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THIRD CIRCUIT
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**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
KONA DIVISION, STATE OF HAWAII**

JASON HESTER, an individual, his)
successors and assigns,)
Plaintiff,)

v.)

LEONARD G. HOROWITZ, an)
individual; 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.)

CIV. NO. 14-1-0304
(Quiet Title/Summary Possession)

**DEFENDANTS' RULE 59(e) MOTION
TO ALTER OR AMEND THE
SUMMARY JUDGMENT AND ORDER
DUE TO MISTAKE; DECLARATION
OF LEONARD G. HOROWITZ;
EXHIBITS A thru D; PROPOSED
ORDER AMENDING/RELIEVING
JUDGMENT; CERTIFICATE OF
SERVICE**

NON-HEARING MOTION

Judge: Honorable Wendy DeWeese
Trial Date: No trial date set

**DEFENDANTS' RULE 59(e) MOTION TO ALTER OR AMEND
THE SUMMARY JUDGMENT AND ORDER DUE TO MISTAKE**

COMES NOW Defendants/Counterclaimants LEONARD G. HOROWITZ and SHERRI KANE, (hereafter, "Defendants") pro se, moving the Court by the Hawaii Rules of Civil Procedure ("HRCP"), Rules 59(e) to Alter or Amend the Judgment and Order entered November 13, 2020, as the Summary Disposition was based on manifest error of law and fact.

I. Standard of Review: Requirement for 59(e) Motion:

The Hawai'i Intermediate Court of Appeals (“ICA”) stated it reviewed an HRCP Rule 59(e) (motion for reconsideration) under the abuse of discretion standard.

“The trial court abuses its discretion if it bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. Stated differently, an abuse of discretion occurs where the trial court has clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant. *Beneficial Hawai'i*, 98 Hawai'i at 164, 45 P.3d at 364 (quoting *Molinar v. Schweizer*, 95 Hawai'i 331, 335, 22 P.3d 978, 982 (2001)).” *ASSOCIATION OF APARTMENT OWNERS OF KAI MAKANI, v. MICHAEL J. OLEKSA and ERICA L. OLEKSA, and OPTION ONE MORTGAGE CORPORATION NKA SAND CANYON CORPORATION*, NO. CAAP-16-0000611

The ICA also held in Association of Apartment Owners of Kai Makani (Kai Makani) that with respect to Rules 59 (e) and 60 (b):

“Each rule is governed by its own standards, requirements, and relevant case law (as detailed infra) and must be addressed separately. See, e.g., *Omerod v. Heirs of Kaheananui*, 116 Hawai'i 239, 273-77, 172 P.3d 983, 1017- 21 (2007) (reviewing a Rule 59(e) motion for reconsideration separately from a Rule 60(b) motion for relief); *Sousaris v. Miller*, 92 Hawai'i 505, 514 n.10, 993 P.2d 539, 548 n.10 (2000)”

Furthermore, per the ICA in Kai Makani:

“[T]he standard for granting relief under Rule 59(e) and Rule 60(b) differs... Rule 59(e) motions are subject to a somewhat 'lower threshold of proof' than Rule 60(b) motions” (citing James WM. Moore, *Moore's Federal Practice* ¶ 60.03[4] (3d ed. 2009)). Thus, the circuit court abused its discretion when it erroneously combined the requirements of HRCP Rule 59(e) and HRCP Rule 60(b) to deny the Oleksas' motion for reconsideration.”

“Because the plaintiff filed his “Motion for Reconsideration” within the 10-day period set for Rule 59(e) motions, the court treats the motion as a Rule 59(e) motion to alter or amend judgment, as opposed to a Rule 60(b) motion seeking relief from a judgment or order. *United States v. Emmons*, 107 F.3d 762, 764 (10th Cir. 1997) (applying filing-date-determinative rule)”

“In general, there are four basic grounds upon which a HRCP 59(e) Motion may be granted: (1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law. While a Rule 59 motion is not limited to those four grounds, alteration or amendment of a judgment is “an extraordinary remedy which should be used sparingly.” *Id.* (quoting *McDowell v. Calderon*, 197 F.3d 1253, 1255 n. 1 (9th Cir. 1999) (en banc)); *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011).

II. Timely Filing of 59 (e) Motion within the 10-day period

Plaintiff's Judgment and Order was entered on November 13, 2020. Therefore, this motion filed on November 22, 2020 is within the 10-day period, and therefore timely.

III. The Court erred under 59(e)(1) and 59(e)(3):

Under 59(e)(1), the "(1)" referencing the enumerations as set forth above in *McDowell v. Calderon*, the Court's ruling was a "wholesale disregard, misapplication, and failure to recognize controlling precedent (see *Rupert v. Bond*, No. 12-CV-05292, 2015 WL 78739, at *2 (N.D. Cal. Jan. 6, 2015) (quoting *Oto v. Metro. Life Ins. Co.*).

Specifically, the Court's errors include: failure to recognize controlling precedent as set forth in *Kondaur Capital Corp. v. Matsuyoshi*, 361 P. 3d 454 - Haw: Supreme Court 2015 and *Ulrich 35 Haw at 168*; misapplication of the statutory language in HRS § 667-5; and wholesale disregard for explicit instructions provided by the ICA in its Memorandum Opinion ("MO") of July 20, 2020 (pgs. 12-14, **Exhibit A**).

Under 59(e)(3), this Court's decision denies Defendants their substantive and procedural due process rights to defend their property from a manifestly unjust, unlawful, and legally-defective foreclosure per 667-5, *Kondaur, inter alia*. This Court's ruling also aides and abets Plaintiff's wrongful attempt to steal an adjacent property, with respect to which, he has no lawful claim. Had the Court taken its time to review Plaintiff's deed, it would have become aware of the fact that Plaintiff has no claim whatsoever to one of two parcels which are the subject of this foreclosure action.

Therefore, due to these mistakes, the Court abused its discretion and the entry of summary judgment against Defendants should be set aside. Nevertheless, if this Court remains unwilling to render justice and deny Plaintiff's Summary Judgment, as the law and facts demand, a new hearing should be ordered without further delay. Defendants (who have been driven from their home, bankrupted, and health destroyed, a.k.a., *substantial detriment*) are entitled after 10-years of *hell* to be heard.

IV. Manifest Error of Law

The Court adopted Plaintiff's pleadings that stated the only remaining issue for the Court to decide was whether the Non-Judicial Foreclosure (NJV) had been conducted in a manner that

was “fair, reasonably diligent, in good faith, and Plaintiff had obtained an adequate price for the Property.” Based on the Court’s erroneous adoption of this misdirection by Plaintiff, Defendants were proscribed from raising issues they were legally entitled to raise per *Kondaur* and *Ulrich*, 35 Haw. at 168)(ICA’s MO, pp. 12-14); and Hawaii Revised Statute (“HRS”) § 667-5 (“667-5”); and the MO directing remand of these proceedings. This “manifest error” is “plain and indisputable,” and “amounts to a complete disregard of the controlling law or the credible evidence in the record.” (*Black’s Law Dictionary*, 8th Edition, 2004, p. 582).

V. **Procedural History:**

“[O]n August 21, 2014, Horowitz and Kane filed an answer and twenty counterclaims in their ‘Defendants/Counterclaimants Answer, Affirmative Defense, and Counterclaims to Paul J. Sulla, Jr. and Jason Hester’s Conspiracy to Commit Theft Under Color of Law’” (See **Exhibit A**, the “MO” in 16-0000163, p. 10.). Subsequently, Defendants responded to Plaintiff’s three summary judgment motions addressing HRS § 667-5 deficiencies in the NJF proceedings. These defenses were referenced in the ICA’s opinion (p. 10), and the ICA vacated the NJF by reason that this Court never permitted Defendants to raise its defenses; nor did it ever consider those defenses, as it *defaulted* Defendants for their failure to timely secure counsel for Defendant/Mortgagor, The Royal Bloodline of David (“RBOD”).

In its opinion, the ICA stated that Defendants’ failure to secure counsel was moot:

“We deem this issue as moot, as both the parties and the record indicate that RBOD was dissolved prior to the initiation of the Quiet Title Action, and remains dissolved. Thus, any further adjudication as to its interests in the subject property is immaterial. See *McCabe Hamilton & Renny Co., Ltd. v. Chung*, 98 Hawai’i 107, 116, 43 P.3d 244, 253 (App. 2002) (noting that “[t]his court may not decide moot questions or abstract propositions of law.” (Citations omitted). (MO, p. 12)

Additionally, the ICA stated:

“Based on our *de novo* review of the record, we conclude that the underlying non-judicial foreclosure on the subject property was deficient under *Kondaur*, and as such the circuit court erred in granting Hester’s Quiet Title MSJ.” (MO, p. 13)

According to the ICA (MO, p. 13), in a “self-dealing transaction” (as was the case at bar), Plaintiff would be required to meet an “initial burden” prior to the burden shifting to Defendants to raise any genuine issue of material fact. The ICA stated:

“In a self-dealing transaction, where the mortgagee is the purchaser in a non-judicial foreclosure sale, the mortgagee has the "burden to prove in the summary judgment proceeding that the foreclosure 'sale was regularly and fairly conducted in every particular....

Here, Revitalize, with Hester as Overseer, was both the foreclosing mortgagee and the highest bidder at the non-judicial foreclosure sale on April 20, 2010... Hester had the initial burden to establish that the non-judicial foreclosure was conducted in a manner that was fair, reasonably diligent, and in good faith, and to demonstrate that an adequate price was procured for the property. See *id.* at 241-43, 361 P.3d at 468-70; *JPMorgan Chase Bank, Nat. Ass'n v. Benner*, 137 Hawai'i 326, 327-29, 372 P.3d358, 359-61 (App. 2016)....

Hester thus failed to satisfy his initial burden of showing that the non-judicial foreclosure sale was conducted in a manner that was fair, reasonably diligent, and in good faith, and that Revitalize had obtained an adequate price for the Property. In turn, the burden never shifted to the defendants to raise any genuine issue of material fact. Thus, the circuit court erred in its "Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment. . . .”

In this case, the Court's error of law was that it misinterpreted the ICA opinion as stating that once Plaintiff (as a self-dealer) met his burden of showing that the sale was fair in every particular, Defendants' genuine issues of material fact unrelated to the sale process itself were no longer subject to the Court's review on remand.

This mistake of law by the Court is clearly contraindicated by the ICA opinion, *Kondaaur*, as well as the 667-5 statute. The Court's refusal to consider all of Defendants' genuine material issues of fact in dispute, constitutes a wholesale disregard, misapplication, and failure to recognize controlling law and precedent.

The ICA spells out clearly that to sustain an ejectment more than a limited focus upon the fairness of the sale's process itself is required. The MO states that the Plaintiff, to maintain an ejectment action, in a self-dealing transaction, must prove *he or she owns the parcel in issue*, and that the sale was fairly conducted in every particular.

In order to maintain an ejectment action, the plaintiff must: (1) prove that he or she owns the parcel in issue, meaning that he or she must have valid title to and right of possession of such parcel; and (2) establish that possession is unlawfully held by another. *Kondaaur* at 468. In a self-dealing transaction, where the mortgagee is the purchaser in a non-judicial foreclosure sale, the mortgagee has the “burden to prove in the summary judgment proceeding that the foreclosure 'sale was regularly and fairly conducted in every particular.’”

This is not an “or” test, but an “and” test. In other words, showing that the sale was fair in every particular only evidences that Plaintiff has met his initial burden. It does not constitute fulfillment of the foundational requirements necessary to maintain a Summary Judgment for ejectment under 667-5 and *Kondaur*. This seems self-evident, and for this Court to hold otherwise is a wholesale disregard of the law.

In fact, *Kondaur* makes it clear *Ulrich* is viable law and the requirements under *Ulrich* are not in lieu of 667-5, but in addition to.

The Hawai'i Supreme Court held that "the duties set forth in *Ulrich* [*v. Sec. Inv. Co.*, 35 Haw. 158 (Haw. Terr. 1939)] remain viable law and are applicable to non-judicial foreclosure of real property mortgages." *Kondaur*, 136 Hawai'i at 229, 361 P.3d at 456.

The Supreme Court also determined that "the *Ulrich* requirements are not statutorily or contractually based," but instead are "separate and distinct from the requirements of the foreclosure statute and operative mortgage." *Kondaur*, 136 Hawai'i at 243, 361 P.3d at 470.

Consequently, "a mortgagee's minimal adherence to the statutory requirements and the terms of the mortgage . . . does not establish that the foreclosure sale similarly satisfied the *Ulrich* requirements." *Id.*

Accordingly, it is apparent that a Motion for Summary judgment (MSJ) cannot be sustained simply by a “self-dealer” showing that the sale process was fair, but requires a self-dealer, as well all mortgagees, to prove ownership of the subject property, adherence to *Ulrich*, as well as strict compliance with HRS § 667-5. This Court’s error, that its review stops with the fairness of the sale, is explicitly countermanded by the ICA’s opinion which states the moving party must show *there are no genuine issues as to any material fact*.

"Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Id.* (citations and brackets omitted). "The moving party has the initial burden of 'demonstrating the absence of a genuine issue of material fact.' 11 *Id.* (citation omitted). "Only with the satisfaction of this initial showing does the burden shift to the nonmoving party to respond 'by affidavits or as otherwise provided in HRCF Rule 56, ... setting forth specific facts showing that there is a genuine issue for trial. 111 *Id.* at 240-41, 361 P.3d at 467-68 (citation, emphasis, and brackets omitted, ellipses in original)(ICA MO, pp.12-13)

The ICA makes it clear it did not preclude consideration of Defendants’ 667-5 issues (as set forth in CAAP- 16-0000163) or even that Plaintiff had satisfied all of his initial burden. In

fact, because Plaintiff didn't even get out of the gate, and failed to meet his heightened initial burden as a self-dealer, the ICA saw little purpose in addressing Defendants' substantive defenses under 667-5.

When a moving party clearly fails to meet his initial burden, stopping the review process is not atypical in appellate decisions. This Court is well aware of that fact. Nevertheless, the ICA spelled it out for the Court:

“In turn, the burden never shifted to the defendants to raise any genuine issue of material fact. Thus, the circuit court erred in its "Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment". Given this ruling, we need not address the appellants' other points of error asserted in CAAP-16-0000163. (MO, p 14.)

Defendants' proffer of these CAAP- 16-0000163 points of error raise genuine issues of material fact, and Defendants placement of these points of error before this Court was explicitly acknowledged by the ICA, even though the ICA found it unnecessary to address them, because Plaintiff failed to meet his initial burden.

“In this appeal, Horowitz, Kane, and RBOD contend that the circuit court erred in . . . granting Hester's motion for summary judgment where there existed substantial questions of material facts. (MO, p. 9.)

Furthermore, Defendants' CAAP-16-0000163 points of error have never been addressed by Plaintiff, this Court, nor in any substantive way in any Third Circuit Court, given its improper default of the Defendants.

VI. Plaintiff does not own nor does Plaintiff have any legal interest in a material portion of the subject property (“Property”)

Under both HRS § 667-5 and *Kondaur*, Plaintiff must prove he owns the subject property. Plaintiff cannot do this because Plaintiff has neither title to Parcel II nor the right to its possession. Parcel II is one of two parcels listed by Plaintiff in Exhibit 11 (attached hereto as **Exhibit B**) which evidences the properties which are the subjects of this MSJ. Parcel II is a valuable property with a lava-heated water pool, and Plaintiff has stated he needs Parcel II to access other portions of the Property. Because Plaintiff, through this MSJ, is seeking to quiet title to Parcel II in the name of his LLC, per *Kondaur* and HRS § 667-5, Plaintiff must establish that possession of Parcel II (.83 acres) is unlawfully held by another. This is a legal impossibility,

because Defendants have the Warranty deed to Parcel II, which was granted to Defendants by the County of Hawaii (COH).

According to the ICA's decision, the higher court determined:

The subject property consists of two parcels of land designated on the tax maps for the State of Hawai'i as TMK: (3)1-3-001:049 and (3)1-3-001:43 and are situated in the County of Hawai'i. The record reflects that the parcels are 1.32 acres and 16.55 acres respectively [ICA p 2].

Per Plaintiff's "WARRANTY DEED" Exhibit 11 (attached hereto as **Exhibit B**), filed July 20, 2020 in this case, the two parcels identified by the ICA as the subject parcels in this action (1.32 acres and 16.55 acres) are no longer in fact an accurate representation of the NJF subject Property, since the 1.32 acre parcel is no longer included as part of the present action. [Note the 1.32 acre parcel is a sink hole worth less than 1% of the total subject Property Value and is titled in the name of strawman Hester. Successor in Interest Sulla (as the real party in interest) holds title through his LLC to 99% of the Subject Property's value via the 16.55 acre parcel (Parcel I). Parcel II is an adjacent .83 acre property owned by Defendants (via Warranty Deed from COH) which Sulla claims to have "mistakenly" appended to Plaintiff's 16.55 acre deed as Parcel II.]

This appendment was admitted by attorney Paul J. Sulla, Jr. *and* was the subject of his grand jury indictment. Whether this appendment was a mistake or intentional makes no difference in a MSJ, since Sulla's *mens rea* is irrelevant under HRS 667-5. In any case, the ICA was clearly unaware of this "mistaken" appendment as evidenced by the ICA's description of the subject Property. Because the correct legal description of TMK (3)1-3-001:049 has been obliterated by successor-in-interest Sulla, this Court now faces the stark prospect of quieting title to Parcel II in the name of Sulla's LLC. If so, this Court will knowingly and intentionally quiet title to a parcel that Plaintiff has no claim of ownership in, as required by HRS 667-5.

Furthermore, Plaintiff cannot establish (as is required by *Kondaur*) that ownership of Parcel II is unlawfully held by another. This is a genuine and material fact which is indisputable, since the Court could take judicial notice of it, by review of Defendant's **Exhibit C** which is a true and accurate copy of the Bureau of Conveyances Doc. No. 2005-009276. This admitted *slander-of-title* by Plaintiff (without any other averment) defeats this MSJ. For this court to remain willfully blind to this fact constitutes gross *manifest error*.

Plaintiff's intentional submission by Exhibit 11 of an improperly modified deed, material to this MSJ, for the purpose of engendering this Court's reliance, constitutes *blatant fraud* and fully justifies an extraordinary remedy per HRCP 59(e).

VII. Ownership of Parcel II – A Genuine Material Issue of Fact this Court Ignored.

- 1) Parcel II is not owned by Plaintiff and Plaintiff has no lawful claim to Parcel II.
- 2) The original seller Lee did not have title to Parcel II, and Parcel II was not referenced in the Mortgage instrument.
- 3) Parcel II was not the subject of the Judicial Foreclosure nor was it the subject of the NJF.
- 4) Parcel II is owned by Defendants and title to Parcel II was conveyed to Defendants' predecessor-in-interest, RBOD, by the County of Hawaii by Warranty Deed. (**Exhibit C**) The COH has sent a writing to Plaintiff telling him he does not own this land.
- 5) The ICA in its MO on page 2 identified the subject parcels in this action, and Parcel II, as legally described by Plaintiff in his Exhibit 11, is *not* in it. Defendant has admitted his inclusion of Parcel II in this deed was a "mistake;" yet he did not correct his "mistake" because he (in his own words) intends to convert title by adverse possession. In other words, Plaintiff intends to steal it.
- 6) By appending Parcel II onto the subject deed of this MSJ, Plaintiff is hereby asking this Court to quiet title to Parcel II (a property he does not own) in the name of his LLC, Halai Heights.

Plaintiff in his testimony to COH Prosecutors defended his actions with respect to the deed in question, as an unintentional "mistake," and, therefore, he did not have the requisite *mens rea* for criminal prosecution. Regardless, Plaintiff's ongoing failure to correct that mistake in his Exhibit 11, has inescapably created a genuine material issue of fact regarding the ownership of the subject Property per *Kondaur*. Additionally, since he has no Mortgage instrument evidencing his right to foreclose against Parcel II, he is not compliant with the requirement as set forth in HRS § 667-5.

Thus, this Court's refusal to address the issue of Parcel II's ownership is an abuse of discretion and manifests "wholesale disregard" for the facts – including the facts set forth in Defendants' **Exhibit C**, evidencing Defendants' Warranty Deed to Parcel II.

A manifest error of fact might include, for example, a court's decision that materially relied on an exhibit that was never offered or admitted into evidence. See *In re Wahlin*, No. 10-

20479, 2011 WL 1063196, at *3 (Bankr. D. Idaho Mar. 21, 2011). Also see *Norman v. Arkansas*, 79 F.3d 748, 750 (8th Cir. 1996) (finding abuse of discretion where court refused to reconsider clear factual error).

Also, by its refusal to consider Defendants’ defenses and counterclaims against Plaintiff’s ownership claim to the subject Property, this Court made a mistake of law by its failure to adhere to controlling precedent as stated in *Kondaaur*, as ruled by the ICA. (**Exhibit A**)

VIII. The Court’s conclusory statement that she would not undo what previous courts have done is a manifest error of fact.

The Court averred she had reviewed all the filings and procedural history of this case and would not undo what her predecessors in the Third Circuit had ruled regardless of the ICA’s remand expressly directing the Court to do just that—adjudicate to vindicate the Court’s previous errors.

Had the Court reviewed the procedural history as averred, she would have noticed that Plaintiff’s creation of the false deed occurred subsequent to the prior actions in the Third Circuit Court. These actions include this 0304 case Complaint filed in 2014, as well as the underlying foreclosure case, Civ. No. 05-1-0196/CAAP 16-0000162. Therefore, it would have been an impossibility for those courts to have addressed and disposed of this “mistake” which constitutes error and mistake of fact by this Court which precludes valid summary judgment.

Furthermore, the Court’s reference to, and reliance upon, dispositions in prior actions constitutes an error of fact since, per the ICA, the Defendants were improperly defaulted and had no opportunity to be heard on any issue, let alone one that had not yet occurred.

IX. The Court erred by disregarding the Defendants’ objections to Plaintiff’s failure to advertise the foreclosed Property consistent with *Ulrich*.

On the issue of Plaintiff’s defective advertising (which goes to the adequacy of the sale price as well as the good faith, diligence, and fairness of the sale), the Court made a mistake of law by barring Defendants from raising their *Ulrich* defenses—that Plaintiff’s advertising was defective per *Kondaaur*.

“Moreover, the description of the property intended to be sold upon foreclosure as contained in the notice of sale was defective. . . . A description of property intended to be foreclosed should be sufficient to inform the public of the nature of the property to be offered for sale. The description of the property to be sold was not calculated to interest purchasers.” *Ulrich V Security Investment Co.* 35 Haw158, 173 (Haw 1939)

The \$225,000.00 sales price of the Property at foreclosure was grossly deficient because Plaintiff neglected to advertise the NJF sale in keeping with *Ulrich*. The subsequent Property listing for \$975,000.00 contradicts Plaintiff's claim that the NJF sale price was reasonable.

The Plaintiff claimed that his \$975,000.00 listing was not its true value since he later reduced the sale price to \$775,000.00 because of the volcano. The volcanic activity after the NJF is completely irrelevant for the determination of value at the time of the NJF. This Court corroborated this higher value when it set the bond amount on May 19, 2016 at \$588,374.91, and fixed the daily commercial value of the Property at "\$500/day". (**Exhibit D**)

Plaintiff's admissions do, however, show that even after the volcano opened-up cracks adjacent to the Property, the listed value was still more than \$500,000 above Plaintiff's NJF purchase price at the self-dealing auction.

Plaintiff also stated that he reduced the area of real property 'comps' to a 3-mile radius because he did not want to include Pahoia town. By doing so he excluded every and all property of comparable value. Plaintiff did produce a valuation from his business partner which based on this clear conflict has little to no probative value. It should also be noted that the public record of assessor value (which historically is below the fair market value) was \$575,000. That is \$350,000 above Plaintiff's purchase price.

Given the Court is required to review these facts in the light most favorable to Defendants, the Court must take notice that the Plaintiff failed to comply with the requirements of *Ulrich*. In fact, Plaintiff took no steps reasonably anticipated to create interest in the sale, and as a result no one but Plaintiff was at the auction to bid. This clearly raises an issue of genuine material fact, that self-dealing Plaintiff did not advertise the sale in compliance with *Ulrich*, and therefore the adequacy of the purchase price as well as the fairness, diligence, and good faith of the sale are at issue.

Plaintiff has never offered any fact, made any claim or attempted to rebut Defendants in any way, regarding Plaintiff's failure to comply with *Ulrich*'s advertising requirement. Plaintiff admittedly only did the absolute minimum required by placing a tombstone ad in a newspaper three times, which the *Ulrich* court explicitly held was insufficient. "A description of property intended to be foreclosed should be sufficient to inform the public of the nature of the property to be offered for sale. . . . defendant . . . , who conducted the foreclosure, kept the sale as quiet as possible." *Ulrich*, op. cit.

Plaintiff's only "defense" for his failure to advertise the valuable features of the Property is that even though no one other than the self-dealer Plaintiff Hester showed-up to bid, Defendants knew about the NJF, and if they thought the price too low should have bid on it themselves. Indeed! This nonsense ignores the fact that Plaintiff's actions were in process of causing Royal's insolvency and dissolution. Having shut down Defendants Court-assessed "\$500/day" income, the Defendants' financial inability to secure timely counsel, and ultimately Horowitz's personal bankruptcy, resulted.

X. The Court erred in granting Plaintiff standing and a right to foreclose against the Property per 667-5; therefore, the NJF is void as is the summary disposition ruling.

The Plaintiff had no legal right to foreclose in 2010, nor now. The summary disposition ruling evaded Defendants' affirmative defenses, counterclaims, and exhibited evidence showing that the Plaintiff (and/or his predecessor and successors-in-interest) had no legal right to foreclosure under the *void* Mortgage's power of sale because original Seller Lee was in breach of the Mortgage's covenants.

The Court erroneously neglected Defendants' material evidence that both successors-in-interest Sulla and Halai Heights, LLC, and original Seller Cecil Loren Lee, jointly and severally engaged in a consistent pattern of bad acts, evidenced by defective transfers, forgeries, fraud, and false filings with the State, the courts, and the title companies.

The Court neglected to review the evidence that Plaintiff's mortgage interest, underlying this NJF, arises out from a void mortgage instrument, due to seller's fraud *ab initio*. This material fact is incontrovertible because this matter was conclusively decided in the case of *Maise v. Lee* and *Lee v. Maise* (Civ. Nos. 01-01-0444 and 05-1-0235). In that case, the Court held that at the same time Lee sold the subject Property to Defendants, Lee had promised to sell the subject property to Maise. As a result, Defendants were issued three orders from the Third Circuit Court to make their mortgage payments directly to Maise and not to Lee. Regardless of these incontrovertible facts, Plaintiff claims at the time of the NJF, Lee and not Maise was owed the money that this Court ordered Defendants to pay to Maise. Plaintiff, however, is on record as stating he was confused about the actual amount Defendants owed to Lee, due to these underlying Third Circuit court Orders. It is for this reason, *inter alia*, that at the time of the NJF the Plaintiff had absolutely no idea what amount was necessary for Defendants to cure. Thus, the amount he did provide was both untimely under HRS § 667-5, and materially and factually incorrect.

Nevertheless, this Court consideration of only those prior Third Circuit rulings, it believes beneficial to Plaintiff under *Kondaur*, is plain error and a violation of Defendants' right to Equal Protection under the Law.

Next, in order to maintain the fictional transfer of the void mortgage, Plaintiff falsely claims Seller Lee transferred his rights in the Mortgage instrument to Plaintiff's foreclosing predecessor, "Revitalize." However, at the time of this "Assignment of Mortgage" "Revitalize" had not been legally formed under Hawaii law and thus vitiates the conveyance and Plaintiff's alleged interest. "As a general rule, when a corporation has been legally formed, it has an existence as a separate and distinct entity." *Evanston Ins. Co. v. Luko* 7 Haw. App. 520, 783, P.2d 293 (1989).

XI. The Plaintiff failed to provide Defendants with the amount to cure as required per HRS § 667-5, even after timely request by Defendant Horowitz.

HRS § 667-5 (3)(2) (c) states in relevant part: "Upon the request of any person entitled to notice pursuant to this section and sections 667-5.5 and 667-6, the attorney, the mortgagee, successor, or person represented by the attorney shall disclose to the requestor the following information: (1) The amount to cure the default, together with the estimated amount of the foreclosing mortgagee's attorneys' fees and costs, and all other fees and costs estimated to be incurred by the foreclosing mortgagee related to the default prior to the auction within five business days of the request; and . . ."

The Court overlooked Plaintiff's failure to comply with 667-5 by never providing the Defendant with an accurate amount to cure Defendants' alleged default; the estimated amount of mortgagee's attorneys fees and costs; and other costs incurred by the foreclosing mortgagee, after the Plaintiff responded to the Defendants written requests for a final accounting beyond the five-day deadline required by HRS § 667-5.

XII. The Court erred by disregarding case law pursuant to the Plaintiff's non-compliance with HRS § 667-5.

The Court also disregarded case law to overrule Defendants' pleadings that Plaintiff never complied with the strict requirements of HRS § 667-5. The Court in *Carey*, 36 Haw. at 125, stated: "A mortgagee violation of the nonjudicial foreclosure requirements of HRS § 667-5, whether those violations are grievously prejudicial or merely technical, voids a subsequent foreclosure sale." The Ninth Circuit reiterated that "Hawaii law requires strict compliance with statutory foreclosure procedures... Without such compliance, the mortgagee has no legal

authority to exercise its power of sale in a nonjudicial foreclosure sale. . . .” *Id.*(Also see *In Lee v. HSBC BANK USA*, 218 P. 3d 775).

XIII. The NJF did not comply with 667-5 because Defendants, at the time the NJF was initiated, were not in default on the Mortgage.

The NJF did not comply with HRS § 667-5 because Defendants, at the time the NJF was initiated, were not in default on the Mortgage, because up until the time the Fifth Amended Final Judgment was issued in Civ. No. 05-1-0196, Defendants’ jury award of \$200,000 was still valid, and offset any monies due to Plaintiff.

Even assuming Plaintiff was clairvoyant and knew for certain the \$200,000 jury award would be vacated, it was false and incorrect under 667-5 for Plaintiff to claim \$350,000 “due and owing” as this was nowhere near the \$200,000 Plaintiff later claimed was the actual amount due.

Thus, even by Plaintiff’s own admittedly confused accounting, at the time of the NJF, Plaintiff failed to provide Defendant with the amount to cure as required by HRS § 667-5 (3)(2) (c). The Court’s refusal to consider this fact was a mistake of law.

V. Conclusion

It is incumbent upon this Court to administer justice by permitting Defendants to exercise their due process right to be heard under 667-5, *Kondaur*, and the ICA’s MO instructions. (**Exhibit A**)

It is clear from this Court's mistaken administration of MSJ process under *Kondaur* and 667-5 that the Defendants’ were deprived of their due process rights because the Court precluded the Defendants from raising material facts in dispute pursuant to the Plaintiff’s: (1) non-ownership of the subject Property; (2) failure to comply with the requirements of HRS § 667-5; (3) improper advertising of the Property per *Kondaur* quoting *Ulrich*; and (4) falsely modifying the Subject Property Deed submitted by the Plaintiff to this Court pursuant to this MSJ.

The Court, in effect, constructively defaulted Defendants again, repeating the ‘mistake’ requiring correction according to the ICA’s MO. The Court denied the Defendants their rights to raise any and all of the aforementioned defenses since the Court deemed their opposition pleadings *irrelevant* under *Kondaur*, HRS 667-5 and/or precluded by previous judgments, in which Defendants were improperly defaulted.

The Court's 'mistake' evidences an error of fact that the prior decision in this Third Circuit was on the merits of Defendants' 667-5 defenses. To the contrary, these merits were never tried, and now, again, this Court denies Defendants their right to raise genuine issues of material fact per 667-5, in direct discord with the ICA's express MO, **Exhibit A**, p. 14.

A review of the ICA's MO clearly avers that justice was initially denied to the Defendants by wrongful default, enabling the Plaintiff to prevail despite Plaintiff never having met his initial burden. To now rule Plaintiff has met his strict burden and that there are no genuine material issues in dispute, is an abuse of discretion that clearly exceeds the bounds of reason and disregards rules and principles of law and practice to the substantial detriment of Defendants.

The litany of mistakes by this Court include the erroneous holding that Defendants' substantive arguments had previously been considered, that Defendants were barred by *Kondaur* from using their 667-5 objections, that *Kondaur's* ownership defenses were not available, and that *Ulrich's* advertising requirements were immaterial. The Court also disregarded the ICA's MO citing the express reason for this remand, which was to provide Defendants with the opportunity to raise all genuine material issues in dispute, if and only if Plaintiff met his initial burden and shifted the burden to Defendants.

Defendants were never given that opportunity. Not even close. Thus, this Court's Final Judgment constitutes a wholesale disregard, misapplication, and failure by this Court to recognize controlling precedent; thus it must be corrected.

We ask this Court to reconsider its decision and put an end to this injustice by allowing the overwhelming and incontrovertible evidence to speak for itself. Justice demands no less.

Respectfully submitted,

Dated: Cape Coral, Florida, November 22, 2020

/s/ Leonard G. Horowitz

LEONARD G. HOROWITZ, pro se

/s/ Sherri Kane

SHERRI KANE, pro se

LEONARD G. HOROWITZ
and SHERRI KANE, pro se
5348 Vegas Drive, Suite 353
Las Vegas, NV 89108
Tel: 310-877-3002;
Email: Editor@MedicalVeritas.org

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

JASON HESTER, an individual, his)
successors and assigns,)
Plaintiff,)
v.)
LEONARD G. HOROWITZ, an)
individual; 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.

CIV. NO. 14-1-0304
(Quiet Title/Summary Possession)

**DECLARATION OF LEONARD G.
HOROWITZ PURSUANT TO
DEFENDANTS' RULE 59(e) MOTION
TO ALTER OR AMEND THE
SUMMARY JUDGMENT AND ORDER
DUE TO MISTAKE**

Hearing: November 5, 2020
Time: 8:30 am
Judge: Honorable Wendy DeWeese
Trial Date: No trial date set

**DECLARATION OF LEONARD G. HOROWITZ PURSUANT TO DEFENDANTS'
RULE 59(e) MOTION TO ALTER OR AMEND THE SUMMARY JUDGMENT AND
ORDER DUE TO MISTAKE**

I, Leonard G. Horowitz, under pains and penalties of perjury do declare as follows:

1. I am a co-Defendant in this action.
2. I declare that Exhibits "A-D" are true and correct copies of the documents in my possession.

3. **Exhibit A** is a true and correct copy of the Intermediate Court of Appeals Memorandum Opinion filed July 20, 2020, directing remand in CAAP 16-0000163.

4. **Exhibit B** is a true and correct copy of the Plaintiff's Warranty Deed to the subject Property filed by Plaintiff as his Exhibit 11, containing a wrong description of the Parcel II land, effectively converting the neighboring property, "Remnant A," as filed by alleged "mistake" by attorney Paul J. Sulla, Jr. with the Hawaii Bureau of Conveyances on September 9, 2016, as Doc. No. A-60960740.

5. **Exhibit C** is a true and correct copy of the Defendant's Warranty Deed to the "Remnant A" granted by the County of Hawaii to Defendant Royal Bloodline of David on-or-about December 4rd, 2004, and on January 14, 2005, filed with the State BoC as Doc. No. 2005-009276.

6. **Exhibit D** is a true and correct copy of the Order Granting Defendants' Motion for Stay Pending Appeal [HRCP 62(d)] And For The Setting of Supersedeas Bond Security During the Period of the Appeal, filed by Judge Fujino on May 19, 2016 in this case.

7. I declare that all of the statements made in the attached "**DEFENDANTS' RULE 59(e) MOTION TO ALTER OR AMEND THE SUMMARY JUDGMENT AND ORDER DUE TO MISTAKE**" are true and correct to the best of my knowledge and belief.

FURTHER DECLARANT SAYETH NAUGHT

This Declaration is based upon my personal knowledge and I am competent to testify as to the truth of the statements contained herein.

Dated: Cape Coral, Florida; November 22, 2020

Signed: /s/ Leonard G. Horowitz

LEONARD G. HOROWITZ

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

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

CAAP-16-0000162

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

v.

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

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

PHILIP MAISE, Intervenor-Appellee,
and

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

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

CAAP-16-0000163

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

v.

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

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

Exhibit A

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

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

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

CAAP-18-0000584

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

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

MEMORANDUM OPINION

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

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

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

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

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

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

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

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

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

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

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

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

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

I. CAAP-16-0000162

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Hester's Standing as Substitute Plaintiff

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

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

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

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

II. CAAP-16-0000163

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

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

A. Quiet Title Action

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Entry of Default against RBOD

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

D. Quiet Title - Summary Judgment

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

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

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

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

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

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

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

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

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

III. CAAP-18-0000584

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

A. Expungement Action

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

¹⁹ HRS § 507D-5(b) provides:

§507D-5 Requirement of certified court order.

. . . .

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

certified court order from a state or federal court.

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

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

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

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

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

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

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

B. Personal Jurisdiction over Horowitz

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. Conclusion

For the reasons discussed above, we conclude that:

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

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

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

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

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

CAAP-16-0000162
Margaret (Dunham) Willie,
for Defendants/Counterclaim
Plaintiffs/Appellants.

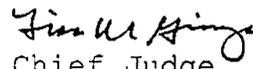
Paul J. Sulla, Jr.
for Plaintiff/Counterclaim
Defendant/Appellee.

CAAP-16-0000163
Margaret (Dunham) Willie,
for Defendants/Counterclaim
Plaintiffs/Appellants.

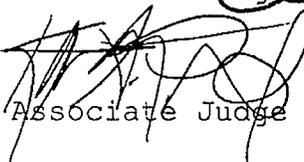
Stephen D. Whittaker, AAL,
for Plaintiff/Counterclaim
Defendant/Appellee.

CAAP-18-0000584
Leonard G. Horowitz,
pro se Respondent-Appellant.

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


Chief Judge


Associate Judge


Associate Judge

712
C



STAT OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

September 09, 2016 3:29 PM

Doc No(s) A-6090740

Electronically Filed

THIRD CIRCUIT

300141000304

23-NOV-2020

ESSE T. KOBATA

REGISTRAR

Dkt. 474 EXH

Conveyance Tax: \$675.00



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B-32865326

orig.

Regular System

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

Paul J. Sulla, Jr.
PO Box 5258
Hilo, HI 96720

TOTAL NO. OF PAGES:

TITLE OF DOCUMENT:

WARRANTY DEED

PARTIES TO DOCUMENT:

GRANTOR: **JASON HESTER**, an individual, whose address is PO Box 748, Pahoa, HI 996778

GRANTEE: **HALAI HEIGHTS, LLC**, a Hawaii limited liability company, whose mailing address is P.O. Box 5258, Hilo, HI 96720

PROPERTY DESCRIPTION:

TAX MAP KEY: (3) 1-3-001-043/049

Exhibit B

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

JASON HESTER, an individual, whose mailing address is PO Box 748, Pahoa, Hawaii 96778, hereinafter referred to as the "**Grantor**", for and in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration paid by **HALAI HEIGHTS, LLC**, a Hawaii Limited Liability Company, whose mailing address is PO Box 5258, Hilo, Hawaii 96720, hereinafter referred to as "**Grantee**", receipt whereof is hereby acknowledged, does hereby grant, sell and convey unto the Grantee, all of said interest in that certain real property as particularly designated on the tax maps of the Third Taxation District, State of Hawaii, as **Tax Map Key (3) 1-3-001-043/049**, more particularly described in **Exhibit "A"** attached hereto and made a part hereof, subject to the encumbrances noted therein.

TOGETHER WITH ALL and singular the buildings, improvements, rights, tenements, easements, privileges, and appurtenances thereunto belonging, appertaining or held and enjoyed in connection therewith.

TO HAVE AND TO HOLD the same unto the Grantee, **as Tenant in Severalty**, and the Grantee's successors and assigns in fee simple forever.

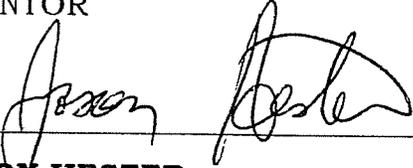
AND THE SAID GRANTOR does hereby covenant with the Grantee that the Grantor is lawfully seised in fee simple of said granted premises and that the said premises are free and clear of all encumbrances made or suffered by said Grantor, except as aforesaid, and except for assessments for real property taxes. And the said Grantor further covenants and agrees that the Grantor has good right to sell

and convey the said premises in the manner aforesaid; that Grantor will **WARRANT AND DEFEND** the same unto the Grantee against the lawful claims and demands of all persons claiming by or through said Grantor, except as mentioned herein.

IT IS MUTUALLY AGREED that the terms "Grantor" and "Grantee," as and when used hereinabove or herein below shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, corporations or partnerships, and their and each of their respective successors in interest, heirs, executors, personal representatives, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more grantors, or by two or more grantees, all covenants of such parties shall be and for all purposes deemed to be their joint and several covenants.

IN WITNESS WHEREOF, the Grantor has executed these presents on the 6 day of September, 2016.

GRANTOR



JASON HESTER

EXHIBIT "A"

-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;

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;

- | | | | | | |
|----|------|-----|-----|--------|--|
| 5. | 40° | 50' | 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

SUBJECT TO THE FOLLOWING:

1. FINAL JUDGMENT

AGAINST: Leonard G. Horowitz, Sherri Kane, individually, Medical Veritas International, Inc. and Royal Bloodline of David, a Washington non-profit corporation

IN FAVOR OF: Jason Hester, individually

DATED: December 29, 2015

FILED: Circuit Court of the Third Circuit, State of Hawaii, #14-1-304

RECORDED: Document No. _____

2. AFFIDAVIT OF LEONARD G. HOROWITZ

DATED: June 6, 2016
RECORDED: Document No. A-60010681 on
June 6, 2016

3. NOTICE OF INVALID LIEN

AGAINST: Leonard G. Horowitz
IN FAVOR OF: Jason Hester, individually
REGARDING: Affidavit of Leonard G. Horowitz
RECORDED: Document No. A-60190688 on
June 24, 2016

END OF EXHIBIT "A"

Electronically Filed
THIRD CIRCUIT
3CC141000304
22-NOV-2020

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Dkt. 475 EXH

BUREAU OF CONVEYANCES
DATE JAN 14 2005 TIME 002
DOCUMENT NO. 2005-009776

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (XX) Pickup () To:

Office of the Corporation Counsel (GT)
County of Hawai'i
101 Aupuni Street, Suite 325
Hilo, Hawai'i 96720

Total Pages: 5
Tax Map Key (3)1-3-001 (Road)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That, the COUNTY OF HAWAII, a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is 25 Aupuni Street, Hilo, Hawai'i 96720, hereinafter called the "Grantor," in consideration of the sum of ONE DOLLAR (\$1.00) and other valuable consideration to it paid by THE ROYAL BLOODLINE OF DAVID, a Washington nonprofit corporation, whose mailing address is P. O. Box 1739, Newport, Washington 99156, hereinafter called the "Grantee," the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns, in fee simple forever, the following real property:

Exhibit C

All of that certain piece or parcel of land situate at Kamā'III, District of Puna, Island and County of Hawaii, State of Hawai'i, being Remnant "A," more particularly described in Exhibit "A" and delineated on Exhibit "B," all of which are attached hereto and made a part hereof by reference.

TO HAVE AND TO HOLD the same, together with all rights, improvements, easements, privileges and appurtenances thereunto belonging or in anywise appertaining, or held and enjoyed therewith, unto the Grantee, its successors and assigns, forever.

AND the Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that it is seised in fee simple of the above-described premises; that the same is free and clear of and from all encumbrances, except as aforesaid; that it has good right to sell and convey the same as aforesaid; and that it will, and its successors and assigns will, WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, the said Grantor has caused these presents to be executed this 3rd day of December, 2004.

COUNTY OF HAWAI'I

By *[Signature]*

HARRY KIM DIXIE KAETSU
Its ~~Mayor~~ Managing Director

emc
emc

APPROVED AS TO FORM
AND LEGALITY:

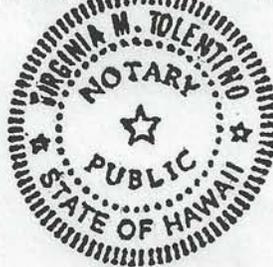
[Signature]
GERALD TAKASE
Assistant Corporation Counsel
County of Hawai'i

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 3rd day of December, 2004, before me personally appeared DIXIE KAETSU, to me personally known, who, being by me duly sworn, did say that she is the Managing Director of the County of Hawai'i, a municipal corporation of the State of Hawai'i; that the seal affixed to the foregoing instrument is the corporate seal of said County of Hawai'i; that the foregoing instrument was signed and sealed in behalf of the County of Hawai'i by authority given to said Mayor of the County of Hawai'i by Section 5-1.3(g) of the County Charter, County of Hawai'i (2000), as amended, and assigned by the Mayor to the Managing Director pursuant to Section 6-1.3(h) of the County Charter; and said DIXIE KAETSU acknowledged said instrument to be the free act and deed of said County of Hawai'i.

Virginia M. Tolentino
VIRGINIA M. TOLENTINO
Notary Public, State of Hawai'i

My commission expires: 4/22/2005



Old Pahoa-Kalapana Road

REMNANT "A"

Being a Portion of Old Pahoa-Kalapana Road
at Kamaili, Puna, Island of Hawaii, Hawaii

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' 30" 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 15-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.



Engineering Division
Department of Public Works
County of Hawaii

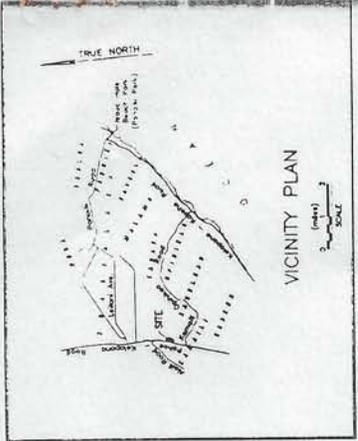
Ronald M. Matsumura

4/30/04

Expiration Date of the License

Aupuni Center
101 Pauahi Street, Suite 7
Hilo, Hawaii 96720-4224
January 29, 2004

Tax Map Key: (3rd Div.) 1-3-01 (Road)



VICINITY PLAN

ENGINEERING DIVISION
DEPARTMENT OF PUBLIC WORKS - COUNTY OF HAWAII
OLD PAHOEHOE-KALAPANA ROAD

Being a Portion of Old Pahoehoe-Kalapana Road
and
REMANANT "A"

SUBMISSION OF LOT 15-D
Into Lot 15-D-1 and Lot 15-D-2
Being a Portion of Lot 15 - Kamehameha Homesteads,
Grant 5005 to J. E. Elderts
of Kamehameha, Puna, Island of Hawaii, Hawaii

SUBMITTED BY: *David P. ...* Date: 11/1/63

APPROVED BY: *Arthur C. ...* Date: 12/15/63

7768

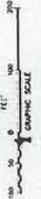
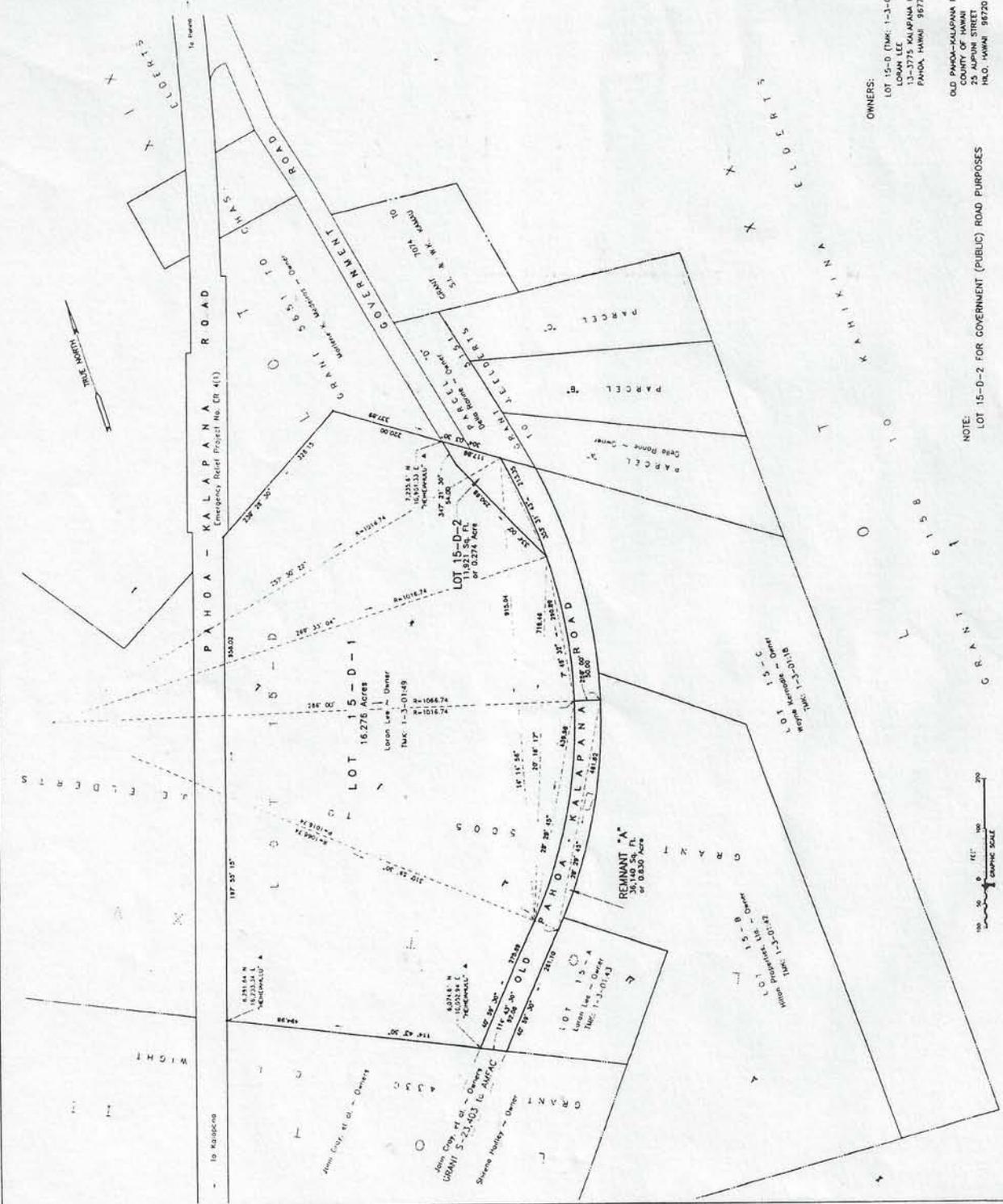
RECORDATION NUMBER: 7768
APPROVED FOR RECORDATION WITH THE BUREAU OF CONVEYANCES, TERRITORY OF HAWAII
DATE: JUN 27 1964



OWNERS:
LOT 15-D (T.M.C. 1-3-0149):
LOMAN LEE
13-3775 KALAPANA HIGHWAY
PAHOEHOE, HAWAII 96775

OLD PAHOEHOE-KALAPANA ROAD:
COUNTY OF HAWAII
25 ALPINE STREET
HONOOLULU, HAWAII 96720

NOTE: LOT 15-D-2 FOR GOVERNMENT (PUBLIC) ROAD PURPOSES



The Map Key (City Ord.) 1-3-0149 and Government Road between Parcels 45, 18, 42 and 43

FILED

Stephen D. Whittaker, AAL (SBN #2191)
73-1459 Kaloko Drive
Kailua Kona, HI 96740
Phone: 808-960-4536

Attorney for Plaintiff
Jason Hester

2016 MAY 19 PM 2:03

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L. KITAOKA, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

JASON HESTER, an individual,

Plaintiff

vs.

LEONARD G. HOROWITZ, an individual; 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)

ORDER GRANTING DEFENDANTS' MOTION FOR STAY PENDING APPEAL [HRCP 62(d)] AND FOR THE SETTING OF SUPERSEDEAS BOND SECURITY DURING THE PERIOD OF THE APPEAL

Hearing Date: May 11, 2016

Hearing Time: 8:30 a.m.

Judge: Hon. Melvin H. Fujino

ORDER GRANTING DEFENDANTS' MOTION FOR STAY PENDING APPEAL [HRCP 62(d)] AND FOR THE SETTING OF SUPERSEDEAS BOND SECURITY DURING THE PERIOD OF THE APPEAL

Defendants' "MOTION FOR STAY PENDING APPEAL [HRCP 62(d)] AND FOR THE SETTING OF SUPERSEDEAS BOND SECURITY DURING THE PERIOD OF THE APPEAL" was filed March 3, 2016 by and through Margaret (Dunham) Wille, as attorney for Defendants LEONARD G. HOROWITZ; SHERRI KANE; MEDICAL VERITAS INTERNATIONAL, INC.; and THE ROYAL BLOODLINE OF DAVID pursuant to Rules 7(b)

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

1

Exhibit D

MW
5-13-16

Clerk, Third Circuit Court, State of Hawaii

and 62(b) of the Hawaii Rules of Civil Procedure (“HRCP”) as well as Rules 3,7,7.1, and 7.2 of the Rules of the Circuit Court.

Through their Motion, Defendants sought to stay execution of the Final Judgment herein dated December 30, 2015 and the resulting Writ of Ejectment during the pendency of their appeal of the judgment.

An Opposition to this motion was filed by Plaintiff by and through his attorney on May 2, 2016. The matter came for hearing on May 11, 2016 at 8:30 a.m. with attorney Stephen D. Whittaker appearing in person on behalf of Plaintiff JASON HESTER and attorney Margaret (Dunham) Wille appearing in person on behalf of Defendants LEONARD G. HOROWITZ; SHERRI KANE; MEDICAL VERITAS INTERNATIONAL, INC.; and THE ROYAL BLOODLINE OF DAVID.

The Court, having considered the motion, memorandum in opposition, and the arguments and statements of the parties at the May 11, 2016 hearing, and the record and file herein, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

Defendants’ “MOTION FOR STAY PENDING APPEAL [HRCP 62(d)] AND FOR THE SETTING OF SUPERSEDEAS BOND SECURITY DURING THE PERIOD OF THE APPEAL” filed March 3, 2016 is **GRANTED** upon the condition that the bond amount set forth below is posted on or before May 18, 2016.

The Court finds that Defendants have advertised on the internet to rent rooms in the Subject Property as vacation rentals and sets the supersedeas bond amount based on the rates and availability stated in the internet advertisements. Defendants’ own publicly-available internet website www.heavenlykingdom.net/Accomodations.html shows rooms for rent on the Subject Property for \$100-\$150 per night and that there are four rooms available.

Thus the court sets the bond amount based on a rental value of an average of \$125/night and using the following formula which is based on an appeal that may take up to three years:

MW
C-13-16

<p>\$546,000.00 use and occupancy value nets +</p> <p>\$12,394.71 property taxes +</p> <p>\$30,000.00 attorneys' fees and costs</p> <p>\$588,374.91 total bond amount required.</p>	<p>[4 rooms rented @ \$125 a night = \$500/day \$182,000/year X 3 yrs = \$546,000)]</p> <p>[the real property taxes are \$4,124.97/year; total property tax for 3 yrs = \$12,394.71]</p> <p>[estimate fees and costs takes into account that the current record in this case is large with 17 volumes]</p>
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The Court rejects Defendants argument that they have not been able to rent rooms due to this lawsuit and have not been able to obtain a Use Permit, and have only received occasional donations.

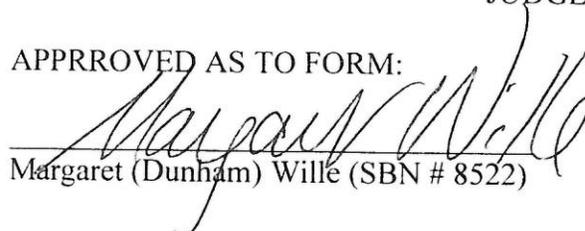
Based on the above formula the court sets the supersedeas bond amount at **\$588,374.91**. The bond must be posted and approved by the Circuit Court of the Third Circuit on or before May 18, 2016. Once the bond is posted, a stay of enforcement of the Writ of Ejectment issued in this matter will be effective beginning May 18th, 2016 and will continue in effect until the Intermediate Court of Appeals matter no. CAAP-16-0000163 is terminated.

Dated: Kealahou, Hawaii on May 18th, 2016




JUDGE OF THE CIRCUIT COURT

APPROVED AS TO FORM:


 Margaret (Dunham) Wille (SBN # 8522)

5/13/16

Hester v. Horowitz Civil No. 14-1-0304
Order Granting Defendants "DEFENDANTS' MOTION FOR STAY PENDING APPEAL [HRCP 62(D)] AND FOR THE SETTING OF SUPERSEDEAS BOND SECURITY DURING THE PERIOD OF THE APPEAL"

LEONARD G. HOROWITZ
and SHERRI KANE, pro se
5348 Vegas Drive, Suite 353
Las Vegas, NV 89108
Tel: 310-877-3002;
Email: Editor@MedicalVeritas.org

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**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
KONA DIVISION, STATE OF HAWAII**

JASON HESTER, an individual)	CIV. NO. 14-1-0304
Plaintiff,)	(Other Civil Action)
v.)	
)	
LEONARD G. HOROWITZ, an)	PROPOSED ORDER AMENDING
individual; SHERRI KANE, an)	(OR RELIEVING) THE
individual; MEDICAL VERITAS)	SUMMARY JUDGMENT AND
INTERNATIONAL, INC, a)	ORDER
California nonprofit corporation; THE)	
ROYAL BLOODLINE OF DAVID,)	
a Washington Corporation Sole;)	
JOHN DOES, 1-10, JANE DOES 1-)	
10, DOE ENTITIES 1-10, DOE)	
PARTNERSHIPS 1-10, DOE)	
GOVERNMENTAL UNITS 1-10.)	
Defendants)	

**PROPOSED ORDER AMENDING (OR RELIEVING) THE
SUMMARY JUDGMENT AND ORDER**

Defendants Leonard Horowitz and Sherri Kane (“Defendants”) having filed:
**DEFENDANTS’ RULE 59(e) MOTION TO ALTER OR AMEND THE SUMMARY
JUDGMENT AND ORDER DUE TO MISTAKE; and DECLARATION OF LEONARD G.
HOROWITZ;** availing this Court’s reconsideration by this non-hearing motion.

THE COURT HAVING read the Motion and after considering the arguments of both parties and the record as a whole, grants Defendants’ Motion to re-hear this matter by evidentiary hearing or trial on the merits of the Defendants’ affirmative defenses and Counterclaims in this

quiet title ejectment action based on the subject non-judicial foreclosure under Hawaii Revised Statute, Section 667-5.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

The HRCP Rule 59(e) Motion of Leonard Horowitz and Sherri Kane, as Individual Defendants, is GRANTED.

DATED: Kailua Kona, Hawai'i, _____, 2020.

Honorable Wendy DeWeese
Judge of the Above-Entitled Court

APPROVED AS TO FORM:

Stephen Whittaker, Attorney for Plaintiff Jason Hester

LEONARD G. HOROWITZ
5348 Vegas Drive, Suite 353
Las Vegas, NV 89108
Telephone: 310-877-3002
E-mail: editor@medicalveritas.org
Plaintiff pro se

SHERRI KANE
5348 Vegas Drive, Suite 353
Las Vegas, NV 89108
Telephone: 310-877-3002
E-mail: editor@medicalveritas.org;
Plaintiff pro se

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THIRD CIRCUIT
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Dkt. 478 CS

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

JASON HESTER, an individual, his)
successors and assigns,)
Plaintiff,)

v.)

LEONARD G. HOROWITZ, an)
individual; 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)
ENTITIES 1-10 and DOE)
GOVERNMENTAL UNITS 1-10,)
Defendants.)

CIV. NO. 14-1-0304
(Quiet Title/Summary Possession)

CERTIFICATE OF SERVICE

NON-HEARING MOTION

Judge: Honorable Wendy DeWeese
Trial Date: No trial date set

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22th day of November, 2020, I served a true and correct copy of the foregoing **“DEFENDANTS’ RULE 59(e) MOTION**

TO ALTER OR AMEND THE SUMMARY JUDGMENT AND ORDER DUE TO MISTAKE” and Declaration of Leonard G. Horowitz, by the method described below to:

STEPHEN D. WHITTAKER (2191)
73-1459 Kaloko Drive
Kailua Kona, HI 96740
808-960-4536

U.S. Mail, Postage Prepaid
 JEFS e-filing

MITCHELL J. FINE
4575 San Pablo Avenue
Emeryville, California 94608
Telephone No. 415-740-8147
Email: mitchfine@hotmail.com

U.S. Mail, Postage Prepaid
 JEFS e-filing

Margaret Wille & Associates, LLC
Margaret Dunham Wille #8522
Timothy Vandever #11005
P.O. Box 6398, Kamuela, Hawaii 96743
Tel: 808-854-6931
Email: mw@mwlawhawaii.com

U.S. Mail, Postage Prepaid
 JEFS e-filing

HONORABLE JUDGE WENDY DeWEESE
THE CIRCUIT COURT OF THE THIRD CIRCUIT STATE OF HAWAII
Keahoulu Courthouse; Attn: Legal Documents
74-5451 Kamakaeha Ave
Kailua- Kona, HI 96750

U.S. Mail, Postage Prepaid
 JEFS e-filing

/s/ Leonard G. Horowitz

LEONARD G. HOROWITZ, pro se

Jason Hester vs. Leonard G. Horowitz et al, Civ. 14-1-0304; *Certificate of Service For “DEFENDANTS’ RULE 59(e) MOTION TO ALTER OR AMEND THE SUMMARY JUDGMENT AND ORDER DUE TO MISTAKE”*.