

**Electronically Filed
Intermediate Court of Appeals
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29-NOV-2010
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NO. 29544

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

MARLON QUAN,
Plaintiff/Counterclaim Defendant-Appellant,
v.
CALIFORNIA BEAR CREDIT UNION,
Defendant/Counterclaimant/Cross-Claimant-Appellee,
and
LIQUID FINANCIAL GROUP, INC.,
Defendant/Cross-Claim Defendant-Appellee,
and
DONALD R. PEART; JOHN DOES 1-10; JANE DOES 1-10;
DOE ASSOCIATIONS 1-10; DOE PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; AND DOE GOVERNMENTAL AGENCIES 1-10,
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 07-1-0032(1))

SUMMARY DISPOSITION ORDER

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

Plaintiff/Counterclaim Defendant-Appellant Marlon Quan (Quan) appeals from the "Order Granting Defendant/Cross-Claimant California Bear Credit Union's Motion for Summary Judgment as to the Issue of Lien Priority Filed on August 7, 2008 and Denying Plaintiff's Motion for Summary Judgment as to the Issue of Lien Priority Filed on October 16, 2008" (Order Granting Bear Credit's MSJ) filed on November 24, 2008 in the Circuit Court of the

Second Circuit (circuit court).¹ The circuit court granted "Defendant California Bear Credit Union's Motion for Summary Judgment as to the Issue of [Lien] Priority" (Bear Credit's MSJ) and denied Quan's "Motion for Summary Judgment as to the Issue of Lien Priority" (Quan's MSJ).

On appeal, Quan contends the circuit court abused its discretion by denying Quan's MSJ and granting Bear Credit's MSJ because

(1) Quan's mortgage constitutes a purchase money mortgage and is therefore entitled to priority over the mortgage of Defendant/Counterclaimant/Cross-claimant-Appellee California Bear Credit Union (Bear Credit);

(2) Bear Credit's mortgage can only attach itself to the subject after-acquired property -- a parcel of land in Hana, Maui, identified as TMK (2)1-3-005-035 (the Property) -- in the condition in which the Property came into the hands of Defendant/Cross-Claim Defendant-Appellee Liquid Financial Group, Inc. (LFG); and

(3) equity warrants a finding that Quan's mortgage is superior to Bear Credit's mortgage.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, as well as the relevant statutory and case law, we conclude that Quan's appeal is without merit.

The circuit court did not err in granting Bear Credit's MSJ and denying Quan's MSJ as to the issue of lien priority. In its Order Granting Bear Credit's MSJ, the circuit court correctly held that pursuant to Hawai'i Revised Statutes §§ 506-1 and 506-2(b), Bear Credit's mortgage filed on January 11, 2006 has full legal priority ahead of Quan's mortgage filed on July 31, 2006.

Therefore,

¹ The Honorable Joel E. August presided.

The "Order Granting Defendant/Cross-Claimant California Bear Credit Union's Motion for Summary Judgment as to the Issue of Lien Priority Filed on August 7, 2008 and Denying Plaintiff's Motion for Summary Judgment as to the Issue of Lien Priority Filed on October 16, 2008" filed on November 24, 2008 in the Circuit Court of the Second Circuit is affirmed.

DATED: Honolulu, Hawai'i, November 29, 2010.

On the briefs:

Michael L. Lam
Michael G. Kozak
(Case Lombardi & Pettit)
for Plaintiff/Counterclaim
Defendant-Appellant.


Chief Judge

John P. Manaut
Lindsay N. McAneeley
(Carlsmith Ball LLP)
for Defendant/Counterclaimant/
Cross-Claimant-Appellee
California Bear Credit Union.


Associate Judge


Associate Judge