

NO. CAAP-16-0000094

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

US BANK NATIONAL ASSOCIATION, not in its
Individual Capacity but Soley as Indenture Trustee for Castle
Peak 2012-1 Loan Trust Mortgage Back Notes, Series 2012-1,
Plaintiff-Appellee

v.

MARIO KAI KWON, Defendant-Appellant,
and

JOHN DOES 1-50, JANE DOES 1-50,
DOE PARTNERSHIPS 1-50, DOE CORPORATIONS 1-50,
DOE ENTITIES 1-50 and DOE GOVERNMENTAL UNITS 1-50, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 08-1-1105)

ORDER

(1) DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION

AND

(2) ALL PENDING MOTIONS ARE DISMISSED AS MOOT

(By: Foley, Presiding Judge, Leonard and Ginoza, JJ.)

Upon review of the record, it appears that we lack jurisdiction over this appeal that Defendant-Appellant Mario Kai Kwon, pro se (**Appellant Kwon**) has asserted in Civil No. 08-1-1105, the Honorable Bert I. Ayabe presiding, apparently from the September 18, 2015 Judgment of Foreclosure, because Appellant Kwon's February 22, 2016 notice of appeal is untimely under

Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) as to the September 18, 2015 Judgment of Foreclosure.

Although the September 18, 2015 Judgment of Foreclosure is an appealable final judgment pursuant to Hawaii Revised Statutes § 667-51(a) (Supp. 2015), HRAP Rule 4(a)(1) required Appellant Kwon to file his notice of appeal within thirty days after entry of the September 18, 2015 Judgment. Appellant Kwon did not timely file any post-judgment tolling motions that would have extended the time to file his notice of appeal under HRAP Rule 4(a)(3). Appellant did not file his February 22, 2016 notice of appeal in a timely manner within thirty days after entry of the September 18, 2015 Judgment of Foreclosure, and, thus, Kwon's February 22, 2016 notice of appeal is untimely under 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); HRAP Rule 26(b) ("[N]o court or judge or justice is authorized to change the jurisdictional requirements contained in Rule 4 of these rules."); HRAP Rule 26(e) ("The reviewing court for good cause shown may relieve a party from a default occasioned by any failure to comply with these rules, except the failure to give timely notice of appeal."). Therefore, we lack appellate jurisdiction.

Accordingly, IT IS HEREBY ORDERED that appellate court case number CAAP-16-0000094 is dismissed for lack of appellate jurisdiction, and all pending motions are dismissed as moot.

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

Presiding Judge

Associate Judge

Associate Judge