

NO. CAAP-16-0000639

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

MORTON BASSAN, JR. & KEIKO BASSAN,  
Plaintiffs-Appellants,

v.

FEDERAL LAND BANK OF HAWAII (FLBH), ET AL., including  
but not limited to: LINUS TAVARES, THEODORE M.  
TOKUNAGA, ROBERT K. YAHIKU, MAURICE T. KANDA,  
DAVID "BUDDY" NOBRIGA, FAITH K. OKABE, JOSEPH M.  
SOUKI, MAMORU KANESHIRO, MICHAEL G. FITZGERALD,  
RAYMOND M. KAWAMATA, WENDELL T. KOGA, FEDERAL LAND  
BANK ASSOCIATION OF HAWAII, FLCA, FARM CREDIT  
SERVICES OF HAWAII, ACA, various aliases under  
which Federal Land Bank operates, & DOE DEFENDANTS  
1-100, All Counsel of Federal Land Bank: GEORGE  
T. OKAMURA, NAKAMOTO, OKAMOTO & YAMAMOTO, JEREL I.  
YAMAMOTO, R. AARON CREPS, H. MAXWELL KOPPER, ALIKA  
PIPER, SIMON KLEVANSKY, CORI ANN C. TAKAMIYA & DOE  
DEFENDANTS 1-100, Purchasers of Plaintiff's home:  
WINDVISTA FARMS, HAWAII LLC, WILLIAM C. PEEBLES,  
BLUE DIAMOND PACIFIC, LLC, EDWARD MECKLEY & DOE  
DEFENDANTS 1-100, Process Servers: ROBERT K.  
KUALII, GREGG M. SAKIHARA & DOE DEFENDANTS 1-100,  
and Federal Farm Credit Act regulators: FARM  
CREDIT ADMINISTRATION, MICHAEL A. STOKKE & DOE  
DEFENDANTS 1-100, Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(CIVIL NO. 15-1-416K)

ORDER DENYING MOTION FOR  
RECONSIDERATION FILED ON JUNE 12, 2017

(By: Leonard, Presiding Judge, Reifurth and Ginoza, JJ.)

Upon review of (1) the June 1, 2017 order granting  
Defendants-Appellees Federal Land Bank of Hawaii (FLBH) and Linus

Tavares's February 6, 2017 motion to dismiss appeal for lack of appellate jurisdiction (the June 1, 2017 dismissal order), (2) Plaintiffs-Appellants Morton Bassan, Jr., and Keiko Bassan's (the Bassan Appellants) June 12, 2017 motion for reconsideration of the June 1, 2017 dismissal order pursuant to Rule 40 of the Hawai'i Rules of Appellate Procedure (HRAP), and (3) the record, it appears that we did not overlook or misapprehend any points of law or fact when we dismissed the Bassan Appellants' appeal based on their failure to file their September 27, 2016 notice of appeal within thirty days after entry of the March 18, 2016 judgment, as HRAP Rule 4(a)(1) required.

Although the minutes from the circuit court's March 24, 2016 proceedings indicate that the Bassan Appellants orally moved for reconsideration of the March 18, 2016 judgment, apparently pursuant to Rule 59 of the Hawai'i Rules of Civil Procedure (HRCPP), both HRCPP Rule 59(e) and HRAP Rule 4(a)(3) require the Bassan Appellants to file, i.e., submit in written form, such a post-judgment motion for the purpose of invoking the tolling provision in HRAP Rule 4(a)(3) that would have extended the time period for filing a notice of appeal from the March 18, 2016 judgment. Under similar circumstances, the Supreme Court of Hawai'i held that an "oral motion for a rehearing [pursuant to HRCPP Rule 59] . . . did not toll the time for appeal. After decision rendered, a motion for new trial was in order and should have been filed. H.R.C.P., Rule 59(b). The oral motion for rehearing was of no legal significance." Marn v. Reynolds, 44 Haw. 655, 659, 361 P.2d 383, 386 (1961) (emphases added). Similarly, in the instant case, both HRCPP Rule 59 and HRAP Rule 4(a)(3) specifically require that a party file such a motion, i.e., submit in written form, for the purpose of invoking the tolling provision in HRAP Rule 4(a)(3). Thus, we conclude that the Bassan Appellants' March 24, 2017 oral motion for reconsideration did not invoke the tolling provision in HRAP Rule 4(a)(3) and the Bassan Appellants' September 27, 2016 notice of appeal from the March 18, 2016 judgment was untimely under HRAP Rule 4(a)(1).

Therefore, IT IS HEREBY ORDERED that the June 12, 2017 Motion for Reconsideration is denied.

DATED: Honolulu, Hawai'i, July 3, 2017.

Presiding Judge

Associate Judge

Associate Judge