

NO. CAAP-15-0000714

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

US BANK NATIONAL ASSOCIATION, as Trustee for the Structured Asset
Securities Corporation Mortgage Loan Trust, 2006-NC1,
Plaintiff/Counterclaim-Defendant/Appellant/
Cross-Appellee/Appellee/Cross-Appellant,

v.

DANEFORD MICHAEL WRIGHT, ELLAREEN UILANI WRIGHT,
Defendants/Cross-Claim Defendants/Appellees/
Cross-Appellants/Appellants/Cross-Appellees,

and

COUNTY OF MAUI,

WAILUKU COUNTRY ESTATES COMMUNITY ASSOCIATION, INC.,
Defendants/Cross-Claim Defendants/Appellees/Cross-Appellees
and

FINANCE FACTORS, LIMITED,
Defendant/Counterclaim-Plaintiff/Cross-Claim
Plaintiff/Appellee/Cross-Appellee

and

JOHN DOES 1-10, JANE DOES 1-10,
DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10,
DOE ENTITIES 1-10, DOE GOVERNMENTAL UNITS 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 09-1-0961(2))

ORDER GRANTING IN PART THE AUGUST 29, 2016
MOTION TO DISMISS PURSUANT TO HRAP RULE 30
(By: Nakamura, C.J., Fujise and Reifurth, JJ.)

Upon consideration of the Motion to Dismiss or, in the Alternative, for Order to Show Cause (Motion to Dismiss), filed on August 29, 2016 by Plaintiff-Appellee-Cross Appellant US Bank Association, as Trustee for the Structured Assets Securities Corporation Mortgage Loan Trust, 2006-NC-1 (US Bank), the Memorandum in Opposition, filed on September 7, 2016 by Defendants-Appellants-Cross Appellees Daneford Michael Wright and Ellareen Uilani Wright (Wrights), and the record herein, US Bank requests that the appeal by the Wrights be dismissed for failure to file the Opening Brief and that its cross appeal be made ready for the Wrights' failure to file an Answering Brief.

On January 7, 2016 appeal Nos. CAAP-15-0000401, CAAP-15-0000578, and CAAP-15-0000714 were consolidated under CAAP-15-0000714 at the Wrights' request. The briefing deadlines were reset to follow CAAP-15-0000714.

On February 10, 2016 US Bank filed an Amended Opening Brief.

On February 12, 2016 this court approved the Wrights' request for an extension to file their Opening Brief from February 10, 2016 to March 11, 2016.

On March 14, 2016 this court granted the Wrights request for an extension to file their Opening Brief but noted that "No further extensions of time will be granted absent extraordinary circumstances." The Wrights deadline to file their Opening Brief was extended to April 1, 2016.

On April 5, 2016 this court granted the Wrights' request for an extension to file their Opening Brief but noted

that "No further extensions of time will be granted absent extraordinary circumstances." The Wrights' deadline to file their Opening Brief was extended to April 29, 2016.

On April 29, 2016 the Wrights requested that this appeal be consolidated with CAAP-16-0000158 and the briefing schedule be reset.

On May 19, 2016 this court denied the April 29, 2016 Motion to Consolidate.

On May 23, 2016 a Notice of Default was issued to the Wrights for failure to file the Statement of Jurisdiction and Opening Brief. The notice stated that the matter would be brought to the attention of this court on June 2, 2016.

On June 1, 2016 a Notice of Default was issued to the Wrights for failure to file an Answering Brief on cross-appeal.

On June 3, 2016 the Wrights filed a Motion for Relief from Defaults for Good Cause.

On June 20, 2016 the Wrights' Counsel filed a declaration that stated that he "will have the Opening Brief in this Appeal completed by the end of this week."

On June 24, 2016 this court issued an Order and Order to Show Cause. Counsel was ordered to file a Statement of Jurisdiction by July 5, 2016, the deadline to file the Opening Brief was extended to July 25, 2016, and "No further extension of time will be granted. Any further default of the opening brief may result in sanctions, including, without limitation, the appeal being dismissed pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 30." The deadline to file the Answering

Brief was extended to July 25, 2016 and "No further extension of time will be granted. Any further default of the answering brief may result in sanctions authorized by HRAP Rule 30."

On July 5, 2016 the Wrights filed a Statement of Jurisdiction.

On August 2, 2016 the Wrights filed a Motion for Leave to File Late Briefs for Good Cause. Counsel stated that "The Wrights Briefs will be filed within one week from today."

On August 4, 2016 this court granted the request based on good cause but noted that "No further extensions will be permitted absent extraordinary cause."

On August 29, 2016 US Bank file a Motion to Dismiss or, in the Alternative, for Order to Show Cause.

On September 7, 2016 the Wrights filed a "Declaration of Counsel in Opposition to 'Motion to Dismiss or, in the Alternative, for Order to Show Cause' in CAAP-15-0000714 and Request for Leave to File Opening Brief in CAAP-16-0000158." Counsel claimed that preparation of the Opening Brief has proven exceptionally difficult and that the Opening Brief would be filed "this week."

On September 11, 2016 Counsel filed a Supplemental Declaration that stated he could not download the record on appeal from JEFS and requested an extension to the end of the week, which would have been September 16, 2016.

On September 21, 2016 Counsel filed a Second Supplemental Declaration which stated that JEFS technical support confirmed that the files were too large to download from JEFS,

however he had access to the files and the brief would be filed "this week," which ended September 23, 2016.

On September 29, 2016 Counsel filed a Third Supplemental Declaration which stated that there were parts of the record that he had not previously seen because he was not trial counsel, thus, requiring extensive revision of the briefs but that the brief would be filed "within a day or two," which period would have ended on October 3, 2016.

To date, no opening or answering brief has been filed by Counsel.

IT IS HEREBY ORDERED that the Motion to Dismiss is granted as follows:

(1) The appeal by the Wrights is dismissed pursuant to HRAP Rule 30.

(2) No Answering Brief in the cross appeal shall be filed by the Wrights. The appellate clerk shall place the cross-appeal on the ready calendar.

DATED: Honolulu, Hawai'i, October 11, 2016.

Chief Judge

Associate Judge

Associate Judge