

**Electronically Filed
Intermediate Court of Appeals
CAAP-19-0000829
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NO. CAAP-19-0000829

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE OF J.P. MORGAN ALTERNATIVE LOAN TRUST 2006-A7, Plaintiff-Appellee, v. MARK MCMILLAN, INDIVIDUALLY AND TRUSTEE FOR THE MCMILLAN ESTATE TRUST, AN IRREVOCABLE TRUST ESTATE DATED MARCH 13, 2011 A.K.A. MARK ALLEN MCMILLAN, TRUSTEE FOR THE MCMILLAN ESTATE TRUST; Defendant-Appellant, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR MORTGAGEIT, INC.; UNITED STATES OF AMERICA; STATE OF HAWAII, DEPARTMENT OF TAXATION; EDWARD HAUSMAN; LORRAINE SILVA-HAUSMAN; THE PRINCIPALITY OF ALOHA; CROWN LAND ESTATE OF KAUIKEAOULI PROBATE ESTATE 2410 A.K.A. THE CROWN ESTATE OF KING KAUIKEAOULI P-2410, A ROYAL PROBATE TRUST ESTATE RECEIVED IN ACCOMMODATION BY TRUSTEE, KAILINAMOIWALE PAIEA; INTERNATIONAL MONETARY FUND; 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. 17-1-0387(3))

ORDER GRANTING FEBRUARY 21, 2020 MOTION TO
DISMISS APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Ginoza, Chief Judge, Chan and Hiraoka, JJ.)

Upon review of (1) the February 21, 2020 motion by Plaintiff-Appellee HSBC Bank USA, National Association, as Trustee of J.P. Morgan Alternative Loan Trust 2006-A7 (**HSBC Bank USA**), to dismiss appellate court case number CAAP-19-0000829 for lack of appellate jurisdiction (**Motion to Dismiss**), (2) the lack

of any memorandum by Defendant-Appellant Mark Allen McMillan, Individually and as Trustee for the McMillan Estate Trust, an Irrevocable Trust Estate Dated March 13, 2011, aka Mark Allen McMillan, Trustee for the McMillan Estate Trust (**McMillan**), self-represented, in response to HSBC Bank USA's Motion to Dismiss, and (3) the record, it appears that we lack appellate jurisdiction over McMillan's appeal as to the Honorable Joseph E. Cardoza's October 21, 2019 Judgment on a decree of foreclosure in Civil No. 17-1-0387-03. McMillan did not file his November 27, 2019 notice of appeal within thirty days after entry of the October 21, 2019 Judgment, as Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (**HRAP**) required for a timely appeal.¹

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, IT IS HEREBY ORDERED that HSBC Bank USA's February 21, 2020 motion to dismiss McMillan's appeal is granted, and appellate court case number CAAP-19-0000829 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, April 17, 2020.

/s/ Lisa M. Ginoza
Chief Judge

/s/ Derrick H.M. Chan
Associate Judge

/s/ Keith K. Hiraoka
Associate Judge

¹ Thirty days after filing of the October 21, 2019 Judgment was November 20, 2019. We note that McMillan's notice of appeal is dated November 22, 2019, which date is still untimely.