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Intermediate Court of Appeals
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NO. CAAP-13-0001432

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

MICHAEL C. GREENSPON,
Plaintiff/Counterclaim Defendant-Appellant,
v.
DEUTSCHE BANK NATIONAL TRUST COMPANY,
AS TRUSTEE OF RESIDENTIAL ASSET SECURITIZATION TRUST 2006-A8,
MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-H UNDER THE
POOLING AND SERVICING AGREEMENT DATED JUNE 1, 2006,
Defendant/Counterclaim Plaintiff-Appellee,
and
INDYMAC FEDERAL BANK, F.S.B.; ONEWEST BANK, F.S.B.;
CAL-WESTERN RECONVEYANCE CORPORATION, Defendants-Appellees,
and
DOES 1-50, Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 11-1-0194)

MEMORANDUM OPINION

(By: Nakamura, Chief Judge, Leonard and Ginoza, JJ.)

Plaintiff/Counter-Claim Defendant/Appellant Michael C. Greenspon (**Greenspon**), pro se,¹ appeals from the following entered in the Circuit Court of the First Circuit (**circuit court**)² in favor of Defendant/Counterclaim Plaintiff-Appellee Deutsche Bank National Trust Company, as Trustee of Residential Asset Securitization Trust 2006-A8, Mortgage Pass-Through

¹ Greenspon was represented by Dubin Law Offices before the circuit court. Dubin Law Offices withdrew as counsel after the notice of appeal was filed but prior to briefing.

² The Honorable Bert I. Ayabe presided.

Certificate Series 2006-H Under the Pooling and Servicing Agreement Dated June 1, 2006 (**DBNTC**), and Defendant-Appellee OneWest Bank, F.S.B. (**OneWest**) (**collectively, Appellees**):³

(A) the "Order Granting: (1) Defendants [OneWest] and [DBNTC's] Motion for Summary Judgment Re: First Amended Complaint, Filed on November 5, 2012; and (2) [DBNTC's] Motion for Summary Judgment Re: Counterclaim (and Writ of Ejectment Against [Greenspon]), Filed on November 5, 2012", (**Order Granting Summary Judgment**) entered on March 13, 2013;

(B) the "Final Judgment [Re: [Order Granting Summary Judgment]]", (**Rule 54(b) Judgment**) entered on March 13, 2013; and

(C) the "Order Denying [Greenspon's] Motion to Reconsider The Court's Order Granting Summary Judgment And Judgment For Possession," entered on May 23, 2013.

Greenspon contends⁴ that the circuit court erred in (1) granting DBNTC's motion for summary judgment on its counterclaims; (2) granting the Appellees' motion for summary judgment on Greenspon's First Amended Complaint; (3) failing to grant a continuance for discovery pursuant to Hawai'i Rules of Civil Procedure (HRCPP) Rule 56(f); (4) failing to grant an HRCPP Rule 15(a) request for leave to amend the First Amended Complaint; and (5) denying Greenspon's motion for reconsideration.⁵

³ Defendants-Appellees IndyMac Federal Bank, F.S.B. (**IndyMac Federal**) and Cal-Western Reconveyance Corporation (**Cal-Western**) did not file briefs in this appeal.

⁴ Greenspon's opening brief violates Hawai'i Rules of Appellate Procedure (HRAP) Rule 28 in many ways, which alone raises the potential for waiver of issues sought to be raised. Bettencourt v. Bettencourt, 80 Hawai'i 225, 230, 909 P.2d 553, 558 (1995); HRAP Rule 28(b)(4) & (7). However, because we seek to address cases on the merits where possible, we address Greenspon's arguments to the extent they are discernable in the opening brief. Bettencourt, 80 Hawai'i at 230, 909 P.2d at 558.

We further note that Greenspon failed to provide transcripts from the circuit court proceedings to the appellate court. However, included in the record on appeal is a transcript of the January 9, 2013 hearing on the summary judgment motions. Our review will thus be limited to the lone transcript appearing in the record on appeal.

⁵ HRAP Rule 28(a) expressly limits the length of opening or answering briefs to 35 pages, and reply briefs to 10 pages, exclusive of indexes, appendices, and statements of related cases. Greenspon filed two separate motions to file an extended-page opening brief. This court denied both
(continued...)

For the reasons set forth below, we affirm in part and vacate in part, and remand for further proceedings.

I. Brief Background

This case stems from a non-judicial foreclosure of real property owned by Greenspon.

On June 21, 2011, Greenspon filed a First Amended Complaint against DBNTC, OneWest, IndyMac Federal,⁶ and Cal-Western, asserting claims for "Wrongful Foreclosure and Quiet Title," "Injunctive Relief," and "Damages" for Unfair and Deceptive Acts and Practices (UDAP).

On August 30, 2011, DBNTC filed a Counterclaim against Greenspon, asserting that a non-judicial foreclosure of Greenspon's property had been properly conducted and thus DBNTC was entitled to Ratification of Non-Judicial Foreclosure and a

⁵(...continued)
motions. Nevertheless, on November 1, 2013, Greenspon filed an opening brief totaling 36 pages, plus an additional 15-page "Supplemental Brief" containing substantive argument. Greenspon also filed an additional 26-page appendix that was duplicative of a portion of the 166-page appendix that accompanied the opening brief. In his "Supplemental Brief", Greenspon admitted that he was filing the "Supplemental Brief" due to page limitations mandated in HRAP Rule 28(a). Subsequently, upon the Appellees' motion, this court struck the "Supplemental Brief" and the 26-page appendix and informed the parties that we will not consider either document or any arguments raised in them.

Limiting our consideration of Greenspon's points of error to his opening brief, we note that Greenspon presents no argument in the opening brief regarding the court's alleged error in failing to grant an HRCF Rule 15(a) request for leave to amend the First Amended Complaint, or in denying the motion for reconsideration. These points of error are waived. HRAP Rule 28(b)(7).

Additionally, Greenspon's reply brief is 16 pages in length (14 pages of substantive argument, plus 2 pages of preface), exclusive of indexes and appendices. HRAP Rule 28(a) mandates that reply briefs not exceed 10 pages. Greenspon acknowledged in his reply brief that his brief exceeded the page limit provided in HRAP Rule 28(a). The Appellees' filed an objection to Greenspon's reply brief, and advocated that sanctions were warranted and necessary, including dismissal of the appeal. As noted above, we seek to address cases on the merits where possible. Bettencourt, 80 Hawai'i at 230, 909 P.2d at 558. Thus, we decline to dismiss the appeal but we limit our consideration of Greenspon's reply brief to the first 10 pages and will not consider any substantive argument set forth beyond the first 10 pages.

Lastly, Greenspon raises numerous arguments for the first time in his reply brief. Arguments not raised until the reply brief are waived. In re Hawaiian Flour Mills, Inc., 76 Hawai'i 1, 14 n.5, 868 P.2d 419, 432 n.5 (1994).

⁶ The First Amended Complaint asserts Greenspon obtained a \$650,000 loan from IndyMac Bank, F.S.B. (IndyMac) in March 2003, and a mortgage on Greenspon's property was granted as security for the loan; that the loan was modified in April 2006, increasing the principal amount of the loan to \$800,000; that in July 2008 IndyMac was closed by, *inter alia*, the Federal Deposit Insurance Corporation (FDIC); and that IndyMac Federal assumed control of substantially all of the assets of IndyMac.

Writ of Ejectment.

On September 15, 2011, Greenspon filed a Notice of Dismissal of All Claims Against IndyMac, which was based on a "Disclaimer of Interest" by the FDIC as Receiver for IndyMac Federal. In the Disclaimer of Interest, a representative of the FDIC declared, in pertinent part:

4. The FDIC-Receiver has determined that it has no interest in the subject property and that it desires to disclaim any interest in the subject property, waive any and all rights of redemption it may have in connection with the subject property, and consent to be forever barred from asserting any rights in or to the subject property.

5. FDIC-Receiver is making this Declaration and Disclaimer of Interest in exchange for plaintiff's agreement to dismiss without prejudice all claims plaintiff alleged or could allege against defendant IndyMac Federal Bank, F.S.B., IndyMac Bank, F.S.B., and the FDIC as Receiver of those two entities from this action.

On November 5, 2012, DBNTC filed a Motion for Summary Judgment on its Counterclaim. Moreover, on the same day, DBNTC and OneWest jointly filed a Motion for Summary Judgment as to Greenspon's claims in the First Amended Complaint, and Cal-Western filed a joinder in that motion.

On March 13, 2013, the circuit court issued orders: granting summary judgment in favor of DBNTC and against Greenspon on DBNTC's counterclaims for Ratification of Non-Judicial Foreclosure and Writ of Ejectment; granting summary judgment in favor of DBNTC and Onewest and against Greenspon as to the First Amended Complaint; and granting Cal-Western's joinder in DBNTC and OneWest's summary judgment motion as to Greenspon's First Amended Complaint.

On the same date, March 13, 2013, pursuant to Hawai'i Rules of Civil Procedure (HRCPP) Rule 54(b), the circuit court entered Final Judgment: (1) in favor of DBNTC as to all claims asserted in its Counterclaim against Greenspon; and (2) in favor of DBNTC and OneWest as to all claims asserted in Greenspon's First Amended Complaint.

On March 25, 2013, Greenspon filed a Motion to Reconsider, seeking to have the circuit court reconsider its orders granting summary judgment. The circuit court denied the Motion to Reconsider on May 23, 2013. On June 13, 2013,

Greenspon filed a Notice of Appeal.

II. Discussion

A. DBNTC's Motion for Summary Judgment on Its Counterclaim

1. Kondaur Capital Case

Greenspon asserts that the circuit court erred in granting DBNTC's motion for summary judgment on its counterclaims seeking (1) ratification of the non-judicial foreclosure and (2) a writ of ejectment. Upon our *de novo* review, Ralston v. Yim, 129 Hawai'i 46, 55-56, 292 P.3d 1276, 1285-86 (2013), and also based on Kondaur Capital Corp. v. Matsuyoshi, 136 Hawai'i 227, 361 P.3d 454 (2015), DBNTC did not satisfy its initial burden to demonstrate there were no genuine issues of material fact regarding the validity of the non-judicial foreclosure. Therefore, the circuit court erred in granting DBNTC's motion for summary judgment.

DBNTC asserted it possessed title to the subject property after a valid non-judicial foreclosure was completed in accordance with HRS §§ 667-5 through -10 (1993 & Supp. 2010) (repealed 2012).⁷ In Kondaur Capital, the Hawai'i Supreme Court recently ruled as follows:

In Ulrich v. Security Investment Co., 35 Haw. 158 (Haw. Terr. 1939), we held that a personal property mortgagee seeking to enforce a non-judicial foreclosure sale bears the burden of establishing that the sale was conducted in a manner that is fair, reasonably diligent, and in good faith and that an adequate price was procured for the

⁷ The non-judicial foreclosure auction was held on February 26, 2010. At that time, HRS § 667-5 provided in pertinent part:

§667-5 Foreclosure under power of sale; notice; affidavit after sale. (a) When a power of sale is contained in a mortgage, and where the mortgagee, the mortgagee's successor in interest, or any person authorized by the power to act in the premises, desires to foreclose under power of sale upon breach of a condition of the mortgage, the mortgagee, successor, or person shall be represented by an attorney who is licensed to practice law in the State and is physically located in the State. The attorney shall:

- (1) Give notice of the mortgagee's, successor's, or person's intention to foreclose the mortgage and of the sale of the mortgaged property, by publication of the notice . . . ; and
- (2) Give any notices and do all acts as are authorized or required by the power contained in the mortgage.

property. . . .

We hold that the duties set forth in *Ulrich* remain viable law and are applicable to non-judicial foreclosures of real property mortgages. Additionally, in situations where a mortgagee acts as both the seller and the purchaser of the subject property at a non-judicial foreclosure sale, that mortgagee, or its quitclaim transferee or non-bona fide successor, bears the burden of proving compliance with the requirements of *Ulrich*.

Kondaur Capital, 136 Hawai'i at 229, 361 P.3d at 456 (footnotes omitted). The supreme court held that when a party seeking ejectment received title from a self-dealing mortgagee in a non-judicial foreclosure, i.e., the foreclosing mortgagee was the purchaser at the foreclosure auction, the party seeking ejectment must establish that the non-judicial foreclosure sale was conducted in a "manner that is fair, reasonably diligent, and in good faith, and to demonstrate that an adequate price was procured for the property." *Id.* at 240, 361 P.3d at 467 (footnote omitted). As the supreme court noted, this is a burden separate from the mortgagee's adherence to the statutory requirements and terms of the mortgage under which the foreclosure sale is conducted. *Id.* at 243, 361 P.3d at 470.

DBNTC, as the moving party seeking ejectment, had the burden of demonstrating that no genuine issue of material fact existed as to whether it had title to and right of possession of the subject property. *Id.* at 241, 361 P.3d at 468. Kondaur Capital places the burden on a self-dealing mortgagee, or its quitclaim transferee or non-bona fide successor, to prove compliance with the *Ulrich* requirements. In this case, there is a genuine issue of material fact whether the FDIC as Receiver for IndyMac Federal, the foreclosing party, was self-dealing, and whether DBNTC is a non-bona fide successor, such that DBNTC must prove compliance with the *Ulrich* requirements. In the Mortgagee's Affidavit of Foreclosure Sale Under Power of Sale (Mortgagee's Affidavit), recorded by Cal-Western as agent for mortgagee FDIC as Receiver for IndyMac Federal, the affiant attests that DBNTC was the high bidder at the public sale, which may not trigger application of Kondaur Capital. However, DBNTC acknowledged in answers to interrogatories that IndyMac Federal was the winning bidder at the auction having credit bid the

indebtedness owed on the subject loan, and that IndyMac Federal designated DBNTC to take title in its place. Given this contradictory evidence in the record, it is unclear if Kondaur Capital applies in this case.

If Kondaur Capital is applicable, DBNTC was required to prove that the foreclosure sale "was regularly and fairly conducted in every particular" in order to establish the validity of its title. Id. at 241-42, 361 P.3d at 468-69. The only evidence produced by DBNTC with respect to the manner in which the sale was conducted was the Mortgagee's Affidavit, which provides that the requirements of HRS §§ 667-5 through -10 were complied with. However, the Mortgagee's Affidavit contains no averments addressing the fairness and regularity of the sale, whether the sale was conducted in a diligent and reasonable manner, or the adequacy of the price bid (which appears to have been a credit bid of the indebtedness). The Affidavit addresses issues such as notice, publication of notice, the postponement of the sale, the date and location of sale, and the number of bidders and the highest bid. However, these statements do not fully satisfy the Ulrich requirements as applied in Kondaur Capital.

Because genuine issues of material fact exist (1) whether DBNTC was required to prove compliance with the Ulrich requirements, and, (2) if so, whether DBNTC demonstrated that the non-judicial foreclosure sale was conducted in a manner that was fair, reasonably diligent, in good faith, and would obtain an adequate price, summary judgment was not warranted as to DBNTC's counterclaims.

2. Greenspon's Arguments on Appeal

As noted above, the circuit court erroneously granted summary judgment in favor of DBNTC on its counterclaims in light of the supreme court's recent ruling in Kondaur Capital. On appeal, Greenspon raises various other challenges to the evidence submitted by DBNTC in support of its motion for summary judgment on the counterclaims. We address his contentions to the extent

discernible.⁸

In its counterclaim, DBNTC sought: (1) ratification of the non-judicial foreclosure; and (2) a writ of ejectment. To obtain a writ of ejectment, DBNTC was required to demonstrate that it is entitled as a matter of law to possession of the premises. HRS § 604-6 (1993). DBNTC's claim to possession is dependent on the propriety of the non-judicial foreclosure conducted by FDIC as receiver for IndyMac Federal.

On appeal, Greenspon contends that genuine issues of material fact exist that preclude summary judgment because (a) the circuit court erred in accepting a declaration submitted by DBNTC as the "sole evidence" of Greenspon's default when it constituted hearsay and was contradicted by Greenspon's evidence; (b) Greenspon and IndyMac agreed to a modification agreement and FDIC as Receiver for IndyMac Federal purportedly breached the modification agreement by foreclosing on the subject property;⁹ (c) there are multiple issues of material fact regarding whether FDIC as Receiver for IndyMac Federal strictly complied with the statutes governing non-judicial foreclosures; and (d) an amended deed filed by DBNTC as proof of title did not cure alleged defects in title and actually evidences a broken chain of title.

Generally, Greenspon contends that DBNTC failed to demonstrate via admissible evidence that Greenspon was in default as a precondition to the non-judicial foreclosure sale. See Lee v. HSBC Bank USA, 121 Hawai'i 287, 291, 218 P.3d 775, 779 (2009). The alleged default was failure in payment. In support of its motion for summary judgment, DBNTC submitted a declaration from Charles Boyle, Vice President, Default Litigation, for OneWest (Boyle Declaration). Boyle declared that he had previously been an employee of IndyMac (until July 14, 2008) and IndyMac Federal

⁸ To the extent that Greenspon makes assertions in his briefs that are not argued, they are waived. See HRAP Rule 28(b)(7).

⁹ As noted in fn. 6, *supra*, Greenspon's original loan was from IndyMac. IndyMac assigned its interest in the mortgage to IndyMac Federal prior to the non-judicial foreclosure. Greenspon contends there are genuine issues of material fact regarding the assignment of mortgage from IndyMac to IndyMac Federal in terms of what was actually assigned. However, a borrower does not have standing to challenge an assignment to which he was not a party. Velasco v. Sec. Nat'l. Mortg. Co., 823 F. Supp. 2d 1061, 1067 (D. Haw. 2011).

(until March 2009). Boyle declared that "[i]n the regular performance of my job functions, I am familiar with business records maintained by OneWest for purposes of servicing mortgage loans[,] "I have personally examined these business records as they relate to the subject matter of this action[,] " and "OneWest's records indicate that as of June 1, 2008, Plaintiff was in default in the payment of principle and interest mentioned in the Note. . . . Throughout the foreclosure, the amounts due and owing under the Note and Mortgage remained in default and the default remains uncured." Attached as an exhibit to the Boyle Declaration is a November 2008 letter from IndyMac Federal to Greenspon noting that his loan was in "serious default" because he had not made required payments, the first outstanding payment had been due June 1, 2008, and the total amount Greenspon was required to pay to cure the default was \$27,664.44.

Greenspon contends that the Boyle Declaration was hearsay because it relied on records that were not attached as exhibits, DBNTC did not produce "the complete record" of the documents reviewed, and Boyle did not declare that he reviewed the records of IndyMac or IndyMac Federal, therefore there was no evidence Greenspon was in default. Greenspon notes that an affidavit consisting of inadmissible hearsay cannot serve as a basis for awarding or denying a motion for summary judgment. Haw Cnty Fed. Credit Union v. Keka, 94 Hawai'i 213, 221, 11 P.3d 1, 9 (2000). However, as noted above, attached to the Boyle Declaration was the November 2008 letter documenting Greenspon's default, which Boyle declared was part of OneWest's records. Further, in his own declaration filed in support of his opposition to DBNTC's motion for summary judgment, Greenspon admitted he stopped paying his loan in June 2008, and despite making one payment on July 30, 2008, in accordance with an alleged modification agreement, made no further payments. Therefore, there was no genuine issue of material fact that Greenspon was in default.

Next, Greenspon contends he was not in default because he demonstrated the existence of a modification agreement that FDIC as Receiver for IndyMac Federal breached by foreclosing and

that he made a payment on July 30, 2008, in accordance with the terms of the alleged modification agreement. Greenspon contends the genuine issue of material fact regarding the existence of the modification agreement prohibits summary judgment.

Greenspon submitted in support of his declaration a copy of the alleged modification agreement signed by Greenspon, but not signed by a representative of IndyMac, and a September 2008 statement of his loan which indicated IndyMac received the July 30 payment. Greenspon contends his good faith performance with the modification agreement was frustrated and the foreclosure was wrongful. However, Greenspon declares that beyond the July 2008 payment, he did not make further payments because IndyMac and IndyMac Federal refused to recognize the modification agreement and he was "not allowed to pay my modified mortgage loan, and no new repayment plan could be agreed upon." Greenspon does not explain how or why he was not permitted to make further payments. There is no genuine issue of material fact that Greenspon stopped making payments altogether on the loan by at least August 2008, and thus was in default by the February 26, 2010 foreclosure sale.

Greenspon's main challenge to IndyMac Federal's compliance with the statutory law governing non-judicial foreclosures relates to notice. It is undisputed that Greenspon was not given timely notice of the original auction date due to delayed service of the Notice of Mortgagee's Intent to Foreclose Under Power of Sale.¹⁰ However, the sale was postponed numerous times, as was permitted under HRS § 667-5, and each time a letter was sent via First Class mail¹¹ to Greenspon which provided that

¹⁰ Greenspon contends on appeal that the Notice of Intent to Foreclose is facially invalid because the signature page of the document was notarized on January 26, 2009, while the previous page, which provides the actual notice, identifies that "Rev 04/01/09". Greenspon contends that this demonstrates a genuine issue of material fact whether IndyMac Federal conducted a valid non-judicial foreclosure because the notice was created months after the sworn certificate of the notary. Greenspon did not raise this argument below and it is waived.

¹¹ Section 15 of the mortgage provides in pertinent part that "[a]ny notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when

(continued...)

the notice of postponement was called out, and identified the date of the rescheduled auction.¹²

In terms of DBNTC's title to the subject property, it appears that the First Deed conferring title to DBNTC incorrectly identified the grantor as FDIC as Receiver for IndyMac. DBNTC relies on an amended deed as proof of title which identifies the grantor as FDIC as Receiver for IndyMac Federal. Greenspon did not object to the amended deed in the circuit court and thus waived any challenge to its admissibility. See, Price v. AIG Hawaii Ins. Co., 107 Hawai'i 106, 111, 111 P.3d 1, 6 (2005).

B. The Appellees' Motion for Summary Judgment on Greenspon's First Amended Complaint

Greenspon contends that the circuit court erred in granting the Appellees' motion for summary judgment on his First Amended Complaint because there are genuine issues of material fact that the essential elements of his claims have been supported and Appellees adduced no evidence to negate his claims. As discussed further below, because we vacate the circuit court's grant of summary judgment on DBNTC's counterclaim, we vacate in part the circuit court's grant of summary judgment on the First Amended Complaint.

In the First Amended Complaint, Greenspon asserted three claims: (1) Quiet Title and Wrongful Foreclosure; (2) Injunctive Relief; and (3) Damages (Fraud UDAP). To carry their burden as defendants-movants, the Appellees must "either (1) present[] evidence negating an element of the non-movant's claim, or (2) demonstrat[e] that the nonmovant will be unable to carry his or her burden of proof at trial." Ralston, 129 Hawai'i at 60, 292 P.3d at 1290.

¹¹(...continued)
actually delivered to Borrower's notice address if sent by other means."

¹² Greenspon contends that DBNTC has not demonstrated that each postponement was done by public announcement as was required by HRS § 667-5. This contention is contrary to the evidence submitted. DBNTC submitted copies of letters informing Greenspon of the postponements. Each letter provides that the postponement was by public announcement "at said time and at set place" designated in prior notice. Greenspon provides no evidence to the contrary and cannot survive summary judgment by asserting general allegations. Ralston v. Yim, 129 Hawai'i, 46, 55-56, 292 P.3d 1276, 1285-86 (2013).

1. Quiet Title and Wrongful Foreclosure

In the First Amended Complaint, Greenspon asserted that he has superior title to quiet title because the non-judicial foreclosure on the subject property was void and the fraudulently created documents evidencing chain of title should be stricken and expunged from the Bureau of Conveyances.¹³

In terms of Greenspon's request to quiet title, his appeal is from the Rule 54(b) Judgment resolving claims only against the Appellees, and the issue is whether Greenspon has superior title to the Appellees, particularly DBNTC. Greenspon's assertion of superior title to DBNTC is dependent on an unwinding of the non-judicial foreclosure. Because there are genuine issues of material fact whether the underlying non-judicial foreclosure sale was proper under Kondaur, there are genuine issues of material fact regarding quiet title as between Greenspon and DBNTC.

However, with regard to his claim for wrongful foreclosure, Greenspon's claim is based on improper conduct in the foreclosure performed by FDIC as Receiver for IndyMac Federal. Greenspon purports to have dismissed all claims against IndyMac Federal. His appeal here is from the Rule 54(b) Judgment in favor of the Appellees. Importantly, in the First Amended Complaint, Greenspon asserts no acts committed by either of the Appellees that was part of the allegedly wrongful foreclosure that resulted in damages to Greenspon.¹⁴ Therefore, to the extent Greenspon argues a wrongful foreclosure claim against Appellees in this appeal, such argument is without merit.

2. Damages (UDAP and Fraud)

In the First Amended Complaint, Greenspon asserted

¹³ Greenspon also argues that once title to DBNTC is void, the property returns to him with superior claim to all others because FDIC, on behalf of IndyMac and IndyMac Federal, has disclaimed any interest in the subject property. Greenspon did not make this argument in opposition to the Appellees' motion for summary judgment.

¹⁴ The only assertion of any improper actions committed by the Appellees was that DBNTC lacked authority under the Pooling and Servicing Agreement (PSA) creating the trust to purchase the subject property. However, Greenspon lacks standing to challenge whether DBNTC violated the PSA. Klohs v. Wells Fargo Bank, N.A., 901 F. Supp. 2d 1253, 1260 n.3 (D. Haw. 2012).

claims of UDAP and fraud based on all of the acts asserted in the complaint and apparently against all named defendants. However, the only defendants involved in this appeal are the Appellees. The lone actions alleged in the First Amended Complaint attributable to the Appellees are that OneWest purchased IMFB, and DBNTC received transfer of title to the subject property without authority.

None of the alleged actions asserted in the First Amended Complaint describe a transaction occurring between Greenspon as a consumer and the Appellees as a seller in a business context in order to support a UDAP claim. See Keka, 94 Hawai'i at 227, 11 P.3d at 15. Therefore, the circuit court did not err in granting summary judgment to Appellees on Greenspon's UDAP claim.

In terms of any alleged fraud, like all torts, Greenspon must have alleged that the Appellees breached a duty owed to Greenspon and the breach caused injury to Greenspon. Exotics Hawaii-Kona, Inc. v. E.I. Du Pont De Nemours & Co., 116 Hawai'i 277, 298, 172 P.3d 1021, 1042 (2007). Greenspon has not alleged any injury caused by the Appellees' actions.

3. Injunctive Relief

Injunctive relief is not an independent cause of action but a remedy to other causes of action. Ramos v. Chase Home Fin., 810 F. Supp. 2d 1125, 1132 (D. Haw. 2011). Because we vacate the circuit court's grant of summary judgment as to quiet title, we also vacate the grant of summary judgment regarding Greenspon's request for injunctive relief on this claim.

In sum, the circuit court erred in granting summary judgment for Appellees as to Greenspon's claim to quiet title and to the extent he seeks injunctive relief based on his quiet title claim. In all other aspects, the circuit court did not err in granting summary judgment for Appellees related to Greenspon's claims asserted in his First Amended Complaint.¹⁵

¹⁵ To the extent Greenspon argues that summary judgment for Cal-Western was not proper, the Rule 54(b) Judgment did not enter judgment as to Cal-Western. Therefore, we will not address the claims against Cal-Western.

We need not address Greenspon's remaining point of error regarding the circuit court's denial of his request for a HRCF Rule 56(f) Discovery Continuance.

III. Conclusion

Based on the foregoing, the following entered by the Circuit Court of the First Circuit are affirmed in part and vacated in part:

(A) "Order Granting: (1) Defendants [OneWest] and [DBNTC's] Motion for Summary Judgment Re: First Amended Complaint, Filed on November 5, 2012; and (2) [DBNTC's] Motion for Summary Judgment Re: Counterclaim (and Writ of Ejectment Against Defendant Michael C. Greenspon), Filed on November 5, 2012", entered on March 13, 2013,

(B) "Final Judgment [Re: [Order Granting Summary Judgment]]", entered on March 13, 2013, and

(C) "Order Denying [Greenspon's] Motion to Reconsider The Court's Order Granting Summary Judgment And Judgment For Possession," entered on May 23, 2013.

They are vacated with respect to (1) DBNTC's counterclaim and (2) Greenspon's claim to quiet title and for injunctive relief. Otherwise, we affirm. This case is remanded to the circuit court for proceedings consistent with this opinion.

DATED: Honolulu, Hawai'i, June 14, 2016.

On the briefs:

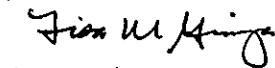
Michael C. Greenspon,
Plaintiff/Counterclaim
Defendant-Appellant, pro se.

J. Blaine Rogers,
Jenny J.N.A. Nakamoto,
(David B. Rosen on the briefs)
for Defendant-Appellees.



Chief Judge


Associate Judge


Associate Judge