

CONCURRING OPINION BY GINOZA, J.

I concur with the majority that the order entered on April 5, 2012 by the District Court of the First Circuit (district court) should be affirmed, but reach this result solely on a review of whether the district court abused its discretion in denying Defendant-Appellant Arna Lahela Johnson's (Appellant Johnson) post-judgment motion to vacate the district court's prior orders.

On May 31, 2011, the district court entered a "Judgment For Possession As To Defendant Arna Lahela Johnson" in favor of Plaintiff-Appellee The Bank of New York Mellon fka The Bank of New York As Trustee for the Certificateholders CWMBS, Inc. CHL Mortgage Pass-Through Trust 2006-12, Mortgage Pass-Through Certificates, Series 2006-12 (Appellee Bank). No appeal was filed from the May 31, 2011 judgment and therefore this court lacks jurisdiction to review the judgment for possession.

Almost a year later, on April 5, 2012, Appellant Johnson filed a post-judgment motion pursuant to Rule 60(b) of the District Court Rules of Civil Procedure (DCRCP) seeking to vacate the district court's prior orders and seeking summary judgment on the grounds that the district court lacked jurisdiction. Appellant Johnson supported her post-judgment motion with exhibits, her affidavit, and the affidavit of Teri L. Petit (Petit). The district court denied the post-judgment motion and Appellant Johnson timely appealed this ruling.

Both in her post-judgment motion and currently in this appeal, Appellant Johnson fails to provide an explanation as to why she would be entitled to relief under any of the provisions of DCRCP Rule 60(b). She appears to conclusively assert that she has newly discovered evidence and that there was a fraud committed such that the Bank does not properly have title to the subject property. As to the alleged newly discovered evidence, I agree with the majority that Appellant Johnson fails to show that she could not have previously obtained the evidence with due diligence. DCRCP Rule 60(b)(2). Similarly, as to the alleged

fraud, Appellant Johnson fails, *inter alia*, to "establish that the conduct complained of prevented [her] from fully and fairly presenting [her] case or defense." See Kawamata Farms, Inc. v. United Agri Products, 86 Hawai'i 214, 251-52, 948 P.2d 1055, 1092-93 (1997) (citation omitted). In this regard, the fraud alleged by Appellant Johnson did not prevent her from presenting Petit's affidavit prior to entry of the judgment. Thus, Appellant Johnson fails to show that she was entitled to relief under DCRCP Rule 60(b)(3).

I therefore concur in affirming the district court's denial of Appellant Johnson's post-judgment motion.

*Tim King*