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NO. CAAP-24-0000803

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS MORTGAGE FUNDING TRUST 2007-AR1, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-AR1, Plaintiff-Appellee,
v.
BRYCE JARET ISHIMITSU, Defendant-Appellee, and
ASSOCIATION OF APARTMENT OWNERS OF HAVENS OF IʻI VISTAS; Defendant/Cross-Claimant-Appellee,
MILILANI TOWN ASSOCIATION; MARINER'S VILLAGE THREE COMMUNITY ASSOCIATION, Defendants-Appellees, and
SEAN CHEUNG TONG, TRUSTEE OF THE UNRECORDED KOOLANI TRUST DATED JANUARY 1, 2015, Defendant/Cross-Claim Defendant-Appellant, and
JOHN AND MARY DOES 1-20; DOE PARTNERSHIPS, CORPORATIONS OR OTHER ENTITIES 1-20, Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1CCV-23-0000210)

SUMMARY DISPOSITION ORDER
(By: Nakasone, Chief Judge, Hiraoka and McCullen, JJ.)

Defendant/Cross-Claim Defendant-Appellant Sean Cheung Tong, Trustee of the Unrecorded Koolani Trust Dated January 1, 2015 (**Tong**), appeals from the Circuit Court of the First Circuit's October 28, 2024 "Findings of Fact; Conclusions of

Law; Order Granting Plaintiff's Motion for Summary Judgment and for Interlocutory Decree of Foreclosure Against All Parties, Filed July 26, 2024" (**Summary Judgment Order**) and Judgment in favor of Plaintiff-Appellee Wells Fargo Bank, National Association, as Trustee on Behalf of the Holders of the Structured Asset Mortgage Investments II Inc., Bear Sterns Mortgage Funding Trust 2007-AR1, Mortgage Pass-Through Certificates, Series 2007-AR1 (**Wells Fargo**).[1]

On appeal, Tong raises seven points of error (**POE**), contending that the circuit court erred by: (1) concluding Tong lacked standing to challenge that notice of default was provided; (2) concluding Tong's Answer to the Complaint admitted that notice of default was provided by failing to deny it with specificity and particularity; (3) finding the mortgagor was provided notice of default via first class mail; (4) concluding Wells Fargo provided admissible evidence of delivery of the notice of default under the business records hearsay exception via testimony of knowledge of standard mailing practices; (5) denying Tong's request for a continuance to conduct further discovery on the purported notice of default; (6) granting summary judgment despite the foreclosure claim being barred

[1] The Honorable James H. Ashford presided.

under the applicable six-year statute of limitations; and (7) concluding Wells Fargo established standing to foreclose.

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the issues raised and the arguments advanced, we resolve this appeal as discussed below and affirm.

In 2006, Defendant-Appellee Bryce Jaret Ishimitsu (**Ishimitsu**) executed an Adjustable Rate Note (**the Note**) in favor of Franklin Financial, a Corporation (**Franklin Financial**), secured by a Mortgage (**the Mortgage**) in favor of Mortgage Electronic Registration Systems, Inc., solely as nominee for Franklin Financial, its successors and assigns, that encumbered the property located at 95-1111 Koolani Drive #214, Mililani, Hawaiʻi 96789 (**the Property**). The Property was subsequently sold to Defendant-Appellee Mililani Town Association via a quitclaim deed recorded on May 27, 2014, and was later conveyed to Tong via an apartment deed recorded in the Land Court on November 3, 2016. Ishimitsu defaulted on the Mortgage loan.

On February 15, 2023, Wells Fargo filed the underlying Complaint for foreclosure. Wells Fargo moved for summary judgment and an interlocutory decree of foreclosure (**First Motion**). Tong opposed, and the circuit court denied the First Motion without prejudice.

On July 26, 2024, Wells Fargo again moved for summary judgment and an interlocutory decree of foreclosure (**Second Motion**). Tong again opposed. The circuit court granted the Second Motion. Tong appealed.

(1) We first address POE 7 regarding Wells Fargo's standing to foreclose on the Property. Tong contends the circuit court erroneously granted summary judgment in favor of Wells Fargo because genuine issues of material fact remained with respect to Wells Fargo's standing to foreclose. Specifically, Tong asserts that Wells Fargo failed to meet its burden of establishing by admissible evidence (1) its capacity as "a Trustee 'on behalf of the holders of the Structured Asset Mortgage Investments II Inc., Bear Sterns Mortgage Funding Trust 2007-AR1, Mortgage Pass-Through Certificates, Series 2007-AR1'" (**2007-AR1 Trust**); (2) the existence of a valid assignment of the Mortgage to the 2007-AR1 Trust; or (3) whether the Note included a special indorsement to "Wells Fargo Bank, N.A., as Trustee," at the time it was received.

We review the grant or denial of summary judgment de novo. Nationstar Mortg. LLC v. Kanahele, 144 Hawaiʻi 394, 401, 443 P.3d 86, 93 (2019).

To establish its right to foreclose on a mortgage, a foreclosing plaintiff must establish its standing, or entitlement to enforce the subject note, at the time the action was commenced. Bank of America, N.A. v. Reyes-Toledo, 139 Hawaiʻi 361, 367-71, 390 P.3d 1248, 1254-58 (2017). Standing may be established through admissible evidence showing that the foreclosing plaintiff was in possession of the note at the time the complaint was filed. Id. at 368, 390 P.3d at 1255. This requirement applies where the subject note is specially indorsed. E.g., U.S. Bank Nat'l Ass'n as Tr. for C-Bass Mortg. Loan Asset-Backed Certificates, Series 2007-CB1 v. Jung Hoon Kim, 144 Hawaiʻi 383, 442 P.3d 446, 2019 WL 2205680, at *1 (App. May 22, 2019) (SDO).

> [A] special indorsement occurs if the indorsement is made by the holder of an instrument and the indorsement identifies a person to whom it makes the instrument payable. [Hawaiʻi Revised Statutes (**HRS**)] § 490:3-205(a) [(2008)]. When an instrument is specially indorsed, it becomes payable to the identified person and may be negotiated only by the indorsement of that person. Id.

Reyes-Toledo, 139 Hawaiʻi at 370, 390 P.3d at 1257.

Here, the Second Motion was supported by the declaration of Gari-Ann Wise (**Wise**), the custodian of records of collateral files for Wells Fargo's counsel. The Wise declaration stated that the original wet ink indorsed Note was received on November 9, 2017, and that Wise personally confirmed possession of the Note on January 10, 2023. The Wise declaration further stated that had the Note left the firm's possession, it would have been logged in the firm's document management system. The "true and correct redacted copies of the documents that were received and scanned within [the firm's] record-keeping system" show that the Note was specially indorsed to "Wells Fargo Bank, N.A., as Trustee."

Because Wells Fargo's counsel was in possession of the Note as its bailee on February 15, 2023, when the foreclosure complaint was filed, and the Note was specially indorsed to Wells Fargo, Wells Fargo was entitled to enforce the Note. See id.

Because Wells Fargo carried its burden of showing it was in possession of the Note at the relevant time and had standing to foreclose on the Property, the burden then shifted to Tong to point to specific facts in evidence to show a challenged fact was material and in genuine dispute. See U.S. Bank N.A. v. Mattos, 140 Hawaiʻi 26, 30, 398 P.3d 615, 619 (2017) (quoting French v. Hawaii Pizza Hut, Inc., 105 Hawaiʻi 462, 470, 99 P.3d 1046, 1054 (2004)). Tong points to no such facts. See id.

Wells Fargo was not separately required to establish the validity of the assignment of the Mortgage because the transfer of a promissory note also transfers the right to enforce the mortgage. See HRS § 490:9-203(g) (2008) ("The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.");

Reyes-Toledo, 139 Hawaiʻi at 371 n.17, 390 P.3d at 1258 n.17 (stating that "the security follows the debt").

Moreover, as a third party, Tong lacks "standing to challenge the validity of an assignment of its loans because they are not parties to the agreement." U.S. Bank Nat'l Ass'n v. Salvacion, 134 Hawaiʻi 170, 175, 338 P.3d 1185, 1190 (App. 2014). While "Hawaiʻi courts may recognize exceptions when a challenge would deem the assignment void, not voidable," Tong makes no such argument on appeal. Id.

Tong similarly lacks standing to challenge the assignment of a mortgage to a securitized trust. See Bank of New York Mellon v. Rumbawa, 137 Hawaiʻi 206, 366 P.3d 1085, 2016 WL 482170, at *1-2 (App. Feb. 4, 2016) (SDO) ("Courts have rejected the argument that before a party may foreclose on a property, 'it must first prove the validity of every transfer in the chain of title.'" (quoting Deutsche Bank Tr. Co. v. Beesley, Civil No. 12-00067 SOM/KSC, 2012 WL 5383555, at *4 (D. Haw. Oct. 30, 2012)). Moreover, "noncompliance with a trust's governing document is irrelevant to the assignee's standing to foreclose," and it "does not render the assignment void." Salvacion, 134 Hawaiʻi at 175-76, 338 P.3d at 1190-91.

Accordingly, the circuit court did not err by concluding Wells Fargo had standing to enforce the Note through its foreclosure complaint.

(2) We now turn to POE 3 and 4, where Tong argues the circuit court erroneously found Wells Fargo gave the requisite notice of default in compliance with the terms of the Mortgage because, Tong contends, delivery of the notice was not supported by admissible evidence.

To establish entitlement to foreclose, the foreclosing party must demonstrate (1) the existence of the agreement, (2) the terms of the agreement, (3) default under the terms of the agreement, and (4) the giving of requisite notice. Bank of Honolulu, N.A. v. Anderson, 3 Haw. App. 545, 551, 654 P.2d 1370, 1375 (App. 1982).

Here, the Second Motion was supported by, among other things, two Notices of Default, both dated August 24, 2021, and addressed to Ishimitsu at the Property; the declaration of Cynthia May (**May**), an officer for Wells Fargo's loan servicer; and screenshots of the loan servicer's correspondence tracker and log. The Notices of Default and the correspondence tracker and log all show a code, "LR062," which, May averred, "indicates that [the] notices were sent via first class mail," consistent with the servicer's standard mailing practices.

Tong contends that May's declaration regarding the meaning of the "LR062" code is inadmissible hearsay that cannot support proof that notice was given:

> To the extent Ms. May's purported personal knowledge as to the use by [the servicer] and meaning of the code "LR062" may have been based upon her review and knowledge of things such as [the servicer's] written policies, training guides, operation procedures, or other similar business records, because those records were not identified and produced, Ms. May's allegation of having personal knowledge if based thereon that the notices of Default were mailed by first class mail on August 24, 2021, remains inadmissible hearsay.

"Though hearsay is generally inadmissible, [Hawaiʻi Rules of Evidence (**HRE**)] Rule 803(b)(6) establishes a hearsay exception for 'records of regularly conducted activity.'" U.S. Bank Tr., N.A. as Tr. for LSF9 Master Participation Tr. v. Verhagen, 149 Hawaiʻi 315, 325, 489 P.3d 419, 429 (2021). HRE Rule 803(b)(6) provides in relevant part:

> The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
>
> . . . .
>
> (b) Other exceptions.
>
> . . . .
>
> (6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made in the course of a regularly conducted activity, at or near the time of the acts, events, conditions, opinions, or diagnoses, as shown by the testimony of the custodian or other qualified witness, or by certification that complies with rule 902(11) or a statute permitting certification, unless the sources of information or other circumstances indicate lack of trustworthiness.

(Emphases added.)

A witness is qualified to provide the testimony required under HRE Rule 803(b)(6) where they have "enough familiarity with the record-keeping system of the business that created the record to explain how the record was generated in the ordinary course of business." Wells Fargo Bank, N.A. v. Behrendt, 142 Hawaiʻi 37, 45, 414 P.3d 89, 97 (2018) (citing Mattos, 140 Hawaiʻi at 32, 398 P.3d at 621 (quoting State v. Fitzwater, 122 Hawaiʻi 354, 365-66, 227 P.3d 520, 531-32 (2010))).

May was qualified to lay a foundation for the admission of these records. See id.; HRE Rule 803(b)(6). The May declaration stated, "[a]s an officer of [Wells Fargo's loan servicer], I am personally familiar with [the servicer]'s standard mailing practices and procedures," because "I am authorized and trained to access these records" and use the relevant systems "on a regular basis as a routine function of my employment."

Thus, Wells Fargo carried its burden of showing the Notices of Default were mailed to Ishimitsu on or around August 24, 2021. The burden then shifted to Tong to point to specific facts in evidence to show a challenged fact was material and in genuine dispute. See Mattos, 140 Hawaiʻi at 30, 398 P.3d at 619 (quoting French, 105 Hawaiʻi at 470, 99 P.3d at 1054). Tong points to no such facts. See id.

Accordingly, the circuit court did not err by granting Wells Fargo's Second Motion.

(3) As to POE 6, Tong contends the foreclosure action was subject to a six-year statute of limitations. After the parties briefed the matters in this case, the Hawaiʻi Supreme Court held that "the statute of limitations for mortgage foreclosure actions is twenty years per HRS § 657-31." Bank of New York Mellon as Tr. for Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-11 v. White, 156 Hawaiʻi 246, 249, 573 P.3d 629, 632 (2025). Thus, POE 6 fails.

(4) Finally, we decline to reach Tong's remaining points of error, contending the circuit court erred by concluding Tong lacked standing to challenge that notice of default was provided (POE 1); concluding Tong's Answer to the Complaint admitted that notice of default was provided by failing to deny it with specificity and particularity (POE 2); and denying Tong's request for a continuance to conduct further discovery on the purported notice of default (POE 5).

As discussed above, Wells Fargo established standing and entitlement to bring its foreclosure action as a matter of law. Error, if any, in concluding Tong lacked standing to challenge notice of default, concluding Tong failed to deny with specificity, and denying Tong's continuance request to conduct discovery would be harmless. See Salvacion, 134 Hawaiʻi at 176, 338 P.3d at 1191 ("Further discovery would not have rebutted

USBNA's showing of absence of genuine issue of fact." (citation modified)).

Based on the foregoing, we affirm the circuit court's October 28, 2024 Summary Judgment Order and Judgment.

DATED: Honolulu, Hawaiʻi, August 27, 2026.

On the briefs:

Frederick J. Arensmeyer,
for Defendant/Cross-
Claim Defendant-Appellant.

Lansen H.G. Leu,
(Leu Okuda & Doi),
for Plaintiff-Appellee.

/s/ Karen T. Nakasone
Chief Judge

/s/ Keith K. Hiraoka
Associate Judge

/s/ Sonja M.P. McCullen
Associate Judge