ICA Case No. CAAP-21-0000018

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

Quiet Title / Ejectment

APPELLANT'S OPENING BRIEF

Leonard G. Horowitz, pro se
5348 Vegas Drive, Suite 353
Las Vegas, NV 89108
Tel: 310-877-3002;
Email: Editor@MedicalVeritas.org

JUDGE ELIZABETH A. STRANCE
JUDGE RONALD IBARRA
JUDGE MELVIN FUJINO
JUDGE WENDY DEWEESE

THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWII
79-1020 Haukapila Street
Kona, HI 96750

LEONARD G. HOROWITZ, pro se
5348 Vegas Drive, Suite 353
Las Vegas, NV 89108
Tel: 310-877-3002;
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JASON HESTER, Plaintiff-Appellee, v. LEONARD G. HOROWITZ, et. al. Defendants-Appellant(s)	(Appeal of Civil Case No. 14-1-0304) **TABLE OF CONTENTS for DEFENDANT/COUNTERCLAIMAINTS–APPELLANT'S OPENING BRIEF with EXHIBITS 1 thru 14.**

TABLE OF CONTENTS FOR DEFENDANT/COUNTERCLAIMAINTS–APPELLANTS OPENING BRIEF

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DEFENDANT/COUNTERCLAIMANT/APPELLANT'S OPENING BRIEF

COMES NOW Defendant/CounterclaimantAppellants LEONARD G. HOROWITZ and the ROYAL BLOODLINE OF DAVID (hereafter collectively referred to as "Defendants" or "Appellants" pursuant to Rules 28 and 32 of the Hawaii Rules of Appellate Procedure (HRAP), filing this Opening Brief.

I. THE PROPERTY.

The subject property (hereafter, "Property") was originally two parcels of land (TMK (3) 1-3-001:049 and 043; hereafter "049" and "043") and improvements thereon located on Kalapana Highway, Pahoa, HI. Civ. No. 14-1-0304; CAAP-16-0000163 ROA Part 1, Doc. No. 2, at 48 ¶ 9; ROA Part 2, Doc. No. 49, at 69 ¶¶ 1-5. (**Exhibit 1**, ICA's Memorandum Opinion ("MO") filed July 20, 2020.)[1] The MO (p. 2) correctly notes "The . . . parcels are 1.32 acres and 16.55 acres respectively." Subsequently, however, the Third Circuit's summary judgment subject to this appeal granted Plaintiff's co-counsel, attorney Paul J. Sulla, Jr.'s limited liability corporation, Halai Heights, LLC, ownership of Defendant ROYAL BLOOD OF DAVID's ("RBOD's") religious property never foreclosed. This land features coveted therapeutic steam spa facilities along with land dividing the "049" and "043" lots. This RBOD property (designated "Remnant A," "PARCEL II" or TMK (3) 1-3-001:095 ["095"] is 0.89 acres +/-, and continues under Defendants' ownership during RBOD's "winding up." RBOD's property is warranted by the County of Hawaii by Warranty Deed, Doc. No. 2005-009276. (**Exhibit 12**) RROA, Doc. No. 471, pp. 8-9. Accordingly, the subject Property in this case now includes the three parcels, "043" "049" and "095", all landlocking access to the Defendants' neighboring property, TMK (3) 1-3-001:042 ["042"] of approximately 9 acres.

II. PARTIES AND PERSONA.

THE ROYAL BLOOD OF DAVID ("RBOD") is the named Mortgagor. It is an is an ecclesiastic sole corporation, the sole member being LEONARD G. HOROWITZ. RBOD was incorporated October 31, 2001, in Washington State, and dissolved on October 31, 2012, due to insolvency resulting from related litigation expenses. ROA Part 1, Doc. No. 2, at 48 ¶ 7; ROA Part 1, Doc. No. 23, at 1274 ¶ C-47-48. Prior to dissolving, all of RBOD's interest in the subject Property was transferred to Defendants Horowitz and Sherri Kane, by quitclaim deed on July 11,

[1] In this Opening Brief citations referencing the Record on Appeal ("ROA") designate the original ROA, not the Remand Record on Appeal ("RROA") designated and distinguished as such.

2012. ROA Part 1, Doc. No 23, at 1279 ¶ 2. RBOD continues now in "winding up" to secure its assets by Hawaii Revised Statute ("HRS") § 419-8,[2] especially the "095" converted lot.

MEDICAL VERITAS was RBOD's lessee of the subject property, and is not party to this appeal. (ROA Part 2, Doc. No. 124, p. 2404, footnote 1.)

Defendant-Appellant **LEONARD G. HOROWITZ** is the successor in interest to RBOD, along with his co-successor in interest, now deceased, SHERRI KANE. Horowitz was signatory on the Promissory Note for the Mortgage in both his "individual" and official corporate capacity for RBOD, and made all of the monthly payments on the mortgage as well as the final balloon payment. ROA Part 1, Doc. No. 6, at 168 ¶ 4-7 Defendant Horowitz purchased the Property in January of 2004 by way of his ecclesiastical non-profit RBOD. ROA Part 2, Doc. No. 156, at 3035 ¶ 4-7. Horowitz executed the promissory note for the $350,000 mortgage on the subject Property. As of July 11, 2012, he, as an individual, is the co-successor of RBOD's interest in the Property following conveyance of the 043 and 049 parcels from RBOD to Defendants Horowitz and Kane, as individuals. ROA Part 1, Doc. No. 23, at 1264 ¶¶ C-1-3. RBOD retained parcel 095 (a.k.a., "Remnant A") On July 6, 2016, Horowitz and Kane were wrongfully ejected from the subject Property pursuant to a Writ of Ejectment acquired by alleged fraud upon the court. ROA Part 2. Doc. No. 141, p. 2893 ¶ 3; ROA Part 2. Doc. No. 153, p. 2948 ¶ 3

Defendant and former Appellant **SHERRI KANE** (now deceased) was the Scribe of RBOD and a co-successor in interest to Appellant RBOD. ROA Part 1, Doc. No. 23, at 1264 ¶ C-3. Ms. Kane died from a series of strokes suffered proximal to the severe distress caused by Judge DeWeese's ruling of November 5, 2020, subject to this appeal.

Plaintiff-Appellee **JASON HESTER,** individually and as Overseer of The Office Of Overseer, A Corporate Sole And Its Successor, Over And For The Popular Assembly Of Revitalize, A Gospel Of Believers ("GOB"), has been granted the court's favor throughout these proceedings commencing in 2009. GOB, a presumed ecclesiastical corporation, was incorporated by *forgery* on May 28, 2009, (**Exhibit 3**) clearly-and-convincingly proven by "altered" pagination, altered date(s), the wrong signature on the General Certification page, and one or

[2] Original Defendant Medical Veritas International, Inc. ("MVII") is a 501c(3) non-profit educational corporation directed by Horowitz and Kane, administering limited research, development, and publication activities under a gifted lease of the subject Property from the Appellants. MVII is not a party to this appeal.

more *photocopied signatures* of Lee, and more.[3] ROA Part 1, Doc. No. 23, at 1265 ¶ C-5 After Seller Mortgagee Lee died in July of 2009, "Substitute Plaintiff" Appellee Hester, as the Successor Overseer of GOB, replaced Lee. This transfer of interest *was set up by* Attorney Sulla at the time GOB's Articles of Incorporation were forged on-or-about May 15, 2009, to transfer any remaining interest Lee may have retained in the Mortgage and subject Property to Hester in anticipation of Lee's death.[4] When Plaintiff Lee died on June 27, 2009 (ROA Part 2, Doc. No. 123, at 2370-71) Hester became the Overseer, and as such, presumably the successor-in-interest to whatever interest Lee retained in the Mortgage. ROA Part 1, Doc. No. 23, at 1273 ¶ C-44-45;

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[3] When the original Plaintiff and Seller-Mortgagee Cecil Loran Lee was near death, subsequent to his loss of the subject property ("Property") to the Defendants by the Amended Final Judgment in Civ. No. 05-1-0196 on February 23, 2009, (**Exhibits 4 and 5**) Lee contrived a fraudulent transfer of his interests in the Property on May 15, 2009, by naming himself the Overseer of GOB with Jason Hester as the Successor Overseer. As evidenced by **Exhibits 6** and **7,** on that date of May 15, 2009, prior to GOB's hasty, untimely, and invalid incorporation by *forgery* two weeks later (on May 28, 2009; **Exhibits 6 and 7**), the original Mortgagee Lee had a meeting of minds with his alleged complicit attorney, Paul J. Sulla, Jr.

These substantive facts and exhibits proving forgery and fraud have, to date, been repeatedly overlooked or disregarded by the willfully-blind court. Instead, the Defendants have been repeatedly deprived of their due process rights and meritorious defenses without a fair trial. No adjudication on the forgery or conveyance actions of these two men, Lee and Sulla, has ever been conducted. These facts go to the heart of the ICA's MO, footnote 6, and remand requiring the lower court to determine whether or not these men's non-judicial foreclosure was conducted in accordance with *Kondaur*, 136 Hawai'I at 242-43, 361 P.3d., to find that the subject NJF was "conducted in a manner that was fair, . . . and in good faith." (**Exhibit 1**, p. 14.)

[4] Aside from GOB's illegal and void incorporation by forgery, Lee and Sulla's Assignments into GOB are presumed fraudulent because, inter alia, the final "balloon payment" had already been made on February 27, 2009. This was acknowledged and recorded by Judge Ronald Ibarra in his Fifth Amended Final Judgment in that underlying judicial foreclosure case, Civ. No. 05-1-0196. (**Exhibit 4**, footnote 1, p. 5.) So not only was the Note and Mortgage made *void* (quoting the judge) by the "equities involved with the timely payment, property improvements, balloon payment, and misleading statements by plaintiff [that] make foreclosure unjust," but the debt and Mortgage was made *void* by the jury decision and directed verdict that Seller Lee had fraudulently misrepresented the sale of the Property to effectively bilk the Defendants. (**Exhibit 5**) The courts have, to date, overlooked and disregarded these facts too, and the law precluding the void Mortgage and Note's conveyance into GOB that was *not-yet-legally-formed* on May 15, 2009, when the ecclesiastical non-profit was recorded supposedly receiving the void Mortgage and Note.

It is unreasonable, reckless, and unconscionable for any court using *Kondaur* as the standard of review to grant quiet title to a non-judicial foreclosing mortgagee, GOB/Hester/Sulla here, given GOB's sham existence relied exclusively on incorporation documents containing photocopied signature(s) of Lee, an improper "General Certification" signature, altered pagination, and altered date(s). All neglected facts expertly detailed in the Declaration of Beth Chrisman, forensic document examiner, attached here as **Exhibit 7**.

Not only did attorney Sulla inform the probate court on December 11, 2009, that "Lee doesn't own anymore" interest in the Property, ROA Part 2, Doc. No. 156, p. 3034 referencing "Exhibit 3" p. 3042; but the basis for the substitution of Hester for Lee, and Lee's conveyance of any remaining interest GOB clamed to hold, was voided by forgery and fraud, based on the aforementioned *false* information and "altered" documents. ROA Part 2, Doc. No. 123, p. 2371 ¶¶ 2-3. Hester was also neither a legal heir nor the personal representative of Lee. (ROA Part 2, Doc. No. 123, at 2371 ¶¶ 1 and 2)

Later, on June 14, 2011, Hester as the Overseer of GOB transferred whatever interest GOB claimed to have in the property by quitclaim deed to himself as an individual, simultaneously transferring a security mortgage interest in the Property to Sulla. ROA Part 1, Doc. No. 23, at 1273 ¶ C-45 (referenced Exhibits "BB" and "CC" pp. 1639-1660) By exercising that mortgage "loan" with Hester, Sulla became *de facto* a real-party-in-interest in this case. (ROA Part 1, Doc. No. 23, at 1318).

The Original Seller – Mortgagee **CECIL LORAN LEE** – died on June 27, 2009, having lost his judicial foreclosure and financial interest in the subject "Property." ROA Part 1, Doc. No. 23, at 1245-47. Jurors learned that Lee had not only misrepresented the Property as a "grandfathered" business, but had sold the Property to Horowitz/RBOD to avoid losing the Property to third party intervenor Philip Maise, who held a litigation encumbrance and pending lien by court-ordered garnishment of Horowitz's Mortgage payments. ROA Part 1, Doc. No. 23, at 1247 ¶¶ C-15-17; Lee sold Horowitz/RBOD the Property without disclosing Maise's litigation encumbrance that resulted from successfully pursuing a fraud claim against Lee for Lee having concealed a federal lien against the Property for marijuana trafficking. See: Civ. No. Civ. No. 01-01-0444. ROA Part 1, Doc. No. 6, at 177 ¶ 2; Doc. No. 23, at 1268 ¶ C-15

ATTORNEY PAUL J. SULLA Jr (hereafter, "Sulla") began representing original Seller-Mortgagee Lee shortly before Lee's death, and following Lee's death has represented "Successor Mortgagee" alleged "sham Plaintiff," (i.e., 'front man') Hester. ROA Doc. No. 23, at 1265 ¶ C-4. [5] Sulla has been the only "face" of "Substitute Plaintiffs" GOB and Hester since.

[5] On June 14, 2011, Sulla arranged for Hester (as the Overseer of GOB) to quitclaim GOB's claimed interest in the 043 and 049 lots to Hester as an individual; and simultaneously Sulla gained a $50,000.00 security interest in the these lots by executing a mortgage "loan" to Hester (**Exhibit 11**). ROA Part 1, Doc. No. 23, at 1271 ¶ C-45.

Severely prejudicial to the Defendants and the administration of justice in this case, Sulla continued to represent Hester and his own interests following Sulla's disqualification as a necessary witness at trial when Defendants removed this case to federal court in CIV. NO. 14 00413 JMS/RLP. (Remand ROA "RROA", Doc. No. 340; and RROA Doc. No. 329, p. 5, ¶ 4.) Operating from the shadows, wrongly not-joined by the court's denial of Defendant's joinder motion (ROA Doc. 25), Sulla continued to finance his indigent alleged shill, "sham Plaintiff" Hester, and their co-counsel, Stephen D. Whittaker. As detailed below, throughout this litigation Sulla has continued to influence Third Circuit justices, demonstrating uncanny immunity against prosecution for blatant torts and crimes committed before onlookers. The "impression of impropriety" is so blatant in this case, apparent public corruption is alleged.

On September 9, 2016, encouraged by the court's continued favor of Sulla, the disqualified lawyer filed a forged "Warranty Deed" fraudulently transferring the subject Property from his alleged "sham Plaintiff" Hester to Sulla's own Halai Heights, LLC ("HHLLC") by **Exhibit 8**. See: State of Hawaii Bureau of Conveyances Doc. No. A-60960740; Remand ROA ("RROA"), Doc. No. 340; and RROA Doc. No. 471, p. 8, ¶ 2. This wrongdoing caused attorney Sulla's criminal indictment by a Hilo grand jury on December 5, 2019. RROA, Doc. No. 471, p. 8, ¶ 3, **Exhibit 9**.

Despite being disqualified from representing Hester in this case, and criminally-charged Sulla's Declaration alone exclusively defends Plaintiff Hester and Sulla's forged Warranty Deed. RROA, Doc. No. 211. This illegal deed is now certified by the court's summary judgment. In effect, the court aided-and-abetted Sulla's conversion of Defendant RBOD's land never foreclosed.

Sulla admitted his "mistake," but never corrected it while continuing to influence the court by declaration to accommodate his conversion. RROA, Doc. No. 211. Now, the quieted title grants Sulla Defendant RBOD's real property designated "Remnant A" (a.k.a. "PARCEL II" or TMK "095") that runs through the heart of the subject Property and divides Hester's huge sink-hole liability (parcel "043") from Sulla's illegal "Inn" acquisitions ("049" and "095").

Throughout this court-facilitated conversion, Sulla has exhibited remarkable immunity against reprimands by Third Circuit judges and the judiciary's chief disciplinarian, Bradly Tamm, all of whom have acted willfully-blind to Sulla's conflicting interests and pattern-and-practice of filing forged and fraudulent documents with the State and courts. Public corruption best explains how and why Defendants' Rule 19(e) motion requiring joinder of Sulla as a necessary secured party in this litigation was denied by the Third Circuit. (RROA, Doc. No. 329, p. 8, ¶¶ 1-3)

Sulla filed the aforementioned forged "Warranty Deed" that fraudulently transferred the subject Property from Hester to Sulla's shell incorporation, HHLLC. (See: **Exhibit 8** and State of Hawaii Bureau of Conveyances Doc. No. A-60960740; Remand ROA ("RROA"), Doc. No. 340; and RROA Doc. No. 471, p. 8, ¶ 2. Although that wrongdoing caused Sulla to be indicted by the State of Hawaii for switching property descriptions in the deed (increasing the Property value for Sulla, but shortchanging Hester in the process), Sulla claimed he made a "mistake" that precluded his 'beyond reasonable doubt' conviction. RROA, Doc. No. 471, p. 8, ¶ 3, **Exhibit 9**.

Consequently, with justice and Sulla's set of forgeries disregarded, Sulla took possession of Defendants' Property on July 6, 2016, when the bench executed a Writ of Ejectment in this quiet title action. With Horowitz bankrupt, and the other Defendants including Ms. Kane financially exhausted and severely distressed, the Defendants were unable to post bond to stay the Writ of Ejectment, and were forced to submit to their ejectment. ROA Part 2, Doc. No. 123, at 2365 ¶ 3.

Sulla exclusively signed and submitted all declarations rather than have Hester testify or submit any affidavits or declarations. (ROA Part 2, Doc. No. 51, at 421 ¶ 22, and the record in its entirety.)

PHILIP MAISE ("Maise") is the Defendant-Intervenor in Civ. No. 05-1-0196. By 2006 Maise prevailed in two lawsuits against Lee for fraud and misrepresentation, relating to attempted sale of the subject Property by Lee to Maise without disclosing a federal lien on the Property related to drug trafficking charges against Lee. ROA Part 1, Doc. No. 6, at 177 ¶ 2. Philip Maise is not a party to this appeal, but has repeatedly contested the aforementioned injustices.

III. CONCISE STATEMENT OF THE CASE: COURSE AND DISPOSITION OF THE PROCEEDINGS

A. INTRODUCTION & OVERVIEW

The Third Circuit erroneously deprived the Defendants of their due process and real property rights by wrongly imposing defaults and thereby neglecting Defendants' material evidence and counterclaims. Defendants argue and evidence the original Seller Lee's successors-in interest—GOB, Hester, and HHLLC, with Sulla as counsel, jointly and severally engaged in a scheme to convert the Defendants' real Property and money. Said enterprise's wrongdoings are evidenced by multiple false filings with the State and court, including defective Mortgage, Note and deed transfers, forged and altered incorporation papers, and a forged warranty deed.

Accordingly, this case is a study in alleged fraud upon the court featuring the court's accommodations favoring mainly Sulla, who uses his underworld agency and prosecutorial immunity, to deprive the Defendants. Along with his alleged shill Hester, the wrongoers prevailed against charges of white collar organized crime. Public corruption best explains the Defendants' damages from Third Circuit deprivations and exactments for more than a dozen years. Those "errors" are evidenced and opposed below, beginning with **Exhibits 1** thru **3**.

B. THE ORIGINAL JUDICIAL FORECLOSURE CASE

The original Mortgagee, Cecil Loran Lee, was a convicted drug dealer who pursued a judicial foreclosure case against the Defendants in Civ. No. 05-1-0196, (hereafter "0196") that legally concluded in Defendants' favor. Following the February 23, 2009 Amended Final Judgment, (**Exhibit 4**) the Defendants , paid off the remaining sum and interest due on the Note on February 27, 2009, inclusive of a jury award of $200,000. (RROA, Doc. No. 329, p. 4, ¶¶ 1

thru 3.) That award and payment was justified by Seller Lee having been found guilty by the jury of misrepresenting the subject Property ("Property") as a "grandfathered" (i.e., legally permitted) "Bed & Breakfast" when it was not permitted to be run commercially. (**Exhibit 5**; RROA, Doc. No. 329, p. 4, ¶ 1.)

C. THE NON-JUDICIAL FORECLOSURE

Several months later, that case arose from the dead when attorney Sulla appeared for the dying Lee to "Substitute Plaintiff" GOB and Hester for Lee to advance motions to vacate that jury award in order to foreclose non-judicially. Thereby, in 2010, Sulla/Hester claimed the Defendants defaulted on that $200,000 award used as a Mortgage credit supplementing the Defendants' final balloon payment of $154, 204.13. (**Exhibit 4,** footnotes 1 and 2, p. 5)

In other words, prior to finality in the 0196 judicial foreclosure case, attorney Sulla, purportedly on behalf of "substitute plaintiff" GOB and Hester, initiated a non-judicial foreclosure (hereafter, "NJF") followed by this quiet title action. This litigation involves the same parties or their privies based on the same series of transactions, and same compliance issues with the same Mortgage. Rather than pursuing any remaining issue of what, if any, monies remained due in the context of the judicial foreclosure (wherein foreclosure was "DENIED"), Sulla, with his interests secured at "arms length," directed "successor mortgagee" Hester (in his capacity as GOB's Overseer) to administer this NJF and quiet title case. The court thus granted this alleged flim-flam Bar member the Defendants' properties after defaulting them.

D. THE COURT'S ACTIONS ENFORCING SULLA'S NJF

Exhibits 2 and **3** show the court did worse than disregard *stare decisis* doctrine that the court claimed she respects. Judge DeWeese stated "a judge should be hesitant to modify, vacate, or overrule a prior interlocutory order of another judge who sits in the same court." (**Exhibit 3**, Hearing Transcript, p. 34, lines 6 thru 9).

But this defiance of reason and *stare decisis* doctrine is precisely what Judge DeWeese did by her Final Judgment on Remand. (**Exhibit 2**) She not only disregarded, effectively modified, vacated, and overruled Judge Ibarra's judicial foreclosure denial. And not only did she preclude the Defendants' civil right to a trial on the merits. But she also gave the "impression of impropriety" appearing with the court having committed an alleged misdemeanor by *evidence tampering*. It appears that the court knowingly altered the physical evidenced published by the

ICA in its Memorandum Opinion (hereafter, "MO") as detailed below. (See: **Tampering with physical evidence**, HRS §710-1076.) All of this was done to enforce Sulla/GOB's completely illegal and unconscionable NJF.

In review, on July 20, 2020, the ICA vacated the court's Summary Judgment. (**Exhibit 1,** p. 14, ¶ 3.) The ICA stated: "the Third Circuit's 'Final Judgment [in this 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." The ICA held that in administering the NJF, the Plaintiff had engaged in a "self-dealing transaction and had not met his initial burden under *Kondaur*. (**Exhibit 1**, p. 13, ¶ 3.) Because of this, the ICA determined **the burden of proof never shifted to Defendants to raise their 667-5 defenses**, and that the Third Circuit's default and deprivation of Defendants' due process rights was improper.

Given Plaintiff failed to meet his initial burden, the ICA stated it was unnecessary for it to address the material issues of fact raised by the Defendants under appeal. Thus, the material facts and exhibits proving Plaintiff's alleged pattern-and-practice of filing forgeries to defraud the Defendants, the State of Hawaii, and the courts, remained *concealed*.

The ICA ruled on remand, that if the Third Circuit found Plaintiff could demonstrate he had met his initial *Kondaur* burden of proving good faith and fair administration of his NJF, then and only then would Defendant be required to raise any defense to the Plaintiff's Renewed Motion for Summary Judgment ("RMSJ").

Judge DeWeese altered the MO narrative. What transpired in the Third Circuit on remand was something entirely different from what the ICA held should occur. On remand, the Third Circuit held the ICA did not vacate the judgment, but had remanded the matter only so that Plaintiff could show he had met his initial burden under *Kondaur*. (See: **Exhibit 3**, Hearing Transcript ["HT"], p. 33. Lines 3-18. "This Court does not read the remand as a setting aside of the non-judicial foreclosure, . . . the Court does read the remand to focus on whether or not the nonjudicial foreclosure sale was conducted in a manner consistent with the Kondaur case.")

The trial transcript provides incontrovertible evidence of the trial court's 'misreading' of, and alleged "tampering" with, the ICA's MO, proximal to the court denying Defendants' due process. The Third Circuit, in fact, mixed-up the present case (Civ. No. 14-1-0304/CAAP 16-0000163) with the ICA's tangential holding in the joined case of Civ. No 17-1-0407/CAAP 18-000584). The following "mistake of fact" was used to deny Defendants' the right to raise their

statutory defenses in accordance with Kondaur and 667-5, once the court determined Plaintiff had met his initial burden.

Here is how Judge DeWeese confabulated the two cases. While exclusively adjudicating the "0304" case, she altered the ICA's language pursuant to the "18-0584" case thusly:

> "The remand from the ICA says that it appears from the record that our ruling above - - I'm just paraphrasing - - under Kondaur could potentially affect this case. Therefore, although we reject Horowitz's arguments on appeal **in CAAP 18-584**, we conclude it would be prudent to remand this case to the Circuit Court, the Third Circuit, for further proceedings as the Court deems necessary in light of our rulings in this memorandum opinion." (**Exhibit 3**, p. 33, lines 7-15; bold emphasis added.)

Thus, the court obviously switched the ICA's opinions in those two cases, 18-584 for 16-163, to knowingly deprive the Defendants of adjudication on the merits. In contrast, the ICA had vacated the NJF to revisit whether or not Sulla had conducted that foreclosure in "good faith" and fairly, inter alia. Contrary to Judge De Weese's conflagration, the ICA ruled in the "18-584" expungement case that the 0304 quiet title case should be resolved prior to disposing of the Defendant's *lis pendens*, beginning with revisiting the NJF in accordance with *Kondaur*.

According to the transcript (**Exhibit 3**) the Third Circuit explicitly held there would be no burden shifting and Defendants would be given no opportunity to raise their defenses, since the court stated that the matter had already been fully adjudicated in the Third Circuit and resolved in Plaintiff's favor. This would have been an impossibility, however, since Defendants' had previously, per the ICA's determination, been *defaulted* and denied any and all opportunity to raise their defenses and counterclaims.

Now here is where this case gets even more interesting. The ICA ruled RBOD's interests were "moot" (**Exhibit 3**, p. 12 ¶ C). That ruling equally and illegally deprived the rights and ongoing interests of RBOD in "winding up" under HRS § 419-8. The Defendants' religious property rights, and civil rights, were deprived, but continue herein nonetheless since Horowitz stands as RBOD's exclusive surviving director and manager. Here, Defendant Horowitz "shall be" permitted to act as "a trustee to wind up the corporation," in accordance with section 3 of the 419-8 statute.[6] And that "winding up" of RBOD's real Property assets supersedes any claim of

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[6] HRS § 419-8 (4) states in relevant part: "The church, to administer the affairs, property, and temporalities of which the corporation was organized, . . . may be represented in court by any authorized officer thereof or trustee acting in its behalf; the remaining assets shall be distributed

'mootness,' because RBOD's interests are the express subject of this Quiet Title action and the subject Warranty Deed forgery aimed at converting RBOD's remaining "095" property.

RBOD's/Horowitz's interests lie in the same Property converted by Sulla's second set of forged documents in this case, compounding evidence of *bad faith* and unfairness in conducting the NJF pursuant to *Kondaur*. What Property did Sulla foreclose on? Sulla's Warranty Deed forgery of September 9, 2016 (**Exhibits 8)** switches RBOD's real property descriptions with Hester's "043" lot description for which Sulla was indicted by the State of Hawaii on December 5, 2019. (**Exhibit 9**) So in granting Sulla/Hester summary judgment and the Property, the court effectively helped Sulla's steal RBOD's religious property never foreclosed upon. These facts are material in this dispute. **Exhibits 8** and **9** demand the attention of this Court in the interest of justice and Defendants' due process and religious property rights.

RBOD's ongoing interests also lie under the same HRS § 419 law the ICA cited in its MO, pg. 3, footnote 6, to presume GOB's ecclesiastical existence and Hester's standing. It would be incongruous and prejudicial to deny RBOD's rights under this same law.[5] The ICA noted:

> "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 interests in the promissory notes and mortgage on the subject property."

By erroneously presuming the substitute plaintiff Hester's valid interests in succeeding Lee and GOB as the "succeeding mortgagee," the court and the MO prejudicially defies the Defendants' evidentiary exhibits and repeated pleadings proving Hester/Sulla's conversion of the Defendants' title and properties are a nullity, and not "moot."

The Plaintiff's interests are voided by the set of forgeries proving fraud shown in **Exhibits 7** through **9**. "Lee created Revitalize" the MO reads neglecting the forgery Lee used to create GOB. (**Exhibit 7**). Also, evidencing violations of several laws, the MO states: "[a]lso in

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to such church or to a trustee or trustees in its behalf, or in such other manner as may be decreed by the circuit court of the judicial circuit in which the dissolved corporation had its principal office at the date of dissolution; and the trustee or trustees in dissolution, the director, the attorney general, or any person connected with the church, may file a petition for the determination of the manner of distribution of the remaining assets, . . ."

Accordingly, pending action before the circuit court of the State of Washington is required by statute to determine the manner of distribution of RBOD's remaining assets contingent upon adjudication on the merits in this case in accordance with *Kondaur*.

May 2009, Lee assigned to Revitalize all of his interests in the promissory notes and mortgage on the subject property," omitting or concealing evidence before the court and ICA showing Lee's Assignments were voided by: (1) Lee's misrepresentations as ruled by the Ibarra court; and (2) forgery of GOB's incorporation Articles. (**Exhibits 4 and 5**)

In other words, the court and ICA's MO wrongly presumes the Plaintiff's illegal conveyances are valid, not void. The Plaintiff's null and void interests in the Mortgage and Note—conveyances to a shell entity incorporated by *forgery*—are erroneously presumed valid. Thus, the Plaintiff's power to foreclose non-judicially on the Defendants' Property defies the facts, the evidence, the laws, *Kondaur*'s good faith requirement, the Ibarra-court's ruling granting the Defendants the Property, *stare decisis* doctrine, and more detailed below.

Horowitz and RBOD, therefore, appeals to the ICA to take notice of its own errors in reviewing *de novo* what transpired in its lower court, to reverse the Third Circuits' erroneous decisions, and put remedial measures in place. Without doing so, judicial corruption aiding-and-abetting Sulla's miscarriage of justice will continue. Continuing neglect will multiply proceedings in the State of Hawaii and elsewhere, predictively bringing the entire Hawaii judiciary into disrepute.

IV. POINTS OF ERROR

A. FIRST POINT OF ERROR: The Lower Court Erred by Failing to Recognize Controlling Precedent as Set Forth in *Kondaur Capital Corp. v. Matsuyoshi*, 361 P. 3d454 – Haw: Supreme Court 2015 (hereafter, "*Kondaur*") and *Ulrich* 35 Haw. At 168.

B. SECOND POINT OF ERROR: The Lower Court Erred By Not Vacating The Default Judgment Of RBOD Under The Standard Of *BDM Inc. v. Sageco, Inc*. 57 Haw. 73, 76, 549 P. 2d 1147, 1150 (1976)

C. THIRD POINT OF ERROR: The Lower Court Erred by Confounding the Foundational Facts in the Two Joined Cases, this Quiet Title/Ejectment Action "0304/163" and the Expungement Case "0407/584", Raising Material Errors of Fact as Well as Material Errors of Law, as Evidenced in the Summary Judgment Hearing Transcript.

D. FOURTH POINT OF ERROR: The Lower Court Erred by Disregarding Irrefutable Evidence of the Plaintiff's Pattern and Practice of Filing Forgeries with the State and Court to Convert the Subject Property by Fraud and Crime**.**

E. FIFTH POINT OF ERROR: The Court Erroneously Presumed Hester's Standing by Acting Willfully-Blind to Evidence of Sulla's Fraud, Forgery, and Exceptions to the *Void* Mortgage Assignment Challenged by Defendants Exposing the Invalidity of the Transfers and Transferee.

V. STANDARDS OF REVIEW

A. STANDARD FOR REVIEW IN THE GRANT OR DENIAL OF SUMMARY JUDGMENT

The appellate court reviews "the circuit court's grant or denial of summary judgment *de novo." Isobe v. Sakatani*, 176 Haw. 368, 376 (279 P. 3d 33, 41 (2012)

B. STANDARD FOR REVIEW RE JURISDICTIONAL QUESTION OF STANDING

Standing is a question of jurisdiction reviewed de novo. See e.g. *Mottl v. Miyahira*, 95 Haw. 381, 388, 23 P.3d 716, 723 (2001) ("Thus, the issue of standing is reviewed *de novo* on appeal.

C. STANDARD FOR NON-JUDICIAL FORECLOSURE SUMMARY PROCEEDINGS

"The moving party has the initial burden of 'demonstrating the absence of a genuine issue of material fact.' . . . 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 trail." MO, Exhibit 1, p. 13, ¶ 1, citing, *Kondaur* at 240-41, 361 P.3d at 467-68.

D. STANDARD FOR ADJUDGING AND REVERSING DEFAULT JUDGMENTS

As an overarching principle, courts disfavor default judgments, and "any doubt should be resolved in favor of the party seeking relief, so that in the interests of justice there can be full trial on the merits." *BDM Inc. v. Sageco, Inc*. 57 Haw. 73, 76, 549 P. 2d 1147, 1150 (1976)

VI. ARGUMENT

A. FIRST POINT OF ERROR: The Lower Court Erred by Failing to Recognize Controlling Precedent as Set Forth in *Kondaur Capital Corp. v. Matsuyoshi*, 361 P. 3d454 – Haw: Supreme Court 2015 (hereafter, "*Kondaur*"), *Ulrich* 35 Haw. At 168, and HRS 667-5

The court's Final Judgment on Remand (**Exhibit 2**) erroneously neglected the standard procedures established by *Kondaur*, *Ulrich* and HRS § 667-5, to secure non-judicial foreclosure defendants fairness and justice when facing the threat of losing their properties. As the ICA's MO made known, once the foreclosing mortgagee has proven: (1) "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 in unlawfully held by another," then, under Kondaur, "In a self-dealing transaction, where the mortgagee is the purchaser in a non-judicial sale [such as in the

instant case] the mortgagee has the 'burden to prove in the summary judgment proceeding that the foreclosure 'sale was regularly and fairly conducted in every particular.'" Then, "[a] prima facie case demonstrating compliance with the foregoing requirements [shifts] the burden to [the mortgagor] to raise a genuine issue of material fact." Most of the above was erroneously neglected by the court, depriving the Defendants of their due process and Property rights.

1. APPLICABLE LEGAL FRAMEWORK: Under 59(e)(1), the "(1)" references enumerations set forth in *McDowell v. Calderon*, 107 F.3d 1351 (9th Cir. 1997) where by that standard the Third Circuit's ruling was a "wholesale disregard, misapplication, and failure to recognize controlling precedent. (See the ICA's MO, **Exhibit 1**, and *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*.)

The lower court erred by: (a) failing 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;* (b) misapplication of the statutory language in HRS § 667-5; and (c) wholesale disregard for explicit instructions provided by the ICA in its Memorandum Opinion ("MO") of July 20, 2020 (pgs. 12-14, **Exhibit 1**).

The Third Circuit's exclusive focus on a subset of Plaintiff's affirmative obligations under *Kondaur* vitiated both the need for Plaintiff to demonstrate he had complied with the full scope of *Kondaur* as well as 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).

The Third Circuit's decision in ignoring the ICA's holding denied Defendants their substantive and procedural due process rights to defend their property from a manifestly unjust, unlawful, and procedurally-defective foreclosure per 667-5 and *Kondaur*, *inter alia.* The court's ruling aided-and-abetted Plaintiff's wrongful attempt to steal RBOD's adjacent spa property, with respect to which Hester has no lawful claim. Had Judge DeWeese taken time to review Plaintiff's filed Warranty Deed (**Exhibit 8**), she 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 among others, the Third Circuit abused its discretion, and the entry of summary judgment against Defendants should be set aside. Defendants, who have been driven from their home, bankrupted, had their health destroyed, causing Kane's death (a.k.a., *substantial detriment*) are entitled to be heard after living 15-years of *hell*.

2. PROCEDURAL HISTORY AND RELEVANT FACTS:

"[O]n August 21, 2014, Horowitz and Kane filed an answer and twenty counterclaims in '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 1**, 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 MO (p. 10), and the ICA vacated the NJF by reason the lower court never permitted Defendants to raise these defenses; nor did the court ever consider those defenses, as it *defaulted* Defendants for their failure to timely secure counsel for Defendant/Mortgagor, RBOD, defying HRS § 419-8 et. seq. in the process.

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)

By the ICA so ruling, with RBOD's spa "095" asset central to the subject Property still "winding up" but being converted by Sulla's forgery and the court, the "moot" ruling deprived RBOD of its due process rights and remaining asset(s) (including the therapeutic spa facilities).

Additionally, the ICA stated:

> "Based on our *de novo* review of the record, we conclude that the underlying nonjudicial 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 nonjudicial 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.… (**Exhibit 1**, MO, p. 13 ¶ 3)
>
> 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)…. (**Exhibit 1**, MO, p. 13 ¶ 4)
>
> Hester thus failed to satisfy his initial burden of showing that the nonjudicial 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. . . ." (**Exhibit 1**, MO, p. 14 ¶ 3)

In this case, the Third Circuit's *error of law* was that it misinterpreted the ICA opinion as stating that once Plaintiff (as a self-dealer) met his affirmative obligation 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 DeWeese court is clearly contradicted by the ICA's opinion, and *Kondaur*, 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's MO 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 <u>in every particular</u>.

In order to maintain an ejectment action, the plaintiff must: (1) prove that he or she holds valid title to and right of possession of such parcel; and (2) establish that possession is unlawfully held by another. *Kondaur* 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. For the Third Circuit to hold otherwise was 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 667-5*. 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 nonjudicial 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. The 3rd Circuit's error, of stopping its review 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 HRCP 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's MO made 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 point 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. The Third Circuit 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-160000163. (**Exhibit 1**, MO, p. 14 ¶ 3)

Defendants' proffer of these CAAP- 16-0000163 points of error raise genuine issues of material fact, and Defendants' raising these points of error was explicitly acknowledged by the ICA, even though the ICA found it unnecessary to address them, because Plaintiff failed to meet his initial burden, and Defendants contended "there existed substantial questions of material facts." (MO, p. 9 ¶ 1)

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

3. PLAINTIFF FOUND THE "AMOUNT TO CURE" THE ALLEGED DEFAULT "CONFUSING" SO SULLA FABRICATED IT IN VIOLATION OF HRS § 667-5.

Among key defects voiding Sulla's 667-5 NJF is Plaintiff's untimely and fabricated default "amount to cure." The Defendants evidence the Plaintiff/Sulla's violation of, inter alia, § 667-5's quintessential "amount to cure" requirement. (RROA, Doc. No. 329, p. 6, Section V.) The Defendants pled facts and attached exhibits proving first the Mortgage was *void* and "amount to cure" contrived, prior to GOB's NJF. (RROA, Doc. No. 329, pp. 6-12.) The void Mortgage matter was conclusively decided first in the cases of *Maise v. Lee* and *Lee v. Maise* (Civ. Nos. 01-01-0444 and 05-1-0235). In those cases, the court held that at the same time Lee sold the subject Property to Defendants, Lee had contracted to sell the same 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 judicially noticeable facts, Plaintiff claimed at the time of the NJF that Lee and not Maise was owed some portion of the money the Third Circuit ordered Defendants to pay to Maise. (RROA Doc. 329, p. 4) If there had been an actual "amount to cure the alleged default on the Mortgage, Maise and not Lee, GOB, or Hester would have demanded and received first dibs.

This is why Plaintiff is on record as stating he was uncertain about the "amount to cure." (RROA Doc. 329, p. 10) Sulla e-mailed Horowitz and stated he found his accounting "confusing." Regardless, Sulla commenced the NJF backed by his influence in the Third Circuit. In an incredible feat of judicial contortionism, the court, first by defaulting Defendants, then on remand by stating the question was irrelevant under *Kondaur*, adroitly sidestepped Plaintiff 's provision of multiple, untimely and contradictory amounts to cure, and other 667-5 violations. To have broached this issue would have brought into focus Plaintiff 's complete failure to comply with HRS § 667-5's most fundamental requirements, including the claimed default amount.

B. SECOND POINT OF ERROR: **The Lower Court Erred By Not Vacating The Default Judgment Of RBOD Under The Standard Of *BDM Inc. v. Sageco, Inc*. 57 Haw. 73, 76, 549 P. 2d 1147, 1150 (1976)**

The lower court erred by defaulting the Defendants, denying their motions to vacate the default, and thereby depriving their due process rights in two important ways: (1) the court defied HRS § 419(8)-4 by denying Horowitz's statutory right to represent RBOD's interests during "winding up" of the church's assets; and (2) depriving the Defendants of their pro se defense and even licensed attorney representation. The court repeatedly rejected Appellants' urging to vacate the default in accordance with *BDM v. Sageco, Inc*. (Id.) and/or honor HRS § 419(8)-4. These errors violating laws are not inconsequential. Nor are they "moot" as the ICA formerly ruled RBOD's interests to be. Thereby depriving the Defendants of their due process rights to defend their interests and counterclaims, the ICA's "moot" ruling encouraged Sulla to convert RBOD's "Remnant A" property by forgery. These decisions resulted in the wrongful conversion of all the Property lots by default and organized crime in defiance of fairness, equity, justice, *stare decisis* doctrine, and laws punishing theft by forgery.

"This court is not going to revisit, vacate, modify or amend prior rulings of this very court, it was just a different judge, made back in 2015," Judge DeWeese stated in her summary disposition hearing transcript, referring to Judge Ibarra et. al.. (**Exhibit 3**, p. 35, lines 19 thru 21.)

That decision too was encouraged by the ICA having similarly ruled to erroneously and unjustly deprive the Defendants by its MO.

1. *Stare Decisis* and *Res Judicata* Doctrines Vacated to Enable Sulla's Theft

The ICA wrote pursuant to *res judicata* preclusion of this quiet title action, "The prior judicial foreclosure was related to Horowitz and RBOD's alleged non-monetary breaches of the mortgage agreement (see footnote 11)." (**Exhibit 1**, p. 12.) That is *FALSE*.

Seller Lee brought foreclosure claiming Horowitz and RBOD had conspired with Philip Maise to bilk Lee out of his Mortgage payments. Lee's November 9, 2007, "AMENDED COMPLAINT FOR FORECLOSURE" makes this crystal clear thusly in paragraph "11."

> "Defendant Horowitz, Defendant Royal Bloodline, and his co-conspirator Philip Maise conspired to unlawfully deprive Plaintiff of his receipt of mortgage payments, trespassed on Plaintiff's chattels, and defrauded the Plaintiff in the process." (See **Exhibit 14**: pp. 4-5)

That Amended Complaint, also states in all caps in paragraph 17:

> "NOTICE IS HEREBY GIVEN THAT THIS ACTION IS AN ATTEMPT TO COLLECT A DEBT, THAT ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE, AND THAT THE DEBT MAY BE DISPUTED."

Accordingly, the ICA played right into the scheme to deprive the Defendants of their due process rights and properties. Both the ICA and lower court aided-and-abetted Sulla's real property conversions, money laundering through HHLLC, and immunity against prosecution given the courts' justifications for the Defendants' deprivations. Wielding and vacating *stare decisis* and *res judicata* doctrines like weapons in lawfare to maliciously prosecute and bleed the Defendants of their money and properties, any competent fact-finder would gain this "impression of impropriety" from the facts and evidence before this Court.

The lower court erred by not vacating the default judgment of RBOD under the standards of *BDM.* Defendants, like the ICA, first reasonably believed RBOD's standing was "moot". But the ICA similarly reasoned this without considering Horowitz's main argument in this regard. HRS § 419(8)-4 spared the Defendants from being damaged further by high litigation costs. Defendants concluded that RBOD was no longer a real party to the dispute while in "winding up" under dissolution law 419(8), and that Horowitz could represent RBOD's interest in court anyway.

Contrarywise, the court neglected and defied that dissolution law 419(8), excusing its deprivation by administrative policy, overstepping its legislative authority. This enabled Sulla to

extend his thievery by forgery, supplementing his possession of the 043 and 049 properties with his attempted taking of the 095 lot by illegal Warranty Deed conversion.

The ICA noted RBOD's remaining interest in the subject Property and Mortgage was conveyed to Horowitz and Kane as individuals by quitclaim deed filed July 11, 2012 that was prior to the initiation of this lawsuit, and failed to consider RBODD's 095 lot. Subsequently, the court defied 419(8) to subject the Defendants to illegal prejudice and expense, compelling the Defendants to obtain costly counsel to represent RBOD's interest. Even then, as a clear-and convincing showing of malicious prosecution enabled by the courts, the Third Circuit denied motions by RBOD's counsel to vacate RBOD's default, to permit Horowitz and Kane's pro se defenses and counterclaims. It was an obvious 'railroading.'

The court, thereby, erred by not granting standing to Defendants Horowitz and Kane as individuals, given that RBOD's interest had been conveyed to them prior to RBOD dissolution, all but Remnant A (095) continuing in "winding up" through this appeal.

2. **APPLICABLE LEGAL FRAMEWORK**: THE *BDM* STANDARD FOR REVERSAL OF A DEFAULT JUDGMENT: As an overarching principle, courts disfavor default judgments, and "any doubt should be resolved in favor of the party seeking relief, so that in the interests of justice there can be full trial on the merits." *BDM Inc. v. Sageco, Inc*. 57 Haw. 73, 76, 549 P. 2d 1147, 1150 (1976) Likewise, as stated in 7 J. MOORE, MOORE'S FEDERAL PRACTICE § 37.50[2][a] at 37-77-78 (3d ed.2002).

> "[I]n view of the strong policy favoring resolution of cases on their merits, and since the magnitude of due process grows with the severity of the sanction, courts uniformly have held that orders dismissing the action or granting judgments on default . . . are generally deemed appropriate only as a last resort, or when less drastic sanctions would not ensure compliance with a court's orders. It follows then that a trial court's range of discretion is appreciably narrower if it chooses to impose these most of severe sanctions."

Pursuant to *BDM,* the criteria for reversal of a default judgment is as follows: 1) the nondefaulting party will not be prejudiced; 2) the defaulting party has a meritorious defense, and 3) the default was not the result of inexcusable neglect or willful act. *BDM, Inc. v. Sageco, Inc*., 57 Haw. 73, 549 P.2d 1147 (1976).

3. THE RELEVANT FACTS: Defendants-Appellants filed an Answer for themselves

individually as the successors in interest to RBOD's interest in the property, based on RBOD's conveyance of the 049 and 043 lots to the two individuals by quitclaim deed dated July 11, 2012, prior to RBOD's dissolution. ROA Part 1, Doc. No. 06, p. 155. Further, with respect to Defendant Horowitz, he was the sole member of RBOD, and sole trustee in RBOD's "winding up," causing him to reasonably believed he was entitled to plead on RBOD's behalf by law (HRS § 419-8(4) and Washington State Laws 24.12.010 and 24.12.020). Horowitz believed he was able to represent RBOD in matters arising during the two-year "winding up" period of this corporate entity that has now been extended by this litigation. ROA Part 2, Doc. No. 123, pp. 2367 ¶ IV. This action commenced on August 11, 2014, within two years of the dissolution of RBOD on September 17, 2012. ROA Part 2, Doc. No. 60, pp. 836 ¶ 2.

As mentioned, Defendant Horowitz was co-signer on the Promissory Note, and made all payments on the Mortgage. ROA Part 2, Doc. No. 60, pp. 836 ¶ 2. Given that at the time this quiet title case began RBOD had already conveyed its interest in the 043 and 049 lots to Defendants Horowitz and Kane as individuals, the Defendants did not believe they needed to file a separate Answer to the Complaint on behalf of RBOD. ROA Part 2, Doc. No. 60, pp. 836 ¶ 2.

On September 17, 2014, the Circuit Court ruled Defendant RBOD in default for failure to answer the Complaint. (ROA Part 1, Doc. No. 016, p. 1112)

On February 13, 2015, the Court orally ruled Defendants needed an attorney to represent RBOD, and struck two reply filings by Defendants. (ROA Part 1, Doc. No. 044, p. 3396). On March 27, 2015, by Order, the Court outright dismissed all of Defendants' Counterclaims. (ROA Part 1, Doc. No. 045, p. 3399.)

Shortly after the Court's February 13, 2015 oral ruling that the Defendants could not represent RBOD without legal representation, Defendants hired an attorney, Ivan van Leer, to represent RBOD. On March 12, 2015, Defendants, through attorney Van Leer, then filed a Motion to Vacate Defaults entered against the Defendants RBOD and Medical Veritas, Inc., (ROA Part 1, Doc. No. 038, p. 3203). On April 10, 2015, attorney Van Leer again filed to vacate the default against Horowitz's corporation sole RBOD, and requested the Court continue the summary judgment hearing to permit Van Leer reasonable time to study the case. ROA Part 2, Doc. No. 57, p. 811 On May 27, 2015 the court summarily denied Van Leer's Motion to Vacate Defaults entered against the Defendants RBOD and Medical Veritas, Inc.. (ROA Part 1, Doc. No. 038, p. 3203)

On December 30, 2015, the Court finally entered a denial of Defendant's January 26, 2015 motion to amend and join Sulla et. al. ROA Part 2, Doc. No. 0121, p. 2355. (This was the same date as the Court entered its Final Judgment.) This ruling vicariously indemnified and concealed Sulla as the secured "proper plaintiff" scheming at arms-length behind Hester.

4. DISCUSSION: The first element of the *BDM* criteria requires a showing of the absence of prejudice to the non-faulting party – that is - other than the burden of affirmatively proving its case on the merits. *BDM* 57 Haw. at 77, 549 P.2d at1150. A delay in the outcome and the burden of securing a decision based on the merits of the case is insufficient. Once the Court ruled against vacating RBOD's default, there was really no further deliberation by the Court… it was simply held that RBOD was the sole mortgagor and exclusive defendant in interest, and RBOD did not file an Answer to the complaint; and so the defense was terminally punished.

Otherwise, vacating the default judgment would have allowed for consideration of the case on its merits, and Sulla's false filings of "altered" Articles of Incorporation for GOB containing photocopied signature(s) of Lee would come to light for justice, thereby exonerating the maliciously prosecuted Defendants. (**Exhibit 7**) (ROA Part 2, Doc. No. 97, pp. 1941-58)

With regard to the second element of *BDM*, Defendants raised valid arguments, including (1) whether the court erred in its denial of Defendants' motion to amend their original Answer and Counterclaims and join Sulla in contravention of HRCP Rules 15 and 19; (2) the questionable adequacy of the underlying non-judicial foreclosure – in particular the failure to timely give proper notice of the amount to cure the fraudulently schemed "default" on Lee's void Mortgage (i.e., non-compliance with HRS § 667-5.); (3) the question whether Plaintiff Hester has standing, and is a "proper party" as the claimed successor to original mortgagee Plaintiff Lee; and (4) the substantive counterclaims raised by Defendants opposing Sulla.

With regard to the third *BDM* factor, the court erred in finding that the default was the result of inexcusable neglect or willful act. As discussed above, the ICA ruled RBOD's standing as "moot" for the same reason Defendant Horowitz reasonably believed he had the right to represent himself and his dissolved ecclesiastic corporation. Defendants Horowitz and Kane acquired the 043 and 049 lots from RBOD prior to initiation of this legal action. In light of both Hawaii and Washington state statutory laws allowing insolvent dissolved churches to wind-up remaining assets through surviving trustees such as Horowitz, under HRS § 419-8, there was no need for RBOD to Answer.

The instant case is similar to that of *State v. Mauna Ziona Church*, 128 Haw. 131, 284 P. 3d 224 (Haw. App. 2012). In *Mauna Ziona* the Intermediate Court of Appeals reversed the lower court's refusal to vacate a default judgment in a case involving an ecclesiastical corporation in which the church's representative sought to represent the church pro se. In both cases the representative of the church believed he could represent the organization pro se. In each case, once the court ruled only a licensed attorney could represent the church, the representative of the association sought and obtained counsel, as did Horowitz in this case. In both cases questions of title to property were involved. And in both cases the prejudice to the plaintiff was based upon the burden of having the case proceed without being blocked by a default judgment. As the Court in *Mauna Ziona* (quoting *BDM*) explained: "The mere fact that the nondefaulting party will be required to prove his case without the inhibiting effect of the default upon the defaulting party does not constitute prejudice which should prevent reopening" *State of Hawaii v. Mauna Ziona Church*, Id. at 128 Haw at 131, 284 P. 3d at 224 quoting *BDM*, 57 Haw at 77, 549 P.2d at 1150.

This case is also similar to *County of Hawaii v. Ala Loop*, 123 Hawai'i 391, 235 P.3d 1103, 1135-1136 (Haw. 2010) wherein the Supreme Court reversed the lower court's refusal to vacate a default judgment. That case also involved a non-profit entity, whose standing was challenged and where the lower court required that the entity be represented by counsel. There too the representative of the subject non-profit entity subsequently found available counsel following the lower court's ruling in favor of default.

Moreover, even assuming arguendo RBOD was defaulted and that default not vacated, the lower court erred by not recognizing the standing of Defendant Horowitz to represent RBOD as its sole member and Note co-signer following RBOD's dissolution to address matters such as this that arise during the "winding up" period.

And finally, the Court should have recognized that as the successors-in-interest to RBOD's interest in the property, Defendants Horowitz and Kane, as individuals, had standing such that the default of RBOD was really a non-issue—"moot" as the ICA concluded. As the Court in *Hustace v. Kapuni*, 718 P. 2d 1109, 1116 (Haw. Intermediate Court of Appeals 1986) explained: "The consequences of quiet title actions are so severe that to have one's interest in land summarily taken away without an opportunity to respond is in violation of due process requirements and our sense of fairness and justice."

In sum, it was egregious error for the court to refuse to vacate the default judgment of RBOD, and thereafter bring this case to an unjust and inequitable close.

C. THIRD POINT OF ERROR: **The Lower Court Erred by Confounding the Foundational Facts in the Two Joined Cases, this Quiet Title/Ejectment Action "0304/163" and the Expungement Case "0407/584", Raising Material Errors of Fact as Well as Material Errors of Law, as Evidenced in the Summary Judgment Hearing Transcript.**

The court averred it had reviewed all the filings and procedural history of this case and would not undo what her predecessors in the Third Circuit had ruled. The court's reference to, and reliance upon, dispositions in prior actions constitutes an error of fact since, per the ICA's MO and the above point of error, Defendants were defaulted and had no previous opportunity to be judiciously heard on any issue.

The Third Circuit's conclusory statement that it would not undo what previous courts had done was a manifest error of fact, given that the ICA's remand expressly directed the court to do just that—adjudicate to vindicate its previous error.

Then the court committed a manifest error of fact by mixing-up the two distinct cases in the ICA's Memorandum Opinion ("MO"). The ICA's description of both cases, CAAP-16-0000163 and CAAP-18-0000584 is clearly written in the MO on pages 3-4 and 17, respectively. The clear record certainly discourages confusion, raising an impression of the lower court's impropriety compounding evidence of the court's complicity in alleged malicious prosecution coordinated by Sulla from the shadows.

CAAP-16-0000163 is this quiet title action, and CAAP-18-0000584 is a tangential *lis pendens* matter, arising out from attorney Sulla's petition to expunge documents. This "mistake" of a foundational fact (the two case differential) resulted in material errors of fact and material errors of law, which are evidenced in the court's Hearing Transcript. (**Exhibit 3**)

With respect to the tangential matter of CAAP-18-0000584, the ICA rejected Defendants arguments as waived, <u>but remanded this separate case too to the Third Circuit because the ICA felt its order vacating CAAP-16-0000163 could potentially affect its ruling in CAAP-18-0000584</u>. At no time did the ICA state that its rejection of Defendants' arguments in CAAP-18-0000584 could potentially affect its ruling to vacate the lower court's decision in this 0163 case (CAAP-16-0000163). Here is the ICA's holding with respect to CAAP-18-0000584:

> "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 (ICA's MO, p. 20)." (Emphasis added.)

The Third Circuit's manifest mistake of fact is that this court confounded the ICA's above ruling in CAAP-18-0000584 (where the Court rejected Defendants' arguments) with CAAP-16-0000163 below (where the court's Summary Judgment was *vacated*). The MO's ruling pursuant to CAAP-16-0000163 read with emphasis added:

> 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 (ICA's MO, p. 14).

The Third Circuit's error—confounding CAAP-18-0000584 with CAAP-16-0000163—was the court's stated reason to deny Defendants their opportunity to raise a genuine issue of material fact and to grant Hester/Sulla their Renewed MSJ and the Defendants' properties.

1. THE COURT's TRANSCRIPT

The court's Hearing Transcript ("HT") reads as follows with emphasis added:

> "So, first of all, this Court agrees with the plaintiff's interpretation of the remand. **This Court does not read the remand as a setting aside of the nonjudicial foreclosure**, as argued by Mr. Horowitz and Miss Kane." (**Exhibit 3**, HT, p. 33, lines 2 thru 6; Emphasis added.)

> **"The remand from the ICA says that: it appears from the record that our ruling above -- I'm just paraphrasing -- under Kondaur could potentially affect this case. Therefore, although we reject Horowitz' arguments on appeal in CAAP-18-584, we conclude it would be prudent to remand this case to the Circuit Court, the Third Circuit, for further proceedings as the Court deems necessary in light of our rulings in this memorandum opinion."** (**Exhibit 3**, HT, p. 33, lines 7 thru 15; Emphasis added.)

> "So the Court does read the remand to focus on whether or not the nonjudicial foreclosure sale was conducted in a manner consistent with the *Kondaur* case." (**Exhibit 3,** HT, p. 33, lines 16 thru 18)

According to the plain language in the ICA's decision directly below emboldened for emphasis, the court's misreading of the ICA's language constitutes wholesale disregard for a higher Court's holding:

> ***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 (ICA's MO, p. 20).

Comparing the court's reading of the ICA record into the trial record shows the: (a) mixing-up of the two cases; (b) falsification of the ICA's ruling in the 0304/163 case; (c) altering the ICA's record by "paraphrasing" it deviously to confuse and deprive the Defendants, and justify the court's deprivation of the Defendants' rights to due process and their Property; and (c) concealing the ICA's express record to falsify the official proceeding pursuant to the remand instruction to comply with the *Kondaur* and *Ulrich* fairness, diligence, and good faith standards.

FACT FINDERS TAKE NOTE: Judge DeWeese reads every word of that ICA/MO record, page 20 paragraph, into her court record, with the only exception being her omission of the ICA's specific reference to the ***CAAP-16-0000163*** case, which is the vacated MSJ case at bar—a case the Third Circuit by its 'discretion' and decision conceals in favor of un-joined concealed proper plaintiff, Sulla.

To maintain its position that the MSJ was not vacated required more than manifest mistake by Judge DeWeese. The record evidences her redaction of the ICA's ***CAAP-16-0000163*** verbiage from the DeWeese Court record. This was obviously done intentionally, and deliberately, with specificity; executed to affect the outcome of this case and justify depriving the Defendants of their Property. <u>This averment is supported by five factors</u>:

1) The paragraph cited by the court from the ICA holding in support of its decision to vacate the summary disposition contained the precise reference to the ***CAAP-16-0000163*** case which Judge DeWeese concealed and removed from her record;

2) This redaction by the court was the only redaction in the entire paragraph that Judge DeWeese read verbatim;

3) Had the court not omitted the reference to ***CAAP-16-0000163*** in this paragraph, it would have been dispositive of the fact that the ICA had vacated the court's summary judgment as it pertains to Sulla's NJF, which would have substantively contradicted the court's ruling and deprived Sulla of his alleged criminal conversion of the subject Property;

4) The court knowingly mischaracterized its action as "I'm just paraphrasing" when the court was clearly aware it was not paraphrasing but redacting, concealing, and removing material evidence out of the court record;

5) The fact that the court paused at the time of the redaction and mischaracterized its actions, evidences conscious deliberation rather than unconscious mistake.

Nevertheless, the end result of the court's action is preserved in the record. A simple review of the transcript, by fact finders, comparing the Third Circuit's redacted/impaired rendition to the ICA's original record will convincingly reveal what occurred and to what end.

2. ANALYSIS & ARGUMENT

Judge DeWeese's concealment, removal, and alteration of the ICA's physical evidence (i.e., the written record) from her court record was not 'harmless error,' but two alleged misdemeanors under HRS § 710-1076 (a) and (b).[7] The court expressly relied on her altered paragraph to rule rather than the ICA's original text. The concealment and removal of the vacated MSJ case from this seminal paragraph enabled the court and record to misstate the ICA's opinion and ignore the plain fact that the MSJ had been vacated.

This was manifest error, an indisputable abuse of the court's discretion, and obstruction of governmental operations by definition in HRS § 710-1076. Judge DeWeese physically interfered with the proceedings, generated and used a written obstacle –a false record—to deprive the Defendants of their due process rights and religious Property. She impaired and hindered the administration of justice in her court in this case.

This foundational alteration of the ICA's decision allowed the court to fashion-out of whole-cloth a false rationale and justification to deprive the maliciously prosecuted Defendants. Thus, by means of this surgically precise alteration and concealment of the actual ICA record in CAAP-16-0000163, the court held the remand was for the limited purpose of Plaintiff showing whether the nonjudicial foreclosure sale was conducted in a manner consistent with the *Kondaur*.

The presumed argument that the court didn't want to read a long case number into the record is negated by the fact that she read "CAAP-18-584" into the transcript. (HT, p. 33, line 11.)

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[7] **§710-1076 Tampering with physical evidence.** (1) A person commits the offense of tampering with physical evidence if, believing that an official proceeding is pending or about to be instituted, the person:

(a) Destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its verity in the pending or prospective official proceeding;

(b) Makes, presents, or offers any false physical evidence with intent that it be introduced in the pending or prospective official proceeding.

(2) "Physical evidence," as used in this section includes any article, object, document, record, or other thing of physical substance.

(3) Tampering with physical evidence is a misdemeanor. [L 1972, c 9, pt of §1; gen ch 1993]

Thus, in the end, Plaintiff's misrepresentation that the ICA's remand was limited to his initial burden under *Kondaur*, was co-facilitated and contrived by this court in a meeting of the minds scheming the alteration of the remand record and remand justification.

At minimum, even if this were no more than an 'innocent mistake,' it was still *manifest error*. The Third Circuit's misperception that the ICA's rejection of Defendants' arguments in CAAP-18-584 were a rejection of Defendants' CAAP-16-0000163 § 667-5 defenses does not comport with a competent court.

And it was this specific error (arising out from the Third Circuit's mixing-up of the cases and alteration of the true and correct record) that disallowed Defendants the opportunity to raise any genuine issues of material facts other than those related to the NJF sale itself. In essence, the court's alteration of the written record accords with the censorship of Defendants' provision of facts and exhibited evidence of fraud and crime. The court's pattern and practice of depriving the Defendants of their rights and properties extends now a dozen years. This is not a court of justice. This is an organized crime syndicate.

Below, again, for those who are skeptic or complicit, is the ICA's ruling. There can be no doubt or dispute that the MSJ was vacated. [Note: The reason why the MSJ was granted in part, and denied in part, was due to the Court's denial of Plaintiff's claim that Defendants were trespassers.]

> 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 (ICA's MO, p. 14; Emphasis added.).

Judge DeWeese's erroneous assessment of the evidence, including the ICA's written MO record, and altering by redaction therein to facilitate Plaintiff/Sulla's conversion of the Defendants' properties using a set of forgeries, compounds the pattern of fraud and crime in the Third Circuit witnessed by the Defendants repeatedly; and resulting in Ms. Kane's death from severe distress. This clearly constitutes an "abuse of discretion."

> "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))."

D. FOURTH POINT OF ERROR: **The Lower Court Erred by Disregarding Clear and Convincing Evidence of the Plaintiff's Pattern and Practice of Filing Forgeries with the State and Court to Convert the Subject Property by Fraud and Crime.**

Had Judge DeWeese reviewed the Plaintiff's exhibits and procedural history as she averred, the court would have noticed Plaintiff/Sulla's creation of his forged Warranty Deed (**Exhibit 8**) filed with the State on September 9, 2016. This invalid Warranty Deed was fraudulently filed subsequent to RBOD's default and Defendants' preclusion from advancing their defenses and counterclaims.

1. Facts and Evidence of Neglected Forgeries

Sulla was indicted by the State of Hawaii for forgery and theft of the Property on December 5, 2019. (**Exhibit 9**) Subsequently, Sulla's co-counsel, Stephen Whittaker, filed the Memorandum for Renewed Motion for Summary Judgment on July 20, 2020 containing the following statement on page 7:

> "In September, 2016 Hester intended to convey the entire subject property to Halai Heights LLC, a Hawaii Limited Liability Company [formed by Sulla], but as a result of a mistake in the description, only the lot shown as TMK (3) 1-3-001-049 was conveyed to Halai and Hester retained TMK (3) 1-3-001-043. A true and correct copy of this deed to HALAI, recorded in the State of Hawaii Bureau of Conveyances as Doc. No. A60960740 is attached to the Declaration of Paul J Sulla Jr. as Exhibit 11." (RROA Doc. No. 209, p. 7, footnote 8.)

Whittaker's filing, that avers a forged Warranty Deed is "true and correct," says nothing about Sulla's "mistake" being the conversion of RBOD's spa lot. Sulla's forgery switched the "095" ("Remnant A" steam spa facilities) for lot 043 that is mostly a large 'sink hole liability.' Hester allegedly retains that liability, exclusively serving Sulla. (RROA Doc. 471, p. 8 ¶ 2)

Simultaneously, Sulla supplied his Declaration, likewise attesting to the "true and correct" forged Warranty Deed designated "Exhibit 11." But forger Sulla's verification also neglected any mention of "Exhibit 11" hiding material facts in dispute that would otherwise jeopardize Plaintiff Hester's standing and right to foreclosure pursuant to *Kondaur's* requirements of fairness, good faith, and valid ownership.

2. Standards in Adjudging Forged Documents

Sulla's set of forgeries, that include GOB's Articles of Incorporation (**Exhibit 7**) and Sulla's mortgage loan to HHLLC that attaches the Warranty Deed forgery as security (**Exhibit 12**), voids GOB's validity as the Assignee of Lee's Mortgage and Note, and voids Sulla/HHLLC's secured interests in the Property as well. Hester's erroneously-presumed interests and standing are nullified as well by Sulla's set of forgeries. "[A] case of simple forgery or false authority . . . result[s] in void documents under Hawai'i law." *Ocwen Loan Servicing LLC v. Lum* 2015 WL 1808955 at 4 (US Dist. Haw. 2015) No title passes if the document is found to have been forged including by alteration. *Id*. *Skaggs v. HSBC Bank USA, N.A*. 2010 WL 5390127 (US Dist. Haw.2010)(Unpublished)(mortgage note may be void even against a holder of due course based on fraud); *Billete v. Deutsche Bank Nat. Trust Co.,* 2013 WL 2367834, at 7 (D. Haw. May 29, 2013) (unpublished) (If the corporate entity did not exist at the time of the assignment, the transfer would be void and the subsequent non-judicial foreclosure and ejectment would be invalid.) "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).

3. Material Facts in Dispute: Ramifications of Forgeries Voiding Hester's Standing

Sulla began his pattern-and-practice of forging documents in this case as evaluated in **Exhibit 7**. This State of Hawaii Department of Commerce and Consumer Affairs ("DCCA") filing of May 28, 2009 proves clearly-and-convincingly Lee never validly assigned the Mortgage and Note to GOB, because GOB's Articles of Incorporation are forged. Plus, the Assignment of the Mortgage and Note was executed on May 15, 2009, according to the DCCA record of May 28, 2009. GOB's non-legal existence at the time of these transfers also voids the transaction. (Id. *Evanston Ins. Co*.)

For these same reasons, Lee's successors-in-interest—title transferees GOB, Hester, and Sulla/HHLLC—never validly held title. Sulla, through HHLLC, is listed in tax records as the current owner of the Inn property based on Sulla's filing of his forged (void) Warranty Deed in 2016. See **Exhibit 8**.

Sulla made his admitted "mistake" when retyping the land description certified by the County of Hawaii (COH). Sulla converted RBOD's much more valuable spa property for Hester's dangerous sink-hole. RBOD's property is designated "REMNANT 'A'" or "SECOND PARCEL" in Sulla's forged Warranty Deed. **Exhibit 8.** This document records Sulla's alteration that *voids* the title to both Sulla-consolidated properties—049 and 095. Sulla's forgery also

vicariously vitiates the quiet title granted "Hester" and the court's summary dispossession of the Defendants. (RROA Doc. No. 209, p. 8, paragraph 20.)

The Defendant's rule 59(e) Motion for Reconsideration brought these matters to the court's attention on November 22, 2020. (RROA Doc. 471, pp. 8-9). **Exhibits 7** thru **9** evidence the undisputed and concealed pattern-and-practice of Sulla forging records to convert the Defendants' properties. The Warranty Deed forgery labels "Exhibit 'A'" "SECOND PARCEL" the switched land description enriching Sulla and damaging Hester and RBOD. Grand jurors found these facts criminally actionable.

Local law enforcers realized Sulla had expunged Hester's "043" lot description, and replaced it with the Defendants' neighboring parcel designated "REMNANT 'A'" (a.k.a., "SECOND PARCEL"). Sulla's "true and correct" "mistake" persuaded grand jurors to indict the lawyer. Not so for the court who ruled to protect and enrich Sulla, acting willfully-blind to these material facts in dispute when granting Hester/Sulla/HHLLC the Defendants' Property.

4. Ownership of Parcel II[8] – A Genuine Material Issue of Fact the Court Ignored.

Plaintiff, in his testimony to COH prosecutors, defended his actions with respect to the Warranty Deed forgery, as an unintentional "mistake," and, therefore, he did not have the requisite *mens rea* for criminal prosecution. (RROA Doc. 471, pp. 8-9) Regardless, Plaintiff's ongoing failure to correct that mistake in his Exhibit 11, and appraise the court of such, has inescapably created a genuine material issue of fact regarding the ownership of the subject Property per

[8] 1) Parcel II is not owned by Plaintiff and Plaintiff has no lawful claim to Parcel II. The original seller Lee did not have title to Parcel II, and Parcel II was not referenced in the Mortgage instrument.
2) Parcel II was not the subject of the Judicial Foreclosure nor was it the subject of the NJF.
3) Parcel II is owned by RBOD/Horowitz and title to Parcel II was conveyed to RBOD by the County of Hawaii by Warranty Deed. (**Exhibit 12**)
4) 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.
6) 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.

By appending Parcel II onto the subject deed of this dispositive MSJ proceeding, the court appears to have conspired with Sulla to enable Sulla's LLC, Halai Heights, to own title.

Kondaur. Additionally, since Plaintiff has no mortgage instrument evidencing his right to foreclose against Parcel II, he is not compliant with the requirement set forth in HRS § 667-5.

Thus, the 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 12**, evidencing RBOD's and Horowitz's ownership of Remnant A by legitimate Warranty Deed to "Parcel II" (a.k.a., 095) issued by the County. **Exhibit 12** is a true and accurate copy of the COH's Bureau of Conveyances Doc. No. 2005-009276. This valid Warranty Deed transfers "Remnant A" ("PARCEL II") to RBOD/Horowitz. Sulla admitted converting this title by "mistake," amounting to *slander-of-[this COH granted]title* by Plaintiff . This overriding material fact of forgery in dispute defeats Plaintiff's Renewed MSJ.

A manifest error of fact includes, 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, as addressed previously, by the court's refusal to consider Defendants' defenses and counterclaims against Plaintiff's ownership claim to the subject Property, Judge DeWeese made a mistake of law by her failure to adhere to controlling precedent stated in *Kondaur,* as ruled by the ICA. (**Exhibit 1**)

E. FIFTH POINT OF ERROR: The Court Erroneously Presumed Hester's Standing by Acting Willfully-Blind to Evidence of Sulla's Fraud, Forgery, and Exceptions to the *Void* Mortgage Assignment Challenged by Defendants Exposing the Invalidity of the Transfers and Transferee.

The issue of standing, as a matter of jurisdiction, may be raised at any time including on appeal. *See e.g.Mortgage Electronic Registration Systems, Inc. v Wise* 130 Haw 11, 17, 304 P.3d 1192, 1198 (2013). The Supreme Court of Hawaii's ruling in *U.S. Bank NA v Mattos* in 2017 followed this Court's discussion of *US Bank National Association v. BERNARDINO*, in *00000*, 134 Hawai`i 170, 175, 338 P.3d 1185, 1190 (App. 2014)). This Court's *Salvacion* decision validated Horowitz's standing to challenge Hester's standing by reason of the crime-fraud exception. Quoting from *U.S. Bank Nat'Lass'N v. Salvacion*, 338 P.3d 1185, 134 Hawaii 170 (Haw. Ct. App. 2014) "Typically, mortgagors lack standing to challenge the validity of the assignment of their mortgages where they are not parties to the agreement, **unless the "challenge would deem the assignment void, not voidable."** [Emphasis added.] In a foreclosure case, the plaintiff must

have sufficient interest in the mortgage to have suffered an injury from the default, and must prove the right to assert another's property interest. *Deutsche Bank v. Williams* 2112 WL1081174 (Civil No. 11-00632 (D. Haw. March 29, 2012). Given the clear-and-convincing evidence of Hester's interests arising from Sulla's set of forgeries and fraud, the Defendants have every right to challenge the standing of transferee GOB/Hester and the Mortgage, Note and deed transfers.

The issue of Hester's standing is paramount. Hester is not on the Note. ROA Part 2, Doc. No. 51, at 395 Section II. Hester is not the "holder in due course" of the Mortgage, Note, or valid title. ROA Part 2, Doc. No. 51, at 395 Section II. Hester is not a real party in interest, since Hester is not the deceased Mortgagee's lawful heir, and not a personal representative of the deceased at the time of the Assignments, nor at the time of the NJF. ROA Part 2, Doc. No. 51, at 395 Section II. Hester never put any facts before the court to establish his prudential standing, or the court's jurisdiction over Hester. Hence the question of whether Plaintiff Hester has standing "to stand in the shoes of" the original Seller mortgagee Lee remains in dispute. ROA Part 2, Doc. No. 51, at 397-98.

Even if Hester had standing to receive Lee's transfers he still cannot prove having sufficient interest in the void Mortgage made void for four objectionable reasons aforementioned: (a) Lee's misrepresentation in the sale of the Property as ruled by the Ibarra court in the 0196 case (**Exhibits 4** and **5**) ; (b) the Mortgage was illegally assigned to the not-yet-existing GOB "church"; (c) this "successor mortgagee' (GOB) was formed by forgery and substantial alterations of its Articles of Incorporation (**Exhibit 7**); and (d) the Mortgage had been paid in full prior to the May 15, 2009 Assignment to GOB, terminating the Mortgage contract and annulling the Power of Sale contained in the Mortgage. (RROA Doc. 471, pp. 12-13)

Consequently, the court erred by disregarding GOB's void interests nullified by GOB's forged and altered Articles of Incorporation. **Exhibit 7**.

And since GOB had no legal standing due to its incorporation by forgery and fraud, neither does Hester, GOB's "Overseer." This voids Hester's invalid right to foreclose under the Mortgage's power of sale clause per *Kondaur* and HRS § 667-5 because the Mortgage was also void conveying nothing to Assignee GOB. Therefore, Hester cannot prove he is a valid successor mortgagee and title holder, because Hester never validly gained any interest in anything other than a void Mortgage through illegal Assignments into Lee/Sulla's untimely-incorporated-by-forgery-assignee, GOB—the fraudulent NJF "Foreclosing Mortgagee."

For any court to remain willfully-blind to these matters of fact voiding Hester's standing constitutes impropriety and at minimum gross *manifest error*. To continue these proceedings, therefore, is also a gross "manifest error" more accurately called malicious prosecution of the Defendants. The ICA should, therefore, vacate the summary judgment and remand with instruction to compensate the Defendants for their losses.

2. Even if Plaintiff Hester had valid standing to assert the Mortgagee's interests, Hester has no 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 095/Remnant A/Parcel II nor the right to its possession.

Remnant A is one of two parcels listed by Plaintiff in his forged "Exhibit 11" (attached hereto as **Exhibit 8**). This document evidences the properties which are the subjects of Plaintiff's RMSJ. Remnant A is a valuable property with lava-heated bathing pools and saunas. Plaintiff has stated he needs Remnant A to access other portions of the Property. Because Plaintiff, through this MSJ, is seeking to quiet title to Remnant A in the name of his LLC, per *Kondaur* and HRS § 667-5, Plaintiff must establish that possession of this lot is unlawfully held by another. <u>This is a legal impossibility, because Defendants have the Warranty Deed to Remnant A, which was granted to Defendants by the COH</u>, and is attached hereto as **Exhibit 12**.

The Third Circuit turned a blind eyes to this evidence.

VII. 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. It is clear from the 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) falsely modifying the Subject Property Deed underlying the NJF; (2) commission of perjury by filing a knowingly false deed as an exhibit, fraudulently evidencing Hester/Sulla's ownership of the Property; (3) failure to provide a timely and accurate amount to cure in compliance with HRS § 667-5; (4) insufficient advertising of the Property to generate interest in the sale per *Kondaur* quoting *Ulrich*; (5) foreclosure pursuant to an underlying void mortgage

instrument and a series of void transfers; and (6) initiating the NJF when any alleged deficiency in Mortgage payments could have been, and should have been, argued before Judge Ibarra. The Ibarra court in 0196 had already ruled that timely payments on the Mortgage had been made; the balloon payment paid; substantial improvements to the Property built equity; and foreclosure was improper and DENIED. In truth, Sulla acted with the Third Circuit's consent to circumvent the justice administered in the 0196 case and the appellate process by forgery and non-judicial chicanery.

By constructively defaulting the Defendants again and again, repeating the error requiring correction according to the ICA's MO, the lower court aided-and-abetted Plaintiff/Sulla's conversion of Defendants' properties by denying their right to raise any and all of the aforementioned defenses since the court deemed their opposition pleadings *irrelevant* under *Kondaur,* and their HRS 667-5 defenses inadmissible and/or precluded by previous judgments, in which Defendants default was wrongfully imposed.

The court's holding evidences a mistake 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; *Kondaur*, *Ulrich*, and the ICA's express MO, **Exhibit 1**, p. 14.

Finally, with preventive notice having been served and ignored, the court compounded Defendants' deprivations, damage, and distress, and this was the proximal cause of Ms. Kane's death. Severe distress from such lawfare caused her death by stroke, for which the Third Circuit remains accountable. The court's alleged willful-blindness to the forged public records, aiding-and-abetting Sulla in alleged malicious prosecution of the Defendants, caused what amounts to reckless/negligent manslaughter of Defendant Kane. Regardless of how the ICA decides in this case, this irreparable damage is done and shall weigh heavy on the souls of those guilty.

Respectfully submitted.

Dated: Cape Coral, FL 33915, April 23, 2021

s\Leonard G. Horowitz\

_____

Leonard G. Horowitz, pro se
Defendant-Appellant

APPENDIX (RULES)

PURSUANT TO THE COURT'S DENYING SULLA'S JOINDER:

On December 30, 2015, the Court denied Defendant's January 26, 2015 motion to amend and join Sulla et. al. (ROA Part 2, Doc. No. 0121, p. 2355.) This was the same date as the Court entered its Final Judgment. This ruling vicariously indemnified and concealed Sulla as the secured "proper plaintiff" indemnified at arms-length behind Hester. These actions severely prejudiced the Defendants in violation of Rule 19 and Defendants' right to prosecute their counterclaims against Sulla, who has acted with "arms length" immunity while directing his judgment-proof "sham plaintiff" Hester to convert the Defendants' real properties.

Rule 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION. (a) Persons to be joined if feasible. A person who is subject to service of process shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (A) as a practical matter impair or impede the person's ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. (b) Determination by court whenever joinder not feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. (c) Pleading reasons for nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a) (1)-(2) hereof who are not joined, and the reasons why they are not joined. (d) Exception of class actions. This rule is subject to the provisions of Rule 23. (Amended May 15, 1972, effective July 1, 1972; further amended December 7, 1999, effective January 1, 2000.)

STATEMENT OF RELATED CASES

The Defendants make known that intertwined cases: (1) Civ. No. 05-1-0196 (CAAP-16-0000162), the underlying judicial foreclosure case; (2) Civ. No. 17-1-0407 (CAAP-18-0000584 that is pending final disposition at the time of this filing, and anticipating appeal; and (3) the federal case of Horowitz v. Sulla, et. al., CV 15 00186JMS-BMK that has been administratively stayed by Judge Seabright, awaiting final disposition of this and related state actions.

INDEX TO OPENING BRIEF EXHIBITS

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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 HAWAI'I

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 1

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 appeals[1] 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 Horowitz[4] 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

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[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*

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[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 HRCP 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.

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[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. HRCP 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 HRCP 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]

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[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]

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[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 HRCP 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

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[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 HRCP 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 HRCP 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.

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[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.

Chief Judge

Associate Judge

Associate Judge

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.

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

Attorney for Plaintiff
Jason Hester

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

JASON HESTER, an individual,

Plaintiff

vs.

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

Defendants.

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

FINAL JUDGMENT ON REMAND; CERTIFICATE OF SERVICE

Hearing: November 5, 2020

Time: 8:30 a.m.

Judge: Hon. Wendy DeWeese

Trial Date: No Trial Date Set

Exhibit 2

FINAL JUDGMENT IN REMAND

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

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

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

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

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

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

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

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

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

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

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

DATED, Kailua-Kona, Hawaii 11/25/2020

The Honorable Wendy DeWeese
JUDGE OF THE CIRCUIT COURT

Hester v. Horowitz
Civil No. 14-1-0304
Final Judgment on Remand

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

JASON HESTER, Plaintiff, vs. LEONARD G. HOROWITZ, SHERRI KANE, Defendants.	) No. 14-1-0304) Hearing Date:) November 5, 2020

TRANSCRIPT OF PROCEEDINGS

on the hearing held before the Honorable Wendy DeWeese at the Circuit Court of the Third Circuit Court, Kona Division, commencing at 8:32 a.m.

TRANSCRIBED BY: WENDY L. GRAVES, CSR NO. 460

APPEARANCES:

(All parties appearing via Zoom video conference)

For the Plaintiff Jason Hester	Stephen D. Whittaker, Esq. 73-1459 Kaloko Drive Kailua-Kona, Hawaii 96740
Also Present	Jason Hester Paul J. Sulla, Esq.
For the Defendants	Leonard Horowitz, in pro se Sherri Kane, in pro se
For Royal Bloodline of David	Margaret Wille, Esq. Margaret Wille and Associates 65-1316 Lihipali Road Kamuela, Hawaii 96743
Also Present	Mitch Fine, Esq.

Exhibit 3

P R O C E E D I N G S

THE CLERK: Calling Civil Case No. 14-1-304. Jason Hester versus Leonard J. Horowitz, et al., for one, amended plaintiff's renewed motion for summary judgment post-remand; and, two, motion to intervene as to defendant, HRCP Rule 24.

THE COURT: Okay. Good morning. State your appearance, please. Let's start with Mr. Whittaker.

MR. WHITTAKER: Good morning, your Honor. Stephen Whittaker appearing on behalf of plaintiff Jason Hester, who is also on the call, your Honor.

Additionally, your Honor, Mr. Paul Sulla, prior counsel to Mr. Hester, and an affiant who has submitted a number of factual representations to the court is also online in the event that the Court may have questions for him.

THE COURT: Okay. So --

MR. WHITTAKER: Thank you, your Honor.

THE COURT: Thank you, Mr. Whittaker.

So for now the Court is going to treat Mr. Sulla as an observer, as if he was simply sitting in the gallery observing the hearing process.

But if we need him, I'm glad he's here.

Okay. Mr. Horowitz, state your appearance, please.

MR. HOROWITZ: Yes, hi. This is Leonard Horowitz. I'm here with Ms. Kane.

THE COURT: Ms. Kane, are you here?

MS. KANE: Yes, I am here. I am Sherri.

THE COURT: Okay. And Mr. Fine, please state your appearance.

MR. FINE: My name, your Honor, is Mitch Fine, and I'm appearing with a motion to intervene.

THE COURT: And Ms. Wille?

MS. WILLE: Margaret Wille on behalf of Royal Bloodline of David.

THE COURT: Okay. So we're here. I am going to take the motion to intervene first that was filed by Mr. Fine. I will -- I have read the motion, the oppositions, the no oppositions, the replies, so nobody needs to reiterate or restate anything that they have put in writing.

But if there is anything that you wish to add, Mr. Fine, Mr. Whittaker, Ms. Wille, Mr. Horowitz, I will allow each one of you no more than five minutes to make additional statements regarding the motion to intervene.

So Mr. Fine.

MR. FINE: Thank you, your Honor. I think my motion was fairly clear. I think that I just want to reemphasize that my motion to intervene is not based on

any claim of access, but in order to protect my economic interest in the property, which is the subject of a motion, the summary judgment motion.

And just the facts, the relevant facts very simply are that a successor interest, Mr. Sulla, basically took the legal description of Remnant A, which is the property I have had the economic interest in, and he basically adhered that or appended that as part 2 of the property, which is designated as 049, which is the major primary property, which is the subject of this motion for summary judgment.

And I just want to make it clear that should the Court grant this motion for summary judgment, it will in effect convey Remnant A to successor in interest, Mr. Sulla, and it will basically obviate my economic interest.

So I am here to protect that interest, and according to the rules of the court, the motion for intervention should be looked at very, very widely, in the interest of the Court's efficiency and process, and I think that's the main point that I want to make.

And let me just see. I think that's essentially the main points that I want to make, your Honor.

THE COURT: Okay. And so, but Mr. Fine, you are talking about an economic interest that you obtained

after a final judgment was entered back in 2015. You are talking about an interest that you obtained in 2018, correct?

MR. FINE: Well, your Honor, my interest in the property dates back to 2005, when I began my partnership with Dr. Horowitz and the Royal Bloodline of David.

And as I understand it there really hasn't been a final judgment that's been determined in this matter. As I understand it, the Intermediate Court of Appeals remanded it back to your court, because the motion for summary judgment had not been pled according to Kondaur and 667-5.

So Defendant Horowitz has never had an opportunity to be heard in this matter, there has been no discovery in this matter. So there has been no final judgment. And according to the ICA, they specifically said, because Mr. Hester, plaintiff, did not meet his additional burden, they did not need to address Dr. Horowitz' and arguably these other others claims.

So, again, our position is that there has been no final judgment in this matter. And again, the argument that -- yes, so my protectable interest, it was recorded in 2018, but again, it dates back to 2005.

THE COURT: All right. Thank you, Mr. Fine. Mr. Whittaker.

MR. WHITTAKER: Yes, your Honor.

THE COURT: Go ahead.

MR. WHITTAKER: First of all, the motion to intervene is filed under the wrong rule, and his representation to the contrary not withstanding, your Honor, he does not have any interest in the subject property, did not have any interest in the subject property, has no access over it, and he cannot by intervention gain something that he didn't have that his purported grantor didn't have.

He claims to have acquired this option in 2018 at a point in time when neither the individual defendants or Royal Bloodline of David had any interest. Royal Bloodline of David having been dissolved in 2016 and having been defaulted herein in 2014.

And, your Honor, in that particular I would urge the Court that Ms. Wille's appearance, her filings, and any argument should be disallowed by the Court. Her client has been in default for years. There was no petition to the Court to set aside that default.

We filed a motion to strike her joinder on September 29th. It wasn't answered. I think that should be granted.

With respect to the motion to intervene, however, your Honor, clearly it was not timely, as your

Honor observed in your questions about the timing of Mr. Fine's acquisition of his interest.

He tries to backdate that by making reference to work he claims to have done in 2005, your Honor. But if that's so, he certainly was aware of what was going on in that the litigation regarding the initial foreclosure began in 2009.

He has no excuse at all to delay asserting his interest until some years post-judgment and after remand.

In so far as he argues to your Honor, that, oh, gosh, the appeals court opened up everything that has already been decided by the Third Circuit Court, Judge Ibarra, and ruled on, that's just simply nonsense, your Honor.

The record is abundantly clear that this case was removed to the federal court by the defendants. Over there they managed to accomplish the removal of Mr. Sulla by making a point of his being involved in the nonjudicial foreclosure sale, at which point I became involved.

But the Circuit Court had dismissed all of these claims made by Hester and Kane long before the appeal. They cannot be resuscitated by this Intermediate Court of Appeals returning it to your Honor's court for the

narrow purpose of determining whether or not the standards of Kondaur were met, which standards are apparently clear --

THE COURT: Hold on. Hold on. I will deal with the MSJ in a moment. I'm just dealing now with the motion to intervene.

MR. WHITTAKER: I'm sorry, your Honor. I apologize.

The point is that in so far as Mr. Fine argued on his motion to intervene, alleged relevant facts underlining his interest and the interest he seeks to advocate for, that is Horowitz and Kane, he simply has no standing.

It's transparent to me what they are trying to do. They know that they have been foreclosed. That is, Horowitz and Kane, so they find a straw man to come in to your Honor and pretend that somehow he's entitled to intervene in this very old case and assert claims that they have had disallowed on their behalf.

Your Honor, it's transparent. It's not lawful. It shouldn't be allowed.

THE COURT: Thank you, Mr. Whittaker. Mr. Horowitz or Ms. Kane, one or the other may speak on this issue.

MR. HOROWITZ: Yes, your Honor. Thank you.

It's very clear to me that Mr. Whittaker is simply throwing a lot of mud, frivolous and capricious statements upon the Court in hopes that something will stick to divert the Court's attention to the actual facts.

I want to also correct Mr. Whittaker. He just errored in stating that the dissolution of Royal Bloodline was a later date. Actually, it was in 2012, I seem to recall, because of the dissolution required because of the insolvency, because of the continuous litigation requiring attorney, attorney counsel representation, which we could simply no longer afford.

Essentially, the joinder of Mr. Fine, and also by the way he made a mistake and claimed that the claims were made by Hester and Kane. I'm Horowitz. This is Kane. Hester is not at all making claims with Miss Kane. That's wrong.

But the most important fact here is that Mr. Fine's agreement with me and his participation and his financing with me, as Mr. Fine has correctly stated, began in 2005. It didn't begin, and it's not at all an estranged contract to have verbal contracts, to have handshakes, whereby Mr. Whittaker seems to say that it would be prudent for the Court to simply recognize a grant, a final granting in 2018 of an option to have an

economic interest, which is substantial, because he deserves it, he earned it. He helped with every aspect of developing the property, even from physical labor.

So I think that Mr. Fine's appearance here and request for intervention is totally appropriate, and that I think it's also extremely important, what Mr. Whittaker and Mr. Sulla and apparently Mr. Hester, and it's interesting that Mr. Whittaker refers to Mr. Fine as a, quote, "straw man," end quote, when in fact all of the evidence clearly indicates that Mr. Hester is the straw man.

So we actually have a projection of what we are alleging as the crime of both foreclosure fraud and conveyance.

Now, the conveyance that Mr. Fine is specifically concerned about mostly is Mr. Sulla's effort to take his interest and include it in the 049 property and simply hoodwink the Court here in a quick motion for summary judgment, when that clearly is a material fact in dispute and --

THE COURT: Mr. Fine, please confine your arguments only to the motion to intervene.

MR. HOROWITZ: Yes. So, in essence, Mr. Fine has legitimate, real interests in protecting his interest, and it's not at all adverse to Mr. Hester and

the plaintiff that Mr. Fine would join here or intervene here with good cause to represent his interest, and even continue to support us, as he has done now since 2005.

THE COURT: Thank you, Mr. Horowitz.

MS. WILLE: Your Honor, can I?

THE COURT: Ms. Wille. In response, Mr. Whittaker, to your comment real briefly, I did grant your motion to strike the pleadings filed on behalf of the entity which was defaulted, which was, Ms. Wille, your client.

So the current procedural status of the case is that your client has been defaulted. There has been no motion to set aside the default. So I know you are appearing here on behalf of RBOD, but really, you know, it's not proper for me to permit any argument on behalf of that entity because it was defaulted. But I will hear from you briefly, if you wish.

MS. WILLE: Yeah. In reviewing, I agree with what you are doing. However, I think that at this point, given the ICA's vacation of the nonjudicial foreclosure and that Royal Blood was the owner at that time, and also in light of Mr. -- of that Remnant A being added to the nonjudicial foreclosure deed, I think that it would be appropriate for RBOD to be able to intervene, given the new current status.

So I would -- I will respectfully agree with the default, but I will assess looking into that intervention.

And I do just want to make a comment on that, whereas I'm bringing up Mr. Fine and his intervention is that it's only within the past year that that interest really, in my mind, became legitimate, because the County of Hawaii challenged Mr. Sulla's inclusion of that parcel in his nonjudicial foreclosure deed. And that parcel was given to RBOD.

So, again, I respect your opinion on that, and I will look into intervention based on the current status of the case now that the nonjudicial foreclosure has been vacated.

THE COURT: Thank you, Miss Wille.

Mr. Fine, this is your motion. I will give you the last word, if you want to speak for a couple minutes.

MR. FINE: Thank you very much, your Honor.

Your Honor, the plaintiff makes a large deal about how my interest was memorialized in 2018. And the reason why my interest was memorialized in 2018 was in direct response to plaintiff's actions.

In approximately 2016, which I did not discover until a year, year and a half later, Mr. Sulla basically

took the title, the legal description of Remnant A, and he included it unlawfully in 049.

And that action of Mr. Sulla was the subject of a grand jury investigation, where they determined there was probable cause that a crime had been committed.

Now, it does not matter what ultimately the grand jury or the prosecutor's office determines based upon being able to prove something beyond a reasonable doubt. But that's not the standard here, your Honor.

So my interest, I determined that to protect my interest, which Dr. Horowitz appropriately said was based on since 2005, I have memorialized it in order to protect it from Mr. Sulla, because I wanted to show that there was actually an interest that was protectable.

But for Mr. Sulla now to come in and argue that somehow I am prejudicing the Court or I am untimely based upon his actions of taking the legal description of Remnant A, which is not the subject of this. It wasn't the subject of a nonjudicial.

THE COURT: Hold on, Mr. Fine. It's not Mr. Sulla who is arguing this. It's Mr. Whittaker who is arguing it on behalf of his client. I just want the record to be clear.

MR. FINE: Well, your Honor, actually in Mr. Whittaker's motions he said that Mr. Sulla was a

successor in interest. And he is the real party in interest here, and he is the person who basically is engaged in the warfare that we're experiencing here.

So what I'm saying is that it was Mr. Sulla -- the plaintiff's actions by taking the interest in Remnant A, which he has no legal ownership of, he has no equitable interest in, and the County of Hawaii basically told him that. And they sent him a written letter stating he has no interest in Remnant A.

And despite that, your Honor, he basically filed a deed in this motion for summary judgment, which basically describes Remnant A, my property, the property that I --

THE COURT: You are going far afield of your motion to intervene. I just wanted you to comment on the issues pertaining to your motion to intervene at this point.

MR. FINE: Well, your Honor, I was really responding to Mr. Whittaker's objection to my motion by saying that somehow my interest is based on access. My interest in this matter is not based on access, your Honor. It's based on trying to protect the legal deed to a property that Mr. Whittaker's client has no interest in.

Just so I want to be really clear, your Honor.

Mr. -- the plaintiff in this case took the legal description of a property he does not own and attached it to 049, which is the subject matter. It goes to the heart of this motion for summary judgment.

And so if I don't step in now and protect that interest, I'm going to lose that opportunity. I mean, he should really join me. I mean, that was really what my motion was getting to.

But I understand the intervention, that's fine. But again, I just want you to understand where -- and finally, the last point, your Honor, is Mr. Sulla in his declaratory statement said that Remnant A is intertwined with 043 and 049, and that it's subject to adverse possession, because he can't get access to his steam vents unless he basically trusts back on Remnant A.

And I tried to survey the land. I tried to put up no trespassing signs on the land, all of which I paid for, and his agents drove me off the property and I was unable to protect my interest in Remnant A.

And he, your Honor, is having dangerous activities on that property. There is ceremonies being conducted on that property --

THE COURT: Thank you, Mr. Fine. Thank you. I think I have heard enough on the issue.

MR. FINE: Good.

THE COURT: The Court is ready to rule.

Mr. Fine, you filed your motion under Rule 19 for joinder. I believe that the proper rule would have been Rule 24 for intervention. I'm not going to deny your motion based on a procedural defect or citing to the wrong rule. I recognize you are self represented.

With respect to Rule 24, there are A and B intervention of right and permissive intervention. So under that rule, frankly, based on having reviewed the records and files of the case, as well as the pleadings, files, and the arguments by the parties and counsel, the Court is going to deny the motion to intervene.

The Court cannot find, A, that there was timely application. It is unclear to the Court whether, Mr. Fine, you intended to base your motion to intervene on a 2005 economic interest or the 2018 recorded interest that deals with -- and your arguments around access.

If you intended to base it on the 2005 alleged economic interest, we're now 15 years later, and the Court cannot find that considering everything that that is a timely application for permission or the right to intervene.

The judgment was entered in December of 2015. The motion to intervene was filed October 28, 2020, five

years after the judgment, 15 years after you allege that you obtained an economic interest, and two years after the recording of the option interest to which you refer.

As cited by the plaintiff, motions to intervene filed after judgment has been entered are viewed with disfavor, and the moving parity has a heavy burden to show facts or circumstances to justify intervention at that late date. The Court cannot find that, Mr. Fine, that you have met that heavy burden imposed by case law.

In addition, the Court is persuaded by plaintiff's arguments that the option agreement for an economic interest to an abutting land parcel given by the defendants is also a basis for your motion, and that based thereon the motion is also not timely, as it was was acquired after final judgment.

Furthermore, the Court is persuaded by the argument that there was no access when you, Mr. Fine, acquired your economic interest. So your argument claiming a loss or impairment for something that you did not have when you acquired the interest does not rise to the level that this court believes is appropriate to allow intervention in this case.

And so the Court cannot find that there is any additional impediment to that interest. Even if the argument can be made that you are timely asserting that

interest, the Court cannot find any additional impediment, and so the Court cannot find that you qualify under Rule 24, intervention of rights, or Rule 24B, permissive intervention.

And so based on the arguments set forth in plaintiff's memorandum in opposition to the motion to intervene, the Court is going to deny your motion to intervene, Mr. Fine.

Mr. Whittaker, you can prepare the order denying the motion to intervene.

So with that, we will move on to the motion for summary judgment.

Mr. Whittaker, this is your motion, so you may go first.

Again, I have read the motions, the oppositions, the replies. I have read the files and the relevant pleadings that were previously filed in this matter.

So, Mr. Whittaker, you may proceed, and five to seven minutes or so if you want to add anything additional to your written pleadings.

MR. WHITTAKER: Your Honor, thank you very much.

First of all, the opposition, while voluminous and certainly in the history of case repetitive, is absolutely inappropriate to the matter before the Court.

The memorandum opinion of the Intermediate Court

of Appeals could not be clearer but that remand was to be had in order to ascertain whether or not plaintiff's foreclosure, nonjudicial foreclosure auction, complied with or comported with the standards established in Kondaur some five years after the nonjudicial foreclosure.

And that is all that is before your Honor is whether or not the plaintiff, Mr. Hester, has shown in undisputed material facts put before your Honor that indeed the four criteria of the Kondaur matter were met, and that is whether or not it was conducted.

That is, the foreclosure sale was conducted in a manner that was fair, reasonably diligent, in good faith, and whether an adequate price was obtained.

Instead of addressing those matters, which were established clearly through the declarations of Mr. Sulla as counsel during the nonjudicial foreclosure, and otherwise, the defendants bring up a lot of peripheral claims that have been adjudicated years ago, your Honor, as discussed in our motion to strike at page 8, we described the history and the dismissal of the defendant's counter-claims, which included all of the stuff that they have tried to put in front of your Honor on this motion for summary judgment years ago.

They appealed that. The Intermediate Court of

Appeals denied their appeal as to that and remanded the matter to your Honor for one purpose and one purpose only, which has been addressed by the motion.

In that particular, your Honor, plaintiff has established, I believe indisputably, that the auction was conducted in a manner that was fair. I don't know if your Honor has had an opportunity to review Exhibit 6 --

THE COURT: I have.

MR. WHITTAKER: -- to the -- you have, your Honor?

THE COURT: Yes.

MR. WHITTAKER: So your Honor is aware then that the defendants were in attendance at the auction. Your Honor can make your own judgment as to whether or not Mr. Sulla conducted that in a manner that was fair, and I believe that he clearly did. Fundamental fairness to the parties before the Court requires notice of proceedings. 30 day notice. They were there.

The next criteria, reasonable diligence, has been established, I believe, without dispute and beyond dispute by the declaration of Mr. Sulla and the multitude of communications with defendants before, after, and indeed for years following the foreclosure, showing his efforts in pursuing the foreclosure in the

first instance on behalf of plaintiff, and ultimately trying to resolve it with defendants.

The third criteria, good faith, your Honor, I haven't seen anything to suggest there is anything but good faith in the context of this case. The plaintiff Hester has no desire to punish defendants. He merely sought to recover the monies that were owed to his deceased great uncle. In any event, your Honor, the suggestion of bad faith in this context is without support in the record.

In the context of foreclosure context, your Honor, to determine good faith the courts look to the integrity of the actor's conduct during the proceedings. Your Honor, nothing in the conduct of either plaintiff or his then counsel suggests anything but good faith.

And lastly, your Honor, the Kondaur criteria that we must meet before your Honor to show that, in fact, the summary judgment was appropriate and should now be entered anew is the adequacy of the price.

We discuss that in detail in the memorandum and point out that the $225,000 price that was obtained was more than adequate under the circumstances, Judge. This sale was conducted in 2010. As your Honor is aware, that was during a major recession.

The other impediments to getting a higher price

were the fact that the defendants were holding over in the property at the time. We had no possession. The amount of repair required suppressed the price. The fact that it's in a volcanic zone suppressed the price. You can't get financing and insurance out there.

So, your Honor, it's just there is no evidence to suggest that the price of $225,000 wasn't fair. We've shown your Honor the survey of prices for properties in the region for a year before the sale, and this is in the highest two or three sales in the area.

Moreover, even if the price is somehow inadequate, that alone is not enough ground to set aside a fairly conducted, open, transparent auction at a nonjudicial sale, particularly when the defendants were in attendance and had the opportunity to bid more, and chose not to.

Frankly, we would wish, your Honor, that anybody had bid more so that Mr. Hester could have avoided these ten years of horror.

Judge, there is no reason to -- and the defendants, so distracted by trying to resurrect claims that the Circuit Court long ago denied, utterly failed to suggest, your Honor, that plaintiff had failed to established any one of these criteria.

They made some passing reference to, oh, well,

it should have been $975,000, because at one point in time in a fantasy Mr. Hester listed it at that price, soon found it was ridiculous, dropped it $200,000, and when possession was actually in his hands listed it for a more realistic price in the 2 to 300,000 range.

Your Honor, I don't think there is any question but that the price was fair, and that the four elements required by Kondaur have been established. They have not been refuted by the defendants. Therefore, the motion should be granted.

THE COURT: Thank you, Mr. Whittaker.

Dr. Horowitz or Ms. Kane.

MR. HOROWITZ: Yes, your Honor. Thank you.

I'd like to address several of the criteria that Mr. Whittaker just stated in this oral testimony that I'm prepared to give here.

First of all, my opening statement here, I want to relay that the key material fact in dispute is that the ICA, the remand tells this court that there are material facts in dispute specifically regarding 667-5 compliance.

Instead of dealing with 667-5 noncompliance, the plaintiff advances a number of capricious arguments and diverts this court again. Example, referring to the video. The video is not related substantive to 667-5.

So let's stay with 667-5. By diverting from 667-5 noncompliance, the Whittaker and Sulla team for Hester moves the court to become an accessory after the fact of wrongful foreclosure, wrongful ejectment and wrongful dispossession.

The ICA vacating the NJF means the plaintiff currently has no valid right to possess our property and should be ordered to leave at once.

The first point, the plaintiff's amount to cure notice in regard to 667-5 noncompliance, this amount to cure notice was grossly defective. The ICA, to reiterate, made clear that Hester has not met his initial burden, that the burden never shifted to us.

In other words, we defendants were erroneously precluded from raising our issues of material fact, erroneously deprived of advancing our counter claims. Erroneously ejected and dispossessed in only 2016.

This situation, the status quo before the vacated foreclosure, is to be restored. Hester's possession of the subject property must end.

The ICA ruled that we defendants do not have the burden of proving that the nonjudicial foreclosure was unfairly and improperly carried out. It is the plaintiff's burden that 667-5 was meticulously followed, which the plaintiff has not done, and cannot do, because

the payment amount misrepresented repeatedly as $350,000 was always false.

The plaintiff repeatedly neglects the balloon payment made and diverts from the correspondence between me and Mr. Sulla that any settlement payment was, quote, "conditioned upon the outcome of the appeal," end quote.

The plaintiff argues that he provided an email thread dated January 19th through the 25th, 2010, that he provided as a valid amount to cure the alleged default.

So let us, your Honor, look at this as shown in the defendant's Exhibit D. If you would kindly get out Exhibit D from my filing, that would be appreciated, and we can clarify this violation of 667-5 procedure very quickly.

THE COURT: Go ahead, Mr. Horowitz. Your time is running, so I'm just telling you.

MR. HOROWITZ: If you could access Exhibit D, you could follow along then, your Honor.

THE COURT: I have it, Mr. Horowitz.

MR. HOROWITZ: Yes, it's Exhibit D in the packet that was tabbed Exhibit D, I believe.

THE COURT: Well, I have Exhibit D, so you may proceed.

MR. HOROWITZ: Thank you, your Honor.

On the email Sulla sent on January the 19th, the second paragraph states quite clearly, the cure amount of the alleged default amount was, quote, "conditioned upon the outstanding appeal," end quote.

There was no express, valid accounting done. That last two sentences in paragraph 2, you can read it, it states, "If you agree to proceed with $220,000 amount outstanding, conditioned upon the outstanding appeal, then we can now respond and begin to negotiate a settlement of the entire balance. Before we counter your prior $100,000 offer settlement, please indicate if this was a figure we can agree to start with," end quote.

A material fact in dispute, your Honor, is that the claimed amount in the default was both unknown and, quote, "conditioned upon the outcome of the appeal," unquote.

And even if this was not the case, the 667-5 express requirements required an accurate payoff amount, foreclosure fees that were never noticed, as well as attorneys fees and costs for the foreclosure. These three elements that were required were not provided.

Instead, the Court will note what happened next, according to the plaintiff's email string, reprinted as defendant's Exhibit D. You see the email dated January

22nd, 2010. Sulla emailed again asking, quote, "Do you have any response to this or should I move to the next step," end quote.

No next step is mentioned. It states, quote, "The note is now a full year overdue. If I don't heard," his error, "if I don't heard anything back from you by Tuesday, January 26, 2010, I will proceed," end quote.

Proceed with what, your Honor? The entire matter was conditioned upon the outstanding appeal.

THE COURT: Mr. Horowitz, I am giving you a two-minute warning on your argument.

MR. HOROWITZ: Yes. Essentially, your Honor, this was not a clear fulfillment of his responsibilities of 667-5, proper notice.

Further, this inadequate notice is false because Mr. Sulla gave this notice not to the defendants. Look at who he sent this notice to. It's corresponding to Mr. Hester, and not on January 26th, which was the deadline date, but in his email on January 25th, 2010.

Here he states in an altered email a forged piece of evidence that does not comport with the format of earlier email correspondence. If you look at those emails carefully. He submitted this in his Exhibit D to the court showing that, quote, "original message

captured on the others and the details provided were not stated."

Sulla states in corresponding only to Hester, not to me, in altered email at 5:23 p.m., quote, "I already sent this out Friday. I will start with a notice to the foreclosure this week. Paul," end quote.

The case law clearly shows that changing or altering or not properly noticing foreclosure or foreclosure dates is grounds for voiding the foreclosure.

But this was also before the January 26 deadline that this email went to Mr. Hester. You can see that it's captioned May's Bank Receipts. It's not captioned any notice of foreclosure, and so subsequently it violates Kondaur.

And regarding the purchase price, if I can use my last few seconds here, Kondaur references Ulrich (ph.), Ulrich, excuse me. And in Ulrich you see it goes into great detail that a property in foreclosure must be advertised expressly, detailing the benefits of the property.

If you look at not only what I shared already as Mr. Sulla's foreclosure notice, but the actual advertisement in a single newspaper that Mr. Sulla presents as having advertised his notice for

foreclosure, you will see that there is no express detailing.

And Exhibit Z, the last exhibit of yours, your Honor, shows that Mr. Sulla listed the property, not Mr. Hester listed the property, Mr. Sulla listed the property with his cohorts within his own business operation, his own real estate firm which Greg Datt (ph.) and Associates, that it was listed for $975,000, your Honor, by Mr. Sulla, not Mr. Hester.

So essentially the inadequacy of the NJF, lack of following 667-5, improper sales price, and the fact that we haven't even now gotten to the fact of the underlying matter that is not regurgitating, not simply regurgitating what any Court has ruled on.

In fact, at this point we have tacit admission that Mr. Sulla's concerns and conveyance of the mortgage and note to the church revitalized, which was the foreclosing mortgagee in 2010. That that is based on substantial fraudulent filings with the State and the court, as you can also review that person Exhibit S, which goes into great forensic detail showing that ultimately the organization that foreclosed wasn't even formed at the time of the transfer by assignment of mortgage and assignment of note into revitalized church.

Certainly, there is the case law we published

that shows that this untimely transfer voids the transfer. But even if it didn't, look at all of the facts, that there is the false signature, falsified altered date or dates, false certification of the Articles of Incorporation of this entity.

Therefore, Mr. Hester has no standing as a successor in interest to this fake sham church, nor does Mr. Sulla and HHLLC. Subsequently, these are tacitly admitted by evasion of these most important facts, and I think this is most clearly an indication that the Court's grant of this motion would be unconscionable.

The Court should dismiss this motion and then permit the return of our dispossessed property that we certainly deserve, and we no longer deserve to be abused like this, your Honor.

THE COURT: Thank you, Mr. Horowitz.

Mr. Whittaker, in five minutes or less, please, you may respond.

MR. WHITTAKER: Thank you, your Honor.

Mr. Horowitz tries desperately to divert the Court's attention from the specific ruling of the Intermediate Court of Appeals, which remanded this for compliance with Kondaur, which had four elements.

He wants to direct your Honor's attention to 667-5, which if there was an objection under that

statute should have been made ten years ago. Any sort of objection under that statue has long since been waived or adjudicated adversely to the defendants in the motion to dismiss their counter claims heard at the Circuit Court back in 2014.

The allegations that are made vis-a-vis counsel Sulla are there just, your Honor, again to distract you and to try and besmirch the plaintiff with some alleged misconduct of his counsel, which is irrelevant to this motion, which deals only with the propriety of the conduct of the nonjudicial foreclosure sale, which we have addressed in detail.

The Intermediate Court of Appeals was quite clear, your Honor, at page 14 of its decision that the issue that it identified, and the only issue, was the compliance with Kondaur. And for that reason -- and it specifically confined its decision to vacating the summary judgment.

And it vacated the summary judgment only because the showing at the trial court then in 2010, and after, relative to the nonjudicial foreclosure, didn't show the Kondaur elements.

The Kondaur elements have now been shown, and while Mr. Horowitz argues about the incredible value, he has not put a single shred of paper before your Honor

that shows that any realtor or anyone with any competence about property values in the area of the subject property believes it to be worth anything even near the $225,000 that was bid by plaintiff at the nonjudicial foreclosure sale.

It strikes me as a little odd that while he was standing there at the foreclosure sale he now wants to tell your Honor that the price was unfair. If it was unfair, he had every opportunity to make bid. He chose not to.

Judge, I just don't think that there is any question but that the narrow matter for remand has been answered in full and in detail by the motion, the declaration, and that there is no competent evidence to the contrary and no disputed question of material fact.

THE COURT: Okay. Thank you, Mr. Whittaker.

MR. WHITTAKER: I have nothing further.

THE COURT: So the Court has reviewed the records and files of this matter, as well as specifically your motion, Mr. Whittaker, and Mr. Horowitz and Miss Kane, your opposition, and Mr. Whittaker your reply.

The Court also went back and reviewed the previous filings, and specifically the opposition to the original motion for summary judgment, the opposition

being filed by Horowitz and Kane on April 6 of 2015.

So, first of all, this Court agrees with the plaintiff's interpretation of the remand. This Court does not read the remand as a setting aside of the nonjudicial foreclosure, as argued by Mr. Horowitz and Miss Kane.

The remand from the ICA says that it appears from the record that our ruling above -- I'm just paraphrasing -- under Kondaur could potentially affect this case. Therefore, although we reject Horowitz' arguments on appeal in CAAP-18-584, we conclude it would be prudent to remand this case to the Circuit Court, the Third Circuit, for further proceedings as the Court deems necessary in light of our rulings in this memorandum opinion.

So the Court does read the remand to focus on whether or not the nonjudicial foreclosure sale was conducted in a manner consistent with the Kondaur case.

Also, the Court will point out that under state versus Oughterson, which is O-U-G-H-T-E-R-S-O-N, 99 Hawaii 244, that case holds and it cites to various other cases, which I will get to in a moment.

That case precedent commands that unless cogent reasons support a second court's action, any modification of a prior ruling of another court of equal

or concurrent jurisdiction will be deemed an abuse of discretion. And that's the Oughterson court citing Grayhound Computer Corporation versus IBM, 559F2d488, which is a Ninth Circuit case from 1977.

Also, the Oughterson case cites Wong versus City and County of Honolulu, 66 Hawaii 389, which held that a judge should be hesitant to modify, vacate or overrule a prior interlocutory order of another judge who sits in the same court.

In reviewing the defendant's opposition to the motion for summary judgment that was filed on April 6 of 2015 and their current opposition to plaintiff's second motion for summary judgment, the Court finds that the arguments raised are virtually if not completely identical to those that were raised back in April of 2015.

The only major differences that this Court could glean from a review of both oppositions was, one, that in the current opposition plaintiffs cite to HRS Section 490:3-203, and in their previous opposition they cite it as UCC Article 3, Section 3-203. And so that argument was raised, previously.

Also, the Court would note that the 667-5 noncompliance arguments were raised and briefed extensively in the April 6, 2015 opposition, as they are

in this case.

The only other change the Court noted between the two oppositions substantively was a cite to HRS Section 651D, as in David, in the current opposition. In the 2015 opposition, the defendant cited extensively to 651C, as in cat.

The Court attempted to look up 651D, AND I don't believe that section applies. I think it may have been a typo, and that the defendants intended to cite to 651C.

Nevertheless, the arguments in both the April 6, 2015 opposition, as well as the opposition filed today are substantively the same.

The Court in its ruling, which was filed on May 27, 2015, had considered the defendant's arguments at that point in time, and had found that there was no genuine issue of material fact and granted plaintiff's motion for summary judgment.

This court is not going to revisit, vacate, modify or amend prior rulings of this very court, it was just a different judge, made back in 2015. So the Court is not going to consider or reconsider any of the arguments previously made by the defendants and that are now being made again by the defendants.

The only issues that this Court believes that

are before it are the Kondaur issues, as articulated by the plaintiff.

Based thereon, and having reviewed the admissible evidence in the case, the Court will find that plaintiff has established the four elements required by the Kondaur case.

The Court will find there is no genuine issue of material fact and that plaintiff is entitled to a judgment as a matter of law. The Court will enter a final judgment pursuant to 54B in favor of the plaintiff.

Again, I believe this resolves all matters. Correct, Mr. Whittaker?

You are muted.

MR. WHITTAKER: Sorry, your Honor. Yes, your Honor, it was sent back down simply for the purpose of Kondaur compliance, which your Honor has found. That's all that remains.

THE COURT: Right. So the Court will then grant final judgment pursuant to 54B, finding no just reason for delay.

Mr. Whittaker, you may prepare or you will prepare the order granting your motion.

MR. WHITTAKER: Thank you, your Honor.

THE COURT: I think that concludes this matter.

Thank you all.

MR. WHITTAKER: Thank you, your Honor.

(Hearing concluded at 9:25 a.m.)

STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

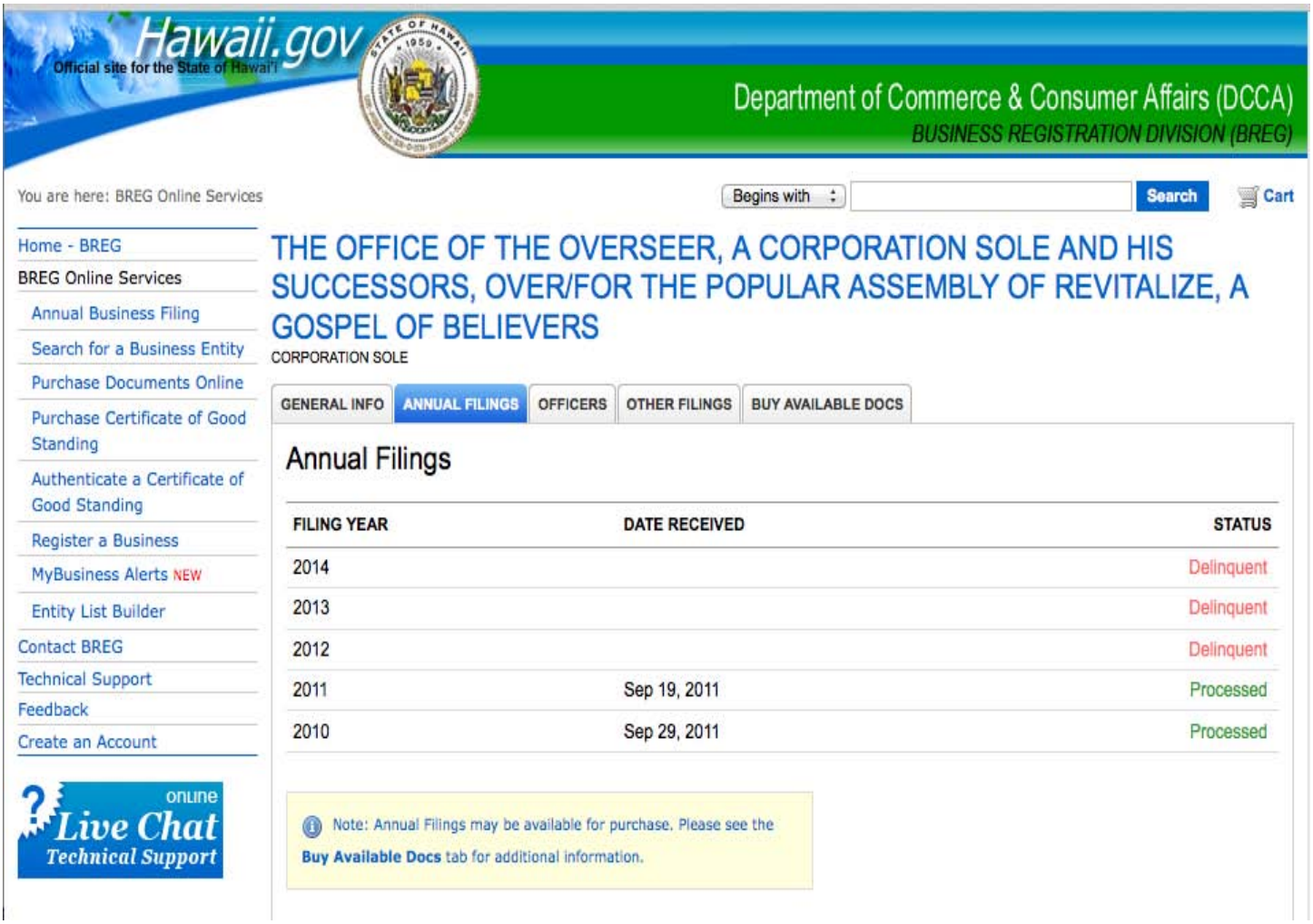
I, WENDY L. GRAVES, a certified court reporter in the State of Hawaii, do hereby certify that the foregoing pages are a true and correct transcription of the proceedings in the above matter.

Dated this 4th day of December, 2020.

Wendy Graves

_____

Wendy L. Graves, CSR No 460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CORPORATION SOLE
GENERAL INFO
ANNUAL FILINGS
OFFICERS
OTHER FILINGS
BUY AVAILABLE DOCS
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2014
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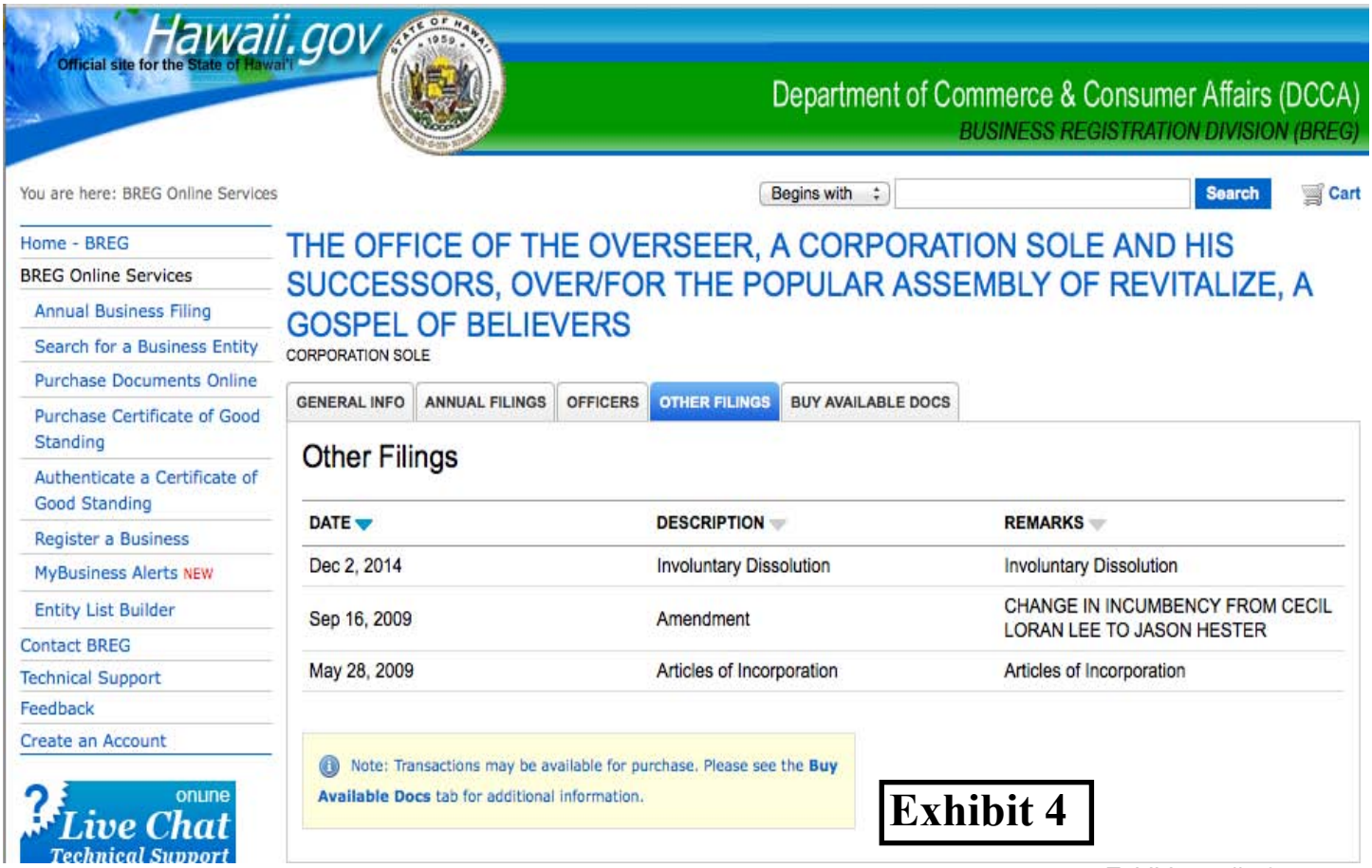
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CORPORATION SOLE
GENERAL INFO
ANNUAL FILINGS
OFFICERS
OTHER FILINGS
BUY AVAILABLE DOCS
Other Filings
DATE
DESCRIPTION
REMARKS
Dec 2, 2014
Involuntary Dissolution
Involuntary Dissolution
Sep 16, 2009
Amendment
CHANGE IN INCUMBENCY FROM CECIL LORAN LEE TO JASON HESTER
May 28, 2009
Articles of Incorporation
Articles of Incorporation
Note: Transactions may be available for purchase. Please see the Buy Available Docs tab for additional information.

Exhibit 4

DECLARATION OF BETH CHRISMAN

I, BETH CHRISMAN, hereby declare as follows:

1. I am an Expert Document Examiner and court qualified expert witness in the field of questioned documents in the State of California. I am over the age of eighteen years, am of sound mind, having never been convicted of a felony or crime of moral turpitude; I am competent in all respects to make this Declaration. I have personal knowledge of the matters declared herein, and if called to testify, I could and would competently testify thereto.

2. I have studied, was trained and hold a certification in the examination, comparison, analysis and identification of handwriting, discrimination and identification of writing, altered numbers and altered documents, handwriting analysis, trait analysis, including the discipline of examining signatures. I have served as an expert within pending litigation matters and I have lectured and taught handwriting related classes. A true and correct copy of my current Curriculum Vitae ("C.V.") is attached as "Exhibit A".

3. **Request:** I was asked to analyze a certified copy of the ARTICLES OF INCORPORATION, CORPORATION SOLE FOR ECCLESIASTICAL PURPOSES for the Corporation Sole of THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS filed with the State of Hawaii Department of Commerce and Consumer Affairs. I have attached this document as EXHIBIT B, Pages 1 through 8.

4. **Basis of Opinion:** The basis for handwriting identification is that writing habits are not instinctive or hereditary but are complex processes that are developed gradually through habit and that handwriting is unique to each individual. Further, the basic axiom is that no one person writes exactly the same way twice and no two people write exactly the same. Thus writing habits or individual characteristics distinguish one person's handwriting from another.

Exhibit 5

Transferred or transposed signatures will lack any evidence of pressure of a writing instrument. Additionally, due to modern technology in the form of copiers, scanners, and computer software that can capture documents as well as edit documents and photos it has become quite easy to transfer a signature from one document to another. However, there will always be a source document and in many cases the signature will remain unchanged. The fact that there is more than one signature that is exactly the same is in direct opposition to one of the basic principles in handwriting identification.

A process of analysis, comparison and evaluation is conducted between the document(s). Based on the conclusions of the expert, an opinion will be expressed. The opinions are derived from the ASTM Standard Terminology for Expressing Conclusions for Forensic Document Examiners.

5. **Observations and Opinions:**

PAGE NUMBERING:

a. This is an 8 page document with the first six pages having a fax footer dated May 26, 2009 and the last 2 pages having a fax footer of May 28, 2009.

b. Further, the first four pages are numbered as such, the fifth page has no original number designation, the sixth page has the numeral 2, and the last two pages are labeled 1 and 2.

c. There is not one consistent page numbering system or text identification within the document pages that indicates all pages are part of one document.

DOCUMENT PAGES:

d. Page 6 and Page 8 are both General Certification pages and contain the same text, exact same signature and exact same handwritten '8' for the day. Since no one person signs their name exactly the same way twice, one of these documents does not contain an authentic signature.

Additionally, no one person writes exactly the same way twice thus the numeral '8' is also not authentic on one of the documents.

e. It is inconclusive if one of the documents is the source or if neither is the source document.

f. There is no way to know if the signature of Cecil Loran Lee was an original prior to faxing or if it was a copy of a copy or the generation of the copy if a copy was used to fax the form.

PAGES 5 AND 6

g. Page 6 is a General Certification appearing to be attached to the previous page, however, Page 5 of this set of documents references a Gwen Hillman and Gwen Hillman clearly is not the signature on the Certification. Additionally, there is no Page number on the Certificate of Evidence of Appointment that actually links it to the next page, the General Certification of a Cecil Loran Lee.

h. Further, the fax footer shows that Page 5 is Page 13 of the fax, where page 4 is Faxed page 5 and page 6 is fax page 7; so there is inconsistency in the overall document regarding the first six pages.

i. There is no way to know based on the fax copy and limited handwriting if the same person wrote the '8' on pages 5 and 6. There's no real evidence these pages go together outside the order they were stapled together in the Certified Copy.

PAGE 8.

j. Page 8 does have an additional numeral '2' added to the original numeral 8 to make '28.'

a. The Please see EXHIBIT 3 for levels of expressing opinions.

6. **Opinion:** EXHIBIT B, The ARTICLES OF INCORPORATION, CORPORATION SOLE FOR ECCLESIASTICAL PURPOSES for the Corporation Sole of THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS filed with the State of Hawaii

Department of Commerce and Consumer Affairs contains page(s) that are not authentic in nature but have been duplicated, transferred and altered. Further, the lack of proper page numbering and consistency within the page number makes the document suspicious.

7. **Declaration:**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on the 12th day of June, 2015, in Sherman Oaks, California.

BETH CHRISMAN

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Business Registration Division
1010 Richard Street
PO Box 40, Honolulu, HI 96810

ARTICLES OF INCORPORATION
CORPORATION SOLE FOR ECCLESIASTICAL PURPOSES
(Section 419, Hawaii Revised Statutes)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned desires to form a Corporation Sole for Ecclesiastical purposes under the laws of the State of Hawaii and does certify as follows:

Article I

The name of the Corporation Sole is:

THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS

Article II

Cecil Loran Lee of 13-811 Malama Street, Pahoa, HI 96778, duly authorized by the rules and regulations of the church ***REVITALIZE, A GOSPEL OF BELIEVERS,*** a Hawaiian non-profit corporation in the nature of Ecclesia, hereby forms ***THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS*** and is the initial holder the office of Overseer hereunder.

Article III

The principal office of ***THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITLIZE, A GOSPEL OF BELIEVERS*** is 13-811 Malama Street Pahoa, HI 96778. The Island of Hawaii is the boundary of the district subject to the ecclesiastical jurisdiction of the Overseer.

Article IV

The period of duration of the corporate sole is perpetual.

Article V

The manner in which any **vacancy** occurring in the incumbency of ***THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS***, is required by the discipline of ***THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS***, to be filled, through an appointment of **Jason Hester** of Pahoa, Hawaii as designated successor, and if said designated successor is unable or unwilling to serve, then through an appointment by the support and blessings by a formal "Popular Assembly" of clerical staff and the general membership of ***REVITALIZE, A GOSPEL OF BELIEVERS***, as to the named designated successor. The corporate sole shall have continuity of existence, notwithstanding vacancies in the incumbency thereof, and during the period of any vacancy, have the same capacity to receive and take gifts, bequests, devise or conveyance of property as though there were no vacancy.

Article VI

THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS shall have all the **powers** set forth in HRS c. 419-3 and 414D-52 including the power to contract in the same manner and to the same extent as any man, male or female, and may sue and be sued, and may defend in all courts and places, in all matters and proceedings whatsoever, and shall have the authority to appoint attorneys in fact. It has in any venue and jurisdiction authority to borrow money, give promissory notes therefore, to deal in every way in prime notes, noble metals, planchets, commercial liens, stamps, mortgages, all manner of banking, and to secure the payment of same by mortgage or other lien upon property, real and person, enter into insurance and assurance agreements, own life insurance policies, and purchase and sell contracts and other commercial instruments. It shall have the authority to buy, sell, lease, and mortgage and in every way deal in real, personal and mixed property in the same manner as a "natural person" or covenant child of God. It may appoint legal counsel, licenses and/or unlicensed, but any professional or nonprofessional account services, legal or other counsel employed shall be utilized in a capacity never greater than subordinate co-counsel in any and all litigious matters whether private, corporate, local, national or international, in order to protect the right of the corporation sole to address all courts, hearings, assemblies, etc., as superior co-counsel.

Article VII

The presiding Overseer of ***THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS*** can be **removed** by a 2/3 vote at a meeting of the Popular Assembly of **REVITALIZE, A GOSPEL OF BELIEVERS**, a Hawaiian non-profit corporation in the nature of Ecclesia, duly called for that purpose, provided that a successor Overseer is selected at that meeting.

The presiding Overseer may not amend or alter this Article VII without the 2/3 vote at a meeting of the Popular Assembly of **REVITALIZE, A GOSPEL OF BELIEVERS** duly called for that purpose.

Article VIII

The presiding **Overseer**, after prayers and counsel from The Popular Assembly of ***REVITALIZE, A GOSPEL OF BELIEVERS***, may at any time **amend** these **Articles**, change the name, the term of existence, the boundaries of the district subject to its jurisdiction, its place of office, the manner of filing vacancies, its powers, or any provision of the **Articles** for regulation and affairs of the corporation and may by Amendment to these **Articles**, make provision for any act authorized for a corporate sole under HRS c. 419. Such Amendment shall be effective upon recordation with the State of Hawaii.

Article IX

The **purpose** of this corporation sole is to do those things which serve to promote Celestial values, the principles of Love, Harmony, Truth and Justice, the love of our brothers and sisters as ourselves, the comfort, happiness and improvement of Man and Woman, with special emphasis upon home church studies, research and education of those rights secured by God for all mankind and of the laws and principles of God for the benefit of the Members of the Assembly and the Community at large. This corporate sole is not organized for profit.

Article X

All property held by the above named corporation sole as ***THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITLIZE, A GOSPEL OF BELIEVERS***, shall be held for the use, purpose, and benefit of ***REVITLIZE, A GOSPEL OF BELIEVERS***, a Hawaiian non-profit corporation in the nature of Ecclesia.

I certify upon the penalties of perjury pursuant to Section 419 of the Hawaii Revised Statues that I have read the above statements and that the same are true and correct.

Witness my hand this 8 day of May, 2009.

CECIL LORAN LEE

Cecil Loran Lee

CERTIFICATE OF EVIDENCE OF APPOINTMENT

Asseveration

State of Hawaii)
) Signed and Sealed
County of Hawaii)

Gwen Hillman, Scribe, on the 8th day of the fifth month in the Year of our Lord Jesus Christ, the Redeemer, Two Thousand Nine having first stated by prayer and conscience, avers, deposes and says:

Cecil Loran Lee is the duly appointed, qualified OVERSEER of **THE OFFICE OF OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**, by virtue of Spiritually and Divinely inspired appointment and he is, and has been, sustained as such by the general membership of said "body of believers" of **REVITALIZE, A GOSPEL OF BELIEVERS** a Hawaiian incorporated Church assembly, in the nature of Ecclesia, and **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**, in a special Popular Assembly meeting on the 8 day of the fifth month in the Year of our Lord Jesus Christ, the Redeemer, Two Thousand Nine as evidenced by an official recording of such appointment signed by Gwen Hillman, Scribe of **THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS.**

General Certification

I, **Cecil Loran Lee**, the named Overseer in **The Office of the Overseer a corporation sole and his successors, over/for *The Popular Assembly of* REVITALIZE, a Gospel of Believers** the Affiant herein, certify, attest and affirm that I have read the foregoing and know the content thereof and that it is true, correct, materially complete, certain, not misleading, all to the very best of my belief, and this I solemnly pledge declare and affirm before my Creator.

In witness whereof, said **Cecil Loran Lee**, The Overseer, of a corporation sole, has hereunto set his hand and seal, on this, the 8 day of May in the Year of Jesus Christ our Lord, the Redeemer, two thousand nine.

Cecil Loran Lee Affix Seal Here.

Cecil Loran Lee, the Overseer
The Office of the Overseer
a corporation sole and his successors,
over/for The Popular Assembly of *REVITALIZE, A GOSPEL OF BELIEVERS* an incorporated Church assembly,
in the nature of Ecclesia

STATEMENT OF INCUMBENCY

THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS.

BE IT KNOWN BY THESE PRESENTS that **Cecil Loran Lee** of 13-811 Malama Street Pahoa, HI 96778 is the current incumbent **OVERSEER** for the corporation sole known as ***THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS.*** This **Statement of Incumbency** is provided pursuant to Hawaii Revised Statutes c.419-5.

Pursuant to **Cecil Loran Lee's** right to worship Almighty God, in accordance with the dictates of his own conscience, and having, humbly, taken possession of The Office of **OVERSEER** on the 28 day of May in the year two thousand nine, the **OVERSEER** does hereby certify, and adopt this "**Statement of Incumbency**".

In accordance with the disciplines of **REVITALIZE, A GOSPEL OF BELIEVERS**, a Hawaiian non-profit corporation, in the nature of Ecclesia located in Pahoa, County and State of Hawaii having established said corporation sole ***THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS*** and by this **Statement of Incumbency** hereby notifies the State of Hawaii that **Cecil Loran Lee** is the duly appointed incumbent **OVERSEER.**

THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, does hereby establish that **Cecil Loran Lee** is the duly appointed incumbent **OVERSEER** of this corporate sole created for the purposes of administering and managing the affairs, property, and temporalities of **REVITALIZE, A GOSPEL OF BELIEVERS**, a Hawaiian non-profit corporation in the nature of Ecclesia.

General Certification

I, **Cecil Loran Lee**, the named Overseer in **The Office of the Overseer a corporation sole and his successors, over/for *The Popular Assembly of* REVITALIZE, a Gospel of Believers** the Affiant herein, certify, attest and affirm that I have read the foregoing and know the content thereof and that it is true, correct, materially complete, certain, not misleading, all to the very best of my belief, and this I solemnly pledge declare and affirm before my Creator.

In witness whereof, said **Cecil Loran Lee**, The Overseer, of a corporation sole, has hereunto set his hand and seal, on this, the 28 day of May in the Year of Jesus Christ our Lord, the Redeemer, two thousand nine.

_____ Affix Seal Here.

Cecil Loran Lee, the Overseer
The Office of the Overseer
a corporation sole and his successors,
over/for The Popular Assembly of *REVITALIZE, A GOSPEL OF BELIEVERS* an incorporated Church assembly,
in the nature of Ecclesia

FILED

cc: Margaret Wille, Esq.
Steven Whittaker, Esq.

2016 MAR -4 PM 2:07

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAI'I

L. MOCK CHEW, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

JASON HESTER, OVERSEER THE OFFICE OF OVERSEER, A CORPORATE SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, Plaintiff, vs. LEONARD GEORGE HOROWITZ, JACQUELINE LINDENBACH HOROWITZ, AND THE ROYAL BLOODLINE OF DAVID, JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10, DOE ENTITIES, DOE GOVERNMENTAL UNITS, Defendants, and PHILIP MAISE Intervenor.	Civil No. 05-1-196 FIFTH AMENDED FINAL JUDGMENT Jury Trial: February 12-14, 2008 February 20-21, 2008 JUDGE RONALD IBARRA
LEONARD GEORGE HOROWITZ, JACQUELINE LINDENBACH HOROWITZ, AND THE ROYAL BLOODLINE OF DAVID, Counterclaimants, vs. JASON HESTER, OVERSEER THE OFFICE OF OVERSEER, A CORPORATE SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY	

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

Clerk, Third Circuit Court, State of Hawaii

Exhibit 6

OF REVITALIZE, A GOSPEL OF BELIEVERS,)
)
)
Counterclaim Defendant.)
)

FIFTH AMENDED FINAL JUDGMENT

This matter comes before the above-referenced Court pursuant to the Order Dismissing Appeal for Lack of Appellate Jurisdiction, E-filed into CAAP-15-0000658 on January 20, 2016 by the Intermediate Court of Appeals ("ICA"). The ICA in its January 20, 2016 Order, decided the Fourth Amended Final Judgment does not satisfy the requirements for an appealable judgment under HRS § 641-1(a), HRCP Rule 58, or the holding in Jenkins v. Cades Schutte Fleming & Wright, Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

On October 24, 2007, the *Order Granting Intervenor's Motion To Strike and/or Dismiss, With Prejudice Counterclaim/Cross Claim Against Intervenor Philip Maise Filed July 25, 2007, Filed On August 24, 2007*, was filed. On February 12, 2008 a jury trial in this matter commenced, finishing February 21, 2008. Pursuant to the *Order Awarding Attorney's Fees and Costs* filed March 25, 2008; the *Findings of Facts, Conclusions of Law, and Order Denying Decree of Foreclosure against all Defendants*, filed April 2, 2008; the *Order Granting Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on the Issue of Defendant's July 6, 2006 Counterclaim for Fraud and Misrepresentation*, filed October 15, 2008; The *Second Amended Final Judgment* filed December 11, 2009; The *Third Amended Final Judgment* filed September 12, 2013 and The *Fourth Amended Final Judgment* Filed June 19, 2015;

This Court Having fully reviewed the record and files herein, and for good cause shown;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I. That Final Judgment on the Complaint for foreclosure filed June 15, 2005 is hereby entered pursuant to HRCP Rule 58 as follows:

a. As to the waste claims for unlicensed business activities and additions to the home or construction of buildings on the property, judgment is entered in favor of Defendants Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David and against Plaintiff, Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers.

b. As to the claim for breach of contract/covenant for failure to keep property insurance, judgment is entered in favor of the Plaintiff, Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers and against Defendants Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David; Defendants Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David are required to obtain property insurance.

c. As to the claims for conspiracy by Defendant Horowitz, Defendant Royal Bloodline of David and co-conspirator Intervenor Phillip Maise, to deprive Plaintiff of receipt of mortgage payments and defrauding plaintiff, judgment is entered in favor of the Defendants Leonard George Horowitz, Jacqueline Lindenbach Horowitz, Defendant The Royal Bloodline of David, and Intervenor Phillip Maise and against Plaintiff, Jason

Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers.

d. As to the claim for trespass to chattels based on destruction of Plaintiff [Lee's] trailer, judgment is entered in favor of Plaintiff, Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers and against Defendants Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David, and Judgment for damages of $400.00 is entered in favor of Plaintiff, Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers and against Defendant Leonard Horowitz and the Royal Bloodline of David.

e. As to the claim for fraud and misrepresentation against Defendant Leonard Horowitz and the Royal Bloodline of David for changing the DROA (deposit receipt offer and acceptance), judgment is entered in favor of Plaintiff, Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers and against Defendants, Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David.

f. As to the claim for foreclosure, judgment is entered in favor of Defendants, Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David and against Plaintiff, Jason Hestor Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of

Revitalize, A Gospel of Believers, but equitable relief was granted requiring Defendants to carry insurance. [1]

II. **IT IS FURTHERED ORDERED** that Final Judgment on the Defendants' Counterclaims filed July 6, 2006 is hereby entered pursuant to HRCP Rule 58 as follows:

a. As to Defendants, Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David, Counterclaims filed July 6, 2006, Claim A, for Misrepresentation and Fraud; Judgment is entered in favor of Plaintiff/Counterclaim Defendant Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers and against Defendants/Counterclaimants Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David as Defendants/Counterclaimants. The Jury's award to the Defendants in the amount of $200,000 is VACATED.[2]

b. As to the Defendants Counterclaim filed July 6, 2006, Claim B, for Abuse

---

[1] Foreclosure was requested on the basis that Defendants committed waste on the property, failed to keep insurance on the property, conspiracy, trespass to chattels, and for fraud/misrepresentation, not because of default on the promissory note and mortgage. The equities involved with the timely payment, property improvements, balloon payment, and misleading statements by plaintiff, make foreclosure unjust. Foreclosure having been denied the request for a joint and several deficiency judgment was not necessary nor the appointment of a commissioner.

[2] Pursuant to the Jury's verdict on February 21, 2008, the count for fraud and misrepresentation, judgment was entered in favor of the Defendants and against Plaintiff, but this relief was vacated by the Order Granting Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on the issue of Defendants' July 6, 2006 Counterclaim for fraud and Misrepresentation filed October 15, 2008, the Third Amended Final Judgment filed September 12, 2013, and The Fourth Amended Final Judgment Filed June 19, 2015, as a result, the $200,000.00 award to Defendants, Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David was VACATED.

of Process and Malicious Prosecution; Judgment is entered in favor of Plaintiff/Counterclaim Defendant Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers and against Defendants/Counterclaimants Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David.

III. **IT IS FURTHERED ORDERED** that Final Judgment is hereby entered pursuant to HRCP Rule 58 as follows:

a. Pursuant to the *Order Awarding Attorney's Fees and Costs*, filed on March 25, 2008, judgment is entered in the sum of nine hundred and seven dollars and ninety-eight cents ($907.98) for attorney fees and costs in favor of Defendants, Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David and against Plaintiff, Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers.

IV. **IT IS FURTHER ORDERED:** that Final Judgment is hereby entered pursuant to HRCP Rule 58 as follows:

a. Pursuant to *Order Granting Intervenor's Motion To Strike And/Or Dismiss, With Prejudice Counterclaim/Cross Claim Against Intervenor Philip Maise Filed July 25, 2007, Filed On August 24, 2007* Filed October 24, 2007; The Counterclaim/Crossclaim filed by Defendant Jason Hester, Overseer the Office of Office of Overseer, A Corporate

Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers Against Intervenor Philip Maise filed July 25, 2007 is DISMISSED.

V. **IT IS FURTHER ORDERED**: that Final Judgment is hereby entered pursuant to HRCP Rule 58 as follows:

a. Philip Maise's Complaint In Intervention filed October 27, 2005 is DISMISSED.[3]

VI. All other claims, counterclaims, and cross-claims are dismissed.

DATED: Kealakekua, Hawai'i; MAR - 3 2016

/s/ Ronald Ibarra (seal)
The Honorable Ronald Ibarra

[3] Foreclosure having been denied, Intervenor Maise's complaint in intervention, filed October 27, 2005 is moot.

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

CECIL LORAN LEE,

Plaintiff,

vs.

LEONARD GEORGE HOROWITZ, ET AL.,

Defendants.

CIVIL NO. 05-1-196

JURY QUESTION NO. 1

FILED

2008 FEB 21 PM 4:48

CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

JURY QUESTION NO. 1

If someone buys a business that isn't licensed or permitted and the buying party losses money due to the misrepresentation is that legal cause to claim losses as per question #10

Foreperson

Exhibit 7

ORIGINAL

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

CECIL LORAN LEE, Plaintiff, vs. LEONARD GEORGE HOROWITZ, et al., Defendant.	)	CIVIL NO. 05-1-196 SPECIAL VERDICT

FILED
2008 FEB 21 PM 5:58
Lani Ng
CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

SPECIAL VERDICT

SPECIAL VERDICT

The Jury must answer the questions below in accordance with the stated directions. To understand what issues are being submitted to you, you may wish to read over the entire Special Verdict form before proceeding to answer. Answer the questions in numerical order and follow all directions carefully. If you do not understand any question or if wish to communicate with the Court on any other subject, you must do so in writing through the bailiff. At least ten (10) of the twelve (12) jurors must agree on each answer before filling in each blank. However, the same ten (10) jurors need not agree on each answer. After you have answered the required questions, the foreperson shall sign the Special Verdict form and notify the bailiff.

If the Court has not previously ruled,

Question 1. Is Plaintiff Cecil Loran Lee entitled to a foreclosure of the mortgage as prayed for in his complaint?

Answer "Yes" or "No" in the space provided below, then go on to Question 2.

Yes √ No _____

Question 2. Did Defendants commit trespass to chattels against Plaintiff Cecil Loran Lee's personal property?

YES √ **NO**_____

If you answered "Yes", proceed to Question 3. If you answered "No", proceed to Question 4.

Question 3. What amount of damages, if any, do you award Plaintiff?

Special Damages: $ 400

Proceed to Question 4.

Question 4. Was the agreement for closing fraudulently altered?

YES√ **NO**_____

If you answered "Yes" to Question 4, proceed to Question 5. If you answered "No", proceed to Question 9.

Question 5. Answer this question only if you answered "Yes" to Question 4. Identify the party or parties you found fraudulently altered the agreement for closing by marking an "X" next to their name.

Plaintiff Cecil Loran Lee _____

Defendant Leonard George Horowitz √

Defendant Jacqueline Lindenbach Horowitz _____

Defendant The Royal Bloodline of David _____

Proceed to Question 6.

Question 6. This question relates to the forging and/or altering of the Agreement for Closing committed by party or parties you identified in Question 5. If you identified Plaintiff Cecil Loran Lee proceed to subsection (a). If you identified a Defendant proceed to subsection (b).

Question 6 subsection (a)

Was forging and/or altering of the Agreement for Closing by Plaintiff Cecil Loran Lee a legal cause of Defendants' losses?

YES_____ **NO**_____

If you answered "Yes" to Question 6 (a), proceed to Question 8. If you answered "No", proceed to Question 9.

Question 6 subsection (b)

Was forging and/or altering of the Agreement for Closing by the Defendant(s) identified in Question 5 a legal cause of Plaintiff's losses?

YES_____ **NO**✓_____

If you answered "Yes" to Question 6 subsection (b), proceed to Question 7. If you answered "No", proceed to Question 9.

Question 7. Answer this question only if you answered "Yes" to Question 6 subsection (b). What amount of damages, if any, do you award Plaintiff Cecil Loran Lee?

Special Damages: $_____

Punitive Damages: $_____

Proceed to Question No. 9.

Question 8. Answer this question only if you answered "Yes" to Question 6 subsection (a). What amount of damages, if any, do you award Defendants?

Special Damages: $_____

Punitive Damages: $_____

Proceed to Question 9.

Question 9. Did Plaintiff Cecil Loran Lee commit fraud or misrepresentation regarding the sale of the property?

YES✓_____ **NO**_____

If you answered "Yes" to Question 9, proceed to Question 10. If you answered "No", then do not answer any further questions, but please sign and date this document and call the bailiff.

Question 10. Answer this question only if you answered "Yes" to Question 9. Was Plaintiff's fraud or misrepresentation regarding the sale of the property a legal cause of Defendants' losses?

YES ✓ **NO**_____

If you answered "Yes" to Question 10, proceed to Question 11. If you answered "No", then do not answer any further questions, but please sign and date this document and call the bailiff.

Question No.11. Answer this question only if you answered "Yes" to Question No. 10. What amount of damages, if any, do you award Defendants?

Special Damages: $ 200,000.00

Punitive Damages: $ 0

The foreperson shall sign and date this document and summon the bailiff.

DATED: Kealakekua, Hawaii, 2-21-08.

Torey Sparks
FOREPERSON