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JAMES B. NICHOLSON

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

JAMES B. NICHOLSON,
SUCCESSOR TRUSTEE,

Plaintiff,

v.

BOBBY N. HARMON,

Defendant.

CIVIL NO. CV05-00030 DAE/KSC

OPPOSITION MEMORANDUM BY
PLAINTIFF-SUCCESSOR TRUSTEE
JAMES B. NICHOLSON TO DEFENDANT
BOBBY N. HARMON'S: (1) MOTION TO
ABATE ORDER GRANTING PLAINTIFF'S
MOTION FOR CONTEMPT AGAINST
DEFENDANT BOBBY N. HARMON OF
FINAL JUDGMENT FILED AUGUST 22,
2006, FILED FEBRUARY 8, 2007; (2)
MOTION FOR ORDER THAT THE
ORIGINAL SETTLEMENT AGREEMENT
AND THE ARBITRATION AWARD
AGAINST BOBBY N. HARMON FILED
AUGUST 18, 2006, BE DECLARED VOID,
FILED FEBRUARY 8, 2007; AND

[CONTINUED ON NEXT PAGE]

(3) MOTION FOR DAMAGES, FILED
FEBRUARY 8, 2007; CERTIFICATE OF
SERVICE

[NON-HEARING MOTION]

JUDGE: Hon. David A. Ezra

OPPOSITION MEMORANDUM BY PLAINTIFF-SUCCESSOR TRUSTEE
JAMES B. NICHOLSON TO DEFENDANT BOBBY N. HARMON'S:
(1) MOTION TO ABATE ORDER GRANTING PLAINTIFF'S
MOTION FOR CONTEMPT AGAINST DEFENDANT BOBBY N.
HARMON OF FINAL JUDGMENT FILED AUGUST 22, 2006, FILED
FEBRUARY 8, 2007; (2) MOTION FOR ORDER THAT THE ORIGINAL
SETTLEMENT AGREEMENT AND THE ARBITRATION AWARD
AGAINST BOBBY N. HARMON FILED AUGUST 18, 2006, BE
DECLARED VOID, FILED FEBRUARY 8, 2007; AND (3) MOTION FOR
DAMAGES, FILES FEBRUARY 8, 2007

**I. ALL THREE MOTIONS ARE ESSENTIALLY MOTIONS FOR
RECONSIDERATION**

All three motions filed by Defendant Bobby N. Harmon ("Defendant")
request the Court to change the decision entered in the Order Granting Plaintiff's
Motion for Contempt Against Defendant Bobby N. Harmon of Final Judgment
Filed August 22, 2006 and Court's Order Granting Plaintiff's Motion for Entry of
Judgment on the Arbitration Award Against Bobby N. Harmon Filed August 18,
2006, filed January 26, 2007 ("Order").

Defendant's Motion for Abatement tells the Court that its Order "should not
be allowed to stand." [Defendant's Mtn at page 10].

Defendant's Motion to Declare Original Settlement and Arbitration Award as Void seems to request that the Court set aside its prior orders confirming the Arbitration Award, award of damages and entry of judgment against Defendant. [Defendant's Mtn at pages 10 - 11].

Finally, Defendant's Motion for Damages asks the Court for an award of damages related to the time and expense incurred by Defendant in defense of this action and in the arbitration. [Defendant's Mtn at page 11]. In summary, by his motion, the Defendant is requesting that the Court to set aside every order it has entered in this case.

Under Local Rule 60.1, motions for reconsideration may be brought only upon the following grounds: (a) discovery of new material facts not previously available; (b) intervening change in the law; or (c) manifest error of law or fact. Local Rule 60.1; see also Leong v. Hilton Hotels Corp., 689 F. Supp. 1572, 1573 (D. Hawaii 1988) ("a party must show that there has been intervening development in the law, some new evidence not previously available, or that the prior order is in clear error or would operate to create a manifest injustice"); Hawaii Tours v. Polynesian Cultural Center, 116 F.R.D. 645, 649 (D. Hawaii 1987); Great Hawaiian Financial Corp. v. Aiu, 116 F.R.D. 612, 616 (D. Hawaii 1987), rev'd on other grounds, 863 F.2d 617 (9th Cir. 1988). Moreover, a motion for

reconsideration is not permitted (a) to assert new legal theories that could just as well have been raised before the initial hearing; (b) to present new facts which could have been presented before the initial hearing; or (c) to rehash the same arguments made the first time or simply express an opinion that the court was wrong. MGIC Indemnity Corp. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986). The motion for reconsideration "must demonstrate some reason why the court should reconsider its prior decision," and it "must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." Stein v. State Farm Mut. Auto. Ins. Co., 934 F. Supp. 1171, 1173 (D. Hawaii 1996). A motion for reconsideration is within the discretion of the district court and will not be reversed absent an abuse of discretion. Plotkin v. Pacific Telephone & Telegraph Co., 688 F.2d 1291 ,1292 (9th Cir. 1982).

There is no argument or claim in any of Defendant's motions that he has discovered new material facts that were not previously available or that there was an intervening change in the law. At best, Defendant's arguments in all three motions seem focused on whether there was a "manifest error of law or fact."

As is evident from all three motions, Defendant has failed to set forth "facts or law to explain how the confirmation of the Arbitration Award, the assessment of damages based on the Arbitration Award, the entry of judgment and the recent order of contempt were manifestly unjust and against the law. The motions instead

repeat arguments and conclusions previously asserted by Defendant and rejected by the Court. Given the absence of any factual or legal basis of a “strongly convincing nature” that proves the Court erred in any of its prior orders, the Court should deny all three motions.

II. ALL THE ANSWERS FILED BY DEFEDANT CONTAIN ARGUMENTS THAT WERE PREVIOUSLY ASSERTED BY DEFENDANT AND ADDRESSED BY THE COURT

As for Defendant’s arguments concerning the purported submittal of a December 2, 2006 Answer [Defendant’s Exh. “D”] to the Trustees ‘s Motion for Contempt, it is quite apparent from Defendant’s arguments that the December 2 Answer contained nothing new and in fact repeated the same arguments and points that had been raised in Defendant’s previous filings in this action.

<u>DECEMBER 2, 2006 ANSWER</u>	<u>PRIOR DOCUMENTS WHERE SAME ARGUMENTS ASSERTED</u>
The sites identified in Court’s order do not violate Settlement Agreement [page 3].	4/27/2006 – Defendant’s ANSWER to Plaintiff-Successor Trustee’s Motion Entry of Judgment on the Arbitration Award Against Bobby N. Harmon at page 8.
Information contained in this sites are public information [page 4]	4/27/2006 – Defendant’s ANSWER at pages 8, 9.
Letters identified are reports of fraudulent activities and related to public interest [page 4].	4/27/2006 – Defendant’s ANSWER at page 8; 7/28/2006 – Defendant’s OBJECTION to the Court's Action to Decide Motion for Summary Judgment on the Arbitration Award Against Defendant Without a Hearing; Motion for Order to Declare Settlement Void; Motion to Deny Plaintiffs Motion for Summary Judgment; Motion to Award Costs and Damages to Defendant at page 5.
Trustee and counsel do not represent parties to settlement and have no legal standing [page 4].	4/27/2006 – Defendant’s ANSWER at page 12.

Settlement Agreement secured by fraud [page 4].	4/27/2006 – Defendant’s ANSWER at page 2; 7/28/2006 – Defendant’s OBJECTION at page 2.
Sites related to insurance claims [page 4].	4/27/2006 – Defendant’s ANSWER at page 9.
Arbitration Award obtained through fraud and collusion [page 5].	4/27/2006 – Defendant’s ANSWER at pages 2-4.

In fact, Defendant’s ANSWER filed on April 27, 2006 and his OBJECTION filed on July 28, 2006, contained the following arguments which the purported December 2, 2006 Answer did not even address:

<u>DEFENDANT’S ARGUMENT</u>	<u>APPEARING AT</u>
Obstruction of justice	4/27/2006 – Defendant’s ANSWER to Plaintiff-Successor Trustee’s Motion Entry of Judgment on the Arbitration Award Against Bobby N. Harmon at pages 4, 15. 7/28/2006 – Defendant’s OBJECTION to the Court’s Action to Decide Motion for Summary Judgment on the Arbitration Award Against Defendant Without a Hearing; Motion for Order to Declare Settlement Void; Motion to Deny Plaintiffs Motion for Summary Judgment; Motion to Award Costs and Damages to Defendant at page 3.
Undisclosed conflicts of interest and conspiracy to cover-up the conflicts of interest	4/27/2006 – Defendant’s ANSWER at pages 4, 5, 14.
Frivolous lawsuit brought for wrongful purposes	7/28/2006 – Defendant’s OBJECTION at page 2.

The other arguments asserted by Defendant in his purported December 2 Answer were repeated in Defendant’s January 17, 2007 Answer to the Supplemental Concise Statement of Facts, and were addressed and rejected by the Court in its Order. These arguments and points were repeated in both documents.


Due consideration was provided by the Court to the arguments, points, and conclusions asserted by Defendant.

<u>DECEMBER 2, 2006 ANSWER</u>	<u>JANUARY 17, 2007 ANSWER</u>
Alleged "good faith" effort to comply [page 2].	January 17, 2007 Answer [Page 2-3].
Plaintiff failed to identify the sites to be removed or what constitutes a "protected subject matter" [page 3].	January 17, 2007 Answer [Page 3].
Information in sites protected under First Amendment [page 4].	January 17, 2007 Answer [Page 3].
Arbitration Award obtained by fraud, collusion and misrepresentation [page 5].	January 17, 2007 Answer [Page 3].
Trustee's lawsuit a violation of Anti-SLAPP Statute [page 5].	January 17, 2007 Answer [Page 3].
Trustee's counsel claim that sites moved to password protected site [pages 5-7].	January 17, 2007 Answer [Page 2].
Trustee identified wrong web host [pages 7-9].	January 17, 2007 Answer [Page 5].

III. CONCLUSION

For the reasons outlined above, the Plaintiff-Successor Trustee requests that the Court deny: (a) Defendant's Motion for Abatement; (b) Defendant's Motion to Declare Original Settlement and Arbitration Award as Void; and (c) Defendant's Motion for Damages.

DATED: Honolulu, Hawaii, February 16, 2007.



 STEVEN GUTTMAN
 Attorney for Plaintiff-Successor Trustee,
 James B. Nicholson

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