

NO. CAAP-19-0000004

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9 MASTER  
PARTICIPATION TRUST, Plaintiff-Appellee, v.  
ASSOCIATION OF APARTMENT OWNERS OF ELIMA LANI CONDOMINIUMS,  
Defendant-Appellant, and JOHN C. PATTERSON;  
FENNY J.M. PATTERSON; WAIKOLOA VILLAGE ASSOCIATION;  
JOHN DOES 1-20; JANE DOES 1-20; DOE CORPORATIONS 1-20;  
DOE ENTITIES 1-20; AND DOE GOVERNMENTAL UNITS 1-20,  
Defendants-Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(CIVIL NO. 18-1-011K)

SUMMARY DISPOSITION ORDER

(By: Ginoza, Chief Judge, Leonard and McCullen, JJ.)

Defendant-Appellant Association of Apartment Owners of  
Elima Lani Condominiums (**Association**) appeals from the Circuit  
Court of the Third Circuit's December 11, 2018 "Findings of  
Fact, Conclusions of Law and Order Granting [Plaintiff-Appellee  
U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation  
Trust's (**Bank**)] Motion for Summary Judgment Against All

Defendants and for Interlocutory Decree of Foreclosure" and Judgment.<sup>1</sup>

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, we resolve Association's points of error below, and affirm.

(1) Association contends that the "circuit court committed reversible error when it purportedly vested the Commissioner with and divested the Association of equitable title to the Property owned by the Association." However, nowhere in its December 11, 2018 order or judgment did the circuit court purport to "vest" the Commissioner with title to the subject property. See Bank of New York Mellon v. Larrua, 150 Hawai'i 429, 445 n.18, 504 P.3d 1017, 1033 n.18 (App. 2022).

(2) Association contends that

The circuit court committed reversible error when it agreed with Lender that the right to possess and collect rental income from the Property was within the Commissioner's discretion upon the entry of the [motion for summary judgment] Order, and ordered the Commissioner "to take possession and control of the Property" owned by the Association, including the collection and retention of rents.

We hold that the circuit court did not abuse its discretion by ordering the Commissioner "to take possession and control of the Property, including but not limited to collecting rental payments[.]" These duties are "standard practice . . . to

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<sup>1</sup> The Honorable Robert D.S. Kim presided.

facilitate a foreclosure sale and ensure preservation of the Property for the subsequent purchaser, after the entry of the foreclosure decree and judgment." Id. at 441, 504 P.3d at 1029. Further, "[u]nder Hawai'i law, a judgment entered on a foreclosure decree is a final determination of a foreclosed party's ownership interests in the subject property . . . notwithstanding that further proceedings are necessary to enforce and otherwise effectuate the foreclosure decree and judgment." Id. at 431, 504 P.3d at 1019.

Based on the foregoing, we affirm the circuit court's December 11, 2018 "Findings of Fact, Conclusions of Law and Order Granting [Bank's] Motion for Summary Judgment Against All Defendants and for Interlocutory Decree of Foreclosure" and Judgment.

DATED: Honolulu, Hawai'i, September 8, 2022.

On the briefs:

R. Laree McGuire,  
Defendant-Appellant.

Robin Miller,  
Charles R. Prather,  
Ken Ohara, and  
Peter T. Stone,  
for Plaintiff-Appellee.

/s/ Lisa M. Ginoza  
Chief Judge

/s/ Katherine G. Leonard  
Associate Judge

/s/ Sonja M.P. McCullen  
Associate Judge