

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. CAAP-20-0000704

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE
FOR STRUCTURED ASSET SECURITIES CORPORATION MORTGAGE
LOAN TRUST 2007-BC1, PASS-THROUGH CERTIFICATES,
SERIES 2007-BC1, Plaintiff-Appellee,

v.

DAVID AUREO SALVADOR CORDERO; MARY TAN LLANOS CORDERO,
Defendants-Appellants,

and

WAIALAE GOLF COURSE COMMUNITY ASSOCIATION,
Defendant-Appellee,

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 FIRST CIRCUIT
(CASE NO. 1CC141002257)

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AMENDED¹ SUMMARY DISPOSITION ORDER

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

Defendants-Appellants David Aureo Salvador Cordero and Mary Tan Llanos Cordero (collectively, **Corderos**) appeal from the October 15, 2020 "Order Granting Plaintiff's Motion for Leave to Amend Findings of Fact, Conclusions of Law and Order Granting Plaintiff's Motion for Default Judgment Against Defendants Waialae Golf Course Community Association and Summary Judgment and Decree of Foreclosure Against All Defendants on Complaint Filed October 30, 2014" (**Order Granting Motion to Amend Foreclosure Decree**),² filed and entered by the Circuit Court of the First Circuit (**Circuit Court**).³

¹ We amend our June 21, 2023 Summary Disposition Order pursuant to the Order granting reconsideration in part and denying in part, filed contemporaneously with this Amended Summary Disposition Order.

² The Corderos also appealed from the amended foreclosure decree and amended judgment entered on October 15, 2020, which we dismissed for lack of appellate jurisdiction on June 30, 2021 (**Order of Partial Dismissal**). In the Order of Partial Dismissal, we determined that the October 15, 2020 amended judgment did not amend the original July 17, 2019 judgment in a material and substantial way; the time to appeal ran from the original judgment; and the November 13, 2020 notice of appeal was untimely from that original July 17, 2019 judgment. The Corderos' request for certiorari review of the Order of Partial Dismissal was rejected by the Hawai'i Supreme Court on September 7, 2021. See Wells Fargo Bank, Nat'l Ass'n, as Tr. for Structured Asset Sec. Corp. Mortg. Loan Tr. 2001-BC1, Pass Through Certificates, Series 2007-BC1 v. Cordero, No. SCWC-20-0000704, 2021 WL 4077556, at *1 (Sept. 7, 2021). We thus do not address the Corderos' first and third points of error (**POEs**), which challenged the grant of summary judgment leading to the entry of the July 17, 2019 foreclosure decree and judgment. The first POE contended that the Corderos "were denied their due process rights because they and their attorney at the time, were not properly notified of the hearing on the Motion for Summary Judgment." The third POE contended that the Circuit Court erroneously granted summary judgment on various substantive, evidentiary grounds. As we noted in our June 30, 2021 Order of Partial Dismissal, we lack jurisdiction over the July 17, 2019 foreclosure decree and judgment, which includes the summary judgment. The Corderos similarly acknowledge in their Reply Brief that this appeal is now limited to review of the October 15, 2020 Order Granting Motion to Amend Foreclosure Decree, which they challenge in POE 2.

³ The Honorable Jeannette H. Castagnetti presiding.

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On appeal, the Corderos contend that the Circuit Court plainly erred in granting Plaintiff-Appellee Wells Fargo Bank, National Association, as Trustee for Structured Asset Securities Corporation Mortgage Loan Trust 2007-BC1, Pass-Through Certificates, Series 2007-BC1's (**Wells Fargo**) Motion to Amend Foreclosure Decree because the Circuit Court did not have jurisdiction to "amend" a judgment by that motion, and the judgment should have instead been vacated and the foreclosure process begun anew.

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 affirm.

On January 31, 2020, following the entry of the July 17, 2019 foreclosure decree and judgment, Wells Fargo filed the Motion to Amend Foreclosure Decree as a non-hearing motion under Rules of the Circuit Court of the State of Hawai'i (**RCCH**) Rule 7.2(c).⁴ The Motion to Amend Foreclosure Decree sought to amend the July 17, 2019 foreclosure decree by including a missing exhibit, Exhibit "A", that was referred to in the foreclosure decree but not attached. The Declaration of Counsel attached to the motion stated that the July 17, 2019 foreclosure decree "was missing the property description that was supposed to be attached as Exhibit A[,] and that "[t]here [we]re no other changes to the Document." The Corderos did not oppose the non-hearing motion. On October 15, 2020, the Circuit Court granted the motion, finding "good cause appearing therefor," stating:

IT IS ORDERED that the Motion shall be and is hereby GRANTED. The Amended Findings of Fact, Conclusions of Law and Order Granting [Wells Fargo]'s Motion for Default

⁴ RCCH Rule 7.2(c), entitled "Non-hearing motions," provides in pertinent part that "[a]ny opposition to a non-hearing motion shall be filed and served no later than 10 days after the service date indicated on the certificate of service accompanying the motion or no later than 12 days after the service date if the motion is served by mail."

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Judgment Against Defendants Waialae Golf Course Community Association and Summary Judgment and Decree of Foreclosure Against All Defendants on Complaint filed October 30, 2014 and Amended Judgment thereon with the property description attached shall be filed following the entry of this Order.

On the same date, the Circuit Court also filed the October 15, 2020 amended foreclosure decree, identical to the previous July 17, 2019 foreclosure decree; but this time, the previously missing two-page exhibit was attached. The Circuit Court also entered the October 15, 2020 amended judgment on the same date.

On appeal, the Corderos urge that their contention of error "should be considered as 'plain error' as at no time was the Motion for Leave to Amend [Foreclosure Decree] objected to." The Corderos argue that the Circuit Court erroneously granted the Motion to Amend Foreclosure Decree because the motion cited inapposite court rules; an Hawai'i Rules of Civil Procedure (**HRCP**) Rule 60 motion should have instead been filed; and the Circuit Court "did not have jurisdiction to entertain a motion to amend the judgment over six months after it was entered."

"Questions regarding subject matter jurisdiction may be raised at any stage of a cause of action." Lingle v. Haw. Gov't Emps. Ass'n, AFSCME, Local 152, AFLO-CIO, 107 Hawai'i 178, 182, 111 P.3d 587, 591 (2005) (quoting Amantiad v. Odum, 90 Hawai'i 152, 159, 977 P.2d 160, 167 (1999)). While the Corderos request plain error review, we can nevertheless consider the Corderos' jurisdictional challenge at any time. See id.

Here, we previously noted in our June 30, 2021 Order of Partial Dismissal that the amendment to the original judgment was based on a clerical mistake under HRCP Rule 60(a),⁵ because

⁵ HRCP Rule 60, entitled "Relief from Judgment or Order," provides in subsection (a) that:

(a) Clerical mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the

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the only proposed change was to attach the Exhibit "A" that was referred to, but not attached, to the original foreclosure decree. We stated:

The Amended Judgment amended the circuit court's July 17, 2019 "Judgment on [FOF/COL/Order]"^[6] (**Judgment**). The Amended Judgment differs from the Judgment only in that it refers to the Amended FOF/COL/Order rather than the FOF/COL/Order. The Amended FOF/COL/Order differs from the original FOF/COL/Order only in that Exhibit "A" -- a Legal Description of the property referenced in the original FOF/COL/Order -- which was not attached to the original FOF/COL/Order, was attached to the Amended FOF/COL/Order upon Bank's motion under Rule 60(a) of the Hawai'i Rules of Civil Procedure based on an alleged clerical mistake (**Motion to Amend**). The original FOF/COL/Order did contain the address and TMK number for the subject property.

(Footnote added.)

Although the Corderos contend that Wells Fargo failed to cite HRCF Rule 60(a) in its Motion to Amend Foreclosure Decree, this court has consistently recognized that "it is the substance of the pleading that controls, not its nomenclature." Anderson v. Oceanic Props., Inc., 3 Haw. App. 350, 355, 650 P.2d 612, 617 (1982) (citing Madden v. Madden, 43 Haw. 148, 149-50 (Haw. Terr. 1959)).

Whether a court has jurisdiction to act is reviewed *de novo* under the right/wrong standard. See Lester v. Rapp, 85 Hawai'i 238, 241, 942 P.2d 502, 505 (1997). We conclude the Circuit Court had jurisdiction to decide the Motion to Amend Foreclosure Decree. HRCF Rule 60(a) permits the Circuit Court to correct clerical mistakes such as the omission of the exhibit

motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

⁶ "FOF/COL/Order" refers to the "Findings of Fact, Conclusions of Law and Order Granting [Wells Fargo]'s Motion for Default Judgment Against Defendants Waialae Golf Course Community Association and Summary Judgment and Decree of Foreclosure Against All Defendants on Complaint Filed October 30, 2014" filed on July 17, 2019, which we refer to herein as the "foreclosure decree."

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that was referenced in, but missing from, the original foreclosure decree "at any time . . . on the motion of any party" up until an appeal has docketed. At the time the October 15, 2020 Order Granting Motion to Amend Foreclosure Decree was filed, the November 13, 2020 notice of appeal had not yet been filed, and the Circuit Court had jurisdiction to decide the Motion to Amend Foreclosure Decree.

"An appellate court reviews a circuit court's determination of an HRCP Rule 60 motion for an abuse of discretion." OneWest Bank, F.S.B. v. Ass'n of Owners of Kumulani at Uplands at Mauna Kea, 146 Hawai'i 105, 111, 456 P.3d 178, 184 (2020) (quoting Buscher v. Boning, 114 Hawai'i 202, 211, 159 P.3d 814, 823 (2007)). The Circuit Court did not abuse its discretion in granting the motion to correct a clerical error, as permitted under HRCP Rule 60(a).

For the foregoing reasons, we affirm the October 15, 2020 "Order Granting Plaintiff's Motion for Leave to Amend Findings of Fact, Conclusions of Law and Order Granting Plaintiff's Motion for Default Judgment Against Defendants Waialae Golf Course Community Association and Summary Judgment and Decree of Foreclosure Against All Defendants on Complaint Filed October 30, 2014," filed and entered by the Circuit Court of the First Circuit.

DATED: Honolulu, Hawai'i, August 1, 2023.

On the briefs:	/s/ Lisa M. Ginoza Chief Judge
Keith M. Kiuchi for Defendants-Appellants.	/s/ Clyde J. Wadsworth Associate Judge
David A. Nakashima for Plaintiff-Appellee.	/s/ Karen T. Nakasone Associate Judge