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IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAI'I

ICA No. CAAP-16-0000162

JASON HESTER, AS
SUCCESSOR OVERSEER, THE
OFFICE OF THE OVERSEER
AND HIS SUCCESSOR,
OVER/FOR THE POPULAR
ASSEMBLY OF REVITALIZE, A
GOSPEL OF BELIEVERS
Plaintiff/Counterclaim Defendant-
Appellee

vs.

LEONARD G. HOROWITZ et al.
Defendants/Counterclaimants –
Appellants

) Civ. No. 05-1-0196
) THIRD CIRCUIT COURT
) Appeal of Fifth Amended
) Final Judgment
)
) APPELLANTS' MEMORANDUM
) IN OPPOSITION TO APPELLEE'S
) MOTION FOR (10 DAY) THIRD
) EXTENSION OF TIME TO FILE
) ANSWERING BRIEF;
) DECLARATION OF MARGARET WILLE;
) CERTIFICATE OF SERVICE.

APPELLANTS' MEMORANDUM IN OPPOSITION TO APPELLEE'S MOTION
FOR SECOND (10 DAY) EXTENSION OF TIME TO FILE ANSWERING BRIEF

COMES NOW Defendants/Counterclaimants-Appellants LEONARD GEORGE HOROWITZ and the ROYAL BLOODLINE OF DAVID (RBOD), by and through their attorney, MARGARET WILLE, hereby opposing for good cause, Appellee's "Motion for Third [10 day] Extension of Time to File Answering Brief" filed by Attorney Paul J. Sulla, Jr. ("Sulla") on behalf of Jason Hester, as Overseer of THE OFFICE OF THE OVERSEER AND HIS SUCCESSOR, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS ("GOB"), in *Hester v. Horowitz et al.*, App. No. CAAP16-0000162 ("CAAP-162") pursuant to Hawaii Rule of Appellate Procedure (HRAP) Rule 27(a) "Motions." Appellants oppose Appellee's Motion and view Appellee Counsel's requested delay in submitting the Answering Brief as specious and tactically motivated. If however the Court deems any extension as appropriate at this time, Appellants ask that it be for no more than three (3) days – until December 6, 2016.

I. INTRODUCTION:

The Opening Brief in the appeal of this 2005 case was filed on August 25, 2016 – almost 100 days ago. In accord with the two thirty-day extensions granted to date, Appellee's Attorney Paul Sulla was aware of the December 3, 2016 deadline since November 2, 2016. Certainly he should have planned to have his Answering Brief ready to submit by December 3rd, rather than instead wait for the Court to enter an Order in response to his October 11, 2016 Motion to Dismiss – which Order was entered on November 22, 2016.

Counsel for Appellants has cleared her schedule as of December 4, 2016 to draft a Reply Brief in the instant case so it can be completed, or almost completed, in advance of December 19, 2016. Between December 19, 2016 and January 15, 2017, Appellants' Counsel will visit and travel with

family in Boston, New York, and Portland Maine. Further, Appellants' Counsel is expecting to also be drafting a Reply Brief during that same time period in the related 2014 case of Jason Hester vs Leonard G. Horowitz et.al. CAAP-160000163 ("CAAP-163") in which case the Answering Brief is due on December 9, 2016. In others words, a further delay in submission of Appellee's Answering Brief in the instant case will cause an undue imposition on Appellants' Counsel.¹ For these reasons, without even responding to Attorney Sulla's arguments, Appellants ask that this requested extension be denied or be granted for no more than three additional days - until December 6, 2016.

II. ATTORNEY SULLA'S ARGUMENTS FOR ANOTHER DELAY, PURPORTEDLY HIS "INITIAL CLIENT'S" DEATH, AND "SUCCESSOR CLIENT'S" DISSOLUTION, ARE UNPERSUASIVE.

Appellee's counsel excuses his repeated requests for extension by pleading, "my initial client is deceased and the successor client is a defunct entity and unable to be fully responsive herein. These facts make drafting of the Answering Brief problematic." Appellee's Motion also repeats his other claimed need for continuance as "significant factual and legal issues that are not set forth concisely and in accordance with Appellate Rules" in the Opening Brief. All of that is hogwash.

Appellee's alleged "need" for another continuance is frivolous, diversionary, and immaterial to the two main issues under Appeal: (a) the untimely Motion for Judgment as a Matter of Law under Hawaii Rule of Civil Procedure (HRCP) Rule 50, combined with the subsequent improper use of HRCP 60(b) to vacate Appellant's \$200,000 damages award; and (b) the prudential

¹ Notably, although the attorney of record in the related 2014 CAAP-163 appeal is Stephen Whittaker, Attorney Paul Sulla is also involved, and though previously disqualified from being Counsel in the case, likely will be the major player in terms of the drafting of the CAAP-163 Answering Brief due on December 9, 2016.

standing, of Sulla's "Substitute Plaintiff"— Jason Hester as the Overseer of the non-profit corporation Revitalize, Gospel of Believers (GOB), an ecclesiastical corporation of questionable legitimacy, that was dissolved or allowed to be extinguished by lack of activity, under attorney Sulla's watch, and his successor client Jason Hester, as an individual, who appears to be no more than a strawman for Attorney Sulla in the quest for the subject property and/or the sale proceeds thereof. These are the same issues that have been being raised and been discussed in the various lower court and appellate proceeding for more than a year.

Appellants here repeat the point made in their October 30, 2016, Opposition to Appellee's October 26, 2016 Request for a Second Extension that Attorney Sulla is well acquainted with the facts and proceedings related to the issues raised in this appeal. As stated in Appellants' October 30, 2016 Opposition to Appellee's Request for a Second Extension:

Attorney Sulla began representing original seller-mortgagee Cecil Loran Lee in the spring of 2009. He orchestrated the transfer of property interests from Lee - who was dying, to Hester as the Successor Overseer for The Office Of The Overseer Over/For The Popular Assembly Of Revitalize, A Gospel Of Believers (GOB), ROA Part 3, Doc. No. 371, p. 359, (apparently representing both parties to this transaction), and subsequent to Lee's death, continued up until the present to represent Hester in either or both his corporate capacity as the Overseer of GOB and in his individual capacity. At the same time that Sulla orchestrated the transfer of interests from Hester, as the Overseer of GOB, to Hester as an individual, he contemporaneously set up a loan and security interest from Hester to himself, so that it is Paul Sulla who in effect has the controlling interest in the subject property. ROA Part 3, Doc. No. 371, Exhibit A, p. 395 and p 416. It was also Sulla who in 2009 drafted the motion for substitution which was based on Sulla's, not Hester's, Declaration, and which contained a later determined false statement of "nephew" kinship between Lee and Hester and which was otherwise based on incorporation documents later determined to have been "altered," with signature page(s) "photocopied," pagination improper, and of overall questionable validity. ROA Part 3, Doc. No. 379, p. 734, footnote 4, and p. 815-816. Throughout these proceedings, Sulla has been "the face" of Hester. Hester has never testified and has never submitted any affidavit or declaration, nor otherwise been required to justify the legitimacy of his standing. ROA Part 3, Doc. No. 379, p. 734, footnote 4, and p. 815-816. Moreover, in 2010, while the appeal in this case was pending, on behalf of Overseer Hester, Sulla pursued the non-judicial foreclosure for the full amount of the Promissory Note, despite the lack of finality in the instant case. Then, subsequent to

a bogus non-judicial foreclosure auction and transfer of Hester as Overseer's interest in the property to Hester as an individual, Sulla pursued two unsuccessful summary possession actions in District Court, and then a quiet title action to secure possession of the subject property (Civ. 14-1-0304, now also on appeal as CAAP 15-0000163).²

Enough is enough. Understandably it is in Attorney Sulla's interest to further delay a determination in the instant case, so that he can dispose of the subject mortgage property - at issue in both CAAP-162 and CAAP-163, in support of his mootness argument such that there is no effective remedy. Attorney Sulla's conflicting interest as the current subject Property possessor, having now listed the Property to be sold, seeking unjust enrichment as Hester's secured party mortgagee with a superior contractual interest in the Property, are material facts requiring candor, not further obfuscation by diversion and delay.

Appellants have been outrageously damaged and severely distressed over and over again by the opposing party's Counsel's manipulation of the system as if it were a poker game. Right from the beginning this case has been a charade. There was no failure on the part of Appellants/Defendants to timely make mortgage payments but instead the underlying foreclosure action was based on non-substantive claims such as Appellants/Defendants having made improvements to the subject property without Cecil Loran Lee's - the original mortgagee's -- written permission, and an alleged conspiracy claim against Horowitz for making the mortgage payments to Intervenor Phillip Maise (Those payments were made to Maise pursuant to a Third Circuit Garnishment Order obtained by Maise following having obtained a judgment of fraud against original Appellant Lee involving the attempted sale of the same property despite a federal lien related to drug trafficking charges.) Months following the February 23, 2009 final judgment in this case and final payment of the remaining amount due in interest and principal on the mortgage,

² The summary judgment decision in that case hinged on the default of RBOD and the lower court's refusal to vacate that default judgment.

with Lee’s impending death, in struts Attorney Sulla with a new found replacement Plaintiff, a local drifter named Jason Hester. And hats off to Attorney Sulla whose expertise at avoiding any substantive issue in the case by way of obtuse procedural maneuvers and being an exacting stickler for compliance with court rules and deadlines, has managed to secure the subject property – Appellants’ home despite Appellant Horowitz having paid off the mortgage in full based on that February 2009 Final Judgment. It is this type of manipulative lawyering, regardless of its success, that gives lawyers a bad name. Simply consider that Hester in his Overseer capacity as representative of GOB as well as in his individual capacity, has never testified or submitted an affidavit, and has repeatedly avoided having to establish prudential standing to “stand” in the shoes of original Plaintiff Lee, that is, as a person entitled to enforce the original promissory note.

III. APPELLEE’S ARGUMENT THAT APPELLANTS’ OPENING BRIEF CONTAINS FACTUAL AND LEGAL ISSUES “THAT ARE NOT SET FORTH CONCISELY AND IN ACCORDANCE WITH APPELLATE RULES” IS LIKEWISE UNPERSUASIVE.

The attack on the conciseness and precision of Counsel for Appellants’ drafting of the Opening Brief is not worthy of again rebutting. This argument is made without specifying any instances in which the Opening Brief failed to comply with the Hawaii Rules of Appellate Procedure (HRAP) – other than the one erroneous claim that Appellants did not reference where in the Record on Appeal the Exhibits are to be found. Had Appellee’s counsel pointed to actual specific inadequacies, pursuant to HRAP Rule 30 “Briefs Not Timely Filed or Not in Conformity with These Rules”³, Appellants’ Counsel could have requested the opportunity to correct those inadequacies by way of

³ HRAP Rule 30 provides in relevant part: “When a brief is filed, an appellate court shall not dismiss an appeal, accept as true the statement of facts in the appellant's opening brief, impose a monetary sanction, or strike a brief without an opportunity to resubmit an amended brief, without prior notice to the affected party, and without a meaningful opportunity to be heard.”

submission of an amended Opening Brief.⁴ Lacking specific instances of inconsistencies with the HRAP in Appellees' two motions for extensions, there will likely be some claims of inadequacies raised in the Answering Brief, when it will be too late to make any corrections. Appellees are here again simply seeking to avoid focusing on the substantive issues in this appeal. This further effort to obfuscate and delay should not be enabled or condoned.

IV. CONCLUSION.

Appellants oppose Appellee's Motion for a Third Extension for the filing of the Answering Brief. If however the Court deems any extension as appropriate at this time, Appellants ask that it be for no more than three (3) days – until December 6, 2016.

DATED: Waimea, HI, 96743 Dec. 2, 2016

/s/ Margaret Wille

MARGARET (DUNHAM) WILLE,
Attorney for Defendants –
Counterclaimants – Appellants

Hester, Overseer v. Horowitz et al; CAAP-16-0000162; *Appellants' Opposition To Appellee's Motion For Third Extension Of Time To File Answering Brief.*

⁴ Appellee's Counsel should counsel himself about precision adherence to the HRAP including Rule 32(a) which requires a three inch margin at the top of the flyleaf - first page of each separately filed document. Appellee's Counsel did not adhere to Rule 32(a) despite having been warned to do so by the Court in its November 22, 2016 "Order Granting In Part the October 26, 2016 Motion"