

**Electronically Filed
Intermediate Court of Appeals
CAAP-19-0000351
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NO. CAAP-19-0000351

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR
STRUCTURED ASSET INVESTMENT LOAN TRUST, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 2005-7, Plaintiff-Appellee, v.
MICHAEL H. NGUYEN, PHUONG VU NGUYEN, Defendants-Appellants,
and

BNC MORTGAGE, INC.; MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., SOLELY AS NOMINEE FOR BNC MORTGAGE, INC.,
a Delaware corporation; DISCOVER BANK, a Delaware
corporation, 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. 16-1-0549)

ORDER DISMISSING APPEAL

(By: Wadsworth, Presiding Judge, and Nakasone and McCullen, JJ.)

Upon consideration of the May 11, 2023 motion to
dismiss appeal as moot (**Motion to Dismiss**) filed by Plaintiff-
Appellee U.S. Bank National Association, as Trustee For
Structured Investment Loan Trust, Mortgage Pass-Through
Certificates, Series 2005-7 (**U.S. Bank**), the papers in support,
the record, and there being no opposition:

1. Defendants-Appellants Michael H. Nguyen and Phuong
Vu Nguyen, self-represented, appeal from the "Judgment on
Findings of Fact, Conclusions of Law and Order Granting [U.S.

Bank's] Motion for Summary Judgment and Decree of Foreclosure Against all Defendants on Complaint Filed October 21, 2016" (**Foreclosure Judgment**) and the "Findings of Fact, Conclusions of Law and Order Granting [U.S. Bank's] Motion for Summary Judgment and Decree of Foreclosure Against all Defendants on Complaint Filed October 21, 2016" (**Foreclosure Decree**), both entered on April 9, 2019, in the Circuit Court of the Second Circuit.

2. On March 21, 2023, U.S. Bank filed a motion for temporary remand (**Temporary Remand Motion**), by which U.S. Bank sought a temporary remand of this case to the Circuit Court of the Second Circuit (**Circuit Court**), so that the Circuit Court could consider and determine a motion to dismiss the underlying complaint and to vacate "the orders and judgment" that are the subject of this appeal.

3. The Temporary Remand Motion was based on the declaration of counsel for U.S. Bank, which stated in part that: (a) counsel had been notified that the loan at issue had been paid off, making it possible for U.S. Bank to move for vacatur of the orders and judgment that are the subject of this appeal; (b) the Circuit Court had indicated its inclination to grant such a motion; and (c) if this case were temporarily remanded and such a motion were granted, upon the return of jurisdiction to this court, it was U.S. Bank's intention to seek dismissal of this appeal.

4. On May 1, 2023, this court entered an order granting the Temporary Remand Motion (**Temporary Remand Order**) on the terms stated therein, including that the Circuit Court Clerk within sixty (60) days after the date of the Temporary Remand Order, but no later than May 20, 2023, file a supplemental record on appeal containing a copy of the Temporary Remand Order and all subsequently-filed documents.

5. On May 3, 2023, the Second Supplemental Record on Appeal was filed.

6. On May 11, 2023, U.S. Bank filed the Motion to Dismiss, by which U.S. Bank sought dismissal of this appeal as moot, on the ground that "[w]ith the benefit of the temporary remand, U.S. Bank's motion to vacate the underlying orders and dismiss the complaint was granted by the [C]ircuit [C]ourt on May 1, 2023."

7. The Motion to Dismiss is based on the declaration of counsel for U.S. Bank, which attaches a "true and correct copy" of the Circuit Court's May 1, 2023 Order Granting [U.S. Bank's] Motion for an Order Dismissing the Complaint Without Prejudice (**Dismissal Order**).

8. The Dismissal Order: (a) dismisses Wells Fargo's Complaint, filed on October 21, 2016, in the underlying action without prejudice; and (b) vacates the Foreclosure Judgment and the Foreclosure Decree.

9. Under Hawai'i law, mootness is an issue of justiciability. See State v. Hewitt, 153 Hawai'i 33, 42, 526 P.3d 558, 567 (2023).

10. The mootness doctrine applies "where events subsequent to the judgment of the trial court have so affected the relations between the parties that the two conditions for justiciability relevant on appeal – adverse interest and effective remedy – have been compromised." Hamilton ex rel. Lethem v. Lethem, 119 Hawai'i 1, 5, 193 P.3d 839, 843 (2008).

11. The vacatur of the Foreclosure Judgment and the Foreclosure Decree, which are the subjects of this appeal, render the appeal moot. See In re TJ, No. CAAP-21-0000596, 2022 WL 16567553, at *1 (Haw. App. Nov. 1, 2022) (citing In re Marn Family, 141 Hawai'i 1, 7, 403 P.3d 621, 627 (2016)).

12. No exceptions to the mootness doctrine apply to this case, see Hamilton, 119 Hawai'i at 5-10, 193 P.3d at 843-48 (discussing "capable of repetition, yet evading review" and public interest exceptions, and adopting "collateral consequences" exception, to mootness doctrine).

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

Therefore, IT IS HEREBY ORDERED that this appeal is dismissed as moot.

DATED: Honolulu, Hawai'i, June 29, 2023.

/s/ Clyde J. Wadsworth
Presiding Judge

/s/ Karen T. Nakasone
Associate Judge

/s/ Sonja M.P. McCullen
Associate Judge