

NO. CAAP-18-0000135

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

WELLS FARGO BANK, N.A., SUCCESSOR BY MERGER TO WELLS FARGO BANK
MINNESOTA, N.A., F/K/A NORWEST BANK MINNESOTA, N.A., SOLELY AS
TRUSTEE FOR STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR
STERNS MORTGAGE FUNDING TRUST 2007-AR1, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2007-AR1, Plaintiff-Appellee,

v.

GEORGE EMERSON TIMMINS, Defendant-Appellant,
and

ASSOCIATION OF APARTMENT OWNERS OF IAO GARDENS; JOHN DOES 1-50;
JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE CORPORATIONS 1-50; DOE
ENTITIES 1-50; and DOE GOVERNMENTAL UNITS 1-50, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 2CC171000342)

SUMMARY DISPOSITION ORDER

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

This is a mortgage foreclosure action. Self-represented Defendant-Appellant George Emerson **Timmins** appeals from the **Judgment** in favor of Plaintiff-Appellee **Wells Fargo** Bank, N.A. entered by the Circuit Court of the Second Circuit on February 28, 2018.¹ For the reasons explained below, we affirm the Judgment.

Wells Fargo filed the **Complaint** on August 16, 2017. It alleged that Timmins signed a promissory **Note** to Colorado

¹ The Honorable Peter T. Cahill presided.

Federal Savings Bank in 2006. Wells Fargo was the owner and holder of the Note. Timmins was in default of the Note. The Note was secured by a **Mortgage** on real **Property** located on the island of Maui. Wells Fargo sought foreclosure of the Mortgage and related relief.

Timmins was served with the Complaint on September 11, 2017. Representing himself, he filed a response on September 25, 2017.

Wells Fargo filed a motion for summary judgment and decree of foreclosure (**MSJ**) on November 21, 2017. Timmins filed a response on January 22, 2018. Wells Fargo filed a reply on January 29, 2018.

The MSJ was heard on January 31, 2018. Timmins appeared, representing himself. He explained his position to the circuit court, and said "my actual defenses are in that document[,]" referring to his January 22, 2018 response. The circuit court ruled that Wells Fargo proved it "has standing, so it is entitled to judgment as a matter of law." Findings of fact, conclusions of law, and an order granting the MSJ (**Foreclosure Decree**) were entered on February 28, 2018. The Judgment was also entered on February 28, 2018. This appeal followed.

Timmins' opening brief does not comply with Rule 28(b)(1) and (4) of the Hawai'i Rules of Appellate Procedure. Wells Fargo suggests that the appeal be dismissed for that reason. However, to promote access to justice the Hawai'i Supreme Court instructs that pleadings prepared by self-represented litigants should be interpreted liberally, and self-represented litigants should not automatically be precluded from appellate review because they fail to comply with court rules. Erum v. Llego, 147 Hawai'i 368, 380-81, 465 P.3d 815, 827-28 (2020). Accordingly, we address what we discern to be Timmins' arguments.

An appellate court reviews a trial court's grant of summary judgment de novo using the same standard applied by the

trial court. Nozawa v. Operating Engineers Local Union No. 3, 142 Hawai'i 331, 338, 418 P.3d 1187, 1194 (2018). Summary judgment is appropriate if the record shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Id. at 342, 418 P.3d at 1198.

Timmins did not challenge the authenticity or admissibility of the evidence presented by Wells Fargo's MSJ. His opening brief concedes that "[t]here is no dispute as to the material facts in this case. The questions presented seemingly involve conclusions of law and are therefore freely reviewable."

"A party seeking to foreclose on a mortgage and note must prove (1) the existence of the agreements, (2) the terms of the agreements, (3) a default under the terms of the agreements, and (4) delivery of the notice of default." Wells Fargo Bank, N.A. v. Fonq, 149 Hawai'i 249, 253, 488 P.3d 1228, 1232 (2021) (citations omitted).

(1) and (2) Wells Fargo proved the existence and terms of the Note, the Mortgage, Colorado Federal Savings Bank's assignment of the Mortgage to Wells Fargo, and Timmins' loan modification agreement with Wells Fargo, by attaching copies of the documents to its MSJ. The Note was endorsed by Colorado Federal Savings Bank to Wells Fargo. The documents were authenticated by a declaration and a copy of a limited power of attorney that satisfied the evidentiary standard of U.S. Bank Tr., N.A. v. Verhagen, 149 Hawai'i 315, 489 P.3d 419 (2021). Timmins did not controvert the authenticity or admissibility of any of those documents.

(3) Wells Fargo proved Timmins' default by attaching a copy of the loan payment history and a Financial Breakdown Summary – showing the payment due on November 1, 2011, and all subsequent payments, having not been made – to its MSJ. Timmins did not controvert this evidence of his default.

(4) Wells Fargo proved that it notified Timmins of his default by attaching a copy of a letter to Timmins dated

December 29, 2011. Timmins attached a copy of the same letter to his January 22, 2018 response to Wells Fargo's MSJ.

On appeal Timmins appears to contend that Wells Fargo lacked standing to foreclose. The evidence submitted by Wells Fargo – none of which was controverted by Timmins – established that Wells Fargo met its burden to show that it had standing to enforce the Note when it filed its complaint and when it filed its MSJ, as required under Bank of Am., N.A. v. Reyes-Toledo, 139 Hawai'i 361, 370, 390 P.3d 1248, 1257 (2017).

Timmins also appears to contend that he was denied due process, to which he was entitled under the United States Constitution and the Hawai'i Constitution. The record shows that he was properly served with the complaint, with all subsequent documents filed by Wells Fargo, with all orders entered by the circuit court including the Foreclosure Decree, and with the Judgment. The circuit court considered his written and oral submissions before ruling on the MSJ and entering the Foreclosure Decree and the Judgment. Timmins' contention of unconstitutionality is without merit.

For the foregoing reasons, the Judgment entered by the circuit court on February 28, 2018, is affirmed.

DATED: Honolulu, Hawai'i, April 4, 2022.

On the briefs:

George Emerson Timmins,
Self-represented Defendant-
Appellant.

Patricia J. McHenry,
Nicholas M. McLean,
for Plaintiff-Appellee.

/s/ Lisa M. Ginoza
Chief Judge

/s/ Keith K. Hiraoka
Associate Judge

/s/ Clyde J. Wadsworth
Associate Judge