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IN THE SUPREME COURT OF THE STATE OF HAWAII
ICA Nos. CAAP-16-0000162; CIV. NO. 05-1-0196

Foreclosure

PETITIONER-APPELLANT'S APPLICATION FOR WRIT OF CERTIORARI

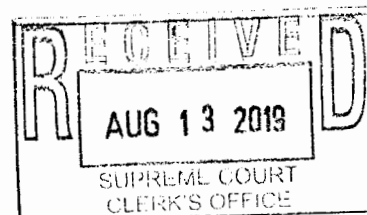
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APPELLATE COURT JUDGES

Honorable Lisa M. Ginoza

Honorable Alexa D.M. Fujise

Honorable Katherine G. Leonard



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IN THE SUPREME COURT OF HAWAII

ICA Nos. CAAP-16-0000162; CIV. NO. 05-1-0196

**JASON HESTER, OVERSEER THE
OFFICE OF OVERSEER, A
CORPORATE SOLE AND HIS
SUCESSORS, OVER/FOR THE
POPULAR ASSEMBLY OF
REVITALIZE, A GOSPEL OF
BELIEVERS.
Plaintiff –Counter-defendant-Appellee**

V.

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

) Civ. No. 05-1-0196/ 14-1-0304
)
) THIRD CIRCUIT COURT
) Appeal of Fifth Amended
) Final Judgment/ Quiet Title-Ejectment
)
)
)
) **PETITIONER-APPELLANT’S**
) **APPLICATION FOR**
) **WRIT OF CERTIORARI**
) **[HRAP Rule 40.1; HRS § 602-59(b)];**
) **APPENDIX “A”; DECLARATION OF**
) **LEONARD G. HOROWITZ;**
) **EXHIBITS “1” TO “10”;**
) **CERTIFICATE OF SERVICE.**
)
)
)
)
)
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)
)

**PETITIONER-APPELLANT'S APPLICATION
FOR WRIT OF CERTIORARI**

PETITIONER-APPELLANT'S APPLICATION FOR WRIT OF CERTIORARI

This timely Application for Writ of Certiorari is filed by Petitioner/Defendant/Counterclaimant-Appellant LEONARD G. HOROWITZ (hereafter, "Petitioner" or "Horowitz") pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 40.1 following the JUDGMENT ON APPEAL filed by the Intermediate Court of Appeals for the State of Hawaii ("ICA") on July 22, 2019 (**Exhibit 1**) and the ICA's MEMORANDUM OPINION filed May 2, 2019 (**Exhibit 2**); the ORDER DENYING THE MAY 12, 2019 MOTION FOR RECONSIDERATION filed May 17, 2019, (**Exhibit 3**); and ORDER DENYING APPELLEE JASON HESTER'S MOTION TO COMPEL APPELLANTS TO ORDER TRANSCRIPTS REQUESTED IN APPELLEE'S DESIGNATION OF ADDITIONAL PARTS OF THE TRANSCRIPT TO BE INCLUDED ON APPEAL, filed June 1, 2016.

Introduction

In 2004, the naïve Petitioner was suckered into buying an "inn" and health spa (subject "Property") in Hawaii's 'drug capital' of Pahoa from a predicate felon, convicted drug trafficker, and skilled con artist who misrepresented the Property as a "grandfathered business" ideal for a world-class natural medicine institute. The deception required the doctor-Petitioner to put down \$200,000 in a non-refundable deposit, only to be promptly foreclosed in 2005 by the Seller/Mortgagee working with a couple of shady lawyers. In 2008, that Foreclosure was DENIED after the jury awarded the Petitioner, his family, and religious ministry, \$200,000 in Special Damages for the "grandfathered inn" *misrepresentation*. To end the case, the Ibarra court ordered "accelerated" a final "balloon payment" in the Findings of Fact and Conclusions of Law dated April 2, 2008. The Petitioner used his \$200,000 judgment credit to supplement his \$154,204.13 cash payment under the court's promise this would end the case. The Petitioner was promised by the Amended Final Judgment filed February 22, 2009 that his balloon payment made five days later, on February 27, 2009, would terminate the Mortgage and Note. Following payment, the Petitioner Noticed the Mortgagee to Release the Mortgage, but "Mortgagee Lee" evaded these Notices and then died leaving no will.

Suddenly appearing at that time was attorney Paul J. Sulla, Jr. (hereafter, "Sulla"). Sulla substituted an alleged sham religious corporation, "Revitalize," for the deceased Seller and con-man, Mortgagee Cecil Loran Lee, (**Exhibit 9**); and then argued the \$200,000 jury award should be vacated by reason of an untimely Rule 50(a) Motion for Judgment as a Matter of Law (MJML) filed pro se by Lee.

Following repeatedly denied motions to vacate the award, Judge Ibarra did an about face. He vacated the \$200,000 award: (a) without subject matter jurisdiction over the untimely motion; (b) no personal jurisdiction over the invalid Revitalize transferee; and (c) wrongly confusing “fraud not pled with particularity” pursuant to Seller Lee having altered the closing agreement, not to be confused with Lee’s totally distinct “grandfathered inn” *misrepresentation* for which the jury award was given.

In 2010, Sulla claimed Revitalize was owed the \$200,000 vacated funds, and used this trick to claim default to justify a non-judicial foreclosure (NJF). The trick was based on Sulla having concealed Revitalize’s void interests derived from void Assignments of Mortgage and Note made untimely. Revitalize didn’t even legally exist at the time of the Assignments, and that debt had already been paid off anyway. Plus, Sulla concealed his own personal interest in the Property, being Revitalize’s and subsequent transferee Hester’s exclusive financier and mortgage “loan” Grantor.

During this Appeal, rather than fact-finding, the Tribunal “waived” its duty to examine the evidence corroborating the aforementioned facts. The ICA deemed “waived” (in two sentences on pp. 10-11 of the MO) the *foremost issue* the Appellant spent more than a decade and three hundred thousand dollars in fees and costs alone to defend—his \$200,000 jury award and rightful title to the Property. A just determination would have disposed of three consolidated current prosecutions in accordance with HRCF Rule 1. Instead, the ICA ruled the Petitioner had “waived” the issue by not ordering oral transcripts superfluous to the Record on Appeal (ROA).

The Tribunal justified this decision by alleging insufficiency of probative evidence despite the ROA proving the dates of filings irrefutably showing fact finders the wisdom in Judge Foley’s analysis and conflicting ruling. Judge Foley DENIED that same alleged need for oral transcripts when that issue was raised by the Respondent. The ICA justified its conflicting decision by overextending HRAP Rules 10 and 11 to make mandatory what was voluntary, unnecessary, not helpful, costly, and left to the Appellants’ discretion. The ICA, thus, deprived the Petitioner of his due process right that was to have been dutifully administered by the fact finders. The Tribunal thus deprived the Petitioner of proper disposition of his \$200,000 in funds used to pay the Mortgage.

The Petitioner also appealed Hester’s erroneously presumed interest and standing in place of Mortgagee Lee and Revitalize.¹ Public Records provided by Judicial Notice showed Sulla quit-claimed title from Revitalize to Sulla’s alleged strawman, Respondent Hester. At the same time Sulla secured his own personal interest in the Property by a \$50,000 Mortgage “loan” to Hester. In 2016, Sulla directed Hester to further transfer the Property title to Sulla’s own incorporation, Halai Heights, LLC (HHLLC). Soon thereafter Sulla secured total interest, title, and control over the Property in his person by way of Sulla’s mortgage “loan” to HHLLC for \$150,000 secured by the Property.

The ICA denied the Petitioner's motion for Sulla's joinder as the "proper party plaintiff." Consequently, the ICA denied the Petitioner's due process rights, and further prejudiced the Petitioner by depriving Sulla's required joinder under HRCF Rule 19. Without joining Sulla, the Petitioner cannot gain restitution or recession of the transferred Property from the judgment proof non-owner and non-controller of the Property, Respondent Hester. Only Sulla's joinder by the Court can administer justice. Equally troubling, the ICA also erroneously ruled that the Petitioner had no standing to object to the Respondents invalid standing gained by the *void* Assignments.

Accordingly, the Petitioner raises two main issues in this Appeal: (1) **the error of granting an untimely Rule 50 MJML—the untimeliness barring the court's jurisdiction to *vacate its own jury-instruction and resulting \$200,000 award for misrepresentation, distinguished from the fraud claim***; and (2) **Respondent Hester's lack of standing, and Petitioner's valid standing, to litigate the *void* (not simply voidable) transfer of the Seller/Mortgagee's interests to Revitalize.**¹

(1) A short and concise statement of the questions presented for decision, set forth in the most general terms possible.

A. Did the ICA erroneously waive its duty and due process required to examine the ROA and Petitioners supplemental filings containing substantial probative evidence proving the untimely Rule 50(a) MJML precluding the trial court's jurisdiction from vacating the jury award?

B. Did the ICA neglect the *void* (not simply voidable) Assignment of Mortgage and Assignment of Note(s), thus erroneously depriving Petitioner's standing to contest Hester's standing in this case (as substitute plaintiff for Revitalize subsequent to Mortgagee Lee's death)?

C. Was the Tribunal's actions inconsistent with HRS § 710-1076(1)(a) and (b) precluding evidence tampering by concealing the preponderance of evidence shown in the ROA and supplemental filings making oral transcripts superfluous to fact finding and justice?

D. Was the Tribunal's actions inconsistent with HRS § 710-1029 and/or § 710-1030, for hindering the Appellant's prosecution of this Appeal by depriving joinder of the real party in interest (and exclusive "proper party") Sulla, required to be joined under HRCF Rules 17 through 19?

¹ See Appendix A that details the trial judge and counsels' actions to distinguish the misrepresentation claim from the fraud claim, as two separate issues at trial. The resulting Special Damage award for misrepresentation was confounded by equally confounding Substitution of Revitalize, the subsequent transfer of that \$200,000 interest to Revitalize, later transferred to Hester, all made *void* by: (1) *prima facie* signature photocopying (i.e., *forgery*), altered page numbers, altered date(s), and the wrong signature on the General Certification page of Revitalize's Articles of Incorporation; (2) overwhelming evidence of fraudulent transfers by Assignment of the Mortgage and Assignment of Note as detailed in HRS § 651C-4; and (3) the transfers to Revitalize were made two weeks *before* Revitalize was incorporated as a legal entity.

E. Was the Tribunal's actions inconsistent with HRS §702-222(c), having a legal duty to prevent Sulla's commission of the offense of theft of the subject Property by fraud, and conversion of the lawful distribution of the \$200,000 jury awarded funds, but failing "to make reasonable effort so to do"? (*Id.*)

(2) A statement of prior proceedings in the case.

In Civ. No. 04-1-0339, Petitioner brought a harassment complaint against Lee filed Oct. 14, 2004 in which Lee used the un-altered certified true original "Agreement for Closing Escrow" in his defense on Nov. 10, 2004, as filed by William J. Rosdil and Paul K. Hamano.

Prior to that proceeding (Civ. No. 05-1-0196) Intervenor Philip Maise defeated Seller Lee in two intertwined lawsuits finalized in 2006 with Maise gaining a Garnishment Order in *Lee v. Maise* (Civ. No. 05-1-0235) compelling Horowitz to make his Mortgage payments due Lee to Maise.

Petitioner's attorney John Carroll filed on May 21, 2009 to circumvent the Ibarra Court in Civ. No. 09-1-0178 (*Horowitz et. al. v. Lee*) due to the appearance of public corruption in that court brought by Sulla. Carroll filed this Complaint to compel the Release of Mortgage.

Sulla directed Hester to file an ejectment action against Horowitz et. al., in the Freitas Court in Civ. No. 3RC-11-1-662, *Hester v. Horowitz et. al.*, filed June 21, 2011, DENIED and dismissed Feb. 13, 2012 by reason of jurisdiction preclusion due to the title dispute.

In Lee's Probate case, filed Feb. 8, 2012 in P. No. 9-1-166, Sulla pled that Lee lost everything due to foreclosure, concealing alleged fraudulent transfers of Lee's interests to Revitalize.

On July 20, 2012, Sulla filed a SLAPP lawsuit in the Strance Court in Civ. No. 12-1-0417 to censor journalists Horowitz and Kane from exposing Sulla and his sons' illegal drug trafficking enterprise in *Sulla and Sulla v. Horowitz and Kane*. The Defendants prevailed on August 28, 2014.

Sulla Jr. and Sulla, III v. Horowitz in Civ. No. 3CC14-1-000173, involved a non-consensual lien decided in Plaintiffs' favor, and appealed to no avail in No. CAAP 15-0000094.

In *Hester v. Horowitz et. al.* 2014, Sulla directed a second ejectment action, alleged malicious prosecution in 3RC 14-1-466, filed April 25, 2014 in the same improper Freitas Court that dismissed the same complaint earlier. This case was dismissed August 11, 2014, when Sulla was directed by Judge Freitas to file *Hester v. Horowitz et. al.* quiet title and summary possession action, CIV. NO. 14-1-0304, or otherwise face a sanction. This case was later consolidated on Appeal with the case at bar, Civ. No. 05-1-0196.

In Civil No. 17-1-0407 (CAAP-18-0000584), Sulla seeks to expunge Horowitz's public notice of lien (*lis pendens*).

(3) A short statement of the case containing the facts material to the consideration of the questions presented.

Pages 1 thru 3 above, captioned “Introduction,” provide a short statement of the case containing the facts material to considering the questions presented. There are five questions presented above designated “A” thru “E”. Key facts material to considering these questions include:

A. The Tribunal deemed “waived” its duty to examine the substantial probative evidence corroborating and affirming the untimeliness of the contested HRCP Rule 50(a) motion, as aforementioned and evidenced in the Record on Appeal (ROA), supplemented by Horowitz’s additional filings including his Motion for Reconsideration. Instead of examining the ROA and these supplemental filings, the ICA deemed “waived” (in two sentences on pp. 10-11 of the MO) this foremost issue. The tribunal justified this decision by alleging insufficiency of probative evidence to determine what was clear in the ROA. Dates of filings irrefutably prove the untimeliness of the Rule 50(a) motion, and the wisdom in Judge Foley’s analysis and ruling DENYING that same alleged need for oral transcripts raised earlier by the Appellee/Respondent. The ICA justified this decision to forego fact finding by overextending HRAP Rules 10 and 11. The ICA thus made mandatory what is or was voluntary, unnecessary, not helpful, superfluous, costly, and left to the Appellants’ discretion—oral transcripts.

B. The MO p. 8 states: “As to Horowitz and RBOD’s contentions regarding the validity of the assignment of the subject mortgage from Lee to Revitalize, our case law makes clear that in a judicial foreclosure, borrowers do not have standing to challenge the validity of an assignment of their loans because they are not parties to the agreement. U.S. Bank N.A. v. Mattos, 140 Hawai’I 26, 35, 398 P. 3d 615, 624 (2017) and U.S. Bank. Nat. Ass’n v. Salvacion, 134 Hawai’I 170, 174-75, 338 P. 3d 1185, 1189-90 (App. 2014). As such, Horowitz and RBOD’s challenge to Hester’s standing in the judicial foreclosure action is without merit.” This statement and determination neglects the fact that the Assignments were *void* ab initio—voided by: (a) invalid transfers into a not-yet-legally-existing Revitalize corporation; (b) a facially-fraudulent warranty on the Mortgage Assignment; and (c) photocopied signature(s) of the Mortgagee, altered date(s), altered page numbers, and the wrong signature on the General Certification page of Revitalize’s Articles of Incorporation. These defects *void*, not simply make “voidable,” Respondent Hester’s claimed interests—a fact proscribing the Tribunal’s decision to deprive Horowitz his due process and legal right to oppose the *void* Assignments as provided in *Salvacion*. (*Id.*)

C. Questions marked “C,” “D” and “E” above relate to questions of law and rules of

procedure, and whether the ICA's actions were inconsistent with these rules and laws. Facts material to this consideration include those recorded in the MO that show the Tribunal acted without personal jurisdiction over Hester as aforementioned, by overlooking the *void* Assignments of Mortgage and Note(s). The ICA also acted inconsistent with HRCP Rules 1, 17, 18, 19, and 50(a). Furthermore, the ICA over-extended HRAP Rules 10 and 11 to falsely conclude Horowitz had "waived" his issue of misappropriated jury-awarded funds totaling \$200,000. The Tribunal also denied motion(s) providing Judicial Notice(s) of public records evidencing alleged fraudulent concealment of the Respondent's attorney, Sulla, as the 'proper plaintiff' with 'real party' conflicting interests who administered the void Assignments, and financed Hester's prosecution of Horowitz, et. al. since 2009. The Tribunal also repeatedly DENIED Horowitz's motions to join Sulla as the 'proper plaintiff' as required under Rule 17, 18 and 19 to satisfy Rule 1 and the timely, equitable, and just disposition of this case. These facts, and ICA's acts inconsistent with the aforementioned rules, produced a pattern of practices prejudicing Horowitz, depriving him of justice, converting his equity, and multiplying damages by delays in the remanded cases.

Combined with the Tribunal's Rule 50(a) decision effectively concealing the substantial and sufficient probative evidence in the ROA, the MO records actions inconsistent with HRS § 710-1076(1)(a) and (b); aiding-and-abetting Sulla's conversion of the Petitioner's \$200,000 in Mortgage-payment funds provided as special damages by the jury as directed, instructed, and affirmed by the trial court—inconsistent with anti-theft laws HRS § 708-830 (2) and (6); also inconsistent with HRS § 634-61 and rules of the court precluding Hester's standing and the Court's personal jurisdiction over Hester. These acts deprived Horowitz of his due process and monetary award by wrongly substituting Hester for Revitalize, and Revitalize for Mortgagee Lee. The ICA's determinations also defy "HRS § 651C-5 Transfers fraudulent" as to present creditors which the Petitioner is by Judge Ibarra's six Final Judgment(s) making Buyer Horowitz a judgment creditor to Seller Lee. The ICA also appears to have acted contrary to its duty under HRS § 702-222(1)(b)(c) "Having a legal duty to prevent the commission of the offense," in this case Sulla's conversion of the subject funds and Property, and "fail[ing] to make reasonable effort so to do." Thus, the ICA appears to have facilitated the commission of theft in the first degree 'under color of law' actionable under HRS § 705-520 as a criminal conspiracy.

(4) A brief argument with supporting authorities.

A-1. The ICA deprived Horowitz of his due process rights, money, and justice when

the MO prejudicially deemed “waived” (on pp. 10-11) the *foremost issue*—the Appellant’s \$200,000 jury award and right to bring closure to fourteen years of multiplying litigations.

A ruling on this matter respecting the facts, laws, and rules, including HRCF Rule 1 would bring just, equitable, and efficient/timely final disposition to all three consolidated prosecutions.

“Waiver of a defendant's fundamental rights must be knowing and voluntary, and must come directly from the defendant. *State v. Murray*, 169 P. 3d 955 - Haw: Supreme Court 2007. The Petitioner neither knowingly or voluntarily waived his rights to have the ICA review the substantial and sufficient probative evidence provided in the ROA and supplemental filings by the Petitioner. Clear-and-convincing evidence of the untimely Rule 50(a) MJML, was provided therein.

The Tribunal justified this *deprivation of right to due process*, right to the \$200,000 jury award, and right to gain prompt finality in the consolidated cases, by alleging that Petitioner’s provisions did not comport with HRAP Rules 10 and 11 concerning the ordering of oral transcripts. The ICA contended that the fact-finders were deprived of sufficient probative evidence without oral transcripts. But oral transcripts in this instance were unnecessary, not helpful, superfluous, and uneconomical, because the ROA provided *sufficient probative evidence* upon which fact-finders could find clear-and-convincing evidence to determine the monetary award vacation was committed improperly by the court, because the Rule 50(a) MJML was made *untimely*. Jurisdiction of the court cannot be given to an untimely motion. *Oppenheimer v. AIG Hawaii Ins. Co.*, 881 P. 2d 1234 - Haw: Supreme Court 1994. The trial court affirmed this too, as shown in the hearing minutes, **Exhibit 6**.

Rule 50(a)(2) only permits, “Motions for judgment as a matter of law . . . made at any time *before submission of the case to the jury*.” [Emphasis added.] This does not permit filing three weeks too late, after the verdict was filed. The Supreme Court in *Harris Truck Lines, Inc. v. Cherry Meat Packers, Inc.*, 371 U. S. 215, 216-217 (1962) (*per curiam*) “(instruct[ed] that petitioner's appeal be heard on the merits where petitioner had received from trial court an improperly grounded . . . extension of the time . . .).” Here the court provided movant Lee an “improperly grounded extension of time” by which the Rule 50(a) motion was repeatedly denied, then *improperly and damagingly granted*; *Carlisle v. United States*, 517 US 416 - Supreme Court 1996. (holding that deadlines in procedural rules shall not be extended by courts for other than acts of God.) “ ‘Substantial evidence’ [of this Rule 50 untimeliness and court error as provided in the ROA] is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion.” *Eastman*, 81 Hawai`i at 135, 913 P.2d at 61. *State v. Quitog*, 85 Hawai`i 128, 145, 938 P.2d 559, 576 (1997) (quoting *State v. Eastman*, 81 Hawai`i 131, 135, 913 P.2d 57, 61 (1996)). The only reasonable “conclusion” here is that the courts deprived the Petitioner erroneously of his

\$200,000 judgment credit, Mortgage payment, and right to just and timely disposition of this case.

The Petitioner repeatedly made known to the ICA that Lee's MJML was filed March 11, 2008, three weeks *after* the jury retired and granted Horowitz et. al., \$200,000 in damages for Seller Lee's *misrepresentation*. Oral transcripts are not required to adjudge the ROA to see that no timely Rule 50(a) filing was ever made by the Mortgagee. Appendix A clarifies this further.

Accordingly, the ICA's ruling that Horowitz waived his primary issue on Appeal based on not ordering oral transcripts is an arbitrary and capricious ruling that, in effect, disappears, disregards, and conceals the ROA that provides substantial probative evidence, a preponderance of evidence, to prove the untimeliness of the Rule 50(a) motion and erroneous conversion of the \$200,000 jury award depriving Horowitz of his money, due process rights, and Property.

Two more facts are weighty. There is an obvious inconsistency in the decision of ICA judges Ginoza, Fujise, and Leonard with that of Judge Foley. The latter judge *ruled adequate* what the former judges ruled *inadequate*. (**Exhibit 5**) Judge Foley DENIED that same alleged need for oral transcripts raised by the Appellee. Add to this 'inconsistency' and disregard for the substantial probative evidence in the ROA Judge Ibarra's April 16, 2008 hearing statement. The Petitioner alerted the Tribunal to the trial court's lacking jurisdiction as recorded by Judge Ibarra at that hearing. **Exhibits 4 thru 6** attached to the "APPELLANT'S RULE 40 MOTION AND MEMORANDUM FOR RECONSIDERATION (OF THE 'MEMORANDUM OPINION' FILED MAY 2, 2019") show trial judge Ibarra recorded in his Hearing Minutes two months after the trial during the single hearing on this matter on April 16, 2008, "THE COURT DENIED [THE RULE 50(a) MJML] MOTION. THERE IS NO AUTHORITY. FURTHERMORE, A JURY'S VERDICT SHALL NOT BE IMPEACHED." (**Exhibit 6**)

"In reviewing the legal sufficiency of the evidence on appeal, ... the test is whether, viewing the evidence in the light most favorable to the State, substantial evidence exists to support the conclusion of the trier of fact." *State v. Lubong*, 77 Hawai'i 429, 432, 886 P.2d 766, 769 (App.1994). The **evidence provided in the ROA was legally sufficient to prove the untimeliness of the 50(a) motion and erroneous vacation of the special damage award by the Ibarra Court inconsistent with the aforementioned facts, rules and case law.**

Therefore, the ICA "waived" its duty to examine the substantial evidence entered in the ROA and subsequent filings. **Horowitz did not waive his right to due process in this Appeal.**

According to further case law, the MO documents a 'red herring' of 'burden shifting,' depriving the Petitioner's right to due process while converting Horowitz's \$200,000 of funds. The Tribunal justified this action by overextending the clear language of HRAP Rules 10 and 11,

to make oral transcripts *mandatory* instead of *voluntary*. “[I]t is precisely this red herring that generated the confusion in the ICA’s opinion regarding . . . improper burden shifting.” *State v. Pone*, 892 P. 2d 455 - Haw: Supreme Court 1995. The MO improperly shifted the burden of the “reasonable trier of fact” to the Appellant(s)—who were the substantial probative evidence provider(s), not the judicial fact finders. This burden-shifting was improper and prejudicial to the Petitioner. Appendix A further details why oral transcripts are superfluous to the ROA by analyzing the movant’s false arguments raised to support the 50(a) motion.

B. Horowitz has standing to oppose the *void* Assignments of Mortgage and Note(s) precluding Hester’s standing as an invalid transferee.

The MO (p. 8) states: “our case law makes clear that in a judicial foreclosure, borrowers do not have standing to challenge the validity of an assignment of their loans because they are not parties to the agreement,” citing *U.S. Bank N.A. v. Mattos*, and *U.S. Bank v. Salvacion*, (Op cit.).

This statement disregards the *void*, not simply voidable, Assignments of Mortgage and Note(s). Mattos (@ 624) states: “According to Salvacion, Hawai’i law would recognize an exception to the general rule when a challenge to a mortgage assignment would deem the assignment void, not voidable.”

The ICA chose to overlook this exception and the ‘substantial evidence’ Horowitz provided proving beyond any reasonable doubt the subject Assignment of Mortgage and Assignment of Note(s) were void *ab initio*. **Revitalize, the transferee, did not even legally exist until two weeks after the Mortgage and Note Assignments were made, thus voiding the Assignments.** “When a corporation has been legally formed, it has an ‘existence as a separate and distinct entity.’ *Evanston Ins. Co. v. Luko*, 783 P. 2d 293 - Haw: Intermediate Court of Appeals 1989. “[T]he interest in the loan was never validly assigned to the foreclosing party, because the assigning entity was dissolved [i.e., not legally existing] prior to executing the assignment. *Lizza v. Deutsche Bank Nat. Trust Co.*, 1 F. Supp. 3d 1106, 1113 - Dist. Court, D. Hawaii 2014. And since Revitalize never had valid interest or standing due to the void assignments, neither did Revitalize’s successor, Hester.

Furthermore, the Assignment of Mortgage was *void* anyway, not simply voidable, due to prima facie fraud on its face. As shown in attorney Sulla’s filing of “Motion for Substitution of Plaintiff” filed July 16, 2009, (attached hereto as **Exhibit 9**) decedent Lee’s Assignment of Mortgage *falsely warranted* that aside from Lee **“there are no other holder of said Mortgage or any interest therein nor has the Assignor declared that th[ere] is any default by Mortgagor therein or in the Note and debt secured thereby.”** [Emphasis added.] This false warranty is

controverted by the obvious lie. Lee had spent the previous four years in this case claiming Horowitz had defaulted on the Mortgage! Horowitz et. al. prevailed against Lee's Foreclosure prior to Lee's fraudulent Assignments. Full payment on the Mortgage and Note was made by February 27, 2009, *after* the Ibarra's court's Amended Final Judgment disposed of all claims on February 22, 2009. The Mortgage was voided by said "balloon payment." Horowitz then Noticed Lee to Release the Mortgage. Those transactions terminated the Mortgage contract according to HRS § 490:3-311.² Thus, Lee's presumed successors gained no valid interest or standing from a void Mortgage and void Note, nor their void Assignments made to the not-yet-legally-existing Revitalize.

And that's not all. The ICA disregarded Horowitz's repeated objections to the *void* incorporation of the transferee, Revitalize. The Articles of Incorporation that Sulla filed with the DCCA on May 26 and May 28, 2009 showed Lee's photocopied signature(s), altered date(s), and altered page numbers confirmed by forensic document and handwriting expert, Beth Chrisman, as shown in **Exhibit 10** attached hereto. "[A] case of simple forgery or false authority . . . result[s] in void documents under Hawai'i law." *Ocwen Loan Servicing LLC v. Lum* 2015 WL 1808955 at 4 (US Dist. Haw. 2015). In a similar foreclosure action involving forged and altered securities involving alleged 'power of attorney,' this Court wrote, "We hold that the note and mortgage were void and unenforceable pursuant to HRS § 454-8." *Beneficial Hawaii, Inc. v. Kida*, 30 P. 3d 895 - Haw: Supreme Court 2001 *Billete v. Deutsche Bank Nat. Trust Co.*, 2013 WL 2367834, at 7 (D. Haw. May 29, 2013) (unpublished) (If the corporate entity did not exist at the time of the assignment it would be void and the subsequent non-judicial foreclosure and ejectment would be invalid.)

In the instant case, had the Tribunal looked at the substantial evidence before it, the fact-finders would have found fraud and crime. However, rather than reviewing the evidence as required, the court failed to follow the rules and laws aforementioned. By so doing, the courts have delayed justice and forced the Petitioner into bankruptcy. A legal maxim is, "Justice delayed is justice denied." "There are cases in which delay appreciably harms the defendant's ability to defend himself." *Barker v. Wingo*, 407 US 514 - Supreme Court 1972. As shown in the case at bar, "[I]nefficiency and delay will drain even a just judgment of its value." Chief Justice William E. Burger, American Bar Association address, 1970.

Furthermore, the ICA's actions precluded Horowitz's civil rights and standing to contest the

² As is the case here, under HRS § 490:3-311, "A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim."

void assignments in direct conflict with HRS § 634-61 that guarantees that the substitution of a plaintiff following death “shall proceed . . . as provided by the rules of court.” But the ICA and lower court neglected these rules, including HRCF Rules 17, 18 and 19, by repeatedly denying Sulla’s joinder. These courts thus imposed upon Horowitz damages, fees, costs and severe distress without the possibility of restitution, or even rescission of the illegally converted Horowitz Property.

These courts disregarded Proper Plaintiff Sulla, despite given Judicial Notice of public records proving Sulla’s strawman—“sham Plaintiff” Hester—is *judgment proof*, having been financed by Sulla’s “loans” since 2009. This fact prejudices the Petitioner by unfair play against a concealed proper party controlling the Property, all related transactions, and moving the courts according to his willful fraudulent concealment. These facts make these proceedings an abuse of process, and this a kangaroo court. “The kangaroo court proceedings in this case involved a more subtle but no less real deprivation of due process of law.” *Rideau v. Louisiana*, 373 US 723, 727 - Supreme Court 1963. “[T]here are two essential elements in a claim for abuse of process: ‘(1) an ulterior purpose and (2) a wilful act in the use of the process which is not proper in the regular conduct of the proceeding.’” *Young v. Allstate Ins. Co.*, 198 P. 3d 666 – Haw: Supreme Court 2008. The Respondent’s fraudulent concealment of Sulla’s real-party-superior-controlling-interest serves: (1) the ulterior purpose of indemnifying Sulla against liability, and prejudicing the Petitioner’s capacity to recover his damages and Property; and (2) is a willful act “not proper in the regular conduct” of honorable proceedings. (*Id.*)

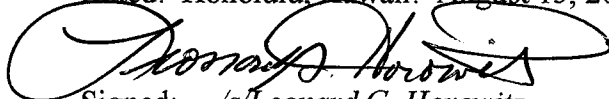
Accordingly, the ICA’s JUDGEMENT ON APPEAL is *void* for having been issued without jurisdiction over Hester. This body of related case law was reviewed in *Rankin v. Howard*, 633 F. 2d 844 - Court of Appeals, 9th Circuit 1980. The Ninth Circuit concluded, “If a court lacks jurisdiction over a party,” as it does here with Respondent Hester by reason of the void chain of records resulting in Hester’s invalid standing and Sulla’s fraudulent concealment, “then it lacks ‘all jurisdiction’ to adjudicate that party’s rights, whether or not the subject matter is properly before it. . . [A]cts taken in the absence of personal jurisdiction do not fall within the scope of legitimate decision making that judicial immunity is designed to protect.” Ninth circuit in *Rankin* citing, *Gregory v. Thompson*, 500 F.2d at 63. Under these circumstances, the ICA’s failure to preserve the jury-awarded-funds brings “an appearance of impropriety whereby their impartiality might reasonably be questioned.” *Proutka v. Cronin*, 179 P. 3d 1050 - Haw: Supreme Court 2008. The Petitioner’s “basic requirement of due process” requires a “fair [appeal] in a fair tribunal[.]” *Id.* This fairness was usurped after showing the Court that the concealed proper Plaintiff, Sulla, “had a ‘direct, personal, pecuniary interest’ in his exercise of judicial power,” moving the courts, including

this Court, as he has repeatedly done, in violation of ethics rules and laws. Under these circumstances, it cannot be held that the ICA administered procedural due process fairly. (*Id.*) In fact, the MO records a pattern and practice of depriving Horowitz of his due process rights and property rights inconsistent with: (1) *evidence tampering* law HRS § 710-1076,³ (2) HRS § 708-830, anti-thievery paragraphs (2) and (6); (3) HRS § 702-222(1)(b)(c) precluding complicity in the illegal conduct of Sulla; and (4) HRS § 705-520 criminal conspiracy law.

Conclusion

The facts show the ICA's MO deprived Horowitz of due process by deeming "waived" the Petitioner's \$200,000 in jury-awarded funds. This wrongly continues even multiplies these proceedings on remand. The ICA and lower courts ruled without personal jurisdiction over Hester, and refused to join real-party-in-interest—the proper Plaintiff—Sulla. This Rule 19 breach further concealed the attorney's conflicting interests in the subject Property gained by *void* Assignments of Mortgage and Note contemporaneously committed when Sulla illegally substituted Revitalize for Mortgagee Lee, violating HRS § 651C-4, inter alia. Accordingly, to vindicate the judiciary, this Application is filed for corrective action seeking restitution for the Petitioner's damages, rescission of his illegally-converted Property, fees and costs in assumpsit, and statutory and punitive damages for the preponderance of evidence proving crimes committed by the Respondent's attorney. The ICA deemed "waived" what it sought to wave—the Appellant's right to due process, equitable relief, and finality in these cases. Justice can "perform its high function in the best way [only if it satisfies] 'the appearance of justice.' *Offutt v. United States*, 348 U.S. 11, 14[, 75 S.Ct. 11, 13, 99 L.Ed. 11]." *Sifagaloa v. Bd. of Trustees*, 840 P. 2d 367 - Haw: Supreme Court 1992.

Dated: Honolulu, Hawaii: August 13, 2019



Signed: /s/Leonard G. Horowitz

LEONARD G. HOROWITZ, Petitioner/Defendant/Counterclaimant/Appellant pro se

³ "Tampering with physical evidence" law precludes *concealing* "evidence with intent to impair its verity in the pending or prospective official proceeding." This is precisely what the ICA did with the ROA, concealed it, removed it from consideration to impair its verity upon remand, to deprive Horowitz of due process and his \$200,000 jury award. Further regarding HRS § 710-1076, the ICA's MO made, presented, and offered the courts by remand the "false physical evidence" that Horowitz "waived" this issue of the \$200,000 converted funds. The tribunal did this "with intent that it be introduced in the pending or prospective official proceeding." [See: L 1972, c 9, pt of §1; gen ch 1993]

APPENDIX A: The Bad Faith in the Rule 50(a) MJML

Bad faith was/is demonstrated by Lee's lawyers, Dan O'Phelan and Paul J. Sulla, Jr., who claimed the falsehood that some private dialogue had occurred at the bench or in closed chambers prior to the jury's retirement. This falsehood is controverted by three irrefutable facts in evidence shown in **Exhibits 6 thru 8**. **Exhibit 6** records Judge Ibarra's hearing minutes on April 16, 2008 in which he stated, "A JURY'S VERDICT SHALL NOT BE IMPEACHED." Had judge Ibarra held a private discussion wherein Lee's counsel objected 'strenuously' as alleged in the Rule 50(a) Motion (**Exhibit 7**) then *Judge Ibarra most certainly instructed the jury properly* as shown in **Exhibit 8**. That **Exhibit 8** record controverts the falsehood by distinguishing the "fraud counterclaim" that expressly concerned the two versions of the Agreement for Closing Escrow, from the "misrepresentation counterclaim" of Lee having sold Horowitz a falsely represented "commercial property." **Exhibit 8** proves any falsely claimed 'conference at the bench' to have resulted in Judge Ibarra's clarifying instruction to the jury expressly on the claim of *misrepresentation of commercial operation* (and not fraud pertaining to the Agreement for Closing Escrow that counsel agreed to make mutually applicable). This instruction by the court caused the jury to affirm the Special Verdict Question #10 on February 21, 2008 as shown in **Exhibit 8**.

And two more pieces of evidence of bad faith omissions and misrepresentations, frank lying, in order to deprive Horowitz et. al. of the \$200,000 jury award is shown in the Appellee's 50(a) Motion on page 5 of **Exhibit 7** that reads:

Plaintiff objected to the jury instruction being include[d] in his filed "Plaintiff's Objections to Defendant's Jury Instructions and Acceptance of the Defendant's Jury Instruction Defining Fraud with the Condition that it Be Made Applicable to Both Parties." See Attached Exhibit E, page 2, paragraph #2 which states as follows:

"Objection to defendant's instructions 2-5, 11, 14 15. These instructions relate to a claim that is not identified in the Defendant's filed counterclaims. Defendant did not claim that there was failure to disclos[e] material defects in his complaint or concealment of material defects, or misrepresentation regarding the disclosure of material defects. . . ."

In fact, *the Court ruled that all of Defendant's proposed jury instructions that related to fraud and misrepresentation with respect to the sale of the property, concealment of defects, and or misrepresentation regarding the disclosure of material defects were stricken.*" [Emphasis added to highlight falsity.]

The bolded statement was false. The Ibarra Court only struck the issue of *material defects* in the physical Property sold. It was sold "As Is." Construction problems were struck, not fraud or misrepresentation in the sale of the Property. These two separate counterclaims were, by the

parties' agreement prior to trial, adjudicated as two different matters: (1) *fraud* in the altering of the Agreement for Closing Escrow to bring the judicial foreclosure; and (2) *misrepresentation* in the sale of the "commercial" Property that Judge Ibarra clarified for jurors as a separate claim as **Exhibit 8** shows.

In fact, the Appellee's acceptance of the revised Jury Instructions and Special Verdict Form "Defining Fraud with the Condition that it Be Made Applicable to Both Parties" conferred consent to the Jury Instruction #10 as shown in the subject 50(a) Motion (**Exhibit 7**) AND in **Exhibit 8**. BUT **Exhibit 8** was purposely omitted in bad faith by Lee/O'Phelan because it evidences Judge Ibarra's *personal instruction* to jurors to affirm their ruling on *misrepresentation* of the "commercial property" that was not a legally operated business contrary to Lee's misrepresentation to Horowitz.

Attorney O'Phelan purposely intermingled these *separate matters* of fraud or misrepresentation to bamboozle everyone and gain the \$200,000 funds conversion (i.e., jury award 'vacation') by deceit. It is completely unreasonable to assert the Rule 50(a) Motion was made timely based on this deceptive pleading—a filing that *purposely omitted* this most "substantial evidence" proving the untimeliness of the Rule 50(a) motion, the lack of the court's jurisdiction to grant this untimely motion, and the injustice committed and continued by the ICA in "waiving" this issue on Appeal.

"Conduct which forms a basis for inference is evidence. Silence is often evidence of the most persuasive character." *United States ex rel. Bilokumsky v. Tod*, 263 US 149 – Supreme Court 1923 (at 154). The Appellee's co-counsel 'silenced' Judge Ibarra's answer and instruction to the jury in Question #1 in the MJML Rule 50(a) filing (**Exhibit 7**). They did the same in subsequent pleadings and filings to *defraud* the courts. Their purpose was to deprive Horowitz of his \$200,000 jury award, generate false Mortgage debt, feign Horowitz's 'default' on the Mortgage and Note, all concealed and 'silenced' by the ICA's 'waiving' its duty to inspect this 'substantial evidence' in the ROA. All of this is purposely disregarded and concealed by the Tribunal with scienter.

To contest scienter, that is, *mens rea* in 'overlooking' the substantial evidence in the ROA in this instance, would unreasonably argue Judges Ginoza, Fujise and Leonard are generally incompetent to serve in the Supreme Court's appellate division.

LEONARD G. HOROWITZ
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Las Vegas, NV 89108
Tel: 310-877-3002;
Email: Editor@MedicalVeritas.org

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAI'I
ICA Nos. CAAP-16-0000162, CAAP-16-0000163, CAAP-18-0000584

JASON HESTER	) Civ. Nos. 05-1-0196; 14-1-0304; 17-1-0407
Plaintiffs/Counterclaim	) THIRD CIRCUIT COURT
Defendants-Appellees	) Appeal of Fifth Amended
	) Final Judgment (Vacated jury award;
	) fees and costs in assumpsit)
vs.)
	) DECLARATION OF
LEONARD G. HOROWITZ	) LEONARD G. HOROWITZ
Defendant/Counterclaimant –)
Appellant	

DECLARATION OF LEONARD G. HOROWITZ

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

- 1) I am an individual over the age of twenty-one (21) years, a resident of the State and County of Las Vegas, Nevada; compelled by these proceedings to acquire 'after residence' part time in Hawaii.
- 2) I am not licensed to practice law before the courts of Hawai'i, but appear pro se.
- 3) As of 2001, I have been the Overseer and 'body corporate' for Defendant-Appellant THE ROYAL BLOODLINE OF DAVID, that currently, legally, is considered to be in "winding-up" following insolvency and dissolution caused by attorney Paul J. Sulla, Jr.'s actions in these foreclosure, quiet title, and ejectment matters.
- 4) The facts set forth in the accompanying APPLICATION FOR WRIT OF CERTIORARI for reconsidering the Court's JUDGEMENT ON APPEAL, MEMORANDUM OPINION ("MO"), and ORDER DENYING APPELLANT'S

MOTION FOR RECONSIDERATION, and are true and correct to the best of my knowledge and belief.

- 5) I file this Application not only for my personal interests, to oppose the injustices detailed herein, but for the benefit of others similarly-situated, and society-at-large. I file this respecting the interests of fellow citizens who have contacted me, and my partner Sherri Kane, in recent years after being damaged by similar proceedings. Many people have contacted us after being damaged by attorney Paul J. Sulla, Jr. and the courts. Many people, myself included, are outraged by the corruption surrounding Mr. Sulla, and his corrupting influence upon the courts clearly and convincingly demonstrated in this case.
- 6) As a reasonable person with advanced training in medicine, public health, and consumer advocacy, I cannot conclude the JUDGMENT ON APPEAL and MEMORANDUM OPINION addressed here was filed in "good faith." There appears too many obvious, 'arbitrary,' and 'capricious' errors favoring Mr. Sulla's concealment as a real-party-in-interest, and hampering due process as detailed in the attached Application. The MO overlooks too many judicially-noticed public records to reasonably excuse these oversights as un-intentional 'errors.' The Court's bias appears here to be blatant.
- 7) Many citizens who have followed this case have gained clear impressions this Court is harboring Mr. Sulla, and aiding-and-abetting organized crimes in the process. For example, the Rule 10 'red herring' 'burden shifting' advanced by the Tribunal as mentioned in this Application conceals substantial probative evidence in the Record on Appeal as a whole. The Court obviously "overextended" Rule 10 to waive the fact-finders' duty and my due process rights, to deprive me of \$200,000 in funds and finality in these cases. It is unreasonable to believe this Court, that requires so much precision from litigants and clerks, would overlook the ROA proving that no Rule 50(a) motion was made 'timely' to justify robbing me of my \$200,000 jury award. Only malicious intent can reasonably account for this damaging ruling by the Court, now imposing upon us extended lawsuits after a decade of bankrupting prosecutions by Mr. Sulla. The toll these years of struggle, abused processes, and persecution has

taken on my life, my family, partner Sherri Kane, our careers, and capacities to serve society has been enormous. Irreparable harm to us, and severe distress to us, has been tremendous.

- 8) I verify that **Exhibits 1 and 2** are a true and correct copies of the subject JUDGMENT ON APPEAL and MEMORANDUM ORDER (MO) filed July 22, 2019 and May 2, 2019, respectively, by the Court.
- 9) **Exhibit 3** is a true and correct copy of the Court's ORDER DENYING THE MAY 12, 2019 MOTION FOR RECONSIDERATION filed May 17, 2019.
- 10) **Exhibit 4** is a true and correct copy of Appellants' Opposition to Appellee's Motion to Compel Appellants to Order Transcripts filed June 6, 2016.
- 11) **Exhibit 5** is a true and correct copy of "Appellee Jason Hester's Motion to Compel Appellants to Order Transcripts . . ." filed June 27, 2016 in the 0162 appeal by Disqualified counsel Paul J. Sulla, Jr., showing Judge Daniel R. Foley "DENIED" this motion.
- 12) **Exhibit 6** is a true and correct screenshot of Judge Ibarra's "Hearing Minutes" dated April 16, 2008, recording the court's decision to deny the Appellee's Motion for Judgment As a Matter of Law or Alternatively New Trial . . ." that states: "COURT DENIED MOTION. THERE IS NO AUTHORITY, FURTHER MORE, A JURY'S VERDICT SHALL NOT BE IMPEACHED, THE JURY WAS POLLED."
- 13) **Exhibit 7** is a true and correct copy of Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on Issue of Defendant's Counterclaim for Fraud and Misrepresentation, filed March 11, 2008 in the trial court.
- 14) **Exhibit 8** is a true and correct copy of the Single Jury Question, and Judge Ibarra and the Parties' Approved Express Jury Instruction on MISREPRESENTATION" filed February 21, 2008 by the jury foreperson.
- 15) **Exhibit 9** is a true and correct copy of attorney Sulla's Motion for Substitution of Plaintiff attaching the falsely warranted Assignment of Mortgage, and Assignment of Note into 'Revitalize' formed untimely using an "altered" and forged set of Articles of Incorporation, filed July 16, 2009.

16) **Exhibit 10** is a true and correct copy of the forensic document examiner's
"Declaration of Beth Chrisman" showing substantial probative evidence of attorney
Sulla having "altered" (and forged) the Articles of Incorporation of the "Foreclosing
Mortgagee" ('Revitalize').

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 Hawaii: August 13, 2019

Signed: /s/Leonard G. Horowitz

LEONARD G. HOROWITZ

A handwritten signature in black ink, appearing to read 'Leonard G. Horowitz', written over the printed name.

Hester vs. Horowitz et al, ICA No. CAAP-16-0000162; CAAP-16-0000163; CAAP-17-0000584
*Declaration Of Leonard G. Horowitz in Support Of APPELLANT'S APPLICATION FOR WRIT OF
CERTIORARI; Appendix "A"; Declaration of Leonard G. Horowitz, and Exhibits "1" thru "10".*

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NOS. CAAP-16-0000162, CAAP-16-0000163
AND CAAP-18-0000584

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

CAAP-16-0000162

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

v.

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

and

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

and

PHILIP MAISE, Intervenor-Appellee,

and

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

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

CAAP-16-0000163

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

v.

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

and

Exhibit 1

THE ROYAL BLOODLINE OF DAVID,
a Washington Corporation Sole,
Defendant/Appellant,
and
MEDICAL VERITAS INTERNATIONAL, INC., a California
non-profit corporation, JOHN DOES 1-10, JANE DOES 1-10,
DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10,
DOE ENTITIES 1-10 and DOE GOVERNMENTAL UNITS 1-10,
Defendants

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

CAAP-18-0000584

JASON HESTER, Petitioner-Appellee,
v.
LEONARD G. HOROWITZ, Respondent-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 17-1-0407)

JUDGMENT ON APPEAL

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

Pursuant to the Memorandum Opinion of this court
entered on May 2, 2019:

(1) In CAAP-16-0000162, arising from Civil No.
05-1-0196, the "Fifth Amended Final Judgment", entered on
March 4, 2016, by the Circuit Court of the Third Circuit, is
affirmed.

(2) In CAAP-16-0000163, arising from Civil No.
14-1-0304, the December 30, 2015 "Final Judgment", solely as it
pertains to the May 27, 2015 "Order Granting in Part and Denying
in Part Plaintiff's Motion for Summary Judgment", is vacated.²

¹ Ginoza, Chief Judge, Fujise and Leonard, JJ.

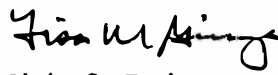
² The Final Judgment, filed on December 30, 2015, states that the
"Order Granting in Part and Denying in Part Plaintiff's Motion for Summary
Judgment" was filed on August 28, 2015, but this appears to be an incorrect
date because the record reflects that this order was filed on May 27, 2015.

This case is remanded to the Circuit Court of the Third Circuit for further proceedings consistent with the Memorandum Opinion.

(3) In CAAP-18-0000584, arising from Civil No. 17-1-0407, the case is remanded to the Circuit Court of the Third Circuit for further proceedings as the circuit court deems necessary in light of the Memorandum Opinion.

DATED: Honolulu, Hawai'i, July 22, 2019.

FOR THE COURT:


Chief Judge

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NOS. CAAP-16-0000162, CAAP-16-0000163 AND CAAP-18-0000584

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

CAAP-16-0000162

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

v.

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

and

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

and

PHILIP MAISE, Intervenor-Appellee,

and

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

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

CAAP-16-0000163

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

v.

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

and

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

and

Exhibit 2

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

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

CAAP-18-0000584

JASON HESTER, Petitioner-Appellee,
v.
LEONARD G. HOROWITZ, Respondent-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 17-1-0407)

MEMORANDUM OPINION

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

These consolidated appeals¹ arise from over a decade of legal proceedings primarily between Jason Hester (**Hester**), both individually and as "successor Overseer" of "the Office of the Overseer, A Corporate Sole and His Successors, Over/For The Popular Assembly of Revitalize, A Gospel of Believers" (**Revitalize**); Leonard G. Horowitz (**Horowitz**); and the Royal Bloodline of David (**RBOD**).² The appeals relate to two parcels of land (**subject property**)³ that the RBOD had purchased from Cecil L. Lee (**Lee**) in 2004. The purchase was financed by two promissory notes executed by Horowitz, as "Overseer" of RBOD, in

¹ CAAP-16-0000162, CAAP-16-0000163, and CAAP-18-0000584 were consolidated on appeal by an Order of Consolidation dated December 18, 2018.

² Horowitz represents that the RBOD is "an ecclesiastic corporation" that was incorporated on October 31, 2001 in the State of Washington, and dissolved on September 17, 2012, with Horowitz being its sole member.

³ The subject property consists of two parcels of land designated on the tax maps for the State of Hawai'i as TMK: (3)1-3-001:049 and (3)1-3-001:43 and are situated in the County of Hawai'i. The record reflects that the parcels are 1.32 acres and 16.55 acres respectively.

favor of Lee, and secured by a mortgage on the subject property. The Mortgage, dated January 15, 2004, designated the RBOD as the "Borrower" and Lee as the "Lender" in this transaction. These appeals arise out of three separate actions related to the subject property and underlying mortgage, as explained below.

CAAP-16-0000162 arises from a judicial foreclosure action initiated by original mortgagee Lee on June 15, 2005, against Horowitz, RBOD, and Jacqueline Horowitz⁴ in the Circuit Court of the Third Circuit (**circuit court**)⁵ for numerous alleged non-monetary violations of the mortgage agreement. In February 2008, the case proceeded to bench trial where the circuit court denied Lee's claim for foreclosure as to all defendants, but granted other equitable relief in light of the defendants' non-monetary breaches of the mortgage agreement. That same month, an advisory jury trial was held in which the jury determined, in relevant part, that Lee was liable to Horowitz, RBOD, and Jacqueline Horowitz on their counterclaim for fraud and misrepresentation and awarded the defendants \$200,000.00 in damages. Subsequently, the circuit court vacated the jury award by granting a judgment as a matter of law pursuant to Hawai'i Rules of Civil Procedure (**HRCP**) Rule 50. Moreover, upon the death of Lee in 2009, the circuit court allowed Hester, as "successor Overseer" to Revitalize, to be substituted as Plaintiff.⁶ Horowitz and RBOD appeal in CAAP-16-0000162.

CAAP-16-0000163 arises from a Quiet Title and Ejectment action initiated by Hester, individually, on August 11, 2014, against Horowitz, RBOD, Sherri Kane (**Kane**), and Medical Veritas

⁴ Defendant/Counterclaim-Plaintiff Jacqueline L. Horowitz is not a party to this appeal.

⁵ The Honorable Ronald Ibarra presided in all proceedings relevant to CAAP-16-0000162.

⁶ The record reflects that in May 2009, Lee created Revitalize, a nonprofit corporation sole pursuant to HRS Chapter 419, naming himself as the "overseer" and Hester as the "successor Overseer." Also in May 2009, Lee assigned to Revitalize all of his interest in the promissory notes and mortgage on the subject property. On June 27, 2009, Lee passed away.

International, Inc. in the circuit court.⁷ In this case, Hester asserts he has title to the subject property following a non-judicial foreclosure conducted by Revitalize in 2010 due to RBOD's payment default of the mortgage agreement, and a subsequent transfer of the subject property by Revitalize in 2011, to Hester, individually. In this action, the circuit court entered judgment in favor of Hester, and entered a writ of ejectment removing all defendants from the subject property, giving rise to the appeal in CAAP-16-0000163.

Finally, CAAP-18-0000584 arises from a petition to expunge documents brought by Hester, individually, against Horowitz, individually, on July 26, 2016 in the Circuit Court of the First Circuit (**first circuit court**).⁸ This case was eventually transferred to the third circuit court,⁹ and Hester sought to expunge two affidavits filed by Horowitz in the Bureau of Conveyances pertaining to the subject property. The circuit court eventually entered summary judgment in favor of Hester, giving rise to CAAP-18-0000584.

I. CAAP-16-0000162

In CAAP-16-0000162, Defendants/Counterclaim-Plaintiffs Horowitz and the RBOD appeal from the "Fifth Amended Final Judgment" (**Final Foreclosure Judgment**) entered by the Circuit Court of the Third Circuit on March 4, 2016, which resolved all claims between Plaintiff/Counterclaim-Defendant Hester, Defendant/Counterclaim-Plaintiffs Horowitz, RBOD, and Jacqueline L. Horowitz, and Intervenor-Defendant/Intervenor-Plaintiff/Counterclaim-Defendant Philip B. Maise (**Maise**) in the

⁷ The Honorable Ronald Ibarra, Elizabeth A. Strance, and Melvin Fujino presided in the relevant proceedings in CAAP-16-0000163.

⁸ The Honorable Virginia L. Crandall presided in the relevant First Circuit Court proceedings in CAAP-18-0000584.

⁹ The Honorable Henry T. Nakamoto presided in the relevant Third Circuit Court proceedings in CAAP-18-0000584.

judicial foreclosure action regarding the subject property.¹⁰ In this appeal, Horowitz and RBOD contend that: (1) the circuit court erred in granting Hester's HRCP Rule 50 Motion for Judgment as a Matter of Law vacating the \$200,000 jury award for damages in favor of the defendants; and (2) Hester lacks standing to prosecute the judicial foreclosure action, both as an individual and as "successor Overseer" of Revitalize.

In the June 15, 2005 "Complaint for Foreclosure", the original mortgagee Lee asserted six causes of action against all defendants relating to a number of alleged non-monetary breaches to the mortgage agreement.¹¹ In response, Horowitz, RBOD and Jacqueline Horowitz filed a counterclaim against Lee, asserting causes of action in fraud and misrepresentation, and abuse of process and malicious prosecution.

The case proceeded to a bench trial, where the circuit court concluded that although the defendants had violated non-monetary terms and conditions of the mortgage, foreclosure would be unjust. Instead, the circuit court fashioned alternative equitable remedies given the breaches. An advisory jury panel ruled on other causes of action brought in Lee's complaint and the Defendants' counterclaims. The jury determined, *inter*

¹⁰ Jacqueline L. Horowitz and Maise are not parties to this appeal.

¹¹ While the "Complaint for Foreclosure" appears to only allege a cause of action for foreclosure, it appears that the circuit court and the parties interpreted the complaint as asserting causes for action for: 1) foreclosure; 2) breach of contract; 3) waste; 4) fraud and misrepresentation; 5) conspiracy and; 6) trespass to chattels, as evidenced in the "Fifth Amended Final Judgment".

In the "Complaint for Foreclosure", Lee alleges that RBOD and Horowitz: made additions to the property without obtaining the necessary permits from the county of Hawai'i, thus subjecting the property to increased liability and a substantial loss of value; engaged in illegal and unlicensed business activities on the property, thus subjecting it to liability and substantial loss of value; violated the mortgage agreement by failing to obtain and maintain fire and extended peril insurance coverage on the property; conspired with Maise to unlawfully deprive Lee of his receipt of mortgage payments, trespassed on Lee's chattels, and defrauded Lee; and fraudulently altered and inserted a legal addendum into the mortgage agreement that Lee did not agree to or authorize.

alia,¹² that Lee was liable to Horowitz, RBOD, and Jacqueline Horowitz for fraud and misrepresentation, and awarded the defendants \$200,000.00 in damages.

Following the trial, Lee filed "Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on Issue of Defendant's [sic] July 6, 2006 Counterclaim for Fraud and Misrepresentation", asserting that Lee was entitled to a judgment as a matter of law (**JMOL**) pursuant to HRCF Rule 50 as to the defendants' counterclaim for fraud and misrepresentation because such claim was not sufficiently pled. Following two re-submissions of the motion for JMOL, and a number of amended judgments, the circuit court eventually granted Lee's motion for JMOL as to the defendants' counterclaim of fraud and misrepresentation, and vacated the jury's \$200,000.00 damage award in favor of the defendants.

During the post-trial litigation, Lee died and Lee's counsel, Paul J. Sulla, Jr. (**Sulla**), filed a "Motion for Substitution of Plaintiff", requesting that the court substitute Revitalize, with Hester as successor Overseer of Revitalize, as plaintiff in place of Lee. The motion asserts that Lee had assigned his interest in the promissory notes and mortgage for the subject property to Revitalize prior to his death, and that Hester, purportedly Lee's nephew, was "successor Overseer" of Revitalize. On August 31, 2009, the circuit court, with no objections on the record from any defendants, granted the motion for substitution, thus substituting Revitalize, with Hester as successor Overseer of Revitalize, as plaintiff.

¹² The jury made the following findings: 1) that Lee was entitled to foreclosure on the subject property against Horowitz, RBOD, and Jacqueline Horowitz; 2) Horowitz, RBOD, and Jacqueline Horowitz were liable to Lee for trespass to chattels in the amount of \$400.00; 3) Horowitz, RBOD, and Jacqueline Horowitz were not liable to Lee for fraud; and 4) Lee was liable to Horowitz, RBOD, and Jacqueline Horowitz for "fraud and misrepresentation", in the amount of \$200,000.00.

Although the jury's special verdict form indicates that the jury determined that Lee was entitled to a foreclosure of the mortgage as prayed for in his complaint, it appears that the circuit court denied such relief under equitable principles.

In its "Fifth Amended Final Judgment", the circuit court ultimately resolved all claims as to all parties in this foreclosure action, and, in relevant part: denied Revitalize's claim for foreclosure against all defendants; and entered judgment in favor of Revitalize on the defendants' counterclaims for fraud and misrepresentation, vacating the \$200,000.00 jury award pursuant to the circuit court's Order Granting Plaintiff's JMOL.

The circuit court's grant of JMOL pertaining to the defendants' counterclaim of fraud and misrepresentation, the vacating of the corresponding jury award, and the substitution of Revitalize (with Hester as successor Overseer) as plaintiff, give rise to the points of error in the Judicial Foreclosure action.

A. HRCF Rule 50 Motion for Judgment as a Matter of Law

In their first point of error in CAAP-16-0000162, Horowitz and RBOD argue that the circuit court erred in granting Revitalize's July 29, 2008 "Notice of Re-Submission of Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on Issue of Defendant's July 6, 2006 Counterclaim for Fraud and Misrepresentation", and its subsequent vacating of the corresponding jury award, because Lee failed to make a motion for JMOL prior to the case being submitted to the jury pursuant to HRCF Rule 50(a)(2). However, the appellants do not provide a transcript of the proceedings below, or any citation in the record that can corroborate such claim.¹³

It is the responsibility of each appellant "to provide a record, as defined in Rule 10 of [the Hawai'i Rules of Appellate Procedure (**HRAP**)] and the Hawai'i Court Records Rules, that is sufficient to review the points asserted and to pursue appropriate proceedings in the court or agency appealed from to correct any omission." HRAP Rule 11(a).

¹³ On March 20, 2016, appellants Horowitz and RBOD filed in the Intermediate Court of Appeals its "Certificate that No Transcripts are to be Prepared" pursuant to HRAP 10(b)(2).

Based on the foregoing, Horowitz and RBOD's first point of error in the Judicial Foreclosure Action is deemed waived:

B. Hester's Standing as Substitute Plaintiff

In their second point of error, Horowitz and RBOD contend that Hester lacks standing, both as an individual and as "successor Overseer" of Revitalize, to prosecute this judicial foreclosure. Horowitz and RBOD's challenge to Hester's standing appears to be based on their contentions that Hester lacks any familial relationship to the predecessor plaintiff Lee, and that the assignment of the subject mortgage from Lee to Revitalize was invalid. These arguments are without merit.

We first note that Hester's familial kinship with Lee is irrelevant to this judicial foreclosure action, as the circuit court substituted Revitalize as plaintiff, with Hester as "successor Overseer" to Revitalize, and not as an individual. Accordingly, Hester's standing as an individual, and likewise his familial kinship to Lee, is immaterial to this case.

As to Horowitz and RBOD's contentions regarding the validity of the assignment of the subject mortgage from Lee to Revitalize, our case law makes clear that, in a judicial foreclosure, borrowers do not have standing to challenge the validity of an assignment of their loans because they are not parties to the agreement. U.S. Bank N.A. v. Mattos, 140 Hawai'i 26, 35, 398 P.3d 615, 624 (2017); U.S. Bank. Nat. Ass'n v. Salvacion, 134 Hawai'i 170, 174-75, 338 P.3d 1185, 1189-90 (App. 2014). As such, Horowitz and RBOD's challenge to Hester's standing in the judicial foreclosure action is without merit.

Based on the foregoing, the "Fifth Amended Final Judgment [on the Judicial Foreclosure action]", entered on March 4, 2016 by the Circuit Court of the Third Circuit is affirmed.

II. CAAP-16-0000163

In CAAP-16-0000163, Defendants/Counterclaim Plaintiffs Horowitz and Kane, and Defendant RBOD appeal from a "Final Judgment" (**Quiet Title Judgment**) entered in favor of Plaintiff/Counterclaim-Defendant Hester in the circuit court on

December 30, 2015. In this appeal, Horowitz, Kane, and RBOD contend that the circuit court erred in: (1) not dismissing the quiet title action in light of the prior judicial foreclosure action; (2) not vacating the entry of default entered against RBOD; (3) denying Horowitz and Kane's motion to amend their original answer; (4) granting Hester's motion for summary judgment where there existed substantial questions of material facts; and (5) entering judgment where Hester's standing to bring the quiet title action remained in dispute.

A. Quiet Title Action

On August 11, 2014, Hester, individually, filed a "Complaint to Quiet Title and For Summary Possession and Ejectment" (**Quiet Title Complaint**) against Horowitz, RBOD,¹⁴ Kane, and Medical Veritas International, Inc. (**Medical Veritas**) in the circuit court. The Quiet Title Complaint asserts causes of action: 1) to quiet title; 2) based on tenants at sufferance; and 3) for trespass against all defendants.

In the Quiet Title Complaint, Hester alleges that the time period for repaying the underlying promissory notes for the purchase of the subject property had expired on January 14, 2009, "with an outstanding balance still due and owing to Lee", and that guarantor Horowitz had failed to make delinquent payments resulting in RBOD's default. Hester further alleges that following RBOD's default, Revitalize had obtained ownership of the subject property through a power of sale in a non-judicial foreclosure conducted under Hawaii Revised Statutes (**HRS**) §§ 667-5 through 667-10 against RBOD on April 20, 2010, subsequent to which Revitalize executed and recorded a quitclaim deed in favor of Hester, individually, making Hester the owner of the subject property.¹⁵

¹⁴ RBOD apparently was dissolved at the time the Quiet Title Complaint was filed.

¹⁵ The quitclaim deed from Revitalize to Hester was recorded in the Bureau on June 14, 2011.

The Quiet Title Complaint identifies Horowitz and Kane as individuals who allege to have obtained an interest in the subject property through an invalid quitclaim deed executed by RBOD in their favor after the April 20, 2010 non-judicial foreclosure sale, and who had continued to occupy and withhold possession of the subject property from Hester. Medical Veritas is identified as a California nonprofit corporation that Horowitz and Kane had purportedly executed a lease with to conduct its business operations on the subject property.¹⁶

On September 17, 2014, the circuit court clerk entered default against Medical Veritas and RBOD, as both parties had failed to file an answer to the Quiet Title Complaint. On March 12, 2015, RBOD and Medical Veritas filed a "Motion to Vacate Default entered September 23, 2014, Against Defendants the Royal Bloodline of David and Medical Veritas International, Inc." (**Motion to Vacate Default**). Medical Veritas and RBOD again requested that the court vacate the entry of default in an April 10, 2015 "Counsel's Declaration in Support of Co-Defendants Opposition to Motion for Summary Judgment". On May 27, 2015, the circuit court denied the Motion to Vacate Default.¹⁷

In the meantime, on August 21, 2014, Horowitz and Kane filed an answer and twenty counterclaims in their "Defendants/Counterclaimants Answer, Affirmative Defense, and Counterclaims to Paul J. Sulla, Jr. and Jason Hester's Conspiracy to Commit Theft Under Color of Law" (**Horowitz/Kane Answer**). On September 12, 2014, Horowitz and Kane apparently filed a notice of removal in the U.S. District Court for the District of Hawai'i, seeking to remove the case from the circuit court. The Quiet Title action was remanded back to the circuit court on

¹⁶ Medical Veritas is not a party on appeal in CAAP-16-0000163.

¹⁷ We note that the circuit court's order denying Medical Veritas and RBOD's Motion to Vacate Default incorrectly refers to the date of the entry of default as September 23, 2014. The record indicates that default was entered against RBOD and Medical Veritas on September 17, 2014.

January 13, 2015, as the U.S. District Court determined that it lacked subject-matter jurisdiction.

On January 26, 2015, Horowitz and Kane filed their "Motion to Amend Answer and Join Indispensible Party Paul J. Sulla, Jr. and Herbert M. Ritke" (**Motion to Amend Answer**), requesting the circuit court, *inter alia*, allow them leave to amend their answer and counterclaims. The circuit court eventually denied the Motion to Amend Answer, and dismissed all counterclaims asserted in the Horowitz/Kane Answer.

On March 9, 2015, Hester filed "Plaintiff/Counterclaim Defendant Jason Hester's Motion for Summary Judgment" (**Hester's Quiet Title MSJ**) against all defendants. On May 27, 2015 the circuit court entered its "Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment" (**Order Granting Hester's Quiet Title MSJ**), which includes, *inter alia*, a provision that Hester is entitled to a writ of ejectment that would remove all the defendants from the subject property.¹⁸ Accordingly, on December 30, 2015, the circuit court entered its "Final Judgment" (**Quiet Title Judgment**) pursuant to the: 1) Entry of Default against Medical Veritas and RBOD; 2) Order Granting Plaintiff's Motion to Dismiss Counterclaims; and 3) Order Granting Hester's Quiet Title MSJ.

B. Preclusion of the Quiet Title Action under *res judicata*

In their first point of error, appellants Horowitz, Kane, and RBOD contend that the circuit court erred in not dismissing the Quiet Title Action in light of the prior Judicial Foreclosure action that ultimately denied the remedy of foreclosure on the subject property. Appellants appear to assert that the subsequent Quiet Title Action is precluded by the doctrine of *res judicata*. We disagree.

¹⁸ The circuit court's Order Granting Hester's Quiet Title MSJ was granted as to Hester's cause of action for tenants at sufferance and cause of action to quiet title, and denied as to Hester's cause of action for trespass. Hester's trespass claim was voluntarily dismissed pursuant to the circuit court's "Order Granting Plaintiff Jason Hester's Motion for Voluntary Dismissal of Trespass Claim", filed August 28, 2015.

The prior judicial foreclosure was related to Horowitz and RBOD's alleged non-monetary breaches of the mortgage agreement (see footnote 11), whereas the Quiet Title Action and underlying non-judicial foreclosure were based on the appellants' alleged monetary default that occurred subsequent to the judicial foreclosure. Accordingly, this case is not precluded by the doctrine of *res judicata* because the claim at issue in the prior judicial foreclosure action was not identical to the claim in this subsequent Quiet Title Action. Cf. E. Sav. Bank, FSB v. Esteban, 129 Hawai'i 154, 159, 296 P.3d 1062, 1067 (2013) (explaining that a "party asserting claim preclusion has the burden of establishing that (1) there was a final judgment on the merits, (2) both parties are the same or in privity with the parties in the original suit, and (3) the claim decided in the original suit is identical with the one presented in the action in question" (emphasis added) (citation omitted)).

C. Entry of Default against RBOD

In their second point of error, Horowitz, Kane and RBOD contend that the circuit court erred in not vacating the entry of default against RBOD. We deem this issue as moot, as both the parties and the record indicate that RBOD was dissolved prior to the initiation of the Quiet Title Action, and remains dissolved. Thus, any further adjudication as to its interests in the subject property is immaterial. See McCabe Hamilton & Renny Co., Ltd. v. Chung, 98 Hawai'i 107, 116, 43 P.3d 244, 253 (App. 2002) (noting that "[t]his court may not decide moot questions or abstract propositions of law." (Citations omitted)).

D. Quiet Title - Summary Judgment

We review the circuit court's grant or denial of summary judgment *de novo*. Kondaur Capital Corp. v. Matsuyoshi, 136 Hawai'i 227, 240, 361 P.3d 454, 467 (2015). "Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment

as a matter of law." Id. (citations and brackets omitted). "The moving party has the initial burden of 'demonstrating the absence of a genuine issue of material fact.'" Id. (citation omitted). "Only with the satisfaction of this initial showing does the burden shift to the nonmoving party to respond 'by affidavits or as otherwise provided in HRCP Rule 56, . . . setting forth specific facts showing that there is a genuine issue for trial.'" Id. at 240-41, 361 P.3d at 467-68 (citation, emphasis, and brackets omitted, ellipses in original).

Based on our *de novo* review of the record, we conclude that the underlying non-judicial foreclosure on the subject property was deficient under Kondaur, and as such the circuit court erred in granting Hester's Quiet Title MSJ.

In order to maintain an ejectment action, the plaintiff must: (1) prove that he or she owns the parcel in issue, meaning that he or she must have the title to and right of possession of such parcel; and (2) establish that possession is unlawfully held by another. Kondaur, 136 Hawai'i at 241, 361 P.3d at 468. In a self-dealing transaction, where the mortgagee is the purchaser in a non-judicial foreclosure sale, the mortgagee has the "burden to prove in the summary judgment proceeding that the foreclosure 'sale was regularly and fairly conducted in every particular.'" Id. (citation omitted). "A prima facie case demonstrating compliance with the foregoing requirements [shifts] the burden to [the mortgagor] to raise a genuine issue of material fact." Id. at 242, 361 P.3d 469.

Here, Revitalize, with Hester as Overseer, was both the foreclosing mortgagee and the highest bidder at the non-judicial foreclosure sale on April 20, 2010. The Mortgagee's Affidavit of Foreclosure Under Power of Sale recorded on May 11, 2010, states that the subject property was sold at public sale to "John Hester, Overseer [for Revitalize] for \$175,000.00, which was the highest bid at said sale." Subsequently, on June 14, 2011, Revitalize transferred its interest in the subject property to Hester, individually, by way of a quitclaim deed. Thus, in

moving for summary judgment, Hester had the initial burden to establish that the non-judicial foreclosure was conducted in a manner that was fair, reasonably diligent, and in good faith, and to demonstrate that an adequate price was procured for the property. See id. at 241-43, 361 P.3d at 468-70; JPMorgan Chase Bank, Nat. Ass'n v. Benner, 137 Hawai'i 326, 327-29, 372 P.3d 358, 359-61 (App. 2016).

As in Kondaur, the Mortgagee's Affidavit of Foreclosure Under Power of Sale prepared and submitted by Revitalize fails to provide evidence concerning the adequacy of, *inter alia*, the purchase price. Kondaur, 136 Hawai'i at 242-43, 361 P.3d at 469-70; see also Benner, 137 Hawai'i at 328, 372 P.3d at 360 (finding a similar foreclosure affidavit was insufficient to establish that the sale was conducted in a manner that was fair, reasonably diligent, and in good faith, and that the purchase price was adequate).

Hester thus failed to satisfy his initial burden of showing that the non-judicial foreclosure sale was conducted in a manner that was fair, reasonably diligent, and in good faith, and that Revitalize had obtained an adequate price for the Property. In turn, the burden never shifted to the defendants to raise any genuine issue of material fact. Thus, the circuit court erred in its "Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment". Given this ruling, we need not address the appellants' other points of error asserted in CAAP-16-0000163.

Based on the foregoing, the Circuit Court of the Third Circuit's "Final Judgment [on the Quiet Title action]" entered on December 30, 2015, solely as it pertains to the May 27, 2015 "Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment" is vacated. This case is remanded to the circuit court for further proceedings consistent with this Memorandum Opinion.

III. CAAP-18-0000584

Finally, in CAAP-18-0000584, Defendant-Appellant Horowitz, *pro se*, appeals from the "Final Judgment" (**Expungement Judgment**) entered in favor of Plaintiff-Appellee Hester in the circuit court on July 26, 2018. In this appeal, Horowitz contends that the circuit court erred in: (1) granting Hester's motion for judgment on the pleadings, or in the alternative for summary judgment because it lacked personal jurisdiction over the parties; (2) failing to perform an "inquiry reasonable" into Hester's counsel Sulla's alleged interest in the subject property and case; (3) granting two *ex parte* motions filed by Hester because it violated relevant civil procedure rules and Horowitz's constitutional rights; and (4) denying Horowitz's motion for sanctions against Sulla.

A. Expungement Action

CAAP-18-0000584 arises from a "Petition to Expunge Documents Recorded in the Bureau of Conveyances of the State of Hawaii" (**Petition to Expunge**) filed by Hester against Horowitz on July 26, 2016, in the Circuit Court of the First Circuit (**first circuit court**). In the Petition to Expunge, Hester alleges that Horowitz had filed an "Affidavit of Leonard G. Horowitz (Lis Pendens on Real Property)" in the Hawai'i Bureau of Conveyances (the **Bureau**) on June 6, 2016, that includes false and misleading information meant to cloud Hester's title to the subject property. Hester alleges that the documents filed by Horowitz constitutes an invalid nonconsensual common law lien pursuant to HRS § 507D-5(b) (2018),¹⁹ as they were not accompanied by a

¹⁹ HRS § 507D-5(b) provides:

§507D-5 Requirement of certified court order.

.

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

certified court order from a state or federal court.

On May 18, 2017, Horowitz responded by filing "Defendant Leonard G. Horowitz's Motion to Dismiss 'Petition to Expunge Documents Recorded in the Bureau of Conveyances of the State of Hawaii'" (**Motion to Dismiss Petition**). On June 27, 2017, Hester filed "Plaintiff's Motion for Judgment on the Pleadings, or in the Alternative, for Summary Judgment on Petition to Expunge Documents Recorded in the Bureau of Conveyances of the State of Hawaii" (**Hester's MSJ**). On September 27, 2017, the first circuit court entered its "Order Granting in Part Defendant's Motion to Dismiss and Denying Without Prejudice Plaintiff's Motion for Judgment on the Pleadings, or in the Alternative, For Summary Judgment" (**Order of Transfer**), granting in part Horowitz's Motion to Dismiss Petition to the extent that the case be transferred to the third circuit court, and denying Hester's MSJ without prejudice.²⁰

On December 13, 2017, Hester filed his "Amended Petition to Expunge Documents Recorded in the Bureau of Conveyances of the State of Hawaii" (**Amended Petition to Expunge**) against Horowitz in the third circuit court. The Amended Petition to Expunge was substantially similar to the original petition, except that it further alleged that since the original petition in the first circuit court, Hester had discovered an "Affidavit of First Lien of \$7,500,000.00 on Real Property TMK: (3) 1-3-001-043 and 049," filed in the Bureau on October 6, 2013, which he additionally seeks to have expunged as a nonconsensual common law lien pursuant to HRS § 507D-5.²¹

²⁰ In its "Order Granting in Part Defendant's Motion to Dismiss and Denying Without Prejudice Plaintiff's Motion for Judgment on the Pleadings, or in the Alternative for Summary Judgment", the first circuit court notes that its dismissal was made "in part relative to venue of this matter only and orders this matter to be transferred to the Third Circuit Court for the State of Hawaii." Accordingly, the order effectuated a transfer of the case to the third circuit court, and was not a dismissal of the action.

²¹ The amended petition further notes that while Hester was the sole owner of the subject property at the time the original petition was filed in
(continued...)

On May 15, 2018, Hester filed two *ex parte* motions requesting an extension of time to serve the Amended Petition to Expunge on Horowitz, and to authorize service by certified mail. In both motions, Hester asserts that he had attempted to serve Horowitz at the physical address noted in Horowitz's notice of change of address filed on March 22, 2018, but service was impossible due to Horowitz's deliberate actions to evade service. The circuit court granted both *ex parte* motions on May 18, 2018, and eventually authorized service on Horowitz by certified mail *nunc pro tunc* to the date of receipt of the original Petition to Expunge *lis pendens*, December 21, 2016.

On April 20, 2018, Horowitz filed a motion for sanctions pursuant to HRCF Rule 11, alleging that Hester's counsel Sulla had violated various court orders and rules of the court in his prosecution of the petition. On June 22, 2018, the circuit court denied Horowitz's motion for sanctions against Sulla.

On June 22, 2018, the circuit court entered its "Findings of Fact, Conclusions of Law and Order Granting Petitioner's Motion for Judgment on the Pleadings, or in the Alternative, For Summary Judgment on Amended Petition to Expunge Documents Recorded in the Bureau of Conveyances of the State of Hawaii" (**Order Granting Petition to Expunge**). On July 26, 2018, pursuant to its Order Granting Petition to Expunge, the circuit court entered its "Final Judgment" (**Expungement Judgment**), entering summary judgment in favor of Hester as to his Amended Petition to Expunge.

B. Personal Jurisdiction over Horowitz

From what we can discern, Horowitz's first point of error in CAAP-18-0000584 appears to assert that: (a) the circuit court lacked personal jurisdiction over Horowitz because Hester never properly served Horowitz with the Amended Petition to

²¹(...continued)
the first circuit court, the current title holder is now Halai Heights, LLC, with Hester retaining an interest in the property as a member.

Expunge pursuant to HRCP Rule 4; and (b) Hester lacks standing. We first note that Horowitz's argument regarding Hester's standing is based on Horowitz's similar argument regarding the prior substitution of Revitalize, with Hester as successor Overseer, in the Judicial Foreclosure action which was previously discussed and rejected above. Thus, we do not further address this contention here.

Because Horowitz's first and third points of error in CAAP-18-0000584 both pertain to the circuit court's jurisdiction over Horowitz, we address both points of error together.

Upon review of the record, we conclude that Horowitz waived the defense of insufficient service of process pursuant to HRCP Rule 12(h)(1). HRCP Rule 12(h)(1) provides:

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(Emphases added). Horowitz's first appearance in this case occurred when he filed "Defendant Leonard G. Horowitz's Motion to Dismiss 'Petition to Expunge Documents Recorded in the Bureau of Conveyances of the State of Hawaii'" (**First Motion to Dismiss**), on May 18, 2017, in the first circuit court. In Horowitz's First Motion to Dismiss, he asserted a number of defenses under HRCP Rule 12(b), but did not raise the defense of insufficiency of service of process under HRCP Rule 12(b)(5). To the contrary, Horowitz acknowledges in his First Motion to Dismiss that he was served the original petition on December 21, 2016, by certified mail. Horowitz instead raised the issue of insufficiency of service of process in his subsequent "Defendant Leonard G. Horowitz's Motion to Dismiss 'Petition to Expunge Documents Recorded in the Bureau of Conveyances of the State of Hawaii'" (**Second Motion to Dismiss**), filed on January 23, 2018, in the third circuit court, eight months after the First Motion to Dismiss.

Because Horowitz failed to raise the defense of insufficiency of service of process in his First Motion to Dismiss, and continued to actively participate in the proceedings in the circuit court, his assertion on appeal that the circuit court lacked personal jurisdiction is deemed waived. HRCP Rule 12(h)(1); see Rearden Family Trust v. Wisenbaker, 101 Hawai'i 237, 247-48, 65 P.3d 1029, 1039-40 (2003) (holding that a pre-answer motion to dismiss which objected to service of process by registered mail under HRCP Rule 12(b)(5), but omitted the defense of lack of personal jurisdiction under HRCP Rule 12(b)(2), resulted in waiver of the omitted defense); see also Puckett v. Puckett, 94 Hawai'i 471, 480, 16 P.3d 876, 885 (App. 2000) (holding that defendant had waived the improper service issue by not raising it until after he had filed an answer, personally appeared at a hearing, and filed his first motion to dismiss).

**C. Circuit Court's failure to perform
"inquiry reasonable" into Hester's counsel Sulla**

From what we can discern, Horowitz's second point of error in CAAP-18-0000584 appears to assert that the circuit court erred in failing to perform an "inquiry reasonable" into Hester's counsel's alleged personal interest in the subject property and collusion with the circuit court in prosecuting the petitions to expunge Horowitz's documents. In support of his contention, Horowitz relies on numerous unsubstantiated and irrelevant facts that are unsupported by the record, and which provide no basis for this court to review any purported error by the circuit court.

As Horowitz makes no discernable argument as to this point of error, it is deemed waived. See Kakinami v. Kakinami, 127 Hawai'i 126, 144 n. 16, 276 P.3d 695, 713 n. 16 (2012) (citing In re Guardianship of Carlsmith, 113 Hawai'i 236, 246, 151 P.3d 717, 727 (2007) (noting that this court may "disregard a particular contention if the appellant makes no discernible argument in support of that position") (internal quotation marks and brackets omitted))).

D. The circuit court's denial of Horowitz's motion for sanctions under HRCF Rule 11

Finally, we conclude that the circuit court did not abuse its discretion in its order denying Horowitz's motion for sanctions against Hester's attorney, Sulla.²² The only discernable argument that Horowitz makes on appeal pertaining to the order denying sanctions is his contention that Sulla's representation of Hester was in contravention of a Disqualification Order apparently issued by the U.S. District Court in a prior quiet title action, which Horowitz contends warranted sanctions by the circuit court. Such argument provides no discernable basis to impose sanctions pursuant to HRCF 11, and as such the circuit court did not abuse its discretion in its order denying sanctions.

E. Remand in light of our ruling under Kondaur in CAAP-16-0000163

It appears from the record that our ruling above in CAAP-16-0000163 under Kondaur could potentially affect this case. Therefore, although we reject Horowitz's arguments on appeal in CAAP-18-0000584, we conclude it would be prudent to remand this case to the Circuit Court of the Third Circuit for further proceedings as the circuit court deems necessary in light of our rulings in this Memorandum Opinion.

IV. Conclusion

For the reasons discussed above, we conclude that:

(1) In CAAP-16-0000162, the "Fifth Amended Final Judgment", entered on March 4, 2016, by the Circuit Court of the Third Circuit, is affirmed.

²² Horowitz's final point of error in the Expungement Action appears to assert three different arguments, contending that the circuit court: 1) abused its discretion in its order denying sanctions against Hester's counsel, Sulla; 2) neglected Sulla's abuse of process, and; 3) neglected Sulla's Malicious Prosecution. We, however, only address Horowitz's contention pertaining to the circuit court's order denying sanctions, as Horowitz makes no discernable argument in support of the other contentions. See Kakinami, 127 Hawai'i at 144 n. 16, 276 P.3d at 713 n. 16 (citing In re Guardianship of Carlsmith, 113 Hawai'i at 246, 151 P.3d at 727 (noting that this court may "disregard a particular contention if the appellant makes no discernible argument in support of that position") (internal quotation marks and brackets omitted))).

(2) In CAAP-16-0000163, the December 30, 2015 "Final Judgment", solely as it pertains to the May 27, 2015 "Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment", is vacated. This case is remanded to the Circuit Court of the Third Circuit for further proceedings consistent with this Memorandum Opinion.

(3) In CAAP-18-0000584, the case is remanded to the Circuit Court of the Third Circuit for further proceedings as the circuit court deems necessary in light of our rulings in this Memorandum Opinion.

DATED: Honolulu, Hawai'i, May 2, 2019.

CAAP-16-0000162

Margaret (Dunham) Willie,
for Defendants/Counterclaim
Plaintiffs/Appellants.

Paul J. Sulla, Jr.
for Plaintiff/Counterclaim
Defendant/Appellee.

CAAP-16-0000163

Margaret (Dunham) Willie,
for Defendants/Counterclaim
Plaintiffs/Appellants.

Stephen D. Whittaker, AAL,
for Plaintiff/Counterclaim
Defendant/Appellee.

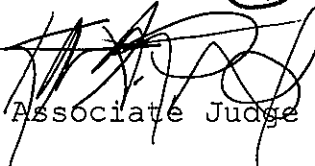
CAAP-18-0000584

Leonard G. Horowitz,
pro se Respondent-Appellant.

Paul J. Sulla, Jr.,
for Petitioner-Appellee.


Chief Judge


Associate Judge


Associate Judge

**Electronically Filed
Intermediate Court of Appeals
CAAP-18-0000584
17-MAY-2019
10:30 AM**

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

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

CAAP-16-0000162

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

v.

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

and

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

and

PHILIP MAISE, Intervenor-Appellee,

and

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

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

CAAP-16-0000163

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

v.

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

and

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

and

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

Defendants

Exhibit 3

Exhibits for Writ of Certiori 7-27-19 pg. 25

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

CAAP-18-0000584

JASON HESTER, Petitioner-Appellee,
v.
LEONARD G. HOROWITZ, Respondent-Appellant

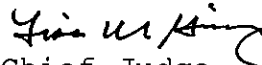
APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 17-1-0407)

ORDER DENYING THE MAY 12, 2019 MOTION FOR RECONSIDERATION
(By: Ginoza, Chief Judge, Fujise and Leonard, JJ.)

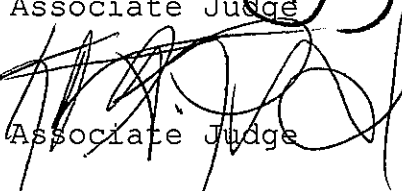
Upon consideration of (1) this court's Memorandum Opinion in these consolidated appeals, filed on May 2, 2019; (2) Appellant Leonard G. Horowitz's (**Horowitz**) "Appellant's Rule 40 Motion and Memorandum For Reconsideration (of the 'Memorandum Opinion' filed May 2, 2019)" (**Motion for Reconsideration**), filed on May 12, 2019, seeking reconsideration of the Memorandum Opinion; (3) the papers in support of the Motion for Reconsideration; and (4) the records and files in this case,

IT IS HEREBY ORDERED that Appellant Horowitz's Motion for Reconsideration is denied. However, an order of correction will be issued to correct a typographical error in the Memorandum Opinion.

DATED: Honolulu, Hawai'i, May 17, 2019.


Chief Judge


Associate Judge


Associate Judge

Margaret (Dunham) Wille #8522

Attorney at Law

65-1316 Lihipali Road

Kamuela, Hawaii 96743

Tel: 808-887-1419

margaretwille@mac.com

Attorney for:

Defendants/Counterclaimants-Appellants

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CAAP-16-0000162
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INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII

ICA No. CAAP-16-0000162

JASON HESTER, OVERSEER

Plaintiff/Counterclaim-

Defendant/Appellee

vs.

LEONARD G. HOROWITZ; AND THE

ROYAL BLOODLINE OF DAVID

Defendants/Counterclaimants -

Appellants

) Civ. No. 05-1-0196

) THIRD CIRCUIT COURT

) Appeal of Fifth Amended

) Final Judgment

)

)

) APPELLANTS' OPPOSITION TO

) APPELLEE JASON HESTER'S MOTION

) TO COMPEL APPELLANTS TO ORDER

) TRANSCRIPTS REQUESTED IN

) APPELLEE'S DESIGNATION OF

) ADDITIONAL PARTS OF THE

) TRANSCRIPT TO BE INCLUDED ON

) APPEAL [HRAP Rule 10(b)(4)]

)

) EXHIBITS "A" TO "D"

) CERTIFICATE OF SERVICE.

**APPELLANTS' OPPOSITION TO APPELLEE JASON HESTER'S MOTION
TO COMPEL APPELLANTS TO ORDER TRANSCRIPTS REQUESTED IN
APPELLEE'S DESIGNATION OF ADDITIONAL PARTS OF THE
TRANSCRIPT TO BE INCLUDED ON APPEAL**

COMES NOW Defendants/Counterclaimants-Appellants LEONARD GEORGE HOROWITZ and his ecclesiastical non-profit, ROYAL BLOODLINE OF DAVID (RBOD), hereafter collectively referred to as "Appellants" or "Defendants-Appellants Horowitz-RBOD," by and through their attorney, MARGARET WILLE, opposing Appellee JASON HESTER'S Motion To Compel Appellants To Order Transcripts Requested in Appellee's Designation of Additional Parts of the

Exhibit 4

Transcript to be Included on Appeal, for the following reasons.¹

Appellee Hester argues that the transcripts from the first day of trial (February 12, 2008) and from the last day of trial (February 21, 2008), and a post trial hearing (April 16, 2008) are necessary to respond to Appellants' arguments relating to:

- (1) whether original Plaintiff Lee² complied with Hawaii Rule of Civil Procedure (HRCP) 50(a) Judgment as a Matter of Law (MJML)'s requirement that the motion have first been made before the case was submitted to the jury as a pre-requisite to making a post-judgment MJML; and,
- (2) whether Appellee Hester, as the substitute plaintiff in this case, has standing in the capacity of a proper party as successor to the original Plaintiff seller- mortgagee Cecil Loran Lee.

Appellants Horowitz – RBOD oppose Appellee Hester motion that Appellees be required to order and pay for the above referenced transcripts in order to show that then Plaintiff Lee made a HRCP 50(a) MJML before the case was submitted to the jury. However that position defies all of the written record in the case - given the total absence in the written record of a HRCP Rule 50(a) MJML having been made prior to submission of the case to the jury, and in light of un-refuted specific evidence in the record that such a motion was in fact not made. Appellants Horowitz – RBOD likewise oppose Appellee Hester's request for transcripts to be ordered by Appellants regarding the issue of whether Appellee Hester has standing/proper party status in the capacity of substitute plaintiff for the original mortgagee Lee, given that the requested February and April 2008 dated transcripts are of proceedings that occurred months prior to Appellee Hester making an appearance in the case in July of 2008.

Appellants Horowitz –RBOD believe Appellee is here simply seeking to wear Appellant Horowitz down financially, in terms of not having funds to pay for these transcripts, so that this case may be dismissed for Appellants not having the funds to pay for Appelles' requested transcripts.³

¹ Appellants do not challenge the timeliness of Appellee's Motion To Compel Appellants To Order Transcripts Requested In Appellee's Designation Of Additional Parts Of The Transcript.

² The original Plaintiff in this case was Cecil Loran Lee, the seller-mortgagee. Plaintiff Jason Hester claims to be the rightful successor-in-interest to Plaintiff Lee.

³ Appellant Horowitz filed for bankruptcy on March 9, 2016, Bk 16 – 00239, and Bk. Adv. Proc.16-90015.

A. LEGAL FRAMEWORK

HRAP Rule 10(b)(4) “**Transcript of Court Proceedings**” states:

(4) NOTICE TO APPELLEE IF FEWER THAN ALL TRANSCRIPTS ARE ORDERED. Unless transcripts of all oral proceedings have been ordered, the appellant shall, within the 10-day time provided in (b)(1)(A) of this Rule 10, file a statement of the points of error the appellant intends to present on the appeal and shall serve on the appellee a copy of the statement. If, within 10 days after service of the statement, the appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall file and serve on the appellant a designation of additional parts to be prepared and included in the record on appeal. Unless within 10 days after service of such designation the appellant has ordered such parts and has so notified the appellee, the appellee may within the following 10 days either order the parts or move in the appellate court for an order requiring the appellant to do so.

B. DISCUSSION

Re: HRCF Rule 50(a) Motion for Judgment as a Matter of Law

If there were any evidence that original Plaintiff Lee in fact made a HRCF Rule 50(a) MJML prior to submission of the case to the jury, Appellants would not have raised this argument and point of error. There is also no evidence that counsel for Plaintiff Lee, who was the Plaintiff during the trial and at the time of the April 16, 2008 hearing, that a pre-jury submission MJML was made. Contrariwise, Appellants’ Counsel’s Opposition to original Plaintiff Lee’s MJML pointed out no MJML was made before submission of the case to the jury. More specifically:

- There is no reference in Plaintiff Lee’s post verdict MJML motion dated March 11, 2008 (which was later submitted as a post-judgment motion), to having made the required HRCF Rule 50(a) pre jury submission MJML⁴;
- Appellants Horowitz-RBOD’s Opposition entitled “Memorandum in Opposition to Plaintiff’s Motion for Judgment as a Matter of Law or Alternatively New Trial on Issue of Defendant’s July 6th, 2006 Counterclaim for Fraud and Misrepresentation, Filed on March 11, 2008,” which opposition was filed on March 24, 2008, pointed out that Plaintiff Lee did not comply with the HRCF Rule 50(a) requirement “The procedural

⁴ A copy of original Plaintiff Lee’s “Motion for Judgment as a Matter of Law or Alternatively New Trial on Issue of Defendant’s July 6th, 2006 Counterclaim for Fraud and Misrepresentation” is attached as **Exhibit A**.

requirements of this particular rule [Rule 50(a)] are not only not met but they are not even mentioned in the body of his motion and memorandum".⁵

- The Circuit Court's Order in response to original Plaintiff Lee's post verdict/post judgment MJML makes no reference to the required MJML motion having been made before the February 21, 2008 jury verdict was announced.⁶

Re: Standing of Plaintiff Jason Hester:

Appellee Jason Hester also asks that Appellants request and pay for the several transcripts for purposes of addressing the issue of whether substitute Plaintiff Hester has standing to stand in the shoes of original Plaintiff-mortgagee Lee.⁷

The substitution of Plaintiff Jason Hester for original Plaintiff seller-mortgagee Lee did not occur until long after the date of the proceedings for which transcripts are being requested by Appellee Hester. For this reason any claim that the transcripts for the first and last days of trial and for the post trial hearing held on April 16, 2016 is needed is bogus, since Hester was not involved in this case at the time the proceedings in question occurred. The first day of trial was February 12, 2008, the last day of trial was February 21, 2008 and the Jury Verdict was announced on that same date February 21, 2008, the Court filed its Findings of Fact and Conclusions of Law on April 2, 2008, and the hearing on the post trial motions was on April 16, 2008. HOWEVER, it was not until July 16, 2008, that Appellee Jason Hester filed a Motion for Substitution to substitute for original Plaintiff seller-mortgagee Lee who died in June of 2008. Since Jason Hester was not involved in this case prior to July 16, 2008, long after the dates in

⁵ A copy of original Defendants-Appellants' "Opposition to Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on Issue of Defendant's July 6th, 2006 Counterclaim for Fraud and Misrepresentation Filed on March 11 2008" is attached as **Exhibit B**.

⁶ A copy of the Court's October 15, 2008 "Order Granting Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on Issue of Defendant's July 6th, 2006 Counterclaim for Fraud and Misrepresentation" is attached as **Exhibit C**.

⁷ Appellants are challenging the standing of Jason Hester, *inter alia*, in light on the false claim of kinship between Lee and Hester (uncle-nephew) made at the time the substitution was made and the altered documents upon which the substitution was based, and in light of controlling case law.

February and April of 2008, for which transcripts are being requested by Appellee Hester, there is no valid reason to request that Appellants order and pay for the transcripts at issue.⁸


C. CONCLUSION:

There is no reasonable basis for inclusion of the transcripts requested for the first day of trial (February 12, 2008), for the last day of trial (February 21, 2008), and for a post jury verdict hearing (April 16, 2008) to respond to the Appellants' arguments relating to compliance with HRCF 50(a) prior to submission of the case to the jury and relating to whether Hester has standing as the Substitute Plaintiff to stand in the shoes of original Plaintiff seller-mortgagee Lee.

For the above stated reasons, Appellants Horowitz-RBOD request that the Court deny Appellee Hester's "Motion To Compel Appellants To Order Transcripts Requested in Appellee's Designation of Additional Parts of the Transcript to be Included on Appeal".

Respectfully submitted:

Waimea, Hawaii 96743 June 5, 2016


Margaret Wille,
Attorney for Appellants

Hester v. Horowitz; CAAP-16-0000162; Opposition to Appellee's Motion To Compel Appellants To Order Transcripts Requested in Appellee's Designation of Additional Parts of the Transcript to be Included on Appeal.

⁸ A copy of Appellee's July 16, 2016 "Motion for Substitution of Plaintiff" is attached as **Exhibit D**.

Paul J. Sulla, Jr. (SBN #5398)
P.O. Box 5258
Hilo, HI 96720-8258
Phone: (808) 933-3600

Attorney for Plaintiff
Jason Hester

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CAAP-16-0000162
27-JUN-2016
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Appeal No. CAAP-16-0000162

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

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

Plaintiff-Counterdefendant -
Appellee

vs.

LEONARD G. HOROWITZ, THE
ROYAL BLOODLINE OF DAVID, ET
AL

Defendants-Counterclaimants-
Appellants

(Civil Case No. 05-1-0196)
(3rd Circuit Court)

APPELLEE JASON HESTER'S
MOTION TO COMPEL
APPELLANTS TO ORDER
TRANSCRIPTS REQUESTED IN
APPELLEE'S DESIGNATION OF
ADDITIONAL PARTS OF THE
TRANSCRIPT TO BE INCLUDED
ON APPEAL; MEMORANDUM IN
SUPPORT OF MOTION;
(CERTIFICATE OF SERVICE
ATTACHED)

**APPELLEE JASON HESTER'S MOTION TO COMPEL APPELLANTS TO ORDER
TRANSCRIPTS REQUESTED IN APPELLEE'S DESIGNATION OF ADDITIONAL
PARTS OF THE TRANSCRIPT TO BE INCLUDED ON APPEAL**

AND ORDER

Plaintiff and Appellee JASON HESTER, OVERSEER, THE OFFICE OF THE
OVERSEER, A CORPORATE SOLE AND HIS SUCCESSORS, OVER/FOR THE
POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS (Appellee
Hester), by and through attorney Paul J. Sulla, Jr., hereby moves the court to COMPEL

No. CAAP-16-0000162
Hester v. Horowitz et al.

MOTION TO COMPEL APPELLANT
LEONARD G. HOROWITZ TO ORDER
TRANSCRIPTS

Page 1

Exhibit 5

APPELLANTS TO ORDER TRANSCRIPTS REQUESTED IN APPELLEE'S DESIGNATION OF ADDITIONAL PARTS OF THE TRANSCRIPT TO BE INCLUDED ON APPEAL in the record on appeal in Hester v. Horowitz et al., App. No. CAAP -16-0000162 (Haw. App.), pursuant to Hawaii Rule of Appellate Procedure 10(b)(4), in response to Appellants Leonard G. Horowitz and the Royal Bloodline of David's Certificate that No Transcripts are to be Prepared and Notice of Points of Error That Appellants Intend to Present on Appeal:

- 1) All transcripts of the proceedings from February 12, 2008 [Day 1 of Trial],
- 2) All transcripts of the proceedings from February 21, 2008 [last day of Trial], and
- 3) All transcripts of the proceedings from April 16, 2008 [hearing transcript].

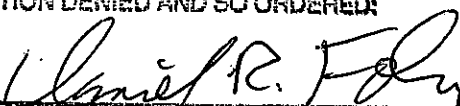
Given the nature of this Motion, Appellee also requests that this Court designate this Motion as a non-hearing motion. This Motion is made pursuant to Rule 10(b)(4) of the Hawaii Rules of Appellate Procedure, the attached Memorandum in Support of Motion, and the records and files in this case.

Dated: This 1st day of June, 2016 in Hilo, Hawaii.

/s/ Paul J. Sulla, Jr.

Paul J. Sulla, Jr., AAL (SBN #5398)
Attorney for Appellee

MOTION DENIED AND SO ORDERED:


JUDGE
APPELLATE COURTS, STATE OF HAWAII

▶ 23	MOT	3CK3	CV	04/16/2008 09:00	1) PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF LAW OR ALTERNATIVELY NEW TRIAL ON ISSUE OF DEFENDANT'S 7-6-06 COUNTERCLAIM FOR FRAUD ETC. 2) MOTION TO DISCLOSE JURORS MAILING ADDRESSES (PLAINTIFF) 3) DEFENDANTS AND COUNTERCLAIMANTS JACQUELINE LINDENBACH HOROWITZ AND THE ROYAL BLOODLINE OF DAVID'S MOTION FOR JUDGMENT AS A MATTER OF LAW 4) MOTION TO STRIKE PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF LAW OR ALTERNATIVELY NEW TRIAL ON ISSUE OF DEFENDANTS 7-6-06 COUNTERCLAIM ETC. 5) MOTION TO ALTER OR AMEND JUDGMENT 6) DEFENDANT AND COUNTERCLAIMANTS LEONARD GEORGE HOROWITZ, JACQUELINE LINDENBACH HOROWITZ AND THE ROYAL BLOODLINE OF DAVID'S MOTION TO ETC.	TUA
▶ 23	MOT	3CK3	CV	04/16/2008 09:00	1) PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF LAW OR ALTERNATIVELY NEW TRIAL ON ISSUE OF DEFENDANT'S 7-6-06 COUNTERCLAIM FOR FRAUD ETC. 2) MOTION TO DISCLOSE JURORS MAILING ADDRESSES (PLAINTIFF) 3) DEFENDANTS AND COUNTERCLAIMANTS JACQUELINE LINDENBACH HOROWITZ AND THE ROYAL BLOODLINE OF DAVID'S MOTION FOR JUDGMENT AS A MATTER OF LAW 4) MOTION TO STRIKE PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF LAW OR ALTERNATIVELY NEW TRIAL ON ISSUE OF DEFENDANTS 7-6-06 COUNTERCLAIM ETC. 5) MOTION TO ALTER OR AMEND JUDGMENT 6) DEFENDANT AND COUNTERCLAIMANTS LEONARD GEORGE HOROWITZ, JACQUELINE LINDENBACH HOROWITZ AND THE ROYAL BLOODLINE OF DAVID'S MOTION TO ETC.	TUA
▶ 226	(HEARING DATE: 4-16-08 AT 8:30 A.M. BEFORE JUDGE IBARRA) (FILED UNDER THE WRONG CASE NUMBER CIV 06-1-98K SHOULD BE CIV 05-1-196)				03/28/2008 15:12	FILED BY COURT, COURT

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Judge I.D.	JRIBARRA	Video No.	<input type="text"/>	Audio No.	<input type="text"/>
Minutes	<p>1) PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF LAW OR ALTERNATIVELY NEW TRIAL ON ISSUE OF DEFENDANT'S JULY 6, 2006 COUNTERCLAIM FOR FRAUD AND MISREPRESENTATION 2) MOTION TO DISCLOSE JURORS MAILING ADDRESSES 3) DEFENDANTS AND COUNTERCLAIMANTS JACQUELINE LINDENBACH HOROWITZ AND THE ROYAL BLOODLINE OF DAVID'S MOTION FOR JUDGMENT AS A MATTER OF LAW 4) MOTION TO STRIKE PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF LAW OR ALTERNATIVELY NEW TRIAL ON ISSUE OF DEFENDANTS JULY 6, 2006 COUNTERCLAIM FOR FRAUD AND MISREPRESENTATION 5) MOTION TO ALTER OR AMEND JUDGMENT (INTERVENOR) 6) DEFT AND COUNTERCLAIMANTS LEONARD GEORGE HOROWITZ, JACQUELINE LINDENBACH HOROWITZ AND THE ROYAL BLOODLINE OF DAVID'S MOTION TO STRIKE PLAINTIFF'S MOTION TO DISCLOSE JURORS MAILING ADDRESSES</p> <p>----- RECORD LOG - 2008-04-16/09:00-10:03 CLERK - N. LAURO APPEARANCES: D. O'HELAN (PLAINTIFF CECIL LEE), J. CARROLL (DEFENDANTS/COUNTERCLAIMANTS LEONARD HOROWITZ), PHILLIP MAISE (INTERVENOR PRO SE)</p> <p>----- AS TO MOTION 2 ARGUMENT BY O'HELAN AND CARROLL. CARROLL REQUESTS MOTION BE DENIED. MAISE HAS FILED HIS OBJECTION IN WRITING AND HAS NOTHING FURTHER TO ADD. **COURT DENIED MOTION. THERE IS NO AUTHORITY, FURTHER MORE, A JURY'S VERDICT SHALL NOT BE IMPEACHED, THE JURY WAS POLLED. -AS TO DEFT AND COUNTERCLAIMANTS LEONARD GEORGE HOROWITZ, JACQUELINE LINDENBACH HOROWITZ AND THE ROYAL BLOODLINE OF DAVID'S MOTION TO STRIKE PLAINTIFF'S MOTION TO DISCLOSE JURORS MAILING ADDRESSES FILED ON 3-31-2008, THE MOTION TO STRIKE IS DENIED GIVEN THE COURT'S RULING ON THE MOTION TO DISCLOSE JURORS MAILING ADDRESSES. **COURT PURSUANT TO RULE 23, PREVAILING SIDES SHALL PREPARE THE ORDERS. -AS TO MOTION 1, 3 AND 4 ARGUMENT BY O'HELAN, CARROLL. **COURT WILL TAKE UNDER SUBMISSION ALL 3 MOTIONS. DEFT'S AND COUNTERCLAIMANTS MOTION TO //</p>				

Law Office of Dan O'Phelan
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Telephone No. (866) 529-2340
Facsimile No. (866) 636-4508

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THIRD CIRCUIT COURT
STATE OF HAWAII

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IN THE CIRCUIT COURT FOR THE THIRD CIRCUIT
STATE OF HAWAII

CECIL LORAN LEE,)	Civil No. 05-1-0196
)	
Plaintiff,	)	PLAINTIFF'S MOTION FOR
	)	JUDGMENT AS A MATTER OF LAW
vs.	)	OR ALTERNATIVELY NEW TRIAL
	)	ON ISSUE OF DEFENDANT'S JULY
LEONARD G. HOROWITZ, et al,	)	6 TH , 2006 COUNTERCLAIM FOR
	)	FRAUD AND
Defendants,	)	MISREPRESENTATION;
	)	MEMORANDUM IN SUPPORT OF
and	)	MOTION; EXHIBITS A-F;
	)	DECLARATION OF DAN O'PHELAN;
PHILIP MAISE,	)	CERTIFICATE OF SERVICE
)	
Intervenor.	)	JUDGE: RONALD IBARRA
)	

**PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF LAW OR
ALTERNATIVELY NEW TRIAL ON ISSUE OF DEFENDANT'S COUNTERCLAIM FOR
FRAUD AND MISREPRESENTATION**

COMES NOW, Plaintiff CECIL LORAN LEE (hereinafter referred to as Plaintiff Lee), by and through his counsel of record, Dan O'Phelan, pursuant to HRCP 7 and HRCP 50, HRCP 59 and files this Motion for Judgment as a Matter of Law or Alternately New Trial.

Exhibit 7

Page | 1

MEMORANDUM IN SUPPORT OF MOTION

THE STANDARD OF REVIEW FOR JUDGMENT AS A MATTER OF LAW IS DE NOVO

Motion for Judgment as a matter of law are reviewed de novo. The Court in *Aluminum Shake Roofing, Inc. v. Hirayasu*, 110 Hawai'i 248, 131 P.3d 1230, Hawai'i, 2006 reaffirmed this well settled point:

It is well settled that a trial court's rulings on motions for judgment as a matter of law are reviewed de novo.

When we review the granting of a [motion for judgment as a matter of law], we apply the same standard as the trial court.

A [motion for judgment as a matter of law] may be granted only when after disregarding conflicting evidence, giving to the non-moving party's evidence all the value to which it is legally entitled, and indulging every legitimate inference which may be drawn from the evidence in the non-moving party's favor, it can be said that there is no evidence to support a jury verdict in his or her favor.

Id. at 251. See also, *Carr v. Strode*, 79 Hawai'i 475, 904 P.2d 489, Hawai'i, 1995.

DEFENDANT'S WERE NOT LEGALLY ENTITLED TO HAVE THE CLAIM FOR FRAUD OR MISREPRESENTATION WITH RESPECT TO PLAINTIFF'S SALE OF THE PROPERTY.

The Special Verdict Form (see attached Exhibit A) in this case included a claim that was not in Defendant's counterclaims. See copy of Defendant's Counterclaims attached as Exhibit B. In fact, the Court removed all jury instructions relating to failure to disclose with respect the subject property, except within the Special Verdict Form. The Special Verdict Form submitted to the jury included the following question:

"Did Plaintiff Cecil Loran Lee commit fraud or misrepresentation regarding the sale of the

Page | 2

property?"

See the Special Verdict Form attached as Exhibit A. The Court made clear to Defendants' counsel at the in camera hearing on jury instructions, that Defendants' Counterclaims did not specify and/or sufficiently identify claims for fraud or misrepresentation and furthermore that there was an insufficient factual connection between Defendants' Counterclaims and Defendants' proposed instructions. In fact, the Court specifically pointed out to Defendants' counsel that pursuant to HRCF 9, fraud must be plead with specificity and Defendants woefully failed to identify the fraud and/or misrepresentation claims with respect to the sale of the property. Defendants' claims for fraud and misrepresentation were included on the Special Verdict Form, despite the grave failure by Defendants to properly place Plaintiff of notice of said counterclaims. Defendant's counsel objected repeatedly and strenuously to this inclusion because again it was never part of Defendants counterclaims.

The very phrase "fraud" and "misrepresentation" comes from page 5 of Defendants' counterclaims. See attached Exhibit B, page 5 of 18. Defendant's Counterclaims (Exhibit B) states as follows:

Misrepresentation and Fraud

Plaintiff Lee's complaint was based on misrepresentation. In the process of fulfilling the obligations incurred in the purchase of the subject properties, two hundred thousand and no/100 dollars (\$200,000.00) was required to be put into an escrow account. At one point, [eighty five thousand and no/100 dollars (\$85,000.00)] was needed by Plaintiff lee. He had to pay off a government lien against him for illegal growth of marijuana. During this period of time, Plaintiff Lee was very cooperative and willing to help the Horowitz group. Horowitz agreed to allow lee to take \$85,000.00 prior to the time escrow was scheduled to close.

Page | 3

1. An agreement for closing Escrow was prepared and is attached hereto as Exhibit B. The basis for the agreement was that there would be cooperation and amicable involvement with construction of improvements without the Seller's approval. This document was altered and filed as part of the Complaint against Horowitz in his Complaint for Foreclosure filed on June 15th, 2005. See, Exh. B. A copy of the original was sent to the Attorney for Defendant Lee to insure he knew the document had been altered. Lee's Attorney failed to recognize or ignored the fact that his attached Exhibit was an altered document. He attached it to the Complaint stating that Horowitz amended the document which was filed with the Complaint, which is in fact the original one. Thus, Lee claimed that Defendant Horowitz had committed a form of perjury and fraud. This false claim was part of the underpinning upon which the Entry of Default was made. Lee and his Counsel worked together to file a false claim. These actions violate the provisions of HRCF Rule 11 (a) (3).

**PARAGRAPH 1 OF DEFENDANT'S COUNTERCLAIMS DOES NOT
REFERENCE FRAUD OR MISREPRESENTATION WITH RESPECT TO
PLAINTIFF'S SALE OF THE PROPERTY TO DEFENDANTS**

First, Plaintiff shall address Paragraph 1, directly above. Note: this quotation is taken verbatim from Defendant's counterclaims page 5 of 18 and attached as Exhibit B. There is no mention whatsoever of the Defendants' counterclaims that the Court submitted to the jury in the special verdict form which asks them to decide the question: "did Plaintiff Cecil Loran Lee commit fraud or misrepresentation regarding the sale of the property?" See Exhibit A, page 3 of 4 (question #9).

Nothing exists in Defendants' counterclaims (Exhibit B and quote directly above) that support any claim for misrepresentation and fraud with respect to the sale of the property. All that is stated is that Plaintiff's complaint was based on misrepresentation, but Plaintiff's Complaint which is attached as Exhibit E, makes no reference whatsoever as to his own fraud or misrepresentation with regard to the sale of the subject property.

Therefore, there is no legal entitlement for Defendants to have the jury answer the question (on the Special Verdict Form) of whether or not Plaintiff committed fraud or misrepresentation with respect to the sale of the property.

**DEFENDANT CONSISTENTLY OBJECTED TO THE SPECIAL VERDICT FORM
CONTAINING DEFENDANTS' CLAIM FOR FRAUD OR MISREPRESENTATION WITH
RESPECT TO THE SALE OF PROPERTY**

Plaintiff objected to the jury instruction being include in his filed "*Plaintiff's Objections to Defendant's Jury Instructions and Acceptance of Defendant's Jury instruction Defining Fraud with the Condition that it Be Made Applicable to Both Parties.*" See attached Exhibit E, page 2, paragraph #2 which states as follows:

"Objection to defendant's Instructions 2-5, 11, 14. 15. These instructions relate to a claim that is not identified in the Defendant's filed counterclaims. Defendant did not claim that there was failure to disclos[e] material defects in his complaint or concealment of material defects, or misrepresentation regarding the disclosure of material defects. ..."

In fact, the Court ruled that all of Defendant's proposed jury instructions that related to fraud and misrepresentation with respect to the sale of the property, concealment of defects, and or misrepresentation regarding the disclosure of material defects were stricken. Despite these actions, the Court included the Special Verdict Form for Defendants' "fraud or misrepresentation" claim as it related to the sale of the subject property. Plaintiff's counsel objected on the record on more than one occasion with respect to including Defendants Counterclaims for fraud and misrepresentation into the Special Verdict Form on the basis that it was not a claim raised in Defendants' counterclaims. In fact, after the jury was seated and the closing arguments were about to

be heard, Plaintiff's counsel Dan O'Phelan asked the Judge (at a sidebar) why the counterclaim for fraud and misrepresentation was in the Special Verdict Form. It was that much of a surprise that the Jury was going to hear this claim without it being referenced in Defendants' Counterclaims. See Declaration of Dan O'Phelan. This caught Dan O'Phelan off guard as he was preparing to give his closing argument to the Jury. See Declaration of Dan O'Phelan.

Plaintiff's counsel even went to the Clerk of Court during the trial and asked specifically if there had been any other counterclaim/s filed by Defendants since Defendants' Counterclaims filed on July 6th, 2006. The Clerk looked up the record and there had been no other counterclaim filed. See Declaration of Dan O'Phelan. The Judge also acknowledged this fact at the in chambers hearing on jury instructions. Plaintiff's counsel argued that if that was part of Defendants' counterclaims, he would have litigated the case differently because he had no notice that that was part of Defendants' claims against his client Mr. Lee. See attached Declaration of Dan O'Phelan.

PARAGRAPH 2 OF DEFENDANT'S COUNTERCLAIMS DOES NOT REFERENCE FRAUD OR MISREPRESENTATION WITH RESPECT TO PLAINTIFF'S SALE OF THE PROPERTY TO DEFENDANTS

Paragraph 2 of Defendants' Counterclaims does not specifically reference any fraud or misrepresentation with respect to the sale of the subject property. What Paragraph 2 does suggest is that Plaintiff and his counsel Dan O'Phelan "*worked together*" to file a false claim. And this was based on Defendants' dishonest assertion that the Agreement for Closing of Escrow was fraudulently altered and/or not adhered to. But this filing of a false claim was not specific enough pursuant to HRCP 9 to provide

meaningful notice to Plaintiff that claims relating to loss of income of a prospective business based on the Plaintiff's alleged fraud and/or misrepresentation. Reviewing Defendants' Counterclaims in total its clear that Defendant asserted fraud and misrepresentation with respect to the Agreement for Closing of Escrow. The evidence in the trial and argument by Defendants strongly suggested that "but for" Plaintiff's alleged Fraud and Misrepresentation (of the Agreement for Closing of Escrow), there would be no foreclosure because Defendants' version of the Agreement for Closing of Escrow did not require insurance, did not require Plaintiff's permission to construct unpermitted structures, etc.

The specific fraud related to the Agreement for Closing of Escrow and the damages requested related to that specific counterclaim. Once the Jury found that it was the Defendant who committed the fraud with respect to the Agreement for Closing Escrow, there was no damages based on fraud and misrepresentation to be awarded because damages for fraud and misrepresentation would only exist if they found that Plaintiff committed fraud or misrepresentation with respect to the Agreement for Closing Escrow.

Again, Defendants are not legally entitled to damages for claims that were not plead and where Plaintiff had insufficient notice of said claims. Plaintiff's counterclaims were filed on July 6th, 2006; trial was February 12th, 2008—so Defendants had more than 19 months to ask to have their counterclaims amended and never did so. Defendants waived any counterclaims that were not plead at the time that trial began.

INDULGING EVERY LEGITIMATE INFERENCE WHICH MAY BE DRAWN FROM THE EVIDENCE IN THE NON-MOVING PARTY'S FAVOR, IT CAN BE SAID THAT THERE IS NO EVIDENCE TO SUPPORT A JURY VERDICT IN THEIR FAVOR.

First the jury needed to find by “clear and convincing evidence a party has committed fraud” and only then could they award damages. See Exhibit D, jury instruction 23. The claim for fraud or misrepresentation with respect to the sale of the subject property even indulging every legitimate inference which may be drawn from the evidence could not produce a jury verdict 1) that the evidence that Plaintiff committed fraud or misrepresentation with regard to the sale of the property; 2) that showed that such fraud or misrepresentation were the cause of Defendant's alleged losses (see Exhibit A, page 4 of 4; Question 10) and 3), and/or that Defendant's sustained any losses at all.

b.1) Defendant's failed to prove by clear and convincing evidence that Plaintiff committed fraud or misrepresentation. See Exhibit D, Jury Instruction 23. First off, other than a potential and vague opinion by Mr. Lee that the property had value, there is no specific fact to support any identifiable fraud. In addition, and in accordance with Jury Instruction 25, Defendants' allegations as to Mr. Lee's alleged expressions about operating a business on the subject property were opinion and not treated as represents of fact upon which to base actionable fraud. See Exhibit D, Jury Instruction 25.

But the larger point is that there was no specific evidence presented that Plaintiff engaged in fraud pursuant to the definition of fraud in Jury Instruction 24. If we examine Jury Instruction 24 on “fraudulent inducement” it requires that several facts be proved:

1. Plaintiff represented a material fact; and
2. The representation was false when it was made;
3. Plaintiff knew the representation to be false or was reckless in making the

- representation without knowing whether it was true or false; and
4. Plaintiff intended that defendants rely upon the representation by entering into the contract; and
 5. Defendant's relied upon the representation by entering into the contract; and
 6. Defendant's reliance upon the representation was reasonable.

The representation must to a past or existing material fact, and not the happening of a future event, except as to a promise of future conduct which plaintiff did not intent to fulfill at the time it was made. A fact is material if a reasonable person would want ot know it before deciding whether to enter into the contract.

Furthermore, there was no specific item brought forth by Defendants that showed that any fraudulent act occurred with respect to the sale of the property. For example, Plaintiff's website (as represented by Defendants' Exhibit 17—see attached Exhibit G¹) never used the words Bed and Breakfast or identified that "meals" were provided to guests. Defendants never rebutted this evidence. Plaintiff's opinion about whether or not the subject property could be used for business purposes or whether or not he used part of the home as a vacation rental is irrelevant on the issue of damages for fraud and misrepresentation and an insufficient basis for fraud because it involves an opinion about prospective possibilities about the use and or benefits that the property may have in the future.

There was no dispute between the parties that Plaintiff advised Defendants that he did not have permits or licenses to operate a business at the premises. There was no evidence that Plaintiff attempted to fail to disclose facts regarding his vacation rentals. Plaintiff's business records were never presented to the jury. There was no argument by Defendants that Plaintiff failed to disclose any records. Defendant Jacqueline Horowitz

testified that she stayed at the property for 2 weeks and was able to review Plaintiff's business records and the property. Defendants purchased the property after this detailed and lengthy review of the property and after (according to Defendant Jacqueline Horowitz's testimony) she reviewed Plaintiff's business records. There was no evidence that Plaintiff guaranteed that the property could legally be used for business purposes. There was no evidence that Plaintiff guaranteed that the property would turn a profit.

There was no evidence alleging any specific fraudulent act, other than the issue of the Agreement for Closing of Escrow and the Jury found that it was Defendant Leonard Horowitz who had been the person who fraudulently forged the Agreement for Closing of Escrow. The Jurors must have considered that Defendant Leonard Horowitz lacked credibility in this case because they found that he committed fraud and forged a document. Defendant Jacqueline Horowitz testified that she was a witness to an event that she was not a witness to. Jacqueline Horowitz's testimony lacked credibility.

Here, Defendant's choose not to have home inspection. Defendant Jacqueline Horowitz testified that they were experienced in buying properties. Defendants chose not to have an appraisal. Defendants chose not to call Mr. Lee as a witness. Defendants chose not to depose Mr. Lee before trial. Defendants did not recite one material fact that they relied on to their detriment prior to the purchase. In fact, there is no basis whatsoever to support damages for Defendants' fraudulent inducement claim. Notably, fraudulent inducement is not cited with particularity in Defendants' counterclaims filed July 6th, 2006.

¹ Plaintiff is referencing Defendant's Exhibit 17, the number may be inaccurate; see attached Exhibit G.

Defendants did not testify that they actually “relied” on what Mr. Lee was saying to them. Instead, they testified that they were in conflict with Mr. Lee, that they did not trust him, and that Jacqueline Horowitz could stand to look at his face. So it is inconsistent with respect to the evidence that Defendants relied on Mr. Lee’s representations. Instead, the Defendants’ evidence demonstrated that they consulted and/or hired attorney Glen Hara to assist with the Agreement for Closing of Escrow. Notably, Glen Hara never testified.

DEFENDANTS’ FAILED TO MEET THEIR BURDEN OF PROOF ON DAMAGES

Even if this Court were to rule that the Jury’s verdict of \$200,000 was sufficiently based on a fraud or misrepresentation, there remained no proof of Defendants income from the property, no proof in the form of any tangible evidence, no proof of what amounts they did receive and what amounts they could have received. Defendants testified that they received donations only and that these donations were reduced because of their allegations against Mr. Lee. But there was no business records relating to donations that they in fact received. There was not one witness who testified as to any of the amounts of alleged donations received or any accountant or bookkeeper to explain the alleged business/charity losses.

In fact, the evidence showed that Defendants lost their insurance because they were using the property for commercial use and were in violation of County of Hawaii regulations and lacked permits as would be required for changes they made to property. Mr. Lee cannot be held liable for the illegal conduct of Defendants. It is impossible to determine how much of the income was allegedly lost because the property had been found by the County of Hawaii to be out of compliance with zoning and building

regulations.

**JURORS MAY HAVE IN GOOD FAITH ERRED WITH RESPECT TO THE \$200,000
NON REFUNDABLE DEPOSIT AND AWARDED THE MONEY BELIEVING THAT
THEY WERE EFFECTUATING A RETURN OF THE 200,000 NONREFUNDABLE
DEPOSIT**

One of the dumbest things that occurred in this case was when Philip Maise testified at this closing argument how convenient it was that in the DROA there was a \$200,000.00 non-refundable deposit and he pointed out the exact paragraph of the DROA and strongly indicated to the jury that Defendants would lose their deposit of \$200,000. The jury awarded the exact same amount in damages. But these damages were not based on fraud, but on what the jury believed was the fair thing to do. This is a fundamental mistake by the jury, but to give them credit they found a way for Defendants to get their 200,000 dollars back. The interesting thing to note is that Defendants did not provide evidence as to the \$200,000 nonrefundable deposit; it was Philip Maise.

It is very likely that the jury believed they were awarding money back that was non-refundable under the DROA. Notably jurors took notes of what paragraph that Philip Maise pointed to.

The juror's consideration of this non-refundable deposit was improper because the jurors should not have even considered the subject at all. The Court did not instruct the jury to not consider the \$200,000 non-refundable deposit. Plaintiff was not permitted to reopen his closing argument to rebut this red herring.

For these reasons, and the other reasons stated above Defendant respectfully asks that the Court adjudge that the Jury's finding as to Plaintiff's fraud and

misrepresentation with respect to the sale of the property, as a matter of law, be reversed and/or vacated and that the Jury's award of damages of \$200,000 be reversed and/or vacated.

ALTERNATIVELY PLAINTIFF'S MOTION FOR A NEW TRIAL

In the event the court does not grant Plaintiff's Motion for Judgment as a Matter of Law, Plaintiff hereby moves for a new trial pursuant to HRCRP 59.

STANDARD OF REVIEW IS CLEAR ABUSE OF DISCRETION

Plaintiff relies on HRCRP 59 subparagraphs (a) and (d) as a the basis for his motion or a new trial. Plaintiff also, in support of his Motion for Judgment as Matter of Law hereby moves that the Court Alter or Amend the Judgment in accordance with the relief requested below and pursuant to HCRP 59 (e).

HRCRP 59

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

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

(e) Motion to Alter or Amend Judgment. *Any motion to alter or amend a judgment shall*

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be filed no later than 10 days after entry of the judgment.

In *Dunbar v. Thompson*, 79 Hawai'i 306, 901 P.2d 1285, Hawai'i App., 1995.

Both the grant and the denial of a motion for new trial is within the trial court's discretion, and we will not reverse that decision absent a clear abuse of discretion. Richardson, 76 Hawai'i at 503, 880 P.2d at 178; see also Stahl v. Balsara, 60 Haw. 144, 152, 587 P.2d 1210, 1215 (1978). An abuse of discretion occurs "where the trial court has clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant." Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114, 839 P.2d 10, 26, reconsideration denied, 74 Haw. 650, 843 P.2d 144 (1992). Unlike motions for a directed verdict or a JNOV, the movant need not, on a motion for new trial, convince the court to rule that no substantial evidence supports its opponent's case, but only that the verdict rendered for its opponent is against the manifest weight of the evidence. Richardson, 76 Hawai'i at 503, 880 P.2d at 178.

Id. at 489.

In the instant case the jury's finding that Plaintiff committed fraud or misrepresentation as to the evidence ***contradicts the manifest weight of the evidence*** and the jury's award of \$200,000 in general damages is against the manifest weight of the evidence. In this case the jury instructions directly conflicted with the instructions on the special verdict and misled the jury.

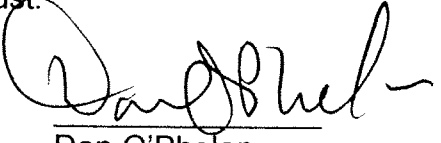
Plaintiff relies on the arguments in this pleading in total to support his request for his alternative request for a new trial on the issue of Defendants' Counterclaims for fraud and misrepresentation and damages for loss of business income.

SPECIFIC RELIEF REQUESTED

WHEREFORE, Plaintiff requests the following:

1. That the Court reverse or vacate the Jury finding that Plaintiff committed fraud or misrepresentation with respect to the sale of the subject property;
2. That the Court reverse or vacate the Jury award of damages to Defendants of \$200,000.
3. In the event that the Court sustains the Jury's damages award that the Court adjudge that the \$200,000 be subtracted from Defendants equitable interest in the subject property;
4. That in the event that the Court denies Plaintiff's Motion for a Judgment as a Matter of Law, that the Court order a new trial on the issue of Defendants' Counterclaims allegations of Plaintiff's fraud and misrepresentation with respect to the sale of the subject property and Defendants' counterclaim for damages as a proximate and legal cause of Plaintiff's alleged fraud and misrepresentation.
5. For an award of attorney's fees and costs associated with the preparation of this motion.
6. For such other relief as the Court deems fair and just.

DATED: 3-11-08


Dan O'Phelan

CECIL LORAN LEE,
Plaintiff,
vs.
LEONARD G. HOROWITZ, et al,
Defendants,
and
PHILIP MAISE,
Intervenor.

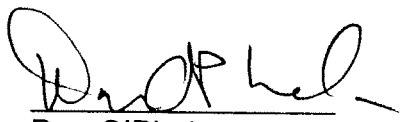
1. I am the attorney that represented Plaintiff in the instant case;
2. I prepared for the trial and during that trial never considered that the issue of Defendants claims for fraud and misrepresentation with respect to the sale of the property was going to be litigated.

3. At the settlement conference on January 14th, 2008 in this matter, while in chambers, there was mention by the Judge of Defendants' Counterclaims relating to failure to disclose defects with respect to the sale of the property. I responded that those claims were not filed specifically as Defendants' counterclaims;
4. In addition, I objected several times during the trial to the inclusion of Defendants counterclaims for fraud and misrepresentation;
5. I had asked the Clerk of Court during the trial when jury instructions were being assembled and discussed, if any other counterclaims were filed other than the July 6th, 2006 Defendants' Counterclaims. The Clerk verified for me that the July 6th, 2006 Defendants' Counterclaims were the only ones filed.
6. I also specifically objected at a sidebar with the Court just prior to closing arguments because Defendants counterclaims for fraud or misrepresentation with respect to the sale of the property were still included on the Special Verdict Form;
7. I informed that Court that I would have prepared for this case very differently if I knew that these claims were going to be litigated.
8. I also know that I would in fact have prepared for trial very differently.
9. It caught me off guard when these claims when Defendants' counterclaims for fraud and misrepresentation with respect to the sale of the property was still on the Special Verdict Form. I was unprepared in my closing arguments to address this issue in part because of the Court ruling to remove so many jury

instructions that related to Defendants' submitted instructions regarding fraud and misrepresentation on the issue of the sale of the property.

10. Even though it was not part of the counterclaim as specific as it should have been, Defendants raised the issue of Plaintiff's fraud with respect to the alteration of the Agreement for Closing of Escrow. On that issue, I had been prepared and Defendants had an expert witness on that question.
11. On that issue, the Jury found that it was Defendant Leonard Horowitz who committed fraud and forgery regarding the alteration of the Agreement for Closing of Escrow and not the Plaintiff.
12. With respect to the damages question, I believe the jury may have thought that Defendants placed a non-refundable deposit down in the amount of \$200,000 dollars and that is why they found a way to award Defendants \$200,000 mistakenly believing that Defendants would not get a credit at the foreclosure sale when the proceeds of the sale were distributed.

Dated: March 9th, 2008


Dan O'Phelan

SPECIAL VERDICT

The Jury must answer the questions below in accordance with the stated directions. To understand what issues are being submitted to you, you may wish to read over the entire Special Verdict form before proceeding to answer. Answer the questions in numerical order and follow all directions carefully. If you do not understand any question or if wish to communicate with the Court on any other subject, you must do so in writing through the bailiff. At least ten (10) of the twelve (12) jurors must agree on each answer before filling in each blank. However, the same ten (10) jurors need not agree on each answer. After you have answered the required questions, the foreperson shall sign the Special Verdict form and notify the bailiff.

If the Court has not previously ruled,

Question 1. Is Plaintiff Cecil Loran Lee entitled to a foreclosure of the mortgage as prayed for in his complaint?

Answer "Yes" or "No" in the space provided below, then go on to Question 2.

Yes ✓ No

Question 2. Did Defendants commit trespass to chattels against Plaintiff Cecil Loran Lee's personal property?

YES ✓ NO

If you answered "Yes", proceed to Question 3. If you answered "No", proceed to Question 4.

Question 3. What amount of damages, if any, do you award Plaintiff?

Special Damages: \$ 400

Proceed to Question 4.

EXHIBIT A
PAGE 1 OF 4

Question 4. Was the agreement for closing fraudulently altered?

YES ✓ NO

If you answered "Yes" to Question 4, proceed to Question 5. If you answered "No", proceed to Question 9.

Question 5. Answer this question only if you answered "Yes" to Question 4. Identify the party or parties you found fraudulently altered the agreement for closing by marking an "X" next to their name.

Plaintiff Cecil Loran Lee

Defendant Leonard George Horowitz ✓

Defendant Jacqueline Lindenbach Horowitz

Defendant The Royal Bloodline of David

Proceed to Question 6.

Question 6. This question relates to the forging and/or altering of the Agreement for Closing committed by party or parties you identified in Question 5. If you identified Plaintiff Cecil Loran Lee proceed to subsection (a). If you identified a Defendant proceed to subsection (b).

Question 6 subsection (a)

Was forging and/or altering of the Agreement for Closing by Plaintiff Cecil Loran Lee a legal cause of Defendants' losses?

YES NO

If you answered "Yes" to Question 6 (a), proceed to Question 8. If you answered "No", proceed to Question 9.

EXHIBIT

PAGE 7 OF 4

Question 6 subsection (b)

Was forging and/or altering of the Agreement for Closing by the Defendant(s) identified in Question 5 a legal cause of Plaintiff's losses?

YES _____ NO ✓ _____

If you answered "Yes" to Question 6 subsection (b), proceed to Question 7. If you answered "No", proceed to Question 9.

Question 7. Answer this question only if you answered "Yes" to Question 6 subsection (b). What amount of damages, if any, do you award Plaintiff Cecil Loran Lee?

Special Damages: \$ _____

Punitive Damages: \$ _____

Proceed to Question No. 9.

Question 8. Answer this question only if you answered "Yes" to Question 6 subsection (a). What amount of damages, if any, do you award Defendants?

Special Damages: \$ _____

Punitive Damages: \$ _____

Proceed to Question 9.

Question 9. Did Plaintiff Cecil Loran Lee commit fraud or misrepresentation regarding the sale of the property?

YES ✓ _____ NO _____

EXHIBIT

A

PAGE 3 OF 4

If you answered "Yes" to Question 9, proceed to Question 10. If you answered "No", then do not answer any further questions, but please sign and date this document and call the bailiff.

Question 10. Answer this question only if you answered "Yes" to Question 9. Was Plaintiff's fraud or misrepresentation regarding the sale of the property a legal cause of Defendants' losses?

YES ✓ NO

If you answered "Yes" to Question 10, proceed to Question 11. If you answered "No", then do not answer any further questions, but please sign and date this document and call the bailiff.

Question No.11. Answer this question only if you answered "Yes" to Question No. 10. What amount of damages, if any, do you award Defendants?

Special Damages: \$ 200,000.00

Punitive Damages: \$ 0

The foreperson shall sign and date this document and summon the bailiff.

DATED: Kealahou, Hawaii, 2-21-08

Loray Spark
FOREPERSON

EXHIBIT

A

PAGE

4

OF

46

FILED

JOHN S. CARROLL #0649
345 Queen St., Suite 607
Honolulu, Hawaii 96813
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2006 JUL -6 PM 3:42

E. Y. WATE, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

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

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

CECIL LORAN LEE,

Plaintiff

vs.

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

Defendants.

CIVIL No. 05-1-0196
(Foreclosure)

DEFENDANTS COUNTERCLAIMS;
EXHIBITS "A-B"; CERTIFICATE OF
SERVICE

DEFENDANTS COUNTERCLAIMS

Defendant THE ROYAL BLOODLINE OF DAVID, a Washington State Certified Corporation, Sole Non-Profit Ecclesiastical Ministry, LEONARD GEORGE HOROWITZ and JACQUELINE LINDENBACH, by and through their attorney, John S. Carroll, hereby submit their Counterclaim against Plaintiff CECIL LORAN LEE, and alleges as follows:

EXHIBIT B		
PAGE	OF	9

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

Exhibits for Writ of Certiorari 7-27-19 pg. 57

1. This is the first "responsive" pleading in this case by undersigned Counsel since first appearing as Counsel for the Defendants.

2. Plaintiff CECIL LORAN LEE, also known as C. Loran Lee, Loran Lee, is a resident of the County and State of Hawaii, whose address is 13-811 Malama Street, Pahoa, Hawaii 96778.

3. Defendants LEONARD GEORGE HOROWITZ (hereinafter "Defendant Horowitz") is a resident of the State of Hawaii, whose address is 13-3775 Kalapana Highway, Pahoa, Hawaii, 96778.

4. Defendant JACQUELINE LINDENBACH HOROWITZ (hereinafter "Defendant Horowitz") is a resident of the State of Hawaii, whose address is 13-3775 Kalapana Highway, Pahoa, Hawaii, 96778.

5. Defendant THE ROYAL BLOODLINE OF DAVID (hereinafter "Defendant RBD") is a Washington nonprofit corporation, whose mailing address is P. O. Box 1739, Newport, Washington, 99156.

6. Defendant JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10; DOE ENTITIES 1-10, and DOE GOVERNMENTAL UNITS 1-10, (hereinafter "Defendants DOE") are persons, corporations, entities, agents, partners, joint venturers or governmental units whose names, identities,

capacities, activities and/or responsibilities are currently not discovered.

7. The real property, which is the major issue in this lawsuit is designated on the tax maps for the State of Hawaii as TMK: (3)1-3-001:049 and (3)1-3-001:043 and is situated in the County and State of Hawaii and is within jurisdiction of this Court. A description of the real property is contained in a mortgage, which is attached hereto as Exhibit A.

8. On or about January 15, 2004, Defendants for and in consideration of a loan made by Plaintiff Lee to Defendant in the sum of three hundred fifty thousand and no/100 dollars (\$350,000.00), made, executed and delivered to Plaintiff Lee the Mortgage and Promissory Note in a like sum, all in their names in accordance with the terms specified in said Mortgage and Promissory Note, a copy which is attached hereto as Exhibit A and made a part hereof.

9. On or about January 15, 2004, as the execution of the Mortgage and Promissory Note mentioned hereinabove, and as part of the same transaction and for the purposes of securing the repayment to Plaintiff Lee of the principal and interest set forth in said Mortgage and Promissory Note, together with all other indebtedness now or to become owing by the Defendants, as Mortgagor, made, executed and delivered to Plaintiff Lee as

Mortgagee, a Mortgage dated January 15, 2004, recorded in the Office of the Assistant Registrar of the Bureau of Conveyances of the State of Hawaii as Document No. 2004-014441, a copy of the Mortgage is attached as Exh. A.

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

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

12. On or about August 4, 2005, this Court entered a Judgment in favor of Phillip Maise.

13. By that Judgment Defendant Horowitz was ordered to pay to Phillip Maise the amount of money, which was equivalent to the monthly mortgage payments due to Plaintiff Lee had a judgment not be entered in favor of Phillip Maise. Maise v. Lee; Civil No. 01-1-444.

A. Misrepresentation and Fraud

1. Plaintiff Lee's Complaint was based on misrepresentation. In the process of fulfilling the obligations incurred in the purchase of the subject properties, two hundred thousand and no/100 dollars (\$200,000.00) was required to be put into an escrow account. At one point, [eighty five thousand and no/100 dollars (\$85,000.00)] was needed by the Plaintiff Lee. He had to pay off a government lien because of a fine, which was levied against him for illegal growth of marijuana. During this period of time, Plaintiff Lee was very cooperative and willing to help the Horowitz group. Horowitz agreed to allow Lee to take \$85,000.00 prior to the time escrow was scheduled to close.

2. An Agreement for closing Escrow was prepared and is attached hereto as Exhibit B. The basis for the agreement was that there would be cooperation and amicable involvement with construction of improvements without the Seller's approval. This document was altered and filed as part of the Complaint against Horowitz in his Complaint for Foreclosure filed on June 15, 2005. See, Exh. B. A copy of the original was sent to the Attorney for Defendant Lee to insure he knew the document had been altered. Lee's Attorney failed to recognize or ignored the fact that his attached Exhibit was an altered document. He attached it to the Complaint stating that Horowitz amended the

document, which was filed with the Complaint, which is in fact the original one. Thus, Lee claimed that Defendant Horowitz had committed a form of perjury and fraud. This false claim was part of the underpinning upon which the Entry of Default was made. Lee and his Counsel worked together to file a false claim. These actions violate the provisions of HRCF Rule 11(a)(3).

3. In addition, to the above, Plaintiff Lee wrote letters to Defendant Horowitz stating that he would cooperate in the building of a swimming pool. Lee claimed he would help Horowitz find a site for the pool. Shortly thereafter, Lee filed his complaint, which effectively stopped pool construction and caused Horowitz to lose in excess of \$5,000.00 in the process.

B. Abuse of Process and Malicious Prosecution

1. Defendants Horowitz hereby incorporate by reference all of the above counts and further complain that Plaintiff LEE knowingly and willfully asked his attorney to file a complaint, which was clearly based on fraud and deception. These acts violate the laws, which prohibit abuse of process, and malicious prosecution.

Subsequent to the opening of Escrow, there was two hundred thousand and no/100 dollars (\$200,000.00) in the escrow account. Lee needed the eighty five thousand and no/100 dollars (\$85,000.00) to pay to the Federal Government to release a lien,

asserted by the U.S. Government. Lee made promises which are set forth in the Agreement For Closing Escrow. The eighty five thousand and no/100 dollars (\$85,000.00) was disbursed to Lee from Escrow before the closing of escrow contrary to the typical practice because of the representations of Defendant Lee to Horowitz. The preparation of the agreement and pretense of friendship to obtain the \$85,000.00 was a fraudulent inducement into entering into the Agreement For Closing Escrow. In addition to fraud, these acts support allegations in this counterclaim for abuse of process and malicious prosecution.

WHEREFORE, Defendants HOROWITZ and ROYAL BLOODLINE OF DAVID pray:

1. That process issues herein citing and summoning Plaintiff CECIL LORAN LEE to respond to the Counterclaims.
2. That upon a hearing that there be ascertained a total amount currently due to Lee, if anything after the Court has awarded special, general and punitive damages against LEE including interest, advances, all costs and attorneys' fees.
3. That the Court determine the exact amount, which is now owed for satisfaction of the mortgage on said property and whether it is to be paid to Maise or Lee or both and in what amounts.

4. That upon the payment of that Court ordered amount by Horowitz, both Lee and Maise shall be ordered to execute whatever deeds, releases, or other documents are necessary to insure that Horowitz Defendants take the title to said properties unencumbered by any interests that currently lie in either Maise or Lee or that otherwise cloud title to the real properties at issue.

5. That Defendant HOROWITZ has whatever relief, the Court deems just and equitable, including attorney's fees and costs for bringing this action.

DATED: Honolulu, Hawaii 30 June 2006.

John S. Carroll
JOHN S. CARROLL

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

EXHIBIT B
PAGE 8 OF 18

Exhibit 17: Agreement to Close Escrow.

Legal Addendum to the DROA
Escrow 302-00225945-BJI

—Agreement for Closing Escrow—

Be it declared, hereby, that The Royal Bloodline of David, Buyer of the escrow Property identified by Tax Map Key No. 1-3-001:049 and 043, the DROA of which is currently being serviced by the Island Title Company (escrow 302-00225945-BJI), agrees to pay the Seller, Mr. C. Loren Lee (aka Loren Lee), the sum of \$25,000 as payment upon fulfilling the following terms and conditions:

- 1) Seller agrees by this agreement that the mortgage granted to the Buyer by the Seller will not be called, and the Property will not be foreclosed upon, for any reason other than failure to make payments in a timely fashion as stated in the mortgage agreement. For example: a) the construction of improvements may be made without Seller's approval without having a foreclosure of the mortgage; b) if the Buyer-Borrower fails to keep hurricane, flood, or public liability insurance on the property.
- 2) Pending payment in full of the \$25,000, Mr. Lee will interact amiably with the Buyer, administrative staff of the Property (if any), and guests on the Property (if any) at all times.
- 3) Mr. Lee shall provide a quit claim to all rights to the trailer and Hostel property (the underlying land sometimes referred to as the .89 acre parcel determined as per EXHIBIT B of the DROA, as well as improvements thereon).
- 4) All prior discussions and agreements concerning the lease of any of the Property being purchased by Buyer is void and no longer of any effect. Unless the Buyer and Seller enter into a future written agreement, Buyer has no current obligation to lease, rent, or otherwise allow the Seller to occupy any of the Property being purchased including the .89 acre parcel detailed in Exhibit B of the DROA.

The \$25,000 will be paid to the Seller upon the Seller delivering a release of the purchase money mortgage security, the \$350,000.00 note, to the Buyer. At that time, the Buyer shall have the option to pay the \$25,000 in either of the following ways:

- a) payment in full at the time of delivery of the release, and
- b) by giving Buyer a unsecured promissory note for \$25,000 payable without prepayment penalty in monthly payments over five years at five percent (5%) interest per annum; with the first monthly payment due one month from the date of delivery of the release of the purchase money mortgage.

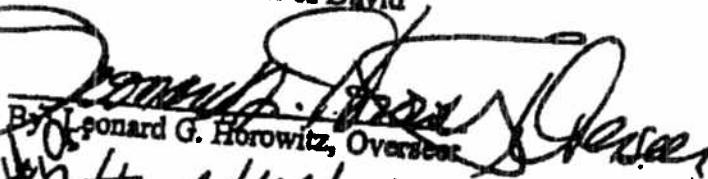
EXHIBIT B
PAGE 9 OF 18

Exhibit Page 1 of 4

EXHIBIT A

Accepted by:

The Royal Bloodline of David

By  Leonard G. Horowitz, Overseer

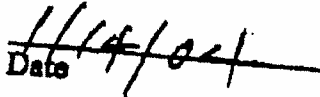
Date

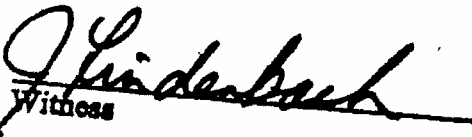
 1/14/04



C. Loren Lee, Seller

Date

 1/14/04



Witness

EXHIBIT

B

PAGE

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OF

8

Page 2 of 4

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N. MOROWITZ

13-2006

Not Indented

Legal Addendum to the DROA
Escrow 302-00225945-BJI

This is New Roman

-Agreement for Closing Escrow-

Be it declared, hereby, that The Royal Bloodline of David, Buyer of the escrow Property identified by Tax Map Key No. V-3-001:049 and 043, the DROA of which is currently being serviced by the Island Title Company (escrow 302-00225945-BK.1) agrees to pay the Seller, Mr. C. Loren Lee (aka Loren Lee), the sum of \$25,000 as payment upon fulfilling the following terms and conditions:

- 1) Pending payment in full of the \$25,000, Mr. Lee will interact amiably with the Buyer, administrative staff of the Property (if any), and guests on the Property (if any) at all times.
- 2) Mr. Lee shall provide a quit claim to all rights to the trailer and Hostel property (the underlying land sometimes referred to as the .89 acre parcel determined as per EXHIBIT B of the DROA, as well as improvements thereon).
- 3) All prior discussions and agreements concerning the lease of any of the Property being purchased by Buyer is void and no longer of any effect. Unless the Buyer and Seller enter into a future written agreement, Buyer has no current obligation to lease, rent, or otherwise allow the Seller to occupy any of the Property being purchased including the .89 acre parcel detailed in Exhibit B of the DROA.

The \$25,000 will be paid to the Seller upon the Seller delivering a release of the purchase money mortgage security, the \$350,000.00 note, to the Buyer. At that time, the Buyer shall have the option to pay the \$25,000 in either of the following ways:

- a) payment in full at the time of delivery of the release, and
- b) by giving Buyer a unsecured promissary note for \$25,000 payable without prepayment penalty in monthly payments over five years at five percent (5%) interest per annum; with the first monthly payment due one month from the date of delivery of the release of the purchase money mortgage.

EXHIBIT B
PAGE 11 OF 18

Large Gap

Exhibit 3
Page 3 of 4

EXHIBIT

PAGE 1 OF 2

Exhibits for Writ of Certiorari 7-27-19 pg. 67

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Wrong Initials

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Extra Space

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DR. LAW HOROWITZ

APR 23 2006

P.O.

Accepted by:

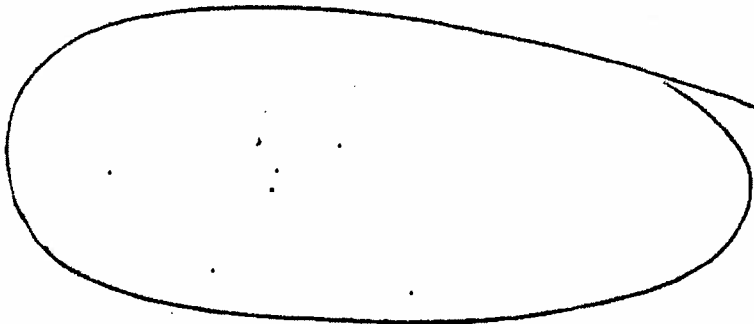
Post Script "B"

The Royal Bloodline of David

By Leonard G. Horowitz, Overseer

Date 1/14/04

C. Lonsa Lee, Seller



Missing Witness

PAGE 12 OF 18

PAGE 12 OF 18

EXHIBIT B
PAGE 12 OF 18

Missing Page #

Exhibit 3
Page 444

**Legal Addendum to the DROA
Escrow 302-00225945-BJI**

—Agreement for Closing Escrow—

Be it declared, hereby, that The Royal Bloodline of David, Buyer of the escrow Property identified by Tax Map Key No. 1-3-001:049 and 043, the DROA of which is currently being serviced by the Island Title Company (escrow 302-00225945-BJI), agrees to pay the Seller, Mr. C. Loren Lee (aka Loren Lee), the sum of \$25,000 as payment upon fulfilling the following terms and conditions:

- 1) Seller agrees by this agreement that the mortgage granted to the Buyer by the Seller will not be called, and the Property will not be foreclosed upon, for any reason other than failure to make payments in a timely fashion as stated in the mortgage agreement. For example: a) the construction of improvements may be made without Seller's approval without having a foreclosure of the mortgage; b) if the Buyer-Borrower fails to keep hurricane, flood, or public liability insurance on the property.
- 2) Pending payment in full of the \$25,000, Mr. Lee will interact amiably with the Buyer, administrative staff of the Property (if any), and guests on the Property (if any) at all times.
- 3) Mr. Lee shall provide a quit claim to all rights to the trailer and Hostel property (the underlying land sometimes referred to as the .89 acre parcel determined as per EXHIBIT B of the DROA, as well as improvements thereon).
- 4) All prior discussions and agreements concerning the lease of any of the Property being purchased by Buyer is void and no longer of any effect. Unless the Buyer and Seller enter into a future written agreement, Buyer has no current obligation to lease, rent, or otherwise allow the Seller to occupy any of the Property being purchased including the .89 acre parcel detailed in Exhibit B of the DROA.

The \$25,000 will be paid to the Seller upon the Seller delivering a release of the purchase money mortgage security, the \$350,000.00 note, to the Buyer. At that time, the Buyer shall have the option to pay the \$25,000 in either of the following ways:

- a) payment in full at the time of delivery of the release, and
- b) by giving Buyer a unsecured promissory note for \$25,000 payable without prepayment penalty in monthly payments over five years at five percent (5%) interest per annum; with the first monthly payment due one month from the date of delivery of the release of the purchase money mortgage.

**I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL
CONTAINED IN THE ABOVE NUMBERED ESCROW FILE.**

ISLAND TITLE CORPORATION

BY: Karen Andrews
KAREN ANDREWS
VP, ESCROW DIVISION MANAGER

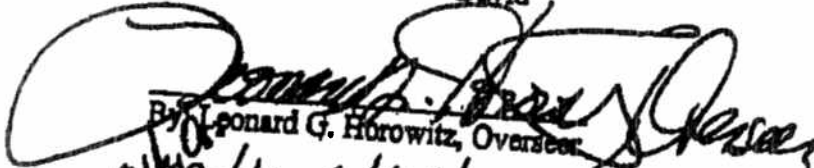
EXHIBIT B

PAGE 13 OF 18

EXHIBIT B

Accepted by:

The Royal Bloodline of David


By Leonard G. Horowitz, Overseer
Date 11/14/04



C. Loren Lee, Seller

Date 11/14/04


Witness

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL
CONTAINED IN THE ABOVE NUMBERED ESCROW FILE.

ISLAND TITLE CORPORATION


BY: 
KAREN ANDREWS
VP, ESCROW DIVISION MANAGER

EXHIBIT B
PAGE 14 OF 18

Mary Martin, Esq.
Clay Chapman Crumpton
Iwamura & Pulice
Attorneys at Law
700 Bishop Street, Suite 2100
Honolulu, HI. 96813

Attorney for Defendant Phillip Maise

DATED: Honolulu, Hawaii 30 June 2006.



JOHN S. CARROLL

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

EXHIBIT B
PAGE 16 OF 18

FILED

JOHN S. CARROLL #0649
345 Queen St., Suite 607
Honolulu, Hawaii 96813
Telephone: (808) 526-9111
Facsimile: (808) 545-3800

2008 MAR 24 PM 12:57
C. GANDALIRA, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

Attorney for Defendants and
Counterclaimants
LEONARD GEORGE HOROWITZ,
JACQUELINE LINDENBACH HOROWITZ AND
THE ROYAL BLOODLINE OF DAVID

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

CECIL LORAN LEE,	)	CIVIL No. 05-1-0196
	)	(Foreclosure)
Plaintiff and)	
Counterclaim-)	
Defendant	)	DEFENDANTS AND
vs.	)	COUNTERCLAIMANTS LEONARD
	)	GEORGE HOROWITZ, JACQUELINE
LEONARD GEORGE HOROWITZ,	)	LINDENBACH HOROWITZ AND THE
JACQUELINE LINDENBACH	)	ROYAL BLOODLINE OF DAVID'S
HOROWITZ AND THE ROYAL	)	MEMORANDUM IN OPPOSITION TO
BLOODLINE OF DAVID, JOHN	)	PLAINTIFF'S MOTION FOR
DOES 1-10, JANE DOES 1-10,	)	JUDGMENT AS A MATTER OF LAW OR
DOE PARTNERSHIPS 1-10, DOE	)	ALTERNATIVELY NEW TRIAL ON
CORPORATIONS 1-10, DOE	)	ISSUE OF DEFENDANT'S JULY 6 TH ,
ENTITIES, DOE GOVERNMENTAL	)	2006 COUNTERCLAIM FOR FRAUD
UNITS,	)	AND MISREPRESENTATION, FILED
	)	HEREIN ON MARCH 11, 2008;
Defendants and	)	CERTIFICATE OF SERVICE
Counterclaimants.)	
	)	(Non-Hearing Motion)
)	
	)	Trial: February 12, 2008
)	
	)	Judge: Honorable Ronald Ibarra
)	
)	

Exhibit B

**DEFENDANTS AND COUNTERCLAIMANTS LEONARD GEORGE HOROWITZ,
JACQUELINE LINDENBACH HOROWITZ AND THE ROYAL BLOODLINE OF
DAVID'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR
JUDGMENT AS A MATTER OF LAW OR ALTERNATIVELY NEW TRIAL ON ISSUE
OF DEFENDANT'S JULY 6TH, 2006 COUNTERCLAIM FOR FRAUD AND
MISREPRESENTATION, FILED HEREIN ON MARCH 11, 2008**

I.
INTRODUCTION

DEFENDANTS AND COUNTERCLAIMANTS LEONARD GEORGE HOROWITZ, JACQUELINE LINDENBACH HOROWITZ AND THE ROYAL BLOODLINE OF DAVID, by and through their attorney, John S. Carroll and hereby opposes to Plaintiff's Motion For Judgment as a Matter of Law or Alternatively New Trial on Issue of Defendant's July 6th, 2006 Counterclaim for Fraud and Misrepresentation, filed herein on March 11, 2008 (hereinafter "motion").

II.
FACTUAL SUMMARY

A. Plaintiff's Motion is Untimely and Does Not Comply with the Rule 50 of the Hawaii Rules of Civil Procedure.

An instruction stated by the Court indicated that parties should submit Post Trial Motions the week of February 25th, 2008. The Plaintiff's current motion is filed on March 11, 2008 and not timely filed.

Rule 50(a) of the Hawaii Rules of Civil Procedure which is the basis for the utilization of this Rule states that

. . . "(2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment

sought and the law and the facts on which the moving party is entitled to judgment."

There is no final judgment with respect to this matter thus filing of a Motion for a new trial is not timely. The Plaintiff failed to move for a judgment NOV at the time the special verdict of the jury was announced as is required by the Rules for assertion of an NOV motion. The procedural requirements of this particular rule are not only not met but they are not even mentioned in the body of his motion or memorandum. This lengthy diatribe is a total waste of the Court's time, Intervenor's time and the time of the undersigned Counsel.

B. Plaintiff's Motion is Frivolous

This motion is frivolous in nature. Defendant's Counsel prays the Court will find in accord with the provisions of Hawaii Revised Statutes **§607-14.5** specifically states the following regarding award of attorney's fees:

"...the Court **upon a specific finding** that all or a portion of the party's claim or defense was frivolous as provided in subsection (b). (Emphasis added).


(b) "...In determining the award of attorney's fees and costs and the amounts to be awarded, the court must find in writing that all or a portion of the claims or defenses made by the party are frivolous and are not reasonably supported by the facts and the law in the civil action".

In this case Plaintiff's motion is frivolous.

II.
CONCLUSION

Based on all of the above, the records and files herein, Plaintiff's motion should be denied. Attorney's fees and costs should be awarded to Defendant's based on the frivolous nature of this claim.

DATED: Honolulu, Hawaii, 21 March 2008



JOHN S. CARROLL
Attorney for Defendants
LEONARD GEORGE HOROWITZ,
JACQUELINE LINDENBACH HOROWITZ AND
THE ROYAL BLOODLINE OF DAVID

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

CECIL LORAN LEE,	)	CIVIL No. 05-1-0196
	)	(Foreclosure)
Plaintiff and)	
Counterclaim-)	
Defendant)	
vs.	)	CERTIFICATE OF SERVICE
)	
LEONARD GEORGE HOROWITZ,)	
JACQUELINE LINDENBACH)	
HOROWITZ AND THE ROYAL)	
BLOODLINE OF DAVID, JOHN)	
DOES 1-10, JANE DOES 1-10,)	
DOE PARTNERSHIPS 1-10, DOE)	
CORPORATIONS 1-10, DOE)	
ENTITIES, DOE GOVERNMENTAL)	
UNITS,)	
)	
Defendants and)	
Counterclaimants.)	
)	

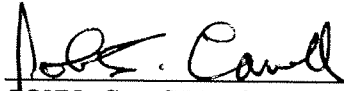
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was served on the following party or person at his last known address by depositing the same in the U.S. mail, postage prepaid on this date:

Dan O'Phelan, Esq.
Law Offices of Dan O'Phelan P.C.
319 Haili Street
Hilo, Hawaii 96720
Attorney for Plaintiff
CECIL LORAN LEE

PHILIP B. MAISE
12-118 Kipuka Street
Pahoa, Hawaii 96778-8029
Intervenor Pro Se

DATED: Honolulu, Hawaii March 21, 2008.

A handwritten signature in black ink, appearing to read "John S. Carroll", is written over a horizontal line.

JOHN S. CARROLL
Attorney for Defendants and
Counterclaimants
LEONARD GEORGE HOROWITZ,
JACQUELINE LINDENBACH HOROWITZ
AND THE ROYAL BLOODLINE OF DAVID

10
FILED

cc:
J. Carroll, Esq.
C. Lee
P. Maise

2008 OCT 15 PM 2: 50

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

[Signature]
L. KITAHARA, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

CECIL LORAN LEE,	)	CIVIL NO. 05-1-196
)	
Plaintiff and	)	ORDER GRANTING PLAINTIFF'S
Counterclaim Defendant	)	MOTION FOR JUDGMENT AS A
	)	MATTER OF LAW OR
vs.	)	ALTERNATIVELY NEW TRIAL ON
	)	ISSUE OF DEFENDANT'S JULY 6 TH ,
LEONARD GEORGE HOROWITZ,	)	2006 COUNTERCLAIM FOR FRAUD
JACQUELINE LINDENBACH HOROWITZ	)	AND MISREPRESENTATION
AND THE ROYAL BLOODLINE OF DAVID,)	
JOHN DOES 1-10, JANE DOES 1-10, DOE	)	JUDGE RONALD IBARRA
PARTNERSHIPS 1-10, DOE)	
CORPORATIONS 1-10, DOE ENTITIES,)	
DOE GOVERNMENTAL UNITS,)	
)	
Defendants and)	
Counterclaimants.)	
)	

ORDER GRANTING PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF
LAW OR ALTERNATIVELY NEW TRIAL ON ISSUE OF DEFENDANT'S JULY 6TH,
2006 COUNTERCLAIM FOR FRAUD AND MISREPRESENTATION

This matter, having come before the Honorable Ronald Ibarra, pursuant to Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on Issue of Defendant's July 6th, 2006, Counterclaim for Fraud and Misrepresentation, filed on March 11, 2008 and heard on August 12, 2008. Cecil Loran Lee appeared pro se as Plaintiff and John Carroll, Esq. appeared on behalf of Defendants. The Court having heard the argument at hearing; and having reviewed the Memorandum in Support of Motion; Exhibits A-F; and Declaration of Dan O'Phelan attached; Defendants and Counterclaimants Leonard George Horowitz and The Royal Bloodline of David's Memorandum in Opposition to Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on Issue of Defendant's July 6th

Exhibit C

Exhibits for Writ of Certiori 7-27-19 pg. 79

2006 Counterclaim for Fraud and Misrepresentation, filed herein on March 11, 2008, filed on March 24, 2008; Notice of Re-Submission of Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on Issue of Defendant's July 6th, 2006 Counterclaim for Fraud and Misrepresentation; Memorandum in Support of Motion; Exhibits A-G; Declaration of Dan O'Phelan, filed on June 26, 2008; and Notice of Resubmission of Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on Issue of Defendant's July 6th, 2006 Counterclaim for Fraud and Misrepresentation; Memorandum in Support of Motion; Exhibits A-F; Declaration of Dan O'Phelan, filed on July 29, 2008; as well as the record and file of the case,

IT IS HEREBY ORDERED, Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on Issue of Defendant's July 6th, 2006, Counterclaim for Fraud and Misrepresentation is GRANTED and judgment in favor of Plaintiff and Counterclaim Defendant shall be entered on the issue of Defendants' Counterclaim for Fraud and Misrepresentation as Defendants and Counterclaimants' failed to plead fraud or misrepresentation as to the sale of the property with particularity.

DATED: Kealakekua, Hawaii 10/14/08.



JUDGE OF THE ABOVE-ENTITLED COURT

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

CECIL LORAN LEE,
Plaintiff,
vs.

LEONARD GEORGE HOROWITZ, ET AL.,
Defendants.

CIVIL NO. 05-1-196

JURY QUESTION NO. 1

THIRD CIRCUIT COURT
STATE OF HAWAII
CLERK

2008 FEB 21 PM 4:48

FILED

JURY QUESTION NO. 1

If someone buys a business that isn't
licensed or permitted and the buying party losses
money due to the misrepresentation is that
legal cause to claim losses as per question #10

Long An

Foreperson

Exhibit 8

MISREPRESENTATION

The misrepresentation must be both false and fraudulent, in order to make the party making it, responsible to the other for damages. It is not every misrepresentation which will make a party liable; when a mere misstatement of a fact has been erroneously made, without fraud, in a casual, improvident communication, respecting a matter which the person to whom the communication was made, and who had an interest in it, should not have taken upon trust, but is bound to inquire himself, and had the means of ascertaining the truth, there would be no responsibility and when the informant was under no legal pledge or obligation as to the precise accuracy and correctness of his statement, the other party can maintain no action for the consequences of that statement, upon which it was his indiscretion to place reliance.

Paul J. Sulla, Jr. (SBN 5398)
2061 Kalaniana'ole Ave.
P. O. Box 5258
Hilo, HI 96720
808-933-3600 telephone
808-933-3601 fax

Attorney for Plaintiff,
CECIL LORAN LEE

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

2009 JUL 16 PM 4:15
HAWAII, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

FILED

CECIL LORAN LEE,

Plaintiff and
Counterclaim-
defendant

vs.

LEONARD GEORGE HOROWITZ, et
al.

Defendant and
Counterclaimants.

Civil No.05-1-196
(Foreclosure)

**MOTION FOR SUBSTITUTION OF
PLAINTIFF; EXHIBIT "A";
DECLARATION OF COUNSEL IN
SUPPORT OF MOTION; EXHIBITS
"1"- "6"; NOTICE OF NON-
HEARING MOTION; CERTIFICATE
OF SERVICE**

MOTION FOR SUBSTITUTION OF PLAINTIFF

Now comes Paul J. Sulla, Jr., attorney for Plaintiff Cecil Loran Lee, deceased, who pursuant to Hawaii Rules of Civil Procedure, Rule 25(a) moves this honorable court for an order substituting *The Office of Overseer, a Corporate Sole and its Successor over and for the Popular Assembly of Revitalize, a Gospel of Believers* with Jason Hester as successor Overseer, as plaintiff in place of Cecil Loran Lee

in the above matter. Cecil Loran Lee died intestate on June 27, 2009. The claim of the plaintiff was not extinguished by the plaintiff's death. See the Proposed Order for Substitution of Plaintiff attached hereto as Exhibit "A".

Prior to Cecil Loran Lee's death he assigned the two Promissory Notes, which are the subject matter of this current action, to a Corporate Sole entitled *The Office of Overseer, a Corporate Sole and its Successor over and for the Popular Assembly of Revitalize, a Gospel of Believers* formed pursuant to Hawaii Revised Statutes, Chapter 419.

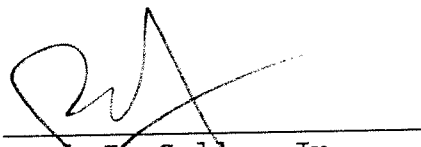
By Assignment of Mortgage dated March 15, 2009, Cecil Loran Lee individually assigned all of his right, title and interest in the Mortgage securing the Promissory Note in the amount of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000) dated January 15, 2004, payable by the defendant Leonard George Horowitz, individually and as Overseer of the Royal Bloodline of David, a Washington non-profit corporation, to the said corporate sole.

The successor Overseer to *The Office of Overseer, a Corporate Sole and its Successor over and for the Popular Assembly of Revitalize, a Gospel of Believers* is Jason Hester of Pahoa, Hawaii, the nephew of Cecil Loran Lee.

Wherefore, the undersigned moves the court for an Order of Substitution of Plaintiff in this subject action substituting *The Office of Overseer, a Corporate Sole and its Successor over and for the Popular Assembly of Revitalize, a Gospel of Believers* with Jason Hester of Pahoa as successor Overseer, as the party plaintiff in the above-captioned matter in place of Cecil Loran Lee, individually, deceased.

Attached to this motion is the Declaration of Paul J. Sulla, Jr. attorney for the deceased Cecil Loran Lee and Exhibits 1-6.

DATED: Hilo, Hawai'i on this 14 day of July, 2009.



Paul J. Sulla, Jr.
Attorney for Plaintiff-
Counterclaim/Defendant

Paul J. Sulla, Jr. (SBN 5398)
2061 Kalaniana'ole Ave.
P. O. Box 5258
Hilo, HI 96720
808-933-3600 telephone
808-933-3601 fax

Attorney for Plaintiff,
CECIL LORAN LEE

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

CECIL LORAN LEE,

Plaintiff and
Counterclaim-
defendant

vs.

LEONARD GEORGE HOROWITZ, et
al.

Defendant and
Counterclaimants.

Civil No.05-1-196
(Foreclosure)

**ORDER FOR SUBSTITUTION OF
PLAINTIFF**

ORDER FOR SUBSTITUTION OF PLAINTIFF

This matter came before the Honorable Judge Ronald.
After review of the pleadings records and documents in the
file the court makes the following order:

IT IS HEREBY ORDERED that *The Office of Overseer, a
Corporate Sole and its Successor Over and for the Popular
Assembly of Revitalize, a Gospel of Believers*, with Jason
Hestor as successor Overseer, is substituted as the party

plaintiff in the above-captioned matter in place of Cecil Loran Lee, individually, deceased.

Dated: Kealahou, Hawaii this ____ day of ____, 2009.

JUDGE OF THE ABOVE-ENTITLED COURT

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

CECIL LORAN LEE,

Plaintiff and
Counterclaim-
defendant

vs.

LEONARD GEORGE HOROWITZ, et
al.

Defendant and
Counterclaimants.

Civil No.05-1-196
(Kona)

**DECLARATION OF COUNSEL IN
SUPPORT OF MOTION**

DECLARATION OF COUNSEL IN SUPPORT OF MOTION

I, Paul J. Sulla, Jr., declare and state as follows:

1. That I am an attorney licensed to practice in the State of Hawaii and am the attorney of records for the Plaintiff Cecil Loran Lee, deceased.

2. Cecil Loran Lee passes away on June 27, 2009 in the state of Arizona. A true and correct copy of the newspaper obituary of Cecil Loran Lee is attached hereto as **Exhibit "1"**.

3. Prior to Mr. Lee's death, on or about May 8, 2009, he created a corporate sole pursuant to Hawaii Revised Statutes, Chapter 419, entitled *The Office of Overseer, a Corporate Sole and its Successor over and for the Popular Assembly of Revitalize, a Gospel of Believers*, naming himself

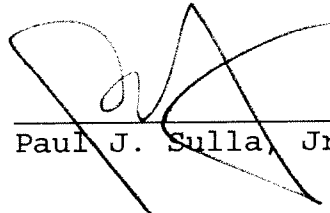
as the incumbent Overseer and his nephew, Jason Hester as successor by the Articles of Incorporation. A true and correct copy of the Articles of Incorporation are attached hereto as **Exhibit "2"**.

4. On May 15, 2009, Cecil Loran Lee assigned all his right, title and interest to the two (2) Promissory Notes and Mortgage made by the defendants, which are the subject matter of the instant action, to Cecil Loran Lee, Overseer, The *Office of Overseer, a Corporate Sole and its Successor over and for the Popular Assembly of Revitalize, a Gospel of Believers*, a Hawaii corporate sole, under which Cecil Loran Lee was the original incumbent Overseer. True and correct copies of the Assignment of Promissory Note(s) are attached as **Exhibits "3" and "4"**. A true and correct copy of the Assignment of Mortgage is attached hereto as **Exhibit "5"**.

5. Upon Cecil Loran Lee's death on June 27, 2009, Jason Hester of Pahoa, Hawaii became the successor Overseer of the corporate sole, *Office of Overseer, a Corporate Sole and its Successor over and for the Popular Assembly of Revitalize, a Gospel of Believers* in place of Cecil Loran Lee. A Certificate of Incumbency has been prepared pursuant to Hawaii Revised Statutes Chapter 419.5 to be filed with the Department of Commerce and Consumer Affairs- Business Registration to replace Mr. Lee with Jason Hester as the Overseer of the said

corporate sole. A true and correct copy of the Certificate of Incumbency is attached hereto as Exhibit "6".

Signed as true and correct under the penalties of law of the State of Hawaii this 14 day of July, 2009.



Paul J. Sulla, Jr.

135

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July 13, 2009

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Cecil Loran Lee

7/13/2009



Cecil Loran Lee, 78, died Saturday, June 27, 2009, in Eagar. He was born Aug. 27, 1930, in Nutrioso to Ella Maxwell and Marion Lee. Loran resided in Pahoa, Hawaii.

Loran was an educator and businessman for 50 years. He was an accomplished pianist and organist. He received a doctorate of music from Brigham Young University and a doctorate from UCLA in college

administration.

Loran loved teaching and performing music. He was a certified reflexologist and wrote a book on reflexology.

Loran was a member of the Church of Jesus Christ of Latter-day Saints and enjoyed the wonderful experience of serving as an ordinance worker in the Kona Hawaii Temple. He also served missions for the church in El Salvador and San Francisco.

Loran is survived by his son, Clark Lee of Mesa; sisters Inez LaVerne (E. Kay) Slade of Eagar, Gwen (Murray) Hillman of Nutrioso and Ida Mae (Niles) Jones of Queen Creek; and four granddaughters. He was preceded in death by his parents, brothers Arthur Lee, Maxie Lee and Oran Lee and sister Iris LeSueur.

A graveside service was held Wednesday, July 1, at the Nutrioso Cemetery.

Burnham Mortuary of Eagar handled the arrangements.

To send condolences to the family, visit burnhammortuary.com.

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Reader Comments

Added: Thursday July 09, 2009 at 11:00 PM EST

delightful personality

oh, when i was 12, i had such a 'crush' on him; he was so handsome and charming...he could talk the birds out of the trees, he once talked us into swimming across the salt river canyon where his nephew



READER POLL

Do you support plans to overhaul health care in the United States?

☐ Yes. Something has to be done to make it more affordable.

☐ No. The government shouldn't get involved. It will just degrade the quality of care.

☐ Maybe. It depends on the price tag and benefits.

☐ No opinion.

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FISHING/OUTDOORS
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EXHIBIT

7/13/2009

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1

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Business Registration Division
1010 Richard Street
PO Box 40, Honolulu, HI 96810
ARTICLES OF INCORPORATION
CORPORATION SOLE FOR ECCLESIASTICAL PURPOSES
(Section 419, Hawaii Revised Statutes)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned desires to form a Corporation Sole for Ecclesiastical purposes under the laws of the State of Hawaii and does certify as follows:

Article I

The name of the Corporation Sole is:

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

Article II

Cecil Loran Lee of 13-811 Malama Street, Pahoa, HI 96778, duly authorized by the rules and regulations of the church **REVITALIZE, A GOSPEL OF BELIEVERS**, a Hawaiian non-profit corporation in the nature of Ecclesia, hereby forms **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS** and is the initial holder the office of Overseer hereunder.

Article III

The principal office of **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITLIZE, A GOSPEL OF BELIEVERS** is 13-811 Malama Street Pahoa, HI 96778. The Island of Hawaii is the boundary of the district subject to the ecclesiastical jurisdiction of the Overseer.

Article IV

The period of duration of the corporate sole is perpetual.

EXHIBIT "2"

2

05/29/200920052

05/29/200920052

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



James M. Redford
DIRECTOR OF COMMERCE AND
CONSUMER AFFAIRS

Date: May 29, 2009

05/29/200920052

Article V

The manner in which any vacancy occurring in the incumbency of **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**, is required by the discipline of **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**, to be filled, through an appointment of Jason Hester of Pahoa, Hawaii as designated successor, and if said designated successor is unable or unwilling to serve, then through an appointment by the support and blessings by a formal "Popular Assembly" of clerical staff and the general membership of **REVITALIZE, A GOSPEL OF BELIEVERS**, as to the named designated successor. The corporate sole shall have continuity of existence, notwithstanding vacancies in the incumbency thereof, and during the period of any vacancy, have the same capacity to receive and take gifts, bequests, devise or conveyance of property as though there were no vacancy.

Article VI

THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS shall have all the powers set forth in HRS c. 419-3 and 414D-52 including the power to contract in the same manner and to the same extent as any man, male or female, and may sue and be sued, and may defend in all courts and places, in all matters and proceedings whatsoever, and shall have the authority to appoint attorneys in fact. It has in any venue and jurisdiction authority to borrow money, give promissory notes therefore, to deal in every way in prime notes, noble metals, planchets, commercial liens, stamps, mortgages, all manner of banking, and to secure the payment of same by mortgage or other lien upon property, real and person, enter into insurance and assurance agreements, own life insurance policies, and purchase and sell contracts and other commercial instruments. It shall have the authority to buy, sell, lease, and mortgage and in every way deal in real, personal and mixed property in the same manner as a "natural person" or covenant child of God. It may appoint legal counsel, licenses and/or unlicensed, but any professional or nonprofessional account services, legal or other counsel employed shall be utilized in a capacity never greater than subordinate co-counsel in any and all litigious matters whether private, corporate, local, national or international, in order to protect the right of the corporation sole to address all courts, hearings, assemblies, etc., as superior co-counsel.

05/29/200920052

05/29/200920052

Article VII

The presiding Overseer of **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS** can be removed by a 2/3 vote at a meeting of the Popular Assembly of **REVITALIZE, A GOSPEL OF BELIEVERS**, a Hawaiian non-profit corporation in the nature of Ecclesia, duly called for that purpose, provided that a successor Overseer is selected at that meeting.

The presiding Overseer may not amend or alter this Article VII without the 2/3 vote at a meeting of the Popular Assembly of **REVITALIZE, A GOSPEL OF BELIEVERS** duly called for that purpose.

Article VIII

The presiding Overseer, after prayers and counsel from The Popular Assembly of **REVITALIZE, A GOSPEL OF BELIEVERS**, may at any time amend these Articles, change the name, the term of existence, the boundaries of the district subject to its jurisdiction, its place of office, the manner of filling vacancies, its powers, or any provision of the Articles for regulation and affairs of the corporation and may by Amendment to these Articles, make provision for any act authorized for a corporate sole under HRS c. 419. Such Amendment shall be effective upon recordation with the State of Hawaii.

Article IX

The purpose of this corporation sole is to do those things which serve to promote Celestial values, the principles of Love, Harmony, Truth and Justice, the love of our brothers and sisters as ourselves, the comfort, happiness and improvement of Man and Woman, with special emphasis upon home church studies, research and education of those rights secured by God for all mankind and of the laws and principles of God for the benefit of the Members of the Assembly and the Community at large. This corporate sole is not organized for profit.

Article X

All property held by the above named corporation sole as **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITLIZE, A GOSPEL OF BELIEVERS**, shall be held for the use, purpose, and benefit of **REVITLIZE, A GOSPEL OF BELIEVERS**, a Hawaiian non-profit corporation in the nature of Ecclesia.

05/29/200920052

I certify upon the penalties of perjury pursuant to Section 419 of the Hawaii Revised Statutes that I have read the above statements and that the same are true and correct.

Witness my hand this 8 day of May, 2009.

CECIL LORAN LEE

Cecil Loran Lee

CERTIFICATE OF EVIDENCE OF APPOINTMENT

Asseveration

State of Hawaii)

)

Signed and Sealed

County of Hawaii)

FILED 05/28/2009 05:41 PM
Business Registration Division
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
State of Hawaii



Gwen Hillman, Scribe, on the 8th day of the fifth month in the Year of our Lord Jesus Christ, the Redeemer, Two Thousand Nine having first stated by prayer and conscience, avers, deposes and says:

Cecil Loran Lee is the duly appointed, qualified OVERSEER of THE OFFICE OF OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, by virtue of Spiritually and Divinely inspired appointment and he is, and has been, sustained as such by the general membership of said "body of believers" of REVITALIZE, A GOSPEL OF BELIEVERS a Hawaiian incorporated Church assembly, in the nature of Ecclesia, and THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, in a special Popular Assembly meeting on the 8 day of the fifth month in the Year of our Lord Jesus Christ, the Redeemer, Two Thousand Nine as evidenced by an official recording of such appointment signed by Gwen Hillman, Scribe of THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS.

RECEIVED MAY-26-2009 11:27

FROM-

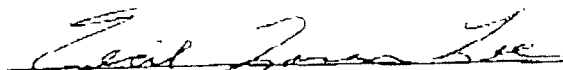
TO-DCCA BREG

PAGE 013

General Certification

I, Cecil Loran Lee, the named Overseer in **The Office of the Overseer a corporation sole and his successors, over/for The Popular Assembly of REVITALIZE, a Gospel of Believers** the Affiant herein, certify, attest and affirm that I have read the foregoing and know the content thereof and that it is true, correct, materially complete, certain, not misleading, all to the very best of my belief, and this I solemnly pledge declare and affirm before my Creator.

In witness whereof, said **Cecil Loran Lee**, The Overseer, of a corporation sole, has hereunto set his hand and seal, on this, the 8 day of May in the Year of Jesus Christ our Lord, the Redeemer, two thousand nine.


Here.

Affix Seal

Cecil Loran Lee, the Overseer
The Office of the Overseer
a corporation sole and his successors,
over/for **The Popular Assembly of REVITALIZE, A GOSPEL OF BELIEVERS** an incorporated Church assembly,
in the nature of Ecclesia

STATEMENT OF INCUMBENCY

THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS.

BE IT KNOWN BY THESE PRESENTS that Cecil Loran Lee of 13-811 Malama Street Pahoa, HI 96778 is the current incumbent OVERSEER for the corporation sole known as **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**. This Statement of Incumbency is provided pursuant to Hawaii Revised Statutes c.419-5.

Pursuant to Cecil Loran Lee's right to worship Almighty God, in accordance with the dictates of his own conscience, and having, humbly, taken possession of The Office of OVERSEER on the 28 day of May in the year two thousand nine, the OVERSEER does hereby certify, and adopt this "Statement of Incumbency".

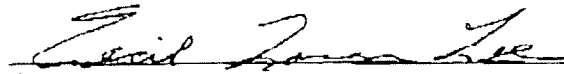
In accordance with the disciplines of REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaiian non-profit corporation, in the nature of Ecclesia located in Pahoa, County and State of Hawaii having established said corporation sole **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS** and by this Statement of Incumbency hereby notifies the State of Hawaii that Cecil Loran Lee is the duly appointed incumbent OVERSEER.

THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, does hereby establish that Cecil Loran Lee is the duly appointed incumbent OVERSEER of this corporate sole created for the purposes of administering and managing the affairs, property, and temporalities of REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaiian non-profit corporation in the nature of Ecclesia.

General Certification

I, Cecil Loran Lee, the named Overseer in The Office of the Overseer a corporation sole and his successors, over/for The Popular Assembly of REVITALIZE, a Gospel of Believers the Affiant herein, certify, attest and affirm that I have read the foregoing and know the content thereof and that it is true, correct, materially complete, certain, not misleading, all to the very best of my belief, and this I solemnly pledge declare and affirm before my Creator.

In witness whereof, said Cecil Loran Lee, The Overseer, of a corporation sole, has hereunto set his hand and seal, on this, the 28 day of May in the Year of Jesus Christ our Lord, the Redeemer, two thousand nine.



Here. Affix Seal

Cecil Loran Lee, the Overseer
The Office of the Overseer
a corporation sole and his successors,
over/for The Popular Assembly of REVITALIZE, A GOSPEL OF
BELIEVERS an incorporated Church assembly,
in the nature of Ecclesia

Assignment of Promissory Note

THIS ASSIGNMENT dated May 15, 2009

BETWEEN:

LORAN LEE a/k/a C. LORAN LEE

(the "Assignor")

-and-

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

(the "Assignee")

WHEREAS:

- (A) THE ROYAL BLOODLINE OF DAVID, a Washington nonprofit corporation (the "Debtor") is indebted to the Assignor in the sum of Three Hundred Fifty Thousand Dollars (\$350,000.00) (the "Debt"), see copies attached as Exhibit "A";
- (B) The Debt is secured by a Mortgage recorded with the Bureau of Conveyances for the State of Hawaii, Document No. 2004-014441 ("Mortgage"), concerning certain premises consisting of 17.87 acres more or less located at TMK (3) 1-3-001:049 and 043, Kalapana, County and State of Hawaii; and
- (C) The Assignor wishes to assign to the Assignee, and the Assignee wishes to receive an assignment of the Debt;

NOW THEREFORE in consideration of the recitals, the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. The Assignor hereby assigns, transfers and sets over unto the Assignee the Debt together with the Mortgage and all advantage and benefit to be derived therefrom.
2. As consideration for the assignment, the Assignee agrees to pay to the Assignor, concurrently with the execution of this Agreement, the sum of \$10.00 and other valuable consideration.
3. The Assignor hereby acknowledges, covenants and agrees that the Debt is justly and truly owing by the Debtor to the Assignor.

Assignment of Promissory Note

THIS ASSIGNMENT dated May 15, 2009

BETWEEN:

LORAN LEE a/k/a C. LORAN LEE

(the "Assignor")

-and-

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

(the "Assignee")

WHEREAS:

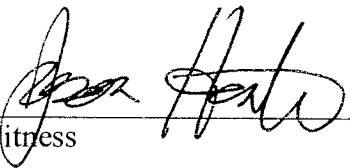
- (A) THE ROYAL BLOODLINE OF DAVID, a Washington nonprofit corporation (the "Debtor") is indebted to the Assignor in the sum of Twenty Five Thousand Dollars (\$25,000.00) (the "Debt"), see copies attached as Exhibit "A";
- (B) The Debt is secured by a Mortgage recorded with the Bureau of Conveyances for the State of Hawaii, Document No. 2004-014441 ("Mortgage"), concerning certain premises consisting of 17.87 acres more or less located at TMK (3) 1-3-001:049 and 043, Kalapana, County and State of Hawaii; and
- (C) The Assignor wishes to assign to the Assignee, and the Assignee wishes to receive an assignment of the Debt;

NOW THEREFORE in consideration of the recitals, the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

- 1. The Assignor hereby assigns, transfers and sets over unto the Assignee the Debt together with the Mortgage and all advantage and benefit to be derived therefrom.
- 2. As consideration for the assignment, the Assignee agrees to pay to the Assignor, concurrently with the execution of this Agreement, the sum of \$10.00 and other valuable consideration.
- 3. The Assignor hereby acknowledges, covenants and agrees that the Debt is justly and truly owing by the Debtor to the Assignor.

4. The Assignor covenants and agrees with the Assignee that the Assignor shall assign to the Assignee all its or his right, title and interest in the Mortgage security in respect of the Debt assigned by this Assignment, and the same shall be deemed security granted by the Assignor to the Assignee.
5. The Assignor acknowledges and agrees that all his rights in respect of the Debt have been assigned to the Assignee but that the acceptance by the Assignee of this Assignment shall impose upon the Assignee the obligation to take any steps to effect the collection of same or to ensure that the Debt does not become statute barred by the operation of any law relating to limitation of actions, or otherwise.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.



Witness



LORAN LEE A/K/A/ C. LORAN LEE



Witness

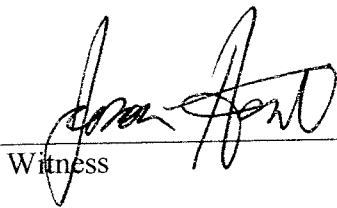


CECIL LORAN LEE, OVERSEER

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

4. The Assignor covenants and agrees with the Assignee that the Assignor shall assign to the Assignee all its or his right, title and interest in the Mortgage security in respect of the Debt assigned by this Assignment, and the same shall be deemed security granted by the Assignor to the Assignee.
5. The Assignor acknowledges and agrees that all his rights in respect of the Debt have been assigned to the Assignee but that the acceptance by the Assignee of this Assignment shall impose upon the Assignee the obligation to take any steps to effect the collection of same or to ensure that the Debt does not become statute barred by the operation of any law relating to limitation of actions, or otherwise.

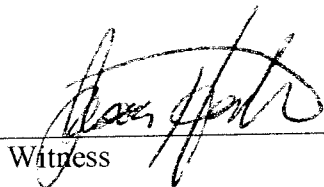
IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.



Witness



LORAN LEE A/K/A/ C. LORAN LEE



Witness



CECIL LORAN LEE, OVERSEER

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

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

Paul J. Sulla, Jr.
P.O. Box 5258
Hilo, HI 96720

TMK Nos. (3) 1-3-001:049 and 043

ASSIGNMENT OF MORTGAGE

THIS **ASSIGNMENT OF MORTGAGE** (herein referenced to as the "Assignment") is made as of this 11th day of May, 2009 by **LORAN LEE, a/k/a C. LORAN LEE and/or CECIL LORAN LEE**, an unmarried individual, whose address is 13-811 Malama Street, Pahoa, HI 96778, (hereinafter referred to as the "Assignor") for the benefit of **CECIL LORAN LEE, OVERSEER of THE OFFICE OF OVERSEER, A CORPORATE SOLE AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**, whose address is 13-811 Malama Street, Pahoa, HI 96778, (hereafter referred to as the "Assignee").

WITNESSETH

WHEREAS, Assignor is the holder of that certain Mortgage together with the debt and Note secured hereby, in the original principal sum of **Three Hundred Fifty Thousand Dollars (\$350,000.00)** given by **THE ROYAL BLOODLINE OF DAVID**, a Hawaiian non-profit corporation whose address is P.O. Box 1739, Newport, WA 99156, (hereinafter referred to as "Mortgagor").

WHEREAS, the said Mortgage is dated January 15, 2004 and recorded in the Bureau of Conveyances of the State of Hawaii, Document No. 2004-014441, and it encumbers and is a lien upon that certain real property consisting of 17.87 acres more or less located in Kalapana, in the County and State of Hawaii, described in Exhibit "A", attached hereto and by this reference made a part hereof (hereinafter referred to as the "Premises"); and,

WHEREAS, Assignor is desirous of assigning said Mortgage, together with the Note and debt therein described to Assignee; and

WHEREAS, Assignee is desirous of receiving and holding said Mortgage, together with the Note and the debt therein described, from Assignor.

NOW THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) paid by Assignee, and other goods and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Assignor, Assignor does hereby make the following assignment:

1. Assignment. Assignor has granted, bargained, sold, assigned, conveyed and transferred, and by these presents does grant, bargain, sell, assign, convey and transfer unto Assignee, its heirs, successors and assigns, forever all of its right, title and interest in, to and under said Mortgage described above, together with the debt and Note secured thereby; together with any and all rights, interests and appurtenances thereto belonging; subject only to any right and equity of redemption of said Mortgage, its successors or assigns in the same.

2. Warranties and Representations. Assignor hereby warrants and represents that it is the present holder of the above described Mortgage and that there are no other holders of said Mortgage or any interest therein nor has the Assignor declared that that is any default by Mortgagor therein or in the Note and debt secured thereby.

3, Governing Law. This Assignment shall be governed, construed and interpreted by, through and under the laws of the State of Hawaii.

4. Headings. Paragraph headings contained herein are for the convenience of reference only and are not to be used in the construction or interpretation hereof.

IN WITNESS WHEREOF, Assignor has executed and delivered this Assignment to Assignee on the date hereof.

LORAN LEE a/k/a C. LORAN LEE



Assignor

STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

On this 15 day of May, 2009, before me personally appeared LORAN LEE a/k/a C. LORAN LEE and CECIL LORAN LEE to me known (or who has proven to me on the basis of satisfactory evidence) to be the persons described in and who executed the foregoing ASSIGNMENT OF MORTGAGE, dated May 15, 2009 and consisting of 3 pages total, who, being duly sworn, acknowledged that he executed said instrument as his free act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal on the day and year last above written.



(Notary signature)

Collins Tomei

(Print notary name)

Notary Public

Third Judicial Circuit

State of Hawai'i

[Stamp or Seal]

My commission expires: 02-20-2010

12

EXHIBIT A

ITEM I:

LOT 15-D
A Portion of Lot 15
Grant 5005 to J. B. Elderts

Kamaili Homesteads, Puna, Island and County of Hawaii, State of Hawaii

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

1. 197° 55' 15" 958.02 feet along Pahoa-Kalapana Road (Emergency Relief Project No. ER 4(1)) to a pipe;
2. 239° 28' 30" 326.15 feet along Lot 19, Grant 5651 to Chas. Elderts to a pipe;
3. 304° 03' 30" 337.89 feet along Lot 19, Grant 5651 to Chas. Elderts, and Grant 5151 to J. B. Elderts to a pipe;

Thence along a 1016.74 feet radius curve to the right the direct chord azimuth and distance being:

4. 14° 14' 56" 915.04 feet along West side of the old Pahoa-Kalapana Road;
5. 40° 59' 30" 275.69 feet along same to a pipe;
6. 114° 43' 30" 494.98 feet along Lot 2, Grant 4330 to C. L. Wight to the point of beginning and containing an area of 16.55 acres, more or less.

Being the land conveyed to The Royal Bloodline of David, a Washington nonprofit corporation, by Warranty Deed dated 2004-01-14 recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2004-01446

ITEM II:

That certain parcel of land (being portion of the land(s) described in and covered by Land Patent Grant Number 5005 to J. B. Elderts) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being LOT 15-A, portion of Lot 15, of the Kamaili Homesteads, being more particularly described as follows:

Beginning at the north corner of this parcel of land at the northwest corner of Lot 15-B and on the easterly side of old (abandoned) Pahoa-Kalapana Road the coordinates of said point of beginning referred to Government Survey Triangulation Station "HEIHEIAHULU" being 6,270.75 feet north and 16,889.17 feet east and running by azimuths measured clockwise from true South:

1. 307° 30' 212.10 feet along Lot 15-B;
2. 37° 30' 235.90 feet along same;
3. 114° 43' 30" 235.14 feet along Grant 4330 to C. L. Wright;
4. 220° 59' 30" 261.10 feet along easterly side of old (abandoned) Pahoa-Kalapana Road;

Thence along a 1066.74 feet radius curve to the left, the chord azimuth and distance being:

5. 220° 15' 30" 27.31 feet along same to the point of beginning and containing an area of 1.32 acres, more or less.

Being the land conveyed to The Royal Bloodline of David, a Washington nonprofit corporation, by Warranty Deed dated 2004-61444, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2004-61444.

SUBJECT, HOWEVER, TO:

1. Title to all minerals and metallic mines reserved to the State of Hawaii.
2. AS TO ITEM I:-

As to the road remnant within the land herein described:

- a. Reservation in favor of the State of Hawaii of all minerals and metallic mines of every description, including all geothermal rights.
- b. Reservation of the rights of native tenants.
- c. The State of Hawaii's and the public's right of access through government roads, namely the "Pahoa-Kalapana Road", a government road under the jurisdiction of the County of Hawaii, shall be protected and not restricted.
- d. Reservation in favor of the State of Hawaii of all right, title, interest or claim to water having its source upon or flowing over or under the subject property.
- e. Reservation in favor of the State of Hawaii of all easements or rights in the nature of easements for the free flowage of surface water through and across any stream and/or established water course upon the subject property.

3. AS TO ITEM II:-

The property does not appear to have access of record to any public street, road or highway.

END OF EXHIBIT X

General Certification

I, **Jason Hestor**, the named Overseer in **The Office of the Overseer a corporation sole and his successors, over/for The Popular Assembly of REVITALIZE, a Gospel of Believers** the Affiant herein, certify, attest and affirm that I have read the foregoing and know the content thereof and that it is true, correct, materially complete, certain, not misleading, all to the very best of my belief, and this I solemnly pledge declare and affirm before my Creator.

In witness whereof, said **Jason Hestor**, The Overseer, of a corporation sole, has hereunto set his hand and seal, on this, the _____ day of _____ in the Year of Jesus Christ our Lord, the Redeemer, two thousand nine.

_____ Affix Seal Here.

Jason Hestor, the Overseer
The Office of the Overseer
a corporation sole and his successors,
over/for The Popular Assembly of REVITALIZE, A GOSPEL OF
BELIEVERS an incorporated Church assembly,
in the nature of Ecclesia

GENESIS

WHEREAS, the presiding Sovereign, in seeking harmony with God and Man; according to Scripture were it states: *"Thou shalt love God with all thy heart and all thy mind and all thy soul and with all thy body, and thou shalt love they neighbor as thyself,"* and;

WHEREAS, our founding fathers know that the creator of an entity is its GOD, and thought it repugnant that a State created corporation could serve as a Church or Religious Assembly; and thus referred to Canon Law, Ecclesiastical Law and common Law which recognize the Corporation Sole as a long established and pragmatic Religious Assembly;

WHEREAS, this instrument is not a creation of or by the State of Hawaii, or any other State in the United States of American as it is now constituted or of any other country on the world earth of Hawaii or the territory of or republic of Hawaii or the Kingdom of Hawaii;

WHEREAS, this written instrument is for the purpose of Acknowledgment of this lawful Sovereign this corporation sole, herein designated as **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**, which derives its powers of Creation and Existence from a divinely inspired "body of believers", under the guidance and support of the Popular Assembly of **REVITALIZE, A GOSPEL OF BELIEVERS**, a Hawaiian non-profit corporation in the nature of ecclesia.

WHEREAS this Office of **OVERSEER** and "Statement of Incumbency" have been anointed and petitioned by the members of this Spiritual Assembly, to accept said position, such Office and Assembly being protected by the First Article of The Bill of Rights of the Constitution for the United States of America, which Office and Assembly is also recognized in Article One section four of the Constitution of the State of Hawaii.

WHEREAS it is declared by said The Bill of Rights for the United States Constitution and the Constitution of the State of Hawaii, and through the intent of its Framers that *"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."* by the creation of an aggregate incorporated State-religious order;

WHEREAS by this "**Statement of Incumbency**" and through the aforementioned existing corporation sole, a Treaty Relationship is established by the between the State of Hawaii and all the other States in the United States and **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**. The Office is recognized by all Common Law, Canon Law, Contract Law, Ecclesiastic Law, International Law, by the Law of Nations, by lawfully ratified Treaties, Commonwealth(s), Monarch(s), Emperor(s), King(s), Queen(s), President(s), Pope(s), Chief(s), Shah(s), Mir(s), Sheik(s), Chairmen, Overseer(s), Sovereigns and other designated Titular Head(s), States, states or other corporations.

THEREFORE LET IT BE KNOWN that this written **Statement of Incumbency** is provided pursuant to Hawaii Revised Statutes c.419-5 for the purpose of acknowledgment of this lawful Sovereign entity. Let it be known that the creator of **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS** is NOT the State or Territory, but a "body of believers" who, by election have established this Office of **OVERSEER** of this Corporation Sole and have furthermore elected an honorable and righteous believer, to fill This Office, who will place only the laws of God before the Laws of Nature and of Nature's God, and serve them well. Let it be known that this "**Statement of Incumbency**" is an instrument solely intended for the State or Territory to acknowledge this Corporation Sole which is already created, established, and recognized by this "body of believers", it is not in any way intended to infer or confer State authority to create, nor is this "**Statement of Incumbency**" to be considered articles of incorporation.

STATEMENT OF INCUMBENCY

THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS.

BE IT KNOWN BY THESE PRESENTS that Jason Hestor of P.O. Box 758, Pahoa, HI 96778 is the current incumbent OVERSEER for the corporation sole known as **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS.** This Statement of Incumbency is provided pursuant to Hawaii Revised Statutes c.419-5.

Pursuant to the right of Jason Hestor to worship Almighty God, in accordance with the dictates of his own conscience, and having, humbly, taken possession of The Office of OVERSEER on the 28th day of June in the year two thousand nine, the OVERSEER does hereby certify, and adopt this "Statement of Incumbency".

In accordance with the disciplines of **REVITALIZE, A GOSPEL OF BELIEVERS**, a Hawaiian non-profit corporation, in the nature of Ecclesia located in Pahoa, County and State of Hawaii having established said corporation sole **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS** and by this Statement of Incumbency hereby notifies the State of Hawaii that Jason Hestor is the duly appointed incumbent OVERSEER.

THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, does hereby establish that Jason Hestor is the duly appointed incumbent OVERSEER of this corporate sole created for the purposes of administering and managing the affairs, property, and temporalities of **REVITALIZE, A GOSPEL OF BELIEVERS**, a Hawaiian non-profit corporation in the nature of Ecclesia.

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

CECIL LORAN LEE,

Plaintiff and
Counterclaim-
defendant

vs.

LEONARD GEORGE HOROWITZ, et
al.

Defendant and
Counterclaimants.

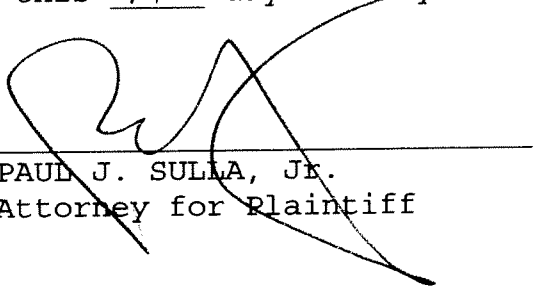
Civil No.05-1-196
(Kona)

**NOTICE OF NON-HEARING
MOTION**

NOTICE OF NON-HEARING MOTION

NOTICE IS HEREBY GIVEN that Plaintiff has filed a **MOTION TO SUBSTITUTE PLAINTIFF** with the above-entitled court. Copies of the **MOTION** have been served on all parties by mail on July 15th, 2009. Any response to said **MOTION** must be filed with the court no later than 10 days after the date of the Certificate of Service attached. If service of the Motion has been made by mail pursuant to Rule 6(e) of the Hawaii Rules of Civil Procedure, any response to said Motion must be filed with the Court no later than twelve (12) days after the date of the said Certificate of Service.

DATED: Hilo, Hawaii this 14th day of July 2009



PAUL J. SULLA, JR.
Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

CECIL LORAN LEE,

Plaintiff and
Counterclaim-
defendant

vs.

LEONARD GEORGE HOROWITZ, et
al.

Defendant and
Counterclaimants.

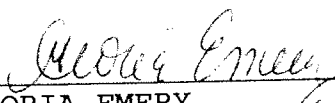
Civil No.05-1-196
(Foreclosure)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document(s):
MOTION FOR SUBSTITUTION OF DECEASED PARTY; EXHIBIT "A";
DECLARATION OF COUNSEL IN SUPPORT OF MOTION; EXHIBITS "1"-
"6"; NOTICE OF NON-HEARING MOTION were duly served upon the
following by mailing a copy of same via U.S. Postal
Service, postage prepaid at the U.S. Post Office in Hilo,
Hawaii on this 15th day of July, 2009, to:

John Carroll, Esq.
345 Queen Street, Suite 607
Honolulu, HI 96813



GLORIA EMERY

FILED

cc:
John Carroll, Esq.
Mr. Cecil Loran Lee
Mr. Philip Maise

2009 APR 27 PM 4: 28

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII


L. KITAOKA, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

CECIL LORAN LEE	)	CIVIL NO. 05-1-196
	)	(Foreclosure)
Plaintiff and)	
Counterclaim-	)	ORDER DENYING PLAINTIFF'S
Defendant,	)	MOTION TO ALTER OR AMEND
	)	THE AMENDED FINAL JUDGMENT
vs.	)	FILED FEBRUARY 23, 2009
)	
LEONARD GEORGE HOROWITZ,)	
JACQUELINE LINDENBACH HOROWITZ)	
AND THE ROYAL BLOODLINE OF DAVID,	)	JUDGE RONALD IBARRA
JOHN DOES 1-10, JANE DOES 1-10, DOE)	
PARTNERSHIPS 1-10, DOE)	
CORPORATIONS 1-10, DOE ENTITIES,)	
DOE GOVERNMENTAL UNITS,)	
)	
Defendants and)	
Counterclaimants.)	

ORDER DENYING PLAINTIFF'S MOTION TO ALTER OR AMEND THE AMENDED
FINAL JUDGMENT FILED FEBRUARY 23, 2009

This matter, having come before the Honorable Ronald Ibarra, pursuant Plaintiff's Motion to Alter or Amend the Amended Final Judgment filed February 23, 2009, filed on March 5, 2009 heard on April 7, 2009. Plaintiff Cecil Loran Lee appeared pro se and Mr. John Carroll, Esq. appeared on behalf of Defendants Horowitz/Royal Bloodline. No other appearances were made. The Court having heard the oral arguments of counsel and parties; and having reviewed the Declaration of Loran Lee attached to the motion;

Exhibit 8

Intervenor's Memorandum in Opposition to Plaintiff's Motion to Alter or Ammend [sic] Final Judgment filed February 23, 2009, Notice of Withdrawal of Intervenor, Declaration of Intervenor filed March 16, 2009; and Defendants and Counterclaimants' Memorandum in Opposition to "Plaintiff's Motion to Alter or Amend the Amended Final Judgment," Received on March 5, 2009 filed March 19, 2009; as well as the record and file of the case,

IT IS HEREBY ORDERED, Plaintiff's Motion to Alter or Amend the Amended Final Judgment filed February 23, 2009, filed on March 5, 2009 is DENIED.

DATED: Kealahou, Hawaii

4/24/09



JUDGE OF THE ABOVE-ENTITLED COURT

Beth Chrisman
Forensic Document Examiner
13437 Ventura Blvd, Ste 213
Sherman Oaks CA 91423
Phone: 310-957-2521 Fax: 310-861-1614
E-mail: beth@handwritingexpertcalifornia.com
www.HandwritingExpertCalifornia.com

CURRICULUM VITAE

I am, Beth Chrisman, a court qualified Forensic Document Examiner. Beginning my career in 2006, I have examined over 500 document examination cases involving over 6500 documents. I trained with the International School of Forensic Document Examination and have apprenticed under a leading court-qualified Forensic Document Expert.

Forensic Examination Provided For:

Disputed documents or signatures including: wills, checks, contracts, deeds, account ledgers, medical records, and autograph authentication. Investigation and analysis including: questioned signatures, suspect documents, forgeries, identity theft, anonymous letters, alterations, obliterations, erasures, typewritten documents, altered medical records, graffiti, handwritten numbers, and computerized and handwritten documents.

Education

- Bachelor of Science Specializing in Prosthetics and Orthotics from the University of Texas Southwestern Medical Center at Dallas
- International School of Forensic Document Examination: Certified Forensic Document Examination, Graduation Date July 2008

Specific Areas of Training:

Handwriting Identification and Discrimination, Signature Comparison, Techniques for Distinguishing Forged Signatures, Disguised Handwriting, Altered Numbers, Anonymous Writing, Laboratory Procedures, Forensic Microscopy and Forensic Photography, Identifying Printing Methods, Papers and Watermarks, Factors that Affect Writing, Demonstrative Evidence Training, Demonstrative Evidence in the High-Tech World, Forgery Detection Techniques, Detection of Forged Checks, Document Image Enhancement, Graphic Basis for Handwriting Comparison, Ethics in Business and the Legal System, Mock Courtroom Trails

- American Institute of Applied Science; 101Q Questioned Documents course completed
- 3 year on-the-job apprenticeship with Bart Baggett, a court qualified document examiner and the president of the International School of Forensic Document Examination, October 2006 – October 2009.

Apprenticeship Included:

Gathering documents, setting up case files, scanning and photographing documents, assisting with on-site examinations, interacting as client liaison with attorneys and clients, accounting and billing, peer reviews, preparing court exhibits, directed and witnessed client hand written exemplars, as well as reviewed and edited official opinion letters and reports for Mr. Baggett's office. I managed 204 cases consisting of 2157 documents during this time period.

Furthermore, I began taking active individual cases that were mentored and/or peer reviewed by Bart Baggett.

- ACFEI Conference October 2009, Las Vegas, NV. (American College of Forensic Examiners International) Attended specific lectures on ink and paper counterfeiting by FBI personnel.

Beth Chrisman
Forensic Document Examiner
13437 Ventura Blvd, Ste 213
Sherman Oaks CA 91423
Phone: 310-957-2521 Fax: 310-861-1614
E-mail: beth@handwritingexpertcalifornia.com
www.HandwritingExpertCalifornia.com

CURRICULUM VITAE Cont.

Further Qualifications:

I am the Director of the International School of Forensic Document Examination; creating curriculum, choosing textbooks, creating schedules and overseeing student apprentice qualifications for students worldwide. I teach and mentor students worldwide, including students in the United States, New Zealand, Australia, India and Slovakia. I also peer review cases for other working document examiners.

Laboratory Equipment:

Numerous magnifying devices including 30x, 20x and 10x loupes, Light Tracer light box, protractor, calipers, metric measuring devices, slope protractor and letter frequency plate, handwriting letter slant and comparison plate, typewriter measurement plate, type angle plate, digital photography equipment, zPix 26x-130x zoom digital hand-held microscope, zOrb 35x digital microscope, an illuminated stereo microscope, Compaq Presario R3000, HP PC, 2 high resolution printers, 2 digital scanners, 1 high resolution facsimile machine, and a copy machine.

Library

Numerous forensic document examination titles and other handwriting reference materials.

DECLARATION OF BETH CHRISMAN

I, BETH CHRISMAN, hereby declare as follows:

1. I am an Expert Document Examiner and court qualified expert witness in the field of questioned documents in the State of California. I am over the age of eighteen years, am of sound mind, having never been convicted of a felony or crime of moral turpitude; I am competent in all respects to make this Declaration. I have personal knowledge of the matters declared herein, and if called to testify, I could and would competently testify thereto.

2. I have studied, was trained and hold a certification in the examination, comparison, analysis and identification of handwriting, discrimination and identification of writing, altered numbers and altered documents, handwriting analysis, trait analysis, including the discipline of examining signatures. I have served as an expert within pending litigation matters and I have lectured and taught handwriting related classes. A true and correct copy of my current Curriculum Vitae ("C.V.") is attached as "Exhibit A".

3. **Request:** I was asked to analyze a certified copy of the ARTICLES OF INCORPORATION, CORPORATION SOLE FOR ECCLESIASTICAL PURPOSES for the Corporation Sole of THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS filed with the State of Hawaii Department of Commerce and Consumer Affairs. I have attached this document as EXHIBIT B, Pages 1 through 8.

4. **Basis of Opinion:** The basis for handwriting identification is that writing habits are not instinctive or hereditary but are complex processes that are developed gradually through habit and that handwriting is unique to each individual. Further, the basic axiom is that no one person writes exactly the same way twice and no two people write exactly the same. Thus writing habits or individual characteristics distinguish one person's handwriting from another.

1 Transferred or transposed signatures will lack any evidence of pressure of a writing
2 instrument. Additionally, due to modern technology in the form of copiers, scanners, and computer
3 software that can capture documents as well as edit documents and photos it has become quite easy
4 to transfer a signature from one document to another. However, there will always be a source
5 document and in many cases the signature will remain unchanged. The fact that there is more than
6 one signature that is exactly the same is in direct opposition to one of the basic principles in
7 handwriting identification.

8
9 A process of analysis, comparison and evaluation is conducted between the document(s).
10 Based on the conclusions of the expert, an opinion will be expressed. The opinions are derived
11 from the ASTM Standard Terminology for Expressing Conclusions for Forensic Document
12 Examiners.

13 **5. Observations and Opinions:**

14 PAGE NUMBERING:

15 a. This is an 8 page document with the first six pages having a fax footer dated May 26, 2009
16 and the last 2 pages having a fax footer of May 28, 2009.

17
18 b. Further, the first four pages are numbered as such, the fifth page has no original number
19 designation, the sixth page has the numeral 2, and the last two pages are labeled 1 and 2.

20 c. There is not one consistent page numbering system or text identification within the
21 document pages that indicates all pages are part of one document.

22 DOCUMENT PAGES:

23
24 d. Page 6 and Page 8 are both General Certification pages and contain the same text, exact
25 same signature and exact same handwritten '8' for the day. Since no one person signs their name
26 exactly the same way twice, one of these documents does not contain an authentic signature.

1 Additionally, no one person writes exactly the same way twice thus the numeral '8' is also not
2 authentic on one of the documents.

3 e. It is inconclusive if one of the documents is the source or if neither is the source document.

4 f. There is no way to know if the signature of Cecil Loran Lee was an original prior to faxing
5 or if it was a copy of a copy or the generation of the copy if a copy was used to fax the form.

6 PAGES 5 AND 6

7 g. Page 6 is a General Certification appearing to be attached to the previous page, however,
8 Page 5 of this set of documents references a Gwen Hillman and Gwen Hillman clearly is not the
9 signature on the Certification. Additionally, there is no Page number on the Certificate of Evidence
10 of Appointment that actually links it to the next page, the General Certification of a Cecil Loran
11 Lee.
12

13 h. Further, the fax footer shows that Page 5 is Page 13 of the fax, where page 4 is Faxed page
14 5 and page 6 is fax page 7; so there is inconsistency in the overall document regarding the first six
15 pages.
16

17 i. There is no way to know based on the fax copy and limited handwriting if the same person
18 wrote the '8' on pages 5 and 6. There's no real evidence these pages go together outside the order
19 they were stapled together in the Certified Copy.

20 PAGE 8.

21 j. Page 8 does have an additional numeral '2' added to the original numeral 8 to make '28.'

22 a. The Please see EXHIBIT 3 for levels of expressing opinions.

23
24 6. **Opinion:** EXHIBIT B, The ARTICLES OF INCORPORATION, CORPORATION SOLE
25 FOR ECCLESIASTICAL PURPOSES for the Corporation Sole of THE OFFICE OF THE
26 OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR
27 ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS filed with the State of Hawaii
28

1 Department of Commerce and Consumer Affairs contains page(s) that are not authentic in nature
2 but have been duplicated, transferred and altered. Further, the lack of proper page numbering and
3 consistency within the page number makes the document suspicious.

4 **7. Declaration:**

5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct and that this declaration was executed on the 12th day of June, 2015,
7 in Sherman Oaks, California.
8

9 
10 BETH CHRISMAN
11
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1 ACKNOWLEDGMENT

2 A notary public or other officer completing this certificate verifies only the identity of the
3 individual who signed the document to which this certificate is attached, and not the truthfulness,
4 accuracy, or validity of that document.

5
6 State of California

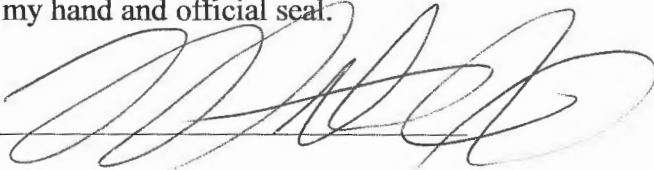
7 County of Los Angeles
8

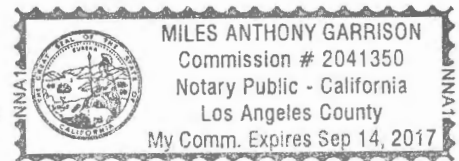
9 On June 30, 2015 before me, Miles Anthony Garrison, Notary Public personally appeared Beth Chrisman,
10 who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed
11 to the within instrument and acknowledged to me that she executed the same in her authorized
12 capacity, and that by her signature on the instrument the person, or the entity upon behalf of which
13 the person acted, executed the instrument.
14

15 I certify under PENALTY OF PERJURY under the laws of the State of California that the
16 foregoing paragraph is true and correct.
17
18

19 WITNESS my hand and official seal.

20
21 Signature







STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Business Registration Division
1010 Richard Street
PO Box 40, Honolulu, HI 96810

**ARTICLES OF INCORPORATION
CORPORATION SOLE FOR ECCLESIASTICAL PURPOSES**
(Section 419, Hawaii Revised Statutes)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned desires to form a Corporation Sole for Ecclesiastical purposes under the laws of the State of Hawaii and does certify as follows:

Article I

The name of the Corporation Sole is:

**THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS
SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF
REVITALIZE, A GOSPEL OF BELIEVERS**

Article II

Cecil Loran Lee of 13-811 Malama Street, Pahoa, HI 96778, duly authorized by the rules and regulations of the church **REVITALIZE, A GOSPEL OF BELIEVERS**, a Hawaiian non-profit corporation in the nature of Ecclesia, hereby forms **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS** and is the initial holder the office of Overseer hereunder.

Article III

The principal office of **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITLIZE, A GOSPEL OF BELIEVERS** is 13-811 Malama Street Pahoa, HI 96778. The Island of Hawaii is the boundary of the district subject to the ecclesiastical jurisdiction of the Overseer.

Article IV

The period of duration of the corporate sole is perpetual.

05/29/200920052

Article V

The manner in which any vacancy occurring in the incumbency of **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**, is required by the discipline of **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**, to be filled, through an appointment of Jason Hester of Pahoa, Hawaii as designated successor, and if said designated successor is unable or unwilling to serve, then through an appointment by the support and blessings by a formal "Popular Assembly" of clerical staff and the general membership of **REVITALIZE, A GOSPEL OF BELIEVERS**, as to the named designated successor. The corporate sole shall have continuity of existence, notwithstanding vacancies in the incumbency thereof, and during the period of any vacancy, have the same capacity to receive and take gifts, bequests, devise or conveyance of property as though there were no vacancy.

Article VI

THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS shall have all the powers set forth in HRS c. 419-3 and 414D-52 including the power to contract in the same manner and to the same extent as any man, male or female, and may sue and be sued, and may defend in all courts and places, in all matters and proceedings whatsoever, and shall have the authority to appoint attorneys in fact. It has in any venue and jurisdiction authority to borrow money, give promissory notes therefore, to deal in every way in prime notes, noble metals, planchets, commercial liens, stamps, mortgages, all manner of banking, and to secure the payment of same by mortgage or other lien upon property, real and person, enter into insurance and assurance agreements, own life insurance policies, and purchase and sell contracts and other commercial instruments. It shall have the authority to buy, sell, lease, and mortgage and in every way deal in real, personal and mixed property in the same manner as a "natural person" or covenant child of God. It may appoint legal counsel, licenses and/or unlicensed, but any professional or nonprofessional account services, legal or other counsel employed shall be utilized in a capacity never greater than subordinate co-counsel in any and all litigious matters whether private, corporate, local, national or international, in order to protect the right of the corporation sole to address all courts, hearings, assemblies, etc., as superior co-counsel.

05/29/200920052

Article VII

The presiding Overseer of **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS** can be removed by a 2/3 vote at a meeting of the Popular Assembly of **REVITALIZE, A GOSPEL OF BELIEVERS**, a Hawaiian non-profit corporation in the nature of Ecclesia, duly called for that purpose, provided that a successor Overseer is selected at that meeting.

The presiding Overseer may not amend or alter this Article VII without the 2/3 vote at a meeting of the Popular Assembly of **REVITALIZE, A GOSPEL OF BELIEVERS** duly called for that purpose.

Article VIII

The presiding Overseer, after prayers and counsel from The Popular Assembly of **REVITALIZE, A GOSPEL OF BELIEVERS**, may at any time amend these Articles, change the name, the term of existence, the boundaries of the district subject to its jurisdiction, its place of office, the manner of filling vacancies, its powers, or any provision of the Articles for regulation and affairs of the corporation and may by Amendment to these Articles, make provision for any act authorized for a corporate sole under HRS c. 419. Such Amendment shall be effective upon recordation with the State of Hawaii.

Article IX

The purpose of this corporation sole is to do those things which serve to promote Celestial values, the principles of Love, Harmony, Truth and Justice, the love of our brothers and sisters as ourselves, the comfort, happiness and improvement of Man and Woman, with special emphasis upon home church studies, research and education of those rights secured by God for all mankind and of the laws and principles of God for the benefit of the Members of the Assembly and the Community at large. This corporate sole is not organized for profit.

Article X

All property held by the above named corporation sole as **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITLIZE, A GOSPEL OF BELIEVERS**, shall be held for the use, purpose, and benefit of **REVITLIZE, A GOSPEL OF BELIEVERS**, a Hawaiian non-profit corporation in the nature of Ecclesia.

05/29/200920052

I certify upon the penalties of perjury pursuant to Section 419 of the Hawaii Revised Statutes that I have read the above statements and that the same are true and correct.

Witness my hand this 8 day of May, 2009.

CECIL LORAN LEE

Cecil Loran Lee

05/29/200920052

CERTIFICATE OF EVIDENCE OF APPOINTMENT

Asseveration

State of Hawaii

County of Hawaii

)
) Signed and Sealed
)

FILED 05/28/2009 05:41 PM
Business Registration Division
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
State of Hawaii

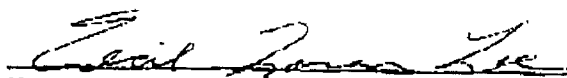
Gwen Hillman, Scribe, on the 8th day of the fifth month in the Year of our Lord Jesus Christ, the Redeemer, Two Thousand Nine having first stated by prayer and conscience, avers, deposes and says:

Cecil Loran Lee is the duly appointed, qualified OVERSEER of THE OFFICE OF OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, by virtue of Spiritually and Divinely inspired appointment and he is, and has been, sustained as such by the general membership of said "body of believers" of REVITALIZE, A GOSPEL OF BELIEVERS a Hawaiian incorporated Church assembly, in the nature of Ecclesia, and THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, in a special Popular Assembly meeting on the 8 day of the fifth month in the year of our Lord Jesus Christ, the Redeemer, Two Thousand Nine as evidenced by an official recording of such appointment signed by Gwen Hillman, Scribe of THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS.

General Certification

I, Cecil Loran Lee, the named Overseer in The Office of the Overseer a corporation sole and his successors, over/for The Popular Assembly of REVITALIZE, a Gospel of Believers the Affiant herein, certify, attest and affirm that I have read the foregoing and know the content thereof and that it is true, correct, materially complete, certain, not misleading, all to the very best of my belief, and this I solemnly pledge declare and affirm before my Creator.

In witness whereof, said Cecil Loran Lee, The Overseer, of a corporation sole, has herewith set his hand and seal, on this, the 8 day of May in the Year of Jesus Christ our Lord, the Redeemer, two thousand nine.



Affix Seal

Here.

Cecil Loran Lee, the Overseer
The Office of the Overseer
a corporation sole and his successors,
over/for The Popular Assembly of REVITALIZE, A GOSPEL OF
BELIEVERS an incorporated Church assembly,
in the nature of Ecclesia

STATEMENT OF INCUMBENCY

**THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS
SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A
GOSPEL OF BELIEVERS.**

BE IT KNOWN BY THESE PRESENTS that Cecil Loran Lee of 13-811 Malama Street Pahoa, HI 96778 is the current incumbent OVERSEER for the corporation sole known as **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**. This Statement of Incumbency is provided pursuant to Hawaii Revised Statutes c.419-5.

Pursuant to Cecil Loran Lee's right to worship Almighty God, in accordance with the dictates of his own conscience, and having, humbly, taken possession of The Office of OVERSEER on the 28 day of May in the year two thousand nine, the OVERSEER does hereby certify, and adopt this "Statement of Incumbency".

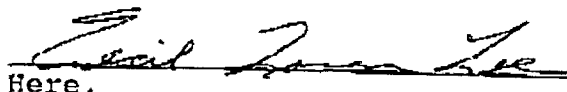
In accordance with the disciplines of REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaiian non-profit corporation, in the nature of Ecclesia located in Pahoa, County and State of Hawaii having established said corporation sole **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS** and by this Statement of Incumbency hereby notifies the State of Hawaii that Cecil Loran Lee is the duly appointed incumbent OVERSEER.

THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, does hereby establish that Cecil Loran Lee is the duly appointed incumbent OVERSEER of this corporate sole created for the purposes of administering and managing the affairs, property, and temporalities of REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaiian non-profit corporation in the nature of Ecclesia.

General Certification

I, Cecil Loran Lee, the named Overseer in The Office of the Overseer a corporation sole and his successors, over/for The Popular Assembly of REVITALIZE, a Gospel of Believers the Affiant herein, certify, attest and affirm that I have read the foregoing and know the content thereof and that it is true, correct, materially complete, certain, not misleading, all to the very best of my belief, and this I solemnly pledge declare and affirm before my Creator.

In witness whereof, said Cecil Loran Lee, The Overseer, of a corporation sole, has hereunto set his hand and seal, on this, the 28 day of May in the Year of Jesus Christ our Lord, the Redeemer, two thousand nine.



Affix Seal

Here.
Cecil Loran Lee, the Overseer
The Office of the Overseer
a corporation sole and his successors,
over/for The Popular Assembly of REVITALIZE, A GOSPEL OF
BELIEVERS an incorporated Church assembly,
in the nature of Ecclesia

LEONARD G. HOROWITZ
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Las Vegas, NV 89108
Tel: 310-877-3002;
Email: Editor@MedicalVeritas.org

THE SUPREME COURT OF THE
STATE OF HAWAII

ICA No. CAAP-16-0000162

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

Plaintiff-Appellee-Respondent

v.

LEONARD G. HOROWITZ,
Defendants-Counterclaimants
Appellant-Petitioner

) TRIAL CIV. NO. 05-1-0196
) (foreclosure)
)
)
) **CERTIFICATE OF SERVICE**
) for **PETITIONER-APPELLANT'S**
) **APPLICATION FOR WRIT OF**
) **CERTIORARI**
)
)
)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of August 13, 2019 I served a true and correct copy of the foregoing *PETITIONER-APPELLANTS'* APPLICATION FOR WRIT OF CERTIORARI [HRAP Rule 40.1; HRS § 602-59(b); Appendix A; Declaration of Leonard G. Horowitz; *EXHIBITS "1" thru "10"* by the method described below to:

PAUL J. SULLA, JR

 X e-filing

Attorney at Law
106 Kamehameha Avenue, Ste. 2A
Hilo, HI 96720
808-933-3600
psulla@aloha.net



/s/ LEONARD G. HOROWITZ

LEONARD G. HOROWITZ, Petitioner, pro se

Jason Hester, Overseer Plaintiff-Appellee vs Leonard G. Horowitz et al,
Defendants/Counterclaimant/Appellant/Petitioner – *PETITIONER-APPELLANT'S*
APPLICATION FOR WRIT OF CERTIORARI [HRAP Rule 40.1; HRS § 602-59(b);
Appendix A; Declaration of Leonard G. Horowitz; *EXHIBITS "1" thru "10"*.