

NO. CAAP-14-0000647

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,
solely as nominee, Plaintiff-Appellee,

v.

SHARON KEHAULANI WISE, BOLOSSOM ILIMA NIHIPALI,
Defendants-Appellants,

and

EWA GENTRY COMMUNITY ASSOCIATION,
Defendant-Appellee

and

JOHN DOES 1-50, JANE DOES 1-50, DOE PARTNERSHIPS 1-50,
DOE CORPORATIONS 1-50, DOE ENTITIES 1-10 and
DOE GOVERNMENTAL UNITS 1-50,
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 09-1-1064)

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J., Foley and Reifurth, JJ.)

Defendants-Appellants Sharon Kehaulani Wise and Blossom Ilima Nihipali (**Appellants**) appeal from the February 25, 2014 "Order Denying [Appellants' Hawai'i Rules of Civil Procedure (**HRCP**) Rule] 60(b)(4) Motion For Relief From the Courts [sic] (1) May 12, 2010 Order Granting Summary Judgment and (2) Related And Consequential Orders and Judgments" entered in the Circuit Court of the First Circuit¹ (**circuit court**).

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to

¹ The Honorable Bert I. Ayabe presided.

the arguments advanced and the issues raised by the parties, as well as the relevant statutory and case law, we conclude Appellants' appeal is without merit.

On May 6, 2009, Plaintiff-Appellee Mortgage Electronic Registration Systems, Inc., (**MERS**) filed a Complaint for Foreclosure against Appellants. On July 13, 2009, MERS filed a "Request to Clerk to Enter Defaults of [Appellants] as to Complaint Filed on May 6, 2009" because Appellants failed to answer or otherwise defend against the Complaint. The clerk of the court signed an Entry of Default on July 13, 2009.

On May 12, 2010, the circuit court entered Judgment pursuant to the May 12, 2010 "Findings of Fact; Conclusions of Law; Order Granting Motion For Summary Judgment as Against All Defendants and For Interlocutory Decree of Foreclosure." Appellants did not appeal from the Judgment.

On March 10, 2011, Appellants filed "[Appellants'] Motion to Set Aside Clerk's Entry of Default As to Them."

On April 29, 2011, the circuit court issued an "Order Approving Report of Commissioner, Confirming Commissioner's Sale of Property at Public Sale, Directing Distribution of Proceeds, for Writ of Possession and for Disposal of Personal Property" (**Order Approving Report**) and the Judgment entered pursuant to the Order Approving Report.

On May 10, 2011, the circuit court issued an "Order Denying [Appellants'] Motion to Set Aside Clerk's Entry of Defaults As to Them Filed on March 20, 2011."

On May 31, 2011, Appellants filed a notice of appeal from the Order Approving Report under appellate case no. CAAP-11-0000444. This court affirmed the Order Approving Report by Summary Disposition Order issued November 29, 2012. On June 28, 2013, the Hawai'i Supreme Court, in turn, affirmed this court's judgment. Mortgage Electronic Registration System, Inc., v. Wise, 130 Hawai'i 11, 304 P.3d 1192 (2013).

On December 10, 2013, Appellants filed "[Appellants'] HRCF 60(b)(4) Motion For Relief From the Court's (1) May 12, 2010 Order Granting Summary Judgment and (2) Related And Consequential Orders and Judgments." Appellants contended that MERS lacked

standing and therefore the circuit court lacked jurisdiction to enter said orders and judgments. On February 25, 2014, the circuit court denied their motion and on March 27, 2014, Appellants filed the notice of appeal in the instant case.

In Appellants' prior appeal, the jurisdiction of the circuit court was affirmed by this court's decision, and the Hawai'i Supreme Court held that Appellants' standing claim was barred by res judicata. See id. at 19 & n.13, 304 P.3d at 1200 & n.13. Therefore, the circuit court did not err in denying Appellants' HRCF Rule 60(b)(4) motion for relief. See id.

Therefore,

IT IS HEREBY ORDERED that the "Order Denying Defendants Sharon Kehaulani Wise and Blossom Ilima Nihipali's HRCF 60(b)(4) Motion For Relief From the Courts [sic] (1) May 12, 2010 Order Granting Summary Judgment and (2) Related And Consequential Orders and Judgments" entered February 25, 2014 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 15, 2015.

On the briefs:

Gary Victor Dubin
Frederick J. Arensmeyer
Richard T. Forrester
(Dubin Law Offices)
for Defendants-Appellants.

Chief Judge

Bernard R. Suter
(Keesal, Young & Logan)
for Plaintiff-Appellee.

Associate Judge

Associate Judge