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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

JASON HESTER, an individual,

Plaintiff

vs.

LEONARD G. HOROWITZ, an individual; and SHERRI KANE, an individual MEDICAL VERITAS INTERNATIONAL, INC., a California nonprofit corporation; THE ROYAL BLOODLINE OF DAVID, a Washington Corporation Sole; JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; DOE ENTITITES 1-10 and DOE GOVERNMENTAL UNITS 1-10,

Defendants.

Civil No. 14-1-0304
(Other Civil Action)

**FINAL JUDGMENT ON REMAND;
CERTIFICATE OF SERVICE**

Hearing: November 5, 2020

Time: 8:30 a.m.

Judge: Hon. Wendy DeWeese

Trial Date: No Trial Date Set

FINAL JUDGMENT IN REMAND

This matter comes before this Court on a remand pursuant to the Memorandum Opinion in CAAP 16-0000163 dated May 7, 2019 by the Intermediate Court of Appeals (ICA) for further proceedings to determine whether the Plaintiff has met his “burden to prove in the summary judgment proceeding that the foreclosure ‘sale was conducted in a manner that was fair, reasonably diligent, and in good faith and the purchase price was adequate” Kondaur Capital v. Matsuyoshi, 136 Hawaii at 241; 361 P3rd at 468 at 241-243; JPMorgan Chase Bank Nat. Ass’n v. Benner 137 Hawaii 326, 328; 372 P3rd at 469-70.

PLAINTIFF’S AMENDED RENEWED MOTION FOR SUMMARY JUDGMENT (“Motion”) was filed September 25, 2020 by Plaintiff Jason Hester, by and through his attorney Stephen D. Whittaker, pursuant to Rules 7 and 56 of the Hawaii Rules of Civil Procedure (“HRCP”). With the Motion, a Declaration of attorney Paul J Sulla was filed and attached a copy of the recorded SECOND AMENDED AND RESTATED MORTGAGEE’S AFFIDAVIT OF FORECLOSURE UNDER POWER OF SALE (“Amended Mortgagee’s Affidavit”), a video of the foreclosure sale, and listing of sales at the time and locus among other exhibits in support. DEFENDANTS MEMORANDUM IN OPPOSITION TO PLAINTIFF’S AMENDED RENEWED MOTION FOR SUMMARY JUDGMENT (“Opposition”) was filed by Defendants Leonard Horowitz and Sherri Kane pro se on October 15, 2020. PLAINTIFF’S REPLY TO DEFENDANTS’ OPPOSITION TO AMENDED RENEWED MOTION FOR SUMMARY JUDGMENT (“Reply”) was filed by Attorney Stephen D. Whittaker on October 29, 2020.

DEFENDANT ROYAL BLOODLINE OF DAVID’S JOINDER IN HOROWITZ AND KANE’S OPPOSITION PLAINTIFF’S TO AMENDED RENEWED MOTION FOR

SUMMARY JUDGMENT (“Royal’s Joinder”) was filed on September 14, 2020 by attorney Margaret Wille. PLAINTIFF’S NON-HEARING MOTION TO STRIKE (1) Royal’s Joinder and (2) the Defendant’s Opposition was filed September 29, 2020. By ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF’S NON-HEARING MOTION TO STRIKE dated November 2, 2020 and entered November 5, 2020, the Court GRANTED Motion to Strike Royal Joinder and DENIED Motion to Strike Defendants’ Opposition.

The matter came for hearing on November 5, 2020 at 8:30 a.m. with attorney Stephen D. Whittaker appearing on behalf of Plaintiff Jason Hester who was present, with attorney Margaret Wille appearing on behalf of defendant Royal Bloodline of David, and Defendants Leonard Horowitz and Sherri Kane both appearing pro se. *All appeared via Zoom.*

The Court, having considered the motion, the responsive and supplemental pleadings, arguments, exhibits and oral statements of the parties at the November 5, 2020 hearing, and the record and files herein, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that FINAL JUDGMENT is hereby entered pursuant to HRCF Rule 54, 56 and 58 as follows:

1. There are no genuine issues of material fact in dispute that “PLAINTIFF’S AMENDED RENEWED MOTION FOR SUMMARY JUDGMENT” filed on September 25, 2020 to address Plaintiff’s burden of proof that “the foreclosure sale was conducted in a manner that was fair, reasonably diligent, and in good faith and the purchase price was adequate” was met, and the Motion is GRANTED.

2. IT IS HEREBY ORDERED, ADJUDGED AND DECREED: that FINAL JUDGMENT is hereby entered pursuant to HRCP Rule 54 and 58 as follows:

3. These proceedings brought before the Court, within the scope of the remand from the ICA, have determined that the Plaintiff by summary proceedings has met his burden to establish that “the foreclosure sale was conducted in a manner that was fair, reasonably diligent, and in good faith and the purchase price was adequate and that the Court has found no genuine issues of material fact in dispute.

4. All other claims, counterclaims and/or crossclaims are dismissed.

DATED, Kailua-Kona, Hawaii _____

11/25/2020


The Honorable Wendy DeWeese
JUDGE OF THE CIRCUIT COURT

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Final Judgment on Remand