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THIRD CIRCUIT
3CPC-19-0000968
19-AUG-2020
09:33 PM

Attorneys for Plaintiff
PAUL J. SULLA, JR., and HALAI HEIGHTS, LLC.

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

STATE OF HAWAII

Plaintiff,

vs.

PAUL J. SULLA JR.; HALAI HEIGHTS,
LLC,

Defendants.

CR NO. 3CPC-19-0000968

MOTION TO DISMISS INDICTMENT;
DECLARATION OF COUNSEL;
DECLARATION OF PAUL J SULLA;
EXHIBITS "A-C"; MEMORANDUM IN
SUPPORT; NOTICE OF MOTION;
CERTIFICATE OF SERVICE

Judge: Honorable Peter K. Kubota

Hearing Date: September 23, 2020

Time: 9:00A.M.

Trial: December 14, 2020

MOTION TO DISMISS INDICTMENT

COMES NOW Defendants PAUL J. SULLA, JR., and HALAI HEIGHTS, LLC. by and through their attorneys, the BRIAN J. DE LIMA and JEREMY J. K. BUTTERFIELD, of the LAW OFFICES OF BRIAN J. DE LIMA, and moves this Honorable Court for an Order dismiss the indictment against Defendant as follows:

1. Prosecutorial misconduct by introducing the Prosecutor's own opinions about matters that the Prosecutor either knew or should have known were false.
2. Prosecutorial misconduct in allowing a witness that provided testimony that was false, inaccurate, and prejudicial and failed to correct the testimony, that the Prosecutor either knew or should have known were false.
3. Failed to present clearly exculpatory evidence to the Grand Jury that was available and should have been known to the prosecutor.

The cumulative conduct and testimony presented to the grand jury resulted in the indictment. The introduction of said evidence violated Defendant's right to due process of law.

The motion is made pursuant to Rules 12, 45, and 47 of the Hawaii Rules of Penal Procedure and the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Art. I, sec. 5, 10 and 14 of the Hawaii State Constitution, and is based upon the records and files herein, the Memorandum In Support Of The Motion To Dismiss, all attached hereto and made a part hereof, and such further evidence as may be adduced at a hearing on the motion

DATED: Hilo, Hawaii, August 19, 2020.

/s/ Jeremy J.K. Butterfield
BRIAN J. DE LIMA
JEREMY J.K. BUTTERFIELD
Attorneys for Defendant

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

STATE OF HAWAII,

vs.

PAUL SULLA;

Defendant.

3CPC-190000968

DECLARATION OF COUNSEL

DECLARATION OF COUNSEL

JEREMY J.K. BUTTERFIELD, do hereby state and declare as follows:

1. I am an attorney duly licensed to practice law within the State of Hawaii;
2. I am an associate attorney with the Law Offices of Brian J. De Lima;
3. The Law Offices of Brian J. De Lima has been retained to represent Defendant PAUL SULLA, JR. and HALAI HEIGHTS, LLC in the above-entitled action;
4. Defendant PAUL SULLA, JR. is charged with Forgery in the Second Degree, and Defendants PAUL SULLA, JR. and HALAI HEIGHTS, LLC are charged with the offense of Theft in the First Degree by way of Indictment filed on December 5, 2019.
5. Counsel has reviewed the discovery provided by the State and the transcription of the Grand Jury Proceedings and am informed and of the belief:
6. Deputy Prosecuting Attorney Ricky Damerville improperly introduced his own opinions on the matter before the grand jury, improperly elicited testimony that was incorrect or inaccurate that Mr. Damerville knew or should have known was incorrect or inaccurate, failed to correct the testimony, and failed to present clearly exculpatory evidence that the Mr. Damerville knew or should have known of.

7. Mr. Damerville called as the state's first witness, Leonard George

Horowitz. On Page 17, Line 4-15, the transcript contains:

Q. Okay. And -- and it went to trial in Kona circuit court. Is that right? That's where it is. It's over in Kona?

A. Yes, it went to -- the Lee foreclosure went to trial in, uh, Kona and we defeated it. The jury had determined that indeed he had committed fraud.

Q. Okay. Just answer my questions.

A. Yes.

Q. I know you're eager after 15 years, however long but if you could just answer my question.

Here, Mr. Damerville does not address the patent misrepresentation of the witness. Had Mr. Damerville reviewed the civil action in this matter, he would see that the jury verdict for foreclosure was vacated on the grounds of equity by the Judge Ibarra, and that the jury also determined that fraud had been committed by both Plaintiff Loren Lee and Mr. Horowitz. (The finding of fraud against Lee was later vacated by Judge Ibarra in 2010.) Furthermore, Mr. Damerville failed to supplement that this action (Civil Action 1) was filed and decided before Defendant Sulla even represented Lee. Furthermore, Mr. Damerville added unnecessary misinformation suggesting that the issue involving the Defendant Sulla has gone on for 15 years. Mr. Damerville should have corrected this confusing testimony.

Mr. Damerville later asks (Page 21 Line 1-25):

Q. After Paul Sulla, Jr. appeared, although there had been a, um, jury verdict in - - somewhat in your favor. Yes?

A. Yes.

Q. Um, Mr. Sulla moved with - - for what's called a, um, judgment from, uh, motion for judgment

A. As a matter of law.

Q. as a matter of law?

A. Yeah.

Q. Okay. And basically, what that motion wanted to do is it argued that there - - there was not sufficient particularity in your pleadings.

A. Correct.

Q. And therefore the judge should grant him a motion grant his motion and vacate the award to you? Is that right?

A. That's correct.

Q. And so that's eventually what happened. Is that right?

A. That's correct.

Q. And after that judgment was entered which vacated that \$200,000, um, award to you, um, final judgment was entered and you took an appeal?

A. That's correct.

8. Mr. Damerville attempts to correct the record regarding Mr. Horowitz's claim of fraud, however, this testimony is elicited four pages later in the transcript. The grand jury likely did not understand that this meant that the "fraud" judgment against Lee had been stricken or overturned. Further, had Mr. Damerville reviewed the record below, he would or should have known that Lee's former counsel Dan O'Phelan filed a Rule 59 Motion for Judgment as a Matter of Law based upon Horowitz's failure to plead fraud with Rule 9 with specificity. The Rule 59 Motion was granted by Judge Ibarra prior to his entry of Final Judgment. Sulla only entered on appeal when Judge Ibarra neglected to remove the \$200,000 jury award in his Final Judgment and Amended Final Judgment. In his 2010 Second Amended Judgment, Judge Ibarra corrected his mistake and vacated the jury award of fraud against Lee.

Page 23, Line 1-25 provides:

Q. And finally on the fifth judgment they say, "Okay. Now we got jurisdiction"?

A. Correct.

Q. And so that ate up a whole lotta time?

A. Yeah, many years.

Q. And -- and a whole lot of filing fees by -- on -- that you had to pay?

A. I ended up bankrupt.

Q. Okay. So --

A. Declaring officially bankruptcy.

Q. -- finally you get up there and you file -- by this time you file multiple number of cases. Is that right?

A. That's correct.

Q. And finally when you get up there, um, while these proceedings are going on you become aware that, um, Mr. Sulla had caused to be filed a warranty deed transferring, uh, property from Jason Hester into a limited liability company called "Halai Heights" on or about September the 9th, 2016. Is that right?

A. That's correct.

Q. And that, um, transfer with the grantor was Jason Hester. Is that right?

A. Yes, the grantor was Hester and HH -- Halai Heights LLC was the grantee.

Here, Mr. Damerville completely failed to elicit or correct the testimony of Mr. Horowitz that there had already been a non-judicial foreclosure and a quiet title action regarding this property. The witness was well aware of the proceedings because he was a party. However, those proceedings, which were exculpatory and known to Mr. Damerville and the witness, were never

mentioned. The testimony as presented seems to suggest that Defendant executed the warranty deed out of nowhere. It also confuses the Civil Action 1 foreclosure started by Lee with the subject Deed from Hester to Halai Heights, which involves completely different parcels of land and has nothing to do with the Lee foreclosure action. Further, Mr. Damerville leads the witness to make Horowitz more sympathetic to the jury, confuses the testimony, and leaves it in the light most negative to Defendant. In fact, all filings by Horowitz were denied or rejected by the court and, other than the appeal proceedings, there were no other proceedings going on at the time.

9. Page 28, Line 22

Q. And the discrepancy according to the County was, um, as to Parcel 043. The description was not the correct description for Parcel 043. Is that right?

A. That's correct.

Q. And in fact the description in that deed was for that remnant that didn't have a TMK number Until found 2018. Is that right?

A. That's correct.

Q. And you thought that's not a mistake?

A. It was not a mistake that the County found that.

Q. No, no. The County found it?

A. They found it. Yeah.

Q. Okay. And then you went and got -- and you went back and you looked at that deed that you had -- you had had previously because you used it in a filing?

A. Right.

Q. And you looked at the description of what's supposed to be, um, Lot 043 and you found that that description for Lot 043 was not in that deed, and in fact what should have been the description for that road remnant was now in that deed?

A. Yeah, it was obvious that Mr. Sulla had switched out the land description from the initial road remnant for that Lot 043.

Here, the witness makes a misleading statement, and Mr. Damerville plays into the statement, leading the witness to speculate as to whether or not the discrepancy was a mistake.

The witness was aware of the quiet title action filed regarding the subject property, and Mr. Damerville knew or should have known about the action as it was a public proceeding involving the witness and Defendant. Mr. Damerville should have known, and the witness knew, that the origin of the legal description of the subject property was derived from a title report purchased

from Title Guarantee by Defendant regarding his client Jason Hester's title status of the subject property. However, there is no mention of that clearly exculpatory document in this proceeding,

thus suggesting to the grand jury that Defendant fraudulently made up the description in the 2016 deed or personally altered it for his benefit.

10. Page 31, Line 1-15

A. Right. The -- the -- there in the retyping that was done it's very clear that the person that created his forged deed retyped the County's land description, made two typographical errors and actually did the retyping because if they didn't the Ronald M. Matsumura's license professional land surveyor's stamp would have shown up on the forgery.

Q. Okay. What you're -- what you're basically saying is that since -- they could have just attached a copy of the deed but they didn't do that?

A. That's correct.

Q. And in the retyping there's two errors?

A. There's two errors. Correct.

Q. Okay. And that's into the land description. Is that right?

A. Correct.

Here, Mr. Damerville allows the witness to testify to legal conclusions. The witness refers to the deed as a forgery on two occasions, but he is not an expert on what forgery entails. Furthermore, the witness, enabled by Mr. Damerville, continues to ignore that the legal description is based on a document that Mr. Damerville and the witness knew about or should have known about and should have introduced during this proceeding. By focusing on two minor errors in the re-typed portion of the deed description, without any explanation of their relevance to the alleged crime of forgery, Damerville suggests or implies wrongdoing by the Defendant without basis.

11. Page 40 Line 3-20

Q. Okay. When it sold at foreclosure it was a nonjudicial foreclosure. Is that right?

A. It was. That's right.

Q. And so Mr. Sulla managed the foreclosure sale?

A. Yes, he did. Every aspect of it.

Q. And the only person that appeared in -- and this was in 2010. Is that right?

A. That's correct.

Q. Okay. In 2010 when it sold there was only one bidder?

A. One bidder .

Q. And what was the sale price?

A. The sale price on video tape was \$200,000. What was registered with the State was 175,000 and also -- oh, actually in litigation filings was 175, and what appears in the State's records is 220.

Here, Mr. Damerville introduced and allowed the witness to testify regarding the foreclosure sale of the subject property, which is irrelevant and prejudicial to the allegations of forgery and Theft. Furthermore, if Mr. Damerville wanted to introduce testimony regarding the foreclosure sale, it would be imperative that he introduce testimony regarding the quiet title action following the foreclosure sale, thus introducing the accompanying clearly exculpatory evidence.

12. Page 43 Line 16

Q. And what was the problem that you saw with the deed?

A. The problem with the deed that was filed was that it included an area that the person that was deeding the property or signed the deed, the grantor, didn't have any vested interest in.

Here, Mr. Damerville elicits a legal conclusion regarding who has a vested interest in the property from a witness who is not qualified to render. This witness knows or should know that there was a trade made between the original property owner (Lee) and the county to trade a portion of Lot 49 in exchange for Remnant A. The witness fails to reveal that information, which is clearly exculpatory. Furthermore, the witness's testimony that Jason Hester does not have a vested interest is incorrect, because based on public records and records in possession of the county, the county took the portion of Lot 49 subject to a mortgage duly executed between Lee and the Royal Bloodline of David. The vested interest of Hester in all or a portion of the Remnant A is a clearly civil matter involving the county, Horowitz and Hester. The findings and testimony of several witnesses in the files of this case clearly state that this may be a civil matter. This exculpatory evidence was certainly in possession of the county and should have been produced to the grand jury.

13. Page 49 Line 2-7

Q. Okay. Now, a couple questions. Just because a corporation had dissolved in 2012 does that mean that any property that was in that corporate name is now free range for anybody to come in and take it who wants to take it?

A. No.

Here, Mr. Damerville elicits from the witness a legal conclusion that she has no basis to render. Further, the testimony is irrelevant and misrepresents the alleged wrongdoing in such a way that negatively affects the jury's view of the Defendant.

14. Page 50 Line 2 - Page 51 Line 10

Q. Okay. You have some experience in dealing with legal descriptions. Is that right?

A. Correct.

Q. Now, if you're constructing a deed with an exhibit with an attached A which is normally a description if you don't have a description from another deed that you just copy and attach how do you create the description? You have to go out and get a surveyor to survey it. Right?

A. Right.

Q. I mean you don't just get numbers you pull out of your head. So is that -- is that true?

A. Correct.

Q. So when he made typos on his 2016 warranty deed he had to have been looking at something. Is that true?

A. I -- I would imagine. Yes.

Q. Yeah, highly likely. Yes? So when he says, "Oh, I didn't know," it would appear he knew. Is that true?

A. Yeah, he - - I mean he told me that he owned the property Halai Heights owned it so I don't from my understanding of the conversation he believed that he owns that property now from the legal description he included.

Q. Okay. But you went back and looked at the legal description in the foreclosure?

A. Correct.

Q. And the legal description in the foreclosure did not include a legal description of Remnant A. Is that correct?

A. That's correct.

Q. So that foreclosure had no effect on with respect to Remnant A. Correct?

Here, Mr. Damerville leads the witness to speculate as to the source of the legal description of the property. Furthermore, had Mr. Damerville done his due diligence, he would have discovered that Defendant had a title status report done, which is the basis for the legal description of the 2016 conveyance in question.

15. Page 60 Line 2 – Page 61 Line 3

Q. That's the one filed in September of 2016?

A. That's correct.
Q. And it's signed by Jason Hester back in
A. Mmm-hmm.
Q. -- September the 6th, 2016?
A. That's right.
Q. And the return it says after filing return it to who?
A. Return it to Paul J. Sulla, Jr.
Q. Okay. But the grantor was Jason Hester?
A. That's what this says.
Q. Yes. Okay. Well, you don't know that Jason Hester didn't sign it?
A. That's correct.
Q. But you don't believe Jason Hester read it?
A. I -- that is correct.
Q. And that's because you've had some experience with Jason Hester, um, since 2009?
A. That's correct.
Q. And Jason Hester is a young guy?
A. He's young and he has some, uh, some deficiencies. He's -- he's not, um.
Q. He's mentally challenged?
A. Yes.
Q. That's your opinion?
A. That's correct. That's my opinion.
Q. But that's just a lay person's opinion. You're not a psychiatrist or psychologist?
A. That's -- that's right. That's correct.
Q. But he's mentally challenged?
A. Yes.

Here, Mr. Damerville elicits testimony that is purely speculative and without basis. Mr. Damerville asks the witness, with double negatives, whether she believes the grantor signed or didn't sign the document at issue. The foundation for her opinion is that she believes the grantor to be mentally challenged. The line of questioning was improper and highly prejudicial, without basis and irrelevant to the case.

16. Page 63 Line 24 – Page 64 Line 5

Q. I know you're eager after many, many years, but that's why you're saying -- you're saying it was not an innocent mistake --
A. No.
Q. -- by Mr. Sulla
A. There's mens rea involved with this for sure.

Here, Mr. Damerville asks the witness to speculate as to Defendant's state of mind. The witness states that it was not an innocent mistake, after testifying that she was not with the Defendant when he produced the deed nor did she have any knowledge of the drafting of the deed.

I, JEREMY J.K. BUTTERFIELD, do declare under penalty of law that the foregoing is true and correct.

DATED: Hilo, Hawaii, August 19, 2020.

/s/ Jeremy J.K. Butterfield
BRIAN J. DE LIMA
JEREMY J.K. BUTTERFIELD
Attorneys for Defendant

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

STATE OF HAWAII

Plaintiff,

vs.

PAUL J. SULLA JR.; HALAI HEIGHTS,
LLC,

Defendants.

CR NO. 3CPC-19-0000968

DECLARATION OF PAUL J SULLA;

DECLARATION OF PAUL J. SULLA, JR.

1. I PAUL J. SULLA, JR., am an attorney licensed to practice law in the State of Hawaii and I am the Defendant in the above entitled case and competent to testify the statements herein.
2. In 2014, following a non-judicial foreclosure, I caused a quiet title action to be filed, and in the course of that representation I ordered and received a title status report of the lot 043 and lot 049, the subject properties in this action. The true and correct copy of that title status report is attached as **Exhibit "A"**.
4. The writings on the title report **Exhibit "A"** were made by me, at a later time, when I was making notes as I was engaged in clearing the impediments to the title.
5. I relied upon this title report when drafting a deed from my client Jason Hester intending to convey Lot 43 and Lot 49 to Halai Heights LLC in September 2016.
7. In 2017 when attempting to market the subject Lot 49 and Lot 43 I reviewed old files relating to title and discovered that the County and my former client Loren

Lee had agreed upon a swap of a part of the Lot 49 in exchange for remnant A in 2004. I sent the county two letters seeking more information about the transfer and to complete same as I had been unaware of this land swap. See true and complete copies of my letters to county dated April 2017 and September 2017 attached as **Exhibit “B”**.

8. In February 2018, the county informed me that the remnant A had just been given a tax map number and that the county had conveyed the remnant to Horowitz’s nonprofit corporation in 2005. **I was not aware of this conveyance.** With further research I found that the swap was made in January 2005 after Lee had already sold Lot 43 and Lot 49 to Horowitz’s non-profit corporation and had taken back a purchase money mortgage encumbering the two lots.
9. **Apparently the county had neglected to consider the Lee mortgage to be an impediment to the swap and took a portion of Lot 49 subject to the mortgage.**
10. Title Guaranty had previously also provided a title report to the witness Horowitz’s non-profit corporation concerning Lots 49 and Lot 43. The remnant A lot was also included as Parcel 2 in the description of Lot 49 in that report as well. See true and correct copies of title report to Royal Bloodline of David attached as **Exhibit “C”**.
11. Jason Hester and I had expected to convey Lot 43 to Halai Heights with Lot 49. This is shown by the cover of the deed indicating that the two lots were included. Neither of us had any idea that the road remnant parcel was included in the title description from Title Guaranty. This was a mistake based upon the Title Guaranty title report which I used for the description in the subject deed for lot 43.
12. After discovering the mistake in 2018, I decided I could not just re-convey the

remnant because I was of the opinion that Hester had a vested interest in the remnant A since it was exchanged in a swap with the county that included a portion of the property that was later foreclosed upon by Lee's mortgage. Further later in 2018 after I had a survey made of Lot 49 and Lot 43 I discovered that a portion of the remnant ran thru one of the wading pools built on the land and cut off access to Lot 43 that had been used openly and adversely for more than 20 years. Based upon these two claims, I decided that the title interest was civil matter and expected to litigate this matter in the future.

13. While it is true that a person cannot convey something that he or she does not own, it is also true that such a conveyance is not theft because nothing is stolen. No possession is taken. All that is created is a cloud on title which can easily be ignored until the grantee acts upon the deed to obtain possession in a court civil matter.
14. In this matter, the witnesses have endeavored to use this criminal action as a means to obtain a result that is of a civil nature. The prosecution proceeded to indict a local attorney for an intent crime without even questioning/intervening the attorney choosing instead to take the word of clearly biased witnesses, instead of the facts.
15. I declare under penalty of law that the foregoing is true and correct.

DATED: Hilo, Hawaii, August 19, 2020.

/s/ Paul J. Sulla Jr.
PAUL J. SULLA JR.
DEFENDANT

EXHIBIT “A”

STATUS REPORT

This Report (and any revisions thereto) is issued for the sole benefit of the Purchaser of this Report identified in the Order No. referenced below. Title Guaranty of Hawaii, Incorporated's responsibility for any actual loss incurred by reason of any incorrectness herein is limited to the lesser of \$3,500 or two times the amount paid for this Report.

SCHEDULE A

Title Guaranty of Hawaii, Incorporated, hereby reports as follows as to the title of the Parties named in Schedule A in and to the title to land described in Schedule C, subject to the matters set forth in Schedule B, based solely upon an abstract and examination of the following Indices in the State of Hawaii: (a) the Office of the Clerks of the Circuit Court of the Judicial Circuit within which the land is located; (b) the Office of the Clerk of the District Court of the United States for the District of Hawaii; (c) the Office of the Registrar of Conveyances; and (d) the Office of the Real Property Tax Assessment Division of the County within which the land is located.

JASON HESTER,
an individual,
as Fee Owner

This report is subject to the Conditions and Stipulations set forth in Schedule D and is dated as of February 18, 2015 at 8:00 a.m.

Inquiries concerning this report
should be directed to
RESIDENTIAL TITLE SERVICES.
Email rtscustomerservice@tghawaii.com
Fax (808) 521-0288
Telephone (808) 533-5874.
Refer to Order No. 201506699.

EXHIBIT A

**SCHEDULE B
EXCEPTIONS**

1. Real Property Taxes, if any, that may be due and owing.

Tax Key: (3) 1-3-001-049 Area Assessed: 17.106 acres

-Note:- Attention is invited to the fact that the premises covered herein may be subject to possible rollback or retroactive property taxes.

2. Any and all matters not shown in the Indices described in Schedule A.
3. Mineral and water rights of any nature in favor of the State of Hawaii.
4. -AS TO PARCEL FIRST:-

(A) NOTICE OF DEDICATION

DATED : July 1, 2006
RECORDED : Document No. 2008-018452
BY : THE ROYAL BLOODLINE OF DAVID
RE : dedication of land for Agricultural Use purposes
PERIOD : 10 years

(B) Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

5. -PARCEL SECOND:-

(A) Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

SCHEDULE B CONTINUED

- (B) The State of Hawaii 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.
- (C) 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.
- (D) 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.

6. PENDING CIVIL NO. 05-1-0235

PLAINTIFF : PHILIP B. MAISE, et al.
DEFENDANT : CECIL LORAN LEE, also known as C. LORAN LEE, LORAN LEE, et al.
FILED : Circuit Court of the Third Circuit, State of Hawaii on July 29, 2005
RE : Breach of Duty of Good Faith & Fair Dealing

7. NOTICE OF PENDENCY OF ACTION

PLAINTIFF : CECIL LORAN LEE, also known as C. LORAN LEE, LORAN LEE
DEFENDANT : LEONARD GEORGE HOROWITZ, JACQUELINE LINDENBACH HOROWITZ, THE ROYAL BLOODLINE OF DAVID, et al.
DATED : November 2, 2007
FILED : Circuit Court of the Third Circuit, State of Hawaii, Case No. 05-1-0196, on November 5, 2007
RECORDED : Document No. 2007-203567 on November 21, 2007
RE : Foreclosure of Mortgage dated January 15, 2004, recorded as Document No. 2004-014441

(057) LP

SCHEDULE B CONTINUED

8. MORTGAGE

MORTGAGOR : JASON HESTER, an individual
MORTGAGEE : PAUL J. SULLA JR. a Law corporation
DATED : June 9, 2011
RECORDED : Document No. 2011-093773
AMOUNT : \$50,000.00

9. THE EFFECTS, IF ANY, OF THE FOLLOWING:

- (A) DEED dated June 28, 2012, recorded as Document No. A-45750676; *25*
- (B) GIFTED LEASE ACCEPTANCE AFFIDAVIT OF MEDICAL VERITAS INTERNATIONAL, INC., dated --- (acknowledged May 17, 2013), recorded as Document No. A-48850885; and *Horowitz MW*
- (C) NOTICE OF LEASE BY DONATION dated April 23, 2013, recorded as Document No. A-48850886. *5/17/13 HHO to MV*

10. AFFIDAVIT OF FIRST LIEN OF \$7,500,000.00 ON REAL PROPERTY TMK: (3) and 049 dated October 6, 2013, recorded as Document No. A-50300768. *861*

11. FINANCING STATEMENT

DEBTOR : LEONARD G. HOROWITZ and SHERRI KANE
SECURED PARTY : LEONARD G. HOROWITZ, SHERRI KANE, and MEDICAL VERITAS INTERNATIONAL, INC.
RECORDED : Document No. A-50300665
RECORDED ON: October 9, 2013

7/11/12
RBL to HHO
48
5/17/13
0/19/13

5/17/13
861
\$650

70
\$1,800
\$44

SCHEDULE B CONTINUED

Exp

Defendant

12. NOTICE OF PENDENCY OF ACTION

PLAINTIFF : PAUL J. SULLA, JR., an individual, and PAUL J. SULLA, III, an individual

DEFENDANT : LEONARD G. HOROWITZ, an Individual, SHERRI KANE, an Individual

DATED : March 13, 2014

FILED : Circuit Court of the Third Circuit, State of Hawaii, Case No. 12-1-0417, on March 14, 2014

RECORDED : Document No. A-51860785 on March 14, 2014

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private

✓ ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON PETITION TO EXPUNGE DOCUMENTS RECORDED IN THE BUREAU OF CONVEYANCES OF THE STATE OF HAWAII dated November 14, 2014, recorded as Document No. A-54590500.

AMBIT
2/14
13. Pending Civil No. 14-1-0304 filed in the Circuit Court of the Third Circuit, State of Hawaii, on ; JASON HESTER, "Plaintiff", vs. LEONARD G. HOROWITZ, THE ROYAL BLOODLINE OF DAVID, et al., "Defendant"; re: :

OK
14. NOTICE OF INVALID LIEN dated April 22, 2014, recorded as Document No. A-52330629.

OK
15. Pending Civil No. 14-1-000173 filed in the Circuit Court of the Third Circuit, State of Hawaii, on April 24, 2014; PAUL J. SULLA, et al., "Plaintiff", vs. LEONARD G. HOROWITZ, "Defendant"; re: .

16. AMENDED FINAL JUDGMENT

AGAINST : LEONARD G. HOROWITZ, an Individual

IN FAVOR OF: PAUL J. SULLA, JR, an individual, and PAUL J. SULLA, III, an individual

DATED : January 21, 2015

AMOUNT : \$7,894.60

4/14
52
529
0611

SCHEDULE B CONTINUED

FILED : Circuit Court of the Third Circuit, State of Hawaii, 14-1-0173, on January 22, 2015
RECORDED : Document No. A-55130663 on February 4, 2015

- 17. Pending Civil No. 14-00413, filed in the U.S. District Court District of Hawaii (Hawaii) on September 12, 2014, State of Hawaii, JASON HESTER, "Plaintiff", vs. THE ROYAL BLOODLINE OF DAVID, LEONARD G. HOROWITZ, ET. AL., "Defendant".

END OF SCHEDULE B

①

Handwritten notes:
In terms of...
dated...
Document No. #14-1-304
011

SCHEDULE C

-PARCEL FIRST:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 5005 to J. E. Elderts) situate, lying and being at Kamaili, District of Puna, Island and County of Hawaii, State of Hawaii, being LOT 15-D-1, being a portion of Lot 15, of the "Kamaili Homesteads" and thus bounded and described as per survey dated January 29, 2004:

Beginning at the west corner of this parcel of land, on 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 "HEIHEIAHULU" 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));
2. 239° 28' 30" 326.15 feet along Pahoa-Kalapana Road (Emergency Relief Project No. ER 4(1)) and Lot 19, Grant 5661 to Chas. Elderts;
3. 304° 03' 30" 220.00 feet along Lot 19, Grant 5651 to Chas. Elderts;
4. 347° 21' 30" 54.00 feet along Lot 15-D-2 (Government Road);
5. 334° 00' 250.69 feet along Lot 15-D-2 (Government Road);
6. Thence along Old Pahoa-Kalapana Road and Remnant "A" (Portion of Old Pahoa-Kalapana Road) on a curve to the right with a radius of 1016.74 feet, the chord azimuth and distance being:

20° 16' 17" 719.46 feet;

SCHEDULE C CONTINUED

7. 40° 59' 30" 275.69 feet along Remnant "A" (Portion of Old Pahoa-Kalapana Road);
8. 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 16.276 acres, more or less.

-PARCEL SECOND:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 5005 to J. E. Elderts) situate, lying and being at District of Puna, Island and County of Hawaii, State of Hawaii, being REMNANT "A", being a portion of Old Pahoa-Kalapana Road at Kamaili and thus bounded and described:

Beginning at the southwest corner of this parcel of land, being also the south corner of Lot 15-D, portion of Grant 5005 to J. E. Elderts, and the northwest corner of Grant S-23,403 to AMFAC, on the north boundary of Lot 2, Grant 4330 to C. L. Wight, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Heiheiahulu" being 6,074.61 feet north and 16,652.94 feet east, and running by azimuths measured clockwise from true South:

1. 220° 59' 0" 275.69 feet along Lot 15-D, portion of Grant 5005 to J. E. Elderts;
2. Thence along Lot 15-D, portion of Grant 5005 to J. E. Elderts, on a curve to the left with a radius of 1016.74 feet, the chord azimuth and distance being:
208° 29' 45" 439.98 feet;
3. 286° 00' 50.00 feet along the remainder of Old Pahoa-Kalapana Road;
4. Thence along Lot 15-B and Lot-A, portions of Grant 5005 to J. E. Elderts, on a curve to the right with a radius of 1066.74 feet, the chord azimuth and distance being:
28° 29' 45" 461.62 feet;

SCHEDULE C CONTINUED

5. 40° 59' 30" 261.10 feet along Lot 15-A, portion of Grant 5005 to J. E. Elderts;
6. 114° 43' 30" 52.08 feet along Grant S-23,403 to AMFAC to the point of beginning and containing an area of 36,140 square feet or 0.830 acre, as shown on Final Plat approved by Hawaii County Planning Director on January 27, 2004 as Subdivision Number 7763.

BEING THE PREMISES ACQUIRED BY QUITCLAIM DEED

GRANTOR : THE OFFICE OF OVERSEER, A CORPORATE SOLE AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaii corporation sole

GRANTEE : JASON HESTER, an individual

DATED : June 9, 2011

RECORDED : Document No. 2011-093772

END OF SCHEDULE C

GENERAL NOTES

1. There is hereby omitted from any covenants, conditions and reservations contained herein any covenant or restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law. Lawful restrictions under state or federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

SCHEDULE D

CONDITIONS AND STIPULATIONS

1. This Status Report (which term shall include any revisions thereto) is a report of the record title only, based solely upon an abstract and examination of the Indices described in Schedule A as of the date of the Report. No responsibility is assumed for (a) matters which may affect the title but either were not disclosed or were incorrectly disclosed in said indices at the date hereof; or (b) matters created, suffered, assumed, or agreed to by Purchaser; or (c) matters not shown herein but actually know to Purchaser. Title Guaranty of Hawaii, Incorporated (the "Company") makes no representation as to the legal effect, validity or priority of matters shown or referred to herein.
2. If the Report is incorrect in any respect, the responsibility of the Company shall be limited to the resulting actual loss, including any attorney's fees and legal costs, but in no event shall exceed the lesser of \$3,500 or two times the amount paid for the Report. Upon payment of any loss hereunder, the Company shall be subrogated to all rights the Purchaser may have against any person or property as a result of such loss.
3. If the Purchaser of this Report shall suffer an actual loss by reason of the incorrectness of the Report, the Purchaser shall promptly notify the Company in writing. After receipt of such notice, the Company shall be allowed a reasonable time in which to investigate the claim. At its sole option, the Company may litigate the validity of the claim, negotiate a settlement or pay to Purchaser the amount the Company is obligated to pay under this Report. The Company's responsibility hereunder constitutes indemnity only and nothing herein shall obligate the Company to assume the defense of the Purchaser with respect to any claim made hereunder.
4. This report is the entire contract between the Purchaser and the Company and any claim by Purchaser against the Company, arising hereunder, shall be enforceable only in accordance with the provisions herein.
5. Notice required to be given the Company shall include the Order Number of this Report and shall be addressed to Title Guaranty of Hawaii, Inc., P.O. Box 3084, Honolulu, HI 96802, Attention: Legal Department.

DATE PRINTED: 2/25/2015

STATEMENT OF ASSESSED VALUES AND REAL PROPERTY TAXES DUE

TAX MAP KEY

DIVISION ZONE SECTION PLAT PARCEL HPR NO.
(3) 1 3 001 049 0000

CLASS: AGRICULTURAL AREA ASSESSED: 17.106 AC

ASSESSED VALUES FOR CURRENT YEAR TAXES: 2014

The records of this division show the assessed values and taxes on the property designated by Tax Key shown above are as follows:

BUILDING	\$	436,100
EXEMPTION	\$	0
NET VALUE	\$	436,100
LAND	\$	15,700
EXEMPTION	\$	0
NET VALUE	\$	15,700
TOTAL NET VALUE	\$	451,800

Installment (1 - due 8/20; 2 - due 2/20) Tax Info As Of - 8/20/2014

Tax Year	Installment	Tax Amount	Penalty Amount	Interest Amount	Other Amount	Total Amount	
2014	2	2,089.58				2,089.58	PENDING
2014	1	2,089.58	208.96	45.98		2,344.52	DELINQUENT
2013	2	1,975.34	197.53	173.84		2,346.71	DELINQUENT
2013	1	1,975.34	197.53	304.22		2,477.09	DELINQUENT
2012	2	1,768.11	176.81	389.00		2,333.92	DELINQUENT
2012	1	1,768.12	176.81	505.69		2,450.62	DELINQUENT
2011	2	1,764.77	176.48	621.17		2,562.42	DELINQUENT
2011	1	1,764.78	176.48	737.64		2,678.90	DELINQUENT
2010	2	1,951.40		9.23		932.46	DELINQUENT

Total Amount Due: 20,216.22

Penalty and Interest Computed to: 8/20/2014

EXHIBIT “B”

PAUL J. SULLA, JR.

ATTORNEY AT LAW
A LAW CORPORATION

106 Kamehameha Ave., Ste. 2A
PO Box 5258
Hilo, HI 96720

Telephone (808) 933-3600
Facsimile (808) 933-3601
e-mail psulla@aloha.net
www.pauljsulla.com

April 27, 2017

Director County of Hawaii
Department of Public Works
101 Bauhahi Street, Suite 7
Hilo, Hawaii 96720

Re: Final Plat Map Subdivision Approval Number
7763 Old Pahoia Kalapana Road
TMK1-3-01:49 and Government Road

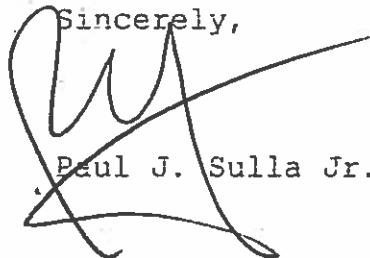
Dear Director:

Enclosed please find a copy of the letter from the Planning Board for the County of Hawaii dated January 27, 2004 granting final subdivision approval of the above subdivision which was initiated by Public Works to create a public right of way by way of the abandonment and exchange of a portion of the Old Pahoia-Kalapana Road.

This office represents the successor to Loren Lee's title, interest in the premises Halai Heights LLC, a Hawaii Limited Liability Co. of Hilo. I would like to have this plan recorded and the exchange completed. It does not look like there is anything else holding it up except the follow through by your department and/or this office on behalf of Loren Lee.

Please contact me upon receipt of the same.

Sincerely,



Paul J. Sulla Jr.

enclosures

EXHIBIT B

PAUL J. SULLA, JR.

ATTORNEY AT LAW
A LAW CORPORATION

106 Kamehameha Ave., Ste. 2A
PO Box 5258
Hilo, HI 96720

Telephone (808) 933-3600
Facsimile (808) 933-3601
e-mail psulla@aloha.net
www.pauljsulla.com

September 15, 2017

Director County of Hawaii
Department of Public Works
101 Pauhahi Street, Suite 7
Hilo, Hawaii 96720

Re: Final Subdivision Approval No.7763
Old Pahoa Kalapana Road and
TMK (3)1-3-01-049/ Government Road (SUB 2003-0173)

Dear Director:

Enclosed is a copy of the correspondence I forwarded to your office on April 27, 2017 relative to the final subdivision approval for the above subdivision which had been initiated by Public Works in January 2004.

I have had one brief contact with your office that has not been followed up. Can you please have someone look into this matter and call me as soon as possible so that we can complete this project.

Thank you again.

Sincerely,

Paul J Sulla Jr.

enclosures

EXHIBIT “C”

STATUS REPORT

Maximum liability limited to
\$3,500.00

This report (and any revisions thereto) is issued solely for the convenience of the titleholder, the titleholder's agent, counsel, purchaser or mortgagee, or the person ordering it.

SCHEDULE A

Title Guaranty of Hawaii, Incorporated, hereby reports that, subject to those matters set forth in Schedule "B" hereof, the title to the estate or interest to the land described in Schedule "C" hereof is vested in:

THE ROYAL BLOODLINE OF DAVID,
a Washington nonprofit corporation,
as Fee Owner

This report is dated as of at

Inquiries concerning this report should be directed to
KAYLEEN KIMATA.
Email kkimata@tghawaii.com
Fax (808) 521-0210
Telephone (808) 539-7711.
Refer to Order No. 200951539.

EXHIBIT C

**SCHEDULE B
EXCEPTIONS**

1. Real Property Taxes, if any, that may be due and owing.

ITEM I is(are) covered by Tax Key: (3) 1-3-001-043.

ITEM II is(are) covered by Tax Key: (3) 1-3-001-049.

2. -AS TO ITEM I:-

The land has no recorded access to a public roadway.

(A) The Company will not insure or otherwise be liable for any loss or damage by reason of lack of access to and from the land.

(B) The land under search is a portion of Lot 15, being Land Patent Grant Number 5005 to J. E. Elderts. By Warranty Deed dated August 25, 1939, recorded in Liber 1519 at Page 301, MARY S. ENGLISH, CLARA S. FISHER, CAROLINE M. SHIPMAN, FLORENCE S. BLACKSHEAR, MARGARET B. SHIPMAN and HERBERT C. SHIPMAN conveyed to MASAYUKI NII the entire Lot 15 as described in Land Patent Grant Number 5005, containing an area of 70.5 acres. The said Land Patent Grant Number 5005 reserved to the Government a 50-foot right of way for the upper Puna Government Road.

By Exchange Deed dated December 15 and 27, 1939, recorded in Liber 1538 at Page 465, CAROLINE M. SHIPMAN, MARGARET B. SHIPMAN, MARY S. ENGLISH, CLARA S. FISHER, FLORENCE S. BLACKSHEAR and HERBERT C. SHIPMAN exchanged with the TERRITORY OF HAWAII those portions of Land Patent Grant Number 5065 to J. G. Elderts needed for the realignment of Paho-Kalapana Road, to-wit:

Paho-Kalapana Road Realignment (50 feet wide) across Lot 15, Kamaili Homesteads, Puna, Hawaii, which is a realignment of the fifty (50) foot right-of-way reserved in Grant 5005 to J. E. Elderts for the Upper Puna Government Road.

SCHEDULE B CONTINUED

Beginning at the northwest corner of this parcel of land, on the north boundary of Grant 5005 to J. E. Elderts, the true azimuth and distance from said point of beginning to an old pipe at an angle in the north boundary of Grant 5005 to J. E. Elderts being 124° 05' 337.88 feet, and the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALIU" being 3,124.72 feet south and 7,469.75 feet west, as shown on Government Survey Registered Map 2075, and running by azimuths measured clockwise from true South:

1. 304° 05' 70.89 feet across Pahoa-Kalapana Road along Grant 5151 to J. E. Elderts;
2. Thence along the new east side of Pahoa-Kalapana Road along portion of Grant 5005 to J. E. Elderts on a curve to the right with a radius of 1,067.10 feet, the direct azimuth and distance being:
 - 15° 39' 38" 913.96 feet;
3. 41° 01' 260.93 feet along the new east side of Pahoa-Kalapana Road along portion of Grant 5005 to J. E. Elderts;
4. 114° 45' 52.09 feet across Pahoa-Kalapana Road along Grant 4330 to C. L. Wright;
5. 221° 01' 275.52 feet along the new west side of Pahoa-Kalapana Road along portion of Grant 5005 to J. E. Elderts;

SCHEDULE B CONTINUED

6. Thence along the new west side of Pahoa-Kalapana Road along portion of Grant 5005 to J. E. Elderts on a curve to the left with a radius of 1,017.10 feet, the direct azimuth and distance being:

194° 16' 43" 915.22 feet to the point of beginning and containing an area of 1.394 acres, more or less.

Title Guaranty of Hawaii, Incorporated is unable to locate of record any conveyance of Land Patent Grant Number 5005 by MASAYUKI NII to CAROLINE M. SHIPMAN, MARGARET B. SHIPMAN, MARY S. ENGLISH, CLARA S. FISHER, FLORENCE S. BLACKSHEAR and HERBERT C. SHIPMAN.

No further deed or deeds appear of record by the SHIPMAN parties dealing with those portions of the Old Pahoa-Kalapana Road within Lot 15, Kamaili Homesteads, covered by Grant 5005, lying outside of the realignment of Pahoa-Kalapana Road and abandoned as no longer required for road purposes, as acquired by the aforementioned Exchange Deed.

Subsequent to the realignment of Pahoa-Kalapana Road, MASAYUKI NII by Deed dated December 18, 1950, recorded in Liber 2423 at Page 489, conveyed to MASAYUKI NII and MILDRED MITSUE NII, husband and wife, as Tenants by the Entirety, al of Land Patent Grant Number 5005.

By Warranty Deed dated May 26, 1958, recorded in Liber 3452 at Page 324, MASAYUKI NII and MILDRED MITSUE NII, husband and wife, conveyed to the TERRITORY OF HAWAII, Parcel 9 as shown on the Right-of-Way map of the Pahoa-Kalapana Road, Emergency Relief Project No. ER 4(1), containing an area of 55,236 square feet or 1.268 acres. This Parcel 9 is the new road lying westerly of the Old Pahoa-Kalapana Road as depicted on the tax map.

3. -AS TO ITEM II, PARCEL FIRST:-

(A) Reservation in favor of the State of Hawaii of all mineral and metallic mines.

SCHEDULE B CONTINUED

(B) NOTICE OF DEDICATION

DATED : July 1, 2006
RECORDED : Document No. 2008-018452
BY : THE ROYAL BLOODLINE OF DAVID
RE : dedication of land for Agricultural Use purposes
PERIOD : 10 years

(C) Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

4. -AS TO ITEM II, PARCEL SECOND:-

- (A) Reservation in favor of the State of Hawaii of all mineral and metallic mines.
- (B) Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
- (C) The State of Hawaii 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.

SCHEDULE B CONTINUED

5. MORTGAGE

MORTGAGOR : THE ROYAL BLOODLINE OF DAVID, a Washington
nonprofit corporation

MORTGAGEE : LORAN LEE, also known as C. LORAN LEE, single

DATED : January 15, 2004

RECORDED : Document No. 2004-014441

AMOUNT : \$350,000.00

6. EFFECTS, IF ANY, OF ASSIGNMENT OF MORTGAGE

TO : 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

DATED : May 15, 2009

RECORDED : Document No. 2009-136885

7. EX PARTE MOTION FOR ORDER FOR ISSUANCE OF GARNISHEE SUMMONS

AGAINST : CECIL LORAN LEE, THE ROYAL BLOOD LINE OF DAVID, et
al.

IN FAVOR OF: PHILIP B. MAISE

DATED : September 27, 2004

AMOUNT : \$173,437.77

FILED : Circuit Court of the Third Circuit, State of
Hawaii, 01-1-0444, on September 30, 2004

RECORDED : Document No. 2004-207803 on October 11, 2004

SCHEDULE B CONTINUED

8. EX PARTE MOTION FOR ORDER FOR ISSUANCE OF GARNISHMENT ORDER

DATED : December 5, 2004
FILED : Circuit Court of the Third Circuit, State of
Hawaii, Case No. 01-1-0444, on December 27, 2004
RECORDED : Document No. 2005-034821 on February 22, 2005
RE : Garnishment Order

9. PENDING CIVIL NO. 05-1-0235

PLAINTIFF : PHILIP B. MAISE, et al.
DEFENDANT : CECIL LORAN LEE, also known as C. LORAN LEE, LORAN
LEE, et al.
FILED : Circuit Court of the Third Circuit, State of Hawaii
on July 29, 2005
RE : Breach of Duty of Good Faith & Fair Dealing

10. NOTICE OF PENDENCY OF ACTION

PLAINTIFF : CECIL LORAN LEE, also known as C. LORAN LEE, LORAN
LEE
DEFENDANT : LEONARD GEORGE HOROWITZ, JACQUELINE LINDENBACH
HOROWITZ, THE ROYAL BLOODLINE OF DAVID, et al.
DATED : November 2, 2007
FILED : Circuit Court of the Third Circuit, State of
Hawaii, Case No. 05-1-0196, on November 5, 2007
RECORDED : Document No. 2007-203567 on November 21, 2007
RE : Foreclosure of Mortgage dated January 15, 2004,
recorded as Document No. 2004-014441

END OF SCHEDULE B

SCHEDULE C

-ITEM I:-



All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 5005 to J. E. Elderts) situate, lying and being at District of Puna, Island and County of Hawaii, State of Hawaii, being LOT 15-A, portion of Lot 15, of the Kamaile Homesteads and thus bounded and described:

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 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 1,066.74 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.

SCHEDULE C CONTINUED

-ITEM II:-

-PARCEL FIRST:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 5005 to J. E. Elderts) situate, lying and being at District of Puna, Island and County of Hawaii, State of Hawaii, being LOT 15-D-1 and LOT 15-D-2, portion of Lot 15-D, of the Kamaili Homesteads bearing Tax Key designation (3) 1-3-001-049, and containing an area of 16.55 acres, more or less.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : LORAN LEE, also known as C. LORAN LEE, single

GRANTEE : THE ROYAL BLOODLINE OF DAVID, a Washington
nonprofit corporation

DATED : January 15, 2004

RECORDED : Document No. 2004-014440

-PARCEL SECOND:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 5005 to J. E. Elderts) situate, lying and being at District of Puna, Island and County of Hawaii, State of Hawaii, being REMNANT "A", being a portion of Old Pahoa-Kalapana Road at Kamaili and thus bounded and described:

Beginning at the southwest corner of this parcel of land, being also the south corner of Lot 15-D, portion of Grant 5005 to J. E. Elderts, and the northwest corner of Grant S-23,403 to AMFAC, on the north boundary of Lot 2, Grant 4330 to C. L. Wight, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Heiheiahulu" being 6,074.61 feet north and 16,652.94 feet east, and running by azimuths measured clockwise from true South:

SCHEDULE C CONTINUED

1. 220° 59' 0" 275.69 feet along Lot 15-D, portion of Grant 5005 to J. E. Elderts;
2. Thence along Lot 15-D, portion of Grant 5005 to J. E. Elderts, on a curve to the left with a radius of 1016.74 feet, the chord azimuth and distance being:
208° 29' 45" 439.98 feet;
3. 286° 00' 50.00 feet along the remainder of Old Paho-Kalapana Road;
4. Thence along Lot 15-B and Lot-A, portions of Grant 5005 to J. E. Elderts, on a curve to the right with a radius of 1066.74 feet, the chord azimuth and distance being:
28° 29' 45" 461.62 feet;
5. 40° 59' 30" 261.10 feet along Lot 15-A, portion of Grant 5005 to J. E. Elderts;
6. 114° 43' 30" 52.08 feet along Grant S-23,403 to AMFAC to the point of beginning and containing an area of 36,140 square feet or 0.830 acre, as shown on Final Plat approved by Hawaii County Planning Director on January 27, 2004 as Subdivision Number 7763.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : COUNTY OF HAWAII, a municipal corporation of the State of Hawaii

GRANTEE : THE ROYAL BLOODLINE OF DAVID, a Washington nonprofit corporation

DATED : December 3, 2004

RECORDED : Document No. 2005-009226

END OF SCHEDULE C

GENERAL NOTES

1. There is hereby omitted from any covenants, conditions and reservations contained herein any covenant or restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law. Lawful restrictions under state or federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.
2. There is no evidence of THE ROYAL BLOODLINE OF DAVID, a Washington nonprofit corporation having been formed or registered with the Department of Commerce and Consumer Affairs of the State of Hawaii.

GUIDELINES FOR THE ISSUANCE OF INSURANCE

- A. Taxes shown in Schedule B are as of the date such information is available from the taxing authority. Evidence of payment of all taxes and assessments subsequent to such date must be provided prior to recordation.
 - B. Evidence of authority regarding the execution of all documents pertaining to the transaction is required prior to recordation. This includes corporate resolutions, copies of partnership agreements, powers of attorney and trust instruments.
 - C. If an entity (corporation, partnership, limited liability company, etc.) is not registered in Hawaii, evidence of its formation and existence under the laws where such entity is formed must be presented prior to recordation.
 - D. If the transaction involves a construction loan, the following is required:
 - (1) a letter confirming that there is no construction prior to recordation; or
 - (2) if there is such construction, appropriate indemnity agreements, financial statements and other relevant information from the owner, developer, general contractor and major sub-contractors must be submitted to the Title Company for approval at least one week prior to the anticipated date of recordation.
- Forms are available upon request from Title Guaranty of Hawaii.
- E. Chapter 669, Hawaii Revised Statutes, sets forth acceptable tolerances for discrepancies in structures or improvements relative to private property boundaries for various classes of real property. If your survey map shows a position discrepancy that falls within the tolerances of Chapter 669, call your title officer as affirmative coverage may be available to insured lenders.
 - F. The right is reserved to make additional exceptions and/or requirements upon examination of all documents submitted in connection with this transaction.
 - G. If a policy of title insurance is issued, it will exclude from coverage all matters set forth in Schedule B of this report and in the printed Exclusions from Coverage contained in an ALTA policy or in the Hawaii Standard Owner's Policy, as applicable. Different forms may have different exclusions and should be reviewed. Copies of the policy forms are available upon request from Title Guaranty of Hawaii or on our website at www.tghawaii.com.

DATE PRINTED: 11/19/2009

STATEMENT OF ASSESSED VALUES AND REAL PROPERTY TAXES DUE

NAME OF OWNER: THE ROYAL BLOODLINE OF DAVID
LEASED TO :

TAX MAP KEY

DIVISION ZONE SECTION PLAT PARCEL HPR NO.
(3) 1 3 001 043 0000

CLASS: 5 AREA ASSESSED: 1.320 AC

ASSESSED VALUES FOR CURRENT YEAR TAXES: 2009

The records of this division show the assessed values and taxes on the property designated by Tax Key shown above are as follows:

BUILDING	\$	0
EXEMPTION	\$	0
NET VALUE	\$	0
LAND	\$	7,600 HIGHEST & BEST USE
EXEMPTION	\$	0
NET VALUE	\$	7,600
TOTAL NET VALUE	\$	7,600

Installment (1 - due 8/20; 2 - due 2/20) Tax Info As Of - 9/30/2009

Tax Year	Installment	Tax Amount	Penalty Amount	Interest Amount	Other Amount	Total Amount	
2009	2	50.00				50.00	PENDING
2009	1	50.00	5.00	1.10		56.10	DELINQUENT
2008	2	50.00		.39		5.94	DELINQUENT
2008	1	50.00				50.00	PAID
2007	2	50.00				50.00	PAID
2007	1	50.00				50.00	PAID

Total Amount Due: 112.04

Penalty and Interest Computed to: 9/30/2009

DATE PRINTED: 11/19/2009

STATEMENT OF ASSESSED VALUES AND REAL PROPERTY TAXES DUE

NAME OF OWNER: THE ROYAL BLOODLINE OF DAVID
LEASED TO :

TAX MAP KEY

DIVISION ZONE SECTION PLAT PARCEL HPR NO.
(3) 1 3 001 049 0000

CLASS: 5 AREA ASSESSED: 17.106 AC

ASSESSED VALUES FOR CURRENT YEAR TAXES: 2009

The records of this division show the assessed values and taxes on the property designated by Tax Key shown above are as follows:

BUILDING	\$	475,400
EXEMPTION	\$	0
NET VALUE	\$	475,400
LAND	\$	16,200
EXEMPTION	\$	0
NET VALUE	\$	16,200
TOTAL NET VALUE	\$	491,600

Installment (1 - due 8/20; 2 - due 2/20) Tax Info As Of - 9/30/2009

Tax Year	Installment	Tax Amount	Penalty Amount	Interest Amount	Other Amount	Total Amount	
2009	2	1,577.03				1,577.03	PENDING
2009	1	1,577.03	157.70	34.69		1,769.42	DELINQUENT
2008	2	1,761.63		13.69		209.23	DELINQUENT
2008	1	1,761.64				1,761.64	PAID
2007	2	1,434.53				1,434.53	PAID
2007	1	1,434.54				1,434.54	PAID

Total Amount Due: 3,555.68

Penalty and Interest Computed to: 9/30/2009

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

STATE OF HAWAII

Plaintiff,

vs.

PAUL J. SULLA JR.; HALAI HEIGHTS,
LLC,

Defendants.

CR NO. 3CPC-19-0000968

MEMORANDUM IN SUPPORT

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I. INTRODUCTION

The Defendant is charged by way of indictment with the offenses of Theft and Forgery. The Indictment must be dismissed because the State allowed a witness to provide false information to the grand jury for which the Grand Jury Counsel advised the grand jurors that they would be able to consider the false information in determining probable cause.

II. FACTS

The pertinent facts are as set out in the Declaration of Counsel and such further evidence as may be adduced at a hearing on the motion.

III. LAW

Because “[i]n all criminal prosecutions, the accused shall enjoy the right ... to be informed of the nature and cause of the accusation[,]” and “[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury,” an indictment or oral charge that fails in a material respect would encroach upon a defendant's constitutional rights. U.S. Const. amends. V and VI; Haw. Const. art. I, § 14. The onus is on the prosecution to inform the accused fully of the accusations presented against him

or her because “[t]he principle of fundamental fairness, essential to the concept of due process of law, dictates that the defendant in a criminal action should not be relegated to a position from which he [or she] must speculate as to what crime he [or she] will have to meet in defense.” See *State v. Israel*, 78 Hawai‘i 66, 71, 890 P.2d 303, 308 (quoting *Kreck v. Spalding*, 721 F.2d 1229, 1233 (9th Cir.1983)), *reconsideration denied*, 78 Hawai‘i 474, 896 P.2d 930 (1995). In other words, the oral charge must be worded in a manner such “that the nature and cause of the accusation [could] be understood by a person of common understanding[.]” *Id.* at 70, 890 P.2d at 307.

State v. Sprattling, 99 Hawai‘i 312, 318, 55 P.3d 276, 282 (2002)

The grand jury proceeding “is an ex parte investigation to determine whether a crime has been committed and whether criminal proceedings should be instituted against any person.” *State v. Bell*, 60 Haw. 241, 244, 589 P.2d 517, 519 (1978). Additionally, the grand jury should also maintain a historical role of being a safeguard to protect citizens against unfounded criminal prosecutions. *Id.* at 243, 589 P.2d at 519; *United States v. Calandra*, 414 U.S. 338, 343, 94 S.Ct. 613, 617, 38 L.Ed.2d 561 (1974).

State v. O'Daniel, 62 Haw. 518, 520, 616 P.2d 1383, 1386 (1980)

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury

Although the requirement of a grand jury indictment as a prerequisite to criminal prosecution has been limited by statute, see HRS ss 705-4, 711-6 et seq., and court rule, see H.R.Cr.P., Rule 7, where the indictment mechanism is employed, it must be through a grand jury which is not only ‘legally constituted,’ but also ‘unbiased.’ *Costello v. United States*, 350 U.S. 359, 363, 76 S.Ct. 406, 100 L.Ed. 397 (1956).

In regard to both an original indictment and superseding indictment, evidence of a clearly exculpatory nature known to the prosecution shall be disclosed to the grand jury. In the event that the term of the grand jury that returned the original indictment has expired, a new indictment may be presented to another grand jury.

Haw. R. Penal P. 6

IV. ARGUMENT

Here, the case presented to the Grand Jury by Deputy Prosecuting Attorney Damerville has fallen short of what is demanded at Grand Jury Proceedings by higher courts. The State failed to produce clearly exculpatory evidence, specifically the title status report attached as Exhibit A.

The state elicited testimony that was clearly un substantiated. The State failed to present to the Grand Jury a fair depiction of the case. Based on the State's slanted presentation of the alleged facts in this case, the Grand Jury was unable to act as a safeguard against this unfounded criminal prosecution.

IV. CONCLUSION

In conclusion, based on the foregoing declarations and memorandum, Defendant moves this Court to dismiss this action based on impropriety in obtaining a true bill from the Grand Jury in this matter.

DATED: Hilo, Hawaii, August 19, 2020.

/s/ Jeremy J.K. Butterfield
BRIAN J. DE LIMA
JEREMY J.K. BUTTERFIELD
Attorneys for Defendant

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

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Plaintiff,

vs.

PAUL J. SULLA JR.; HALAI HEIGHTS,
LLC,

Defendants.

CR NO. 3CPC-19-0000968

NOTICE OF MOTION

Judge: Honorable Peter K. Kubota

Hearing Date: September 23, 2020
Time: 9:00A.M.

Trial: December 14, 2020

NOTICE OF MOTION

TO: Office of the Prosecuting Attorney
County of Hawaii
655 Kilauea Avenue
Hilo, HI 96720

Please take notice that the undersigned will bring the foregoing Motion on for hearing before the Honorable Judge Peter K. Kubota, Judge of the above-entitled Court, in his courtroom at the Hilo Division, at Hale Kaulike, Third Floor, 777 Kilauea Avenue, Hilo, Hawaii 96720, on Wednesday, September 23, 2020, at 9:00 A.M. or as soon thereafter as counsel may be heard.

DATED: Hilo, Hawaii, August 19, 2020.

/s/ Jeremy J.K. Butterfield
BRIAN J. DE LIMA
JEREMY J.K. BUTTERFIELD
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an e-filed copy of the foregoing document was served upon the following individuals, by electronic mail, through the Judiciary Electronic Filing and Service System on , August 19, 2020

TO: Assigned Deputy Prosecuting Attorney
Office of the Prosecuting attorney
County of Hawaii
655 Kilauea Avenue
Hilo, HI 96720

DATED: Hilo, Hawaii, August 19, 2020.

/s/ Jeremy J.K. Butterfield
BRIAN J. DE LIMA
JEREMY J.K. BUTTERFIELD
Attorneys for Defendant