

NO. CAAP-16-0000542

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

HSBC BANK USA, National association as Trustee for Luminent
Mortgage Trust 2006-7, Mortgage Pass Through Certificates, Series
2006-7, Plaintiff-Appellee,

v.

MARIO ASIERTO DULATRE; ROSEMARIE RAGASA DULATRE,
Defendants-Appellants,

and

JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10, and DOE
GOVERNMENTAL UNITS 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 15-1-0992-05)

ORDER GRANTING OCTOBER 14, 2016 MOTION TO
DISMISS APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Nakamura, Chief Judge, Fujise and Reifurth, JJ.)

Upon review of (1) Plaintiff-Appellee HSBC Bank USA
National Association, as Trustee for Luminent Mortgage Trust
2006-7 Mortgage Pass Through Certificates Series 2006-7's
(Appellee HSBC Bank USA), October 14, 2016 motion to dismiss
appellate court case number CAAP-16-0000542 for lack of appellate
jurisdiction, and (2) the record, and noting, (3) the lack of any

memorandum by Defendants-Appellants Mario Asierto Dulatre and Rosemarie Ragasa Dulatre (the Dulatre Appellants) in response to Appellee HSBC Bank USA's October 14, 2016 motion, it appears that we lack jurisdiction over the Dulatre Appellants's appeal from the Honorable Karl K. Sakamoto's June 6, 2016 judgment on a decree of foreclosure, because the Dulatre Appellants's July 22, 2016 notice of appeal is untimely under Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) as to the June 6, 2016 judgment on the decree of foreclosure.

Although the June 6, 2016 judgment on the decree of foreclosure is an appealable final judgment pursuant to Hawaii Revised Statutes § 667-51(a) (Supp. 2015), HRAP Rule 4(a)(1) required the Dulatre Appellants to file their notice of appeal within thirty days after entry of the June 6, 2016 judgment on the decree of foreclosure. The Dulatre Appellants did not file their July 22, 2016 notice of appeal within thirty days after entry of the June 6, 2016 judgment on the decree of foreclosure, and, thus, the Dulatre Appellants's July 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 over the Dulatre Appellants's appeal in appellate court case number CAAP-16-0000542. Accordingly,

IT IS HEREBY ORDERED that Appellee HSBC Bank USA's October 14, 2016 motion to dismiss appellate court case number CAAP-16-0000542 for lack for appellate jurisdiction is granted, and appellate court case number CAAP-16-0000542 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, December 9, 2016.

Chief Judge

Associate Judge

Associate Judge