

NO. CAAP-11-0000761

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

ANGELO M. MARIANI, JR., Plaintiff-Appellant,
v.

BAC HOME LOANS SERVICING LP, a TEXAS LIMITED
PARTNERSHIP SERVICED BY BANK OF AMERICA,
FKA COUNTRYWIDE HOME LOANS, INC. TX;
JOHN DOES 1-10; JANE DOES 1-10;
DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10;
DOE ENTITIES 1-10; and DOE GOVERNMENTAL UNITS 1-10;
RE: 64-5263 PUU NANEA ST, KAMUELA, HI 96743,
TMK (3) 6-4-023-072-0000,
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 09-1-488K)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding J., Reifurth and Ginoza, JJ.)

Pro Se Plaintiff-Appellant, Angelo M. Mariani, Jr.
(Mariani) appeals from the Judgment entered June 29, 2011 in the
Circuit Court of the Third Circuit¹ (circuit court). Judgment
was entered in favor of Defendants-Appellees BAC Home Loan

¹ The Honorable Elizabeth A. Strance presided.

Servicing, LP (BAC) and Bank of America, N.A. and against Mariani.

On appeal, Mariani contends the circuit court erred in:

(1) concluding Mariani's claim for injunctive and declaratory relief was moot;

(2) denying Mariani's motion for leave to amend his complaint; and

(3) granting BAC's motion for summary judgment.

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, as well as the relevant statutory and case law, we conclude Mariani's appeal is without merit.

(1) Mariani contends the circuit court erred in holding his claim for injunctive relief was moot. On November 13, 2009, Mariani filed his Complaint seeking injunctive relief to enjoin BAC from conducting a foreclosure sale of his residence but did not properly serve the Complaint or initially file proof of service of the Complaint. BAC conducted the foreclosure sale on March 5, 2010, releasing Mariani from any interest in the property and effectively nullifying his request to enjoin the sale.

"A case is moot if the reviewing court can no longer grant effective relief." Kemp v. State of Hawai'i Child Support Enforcement Agency, 111 Hawai'i 367, 385, 141 P.3d 1014, 1032 (2006) (internal quotation marks, citation and brackets omitted). With the sale already finalized and recorded, the circuit court could not grant the relief requested by Mariani. Therefore, Mariani's request for injunctive relief was moot. See McCabe Hamilton & Renny Co., Ltd. v. Chung, 98 Hawai'i 107, 117, 43 P.3d 244, 254 (App. 2002).

(2) Mariani requested leave to amend his complaint in his Memorandum in Opposition to BAC's Motion to Dismiss and

Motion for Summary Judgment. Mariani did not include the proposed amended complaint in support of his request as required by Hawai'i Rules of Civil Procedure (HRCP) Rule 15(a)(2) or an explanation of how his Complaint would be amended. Therefore, the circuit court did not abuse its discretion in denying Mariani's motion for leave to amend his complaint. Jou v. Dai-Tokyo Royal State Ins. Co., 116 Hawai'i 159, 163, 172 P.3d 471, 475 (2007).

Furthermore, a motion to amend a complaint is not a "vehicle to circumvent summary judgment." Federal Home Loans Mortg. Corp. v. Transamerica Ins. Co., 89 Hawai'i 157, 162, 969 P.2d 1275, 1280 (1998) (internal quotation marks and citation omitted).

(3) Mariani contends the circuit court erred in granting BAC's Motion for Summary Judgment. In support of their Motion for Summary Judgment, BAC presented evidence that it had the legal right, as supported by documentation, to foreclose under the mortgage. Though Mariani argues BAC did not hold the mortgage, Mariani himself, presented evidence of a recorded Assignment of Mortgage transferring the right, title, and interest in the mortgage from Mortgage Electronic Registration Systems, Inc., as a nominee for Countrywide Home Loans, Inc., to BAC. Additionally, Mariani does not dispute that he was in default on the mortgage. Given the evidence produced by BAC to support its motion for summary judgment, HRCP 56 obligated Mariani to produce evidence to show that a genuine issue of material fact remained to be adjudicated. Because Mariani did not do so, the circuit court did not err in granting summary judgment.

Therefore,

IT IS HEREBY ORDERED that the Judgment entered June 29, 2011 in the Circuit Court of the Third Circuit is affirmed.

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

On the briefs:

Angelo M. Mariani, Jr.
Plaintiff-Appellant pro se.

Presiding Judge

Sharon V. Lovejoy
Andrew J. Lautenbach
Brandi J. Buehn
(Starn O'Toole Marcus & Fisher)
Rosalie Euna Kim
(Reed Smith)
for Defendants-Appellees.

Associate Judge

Associate Judge