

NO. CAAP-15-0000026

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

ROBERT C. REISH and SUSAN N. REISH, AS TRUSTEES FOR THE REISH 1995 FAMILY TRUST AS CREATED BY DECLARATION OF TRUST DATED SEPTEMBER 18, 1995, Plaintiffs-Appellees, v. RODILLO M. TABUYO, SR., and MERLINA D. TABUYO; Defendants-Appellants, and MORTGAGE ELECTRONIC REGISTRATION, INC.; solely as nominee for FINANCE AMERICA, LLC; CHARITO LACAR; FRANCIS LACAR; JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; DOE ENTITIES 1-10; and DOE GOVERNMENTAL UNITS 1-10, Defendants-Appellees

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE UNDER POOLING AND SERVICING AGREEMENT DATED AS OF AUGUST 1, 2004 FINANCE AMERICA MORTGAGE LOAN TRUST 2004-2, Plaintiff-Appellee, v. RODILLO M. TABUYO, SR.; MERLINA D. TABUYO; Defendants-Appellants, and ROBERT C. REISH and SUSAN N. REISH, AS TRUSTEES FOR THE REISH 1995 FAMILY TRUST AS CREATED BY DECLARATION OF TRUST DATED SEPTEMBER 18, 1994; CHARITO LACAR; FRANCIS LACAR; JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; DOE ENTITIES 1-10; and DOE GOVERNMENTAL UNITS 1-10, Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NOS. 09-1-2429-10 and 12-1-0411-02)

ORDER DISMISSING THE APPEAL

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

Upon review of "Plaintiff-Appellee Robert C. Reish, as Trustee for the Reish 1995 Family Trust as Created by Declaration of Trust Dated September 18, 1995's Motion to Dismiss Appeal Filed Herein on January 14, 2015 and Supplemented on February 5, 2015," filed October 13, 2015, by Plaintiff-Appellee Robert C. Reish (Appellee Reish), the "Joinder in Plaintiff-Appellee Robert C. Reish, as Trustee for the Reish 1995 Family Trust as Created by Declaration of Trust Dated September 18, 2995's Motion to Dismiss Appeal Filed Herein on January 14, 2015 and Supplemented on February 5, 2015, Filed October 13, 2015," filed October 14, 2015, by Plaintiff/Counterclaim-Defendant/Appellee Deutsche Bank National Trust Company and Defendant-Appellee Mortgage Electronic Registration Systems, Inc. (Bank Appellees), the papers in support, the record, and there being no opposition, it appears that:

(1) On January 14, 2015, Defendants-Appellants Rodillo M. Tabuyo, Sr. and Merlina D. Tabuyo (Appellants), filed a notice of appeal;

(2) On January 16, 2015, the appellate clerk notified Appellants that, contrary to Hawai'i Rules of Appellate Procedure (HRAP) Rule 3(a), they failed to pay the filing fee with the notice of appeal, and did not seek leave to proceed on appeal in forma pauperis. The appellate clerk notified Appellants to pay the filing fee or file a motion for leave to proceed on appeal in forma pauperis by January 26, 2015, or the matter would be brought to the court's attention for action that may include dismissal;

(3) On February 5, 2015, Appellants filed a "supplemental notice of appeal";

(4) On March 17, 2015, the appellate clerk notified Appellants that the time to docket the record on appeal expired on March 16, 2015, Appellants did not pay the filing and docketing fees, the record on appeal cannot be prepared without the fees, the matter would be called to the court's attention on March 27, 2015, for action that may include dismissal, and relief from default may be requested by motion;

(5) On March 26, 2015, Bank Appellees filed a notice indicating Appellant Rodillo M. Tabuyo filed a Chapter 7 bankruptcy case in the United States Bankruptcy Court on February 28, 2015. The March 26, 2015 notice automatically stayed all proceedings in this appeal. See 11 U.S.C. § 362(a)(1) (2010); HRAP Rule 54(c);

(6) On October 30, 2015, Bank Appellees filed a certified copy of the bankruptcy court's June 24, 2015 notice of dismissal of Appellant Rodillo M. Tabuyo's bankruptcy case. The October 30, 2015 notice effectively terminated the bankruptcy stay. See HRAP Rule 54(b) & (c);

(7) Appellant did not pay the filing and docketing fees, give security for costs, or take any further action in this appeal; and

(8) An appeal may also be dismissed where the record on appeal has not been prepared because the appellant failed to pay the required fees or obtain an order allowing the appellant to proceed in forma pauperis. HRAP Rule 11(b)(2), (c)(2).

Therefore, IT IS HEREBY ORDERED that the appeal is dismissed.

Dated: Honolulu, Hawai'i, November 9, 2015.

Chief Judge

Associate Judge

Associate Judge