

Electronically Filed
Intermediate Court of Appeals
CAAP-15-0000361
28-JUN-2016
08:26 AM

NO. CAAP-15-0000361

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

ASSOCIATION OF APARTMENT OWNERS OF
CENTURY CENTER BY AND THROUGH ITS BOARD OF DIRECTORS,
Plaintiff-Appellee,

v.

LILY TAI NOMURA, Defendant-Appellant,
and

RICHARD LEE, Applicant for Intervention-Appellant,
and

DANNY ROBERTS, MICHAEL SPENCER, SAMANTHA COOK,
ALETTA FLEISCHINGER, KAYLA FERNANDEZ, KAYCEE HABAN,
ALIX LUNSFORD, HANS BRODO, LILY LUM, CHRISTOPHER SCHULTE,
LYLE NAM PAK, TOM SALT, LOGAN CROWLEY, AND ERIN BARASKY,
Defendants-Appellees,

and

JOHN DOES 1-50 AND JANE DOES 1-50,
Defendants

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(Honolulu Division)
(CIVIL CASE NO. 1RC14-1-7636)

SUMMARY DISPOSITION ORDER

(By: Nakamura, Chief Judge, and Fujise and Reifurth, JJ.)

Lilly Tai Nomura (Nomura) and Richard Lee (Lee)
(collectively, Appellants)^{1/} appeal from the Judgment for
Possession in favor of Plaintiff-Appellee Association of
Apartment Owners of Century Center, Inc. (AOAO). The Judgment
for Possession was accompanied by a Writ of Possession, and they
were both filed on March 24, 2015, in the District Court of the
First Circuit (District Court).

^{1/} Nomura was a named defendant, and Lee moved for intervention, but his
motion was denied.

On appeal, Appellants argue that the District Court lacked jurisdiction over the AOA's summary possession action because Appellants had sufficiently raised a claim to title to divest the District Court of jurisdiction. See Hawaii Revised Statutes (HRS) § 604-5(d) (1993) ("The district courts shall not have cognizance of real actions, nor actions in which the title to real estate comes in question . . .").^{2/} In particular, Appellants argue that their claim to title is superior to that of the AOA because the AOA lacked the authority to conduct a non-judicial foreclosure, and therefore, the non-judicial foreclosure by which the AOA acquired its interest in the subject unit was void. We recently considered essentially the same claim to title presented here by Appellants in Association of Apartment Owners of Century Center, Inc. v. Nomura, No. CAAP-15-0000119, 2016 WL 2940855 (Haw. App. May 11, 2016) (Memorandum Opinion). Consistent with our previous decision in Nomura (No. CAAP-15-0000119), we conclude that Appellants' claim to title in the instant case was sufficient to divest the District Court of Jurisdiction.

Accordingly, we vacate the March 24, 2015, Judgment for Possession issued by the District Court, and we remand the case to the District Court with instruction to dismiss the summary possession action for lack of jurisdiction.

DATED: Honolulu, Hawai'i, June 28, 2016.

On the briefs:

Gary Victor Dubin
Frederick J. Arensmeyer
(Dubin Law Offices)
for Defendants-Appellants

R. Laree McGuire
Jamila E. Jarmon
(Porter McGuire Kiakona & Chow, LLP)
for Plaintiff-Appellee


Chief Judge


Associate Judge


Associate Judge

^{2/} The Honorable Hilary Benson Gangnes issued the order denying Appellants' joint motion to dismiss for lack of subject matter jurisdiction. The Honorable Michael K. Tanigawa issued the order granting the AOA's motion for summary judgment and the Judgment for Possession.