged, is hereby discharged as the trustee of this estate and this case is closed.
SO ORDERED. /s/Robert J. Faris, U.S. Bankruptcy Judge.

The official order in this matter is set forth in the Notice of Electronic Filing created by this entry. No document is attached.

(LL)

The following document(s) are associated with this transaction:

16-00239 Notice will be electronically mailed to:

Jade Lynne Ching on behalf of Defendant Stewart Title Guaranty Company
jlc@ahfi.com, llk@nchilaw.com;nmk@nchilaw.com

Howard M.S. Hu
Ch13mail@aol.com, hhu1h13@ecf.epigsystems.com

[illegible]

Cynthia M. Johiro on behalf of Creditor Department of Taxation, State of Hawaii
atg.tax.hbcf@hawaii.gov, cynthia.m.johiro@hawaii.gov

Sherri Kane
sherrikane@gmail.com

Jenny Jun Nee Ayako Nakamoto on behalf of Defendant Stewart Title Guaranty Company
jena@ahfi.com, jai@ahfi.com;notice@ahfi.com

Office of the U.S. Trustee.
ustpregion15.hi.ecf@usdoj.gov

Paul J. Sulla, Jr. on behalf of Creditor Jason Lee Hester
psulla@aloha.net, lockeywhite@zoho.com

Paul J. Sulla, Jr. on behalf of Creditor Paul J. Sulla, Jr.
psulla@aloha.net, lockeywhite@zoho.com

Paul J. Sulla, Jr. on behalf of Defendant Paul J. Sulla Jr., Attorney At Law A Law Corporation
psulla@aloha.net, lockeywhite@zoho.com

Paul J. Sulla, Jr. on behalf of Defendant The Office of Overseer
psulla@aloha.net, lockeywhite@zoho.com

Paul J. Sulla, Jr. on behalf of Defendant Jason Hester
psulla@aloha.net, lockeywhite@zoho.com

Paul J. Sulla, Jr. on behalf of Defendant Paul J. Sulla, Jr.
psulla@aloha.net, lockeywhite@zoho.com

Paul J. Sulla, Jr. on behalf of Defendant Stephen D. Whittaker
psulla@aloha.net, lockeywhite@zoho.com

Bradley R. Tamm on behalf of Trustee Howard M.S. Hu
btamm@hawaiiantel.net

16-00239 Notice will not be electronically mailed to:

Department Store National Bank
PO Box 657
Kirkland, WA 98083-0657

Leonard George Horowitz
P.O. Box 75104
Honolulu, HI 96836

Rev. Patricia Villalobos
The Church of the House of Golden Light
PO Box 1732
Pahoa, HI 96778

LEONARD G. HOROWITZ, in pro per
P. O. Box 75104
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 Appellant-debtor, vs. PAUL J. SULLA, JR. an individual; PAUL J. SULLA JR., ATTORNEY AT LAW A LAW CORPORATION, a corporation Defendants	**Bankruptcy Case No: 16-00239** (Chapter 13) Related Case: Adv. No. 16-90015 (Chapter 13) **DECLARATION OF ATTORNEY MARGARET WILLE, EXHIBITS 1 AND 2** JUDGES: HONORABLE DERRICK K. WATSON (and KEVIN S. CHANG)

DECLARATION OF ATTORNEY MARGARET WILLE

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

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

2) I am licensed to practice law before the Courts of Hawai'i.

Exhibit 5

3) As of June 29, 2015, I have been the attorney for Defendant-Appellants LEONARD G. HOROWITZ and SHERRI KANE and THE ROYAL BLOODLINE OF DAVID and am representing these Defendants in State related cases, Civ. 14-1-0304, Civ. 05-1-0196, and respectively their appeals, ICA CAAP 16-0000162 and 163.

4) I am not however involved in the current proceedings before the Bankruptcy Court.

5) With regard to statements made in Attorney Sulla's Answering Brief in the current proceedings, I disagree with any insinuation that I filed any motion or memorandum unnecessarily in my effort to obtain a stay of the subject ejectment writ that was posted during the period of the automatic stay;

6) My efforts to stop Attorney Sulla activities from having the Sheriff execute the Writ of Ejectment included a brief conversation with Sheriff Kenneth Kauwe on March 24, 2016 during which he stated that Paul Sulla's posting of the ejectment notice was improper procedure and that it was Paul Sulla and only Paul Sulla who was now seeking to have the Sheriff-arrangement for ejectment;

7) Following that conversation on the same day I emailed Sheriff Kauwe a copy of my letter to the Court, and a copy of the motion seeking a stay of the writ of ejectment, and based on the Sheriff's response my understanding was that he would accordingly not carryout the ejectment until the Motion was heard and ruled upon;

8) In my billing at $300 per hour, I do not bill for brief phone calls or brief emails, and did not separately bill for the time I spent on March 24, 2016 briefly talking with Sherriff Kauwe and sending him two brief emails, copies of which are attached. (Copies of the emails to Sheriff Kauwe are attached as Exhibits 1 and 2)

9) I did however bill my client for two hours on March 25th as part of my review of my client's draft reply in the bankruptcy case which included discussing with my client Attorney Sulla's efforts to have my clients ejected and my efforts to deter Sherriff Kauwe from carrying out the writ of ejectment (estimated charge $300.)

FURTHER DECLARANT SAYETH NAUGHT

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

Dated: Waimea Hawai'i April 7, 2017

Signed: /s/ MARGARET WILLE

Margaret (Dunham) Wille
Appellant Horowitz's Attorney in State cases
Civ. No. 05-1-0196 and 14-1-0304.

Margaret Wille
Attorney at Law
65-1316 Lihipali Road
Kamuela, Hawaii 96743
Tel: 808-854-6931
margaretwille@mac.com

FILED

2016 MAR 14 PM 3:39

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

March 13, 2016 (to be filed on March 14, 2016)

Honorable Melvin Fujino
Circuit Court of the Third Circuit
Keakealani Bldg., Rm. 240
79-1020 Haukapila Street
Kealakekua, HI 96750

Hester et al v. Horowitz et. al. Civ. No. 14-1-0304
Re: Writ of Execution

Dear Judge Fujino:

My clients, Defendants Leonard Horowitz and Sherri Kane, advised that Saturday night March 12th they found a Writ of Ejectment signed by you and dated January 29, and entered by the Clerk on March 1, 2016, on the gate to their property that has been the subject of the above referenced litigation. Attorney Stephen Whittaker's name is on the upper left hand corner of the document. As the attorney for Defendants Horowitz and Kane, I should have immediately received a copy of the proposed Writ when it was submitted to the Court by Attorney Whittaker. There is no certificate of service showing that I was served a copy of the proposed Writ - stamped as filed on February 29, 2016. THERE IS CLEARLY THE APPEARANCE OF IMPROPRIETY IN THIS CASE.

Likewise I should have immediately been provided a copy of the signed Writ when that was returned by the Court to Attorney Whittaker for processing and service to me. Instead I received copies of the related Orders on March 4, 2016, but still did not receive a copy of the Writ —IN FACT I HAVE YET TO BE SERVED A COPY OF THE WRIT!

WHAT IS UP WITH DUE PROCESS PROCEDURES HERE?

Note that since my clients have in the past not been timely served documents to be provided by Attorney Whittaker, they have been checking Ho'ohiki to make sure a Writ was not signed and issued without their knowledge. It was not until Friday March 11, 2016 that the Orders and proposed Writ filed by Attorney Whittaker was posted on Ho'ohiki. Further the Court's issuance of the signed Writ has yet to be posted on Ho'ohiki.

On March 2, 2016, I filed for a stay pending appeal pursuant to Hawaii Rules Civil Procedure 62(d) – within 10 days of your having denied Defendants' Motion for Reconsideration or Alternatively for New Trial on February 29, 2016 (along with the related Rule 62(b) Motions). A hearing on the March 2nd filed HRCP Rule 62(d) motion is

EXHIBIT 1

scheduled for April 21, 2016. In light of the due process violations, the Writ of Ejectment should not be carried out until after a ruling on that March 2, 2016 filed Motion

Please also be advised that this matter is now subject to an automatic stay in light of the March 10, 2016, filing of Bankruptcy by Leonard Horowitz No. 16-00239.

Respectfully,

Margaret Wille, Attorney for Defendants

cc: Stephen Whittaker, Esq. Attorney for Plaintiff

Margaret (Dunham) Wille #8522
Attorney at Law
65-1316 Lihipali Road
Kamuela, Hawaii 96743
Tel: 808-854-6931
margaretwille@mac.com

Attorney for Defendants

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

JASON HESTER, an individual Plaintiff, v. LEONARD G. HOROWITZ, an individual; SHERRI KANE, an individual; MEDICAL VERITAS INTERNATIONAL, INC, a California nonprofit corporation; THE ROYAL BLOODLINE OF DAVID, a Washington Corporation Sole; JOHN DOES, 1-10, JANE DOES 1-10, DOE ENTITIES 1-10, DOE PARTNERSHIPS 1-10, DOE GOVERNMENTAL UNITS 1-10. Defendants	CIV. NO. 14-1-0304 (Other Civil Action) STIPULATION FOR CHANGE OF DATE FOR MOTION HEARING NOW SCHEDULED FOR APRIL 21, 2016 AT 8 A.M.; PROPOSED REVISED DATE: APRIL 28, 2016 AT 8:30 A.M. Judge: Honorable Melvin H. Fujino

STIPULATION FOR CHANGE OF DATE FOR MOTION HEARING

IT IS HEREBY STIPULATED AND AGREED TO by and between the Parties herein, through their respective counsel, as follows:

1. A hearing on Defendants/Counterclaimants' Motion for A Stay Pending Appeal [HRCP 62(d)] is now scheduled before Judge Melvin Fujino on April 21, 2016 at 8 a.m.

2. Defendants/Counterclaimants LEONARD G. HOROWITZ, SHERRI KANE, and THE ROYAL BLOODLINE OF DAVID (RBOD) and Plaintiff Counter-Defendant Jason Hester

EXHIBIT 2

all agree to change the date of the hearing to April 28, 2016 at 8:30 a.m.

3. The reason for requesting this change of date is that Defendants' Attorney, Margaret Wille, has been directed to attend a federal bankruptcy proceeding that is scheduled at 9:30 a.m. on that same date, April 21, 2016, in Hilo, Hawaii.

4. Counsel for all parties are available and agreeable to reschedule this Motion hearing to April 28, 2016, at 8:30 a.m.

5. Counsel for Jason Hester, Stephen Whittaker Esquire, has agreed to sign this Stipulation and is asked to promptly return it to Defendants' attorney Margaret Wille for filing in the Court.

6. Margaret Wille, Counsel for Defendants, agrees to then promptly file this Stipulation with all original signature pages attached.

Dated: Waimea, 96743 March 18, 2016

Stephen D. Whittaker, Esq.
Attorney for Plaintiff Jason Hester

Dated: Kailua-Kona March 23, 2016

Margaret Wille, Esq.
Attorney for Defendants Horowitz, Sherri Kane, and Royal Bloodline of David.

Begin forwarded message:

From: MARGARET WILLE <margaretwille@mac.com>
Subject: **Fwd: Civ. 14-1- 0304 Handling of Writ of Ejectment**
Date: March 24, 2016 at 1:21:52 PM HST
To: "kenneth.d.kauwe@hawaii.gov" <kenneth.d.kauwe@hawaii.gov>

FYI — Here is copy of the letter I sent to Judge Fujino given my concern that I was not being informed of the legal proceedings relating to issuance of the Writ of Ejectment.

Begin forwarded message:

From: MARGARET WILLE <margaretwille@mac.com>
Subject: Civ. 14-1- 0304 change date of hearing on stay pending appeal
Date: March 24, 2016 at 12:32:05 PM HST
To: kenneth.d.kauwe@hawaii.gov

Here is the Stipulation by both attorneys agreeing to postpone the hearing on the stay pending appeal in Civ. 14-1-0304. 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.

Judge Fujino's clerk has tentatively noted this change of date (to April 28th) -subject to receiving the original signed stipulation - which is now in the mail to the Court to confirm agreement among all parties.

I would appreciate an email confirming your receipt of this email. Thank you.

Much aloha, Margaret Wille, attorney for Len Horowitz and Sherry Kane

MARGARET WILLE
margaretwille@mac.com
See More
808-854-6931

Letter to Judge from Margaret W...-14-16.pdf

Stip chge date 3 16.pdf

Exhibit 6

Date Signed:
September 29, 2016

SO ORDERED.

Robert J. Faris
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re LEONARD GEORGE HOROWITZ Debtor.	Case No.: 16-00239 Chapter 13 Re: Docket No. 97 and 148

ORDER DENYING DEBTOR'S MOTION TO RECONSIDER

Debtor moves for reconsideration of my memorandum decision on debtor's alleged misconduct by Paul J. Sulla, Jr., which was filed on September 16, 2016 (dkt. 139).

Debtor seeks relief under Fed. R. Civ. P. 60, made applicable by Fed. R. Bankr. P. 9024.[1] To obtain relief under Rule 60(b), the moving party must show entitlement

[1] Debtor also moved under Rule 9027(a)(3)(A), Fed. R. Bankr. P., and LBR 9027-1 but these rules pertain to removal notices and are irrelevant for purposes of this motion. Debtor also cites to LR 7.5, which is a district court local rule that establishes the guidelines for filing motions. The bankruptcy court has its own set of guidelines found at LBR 9013-1.

Exhibit 7

to one of the specified grounds for relief.[2] Debtor's motion does not specify which subsection of Rule 60(b) forms the basis for his reconsideration request. Instead, debtor simply rehashes the arguments he made in the motion and in many other papers.

Based on the arguments presented in the reconsideration motion, there is no support for relief from the order under any provision of Rule 60(b)(1) - (5). There is no newly discovered evidence that could not have been or was not raised in the underlying motion. The facts stated in the reconsideration motion were also raised numerous times in various motions before this court as well as in the state court actions where debtor lost title to the property. Furthermore, there are no unusual or extraordinary circumstance that would justify relief under Rule 60(b)(6).[3]

Therefore, IT IS HEREBY ORDERED that debtor's motion for reconsideration is DENIED.

---

[2] The grounds for relief under Rule 60(b), Fed. R. Civ. P., are:
(1) mistake, inadvertence, surprise, or excusable neglect;
(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
(4) the judgment is void;
(5) the judgment has been satisfied, released, or discharged; its based on an earlier judgment that has been reversed or vacated; or applying its prospectively is no longer equitable; or
(6) any other reason that justifies relief.

[3] There is a strong public interest that favors finality of rulings and relief under Rule 60(b)(6) is used sparingly and only under extraordinary circumstances. *In re International Fibercom, Inc.*, 503 F.3d 933, 941 (9th Cir. 2007) and *In re William*, 287 B.R. 787,792 (B.A.P. 9th Cir. 2002).

END OF ORDER

H9022 (12/15)

Information to identify the case:

Debtor 1	**Leonard George Horowitz**	**United States Bankruptcy Court District of Hawaii**
	Name	
Debtor 2 (Spouse, if filing)	Name	Case number: **16–00239** Chapter: **13**

NOTICE OF ENTRY OF ORDER OR JUDGMENT

NOTICE IS GIVEN THAT:

The court entered the following order or judgment on the date below,

Order Denying Debtor's Motion to Reconsider (Related Doc # 148, 97) Date of Entry: 9/29/2016. (JN)

The order or judgment may be viewed at the Clerk's Office. It may also be viewed online using PACER, the federal judiciary's electronic records system. Information about obtaining and using a PACER account is available at the court website, www.hib.uscourts.gov.

Date: September 29, 2016

Michael B. Dowling
Clerk

Clerk's Office:
1132 Bishop Street, Suite 250
Honolulu, Hawaii 96813
(808) 522–8100
www.hib.uscourts.gov

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 21th day of April, 2017, I served a true and correct copy of the foregoing "**MOTION FOR RECONSIDERATION," and EXHIBITS 1-7"** by the method described below to:

PAUL J. SULLA, JR. (SBN 5398)
Attorney at Law
P.O. Box 5258
Hilo, HI 96720
Telephone: 808/933-3600
Facsimile: 808/933-3601 ___X___ U.S. Mail

THE HONORABLE JUDGES
DERRICK K. WATSON
and KEVIN S. CHANG
THE U.S. DISTRICT COURT
FOR THE DISTRICT OF HAWAII _____ U.S. Mail
300 Ala Moana Blvd. #C338 ___X__ Hand
Honolulu, HI 96850
808-541-1300

LEONARD G. HOROWITZ
Post Office Box 75104
Honolulu, HI 96836
Email: editor@medicalveritas.org
310-877-3002