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Intermediate Court of Appeals
CAAP-24-0000670
20-AUG-2026
07:55 AM
Dkt. 113 SO

NO. CAAP-24-0000670

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR HARBORVIEW MORTGAGE LOAN TRUST 2006-14, Plaintiff-Appellee, v. MICHELLE MICHIE YOSHIMORI IGARASHI, CLYDE DAIKAN IGARASHI, Defendants-Appellants,
and
DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR HOME EQUITY LOAN ASSET-BACKED TRUST, SERIES INDS 2006-3, DISCOVER BANK, VIVINT SOLAR HOLDING, INC., MILILANI TOWN ASSOCIATION, 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 FIRST CIRCUIT
(CIVIL NO. 1CC171000618)

SUMMARY DISPOSITION ORDER
(By: Nakasone, Chief Judge, and Wadsworth and Guidry, JJ.)

This appeal stems from a foreclosure action brought by Plaintiff-Appellee Deutsche Bank National Trust Company as Trustee for Harborview Mortgage Loan Trust 2006-14 (**Deutsche Bank**) against self-represented Defendants-Appellants Michelle Michie Yoshimori Igarashi (**Michelle**) and Clyde Daikan Igarashi (together, the **Igarashis**) and others. The Igarashis appeal from the *Findings of Fact, Conclusions of Law and Order Granting [Deutsche Bank's] Motion for Default Judgment Against Defendants[-Appellees] Discover Bank and Vivint Solar Holdings,* *Inc. and Summary Judgment and Decree of Foreclosure Against All Defendants on Complaint Filed April 18, 2017* (**Foreclosure Decree**) and the related judgment (**Judgment**), both entered on July 24, 2024, by the Circuit Court of the First Circuit (**Circuit Court**).[1/]

Michelle allegedly executed and delivered to IndyMac Bank, F.S.B. (**IndyMac**) a promissory note (**Note**) dated October 16, 2006; IndyMac endorsed the Note in blank; and Deutsche Bank became the holder of the Note, entitled to enforce it. The Note was secured by a mortgage (**Mortgage**) dated October 16, 2006, executed by the Igarashis, as mortgagors, in favor of Mortgage Electronic Registration Systems, Inc. (**MERS**) as the nominee for IndyMac, as mortgagee, and encumbering the subject property (**Property**). By an assignment of mortgage dated September 19, 2012, MERS assigned the Mortgage to Deutsche Bank. Michelle allegedly defaulted on the Note and, thereafter, written notice was given of the default and Deutsche Bank's intention to accelerate the loan and foreclose the Mortgage if the default was not cured (**Notice**). On April 18, 2017, Deutsche Bank filed a foreclosure complaint against the Igarashis and others who may have had an interest in the Property.

On January 4, 2024, Deutsche Bank filed a motion for summary judgment and decree of foreclosure (**MSJ**), along with supporting declarations and exhibits. On April 9, 2024, the Igarashis filed their opposition to the MSJ. Following a May 23, 2024 hearing, the Circuit Court granted the MSJ and entered the Foreclosure Decree and Judgment in favor of Deutsche Bank.

On appeal, the Igarashis appear to contend that: (1) Deutsche Bank did not establish its standing to foreclose the Mortgage, where two allegedly conflicting versions of the Note were presented; (2) the assignment of the Mortgage to Deutsche Bank by MERS was invalid because of IndyMac's filing for bankruptcy; (3) Deutsche Bank failed to give "proper notification of default"; (4) the MSJ "was afflicted by the doctrine of res judicata"; and (5) the Circuit Court's denial of the Igarashis' motion to compel certain discovery from Deutsche Bank "hampered

[1/] The Honorable Karin L. Holma presided.

[their] right to a proper legal process."[2/]

In addition to addressing these contentions, Deutsche Bank argues in its answering brief that this court lacks jurisdiction over the Igarashis' appeal because the notice of appeal was not timely filed. Deutsche Bank also filed a June 30, 2026 motion to dismiss the appeal as moot (**Motion to Dismiss**) because the Property has been sold to a good-faith, third-party purchaser.

After reviewing the record on appeal and the relevant legal authorities, and giving due consideration to the issues raised and the arguments advanced by the parties, we resolve their contentions as follows, and affirm.

**A. Jurisdiction**

We first address Deutsche Bank's contention that this court lacks jurisdiction over the Igarashis' appeal. Deutsche Bank argues that the notice of appeal was untimely, as it was filed on September 29, 2024, more than 30 days after entry of the July 24, 2024 Foreclosure Decree and Judgment, in violation of HRAP Rule 4(a). Deutsche Bank further argues that the Igarashis' August 7, 2024 motion for reconsideration, which was filed more than 10 days after entry of the Judgment, was not a tolling motion that extended the time for filing the notice of appeal under HRAP Rule 4(a)(3).

In Mālama Kakanilua v. Dir. of Dep't of Pub. Works, 157 Hawaiʻi 280, 576 P.3d 793 (2025), the supreme court held that "for purposes of serving as a 'tolling motion,' a[ Hawaiʻi Rules

[2/] The Igarashis' apparent points of error have been restated and reordered for clarity. The amended opening brief fails to comply in material respects with Hawaiʻi Rules of Appellate Procedure (**HRAP**) Rule 28(b). In particular, the Igarashis fail to provide "[a] concise statement of the points of error set forth in separately numbered paragraphs" and a statement of "where in the record the alleged error[s were] objected to or the manner in which the alleged error[s were] brought to the attention of the court," as required by HRAP Rule 28(b)(4). In addition, the Igarashis' argument lacks references to the record and is somewhat difficult to discern. HRAP Rule 28(b)(7). Nevertheless, Hawaiʻi appellate courts have "consistently adhered to the policy of affording litigants the opportunity 'to have their cases heard on the merits, where possible.'" Marvin v. Pflueger, 127 Hawaiʻi 490, 496, 280 P.3d 88, 94 (2012) (quoting Morgan v. Plan. Dep't, Cnty. of Kauai, 104 Hawaiʻi 173, 180–81, 86 P.3d 982, 989–90 (2004)). We thus address the Igarashis' arguments to the extent discernible.

of Civil Procedure (**HRCP**)] Rule 60(b) motion extends the time in which to file a notice of appeal pursuant to HRAP Rule 4(a)(3), if the motion for reconsideration is filed within thirty days of the entry of judgment." Id. at 293-94, 576 P.3d at 806-07.

Here, the Igarashis' motion for reconsideration was filed within 30 days of entry of the Judgment, and the Circuit Court treated it as an HRCP Rule 60(b) motion. As such, the motion for reconsideration was a tolling motion under HRAP Rule 4(a)(3), which extended the time for filing the notice of appeal until 30 days after entry of the March 17, 2025 order denying the motion for reconsideration. The September 29, 2024 notice of appeal was therefore timely under HRAP Rule 4(a)(3), and this court has jurisdiction over the Igarashis' appeal.

**B. Mootness**

We next address Deutsche Bank's contention that this appeal is moot. Deutsche Bank argues that: (1) the Property has been sold via judicial sale to a good-faith, third-party purchaser, *i.e.*, Sunshine Holdings, LLC (**SHL**); (2) the Igarashis did not post a supersedeas bond and/or obtain a stay pending appeal; (3) under Bank of N.Y. Mellon v. R. Onaga, Inc., 140 Hawaiʻi 358, 400 P.3d 559 (2017), the appeal should be dismissed as moot; and (4) the exceptions to the Onaga rule do not apply here, where SHL is not the mortgagee and the Igarashis do not challenge the Circuit Court's jurisdiction. Deutsche Bank's Motion to Dismiss is supported by the declarations of Micah Christensen, a managing member of SHL, and Zachary K. Kondo, with attached copies of: (A) the March 3, 2025 *Order Granting [Deutsche Bank's] Motion for Confirmation of Sale by Commissioner* and related judgment; (B) a *Commissioner's Deed*, recorded in the Office of the Assistant Registrar of the Land Court on September 8, 2025, and reflecting the conveyance of the Property to SHL; and (C) a *Final Buyer's Statement* dated September 8, 2025.

In response, the Igarashis do not refute the asserted bases for Deutsche Bank's Motion to Dismiss. Instead, they argue:

> [S]ubstantial excess sale proceeds remain deposited with the Circuit Court and . . . attorneys' fees and costs remain unresolved. Those continuing financial consequences are derived directly from the foreclosure judgment under review. A ruling concerning the validity of that judgment can therefore still have practical legal and financial consequences between [the Igarashis] and [Deutsche Bank], even if the purchaser's recorded title is not disturbed.

Deutsche Bank has similarly stated, in responding to the Igarashis' January 5, 2026 motion to withdraw (or dismiss) appeal without prejudice:[3/]

> Pursuant to the "Distribution Statement and Account of Commissioner" filed below on September 8, 2025 (RA #414), the payoff of the first mortgage has already been completed; substantial 'excess proceeds' have been deposited with the Clerk of the First Circuit Court, and counsel for the Bank is waiting for a ruling on the additional fees and costs sought below (RA #404), <u>for which the lower court deferred ruling, pending the appeal of the foreclosure order</u>. (RA #412). Indeed, should the motion to dismiss be granted, counsel for the Bank <u>intends to seek additional legal fees for having had to defend a frivolous appeal</u>.

(Emphases added.)[4/]

A case is moot "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." <u>Hamilton ex rel. Lethem v. Lethem</u>, 119 Hawaiʻi 1, 5, 193 P.3d 839, 843 (2008) (quoting <u>Lathrop v. Sakatani</u>, 111 Hawaiʻi 307, 312-13, 141 P.3d 480, 485-86 (2006)). "[A] case is moot if the reviewing court can no longer grant effective relief." <u>Cmty. Ass'ns of Hualalai, Inc. v. Leeward Plan. Comm'n</u>, 150 Hawaiʻi 241, 253, 500 P.3d 426, 438 (2021) (internal

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[3/] The Igarashis later filed a motion to withdraw the motion to withdraw (or dismiss), which this court granted by order entered on February 23, 2026.

[4/] We take judicial notice of the following documents in the underlying case: (A) *[Deutsche Bank's] Non-Hearing Motion for (1) Additional Attorneys' Fees and Costs, and (2) Second Extension of Time to Close Sale*, filed on June 4, 2025; and (B) *Order Granting in Part [Deutsche Bank's] Non-Hearing Motion for (1) Additional Attorneys' Fees and Costs, and (2) Second Extension of Time to Close Sale*, entered on August 7, 2025. <u>See</u> Hawaii Rules of Evidence Rule 201. We note the following language in the latter order: "IT IS HEREBY ORDERED that the Court will not rule on [Deutsche Bank's] request for additional attorneys' fees and costs due to the pending appeal . . . ."

quotation marks omitted) (quoting In re Marn Family, 141 Hawaiʻi 1, 7, 403 P.3d 621, 627 (2016)).

Here, the requested relief is for this court to "reverse" the Circuit Court's grant of summary judgment and to remand the matter back to the Circuit Court for trial. However, the Igarashis did not obtain a stay of the proceeding by posting a bond, and they do not dispute that the Property has been sold to a good-faith, third-party purchaser. Thus, their appeal of the merits of the Foreclosure Decree and Judgment would ordinarily be moot. See Onaga, 140 Hawaiʻi at 368-69, 400 P.3d at 569-70.

We decline to dismiss the appeal, however, based on the collateral consequences exception to the mootness doctrine. See Lethem, 119 Hawaiʻi at 11, 193 P.3d at 849. Such a dismissal would have a possible prejudicial effect on the unresolved issues below regarding the "excess proceeds" of the foreclosure sale and Deutsche Bank's pending motion for additional fees and costs, for which the Circuit Court has expressly deferred ruling pending the outcome of this appeal. Additionally, Deutsche Bank has indicated that it may "seek additional legal fees for having had to defend a frivolous appeal." In other words, if the Foreclosure Decree and the Judgment were unreviewable on appeal due to mootness, there is a reasonable possibility that they would "spawn[ ] . . . legal consequences" regarding these issues. McCabe Hamilton & Renny Co. v. Chung, 98 Hawaiʻi 107, 121, 43 P.3d 244, 258 (App. 2002). We thus deny the Motion to Dismiss and review the appeal of the Foreclosure Decree and the Judgment on the merits, under the collateral consequences exception.

**C. The Igarashis' Contentions**

(1) The Igarashis contend that Deutsche Bank did not establish its standing to foreclose the Mortgage, where two allegedly conflicting versions of the Note were presented.

We review the grant of summary judgment de novo. U.S. Bank, N.A. v. Mattos, 140 Hawaiʻi 26, 30, 398 P.3d 615, 619 (2017) (citing French v. Haw. Pizza Hut, Inc., 105 Hawaiʻi 462, 466, 99 P.3d 1046, 1050 (2004)). A foreclosing plaintiff must establish its standing to enforce the subject promissory note when the complaint was filed. See Bank of Am., N.A. v. Reyes-Toledo, 139 Hawaiʻi 361, 368, 390 P.3d 1248, 1255 (2017). A person entitled to enforce the note includes the "[h]older," defined in this context as "[t]he person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession[.]" HRS §§ 490:1-201(b), :3-301 (2008). A foreclosing plaintiff may establish it is the holder of the note by showing that its agent physically possessed it. See U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust v. Verhagen, 149 Hawaiʻi 315, 327-28, 489 P.3d 419, 431-32 (2021).

Here, Deutsche Bank asserted in the MSJ that it was the holder in possession of the original Note, endorsed in blank, at the time the complaint was filed on April 18, 2017. To support this assertion, Deutsche Bank submitted the declarations of Juliana Thurab (**Thurab**), the custodian of records for PHH Mortgage Corporation (**PHH**), the authorized servicing agent for Deutsche Bank, and Sarah Aila (**Aila**), a paralegal employed by the law firm representing Deutsche Bank in this matter.

As relevant to the Igarashis' contention, Thurab authenticated what she identified as a copy of the original Note, which showed an endorsement in blank on the fourth page, executed by Cynthia Prees (**Prees**), Assistant Vice President of IndyMac, the original lender. According to Thurab, PHH's records indicated that the original Note was transmitted to Deutsche Bank's counsel on March 27, 2017. Aila confirmed that Deutsche Bank's counsel had possession of the original Note on April 18, 2017.

Thurab also explained that on or about June 23, 2020, in response to a written request made by the Igarashis, PHH had "inadvertently sent" to Michelle "an incorrect copy of the Note," which did not show an endorsement in blank on the fourth page, but which included an allonge showing an endorsement in blank, executed by Prees. Thurab further explained that based on her research, the PHH representative who prepared the response "inadvertently included an old image of the Note as an attachment to the . . . [r]esponse[,]" and Deutsche Bank's counsel was in physical possession of the original Note when the errant response was prepared and sent to Michelle. The response was later amended to provide Michelle with the correct copy of the original Note.

We conclude that the declarations submitted by Deutsche Bank were sufficient to establish its possession, through its counsel, of the original Note when the complaint was filed on April 18, 2017. Deutsche Bank thus satisfied its initial burden on summary judgment.

The burden then shifted to the Igarashis, who did not show there was a genuine issue of material fact as to Deutsche Bank's physical possession of the original Note on April 18, 2017. See Verhagen, 149 Hawaiʻi at 328, 489 P.3d at 432. They merely asserted that the Note contained a "seemingly fraudulent endorsement" and that "the documents . . . Deutsche Bank presented are inconsistent and do not seem to match the official records from . . . IndyMac." They inferred fraud based solely on the differences between the original Note and the "incorrect copy of the Note" that Michelle had received. They did not refute Thurab's explanation. Once the movant has satisfied its initial burden, the party opposing summary judgment must "demonstrate specific facts, as opposed to general allegations, that present a genuine issue worthy of trial." Nozawa v. Operating Eng'rs Local Union No. 3, 142 Hawaiʻi 331, 342, 418 P.3d 1187, 1198 (2018) (quoting Lales v. Wholesale Motors Co., 133 Hawaiʻi 332, 359, 328 P.3d 341, 368 (2014)). The Igarashis did not meet their burden here.

Accordingly, Deutsche Bank established its standing to bring the foreclosure action, and the Circuit Court did not err in so ruling.

(2) The Igarashis contend that the assignment of the Mortgage to Deutsche Bank by MERS, as IndyMac's nominee, was invalid because it occurred nearly four years after IndyMac filed for bankruptcy.

In similar cases, this court has ruled that when the plain language of a mortgage establishes MERS as a nominee permitted to take action on behalf of the lender, it has "the authority to take any action required of [the lender], including assigning the mortgage . . . ." Wells Fargo Bank, N.A. v. Yamamoto, No. CAAP-11-0000728, 2012 WL 6178303, at *1 (Haw. App. Dec. 11, 2012) (SDO); see Bank of New York Mellon v. Rumbawa, No. CAAP-15-0000024, 2016 WL 482170, at *3 (Haw. App. Feb. 4, 2016) (SDO); Bank of New York Mellon v. Blye, No. CAAP-14-0000784, 2016 WL 4035615, at *6 (Haw. App. July 22, 2016) (mem. op.). Here, as in Yamamoto, the language of the Mortgage established that MERS was a nominee for IndyMac and had the ability to transfer and convey the property. Accordingly, MERS had the authority to assign the Mortgage to Deutsche Bank. The Igarashis' related argument that IndyMac's alleged bankruptcy invalidated the assignment lacks merit. The Igarashis failed to offer specific facts establishing that any bankruptcy stay affected MERS or demonstrating that the Note and Mortgage were part of the bankruptcy estate. See Wells Fargo Bank, N.A. v. Pasion, No. CAAP-12-0000657, 2015 WL 4067259, at *4 (Haw. App. June 30, 2015) (SDO). In short, the Igarashis did not show a genuine issue of material fact relating to bankruptcy that precluded summary judgment for Deutsche Bank.

(3) The Igarashis summarily contend that Deutsche Bank failed to give "proper notification of default."

However, Deutsche Bank presented documentation with the MSJ showing that Ocwen Loan Servicing (Deutsche Bank's servicer at the time) mailed the Notice to Michelle via first class mail on January 5, 2017. The Mortgage itself provides that notice of default is "deemed to have been given to Borrower when mailed by first class mail," and that "[n]otice to any one Borrower shall constitute notice to all Borrowers . . . ." The Igarashis did not present evidence to rebut the presumption that Deutsche's Bank's Notice was mailed via first class mail and did not dispute receipt of the Notice.

On this record, the Igarashis did not raise a genuine issue of material fact regarding the notice of default.

(4) The Igarashis contend that the MSJ "was afflicted by the doctrine of res judicata due to the learned Court's dismissal of an almost identical motion in 2021."

"[T]he party asserting claim preclusion has the burden of proving three elements to establish that an action is barred: 1) there was a final judgment on the merits, 2) both parties are the same or are in privity with the same parties in the original suit, and 3) the claim decided in the original suit is identical with the one presented in the action in question." Priceline.com, Inc. v. Dir. of Taxation, 144 Hawaiʻi 72, 82, 436 P.3d 1155, 1165 (2019) (citing E. Sav. Bank, FSB v. Esteban, 129 Hawaiʻi 154, 159, 296 P.3d 1062, 1067 (2013)).

Here, there was no final judgment on the merits. Accordingly, claim preclusion did not bar the MSJ.

(5) The Igarashis contend that they "filed a Motion to Compel certain documents and specific interrogatory questions of Deutsche Bank to provide proof of payment for the loan to support their claim of ownership of the note and mortgage. The Motion to Compel was denied, which hampered the [Igarashis'] right to a proper legal process."

The Igarashis fail to state where in the record the alleged error occurred and present no discernible argument supporting their assertions. See HRAP Rule 28(b)(4), (7). In particular, they do not identify the specific document requests or interrogatories that were the subject of their motion and how the discovery they sought was "relevant to the subject matter involved in the pending action[.]" HRCP Rule 26(b). Their contention is deemed waived. See HRAP Rule 28(b)(7).

In any event, to the extent the Igarashis were seeking "proof of payment for the loan," they do not explain how such evidence was relevant to Deutsche Bank's standing to foreclose, where Deutsche Bank was the holder of the Note, endorsed in blank. See supra. The Circuit Court did not abuse its discretion in denying the motion to compel.

For these reasons, the Foreclosure Decree and the Judgment are affirmed. The June 30, 2026 Motion to Dismiss is denied, as is the Igarashis' August 6, 2026 motion for leave to file a limited surreply to Deutsche Bank's reply memorandum in support of the Motion to Dismiss.

DATED: Honolulu, Hawaiʻi, August 20, 2026.

On the briefs:

Clyde Daikan Igarashi and
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Zachary K. Kondo and
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for Plaintiff-Appellee.

/s/ Karen T. Nakasone
Chief Judge

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge