

NO. 27925

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

WM SPECIALTY MORTGAGE LLC, WITHOUT RECOURSE,
Plaintiff-Appellee, v. MARGERY K. KEKAUOHA-ALISA,
Defendant-Appellant, CRAIG PASCUAL, CHERYL PASCUAL, et al.,
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 06-1-2)

ORDER OF DISMISSAL

(By: Fujise, Presiding Judge, Leonard and Ginoza, JJ.)

Defendant-Appellant Margery K. Kekauoha-Alisa (Kekauoha-Alisa) appeals from the Judgment, Writ of Possession and Judgment for Possession, all entered on April 11, 2006, by the Circuit Court of the Third Circuit (circuit court).¹

During the pendency of this appeal, the United States Bankruptcy Court for the District of Hawaii (Bankruptcy Court), before whom Kekauoha-Alisa had filed a petition for bankruptcy, ruled that the foreclosure sale that is the subject of this appeal was void, set aside the foreclosure sale, ordered that the subject property be reconveyed to Kekauoha-Alisa, and awarded attorneys' fees and costs to Kekauoha-Alisa. WM Specialty Mortgage LLC, Without Recourse (WM Specialty), Plaintiff-Appellee herein, purchaser of the property at the foreclosure sale and defendant in the adversary proceeding before the Bankruptcy Court, appealed the Bankruptcy Court's decision to the United

¹ The Honorable Greg K. Nakamura presided.

States Bankruptcy Appellate Panel for the Ninth Circuit (BAP) who reversed the Bankruptcy Court's decision. Kekauoha-Alisa appealed from the BAP's decision to the Court of Appeals for the Ninth Circuit and, on March 26, 2012, the Ninth Circuit issued its Opinion in which it affirmed the Bankruptcy Court's ruling that the foreclosure sale was void, vacated the Bankruptcy Court's award of damages and attorneys' fees and remanded for findings on causation and damages and recalculation of attorneys' fees. Kekauoha-Alisa's petition for rehearing was denied on April 12, 2012.²

Given these events, we ordered the parties to the instant appeal to file supplemental briefs addressing the preclusive effect of the Ninth Circuit's decision. The parties responded by filing their "Joint Supplemental Brief in Response to April 18, 2012 Order," in which they agree that the Ninth Circuit's opinion has collateral estoppel effect on the instant appeal and urge this court to vacate the circuit court's order granting summary judgment, judgment, writ of possession and judgment for possession and to dismiss the instant appeal.

Based on the submission of the parties, the record, and the applicable authority, we hereby dismiss this appeal without prejudice to a subsequent motion filed with the circuit court to vacate the judgment or dismiss the case.

DATED: Honolulu, Hawai'i, May 24, 2012.

Presiding Judge

Associate Judge

Associate Judge

² Although the time for filing a petition for certiorari before the United States Supreme Court has not yet run, both parties maintain that neither intends to file such a petition.