

CONCURRING AND DISSENTING OPINION BY NAKAMURA, C.J.

The circuit court granted summary judgment and a decree of foreclosure in favor of Plaintiff-Appellee Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP (BANA) and against Defendant-Appellant John Yeh (Yeh).

I agree with the majority that based on the Hawai'i Supreme Court's decision in Bank of America, N.A. v. Reyes-Toledo, 139 Hawai'i 361, 390 P.3d 1248 (2017), the circuit court erred in granting BANA's motion for summary judgment and for decree of foreclosure. However, I respectfully dissent to the extent that the majority concludes that the loan modification discussions between BANA and Yeh created genuine issues of material fact regarding whether Yeh was in default on the subject promissory note (Note). It is undisputed: (1) that BANA informed Yeh in December 2011 that his loan was not eligible for modification; (2) that there was no agreement establishing the terms of a loan modification; and (3) after July 2010, Yeh made no payments on the subject Note. Under these circumstances, I conclude that there was no genuine issue of material fact that Yeh was in default on the subject Note.

*Craig H. Nakamura*