

NO. CAAP-17-0000629

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

HOMESTREET BANK, Plaintiff-Appellee,
v.
CESAR RENOL CABA; EVELYN SAHAGUN CABA,
Defendants-Appellants,
and
JOHN DOES 1-50; JANE DOES 1-50; and
DOE ENTITIES 1-50,
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 16-1-0571)

ORDER

(By: Chan, J., for the court¹)

Pursuant to review of both the record in the Circuit Court of the Second Circuit under Civil No. 16-1-0571 and the Intermediate Court of Appeals under CAAP-17-0000629, it appears that:

(1) A Notice of Removal of Action Under the Civil Case No. 16-1-0571(2) from the Second Circuit, State of Hawaii to Federal Court Based on FRCP 11 & Federal Question Jurisdiction Pursuant to 28 U.S.C. 1441(a) was filed on April 16, 2018 in the Circuit Court of the Second Circuit;

(2) Defendant Evelyn Sahagun Caba's Notice of Filing of

¹ Fujise, Presiding Judge, Leondard and Chan, J.J.

Voluntary Petition Under Chapter 13 and of the Automatic Stay, was filed on June 6, 2018 in the Circuit Court of the Second Circuit;

(3) On June 7, 2018, this court entered a Summary Disposition Order;

(4) On July 2, 2018, the plaintiff-appellee filed, under CAAP-17-0000629, a letter addressed to The Honorable Kenneth J. Mansfield;

(5) On July 3, 2018, this court entered Judgment;

(6) The filing of a bankruptcy petition stays the "commencement or continuation . . . of a judicial . . . proceeding against the [bankruptcy] debtor" during the pendency of the bankruptcy case. 11 U.S.C. § 362(a)(1). It also operates as an automatic stay of "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate[.]" 11 U.S.C. § 362(a)(3). The filing of the petition triggers the automatic stay, notwithstanding the lack of actual notice of commencement of proceedings. In re Sumpter, 171 B.R. 835, 841-42 (Bankr. N.D. Ill. 1994).

(7) This court did not receive appropriate notice of defendant-appellant's bankruptcy. Nevertheless, the Summary Disposition Order and the Judgment are void. See Island Ins. Co., Inc. V. Santos, 86 Hawai'i 363, 366, 949 P.2d 203, 206 (App. 1997) (holding that actions taken in violation of the automatic stay are void and without effect, even if the entity that violated the stay had no knowledge or notice of the filing of the bankruptcy petition or of the automatic stay, although the bankruptcy court could retroactively annul the stay and validate actions that violated the stay); Wagner v. World Botanical Gardens, Inc., 126 Hawai'i 190, 195, 268 P.3d 443, 448 (App. 2011) ("A judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law." (citation and internal quotation marks omitted)).

Therefore, IT IS HEREBY ORDERED that the June 7, 2018 Summary Disposition Order and the July 3, 2018 Judgment are vacated.

IT IS FURTHER ORDERED that the parties jointly or severally shall file, in this court under CAAP-17-0000629, certified copies of the appropriate bankruptcy court document(s) indicating the automatic stay has been vacated, modified, lifted, or terminated. Failure to timely comply with this order may result in sanctions.

DATED: Honolulu, Hawai'i, August 10, 2018.

FOR THE COURT:

Associate Judge