

NO. CAAP-11-0000079

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

ONEWEST BANK FSB, Plaintiff-Appellee,
v.
LAC HOILIEN, Defendant-Appellant,
and
JOHN DOES 1-50 AND JANE DOES 1-50, Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
WAILUKU DIVISION
(DC-CIVIL NO. 10-1-2647)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Leonard and Ginoza, JJ.)

Defendant-Appellant Lac Hoilien (Hoilien) appeals from the Judgment for Possession and Writ of Possession, both filed January 24, 2011 and entered by the District Court of the Second Circuit, Wailuku Division (District Court) in favor of Plaintiff-Appellee Onewest Bank FSB (Onewest Bank).¹ We affirm.

On July 27, 2010, Onewest Bank filed its Verified Complaint for Ejectment against Hoilien. Onewest Bank alleged that it was the fee simple owner of the subject property by virtue of a non-judicial foreclosure sale held on March 19, 2010, and the subsequent recording on July 12, 2010 of a Quitclaim Deed in the Bureau of Conveyances. The complaint asserted that

¹ The Honorable Blaine J. Kobayashi presided.

Hoilien was unlawfully occupying the subject property without Onewest Bank's consent or permission and despite written notice to vacate, and therefore prayed for *inter alia* a Judgment for Possession and a Writ of Possession.

On September 15, 2010, Onewest Bank filed a Motion for Summary Judgment for Ejectment and Writ of Possession. On September 16, 2010, Hoilien filed a Motion for Summary Judgment, seeking an order invalidating the auction sale of the property, an order cancelling the quitclaim deed, and an award of attorney's fees and costs.

On January 13, 2011, the District Court entered an: (1) order granting Onewest Bank's motion for summary judgment for ejectment and writ of possession (Order Granting Onewest Bank's MSJ); and (2) order denying Hoilien's motion for summary judgment (Order Denying Hoilien's MSJ). On January 24, 2011, the District Court entered a Judgment for Possession and Writ of Possession in favor of Onewest Bank.

On appeal, Hoilien argues that the District Court erred by issuing the Order Granting Onewest Bank's MSJ, the Order Denying Hoilien's MSJ, and the Judgment for Possession and Writ of Possession. Hoilien contends that Onewest Bank lacked standing to eject him because the underlying non-judicial foreclosure sale, from which Onewest Bank derives its interest in the property, is void for failure to comply with Hawaii Revised Statutes (HRS) §§ 667-5 to 667-10 (1993 Repl. and Supp. 2011). In particular, Hoilien argues that the non-judicial foreclosure sale was void because Onewest Bank failed to make a downpayment allegedly required pursuant to HRS § 667-5.7 (Supp. 2011), and instead made a credit bid, which Hoilien argues is not permitted under HRS § 667-5.7. Hoilien's challenge to the District Court's judgment rests entirely on this point.

This court recently addressed this issue and held that HRS § 667-5.7 "simply imposes a limitation on the downpayment that can be demanded; it does not require that the successful bidder make a downpayment or preclude the mortgagee from making a credit bid." Fed. Nat'l Mortg. Ass'n v. Siangco, No. CAAP-10-0000110, 2011 WL 3849841 (App. Aug. 31, 2011) (SDO); Winged Foot Invs., Inc. v. Jones, No. CAAP-10-0000021, 2011 WL 4537853 (App. Sept. 30, 2011) (SDO); see also Angel v. BAC Home Loans Servicing, LP, Civ. No. 10-00240 HG-BMK, 2011 WL 1230413 (D. Haw. Mar. 30, 2011). Thus, we disagree with Hoilien's point of error that Onewest Bank lacked standing to seek ejectment of Hoilien because the non-judicial foreclosure was void.

We affirm the Judgment of Possession and Writ of Possession that were filed by the District Court on January 24, 2011.

DATED: Honolulu, Hawai'i, June 29, 2012.

On the briefs:

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Presiding Judge

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Associate Judge

Associate Judge