

NO. SCWC-16-0000162

IN THE SUPREME COURT OF THE STATE OF HAWAII

(Foreclosure • Counterclaim Misrepresentation and Fraud)

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

vs.

LEONARD G. HOROWITZ and THE ROYAL BLOODLINE OF DAVID
Petitioners/Defendants-Counterclaimants-Appellants,

and

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

and

PHILIP MAISE, Respondent/Intervenor-Appellee,

**REPLY TO RESPONSE OF RESPONDENT/PLAINTIFF-
COUNTERCLAIM DEFENDANT-APPELLEE JASON HESTER RE:
APPLICATION FOR WRIT OF CERTIORARI**

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REPLY TO “STATEMENTS OF REASONS” SET FORTH IN THE RESPONSE

Defendant-Counterclaimant-Petitioner “Horowitz” herein supplements his position that no oral Transcripts from the trial in this case are needed to prove that no timely HRCP Rule 50(a) Judgment as a Matter of Law Motion (JMOL), for fraud not being pled with “particularity,” was ever made or recorded in the Record on Appeal (ROA). And that even if it was made orally, as Plaintiff-Respondent “Hester” supposes, that argument is also discredited or mooted by the overlooked facts in the ROA. The Record clearly shows the parties agreed to separate, and clarify for trial, the Defendants’ Counterclaims for “Misrepresentation and Fraud”. (ROA VI, P. 636) The Misrepresentation claim *did not sound in fraud*, but in Restatement (Second) of Torts § 552 (1977).^{1,2} Additionally, the separate fraud in the factum claim addressed an altered closing agreement that did sound in fraud. The jury awarded Horowitz et. al. \$200,000 in Special Damages for Plaintiff’s negligent misrepresentation, not fraud. The Plaintiff then filed an untimely JMOL to vacate that award and later improperly appealed.¹ The court belatedly and improperly imposed HRCP Rule 9(b) particularity upon the misrepresentation pleading,^{1,2} and vacated the award twenty-two (22) months later. (ROA Part 2, Doc. No. 336, pp. 2518-2521, ftnt. 5) In the instant Appeal, the ICA erroneously ruled that Horowitz had “waived” his right to appeal these issues by not ordering oral transcripts. This Reply focuses on correcting these errors and

¹ *STATE BY BRONSTER v. US Steel Corp.*, 919 P. 2d 294 – Haw: Supreme Court 1996 clarifies the negligent misrepresentation tort based on Section 552 as distinguished from misrepresentation based on fraud. This case also explains why Plaintiff’s appeal of the jury verdict was improper. “[E]xpress wording of Section 552, . . . provides that ‘one who, . . . in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information...’ . . . [I]f a seller or manufacturer intentionally misrepresents or engages in fraud or deceit in representing the qualities, performance characteristics, or capabilities of a product and the product fails to perform accordingly causing economic damages only, the seller may be liable.” See also negligent misrepresentation case law reviewed in *Smallwood v. NCsoft Corp.*, 730 F. Supp. 2d 1213 - Dist. Court, D. Hawaii 2010, citing, inter alia, *Blair v. Ing*, 95 Hawai’i 247, 21 P.3d 452, 474 (Haw.2001).

² “A negligent misrepresentation claim . . . is not subject to Rule 9(b).” *Smallwood v. NCsoft Corp.*, 730 F. Supp. 2d 1213 - Dist. Court, D. Hawaii 2010, citing, inter alia, *Blair v. Ing*, 95 Hawai’i 247, 21 P.3d 452, 474 (Haw.2001). This case law is crucial to the courts’ errors. “Based upon a review of Hawai’i case law, Judge Mollway concluded that ‘the Hawaii Supreme Court does not appear to have been equating negligent misrepresentation with fraud.’ *Id.* This Court agrees. . . . Furthermore, as explained in *Marolda*, the heightened pleading standard ‘does not apply, of course [to negligent misrepresentation.]’ See [Marolda, 672 F.Supp.2d at 998](#); see also Fed. R. Civ. P. 8(d) (permitting alternative and inconsistent statements of a claim). This case law is tested in this instant action.

The precise jury instruction #24 (for fraudulent inducement); #25 (for misrepresentation by party possessing superior knowledge), #26 (seller misrepresentation by failure to disclose material facts); #27 (misleading half-truths and suppressing facts) and #28 “misrepresentation” that word-for-word shows Lee’s definition and instruction filed February 14, 2008 (**Exhibit 2**’s “Exhibit B”) caused jurors to correctly rule Lee guilty of *negligent misrepresentation* as **Exhibit 6** proves. (ROA V2, pg. 366)

injustices. For all other points of Opposition raised by Plaintiff in his Response, Defendant Horowitz stands on his Application.

A. Plaintiff's Rule 50 Objection to the Special Verdict Form is Discredited by ROA Filings.

Hester asserts in his Response ("R") (pp. 3-5) that his counsel renewed his Rule 50(a) JMOL without even a scintilla of evidence that such a motion had been made prior to submission of the case to the jury as is the *prerequisite*. Correspondingly, there is not a scintilla of evidence that such a motion was ruled on by the Court. (Opening Brief "OB", pp 7-10; ROA in its entirety.)

Hester's R postulates unrealistically that there may have been an oral motion for JMOL, and a ruling on that motion by the court, without any document evidencing such in the Record prior to the case going to the jury. (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.)

Quoting Plaintiff's counsel O'Phelan, "[A]fter the jury was seated and the closing arguments were about to be heard, Plaintiff's counsel . . . asked the Judge (at a sidebar) why the counterclaim for fraud and misrepresentation was in the Special Verdict Form ("SVF"). It was that much of a surprise." (ROA V2, pp. 1100-01) This incredulous statement by O'Phelan in the Record is not a Rule 50(a) motion. Nor is it even realistic because Plaintiff's filings prove the parties considered carefully their collective need to clarify for jurors the "Misrepresentation and Fraud" Counterclaims (ROA V1, p. 636). Plaintiff's jury-instruction-filings include **Exhibit 1** (ROA V 2, pp. 172-246), **Exhibit 2** (ROA V2, pp. 271-274), and **Exhibit 3**, ROA V2, pp. 276-277).

In fact, the ROA clearly shows Lee's interactivity with Horowitz and Intervenor Maise to lighten the jury's burden by carefully defining each of the two *distinct* and distinguishable claims. The "**fraud**" in the **factum claim** only concerned the altered/forged closing agreement.³ The **negligent "misrepresentation" claim** addressed Seller Lee having committed "Misrepresentation and Fraud" regarding the sale of the property. (ROA V1, p. 636) The resulting Final Jury Instruction (FJI) (**Exhibit 4**; ROA V2, pp. 322-365) and the SVF (**Exhibit 5**; ROA V2, pp. 367-371.) clearly reflected this pre-trial separation and clarification that Plaintiff Lee primarily sought and gained. Questions 4 thru 8 of the SVF addressed the fraud claim. Questions 9 thru 11 addressed the negligent misrepresentation claim. The fraud claim was made mutually "applicable to both parties." (**Exhibit 3**, ROA V2, pp. 276-277) The misrepresentation claim primarily addressed the

³ The jury's verdict on Horowitz having forged the closing agreement was caused by Horowitz's first attorney, Glenn S. Hara, failing to appear as the scheduled "expert witness" for having "crafted" the certified true original document that jurors misruled was the forgery. (ROA V 1, pp. 2041-42) The erroneous verdict, used by Sulla to smear Horowitz (R, p. 4), indicts retired Judge Glenn S. Hara as much as Horowitz.

unlicensed business that Lee sold as a legally operating 'B&B' under the misrepresentation that Lee would help develop the business and collaborate in improving the Property. The jury found that, "At the time of purchase, Plaintiff represented to Defendants that the property could be used as a bed and breakfast. This later turned out to be untrue." (FOF, ROA Part 2, Doc. 220, p. 664 ¶ 5.)

So Plaintiff's counsel should not have been "surprised" by the appearance of Questions 9-11 on the SVF, nor should current counsel claim in the Response this is "inexplicable." (R. p. 3, ¶ 2) Lee's proposed jury instructions, pre-trial clarifications by filings, and approval of that SVF by all parties, make clear Lee's acceptance of the two claims reflected in the SVF.

Counsel should know that the claim of misrepresentation does not require Rule 9(b) particularity.¹⁻² This applies to the negligent misrepresentation Questions 9-11 that all parties agreed upon. All SVF Questions derived from the same parties and same proceedings. It appears that Plaintiff's "surprise," oral "objection," and untimely JMOL are all erroneous. The error "raised on [Lee's] motion for a new trial" was manufactured "in the event of an unfavorable verdict." *STATE BY BRONSTER* quoting *Weathers v. Kaiser Foundation Hospitals*, 5 Cal. 3d 98, 103, 95 Cal. Rptr. 516, 519, 485 P.2d 1132, 1135 (1971). Given these facts and concerns no Rule 50 JMOL, nor jury award "vacation," nor ICA "waiver," is judicious.

O'Phelan's Rule 50 JMOL Declaration states, "I was unprepared in my closing arguments to address the 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." (ROA V2, pp. 1112-3 ¶ 9) Not so! Judge Ibarra removed and added claims that *mainly Lee requested be removed or added*, as detailed below.

Hester's R (p. 3) stretches credulity and confuses this matter by arguing that O'Phelan *possibly* had made an oral JMOL at the "sidebar." But O'Phelan himself recorded he did not make a JMOL. He only "verified" having made an "objection." An objection is *not a motion.* (ROA V2, pp. 1100-01;1112-3)

Hester also neglects Lee's objections to Horowitz's proposed jury instructions numbers "2-5, 11, 14, 15" concerning "material defects" in the Property structures that were not counterclaimed. "Material defects" also apply(ied) to the commercial defects precluding licensing and successful operations as Lee had misrepresented. (ROA V2, 191: 277 ¶ 2) The court struck the structural concerns only upon Lee's prodding, resulting in the FJI and the SVF. Nonetheless, the Verdict was rendered in Horowitz's favor. \$200,000 was correctly awarded the Defendants.

The ROA documents the aforementioned facts, without oral transcripts. Lee's pre-trial filings prove there was never a need for oral transcripts. The cited and exhibited records confirm an 'oral JMOL' never existed, that the written JMOL was untimely, and it was all improper.

Lee's Amended Complaint was filed on February 8, 2008 (ROA V2, p. 137 ¶ 9) synchronous with Horowitz's proposed jury instructions.⁴ (ROA V2, p. 108) Both filings and parties emphasized the issue of "unlicensed business activities" on the Property. (ROA V2, p. 137 ¶ 9) Horowitz stated in his Counterclaims that Lee had pledged his cooperation, had superior knowledge of the "B&B" business and local licensing requirements, but had *misrepresented* these "material defects" during the sale of the supposedly legally-operating business. That is why Horowitz proposed jury instructions #2, and 11-16, addressing this claim for negligent misrepresentation *in detail* (ROA V2, p. 111, 112, 122-126). Lee only struck Horowitz's proposed jury instructions "2-5, 11, 14, [and] 15," but agreed to the rest. Lee proposed similar instructions (ROA V2, p. 172) since his Complaint claimed Horowitz was using, damaging, and developing the residence for business without permits. Lee's instructions (in ROA V2) included: "negligence" p. 186; negligent violation of law, p. 194; negligence defined, p. 204; allocation of negligence, p. 206; special damages, p. 210; and contract fraud relating to misrepresentation, p. 246.

Lee and his counsel accepted Defendant's Instructions: #12 addressing "false representation"; #13 defining *misrepresentation* as, "Where a party intentionally or by design misrepresents a material fact or produces a false impression in order to mislead another or to entrap or cheat him or her to obtain an undue advantage, in every such case there is a positive fraud in the truest sense of the term;"^{1,2} #14 was added regarding the liability of concealing material facts, "such as known defects in a property," as a type of fraud²; and #16 made Lee liable for intentionally misrepresenting to Horowitz the legal operations of the Property. Lee, the Defendant, the Intervenor, and the court, each approved of these instructions giving rise to SVF Questions 9-11. Similarly, these instructions were included in the FJI # 24, 25, 26, 27 and #28.⁴ **The Misrepresentation instruction #28 in the FJI is Lee's word-for-word definition of misrepresentation, that Lee filed pre-trial on February 14, 2008.** (ROA V2, pp. 346-350.)

⁴ Lee realized that he had neglected to add "misrepresentation" in his proposed instruction, so he corrected this by writing, "Upon examination of the jury instructions filed by Plaintiff on February 11th, 2008, there appeared that there was no jury instruction submitted for 'misrepresentation' . . ." Lee thus attached his "Exhibit B"—the misrepresentation instruction that appears(ed) in the FJI, resulting also in the SVF and the jury's verdict on this separate claim. **Exhibit 2**, ROA V2, pp. 271-274.

Furthermore, the jury's decision to award Horowitz et. al., \$200,000 in Special Damages additionally resulted from Judge Ibarra's declaratory judgment affirming Lee's jury-instruction on expressly this negligent misrepresentation claim as shown by Exhibit 6. (ROA V2, pg. 366)

Moreover, had the Defendant obtained the costly oral transcripts, the Plaintiff could still make the same unreasonable and prejudicial claim that some 'off-the-record' JMOL was made, perhaps in the court's chambers. (ROA V2, pp. 1100-01)

Finally proving this Rule 50 contrivance is false, the Plaintiff's post-trial verdict submissions were inconsistent with having made a valid timely JMOL. Had Plaintiff made a Rule 50 motion timely, it would have had to have been done before the jury went into deliberation. Instead, it was filed three weeks too late, on March 11, 2008. ROA Part 2; 209, pp. 496 and 509.

Under these circumstances, given all the aforementioned evidence, for the ICA to rule against Horowitz based on omission of the transcript amounts to a grave error, barring access to justice. There is: 1) the complete absence of any documentary indication of any timely motion for JMOL; 2) the complete absence of any documentary evidence of a ruling on such a non-existent motion; and (3) the complete absence of acknowledging the Plaintiff's filings that sourced and accepted the FJI and SVF, that all parties and the court approved. These evasive actions are inconsistent with Judge Ibarra's declaratory judgment on the claim of misrepresentation, not fraud, affirming the Jury's Question No. 1. **Exhibit 6.** (ROA V2, pg. 366)

In Conclusion, the aforementioned facts in evidence, from the ROA, controverts claims that oral transcripts are needed to prove the non-existence of Plaintiff's timely JMOL motion. Jurors properly granted \$200,000 in Special Damages to Horowitz due to Lee's negligent misrepresentation(s). The Petitioner used that judgment credit to make his final Mortgage payment.⁵ Subsequently, the Property was wrongly taken. The award must be reinstated, and Horowitz's Property must be returned for the sake of equity and justice.

⁵ R p. 2 contests the final Mortgage payment Horowitz made on February 27, 2009 with the court's implied promise to end the case. Hester claimed that, "No such real payment [of \$154,204.13 in cash] or court promise exist[ed]." But Judge Ibarra "DENIED WITHOUT PREJUDICE" the final payment request (ROA V2, 259; 1402-06) and **Exhibits 7 - 8** prove the court ordered, "Defendants shall submit an accounting of total payments made to date no later than November 13, 2008." ROA V2 pp.1524-25. Horowitz complied to no avail. ROA V2 pp. 1601-07; ROA V 3, Doc. No. 0370 at 335 ¶ 4.⁵ Plaintiff(s) evaded the final accounting (ROA Part 2. Doc. No. 347, pp. 2649, ¶¶ 34-35), and based on the contrived Rule 50(a) JMOL, Hester's lawyer, Paul J. Sulla, Jr., tied up the Mortgage Release and final disposition of this case in appeal. Subsequently, Plaintiff and Sulla took possession of the Property. These matters directly impact the quiet title case Civ. No. 14-1-0304 that the ICA remanded after voiding Plaintiff's non-judicial foreclosure.

I DECLARE under pains and penalties of perjury at law that the statements made above, including citations in the Record on Appeal, evidenced by Exhibits 1 through 8 attached hereto, are true and correct to the best of my knowledge; and that if called upon to defend or argue these matters in court, I am competent and willing to do so.

Dated: Honolulu, Hawaii: September 3, 2019

A handwritten signature in cursive script, appearing to read "Leonard G. Horowitz", written in black ink on a light-colored background.

Signed: /s/Leonard G. Horowitz

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

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DEFENDANT/APPELLANT/PETITIONER'S
REPLY BRIEF

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

2008 FEB - 8 PM 1:56
E. YAMANE, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

FILED

CECIL LORAN LEE,)
) Civil No. 05-1-0196
) (Foreclosure)
)
) Plaintiffs,)
)
) vs.)
)
) NOTICE OF FILING JURY
) INSTRUCTIONS;
) CERTIFICATE OF SERVICE.
)
) LEONARD GEORGE HOROWITZ, et)
) al,)
)
) JUDGE: Ronald Ibarra
)
)
) Defendants.)

NOTICE OF FILING JURY INSTRUCTIONS

COMES NOW, Plaintiff Cecil Loran Lee (hereinafter "Lee"), by and through counsel Dan O'Phelan and files the Notice of Filing Jury Instructions.

Plaintiff's counsel hereby notifies counsel and the parties that the Jury Instructions are attached herein.

Dated: 2-8-08


Dan O'Phelan

Exhibit 1

INSTRUCTION NO. 6.1

NEGLIGENCE DEFINED

Negligence is doing something which a reasonable person would not do or failing to do something which a reasonable person would do. It is the failure to use that care which a reasonable person would use to avoid injury to himself, herself, or other people or damage to property.

In deciding whether a person was negligent, you must consider what was done or not done under the circumstances as shown by the evidence in this case.

INSTRUCTION NO. 8.2

SPECIAL DAMAGES DEFINED

Special damages are those damages which can be calculated precisely or can be determined by you with reasonable certainty from the evidence.

INSTRUCTION NO. 15.27

CONTRACT - FRAUD

Defendant(s) assert(s) the affirmative defense that he/she/it/they is/are excused from performing under the contract because plaintiff(s) fraudulently induced defendant(s) to enter into the contract.

To prevail on the affirmative defense of fraudulent inducement, defendant(s) must prove all of the following elements by clear and convincing evidence:

- (1) Plaintiff(s) represented a material fact; and
- (2) The representation was false when it was made; and
- (3) Plaintiff(s) knew the representation to be false or was/were reckless in making the representation without knowing whether it was true or false; and
- (4) Plaintiff(s) intended that defendant(s) rely upon the representation; and
- (5) Defendant(s) relied upon the representation by entering into the contract; and
- (6) Defendant's(s') reliance upon the representation was reasonable.

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

ORIGINAL

FILED

Dan O'Phelan
Attorney at Law #7843
319 Haili Street
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2008 FEB 14 AM 8:42

Walter B.
CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

IN THE CIRCUIT COURT FOR THE THIRD CIRCUIT
STATE OF HAWAII

CECIL LORAN LEE,	)	Civil No. 05-1-0196
)	
Plaintiff,	)	PLAINTIFF'S MOTION TO ADD JURY
	)	INSTRUCTIONS FOR
vs.	)	MISREPRESENTATION AND
	)	CONSPIRACY TO MAKE PARTY
LEONARD G. HOROWITZ,	)	NEUTRAL JURY INSTRUCTIONS
JACQUELINE LINDENBACH	)	RELATING TO SIMILAR CLAIMS
HOROWITZ; THE ROYAL	)	BETWEEN PLAINTIFF AND
BLOODLINE )	)	INTERVENOR
OF DAVID, and PHILIP B. MAISE,)	
	)	JUDGE: RONALD IBARRA
Defendant.)	

Now Comes, Plaintiff, Mr. CECIL LORAN LEE, and moves to add two jury instructions, one relating to Conspiracy and one relating to Misrepresentation.


Upon examination of the jury instructions filed by Plaintiff on February 11th, 2008, there appeared that there was no jury instruction submitted for "misrepresentation" and no jury instruction submitted for conspiracy. Since Plaintiff plead the claim of conspiracy in his original complaint, Plaintiff asks that the jury instruction relating to conspiracy be added as part of his jury instructions. Plaintiff also requests that the Court make party neutral those jury instructions submitted by both parties that relate to the same or similar claims.

The Court has already ruled that Plaintiff can submit a jury instruction relating to trespass to chattels and that instruction is being attached as Exhibit C.

Instructions for Conspiracy and Misrepresentation are hereby attached as Exhibit A and B.

Exhibit 2

DATED: 2-14-08



Dan O'Phelan

Served on the parties and filed with the Court on 2-14-08

EXHIBIT A

CONSPIRACY

Plaintiff has sued Defendants for conspiracy. Conspiracy is an agreement between two or more natural persons to break the law at some time in the future to achieve a lawful aim by unlawful means.

The Jury must accept that Intervenor has a valid right to garnish the proceeds of paid by Defendants' to Plaintiff; however if the jury further finds that Intervenor and Defendant's acted in agreement to unlawfully deprive Plaintiff of his receipt of mail and receipt of mortgage payments, the jury may award damages to Plaintiff.

EXHIBIT B

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.

ORIGINAL

FILED

2008 FEB 14 AM 8:43

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Nonne Law
CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

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

CECIL LORAN LEE,	)	Civil No. 05-1-0196
)	
Plaintiff,	)	PLAINTIFF'S OBJECTIONS TO
	)	DEFENDANTS' JURY
vs.	)	INSTRUCTIONS AND ACCEPTANCE
	)	OF DEFENDANT'S JURY
LEONARD G. HOROWITZ,	)	INSTRUCTION DEFINING FRAUD
JACQUELINE LINDENBACH	)	WITH THE CONDITION THAT IT BE
HOROWITZ; THE ROYAL	)	MADE APPLICABLE TO BOTH
BLOODLINE )	)	PARTIES
OF DAVID, and PHILIP B. MAISE,)	
	)	JUDGE: RONALD IBARRA
Defendant.)	
)	

Now Comes, Plaintiff, Mr. CECIL LORAN LEE, by and through his attorney, Dan O'Phelan and hereby submits the following Proposed Special Verdict Form as follows:

Plaintiff objects to the following jury instructions proposed by Defendant. This objection is prefaced with Plaintiff's counsel having reviewed the filed Defendant's Counterclaims in this case dated July 6th, 2006, which are attached as Exhibit A.

1. Objection to Defendant's Jury instruction 1: since the hearing on the issue of jury instructions that occurred after the jury departed on 2-13-08, Plaintiff agreed with Defendant's Jury Instruction 1, but requested that it be applied to both parties because both parties are asserting "fraud." Jury instruction 1 current reads as if it is

Exhibit 3

exclusive to Defendant and not Plaintiff. Plaintiff requests that the instruction be corrected to apply to both parties. Plaintiff agreed to Defendant's instruction relating to the definition of fraud, but not those instructions that relate to fraud as it relates to causes of action that are not identified in Defendant's counterclaims.

2. Objection to Defendant's Instructions 2-5, 11, 14, 15, . These instructions relate to a claim that is not identified the Defendant's filed counterclaims. Defendant did not claim that there was a failure to disclose material defects in his complaint or concealment of material defects, or misrepresentation regarding the disclosure of material defects. These claim is simply not indicated in def
3. Objection to Defendant's Jury Instruction: 7, 8, 10: The counterclaims do not indicate that there are claims for pain and suffering or causes of actions that would involve pain and suffering damages. These types of damages were not plead in Defendant's counterclaims.

DATED: Hilo, HI 2-14-08



Dan O'Phelan

To be served on the parties and the Court at the beginning of trial on 2-14-08.

FILED

2008 FEB 21 AM 8:46

Monica Law
CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

CECIL LORAN LEE,	)	CIVIL NO. 05-1-196
)	
Plaintiff,)	
	)	FINAL JURY INSTRUCTIONS
vs.)	
)	
LEONARD GEORGE HOROWITZ, ET AL.,)	
)	
Defendants,)	
_____)	

FINAL JURY INSTRUCTIONS

Exhibit 4

P

MEMBERS OF THE JURY:

You have heard the evidence in this case. I will now instruct you on the law that you must apply.

You are the judges of the facts. It is your duty to review the evidence and to decide the true facts. When you have decided the true facts, you must then apply the law to the facts.

I will tell you the law that applies to this case. You must apply that law, and only that law, in deciding this case, whether you personally agree or disagree with it.

The order in which I give you the instructions does not mean that one instruction is any more or less important than any other instruction. You must follow all the instructions I give you. You must not single out some instructions and ignore others. All the instructions are equally important and you must apply them as a whole to the facts.

During the trial, I have ruled on objections made by the attorneys. Objections are based on rules of law designed to protect the jury from unreliable or irrelevant evidence. It is an attorney's duty to object when he or she believes that the rules of law are not being followed. These objections relate to questions of law for me to decide and with which you need not be concerned.

If you find by clear and convincing evidence a party has committed fraud, then you may award damages in an amount that will reasonably compensate the injured party for all the loss suffered by it and was a legal cause by the fraud upon which you base your finding of liability.

Defendants assert the affirmative defense that they are excused from performing under the contract because plaintiff fraudulently induced defendants to enter into the contract.

To prevail on the affirmative defense of fraudulent inducement, defendants must prove all of the following elements by clear and convincing evidence:

- (1) Plaintiff represented a material fact; and
- (2) The representation was false when it was made; and
- (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; and
- (5) Defendants relied upon the representation by entering into the contract; and
- (6) Defendants' reliance upon the representation was reasonable.

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

Ordinarily expressions of opinion are not treated as representations of fact upon which to based actionable fraud.

However, when one party possesses or holds himself out as possessing superior knowledge or special information regarding the subject of a representation, and the other party is so situated that he may reasonably rely upon such supposed superior knowledge or special information, a representation made by the party possessing, or holding himself out as possessing, such knowledge or information will be treated as a representation of fact although if made by any other person it might be regarded as an expression of opinion.

When a party states an opinion as a fact, in such a manner that it is reasonable to rely and act on it as a fact, it may be treated as a representation of fact.

Where it is shown that material facts were accessible to the seller only and he or she knew them not to be within the reach of the purchaser, the seller is under a duty to disclose them and failure to do so proves fraud.

A party is subject to liability for fraud if he intentionally conceals facts within his knowledge, such as known defects in a property, or if he actively prevents investigation and discovery of material facts by the other party.

Moreover, where one party is under no duty to speak, but nevertheless does so, he is bound to speak honestly and not to engage in misleading half-truths or the suppression of facts which materially qualify those stated.

The misrepresentation must be both false and fraudulent, in order to make the party making the representation responsible to the other for damages. It is not every misrepresentation which will make a party liable. Where 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, there would be no responsibility and when the speaker was under no legal pledge or obligation as to the precise accuracy and correctness of the statement, the other party can not maintain an action for the consequences of that statement, upon which it was his indiscretion to place reliance.

A party claiming to have been defrauded by a false representation must have relied upon it. That is, the representation must have been a legal cause of his or her conduct in entering into the transaction and without such representation he or she would not have entered into such a transaction.

The fraud, if any, need not be the sole legal cause if it appears that reliance upon the representation substantially influenced such party's action, even though other influences operated as well.

Reliance upon a representation may be shown by direct evidence or may be inferred from the circumstances.

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

CECIL LORAN LEE,

Plaintiff,

vs.

LEONARD GEORGE HOROWITZ,
et al.,

Defendant.

) CIVIL NO. 05-1-196

) SPECIAL VERDICT

2008 FEB 21 PM 5:58
Lani Ng
THIRD CIRCUIT COURT
STATE OF HAWAII
[Signature]

FILED

SPECIAL VERDICT

Exhibit 5

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.

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.

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 _____

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 Spivey
FOREPERSON

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

[Signature]
CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

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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

[Signature]
Foreperson

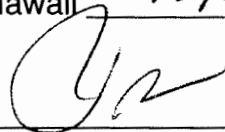
Exhibit 6

Court Allowing Royal Bloodline of David to Make Payment to the Clerk of the Third Circuit Court for Satisfying Indebtedness to Intervenor Philip Maise, filed October 2, 2008; as well as the record and file of the case,

IT IS HEREBY ORDERED, Motion Requesting an Order from the Court Allowing Royal Bloodline of David to Make Payment to the Clerk of the Third Circuit Court for Satisfying Indebtedness to Intervenor to [sic] Philip Maise, filed on September 26, 2008 is DENIED WITHOUT PREJUDICE. Defendants shall submit an accounting of total payments made to date no later than November 13, 2008.

DATED: Kealakekua, Hawaii

10/14/08



JUDGE OF THE ABOVE-ENTITLED COURT

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

ORIGINAL

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

2008 NOV -5 AM 10:57



B. TERAKA

EX OFFICIO CLERK

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	)	SUBMISSION OF ACCOUNTING
vs.	)	ON BEHALF OF LEONARD
	)	GEORGE HOROWITZ,
LEONARD GEORGE HOROWITZ,	)	JACQUELINE LINDENBACH
JACQUELINE LINDENBACH	)	HOROWITZ AND THE ROYAL
HOROWITZ AND THE ROYAL	)	BLOODLINE OF DAVID;
BLOODLINE OF DAVID, JOHN	)	DECLARATION OF JOHN S.
DOES 1-10, JANE DOES 1-10,	)	CARROLL; EXHIBIT "A";
DOE PARTNERSHIPS 1-10, DOE	)	CERTIFICATE OF SERVICE
CORPORATIONS 1-10, DOE)	
ENTITIES, DOE GOVERNMENTAL)	
UNITS,	)	(Non-Hearing Motion)
)	
Defendants and)	
Counterclaimants.)	
)	
)	
)	
)	

**SUBMISSION OF ACCOUNTING ON BEHALF OF LEONARD GEORGE
HOROWITZ, JACQUELINE LINDENBACH HOROWITZ AND THE ROYAL
BLOODLINE OF DAVID**


COMES NOW, Defendants and Counterclaimants
LEONARD GEORGE HOROWITZ, JACQUELINE LINDENBACH HOROWITZ and

Exhibit 8

THE ROYAL BLOODLINE OF DAVID (hereinafter "Defendants-Counterclaimants"), by and through undersigned Counsel, hereby submit an accounting on behalf of The Royal Bloodline of David by Leonard Horowitz.

The attached Declaration by counsel for Royal Bloodline of David and submission by Leonard Horowitz, Defendants-Counterclaimants, are submitted pursuant to the request of the Court dated October 14, 2008.

DATED: Honolulu, Hawaii, NOV 04 2008.



JOHN S. CARROLL
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,)	
)	
vs.	)	DECLARATION OF JOHN S.
LEONARD GEORGE HOROWITZ,	)	CARROLL
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.)	
)	
)	
)	
)	

DECLARATION OF JOHN S. CARROLL

I, John S. Carroll declare as follows:

1. I am an attorney licensed to practice law in the State of Hawaii and am one of the attorneys for the Defendants, LEONARD GEORGE HOROWITZ, JACQUELINE LINDENBACH HOROWITZ AND THE ROYAL BLOODLINE OF DAVID, a Washington State Certified Corporation, Sole Non-Profit Ecclesiastical Ministry in this matter.

2. In the Declaration of Dr. Horowitz, Item 2 indicates a period of October 15, 2004 through November

2004. It is supposed to be November 2008 for a total of forty-nine months. That error has been noted and is hereby corrected. Dr. Horowitz has acknowledged that inadvertent error.

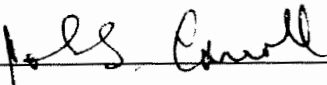
3. An examination of the records which are present in this office, reveal that in addition to the \$133,583.15 as evidenced in the declaration of Dr. Horowitz (attached hereto as Exhibit A), there was also paid to Plaintiff a deposit of \$85,000.00 at the time of the original contract and an additional \$115,000.00 paid as the down payment on the subject property purchase.

4. In addition to the \$200,000.00 that was paid, \$85,000.00 was allowed to be taken early on, out of escrow before closing. This allowed the Plaintiff to pay off a high-interest loan.

5. In any event, in addition to the \$333,583.15 that has been paid, additional attorney's fees and costs in the vicinity of \$100,000 have been paid or incurred. This matter is the subject of Defendants-Counterclaimants' Motion for attorney's fees which was denied without prejudice on October 13, 2008.

Respectfully Submitted.

DATED: Honolulu, Hawaii, NOV 04 2008.



JOHN S. CARROLL

EXHIBIT A

**PAYMENTS MADE BY CHECKS TO PLAINTIFF MORTGAGE HOLDER
CECIL LORAN LEE, FEB. 2004 THROUGH SEPTEMBER, 2004;
FOLLOWED BY PAYMENTS MADE TO COURT AWARDED GARNISHER,
INTERVENOR, PHILIP MAISE, OCTOBER, 2004 THROUGH NOVEMBER, 2008,
BY THE ROYAL BLOODLINE OF DAVID, DEFENDANT**

For the legal record, the following itemizes the payments made in full to date to the Plaintiff and Intervenor by the Defendant, The Royal Bloodline of David:

I.	FEBRUARY 15, 2004 – SEPTEMBER 15, 2004 (8 Months)	\$18, 666.66
II.	OCTOBER 15, 2004 – NOVEMBER 15, 2004 (49 Months)	\$114,916.49

	Total Payments Made Through Nov. 2008	\$133,583,15

DATED: Hilo, Hawaii, October 20, 2008

THE ROYAL BLOODLINE OF DAVID
BY: LEONARD G. HOROWITZ, OVERSEER

The Royal Bloodline of David
By: Leonard G. Horowitz, Overseer
Signed: _____

LEONARD G. HOROWITZ
5348 Vegas Drive, Suite 353
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***
) **REPLY TO THE RESPONSE**
) **PURSUANT TO THE**
) ***APPLICATION FOR WRIT OF***
) ***CERTIORARI***
)
)
)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of September, 2019 I served a true and correct copy of the foregoing *PETITIONER-APPELLANT'S* REPLY TO RESPONSE PURSUANT TO THE APPLICATION FOR WRIT OF CERTIORAR [HRAP Rule 40.1; *Declaration of Leonard G. Horowitz, and EXHIBITS "1" thru "8"*] by the method described below to:

PAUL J. SULLA, JR

e-filing

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

MARGARET WILLE & ASSOCIATES, LLC

e-filing

Margaret (Dunham) Wille #8522
David Swatland #10929
P.O. Box 6398
Kamuela, Hawaii 96743
Tel: 808-854-6931
Email: mw@mwlawhawaii.com
Attorneys for:
Defendant Royal Bloodline of David

/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*
REPLY TO RESPONSE PURSUANT TO THE APPLICATION FOR WRIT OF
CERTIORARI [HRAP Rule 40.1; HRS § 602-59(b); *Declaration of Leonard G. Horowitz;*
EXHIBITS "1" thru "8"].