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Intermediate Court of Appeals  
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NO. CAAP-14-0000426

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

CIVIL NO. 11-1-2095

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK,  
NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE  
FOR THE BENEFIT OF THE CERTIFICATE HOLDERS OF THE  
CWMBS 2006-10 TRUST, MORTGAGE PAS THROUGH CERTIFICATES,  
SERIES 2006-10, Plaintiff-Appellee,

v.

R. ONAGA, INC., a Hawaii corporation, Defendant-Appellant,  
and

ROBERT NISPEROS MARQUEZ; MARLYN MIRANDA MARQUEZ;  
MORTGAGE ELECTRONIC REGISTRATIONS SYSTEMS, INC.,  
solely as nominee for CASTLE & COOKE MORTGAGE, LLC.,  
a Hawaii corporation; DEPARTMENT OF TAXATION, STATE OF  
HAWAII; UNITED STATES OF AMERICA, DEPARTMENT OF THE  
TREASURY, INTERNAL REVENUE SERVICE, Defendant-Appellees,  
and

JOHN DOES 1-20, JANE DOES 1-20, DOE CORPORATIONS 1-20,  
DOE ENTITIES 1-20, and DOE GOVERNMENTAL UNITS  
1-20, Defendants

CIVIL NO. 12-1-1758

R. ONAGA, INC., a Hawaii corporation, Plaintiff-Appellant,  
v.

ROBERT NISPEROS MARQUEZ; MARLYN MIRANDA MARQUEZ;  
BANK OF NEW YORK MELLON, TRUSTEE;  
MORTGAGE ELECTRONIC REGISTRATIONS SYSTEMS, INC.,  
DEPARTMENT OF TAXATION, STATE OF HAWAII;  
INTERNAL REVENUE SERVICE, DEPARTMENT OF THE  
TREASURY, U.S.A., Defendants-Appellees,  
and

JOHN DOES 1-10, and DOE GOVERNMENTAL UNITS  
1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NOS. 11-1-2095 AND 12-1-1758)

**MEMORANDUM OPINION**

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

This case involves competing claims to foreclose on the same property located in Mililani, Hawai'i (the Property) by Plaintiff-Appellee Bank of New York Mellon, fka Bank of New York, not in its Individual Capacity, but Solely as Trustee (BNYM) and Defendant-Appellant R. Onaga, Inc. (Onaga Inc.). The Circuit Court of the First Circuit (circuit court) consolidated the competing claims for foreclosure and granted summary judgment for BNYM, determining that BNYM held the first priority lien and could foreclose on the Property (Foreclosure Judgment).

The Foreclosure Judgment was the subject of a separate appeal before this court in CAAP-13-0002287. In CAAP-13-0002287, we vacated the Foreclosure Judgment in a Summary Disposition Order issued on September 18, 2014, and remanded the case to the circuit court. Bank of New York Mellon v. R. Onaga, Inc., No. CAAP-13-0002287, 2014 WL 4661972, (Haw. App. Sept. 18, 2014) (SDO).

In the instant appeal, which was pending when we issued the September 18, 2014 SDO in CAAP-13-0002287, Onaga Inc. appeals from a February 21, 2014 Judgment issued by the circuit court<sup>1</sup> pursuant to Hawai'i Rules of Civil Procedure (HRCPP) Rule 54(b) (Judgment Confirming Sale), following an "Order Confirming Foreclosure Sale, Approving Commissioner's Report, Allowance of Commissioner's Fees, Costs, and Directing Conveyance." (Order Confirming Sale).<sup>2</sup> On appeal, Onaga Inc. contends that the

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<sup>1</sup> The Honorable Edwin C. Nacino presided, except as noted below.

<sup>2</sup> Onaga Inc.'s notice of appeal identifies the Order Confirming Sale, not the Judgment Confirming Sale. Pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rules 3(c)(2) and 4(a)(2), we treat Onaga Inc. as having timely appealed from the Judgment Confirming Sale.

Onaga Inc. also purports to appeal from the "Order Denying Defendant R. Onaga, Inc.'s Motion for an Order to Void Amended Judgment Filed on September 6, 2013 and the Amended Notice of Entry of Judgment Filed September 26, 2013" (Order Denying Motion to Void Judgment) filed on December 12, 2013, in the circuit court. "An order denying a motion for post-judgment relief under HRCPP [Rule] 60(b) is an appealable final order under [Hawaii Revised Statutes (HRS)] § 641-1(a)." Ditto v. McCurdy, 103 Hawai'i 153, 160, (continued...)

circuit court erred in (1) concluding it has subject matter jurisdiction in BNYM's judicial foreclosure action; (2) confirming BNYM's foreclosure sale; and (3) denying Onaga Inc.'s motion for stay of proceedings pending appeal.

Additionally in this appeal, Intervenor Lyle Anthony Ferrara and Linda Susan Ferrara (the Ferraras), the high bidders at the foreclosure auction, have filed a "Motion to Dismiss the Appeal and [Request] for Judicial Notice." The Ferraras contend that the Property has irretrievably passed to them and Onaga Inc.'s appeal is moot.

For the reasons set forth below, we take judicial notice of the documents proffered by the Ferraras, including a certificate of title, but hold that the Ferraras have not demonstrated that Onaga Inc.'s appeal is moot.

Further, in terms of Onaga Inc.'s points of error: (1) because the Foreclosure Judgment was vacated by this court in CAAP-13-0002287, the Judgment Confirming Sale must also be vacated; and (2) because Onaga Inc. requested a stay pending appeal, it was required to post a supersedeas bond pursuant to HRCF Rule 62(d) to obtain the stay.

### **I. Background**

Both BNYM and Onaga Inc. initiated separate foreclosure proceedings in the circuit court on the Property owned by Robert

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<sup>2</sup>(...continued)  
80 P.3d 974, 981 (2003). The circuit court's Order Denying Motion to Void Judgment was an appealable final post-judgment order.

HRAP Rule 4(a)(1) requires Onaga Inc. to have filed its notice of appeal from the Order Denying Motion to Void Judgment within thirty-days of entry. The order was entered on December 12, 2013. The thirtieth day was Saturday, January 11, 2014. Pursuant to HRAP Rule 26(a), the deadline for Onaga Inc. to appeal from the Order Denying Motion to Void Judgment was January 13, 2014. Onaga Inc. filed its notice of appeal on February 10, 2014.

"As a general rule, compliance with the requirement of the timely filing of a notice of appeal is jurisdictional[.]" Ditto, 103 Hawai'i at 157, 80 P.3d at 978 (citation and quotation marks omitted). We do not have jurisdiction in this case to review the Order Denying Motion to Void Judgment.

and Marlyn Marquez (the Marquezes).<sup>3</sup> The Marquezes' title was recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i (Land Court), Certificate No. 794004. In their respective complaints, BNYM (Civ. No. 11-1-2095-09) and Onaga Inc. (Civ. No. 12-1-1758-12) both sought to foreclose on the Property, apply the proceeds of the sale to their respective liens as first priority liens, and have all other interests or liens adjudicated as subordinate.

BNYM asserts that it has a first priority lien based on a note and mortgage executed by the Marquezes. BNYM claims the Marquezes executed and delivered to Castle & Cooke Mortgage, LLC, a promissory note in the amount of \$720,400, and executed and delivered to Mortgage Electronic Registration Systems, Inc. (MERS) as nominee, a mortgage encumbering the Property. The mortgage is alleged to have been recorded in the Land Court (Doc. No. 3394749) on February 21, 2006. The note and mortgage were allegedly assigned to BNYM via an Assignment of Mortgage, which was recorded in the Land Court on March 31, 2011 (Doc. No. 4061412).

Onaga Inc. asserts that it has a first priority lien on the Property based on the following facts asserted in its complaint. In November 2003, the Marquezes secured payment on a promissory note for the purchase of Onaga Inc.'s assets via a mortgage on a condominium owned by the Marquezes. When the Marquezes purchased the Property, the Marquezes promised to substitute a mortgage on the Property for the mortgage on the condominium, but did not do so. Onaga Inc. filed suit in the circuit court for specific performance and a final judgment was entered in its favor on December 11, 2007. Onaga Inc. recorded

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<sup>3</sup> On June 12, 2014, the Marquezes informed the court that they take no position regarding the issues raised on appeal and did not file an answering brief. On May 8, 2012, the Marquezes had received a bankruptcy discharge from the United States Bankruptcy Court for the District of Hawai'i.

Previously, on May 23, 2014, the Department of Taxation, State of Hawai'i also informed the court that it takes no position with respect to the issues raised on appeal and did not file an answering brief.

the final judgment in the Land Court on March 24, 2008 (Doc. No. 3725614). Pursuant to the final judgment, the Marquezes executed a new mortgage in favor of Onaga Inc. which was also recorded on March 24, 2008 in the Land Court (Doc. No. 3725614).

The circuit court granted Onaga Inc.'s motion to consolidate the separate foreclosure proceedings.<sup>4</sup> On April 9, 2013, BNYM filed a "Motion for Summary Judgment for Foreclosure Against All Defendants and for Interlocutory Decree of Foreclosure." BNYM contended that there was no genuine issue of material fact that it held a valid first priority lien on the Property and it was entitled to conduct a foreclosure sale. On May 15, 2013, Onaga Inc. filed an opposition to BNYM's Motion and a Cross Motion for Summary Judgment and for Interlocutory Decree of Foreclosure. Onaga Inc. contended that there was no genuine issue of material fact that it held the first priority lien on the Property.

On July 3, 2013, the circuit court entered an "Order Denying [Onaga Inc.'s] Cross Motion for Summary Judgment and For Interlocutory Decree of Foreclosure" (Order Denying Onaga Inc.'s Cross Motion for Summary Judgment). On July 5, 2013, the circuit court entered (1) "Findings of Fact, Conclusions of Law and Order Granting [BNYM's] Motion for Summary Judgment For Foreclosure Against All Defendants and For Interlocutory Decree of Foreclosure" (Order Granting BNYM's Motion for Summary Judgment); and (2) the Foreclosure Judgment. Onaga Inc. filed a timely notice of appeal from these three documents, which became case no. CAAP-13-0002287.

In the Order Granting BNYM's Motion for Summary Judgment, the circuit court concluded that BNYM's lien had priority over any other lien and BNYM was entitled to foreclose on the Property and conduct a foreclosure auction. The circuit court also concluded that upon closing of the foreclosure sale, all other claims in the Property would be forever barred and

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<sup>4</sup> The Honorable Bert I. Ayabe entered this order.

foreclosed upon. On August 8, 2013, the circuit court entered an "Amended Findings of Fact, Amended Conclusions of Law and Amended Order Granting [BNYM's] Motion for Summary Judgment for Foreclosure Against All Defendants and for Interlocutory Decree of Foreclosure" and an amended order appointing Lorrin Kau as commissioner of the court.

On October 29, 2013, Onaga Inc. filed a "Motion For an Order to Stay the Proceedings Pending Appeal Without Conditions or Bond" (Motion to Stay Proceedings) pursuant to HRCF Rule 62(h). In its Memorandum in Support of Motion, Onaga Inc. reargued the merits of its case and noted that it appealed the Foreclosure Judgment, therefore the court should stay the proceedings without requiring Onaga Inc. to post a supersedeas bond or placing conditions on the stay.

At a public auction held on November 5, 2013, the Ferraras were the high bidders. On November 20, 2013, BNYM filed a "Motion for Order Confirming Foreclosure Sale, Approving Commissioner's Report, Allowance of Commissioner's Fees, Attorney's Fees, Costs, and Directing Conveyance."

On January 17, 2014, the circuit court entered the Order Confirming Sale, which *inter alia* ordered the commissioner to make a good and sufficient conveyance of title to the Ferraras upon receipt of the full purchase price. On February 12, 2014, the circuit court denied Onaga Inc.'s Motion to Stay Proceedings and ordered Onaga Inc. to post a supersedeas bond in order to obtain a stay. On February 21, 2014, the circuit court entered the Judgment Confirming Sale.

**A. CAAP-13-0002287 (Prior Appeal)**

On July 24, 2013, Onaga Inc. appealed from the Foreclosure Judgment, the Order Granting BNYM's Motion for Summary Judgment, and the Order Denying Onaga Inc.'s Cross Motion for Summary Judgment, which became appellate case no. CAAP-13-0002287. On September 18, 2014, this court issued a Summary Disposition Order (SDO) which affirmed the Order Denying Onaga Inc.'s Cross Motion of Summary Judgment, but concluded that the

circuit court erred in granting summary judgment in favor of BNYM. Thus, this court vacated the Foreclosure Judgment and the Order Granting BNYM's Motion for Summary Judgment, and remanded to the circuit court for further proceedings consistent with the September 18, 2014 SDO. Bank of New York Mellon, 2014 WL 4661972, at \*2.

Subsequently, on September 29, 2014, in CAAP-13-0002287, the Ferraras filed a "Motion to Intervene and [Request] for Judicial Notice" and a "Motion: (1) For Reconsideration of the Summary Disposition Order, Filed on September 18, 2014, and (2) To Dismiss the Appeal." The Ferraras sought leave to intervene, asserting that Onaga Inc.'s appeal was moot prior to entry of the September 18, 2014 SDO because the Ferraras had finalized purchase of the Property on August 29, 2014, the day they purport to have recorded a Commissioner's Deed in the Land Court (Commissioner's Deed), and BNYM had not properly informed the court of this development. This court denied both of the Ferraras' motions.

**B. The Instant Appeal**

On February 10, 2014, while the prior appeal in CAAP-13-0002287 was still pending, Onaga Inc. filed the notice of appeal in the instant case. On September 12, 2014, Onaga Inc. filed a motion for an injunction during the pendency of the appeal. On September 19, 2014, this court granted the motion due to the court's September 18, 2014 SDO in CAAP-13-0002287, and stayed the Order Confirming Sale during the pendency of this appeal.

On September 28, 2014, the Ferraras filed a "Motion to Intervene and [Request] for Judicial Notice." On September 29, 2014, the same day that the Ferraras filed their motions in CAAP-13-0002287, they filed a "Motion to Dismiss the Appeal" in the instant appeal raising the same contentions they raised in the motions filed in CAAP-13-0002287. As part of their motion to intervene, the Ferraras requested that judicial notice be taken of the Commissioner's Deed, recorded in the Land Court on August

29, 2014 (Doc. No. T-9006302), which they purport demonstrates final transfer of title on the Property.

In an order issued on January 23, 2015, this court granted the Ferraras' motion to intervene for the limited purpose of presenting their argument that the instant appeal is moot. We also took judicial notice of the Commissioner's Deed. In the same order, we denied the Motion to Dismiss the Appeal, stating:

The Ferraras contend the appeal is moot because they are good faith purchasers of foreclosed property and title cannot be affected by the reversal of an order confirming the sale after its recordation. However, the Ferraras do not assert that a Certificate of Title has been issued, and even if a Certificate of Title was issued, the Ferraras would need to establish that there is no encumbrance noted on such Certificate of Title related to Appellant Onaga's mortgage or his [sic] claims on the property. . . .

The Ferraras have not established that the appeal is moot.

On August 4, 2015, the Ferraras filed a second "Motion to Dismiss the Appeal and [Request] for Judicial Notice" (Second Motion to Dismiss) on grounds of mootness. The Ferraras request judicial notice of (a) a Certificate of Title, Certificate No. 1083890, issued on August 29, 2014; (b) Commissioner's Deed, recorded August 29, 2014; and (c) a Mortgage recorded on August 29, 2014, regarding the Property in which the Ferraras are listed as borrowers. The Ferraras reassert in their Second Motion to Dismiss that Onaga Inc.'s instant appeal is moot because title has irretrievably passed to the Ferraras, and, because they have provided a certificate of title, this court's concerns regarding priority of liens should be alleviated. We address the Second Motion to Dismiss in this opinion.

## **II. Discussion**

### **A. The Ferraras' Motion to Dismiss the Appeal as Moot**

In the Second Motion to Dismiss, the Ferraras again move to dismiss this appeal as moot and this time request judicial notice of the Commissioner's Deed, a Certificate of Title issued on August 29, 2014, and a Mortgage recorded in the Land Court on August 29, 2014.



**1. Judicial Notice**

"[A]n appellate court may take judicial notice of facts despite the failure of the trial court to do so, provided that the facts are capable of immediate and accurate demonstration by resort to easily accessible sources of indisputable accuracy." State v. Puaoi, 78 Hawai'i 185, 190, 891 P.2d 272, 277 (1995) (citation and quotation marks omitted). The recording of the Commissioner's Deed and the Mortgage, and the issuance of the Certificate of Title, are facts that were not considered by the circuit court and were not included in the record on appeal because they occurred after the record on appeal was filed. However, Onaga Inc. does not dispute the accuracy of the documents, and the documents are easily accessible from a source of indisputable accuracy because they are records in the Land Court. Therefore, we take judicial notice of the Commissioner's Deed, Certificate of Title, and Mortgage proffered by the Ferraras.

**2. Certificate of Title**

The Ferraras contend this appeal is moot. The Ferraras argue that despite the September 18, 2014 SDO in CAAP-13-0002287, Onaga Inc. did not obtain a stay pending appeal and failed to post a supersedeas bond. Thus, the Ferraras contend, they were able to finalize the purchase and transfer of the Property on August 29, 2014, the day the Commissioner's Deed was recorded and the Certificate of Title was issued in the Land Court, which was prior to this court's issuance of the September 18, 2014 SDO. The Ferraras contend the sale cannot be undone. The Ferraras further contend that the recording of the Commissioner's Deed was sufficient to transfer title to them and warranted the issuance of the Certificate of Title, and that the Certificate of Title does not reflect any encumbrances relating to Onaga Inc.'s claims to the Property.

In response, Onaga Inc. contends that the Certificate of Title is void because the Land Court lacked statutory

authority to issue a new certificate of title in this case.<sup>5</sup> Onaga Inc. contends that because this case involved a "foreclosure by action," the Ferraras were required to comply with HRS § 501-118 (2006),<sup>6</sup> they failed to do so, and thus, there was no legal basis for the Ferraras to record the Commissioner's Deed or for the Land Court to issue a new certificate of title.

"[A] case is moot if the reviewing court can no longer grant effective relief." City Bank v. Saje Ventures II, 7 Haw. App. 130, 134, 748 P.2d 812, 815 (1988) (citation marks omitted). Mootness is an issue of subject matter jurisdiction. Hamilton ex rel. Letham v. Lethem, 119 Hawai'i 1, 4, 193 P.3d 839, 842 (2008). "The proponent of mootness has the heavy burden of persuasion." Knuckles v. Weinberger, 511 F.2d 1221, 1222 (9th Cir. 1975) (citation and quotation marks omitted).

On January 23, 2015, this court denied the Ferraras' first motion to dismiss filed in this appeal noting that they had not asserted that a certificate of title had been issued, and even if they had, the Ferraras had not demonstrated no encumbrance was noted on the certificate of title related to

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<sup>5</sup> We reject Onaga Inc.'s other contention, that the Certificate of Title is void because a stay was filed in this appeal. The stay was not entered until September 19, 2014, whereas the Commissioner's Deed was recorded and the Certificate of Title was issued on August 29, 2014.

<sup>6</sup> HRS § 501-118 provides:

**HRS § 501-118 Foreclosure.** Mortgages of registered land may be foreclosed like mortgages of unregistered land.

In case of foreclosure by action, a certified copy of the final judgment of the court confirming the sale may be filed or recorded with the assistant registrar or the deputy after the time for appealing therefrom has expired and the purchaser shall thereupon be entitled to the entry of a new certificate.

In case of foreclosure by exercising the power of sale without a previous judgment, the affidavit required by chapter 667 shall be recorded with the assistant registrar. The purchaser or the purchaser's assigns at the foreclosure sale may thereupon at any time present the deed under the power of sale to the assistant registrar for recording and obtain a new certificate. Nothing in this chapter shall be construed to prevent the mortgagor or other person in interest from directly impeaching by action or otherwise, any foreclosure proceedings affecting registered land, prior to the entry of a new certificate of title.

After a new certificate of title has been entered, no judgment recovered on the mortgage note for any balance due thereon shall operate to open the foreclosure or affect the title to registered land.

Onaga Inc.'s mortgage.<sup>7</sup> In support of their Second Motion to Dismiss, the Ferraras have provided this court with a certificate of title issued in their names that does not reflect an encumbrance related to Onaga Inc.'s mortgage. They thus contend this appeal is moot, relying on City Bank, in which this court expressed: "[t]he general rule is that the right of a good faith purchaser to receive property acquired at a judicial sale cannot be affected by the reversal of an order ratifying the sale where a supersedeas bond has not been filed." 7 Haw. App. at 133, 748 P.2d at 814 (citation, quotation marks and brackets omitted).

We conclude that the Ferraras have not carried their burden to demonstrate that this appeal is moot. City Bank held that an appeal from a judgment confirming sale was moot because the Property had been sold to a good faith third party purchaser and the court could not vitiate the closed sale and direct a new sale, as requested by the appellants. 7 Haw. App. at 134, 748 P.2d at 815. Importantly however, City Bank did not involve property registered in Land Court. Here, we must consider that a certificate of title is given conclusive effect to all matters stated in the certificate, except as otherwise provided in HRS Chapter 501. HRS § 501-88 (2006).

As Onaga Inc. argues in opposing the Ferraras second motion to dismiss, HRS § 501-118 covers foreclosures related to property registered in Land Court and expressly provides that: "In case of foreclosure by action, a certified copy of the final judgment of the court confirming the sale may be filed or recorded with the assistant registrar or the deputy after the time for appealing therefrom has expired and the purchaser shall thereupon be entitled to the entry of a new certificate."

(Emphasis added.) Thus, based on the provisions of Chapter 501, it is questionable whether the certificate of title submitted by

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<sup>7</sup> HRS § 501-82 provides that "every subsequent purchaser of registered land who takes a certificate of title for value and in good faith, hold[s] the same free from all encumbrances except those noted on the certificate in the order of priority of recordation[.]"

the Ferraras is conclusive in passing title to the Ferraras. Rather, it appears that Onaga Inc. is permitted the opportunity to appeal the foreclosure by action.

There also appear to be further questions regarding the issuance of the certificate of title. Pertinent to this case, HRS § 501-106(a) (2006 & Supp. 2015) provides in relevant part:

**§501-106 Entry of a new certificate.** (a) No new certificate of title shall be entered, and no memorandum shall be made upon any certificate of title by the registrar or assistant registrar, except:

(1) In pursuance of any deed or other voluntary instrument; [or]

(4) In cases expressly provided for in this chapter[.]

The Ferraras contend they obtained a certificate of title pursuant to subsection (1). However, it is questionable whether subsection (1) governs in the case of a judicial foreclosure in which case title does not pass by voluntary means. Rather, as noted, HRS § 501-118 expressly covers foreclosure of Land Court property and, with respect to a "foreclosure by action," a certified copy of the final judgment confirming the foreclosure sale may be filed after the time for appealing therefrom has expired. Under HRS § 501-118, it is only in the case of foreclosure by "exercising the power of sale" that the purchaser may present the deed of conveyance to obtain a new certificate of title. The Ferraras do not contend that they filed a certified copy of the Judgment Confirming Sale, instead claiming that title was vested in them upon the recording of the Commissioner's Deed. This is contrary to the express provisions of HRS § 501-118 where there has been a "foreclosure by action," as in this case.

In sum, the Ferraras have not carried their burden to establish that Onaga Inc.'s appeal is moot.

**B. Onaga Inc.'s Appeal on the Merits**

Onaga Inc.'s first two points of error concern BNYM's right to conduct a judicial foreclosure sale and the circuit court's confirmation of the sale. In CAAP-13-0002287, we vacated the Foreclosure Judgment and remanded for further proceedings.

Bank of New York Mellon, 2014 WL 4661972, at \*2. In light of this court's September 18, 2014 SDO in CAAP-13-0002287, we must also vacate the Judgment Confirming Sale. See GMAC Mortg., LLC v. Unciano, CAAP-11-0001081, CAAP-13-0000306, CAAP-13-0001307, 2014 WL 2949441, at \*4 (Haw. App. June 30, 2014) (SDO), cert. rejected, SCWC-11-0001081, SCWC-13-0000306, SCWC-13-0001307, 2014 WL 6863963 (Dec. 3, 2014). This resolves Onaga Inc.'s first and second point of error.

With respect to Onaga Inc.'s third point of error, it contends that the circuit court erred in denying its motion for stay of proceedings without bond or conditions pending appeal. On appeal, it appears that Onaga Inc. asserts that the circuit court should have issued a stay based on the provisions of HRS § 501-118. However, there is nothing in that statute that mandates or suggests that a court should issue a stay. Rather, the statute is directed to what should occur in Land Court.

Moreover, in its motion before the circuit court, Onaga Inc. requested a stay pursuant to HRCF Rule 62(h) and noted that it had appealed the Foreclosure Judgment (at the time, this court had not issued the September 18, 2014 SDO in CAAP-13-0002287), therefore the court should stay the proceedings without requiring Onaga Inc. to post a supersedeas bond or placing conditions on the stay. Onaga Inc.'s contention is without merit and ignores the requirements of HRCF Rule 62.

HRCF Rule 62 governs stays of proceedings to enforce a judgment. "When interpreting rules promulgated by the court, principles of statutory construction apply." Kawamata Farms, Inc. v. United Agri Prods., 86 Hawai'i 214, 255, 948 P.2d 1055, 1096 (1997) (quoting State v. Baron, 80 Hawai'i 107, 113, 905 P.2d 613, 619 (1995)).

HRCF Rule 62 provides in pertinent part that:

**(d) Stay Upon Appeal.** When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the

supersedeas bond is approved by the court.

. . . . .

**(h) Stay of Judgment as to Multiple Claims or Multiple Parties.** When a court has ordered final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

Onaga Inc. requested a stay pending appeal pursuant to HRCP Rule 62(h) without conditions or bond. However, the plain language of HRCP Rule 62(h) only permits a stay of a HRCP Rule 54(b) judgment until "subsequent judgment[s]" are entered. In other words, to permit the circuit court to resolve other claims or issues involving other parties. However, a judgment of foreclosure is deemed final for appeal purposes notwithstanding that issues such as the confirmation of sale remain outstanding. HRS § 667-51 (Supp. 2015). In its motion, Onaga Inc. argued that because the Foreclosure Judgment was on appeal, a stay should be entered; in other words, Onaga Inc. requested a stay upon appeal. Thus, HRCP Rule 62(d), not 62(h), is the applicable provision. HRCP Rule 62(d) expressly requires the appellant to post a supersedeas bond before obtaining a stay. Onaga Inc. does not dispute that it did not post a supersedeas bond.

The circuit court did not err in denying Onaga Inc.'s motion for a stay of proceedings pending appeal.

### **III. Conclusion**

The Ferraras' "Motion to Dismiss the Appeal and [Request] for Judicial Notice" filed August 4, 2015, is granted in part and denied in part. The motion is granted only to the extent that we take judicial notice of the offered documents. However, for the reasons set forth above, we deny the Ferraras' motion to dismiss the appeal as moot.

The Judgment entered on February 21, 2014, in the Circuit Court of the First Circuit is vacated and this case is remanded for further proceedings consistent with this opinion.

DATED: Honolulu, Hawai'i, June 21, 2016.

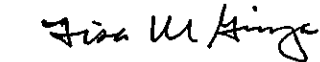
On the briefs:

Lloyd Y. Asato,  
for Defendant-Appellant.

Manmeet Rana,  
for Plaintiff-Appellee.

  
Presiding Judge

  
Associate Judge

  
Associate Judge