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Intermediate Court of Appeals
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NO. CAAP-14-0000784

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK,
AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC.,
ALTERNATIVE LOAN TRUST 2005-74T1, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-74T1, A NEW YORK CORPORATION,
Plaintiff-Appellee, v. WARREN EUGENE BLYE AND JUDY CASEY BLYE,
Defendants-Appellants, and AMERICAN SAVINGS BANK, F.S.B.;
DISCOVER BANK; JEFFREY L. ULDRICKS; TROY CAPITAL, INC.
Defendants-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

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 13-1-0577(1))

MEMORANDUM OPINION

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

Defendants-Appellants Warren Eugene Blye (Warren) and
Judy Casey Blye (collectively, Appellants) appeal from the March
27, 2014 Judgment Re: Plaintiff-Appellee's Findings of Fact,
Conclusions of Law and Order Granting Plaintiff The Bank of New
York Mellon FKA The Bank of New York, as Trustee for the
Certificateholders of CWALT, Inc., Alternative Loan Trust 2005-
74T1, Mortgage Pass-Through Certificates, Series 2005-74T1, a New
York Corporation's [(BNYM's)] Motion for Summary Judgment for
Decree of Foreclosure Against All Defendants and for

Interlocutory Decree of Foreclosure Filed on 01/22/2014
(Judgment), entered by the Circuit Court of the Second Circuit
(Circuit Court).¹

I. BACKGROUND

This case involves a property located on Wainee Street, in Lahaina, Maui, Hawai'i 96761 (Property). On September 16, 2005, Warren executed a promissory note (Note) to U.S. Financial Mortgage Corp., a Hawaii Corporation (U.S. Financial) in the amount of \$640,000.00. The Note was secured by the mortgage (Mortgage) on the Property. Mortgage Electronic Registration Systems, Inc. (MERS) was listed in the Mortgage as "mortgagee" and "nominee." The Mortgage was filed with the State of Hawai'i Bureau of Conveyances on September 23, 2005.

On February 17, 2011, MERS, as nominee for U.S. Financial, executed an Assignment of Mortgage. The Assignment of Mortgage granted, assigned, and transferred to BNYM "all mortgagee interest under that certain Mortgage dated 9/16/2005, executed by Warren Eugene Blye and Judy Casey Blye, Husband and Wife, as Tenants by the Entirety, mortgagor[.]"

On May 14, 2013, BNYM filed a Complaint for Mortgage Foreclosure (Complaint). In the Complaint, BNYM alleged that Appellants' failure to make scheduled payments "represents a default of the repayment terms under the Mortgage and Note." BNYM contended that it is "entitled to a foreclosure of its Mortgage and to a sale of the Property in accordance with the terms of the Mortgage." Copies of the Note, Mortgage, and

¹ The Honorable Rhonda I.L. Loo presided.

Assignment of Mortgage are attached to the Complaint. The Note includes an endorsement from U.S. Financial to Countrywide Bank, N.A., followed by an endorsement from Countrywide Bank, N.A. to Countrywide Home Loans Inc., and another endorsement from Countrywide Home Loans Inc., in blank.

On July 30, 2013, Appellants filed an Answer to the Complaint. Appellants did not assert any claims or affirmative defenses in their Answer.

On January 22, 2014, BNYM filed a motion for summary judgment and interlocutory decree of foreclosure (**Motion for Summary Judgment**). Copies of the Note, Mortgage, Assignment of Mortgage, Notice of Intent to Accelerate, and loan history were attached to the Motion for Summary Judgment. BNYM also submitted a declaration of Melissa Black (**Black**), an Assistant Vice President for Residential Credit Solutions, Inc., the servicing agent for BNYM. Black declared under penalty of perjury, *inter alia*, that Warren "defaulted in the performance of the terms set forth in the Note and Mortgage by failing to pay the principal, interest, and advances", and she attested to the "true and correct cop[ies]" of the loan documents, which were kept as part of the business records of BNYM's servicing agent.

On January 30, 2014, Appellants filed a joint Declaration in Opposition to Motion for Summary Judgment. Appellants asserted that "pursuant to Rule 6, Hawaii Rules of Civil Procedure, they were not given sufficient time to respond to the Motion, which is scheduled to be heard on February 11, 2014[.]" Appellants requested a continuance under Hawai'i Rules

of Civil Procedure (HRCP) Rule 56(f) to conduct discovery on (1) "[w]hether or not [BNYM] has the original Note and Mortgage," (2) "[w]hether or not [BNYM] was paid on the Note by their reinsurance company 60 days after the Note went into default," and (3) "[w]hether or not [BNYM] used 'tainted' funds to fund the Mortgage."

The Circuit Court held a hearing on the Motion for Summary Judgment on February 11, 2014. BNYM requested that the court grant its Motion for Summary Judgment pursuant to Bank of Honolulu N.A. v. Anderson, 3 Haw. App. 545, 654 P.2d 1370 (1982). Warren requested a sixty-day continuance to determine whether the sale of the Note and Mortgage was fraudulent. The Circuit Court granted the Motion for Summary Judgment.

On March 27, 2014, the Circuit Court entered its Judgment, and Findings of Fact (FOF), Conclusions of Law (COL) and Order granting BNYM's Motion for Summary Judgment, which included the following:

[FOF 5]: [BNYM] is the owner and holder of the Note and Mortgage by virtue of that certain Assignment of Mortgage dated 2/17/2011, recorded in the Bureau on 6/24/2011, as Document No.2011-099465 ("Assignment"). The Note, Mortgage, and Assignment are collectively referred to as the "Loan Documents."

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[FOF 8]: Defendant Warren Blye is in default under the terms of the Loan Documents in that he breached the covenant to make the payments as required under the terms of the Note.

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[FOF 11]: By reason of said default, [BNYM] is entitled to foreclose upon the Property in accordance with the terms and conditions provided in the Loan Documents.

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[COL 4]: [BNYM] is the holder of the Note and Mortgage and is entitled to enforce them. [BNYM] qualifies as the

Note holder with standing to prosecute the instant action as the Note is endorsed in blank, thereby converting the Note to a bearer instrument, and because [BNYM] is currently in rightful possession of the endorsed note.

[COL 5]: On 2/27/2011, the aforementioned Note and Mortgage were validly assigned to [BNYM] by virtue of an Assignment recorded in the Bureau on 6/24/2011 as Document No.2011-099465.

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[COL 7]: [BNYM] is entitled to the entry of summary judgment and an interlocutory decree of foreclosure against Defendants Warren Eugene Blye; Judy Casey Blye; American Savings Bank, F.S.B.; Discover Bank; Jeffrey L. Uldricks; Troy Capital, LLC; John Does 1-20; Jane Does 1-20; Doe Corporations 1-20; Doe Entities 1-20; And Doe Governmental Units 1-20, in the foreclosure action, on the grounds that no genuine issue of material fact exists, and [BNYM] is entitled to summary judgment and an interlocutory decree of foreclosure as a matter of law.

On April 28, 2014, Appellants filed their notice of appeal.

II. POINTS OF ERROR

Appellants raise nine points of error, contending that the Circuit Court erred in:

(1) finding that "[BNYM] is the owner and holder of the Note and Mortgage by virtue of that certain Assignment of Mortgage dated 2/17/2011, recorded in the Bureau on 6/24/2011, as Document No. 2011-099465" in FOF 5;

(2) finding that "[BNYM] is entitled to foreclosure upon the Property in accordance with the terms and conditions provided in the Loan Documents" in FOF 11;

(3) concluding that "[BNYM] is the holder of the Note and Mortgage and entitled to enforce them" in COL 4;

(4) concluding that "[BNYM] qualifies as the Note holder with standing to prosecute the instant action" in COL 4;

(5) concluding that the "Note and Mortgage were validly assigned to [BNYM] by virtue of an Assignment recorded in the Bureau on 6/24/2011 as Document No. 2011-099465" in COL 5;

(6) concluding that no genuine issue of material fact exists, and BNYM is entitled to summary judgment and an interlocutory decree of foreclosure as a matter of law in COL 7;

(7) failing to consider Appellants' Declaration in Opposition in its decision to grant BNYM's Motion for Summary Judgment;

(8) not granting a continuance to Appellants; and

(9) entering its Judgment.

We distill these points of error into four contentions:

(1) that the Circuit Court erred when it granted BNYM's Motion for Summary Judgment because genuine issues of material fact remained in dispute; (2) that the Circuit Court abused its discretion when it denied Appellants' request for a continuance under HRCF Rule 56(f); (3) that the Circuit Court erred when it failed to consider Appellants' Declaration in Opposition in its decision to grant BNYM's Motion for Summary Judgment and deny Appellants' request for a continuance; and (4) that the Circuit Court erred when it entered its Judgment.

III. APPLICABLE STANDARD OF REVIEW

On appeal, the grant or denial of summary judgment is reviewed *de novo*. See *State ex rel. Anzai v. City and County of Honolulu*, 99 Hawai'i 508, [515], 57 P.3d 433, [440] (2002); *Bitney v. Honolulu Police Dep't*, 96 Hawai'i 243, 250, 30 P.3d 257, 264 (2001).

[S]ummary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A fact is material if

proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. The evidence must be viewed in the light most favorable to the non-moving party. In other words, we must view all of the evidence and inferences drawn therefrom in the light most favorable to the party opposing the motion.

Kahale v. City and County of Honolulu, 104 Hawai'i 341, 344, 90 P.3d 233, 236 (2004) (citation omitted).

Nuuanu Valley Ass'n v. City & Cty. of Honolulu, 119 Hawai'i 90, 96, 194 P.3d 531, 537 (2008).

"A trial court's decision to deny a request for a continuance pursuant to HRCF Rule 56(f) will not be reversed absent an abuse of discretion." *Kaleikini v. Yoshioka*, 128 Hawai'i 53, 67, 283 P.3d 60, 74 (2012) (citations and internal quotation marks omitted).

[T]he request must demonstrate how postponement of a ruling on the motion will enable him or her, by discovery or other means, to rebut the movants' showing of absence of a genuine issue of fact. An abuse of discretion occurs where the trial court has clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant.

Associates Fin. Services of Hawaii, Inc. v. Richardson, 99 Hawai'i 446, 454, 56 P.3d 748, 756 (App. 2002) (quoting *Josue v. Isuzu Motors Am., Inc.*, 87 Hawai'i 413, 416, 958 P.2d 535, 538 (1998)).

U.S. Bank Nat. Ass'n v. Salvacion, 134 Hawai'i 170, 172-73, 338 P.3d 1185, 1187-88 (App. 2014).

IV. DISCUSSION

A. Summary Judgment

In reviewing a motion for summary judgment, the "burden is on the party moving for summary judgment (moving party) to show the absence of any genuine issue as to all material facts, which, under applicable principles of substantive law, entitles the moving party to judgment as a matter of law." Pioneer Mill Co., Ltd. v. Dow, 90 Hawai'i 289, 295, 978 P.2d 727, 733 (1999) (citation omitted). "If the moving party meets its burden of production, the non-moving party must present admissible evidence

showing specific facts about essential elements of each claim to avoid summary judgment." Tanaka v. Santiago, No. CAAP-13-0000014, 2014 WL 3512986, at *1 (Haw. App. July 16, 2014) (mem. op) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986)).

To be entitled to summary judgment in a foreclosure action, the movant must prove: (1) the existence of the agreement, (2) the terms of the agreement, (3) default under the terms of the agreement, and (4) notice of default was provided. Bank of Honolulu, N.A. v. Anderson, 3 Haw. App. 545, 551, 654 P.2d 1370, 1375 (1982).

In the instant case, BNYM presented copies of: (1) the Note by which Appellants promised to pay U.S. Financial Corp \$640,000.00; (2) the Mortgage that Appellants executed with U.S. Financial Corp; (3) a notice of intent to accelerate dated April 16, 2010, which notified Appellants of their default under the terms of the Note and Mortgage; and (4) the loan history. BNYM also submitted Black's declaration stating, *inter alia*, that Warren "defaulted in the performance of the terms set forth in the Note and Mortgage, by failing to pay the principal, interest, and advances[.]" Accordingly, BNYM established the existence and terms of the Note and Mortgage, that Appellants defaulted under the terms of the Note and Mortgage, and that Appellants were provided notice of their default. As BNYM satisfied its initial burden of production, the burden shifted to Appellants to "set forth specific facts, as opposed to mere allegations, that there was a genuine issue for trial." Bank of America, N.A. v. Hill,

No. CAAP-13-0000035, 2015 WL 6739087, at *5 (Haw. App. Oct. 30, 2015) (mem. op).

Appellants argue that there are two genuine issues of material fact, (1) whether BNYM is the holder of the Note; and (2) whether the Note and Mortgage were validly assigned to BNYM.

Appellants argue that the Circuit Court erred when it granted summary judgment because the issue of whether BNYM is the holder of the Note remains in dispute. BNYM contends that it presented "sufficient admissible evidence in the form of the sworn declaration that [BNYM] owned the Note[.]"

"In order to enforce a note and mortgage under Hawaii law, a creditor must be a 'person entitled to enforce' the note. One person entitled to enforce an instrument is a 'holder' of the instrument." U.S. Bank N.A. v. Mattos, 137 Hawai'i 209, 211, 367 P.3d 703, 705 (App. 2016) (citing In re Tyrell, 528 B.R. 790, 794 (Bankr. D. Haw. 2015)) cert. granted, No. SCWC-14-0001134 (Haw. June 23, 2016); see also Hawaii Revised Statutes (HRS) § 490:3-301 (2008)² and HRS § 490:1-201(b) (2008).³ Under HRS § 409:3-205

² HRS § 490:3-301 provides:

§490:3-301 Person entitled to enforce instrument.
"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to section 490:3-309 or 490:3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

³ HRS § 490:1-201(b) states in relevant part:

"Holder" means:

(1) The person in possession of a negotiable instrument that is payable either to bearer or to an identified (continued...)

(2008),⁴ "the bearer of an instrument endorsed in blank becomes the holder of that instrument." Mortgage Elec. Registration Sys. v. Wise, No. CAAP-11-0000444, 2012 WL 5971062, at *1 (Haw. App. Nov. 29, 2012) (SDO). This court has recognized that "a trial court does not err in finding that a plaintiff is the holder of the note when the plaintiff bears the note, a blank endorsement establishes that the plaintiff is the holder of the note, and there is a declaration stating that the note is a true and accurate copy of the note in the plaintiff's possession." Wells Fargo, N.A. v. Pasion, No. CAAP-12-0000657, 2015 WL 4067259, at *3 (Haw. App. June 30, 2015) (SDO), cert. denied, 2015 WL 5965895 (Haw. Oct. 13, 2015).

In order to establish that it was entitled to enforce the Note, BNYM attached Black's declaration, the Note, Mortgage, and Assignment of Mortgage. The Note included an endorsement

³(...continued)

person that is the person in possession;

- (2) The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or
- (3) The person in control of a negotiable electronic document of title.

HRS § 490:3-205 states in relevant part:

⁴ **§490:3-205 Special indorsement; blank indorsement; anomalous indorsement.** (a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement". When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. . . .

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement". When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

from U.S. Financial to Countrywide Bank, N.A., followed by an endorsement from Countrywide Bank, N.A. to Countrywide Home Loans Inc., and another indorsement from Countrywide Home Loans Inc., in blank. In her declaration, Black declared that the Note was a true and accurate copy of the Note in BNYM's possession. BNYM presented evidence that it "possessed the Note, the blank endorsement established that [BNYM] could possess the note, and the motion for summary judgment attached a declaration establishing that the Note was a true and accurate copy of the note in [BNYM's] possession." Pasion, 2015 WL 4067259, at *3. Thus, BNYM produced sufficient evidence that it was the "holder" of the Note and entitled to enforce the Note under HRS § 490:3-301. Bank of America, N.A. v. Reyes-Toledo, No. CAAP-15-0000005, 2016 WL 1092305, at *3 (Haw. App. Mar. 16, 2016) (SDO) cert. granted, No. SCWC-15-0000005 (Haw. June 22, 2016). Appellants did not present any evidence to contradict BNYM's showing that it was the holder of the note, and therefore, did not raise a genuine issue of material fact. See Hill, 2015 WL 6739087, at *5.

Appellants further argue that the Circuit Court erred when it granted summary judgment because the issue of whether the Note and Mortgage were validly assigned to BNYM remains in dispute. In particular, Appellants contend that "the note has no provision regarding transfer or assignment giving Lender or MERS authority to transfer the Note without Borrower's prior knowledge." BNYM contends that a "Note that has been endorsed in

blank is negotiated by delivering possession of the Note, not by assignment."

In Pasion, this court rejected a challenge to "the ability of the mortgagee, MERS, to assign the Mortgage or the Note[.]" Pasion, 2015 WL 4067259, at *3. This jurisdiction has recognized that when the "plain language of a mortgage establishes MERS as a nominee permitted to take action on behalf of the lender, it has 'the authority to take any action required of the lender, including assigning the mortgage.'" Id. (quoting Wells Fargo Bank, N.A. v. Yamamoto, No. CAAP-11-0000728, 2012 WL 6178303, at *1 (Haw. App. Dec. 11, 2012) (SDO)) (brackets omitted); see also Bank of New York Mellon v. Rumbawa, No. CAAP-15-0000024, 2016 WL 482170, at *3 (Haw. App. Feb. 4, 2016) (SDO).

Here, MERS was listed in the Mortgage as "mortgagee" and "nominee." Appellants mortgaged, granted, and conveyed the property to "MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, with power of sale[.]" The terms of the Mortgage granted MERS the right "to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the property; and to take action required by Lender including, but not limited to, releasing and canceling this Security Instrument." This court has held that mortgages with nearly identical language "have empowered MERS to take any action, including assigning the loan." Rumbawa, 2016 WL 482170, at *3. We reach the same conclusion in this case. Thus, we conclude

that there was no genuine issue of material fact as to whether MERS had the authority to assign the Note and Mortgage to BNYM.

B. HRCP Rule 56(f) Continuance

Appellants argue that the Circuit Court abused its discretion when it denied Appellants' request for a continuance. BNYM asserts that "Appellants did not meet their burden to be entitled to a continuance to conduct discovery."

HRCP Rule 56(f) states:

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

"A trial court's decision to deny a request for a continuance pursuant to HRCP Rule 56(f) will not be reversed absent an abuse of discretion." Salvacion, 134 Hawai'i at 172, 338 P.3d at 1187 (citing Kaleikini, 128 Hawai'i at 67, 283 P.3d at 74). A request for a continuance "must demonstrate how postponement of a ruling on the motion will enable the moving party, by discovery or other means, to rebut the movant's showing of absence of a genuine issue of fact." Id. at 176, 338 P.3d at 1191 (citation omitted). A party requesting a continuance is "required to show what specific facts further discovery might unveil." Exotics Hawaii-Kona, Inc. v. E.I. Du Pont De Nemours & Co., 116 Hawai'i 277, 308, 172 P.3d 1021, 1052 (2007) (quoting McCabe v. Macaulay, 450 F. Supp. 2d 928, 933 (N.D. Iowa 2006)). Additionally:

To prevail under [FRCP Rule 56(f)], parties opposing a motion for summary judgment must make (a) a timely application which (b) specifically identifies (c) relevant information, (d) where there is some basis for believing

that the information sought actually exists. The burden is on the party seeking additional discovery to proffer sufficient facts to show that the evidence sought exists, and that it would prevent summary judgment.

Hill, 2015 WL 6739087, at *10 (quoting Emp'rs Teamsters Local Nos. 175 & 505 Pension Trust Fund v. Clorox Co., 353 F.3d 1125, 1129-30 (9th Cir. 2004)).

In their Declaration in Opposition to BNYM's Motion for Summary Judgment, Appellants requested a continuance under HRCF Rule 56(f) to conduct discovery on whether or not BNYM: has the original Note and Mortgage; was paid on the Note by their reinsurance company sixty days after the Note went into default; and used "tainted" funds to fund the Mortgage. On appeal, Appellants clarify and contend that their request for a continuance was to obtain "essential facts" needed to support their legal theories about: (1) BNYM's standing to enforce the Note; and (2) fraud and illegal activity resulting in their default. As discussed, BNYM established that it was the holder of the Note and entitled to enforce the Mortgage. Reyes-Toledo, 2016 WL 1092305, at *3. Additionally, Appellants have not pled or provided any facts to support their contention that their default was caused by fraud and illegal activity. Appellants' allegations that fraud and illegal activity caused their default "appears to be based on pure speculation." Hill, 2015 WL 6739087, at *10. Appellants have provided no "plausible basis" for their claims that further discovery was necessary to establish that their default was due to fraud and illegal activity. Id. Therefore, Appellants failed to demonstrate how postponement of a ruling on the motion would have enabled them,

by discovery or other means, to rebut BNYM's showing of absence of a genuine issue of fact. See Assocs. Fin. Serv. of Haw., 99 Hawai'i at 454, 56 P.3d at 756. Under these circumstances, the Circuit Court did not abuse its discretion when it denied Appellants' request for a continuance under HRCF Rule 56(f). Salvacion, 134 Hawai'i at 172, 338 P.3d at 1187 (citing Kaleikini, 128 Hawai'i at 67, 283 P.3d at 74).

C. Failure to Consider Declaration in Opposition

Appellants argue that the Circuit Court failed to consider their Declaration in Opposition in conjunction with its decision to grant BNYM's Motion for Summary Judgment and deny Appellants' request for a continuance. Appellants contend that the Circuit Court erred when it refused to acknowledge their Declaration in Opposition and required Appellants to file a "full-fledged opposition."

At the beginning of the hearing on the Motion for Summary Judgment, the Circuit Court asked Appellants if they had submitted anything in writing. Warren informed the Circuit Court that they filed a Declaration in Opposition on January 30, 2014. At the end of the hearing, the Circuit Court confirmed that Warren "file[d] a declaration, and that was titled, . . . declaration in opposition." The Circuit Court apologized and explained that it was "looking for a full blown -- I didn't get any full blown memo in opposition. There was a couple pages of your declaration. So thank you for that." Thus, it appears from the record that the Circuit Court in fact reviewed and considered Appellants' Declaration in Opposition. There is no support in

the record for the proposition that the Circuit Court refused to consider the assertions in the Declaration in Opposition, or otherwise failed to consider Appellants' arguments against summary judgment, based on the form of the opposition. Accordingly, this argument is without merit.

D. Judgment

Finally, Appellants contend that the Circuit Court erred when it entered its Judgment. However, Appellants fail to provide any discernable argument in support of their contention. Kakinami v. Kakinami, 127 Hawai'i 126, 144 n.16, 276 P.3d 695, 713 n.16 (2012) (citing In re Guardianship of Carlsmith, 113 Hawai'i 236, 246, 151 P.3d 717, 727 (2007) (noting that this court may "disregard a particular contention if the appellant makes no discernible argument in support of that position") (internal quotation marks and brackets omitted)). Therefore, this contention is not subject to review by this court.

V. CONCLUSION

For these reasons, the Circuit Court's March 27, 2014 Judgment is affirmed.

DATED: Honolulu, Hawai'i, July 22, 2016.


On the briefs:

Valentina Stewart Watson,
for Defendants-Appellants.

Manmeet Rana,
Peter T. Stone,
(TMLF Hawaii, LLC),
for Plaintiff-Appellee.


Chief Judge


Associate Judge


Associate Judge