

**Electronically Filed
Intermediate Court of Appeals
CAAP-17-0000712
19-MAR-2018
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NO. CAAP-17-0000712

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

BANK OF HAWAII, Plaintiff-Appellee,
v.
KEITH KIMI and JEANNE KIMI, Defendants-Appellants
and
JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50;
DOE CORPORATIONS 1-50; DOE ENTITIES 1-50 and
DOE GOVERNMENTAL UNITS 1-50, Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 12-1-578K)

ORDER DENYING FEBRUARY 6, 2018 MOTION TO DISMISS APPEAL AS MOOT
(By: Fujise, Acting Chief Judge, Reifurth and Ginoza, JJ.)

Upon review of (1) Plaintiff-Appellee Bank of Hawaii's (Bank of Hawaii) February 6, 2018, motion to dismiss appellate court case number CAAP-17-0000712 as moot, (2) Defendants-Appellants Keith Kimi and Jeanne Kimi's (the Kimis) February 12, 2018, memorandum in opposition to Bank of Hawaii's motion to dismiss, and (3) the record, it appears that under Hawaii Revised Statutes (HRS) § 641-1(a) (2016) we have appellate jurisdiction over the Kimis' appeal from the Honorable Melvin Fujino's September 14, 2017, post-judgment order denying the Kimis' motion for post-judgment relief under Rule 60(b) of the Hawai'i Rules of Civil Procedure (HRCP) from the circuit court's prior August 11, 2014, judgment on the decree of foreclosure and February 24,

2015, HRCP Rule 54(b)-certified judgment on the order confirming the sale of the foreclosed property. See, e.g., Ditto v. McCurdy, 103 Hawai'i 153, 160, 80 P.3d 974, 981 (2003) ("An order denying a motion for post-judgment relief under HRCP [Rule] 60(b) is an appealable final order under HRS § 641-1(a).") (Citation omitted)).

An issue apparently exists whether the Kimis' appeal is moot:

A case is moot where the question to be determined is abstract and does not rest on existing facts or rights. Thus, the mootness doctrine is properly invoked where events have so affected the relations between the parties that the two conditions of justiciability relevant on appeal—adverse interest and effective remedy—have been compromised.

Bank of New York Mellon v. R. Onaga, Inc., 140 Hawai'i 358, 365, 400 P.3d 559, 566 (2017) citation, internal quotation marks and brackets omitted). The Bank of New York Mellon court held that

[a] party who wishes to stay an order confirming a foreclosure sale pending appeal must post a supersedeas bond or otherwise obtain a stay pursuant to HRCP Rule 62 or HRAP Rule 8. If a stay is not obtained and the property is sold to a bona fide purchaser, the appeal should be dismissed as moot because no effective relief can be granted.

Id. at 370, 400 P.3d at 571. It is noteworthy, however, that the Bank of New York Mellon court apparently acknowledged an exception to the mootness doctrine when an aggrieved appellant seeks "reversal . . . based on jurisdictional grounds[.]" Id. at 366, 400 P.3d at 567 (citation and internal quotation marks omitted).

Furthermore, the Supreme Court of Hawai'i has previously acknowledged at least three other exceptions to the mootness doctrine that we could invoke at our discretion for the purpose of reviewing the merits of an appeal, even if the appeal is moot:

- (1) the "capable of repetition, yet evading review" exception;
- (2) the public interest exception; and
- (3) the collateral consequences exception.

Hamilton Ex Rel Lethem v. Lethem, 119 Hawai'i 1, 5-10, 193 P.3d 839, 843-48 (2008) (paraphrased; not a direct quote).


In the instant case, the parties have not fully addressed whether any of the exceptions to the mootness doctrine apply to the instant case. Under these circumstances, we decline to resolve the issue of mootness at this preliminary stage of the appeal.

Therefore, IT IS HEREBY ORDERED that Bank of Hawaii's February 6, 2018, motion to dismiss appellate court case number CAAP-17-0000712 as moot is denied, but without prejudice to the parties further addressing the applicability of the mootness doctrine and the applicability of possible exceptions to the mootness doctrine in their respective appellate briefs.

DATED: Honolulu, Hawai'i, March 19, 2018.


Acting Chief Judge


Associate Judge


Associate Judge