

**Exhibit 1. Findings of Fact, Conclusions of Law, and Order Denying Decree of Foreclosure Against All Defendants, April 2, 2008, Ruling by JUDGE RONALD IBARRA.**

FILED

cc:  
John Carroll, Esq.  
Dan O'Phelan, Esq.  
Mr. Philip Maise

2008 APR -2 PM 12:03

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAII  
JULIETAOKA, CLERK  
THIRD CIRCUIT COURT  
STATE OF HAWAII

CECIL LORAN LEE	)	CIVIL NO. 05-1-196
	)	(Foreclosure)
Plaintiff and	)	
Counterclaim-	)	FINDINGS OF FACT,
Defendant,	)	CONCLUSIONS OF LAW, AND
	)	ORDER DENYING DECREE OF
vs.	)	FORECLOSURE AGAINST ALL
	)	DEFENDANTS
LEONARD GEORGE HOROWITZ,	)	
JACQUELINE LINDENBACH HOROWITZ	)	<u>Trial Dates:</u>
AND THE ROYAL BLOODLINE OF DAVID,	)	
JOHN DOES 1-10, JANE DOES 1-10, DOE	)	February 12-14, 2008
PARTNERSHIPS 1-10, DOE	)	February 20-21, 2008
CORPORATIONS 1-10, DOE ENTITIES,	)	
DOE GOVERNMENTAL UNITS,	)	
	)	JUDGE RONALD IBARRA
Defendants and	)	
Counterclaimants.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING DECREE OF FORECLOSURE AGAINST ALL DEFENDANTS

This matter in equity having come before the Honorable Ronald Ibarra for bench trial<sup>1</sup> commencing the week of February 12, 2008 pursuant to Plaintiff's Complaint for Foreclosure filed on June 15, 2005 and Defendants' Counterclaims filed July 6, 2006. Dan O'Phelan, Esq. appeared for Plaintiff, John Carroll, Esq. appeared for Defendants, and Philip B. Maise appeared as Intervenor. Present were Plaintiff Cecil Loran Lee, Defendants Leonard George Horowitz and Jacqueline Lindenbach

<sup>1</sup> The issue was submitted to an advisory jury with the other causes of action.

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

*[Signature]*  
Clerk of the Third Circuit Court of Hawaii

Horowitz, individually and as representatives of the Royal Bloodline of David, and Intervenor Philip Maise. No other parties appeared. Having reviewed the evidence at trial, including the Exhibits, the credibility of all witnesses, the arguments of counsel, and records and file of the case,

#### FINDINGS OF FACT

If any of these findings are deemed conclusions of law they shall be construed as such:

1. For value received, Defendant LEONARD GEORGE HOROWITZ as Overseer of ROYAL BLOODLINE OF DAVID, maker, made executed and delivered to CECIL LORAN LEE, two (2) certain Promissory Notes dated January 15, 2004. One Note was for the principal sum of Three Hundred Fifty Thousand Dollars (\$350,000.00) (received into evidence as Plaintiff's Exhibit P-4 at trial), and a second promissory note was for the principal sum of Twenty-Five Thousand Dollars (\$25,000.00)(received into evidence as Plaintiff's Exhibit P-5 at trial).
2. Both Notes were secured by that certain Mortgage (received into evidence as Plaintiff's Exhibit P-3 at trial) dated January 15, 2004, executed by Defendant HOROWITZ individually and as Overseer of ROYAL BLOODLINE OF DAVID, as mortgagor, in favor of CECIL LORAN LEE as mortgagee, and on January 23, 2004, filed in the Office of Registrar of Conveyances, Bureau of Conveyances, State of Hawaii, as Document Number 2004-014441 and noted on Warranty Deed document number 2004-014440. The property, more fully described in Exhibit "A" attached to the mortgage is located at 13-3775 Kalapana Highway, Pahoa, Hawaii 96778, TMK Numbers: (3) 1-3-001:048 and (3) 1-3-001:043.

3. By Assignment of Mortgage dated January 15, 2004 and recorded in the Bureau of Conveyances, State of Hawaii, as Document Number 2004-014441, and noted on Warranty Deed document number 2004-014440 and recorded in the Office of the Registrar on Conveyances, Bureau of Conveyances, State of Hawaii, Plaintiff has become the owner of the Mortgage. Plaintiff is also the owner of the Notes in the amounts of \$350,000.00 and \$25,000.00 upon closing of the sale herein authorized. Defendants have made the monthly payments in the amount of \$2,333.33 per month pursuant to the Notes and Mortgage. Defendants have paid a total of \$165,666.43 in interest and \$25,000.00 good faith release of payment, for a total payment of \$190,666.43. The balloon payment is due January 15, 2009.
4. Two versions of the Escrow Instructions were drafted. One version required the subject property to be insured, the other version did not require the subject property to be insured. The jury found the version not requiring the subject property to be insured to be fraudulent. As a result, the version requiring the subject property to be insured was found by the jury to be the true version of the Escrow Instructions.
5. At the time of purchase Plaintiff represented to Defendants that the property could be used as a bed and breakfast. This later turned out to be untrue.
6. Defendants engage in commercial use of the property for their ministerial purposes and as a consequence, their insurance on the property was terminated. Defendants were advised by Bank of Hawaii Insurance on March 31, 2004 that the dwelling fire policy would be cancelled on April 23, 2004

(received into evidence as Plaintiff's Exhibit P-7). A Notice of Policy Termination or Cancellation was sent to Defendants from Island Insurance Companies on March 19, 2004 (received into evidence as Plaintiff's Exhibit P-9). Defendants failed to obtain insurance or maintain insurance on the property since the date of April 23, 2004 and during trial provided no proof that the property was insured.

7. Defendants cannot obtain insurance on the property because it is located in a lava zone.
8. Defendants constructed a pool and other structures on the property and modified the existing structures. Defendants failed to obtain Plaintiff's written consent for the new construction and modification of the existing structure in violation of the terms and conditions of the mortgage.
9. Defendants' modifications improved the subject property by painting, landscaping, and updates to the structure.

#### CONCLUSIONS OF LAW

If any of these conclusions of law are deemed findings of fact they shall be construed as such:

1. This Court has jurisdiction over the parties and the subject matter of this case, including the mortgaged property, and venue is proper in this circuit.
2. Plaintiff's Mortgage and Notes, dated January 15, 2004, executed by Defendants Horowitz and Royal Bloodline of David, as mortgagor and filed in the office of the Registrar of Conveyances, Bureau of Conveyances, State of Hawaii as document number(s) 2004-014440 and 2004-014441 is a valid first lien upon the property located at 13-3775 Kalapana Highway, Pahoa, Hawaii 96778 is a

superior interest prior to the interest of all other parties in the mortgaged property and subordinate only to a lien for unpaid taxes.

3. Foreclosure is an equitable proceeding; therefore the principals of equity apply. Beneficial Hawaii, Inc. v. Kida, 96 Haw. 289, 312 30 P.3d 895, 918 (Haw. 2001).
4. Equity jurisprudence is not bound by strict rules of law, and a court of equity can mold its decree to do justice. Id.

5. Equity abhors forfeiture. Converse v. James, 89 Haw. 461, 473, 974 P.2d 1051, 1063 (Haw. App. 1997). Another maxim of equity is that "he who comes into equity must come with clean hands." 7's Enterprises Inc. v. Del Rosario, 111 Haw. 484, 489, 143 P.3d 23, 28 (Haw. 2006).

6. Although Defendants violated the terms and conditions of the mortgage by failing to maintain property insurance, and making improvements/modifications to the property without prior consent of Plaintiff; there is enough equity on behalf of Defendants to find foreclosure in this instant unjust.

7. Considering the equities involved with the timely payment, property improvements, balloon payment near due, and misleading statements by Plaintiff, foreclosure in this instant case would be unjust.

IT IS HEREBY ORDERED, Plaintiff's Decree of Foreclosure Against All Defendants is DENIED.

IT IS FURTHER ORDERED that the appropriate equitable remedy in this matter is that Defendants Leonard George Horowitz and Jacqueline Lindenbach Horowitz, individually and as representatives of the Royal Bloodline of David shall obtain insurance within thirty (30) days of this Order. In the event Defendants do not obtain insurance,

Fraudulent Finding of "FACT" indicting HOROWITZ and Judge Glenn S. Hara, as they co-constructed Agreement superseding Mortgage.

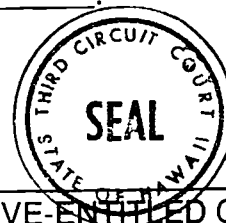
Plaintiff shall obtain a rate quote on insurance and provide Defendants with the company's name and Defendants shall pay for the insurance within thirty (30) days.

IT IS FURTHER ORDERED that further appropriate equitable remedy is that the balloon payment be accelerated to September 1, 2008 in the event that insurance is available for purchase and Defendants do not purchase said insurance.

DATED: Kealahou, Hawaii

*4/1/08*

*[Handwritten Signature]*



JUDGE OF THE ABOVE-ENTITLED COURT