

NO. CAAP-16-0000816

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

U.S. BANK NATIONAL ASSOCIATION, as Trustee for
SG Mortgage Securities Asset Backed Certificates,
Series 2006-FRE2, aka US BANK NATIONAL ASSOCIATION,
as Trustee for SG Mortgage Securities Trust 2006-FRE2,
Asset Backed Certificates, Series 2006-FRE2,
Plaintiff-Appellee,

v.

LEONIDA F. CHANG, JOSE-RIZAL B. VIERNES,
Defendants-Appellants,

and

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,
Solely as Nominee for Fremont Investment & Loans,
Defendants-Appellees,

and

DOES 1-20, Inclusive, Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 12-1-0862)

ORDER DISMISSING APPEAL FOR FAILURE TO FILE OPENING BRIEF
(By: Leonard, Presiding Judge, and Reifurth and Ginoza, JJ.)

Upon review of the record, it appears that:

(1) On November 17, 2016, Defendants-Appellants
Leonida F. Chang (Chang) and Jose-Rizal B. Viernes (Viernes) "by

[Chang], Attorney-in-Fact for [Viernes]" (collectively, Appellants), filed a notice of appeal pro se;¹

(2) On January 16, 2017, the circuit court clerk filed the record on appeal, which indicates Appellants were represented in the underlying case, Civil No. 12-1-0862, by William H. Gilardy, Jr. (Counsel). There is no order or motion for withdrawal of counsel, or withdrawal and substitution of counsel, filed here or in the underlying case;

(3) On January 17, 2017, the appellate clerk notified the parties, including Counsel, that, among other things, the opening brief was due on or before February 27, 2017;

(4) A bankruptcy stay was in effect for this appeal from January 25, 2017, through March 23, 2017. Pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 54(a), which is self-executing, the opening brief was due forty days after the bankruptcy stay was lifted. Thus, the opening brief was due on or before May 2, 2017;

(5) Appellants did not file the opening brief or request an extension of time;

(6) On May 4, 2017, the appellate clerk notified Appellants and Counsel that the time for filing the opening brief had expired, the matter would be called to the court's attention on May 15, 2017, for appropriate action, which could include dismissal of the appeal, pursuant to HRAP Rule 30, and Appellants may request relief from default by motion; and

(7) Neither Appellants pro se nor Counsel took further action in this appeal.

¹ It appears that Chang is not licensed to practice law in Hawai'i, and Appellants cite no authority and provide no documentation to support the assertion that she is authorized to appear as "Attorney-in-Fact" for Viernes. See HRS §§ 605-2, 605-14 & 605-17 (governing unauthorized practice of law). At this time, the court does not determine whether Chang may appear for Viernes, or Chang lawfully executed the notice of appeal for Viernes.

Therefore, IT IS HEREBY ORDERED that the appeal is dismissed.

DATED: Honolulu, Hawai'i, May 31, 2017.

Presiding Judge

Associate Judge

Associate Judge