

Western Fin. Bank, F.S.B. v. Raras

Intermediate Court of Appeals of Hawai'i

June 12, 2008, Decided

NO. 27453

Reporter

2008 Haw. App. LEXIS 313 *

WESTERN FINANCIAL BANK, F.S.B., a United States corporation, Plaintiff-Appellee, v. ADOLFO DIZA RARAS, Defendant-Appellant, and JOSEPHINE AGUILAR RARAS; INDYMAC BANK, F.S.B.; Defendants-Appellees, and JOHN and MARY DOES 1-20, DOE PARTNERSHIPS, CORPORATIONS or OTHER ENTITIES 1-20, Defendants and INDYMAC BANK, F.S.B., Plaintiff-Appellee, v. ADOLFO DIZA RARAS, Defendant-Appellant, and JOSEPHINE AGUILAR RARAS, WESTERN FINANCIAL BANK, F.S.B., a United States corporation, Defendants-Appellees, and JOHN and MARY DOES 1-20, DOE PARTNERSHIPS, CORPORATIONS or OTHER ENTITIES 1-20, Defendants

Notice: SUMMARY DISPOSITIONAL ORDERS OF THIS COURT DO NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED. SEE HAWAII RULES OF APPELLATE PROCEDURE FOR GUIDELINES RESTRICTING PUBLICATION AND CITATION OF SUMMARY DISPOSITIONAL ORDERS.

Subsequent History: Reported at

Western Fin. Bank, F.S.B. v. Raras, 117 Haw. 525, 184 P.3d 840, 2008 Haw. App. LEXIS 437 (Haw. Ct. App., June 12, 2008)

Prior History: [*1] APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT. Civ. No. 99-0-3656, Civ. No. 00-1-0369.

Core Terms

circuit court, costs, Mortgage, Confirming, attorneys', fees and costs

Case Summary

Procedural Posture

In two actions, appellant mortgagor sought review of a judgment on an order of the Circuit Court of the First Circuit (Hawai'i), granting appellee assignee's motion for an order confirming a foreclosure sale; allowing costs, commissions, and fees; directing conveyance; and for a judgment for deficiency.

Overview

The mortgagor argued that the assignee lacked standing, the order for confirmation of sale was improperly reassigned to another judge, and the

attorneys' fees and costs were improper. The court found that the transactions pursuant to which the mortgages at issue were transferred to the assignee were properly recorded and were established by copies of the assignment documents and a certified copy of the Land Court Certificate of Title. The mortgagor failed to cite any authority for his claim that a substitute circuit court judge lacked authority to hear and decide motions that had been assigned to another circuit court judge. However, the circuit court did abuse its discretion in awarding the assignee's request for attorneys' fees and costs. It was an abuse of discretion to award such fees for work performed prior to the mortgages being transferred to the assignees. In addition, in one of the cases the assignee's fees were not taxable to the mortgagor because the assignee was a defendant and was not granted any relief or damages. Finally, the circuit court abused its discretion by awarding costs because the assignee failed to state the statutory basis for recovering costs.

Outcome

The court issued an order that the circuit court's judgment on order was affirmed in part, vacated in part, and remanded for further proceedings.

LexisNexis® Headnotes

Civil
 Procedure > ... > Justiciability > Standing
 > Personal Stake

HN1 Absent a demonstration that a plaintiff has such a sufficient personal stake in the dispute, a court lacks jurisdiction and cannot exercise its remedial powers to resolve a matter.

Real Property Law > Priorities &
 Recording > Title Registration

HN2 See Haw. Rev. Stat. § 501-88 (1993).

Civil Procedure > ... > Costs & Attorney
 Fees > Costs > General Overview

HN3 Haw. Rev. Stat. § 607-9 (1993) allows recovery of all actual disbursements.

Counsel: On the briefs:

Gary V. Dubin, for Defendant-Appellant.

Steven T. Iwamura and Robert M. Ehrhorn, Jr., (Clay Chapman Crumpton Iwamura & Pulice), for Plaintiff-Appellee.

Judges: By: Recktenwald, C.J.,
 Watanabe and Fujise, JJ.

Opinion

SUMMARY DISPOSITION ORDER

This is an appeal of consolidated cases, Civil Nos. 99-0-3656 and 00-1-0369. In Civil No. 99-0-3656, Plaintiff-Appellee Western Financial's (Western Financial) complaint sought to foreclose on a Second Mortgage and was filed on September 29, 1999 against Defendant-Appellant Adolfo Diza Raras (Raras),

Josephine Aguilar Raras, and The Bank of New York Trustee Under the Pooling and Servicing Agreement Series 1998-A (BNY).¹ Defendant-Appellee/Plaintiff-Appellee IndyMac Bank, F.S.B. (IndyMac) was substituted for BNY on September 20, 2004.

In Civil No. 00-1-0369, Independent [*2] National Mortgage Corporation's (INMC) complaint sought to foreclose on a First Mortgage on the same property and was filed on February 2, 2000. On September 20, 2004, the Circuit Court of the First Circuit (circuit court) approved the substitution of IndyMac in place of INMC.

Raras challenges the Order Granting Indymac Bank F.S.B.'s Motion for Order Confirming Foreclosure Sale, Allowance of Costs, Commissions and Fees, Directing Conveyance and for Judgment for Deficiency, filed on July 25, 2005 (Confirmation Order), and appeals from the July 25, 2005 Judgment on Order Granting Indymac Bank F.S.B.'s Motion for Order Confirming Foreclosure Sale, Allowance of Costs, Commissions and Fees, Directing Conveyance and for Judgment for Deficiency, filed on June 3, 2005 (Judgment), in the circuit court² in Civil No. 99-0-3656.³

¹ Although the complaint named The Bank of New York Trustee Under the Pooling and Servicing Agreement Series 1997-A, by order entered August 10, 2004, the Circuit Court of the First Circuit corrected the caption to read "The Bank of New York Trustee Under the Pooling and Servicing Agreement Series 1998-A."

² The Honorable Karen N. Blondin presided.

³ Although the Confirmation Order specifically addressed both the Second Mortgage, which was the subject of the suit in Civil

On appeal, Raras contends that (1) it was reversible error for the [*3] lower court to have granted summary judgment and a decree of foreclosure in favor of IndyMac, properly and timely appealed in Appellate Case No. 27097, thus requiring reversal of the confirmation order and judgment as well, while there remained a genuine issue of material fact concerning whether IndyMac had standing to foreclose in the first place; (2) it was reversible error and in direct violation of the Hawai'i Supreme Court's judicial reassignment order for IndyMac's confirmation of sale motion to have been calendared by IndyMac before the Honorable Karen N. Blondin, and heard and decided other than by the Honorable Karen S.S. Ahn to whom the case had been reassigned at the time; and (3) IndyMac's confirmation of sale fee and cost request, approved by the lower court, was mostly improper in form and not chargeable to Raras.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Raras's points of error as follows:

1. Raras cites six instances where he raised the issue of IndyMac's standing in Civ. No. 99-0-3656. However, each instance cited was either to [*4] an objection made before IndyMac was a

No. 99-0-3656 and the First Mortgage, which was the subject of the lawsuit in Civil No. 00-1-0369, it was filed only in Civil No. 99-0-3656.

party; to a document filed by IndyMac, not Raras; to a document that did not contain an objection to standing; or was made after assignment of the mortgage to IndyMac had already been recorded.

In any event, **HN1** absent a demonstration that a plaintiff has such a sufficient personal stake in the dispute, a court lacks jurisdiction and cannot exercise its remedial powers to resolve the matter. *In re Application of Matson Navigation Co. v. Fed. Deposit Ins. Corp.*, 81 Hawai'i 270, 275, 916 P.2d 680, 685 (1996). However, contrary to Raras's arguments, the record supports the circuit court's finding that "IndyMac is now the owner of said note [Document Number 2414403]." By the time IndyMac was substituted for BNY, the note and First Mortgage originally given to Western Financial Bank by Raras on October 29, 1997 had been assigned by Western Financial Bank to BNY on November 26, 1997, assigned by BNY to IndyMac on July 20, 2004, and recorded with the Assistant Registrar of the Land Court of this state. These transactions were established not only by copies of the assignment documents filed with the Land Court, but by a certified copy of the Land Court Certificate [*5] of Title that shows the assignment of the mortgage to BNY, the conveyance disputed by Raras. This is conclusive evidence of this assignment. *Hawaii Revised Statutes (HRS) § 501-88* (1993).⁴ Based on this record, we

find no error in the circuit court's determination that IndyMac held the mortgage at issue here.

2. With respect to Raras's second point of error on appeal, Raras has failed to cite any authority for his argument that a substitute circuit court judge or another circuit court judge lacks authority to hear and decide motions that have been assigned to a specific circuit court judge in the same judicial circuit.

3. With respect to Raras's third point of error, we agree that the circuit court abused its discretion in awarding IndyMac's request for attorneys' fees and costs.

IndyMac requested \$ 19,221.25 [*6] for attorneys' fees incurred, \$ 1,350.00 for expected attorneys' fees to be incurred, and \$ 1,980.50 for costs incurred. The circuit court awarded IndyMac \$ 18,438.86 for attorneys' fees and \$ 1,980.50 for costs.

First, it was an abuse of discretion to award IndyMac attorneys' fees for work performed prior to July 20, 2004. IndyMac was assigned the First Note and First Mortgage on July 20, 2004. Yet, IndyMac requested attorneys' fees beginning on April 1, 2004, almost four months prior to IndyMac obtaining an

HN2 Certificate as evidence. The original certificate in the registration book, and any copy thereof duly certified under the signature of the registrar or assistant registrar, and the seal of the court, shall be received as evidence in all courts of the State and shall be conclusive as to all matters contained therein, except as otherwise provided in this chapter.

⁴ *HRS § 501-88* provides,

interest in the First Note and First Mortgage. Raras is not responsible for attorneys' fees incurred by IndyMac to acquire the First Note and First Mortgage.

Second, the circuit court abused its discretion to the extent that it awarded fees and costs to IndyMac for items related to Civil No. 99-0-3656. IndyMac was the substituted plaintiff and prevailed in Civil No. 00-1-0369. However, in Civil No. 99-0-3656, IndyMac was a defendant who did not institute the action and was not granted any relief or damages. Therefore, IndyMac's fees and costs associated with Civ. No. 99-0-3656 are not taxable to Raras. IndyMac's request did not itemize the fees and costs incurred for each case.

Lastly, [*7] the circuit court abused its discretion in awarding costs to IndyMac. IndyMac's request for fees and costs did not state the statutory basis for recovering costs. However, HN3 HRS § 607-9 (1993) allows recovery of "all actual disbursements." IndyMac included only a summary of its costs, without providing specific information such as the dates when the costs were incurred, specific amounts, the parties that sent or received facsimiles, the parties that incurred long distance charges, and the reason for incurring postage and copy costs. Without this documentation, there was insufficient proof that IndyMac's costs were actually incurred. Further, the circuit court erred by awarding computer-assisted legal

research costs of \$ 24.68 which are not recoverable. Bjornen v. State Farm Fire & Cas. Co., 81 Hawai'i 105, 107, 912 P.2d 602, 604 (App. 1996).

Upon remand to the circuit court, IndyMac may submit an amended request for attorneys' fees and costs incurred on or after July 20, 2004 that provides dates and an explanation of the fees and costs incurred with adequate proof, which excludes computer legal research and fees and costs incurred in Civil No. 99-0-3656. Indymac should provide "specific [*8] descriptions, identifying the particular issues researched or worked on," including "sufficiently documented hours devoted to the various tasks," so that "a reasonably accurate determination can be made regarding allowable fees." Hawaii Ventures, LLC v. Otaka, Inc., 116 Hawai'i 465, 478-79, 173 P.3d 1122, 1135-36 (2007). If the circuit court awards fees and/or costs that are different from IndyMac's requested fees and costs, it shall provide an explanation if the reason is not obvious from the record. Finley v. Home Ins. Co., 90 Hawai'i 25, 39, 975 P.2d 1145, 1159 (1998).

THEREFORE,

IT IS HEREBY ORDERED that the July 25, 2005 Judgment on Order Granting Indymac Bank F.S.B.'s Motion for Order Confirming Foreclosure Sale, Allowance of Costs, Commissions and Fees, Directing Conveyance and for Judgment for Deficiency, filed on June 3, 2005,

entered by the Circuit Court of the First Circuit is affirmed in part, vacated in part, and remanded for further proceedings.

DATED: Honolulu, Hawai'i, June 12, 2008.

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