

NO. CAAP-17-0000454

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

NATIONSTAR MORTGAGE, LLC, Plaintiff-Appellee,
v.
ROGELIO P. MAGBUAL, ZENAIDA D. MAGBUAL,
Defendants-Appellants,
and
KEHALANI COMMUNITY ASSOCIATION, FIA CARD SERVICES, N.A.,
Defendants-Appellees,
and
JOHN DOES 1-10, JANE DOES 1-10,
DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10,
DOE ENTITIES 1-10, and DOE GOVERNMENTAL UNITS 1-10,
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 12-1-0805 (1))

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Leonard, Presiding Judge, Reifurth and Ginoza, JJ.)

Upon review of the record, it appears that we lack jurisdiction over this appeal, which Defendants-Appellants Rogelio P. Magbual and Zenaida D. Magbual (the Magbuals), pro se, apparently asserted from the Honorable Rhonda I.L. Loo's June 16, 2016 judgment on an order confirming the sale of the foreclosed property in the underlying foreclosure case, Civil No. 12-1-0805(1).

The Magbuals' April 10, 2017 notice of appeal does not designate any order or judgment, but their April 11, 2017 civil appeals docketing statement refers to their objection to a February 26, 2016 auction of the foreclosed property that took place on the same day that the Magbuals petitioned for bankruptcy in the United States Bankruptcy Court for the District of Hawaii in Case No. 16-00190. Pursuant to an order of this court on June 2, 2017 and Rules 54(b) and (c) of the Hawai'i Rules of Appellate Procedure (HRAP), Plaintiff-Appellee NationStar Mortgage, LLC, filed with this court a certified copy of the bankruptcy court's February 29, 2016 order dismissing Case No. 16-00190 and thereby terminating the automatic bankruptcy stay.

The most recent appealable document in the record before the Magbuals filed their April 10, 2017 notice of appeal is the June 16, 2016 judgment on the order confirming the sale of the foreclosed property, which the circuit court certified for appeal pursuant to Rule 54(b) of the Hawai'i Rules of Civil Procedure, making it immediately appealable pursuant to Hawaii Revised Statutes § 667-51(a)(2) (2016). Nevertheless, the Magbuals did not file their April 10, 2017 notice of appeal within thirty days after entry of the June 16, 2016 judgment, as HRAP Rule 4(a)(1) required for a timely appeal. 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 Magbuals' appeal.

Accordingly, IT IS HEREBY ORDERED that this appeal is dismissed.

DATED: Honolulu, Hawai'i, February 16, 2018.

Presiding Judge

Associate Judge

Associate Judge