

CONCURRING OPINION BY GINOZA, J.

Based on Plaintiff Ruth Tanaka's (Tanaka) own assertions in her First Amended Complaint and the undisputed evidence in the record, including the extensive prior litigation between the parties, I concur that Tanaka's claims in this case are barred by claim preclusion. It is undisputed that in a prior lawsuit Tanaka asserted a claim against Defendants Louis Robert Santiago and Yong Hwan Santiago (Santiagos) for breach of contract, and Tanaka herself contends in this case that the amounts she seeks to recover for sewer fees and attorney's fees she paid to James Jasper Enterprises, Ltd. (Jasper) are the "natural and foreseeable consequences" of the Santiagos' breach of those contractual obligations.

Moreover, even if not barred by claim preclusion, the record indicates that Tanaka does not have viable claims in this case. As to Tanaka's claim seeking recovery of attorney's fees she reimbursed to Jasper, Defendant Louis Robert Santiago's declaration, attached to the Defendants' motion for summary judgment, states that those fees are related to Civil No. 08-1-0160, in the Circuit Court of the Fifth Circuit. Tanaka's responsive declaration does not dispute this. The parties in Civil No. 08-1-0160, including Jasper, Tanaka and the Santiagos, entered into an amended stipulation for dismissal pursuant to which each party agreed to bear their own attorney's fees and costs. It thus appears that the stipulation in Civil No. 08-1-0160 applies such that attorney's fees were not owed to Jasper, and Tanaka should not be allowed to recover from the Santiagos any payments she made to Jasper in this regard. Further, regarding the sewage fees that Tanaka paid to Jasper, those fees were incurred *after* Tanaka was the winning bidder at a nonjudicial foreclosure auction, *after* the court in the disclosure case had upheld the validity of the foreclosure action and ejected the Santiagos from the property, and thus, Tanaka had title to and possession of the subject property as the winning bidder at foreclosure. Having purchased the property through the foreclosure auction, and holding the property in that capacity at

the time the sewer fees were incurred, there is no basis for Tanaka to seek breach of contract damages from the Santiagos for those sewer fees. See 59 C.J.S. Mortgages § 715 (2009) ("A properly conducted nonjudicial foreclosure sale constitutes a final adjudication of the rights of the borrower and lender.").

Finally, I concur with the majority that the district court's denial of the Santiagos' motion for attorney's fees and costs should be vacated, to the extent that reasonable attorney's fees as provided under Hawaii Revised Statutes (HRS) § 607-14 and reasonable costs under Rule 54(d) of the Hawai'i Rules of Civil Procedure (HRCP) are warranted. I therefore agree with remanding the case to the district court to determine reasonable attorney's fees pursuant to HRS § 607-14 and reasonable costs pursuant to HRCP Rule 54(d).

On these grounds, I concur.

*Jim M. King*