

NO. CAAP-12-0000630

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

HSBC BANK USA, NATIONAL ASSOCIATION,
AS TRUSTEE FOR WFMB 2007-AR6, Plaintiff-Appellee,
v.
KEVIN COLLMAN, Defendant-Appellant,
and
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., et al.,
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 08-1-198K)

ORDER GRANTING OCTOBER 12, 2012 MOTION
TO DISMISS APPEAL FOR LACK OF JURISDICTION
(By: Fujise, Presiding Judge, Reifurth and Ginoza, JJ.)

Upon review of (1) Plaintiff-Appellee HSBC Bank USA, National Association, as Trustee for WFMB 2007-AR6's (Appellee HSBC Bank USA) October 12, 2012 motion to dismiss appellate court case number CAAP-12-0000630 for lack of jurisdiction (October 12, 2012 motion), (2) the lack of any memorandum by Defendant-Appellant Kevin Collman (Appellant Collman) in opposition to Appellee HSBC Bank USA's October 12, 2012 motion, and (3) the record, it appears that Appellant Collman's appeal is untimely

under Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) as to the following three documents that the Honorable Ronald Ibarra entered:

- (1) the June 7, 2012 "Order Approving Commissioner's Report and Granting Plaintiff's Motion for Confirmation of Sale by Commissioner" (the June 7, 2012 order confirming the sale of the foreclosed property);
- (2) the June 7, 2012 "Judgment on Order Approving Commissioner's Report and Granting Plaintiff's Motion for Confirmation of Sale by Commissioner" (the June 7, 2012 judgment on the order confirming the sale of the foreclosed property); and
- (3) the June 7, 2012 post-judgment "Order Denying Defendant Kevin Collman's Motion to Void Judgment Filed Herein on March 6, 2012" (the June 7, 2012 post-judgment order denying Appellant Collman's HRCF Rule 60(b) motion to void judgment).

Two of these three documents are independently appealable. The June 7, 2012 judgment on the order confirming the sale of the foreclosed property is an appealable final judgment pursuant to Hawaii Revised Statutes (HRS) § 667-51(a)(2) (Supp. 2011). The June 7, 2012 post-judgment order denying Appellant Collman's HRCF Rule 60(b) motion to void judgment is an appealable post-judgment order pursuant to HRS § 641-1(a) (1993 & Supp. 2011). See Ditto v. McCurdy, 103 Hawai'i 153, 160, 80 P.3d 974, 981 (2003) ("An order denying a motion for post-judgment relief under HRCF [Rule] 60(b) is an appealable final order under HRS § 641-1(a)." (Citation omitted)). However, "[w]hen a civil appeal is permitted by law, the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order." HRAP Rule 4(a)(1). In violation of HRAP Rule 4(a)(1), Appellant Collman did not file his July 11, 2012 notice of appeal within thirty days after entry of (1) the June 7, 2012 judgment on the order confirming the sale of the foreclosed property or (2) the

June 7, 2012 post-judgment order denying Appellant Collman's HRCP Rule 60(b) motion to void judgment. Therefore, Appellant Collman's July 11, 2012 notice of appeal is untimely.

The failure to file a timely notice of appeal in a civil matter is a jurisdictional defect that the parties cannot waive and the appellate courts cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986); HRAP Rule 26(b) ("[N]o court or judge or justice is authorized to change the jurisdictional requirements contained in Rule 4 of [the HRAP]."); HRAP Rule 26(e) ("The reviewing court for good cause shown may relieve a party from a default occasioned by any failure to comply with these rules, except the failure to give timely notice of appeal."). Consequently, we lack appellate jurisdiction over this case. Therefore,

IT IS HEREBY ORDERED that Appellee HSBC Bank USA's October 12, 2012 motion to dismiss appellate court case number CAAP-12-0000630 for lack of jurisdiction is granted, and appellate court case number CAAP-12-0000630 is dismissed.

DATED: Honolulu, Hawai'i, October 30, 2012.

Presiding Judge

Associate Judge

Associate Judge