

NO. CAAP-16-0000119

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

FIRST HAWAIIAN BANK, Plaintiff-Appellee  
v.  
MEL DANIEL HORNER, Defendant-Appellant,  
and  
TALIA LYNN HORNER; ASSOCIATION OF APARTMENT OWNERS  
OF 1340 AND 1342 HOOLI CIRCLE, BY ITS BOARD OF DIRECTORS,  
Defendants-Appellees,  
and  
JOHN DOES 1-10; JANE DOES 1-10;  
DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; DOE ENTITIES 1-10;  
DOE GOVERNMENTAL UNITS 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 11-1-2149)

ORDER DISMISSING THE APPEAL FOR LACK OF APPELLATE JURISDICTION  
(By: Foley, Presiding Judge, Leonard and Ginoza, JJ.)

Upon review of the records in CAAP-16-0000119, it appears that this court lacks appellate jurisdiction over the appeal. Defendant-Appellant Mel Daniel Horner (Appellant) appeals pro se from the Circuit Court's April 6, 2015  
(1) Findings of Fact, Conclusions of Law and Order Granting

Plaintiff's Motion for Summary Judgment as to all Claims and all Parties, Interlocutory Decree of Foreclosure and Order of Sale, (2) Judgment Re: Findings of Fact, Conclusions of Law and Order Granting Plaintiff's Motion for Summary Judgment as to all Claims and all Parties, Interlocutory Decree of Foreclosure and Order of Sale, and (3) Notice of Entry of Judgment. On April 6, 2015 the Circuit Court ordered foreclosure of 1340 Hooli Circle, TMK 9-7-073-004 CPR 0001 and sale of the property.

Hawaii Revised Statutes (HRS) § 667-51 authorizes an appeal from a judgment entered on a decree of foreclosure. The "court has previously noted that "foreclosure cases are bifurcated into two separately appealable parts: (1) the decree of foreclosure and the order of sale, if the order of sale is incorporated within the decree; and (2) all other orders." Beneficial Hawaii, Inc. v. Casey, 98 Hawai'i 159, 165, 45 P.3d 359, 365 (2002). "A litigant who wishes to challenge a decree of foreclosure and order of sale may - - and, indeed, must - - do so within the thirty day period following entry of the decree or will lose the right to appeal that portion of the foreclosure proceeding." Id.

Appellant filed his Notice of Appeal on February 22, 2016, more than 30 days after entry of the April 6, 2015 (1) Findings of Fact, Conclusions of Law and Order Granting Plaintiff's Motion for Summary Judgment as to all Claims and all Parties, Interlocutory Decree of Foreclosure and Order of Sale and (2) Judgment Re: Findings of Fact, Conclusions of Law and Order Granting Plaintiff's Motion for Summary Judgment as to all Claims and all Parties, Interlocutory Decree of Foreclosure and

Order of Sale Therefore, the appeal was untimely. HRAP Rule 4(a)(1). The failure to file a timely notice of appeal in a civil matter is a jurisdictional defect that the parties cannot waive and the appellate courts cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986). Accordingly, the court lacks appellate jurisdiction over the appeal.<sup>1</sup>

IT IS HEREBY ORDERED that the appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 3, 2016.

Presiding Judge

Associate Judge

Associate Judge

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<sup>1</sup> Appellant's reference to his filing of bankruptcy notice is to no avail because, inter alia, the bankruptcy notice was filed well after the time to appeal expired and the automatic stay has been lifted.