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Intermediate Court of Appeals
CAAP-23-0000497
13-FEB-2025
08:05 AM
Dkt. 95 ORD

NO. CAAP-23-0000497

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR
CSFB MORTGAGE-BACKED PASS-THROUGH CERTIFICATES,
SERIES 2004-8, Plaintiff-Appellee, v.
JOHN D. CHARBONNEAU, Defendant-Appellant,
and
URAI CHARBONNEAU; MBNA AMERICA BANK, N.A.; THE STATE
OF HAWAII-DEPARTMENT OF TAXATION, Defendants-Appellees,
and DOES 1 through 20, Inclusive, Defendant

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CASE NO. 2CC161000234)

ORDER DISMISSING APPEAL

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

John D. **Charbonneau** appealed from the July 28, 2023 judgment of foreclosure entered by the Circuit Court of the Second Circuit.¹ Charbonneau did not obtain a stay of enforcement of the judgment of foreclosure. The foreclosure **Commissioner** filed a report on December 12, 2023. The Commissioner reported:

three registered bidders entered ninety-one additional and successively higher bids with the final and winning bid coming in [from CNADY LLC] at \$1,100,000.00. . . . Interest in the property has been strong and your Commissioner

¹ The Honorable Kirstin M. Hamman presided.

recommends that the Court schedule a hearing and reopen bidding for the subject property to determine if there are additional bids for the property from other potential bidders.

U.S. Bank National Association moved to confirm the foreclosure sale on December 14, 2023. The motion requested a finding "that CNADY, L.L.C. is a bona fide good faith purchase[r.]" Charbonneau opposed confirmation of the sale and filed a "Motion of Non-appearance" at the hearing. The circuit court heard the motion to confirm on January 18, 2024. Charbonneau did not appear. No bidders other than the winning bidder were present. The circuit court orally granted the motion.

The circuit court entered its "Order Approving Commissioner's Report and Granting Plaintiff's Motion for Confirmation of Foreclosure Sale, Allowance of Costs, Commissions and Fees, Distribution of Proceeds, Directing Conveyance and for Writ of Possession/Ejectments, [sic] Filed December 14, 2023" on September 10, 2024.² The order contained a finding "that the price obtained by the Commissioner fairly represents the market value of the Mortgaged Property under the circumstances of the sale and present economic conditions and that no other person indicated any interest in submitting a higher bid." The order also contained this finding:

3. That CNADY, L.L.C. is a bona fide purchaser, without any affiliation to [U.S. Bank] or its agents, as supported by [U.S. Bank]'s Motion. Defendant JOHN D. CHARBONNEAU failed to raise any factual or evidentiary objection regarding CNADY, L.L.C. as a bona fide purchaser of the Property, and as such, any objection is deemed waived.

The circuit court entered its **Judgment** confirming the foreclosure sale on September 10, 2024. Charbonneau did not appeal from the Judgment or file a timely post-judgment tolling motion, and the time to appeal from the Judgment has expired.

² The proceedings below were stayed from January 22, 2024, until July 18, 2024, because of Charbonneau's bankruptcy.

See Hawai'i Rules of Appellate Procedure Rule 4. The circuit court's determination that CNADY, LLC is a good faith purchaser is "the final and binding law of the case[.]" Dosland v. Dosland, 5 Haw. App. 87, 88, 678 P.2d 1093, 1095 (1984).

IT IS THEREFORE ORDERED that this appeal is dismissed as moot. See Wilmington Sav. Fund Soc'y v. Domingo, 155 Hawai'i 1, 13-14, 556 P.3d 347, 359-60 (2024).

IT IS FURTHER ORDERED that all pending motions are dismissed.

DATED: Honolulu, Hawai'i, February 13, 2025.

/s/ Keith K. Hiraoka
Presiding Judge

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Sonja M.P. McCullen
Associate Judge