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1985 JUN 20 AM 10:15  
STATE OF HAWAII  
FILED

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S. IKEDA  
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

GECC FINANCIAL CORPORATION,	)	CIVIL NO. 80828
	)	
Plaintiff,	)	MOTION FOR RELIEF FROM
	)	JUDGMENT OR ORDER;
vs.	)	
	)	MEMORANDUM IN SUPPORT OF
RICHARD JOHN BLANGIARDI, et al.,	)	MOTION FOR RELIEF FROM
	)	JUDGMENT OR ORDER;
Defendants.	)	
	)	AFFIDAVIT OF RICHARD JOHN
	)	BLANGIARDI;
	)	
	)	EXHIBIT "A";
	)	
	)	NOTICE OF HEARING ON MOTION
	)	FOR RELIEF FROM JUDGMENT OR
	)	ORDER AND CERTIFICATE OF
	)	SERVICE
	)	
	)	DATE: 7/25/85
	)	
	)	TIME: 8:30 AM
	)	
	)	JUDGE: PHILIP T. CHUM

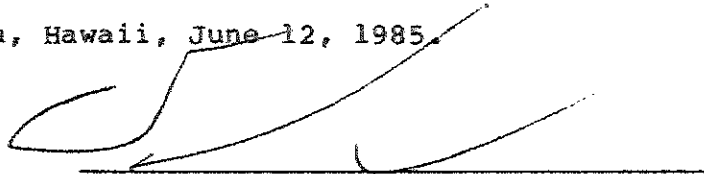
MOTION FOR RELIEF FROM JUDGMENT OR ORDER

PAID  
\$15.00  
L. W. W. W.

Defendant RICHARD JOHN BLANGIARDI by and through his undersigned counsel, hereby moves this Court, pursuant to Rule 60(b) of the Hawaii Rules of Civil Procedure, for an order relieving him from the Deficiency Judgment filed on November 21, 1984 pursuant to the Motion for Confirmation of Sale filed August 2, 1984 and heard on August 23, 1984 by the Honorable Phillip T. Chun.

This Motion is supported by the attached memorandum, affidavit and exhibit and such further argument as may be given at the hearing on the Motion.

DATED: Honolulu, Hawaii, June 12, 1985.

A handwritten signature in black ink, appearing to be "David L. Turk", written over a horizontal line.

DAVID L. TURK  
BRENTON ROGOZEN

Attorneys for Defendant  
RICHARD JOHN BLANGIARDI

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

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GECC FINANCIAL CORPORATION,	)	CIVIL NO. 80828
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Plaintiff,	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR RELIEF FROM
vs.	)	JUDGMENT OR ORDER
	)	
RICHARD JOHN BLANGIARDI, et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM IN SUPPORT OF MOTION FOR  
RELIEF FROM JUDGMENT OR ORDER

I. INTRODUCTION

Plaintiff GECC FINANCIAL CORPORATION (hereinafter, "GECC") filed its Complaint against Defendant RICHARD JOHN BLANGIARDI (hereinafter, "BLANGIARDI") on December 21, 1983. A default was entered by the Clerk on February 14, 1984. Plaintiff moved for summary judgment on February 14, 1984, and an Order granting summary judgment was filed on May 18, 1984. After a commissioner's sale, confirmed on September 20, 1984, a Deficiency Judgment was filed on November 21, 1984, a copy of which is attached as Exhibit "A". Defendant BLANGIARDI is, at this time, seeking relief from the deficiency judgment on the grounds of fraud, misrepresentation, or other misconduct as provided in Rule 60(b)(3), H.R.C.P.

II. FACTS

As set forth in the attached Affidavit of RICHARD JOHN BLANGIARDI, the relevant facts are as follows. In early 1982, Sam Daily of Sam Daily Realty approached Defendant BLANGIARDI with a proposal by which Defendant BLANGIARDI would be paid \$1,500.00 to act as a "strawman" in a proposed sale of unit No. 101 at the Mokuleia Surf Condominium. Under the agreement between Defendant BLANGIARDI and Sam Daily, the property would be immediately resold and Defendant would have no further involvement. Essentially, it was solely for the use of his name that Defendant would receive the \$1,500.00

Defendant BLANGIARDI submitted incomplete loan applications and financial statement forms provided by Sam Daily, which were submitted by Mr. Daily to Plaintiff GECC. Defendant also signed a blank DROA form which was also submitted to GECC, which nevertheless approved the loan. Subsequent to the filing of the deficiency judgment, GECC's Vice-President, Mr. Robert Tassie, discussed this matter with Defendant. At this time Defendant inspected the GECC file and noticed that information had been added to the loan application and DROA which he had not authorized, based upon information which he had not supplied. See Defendant BLANGIARDI's Affidavit attached hereto. Thus, the loan forms and financial statements were altered by GECC or with GECC's knowledge and, moreover, BLANGIARDI's signature was forged on the completed DROA. The money, however, never went to BLANGIARDI; in fact, after BLANGIARDI received the \$1,500.00 fee

he was under the impression that he was no longer involved in the project. BLANGIARDI conveyed title to FAF Mokuleia and had no idea his name was still on the GECC note. Plaintiff, however, knew all along that BLANGIARDI was a mere straw buyer, and that the loan was approved through its own fraud and misrepresentation.

Subsequent to the filing of the instant case, Defendant BLANGIARDI inspected his GECC file and noticed that information was included on his loan applications which he, BLANGIARDI, had not supplied thus confirming his suspicion that the forms had been altered. In addition, one of Plaintiff GECC's employees, Gordon Nyuha, had a conversation with BLANGIARDI in which it was agreed that BLANGIARDI would not contest this foreclosure action. BLANGIARDI was told that the market value of the condominium was greater than the loan balance, so that should there be a deficiency judgment, it would be small, if anything at all. At the commissioner's sale, Plaintiff GECC was the only bidder and bid only \$32,000.00. The Commissioner's report filed on August 2, 1984 indicates that the property originally sold for \$65,000.00 and \$43,363.84 was still owed. Nevertheless, the Court accepted the bid and the property was foreclosed. Thus, BLANGIARDI was lulled by Plaintiff into not contesting this action by statements from Plaintiff's employees, which Plaintiff knew, or should have known, were false or misleading.

III. ARGUMENT

Generally, relief granted under Rule 60(b) has been confined to those cases where, like the case at bar, either a default judgment, or a dismissal, has been entered, "reflecting a historical preference for cases to be decided in a trial on their substantive merits", Isemoto Contracting Co., Ltd. v. Andrade, 1 Haw. App. 202, 205 (1980).

Where a party has been prevented from presenting the merits of his case by the conduct of the opposing party, relief under Rule 60(b) is appropriate. Ervin v. Wilkinson, 701 F.2d 59 (7th Cir. 1983); Clarke v. Burkle, 570 F.2d 824 (8th Cir. 1978); Patapoff v. Volkstedt's, Inc., 267 F.2d 863 (9th Cir. 1959). In order to do substantial justice, Rule 60(b) motions must be liberally construed. United States v. Gould, 301 F.2d 353 (5th Cir. 1962).

In making its determination, the Court should assume that the factual allegations set forth by the movant are true, as it would on a motion to dismiss. McKinney v. Boyle, 404 F.2d 632 (9th Cir. 1968), cert. denied, 394 U.S. 992, 89 S.Ct. 1481, 22 L.Ed.2d 1481 (1969). The Court must then analyze a two-prong test. If the facts set forth indicate that the defendants would have had a meritorious defense had there been no default, and if the facts also indicate that the plaintiff's misconduct induced the default, then an order under Rule 60(b)(3) is warranted. Compton v. Alton Steamship Co., 608 F.2d 96 (4th Cir. 1979).

In the case at bar, BLANGIARDI had a meritorious defense to this action. The basis for Plaintiff's claims for relief was a promissory note signed by BLANGIARDI on June 22, 1982, which was attached to the Complaint as Exhibit "A". As evidenced by the Affidavit of Richard John Blangiardi attached hereto, the promissory note was obtained in order to consummate a real estate contract. Yet, Defendant's signature was forged on the DROA, and Plaintiff knew, or should have known, of this fact. Moreover, information on the loan application and financial statements submitted by BLANGIARDI was altered, without BLANGIARDI's knowledge, after they were submitted to GECC. Plaintiff knew, or should have known, that the alterations had been made.

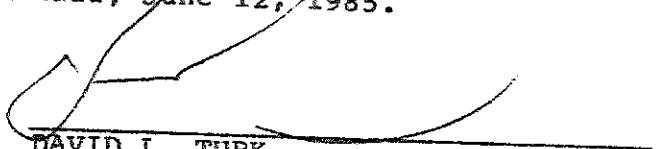
These facts indicate that there was, in fact, no valid contract between GECC and BLANGIARDI. Defendant, therefore, can show that he has met the first prong of the two-prong test.

The facts also indicate that BLANGIARDI was led to believe, by statements made by Plaintiff's employees, that there would not be a deficiency because the value of the condominium exceeded the remaining balance on the note. Yet, Plaintiff was the only bidder at the public auction, and bid an amount covering less than half the value of the unit. Plaintiff had no interest in submitting a realistic bid because the money just went to pay itself.

These facts indicate that Plaintiff's misconduct induced the default. Defendant, therefore, can show that he has met the second prong of the two-prong test. Accordingly, the instant motion should be granted.

The instant motion should not be considered as burdensome to Plaintiff. After all, Plaintiff did not obtain its judgment after a trial, or even after having engaged in any discovery. Plaintiff has not yet been required to prove its case. BLANGIARDI is merely requesting, at this time, for permission to have his case decided on the merits given the fraudulent method by which Plaintiff obtained its initial judgment.

DATED: Honolulu, Hawaii, June 12, 1985.



DAVID L. TURK  
BRENTON ROGOZEN

Attorneys for Defendant  
RICHARD JOHN BLANGIARDI