

NO. CAAP-18-0000349

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

NATIONSTAR MORTGAGE, LLC,
Plaintiff-Appellee,
v.
MARK A. LEE; CHERYL A. LEE,
Defendants-Appellants
and
PACIFIC SOURCE, INC.; KAHANA RIDGE ASSOCIATION, INC.,
Defendants-Appellees,
and
JOHN and MARY DOES 1-20; DOE PARTNERSHIPS,
CORPORATIONS or OTHER ENTITIES 1-20, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 15-1-0336(3))

SUMMARY DISPOSITION ORDER

(By: Ginoza, Chief Judge, Chan and Hiraoka, JJ.)

Defendants-Appellants Mark A. Lee and Cheryl A. Lee (collectively **the Lees**) appeal from the post-judgment "Order Denying Defendant's HRCP Rule 60(b) Motion for Relief from Foreclosure Judgments" (**Order Denying Rule 60(b) Motion**), entered on March 22, 2018, in favor of Plaintiff-Appellee Nationstar Mortgage, LLC (**Nationstar**), in the Circuit Court of the Second Circuit (**circuit court**).¹

On appeal, the Lees contend the circuit court abused its discretion in denying their Motion for Relief filed pursuant

¹ The Honorable Joseph E. Cardoza presided.

to Hawai'i Rules of Civil Procedure (HRCP) Rule 60(b) (**Rule 60(b) Motion**) because Nationstar failed to demonstrate its standing to enforce the subject Note and Mortgage at the commencement of the action. The Lees thus contend the circuit court lacked jurisdiction in this matter.

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the arguments advanced and the issues raised by the parties, as well as the applicable legal authorities, we affirm.

Nationstar initiated this judicial foreclosure action against the Lees on June 26, 2015. On August 5, 2016, the circuit court entered an order granting Nationstar's motion for summary judgment and a decree of foreclosure, and on the same date entered a Judgment on the decree of foreclosure (**Foreclosure Judgment**) in favor of Nationstar and against the Lees. The Lees did not appeal from the Foreclosure Judgment, and thus the Foreclosure Judgment became final and binding. See Mortg. Elec. Registration Sys., Inc. v. Wise, 130 Hawai'i 11, 17, 304 P.3d 1192, 1198 (2013).

In subsequent confirmation of sale proceedings, the Lees continued to contest Nationstar's right to foreclose on the subject property, asserting, *inter alia*, that the underlying judgment and sale were void because Nationstar failed to establish its standing to invoke the circuit court's jurisdiction. On October 2, 2017, the circuit court entered an order granting Nationstar's motion for confirmation of sale and a corresponding Judgment (**Judgment Confirming Sale**). On October 31, 2017, the Lees appealed from the Judgment Confirming Sale, and we resolved that appeal in Nationstar Mortg., LLC v. Lee, No. CAAP-17-0000788, 2018 WL 4627280 (Hawai'i App. Sept. 27, 2018), affirming the circuit court.

On November 21, 2017, in the circuit court, the Lees filed their Rule 60(b) Motion seeking relief from the Foreclosure Judgment and the Judgment Confirming Sale, again asserting that Nationstar lacked standing. On March 22, 2018, the circuit court

entered its Order Denying Rule 60(b) Motion, from which the Lees now appeal.

In this appeal, the Lees continue to argue that the Foreclosure Judgment is void because Nationstar failed to establish its standing necessary to invoke the circuit court's jurisdiction at the time the complaint was filed. However, under Wise, the Lees' failure to appeal from the Foreclosure Judgment barred any further challenges to Nationstar's standing under the doctrine of *res judicata*. Wise, 130 Hawai'i at 12, 304 P.3d at 1193. As in similar situations where a defendant failed to appeal from a foreclosure judgment, the Lees cannot rely on HRCF Rule 60(b)(4) to resurrect arguments that Nationstar lacked standing. See Nationstar Mortg. LLC v. Akepa Properties LLC, Nos. CAAP-15-0000407 and CAAP-15-0000727, 2017 WL 1401468 (Hawai'i App. Apr. 19, 2017) (SDO); see also Bank of America, N.A. v. Panzo, Nos. CAAP-14-0001356 and CAAP-15-0000660, 2017 WL 1194002 (Hawai'i App. Mar. 31, 2017) (SDO), reconsideration denied, Nos. CAAP-14-0001356 and CAAP-15-0000660, 2017 WL 1753390 (Hawai'i App. May 4, 2017), cert. denied, SCWC-14-0001356, 2017 WL 4837872, (Haw. Oct. 26, 2017).

Therefore, IT IS HEREBY ORDERED that the "Order Denying Defendant's HRCF Rule 60(b) Motion for Relief from Foreclosure Judgments," entered by the Circuit Court of the Second Circuit on March 22, 2018, is affirmed.

DATED: Honolulu, Hawai'i, January 25, 2019.

On the briefs:

Gary Victor Dubin,
Katherine S. Belford,
for Defendants-Appellants.

Chief Judge

Andrew J. Lautenbach,
Kukui Claydon,
for Plaintiff-Appellee.

Associate Judge

Associate Judge