Electronically Filed
Intermediate Court of Appeals
CAAP-25-0000447
31-AUG-2026
07:51 AM
Dkt. 49 SO

NO. CAAP-25-0000447

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI‘I

MCH SUB I, LLC, Plaintiff-Appellee,
v.
MICHAEL K. TANIGUCHI, PATRICIA ANN U. MOORE,
Defendants-Appellants,
and
JOHN and MARY DOES 1-10, Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CASE NO. 3CC131000386)

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

In this foreclosure action, Defendants-Appellants Michael K. Taniguchi and Patricia Ann U. Moore (**Homeowners**) appeal from the May 13, 2025 "Findings of Fact; Conclusions of Law; [and] Order Granting Plaintiff's Motion for Summary Judgment and for Interlocutory Decree for Foreclosure as to Count III of the Amended Complaint" (**Order**) and the May 13, 2025 Judgment (**Final Judgment**) entered by the Circuit Court of the Third Circuit (**Circuit Court**).[1] On appeal, Homeowners contend that the Circuit Court erred in granting summary judgment because:

[1] The Honorable Peter K. Kubota presided.

(1) Plaintiff-Appellee MCH SUB I, LLC, (**MCH**) did not prove that its predecessor in interest had standing at the time it filed the original complaint; (2) MCH did not prove that it had the right to enforce the Note; (3) MCH did not satisfy the contractual requirements for notice of default because (a) MCH sent the default letter to Homeowners' counsel after the complaint was filed and because (b) MCH sent the default letter to Homeowners' counsel rather than Homeowners themselves; and (4) MCH did not demonstrate that its documents were trustworthy. Homeowners ask that the Circuit Court's Order and Final Judgment be vacated and that the case be remanded for further proceedings.

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, Homeowners' contention in point of error 3(a), that the default letter must be sent prior to the operative complaint, has merit. Therefore, we vacate the Order and Final Judgment and remand for further proceedings.

Background: This is a second appeal arising out of proceedings conducted on remand, following this court's 2016 decision in Citi Prop. Holdings, Inc. v. Taniguchi, No. CAAP-14-0000439, 2016 WL 3128741, at *1 (Haw. App. June 2, 2016) (SDO), which vacated a 2014 summary judgment order on an ejectment complaint from 2013. The 2013 ejectment complaint was filed by MCH's predecessor in interest, Citi Property Holdings, Inc. (**Citi**), against Homeowners, after Citi's non-judicial foreclosure sale of the subject property in Keaʻau, Hawaiʻi (**Property**).

On remand, following the November 15, 2026 substitution of Mid-Pac Portfolio, LLC (**MPP**) for Citi, MPP filed an Amended Complaint on January 12, 2017 (**Amended Complaint**). The Amended Complaint listed three counts requesting:

(I) a declaratory ruling as to whether the non-judicial foreclosure completed by Citi was valid; (II) a declaratory ruling that MPP be allowed to set aside the non-judicial foreclosure and proceed with a judicial foreclosure (if, in Count I, the prior non-judicial foreclosure was ruled to be invalid); and (III) judicial foreclosure (if ruled permissible pursuant to Count II). Various motions followed.

On May 27, 2021, the Circuit Court granted the substitution of the current plaintiff, MCH, for MPP, due to transfer of the Property.

On August 17, 2022, MCH moved for summary judgment. On April 17, 2023, the Circuit Court issued its Findings of Fact, Conclusions of Law, and Order. Among other things, the Circuit Court concluded that Citi's notice of default was improper and voided the non-judicial foreclosure. The Circuit Court specifically "reserve[d] for later ruling the disposition of Count III, the claim for foreclosure and related issues, which will remain subject to this Court's equitable discretion."[2]

On June 25, 2024, MCH sent a notice of default letter to Homeowners' counsel (**2024 Notice**). MCH then filed a motion for summary judgment on its foreclosure-related claims on November 12, 2024 (**2024 MSJ**).[3] Attached to the 2024 MSJ was a Declaration of April Smith (**Smith Declaration**), which in turn attached a trust receipt from Wells Fargo Bank, N.A. (**Wells Fargo**) (MPP's custodian), indicating that Wells Fargo possessed the Note (on behalf of MPP) in 2012. The Smith Declaration also indicated that sometime after Wells Fargo's receipt of the Note, the Note was lost. As such, a Lost Note Affidavit was executed on February 21, 2020.

---

[2] The Honorable Jeffrey A. Hawk signed the Order.

[3] The 2024 MSJ was still based upon the 2017 Amended Complaint.

On May 13, 2025 the Circuit Court granted the 2024 MSJ and entered its Order and Final Judgment foreclosing on the Property. Homeowners timely appealed.

Standard of review: On appeal, the grant or denial of summary judgment is reviewed de novo. HELG Admin. Servs., LLC v. Dep't of Health, 154 Hawaiʻi 228, 232, 549 P.3d 313, 317 (2024). The issue of standing is likewise reviewed de novo. Tax Found. of Hawaiʻi v. State, 144 Hawaiʻi 175, 185, 439 P.3d 127, 137 (2019).

Notice of Default: Homeowners argue that they did not receive proper notice of default as required by the Mortgage. This issue is dispositive, because "[a] foreclosing plaintiff's burden to prove entitlement to enforce the note overlaps with the requirements of standing in foreclosure actions . . . ." Bank of Am., N.A. v. Reyes-Toledo, 139 Hawaiʻi 361, 367, 390 P.3d 1248, 1254 (2017) (holding that "the foreclosing party must demonstrate that all conditions precedent to foreclosure under the note and mortgage are satisfied and that all steps required by statute have been strictly complied with"; this "typically requires the plaintiff to prove the existence of an agreement, the terms of the agreement, a default by the mortgagor under the terms of the agreement, and giving of the cancellation notice").

Homeowners make two arguments regarding notice: first, that MCH was required to send notice of default prior to filing a complaint; second, that the 2024 Notice did not satisfy the terms of the mortgage because it was sent to Homeowners' counsel rather than Homeowners themselves. We address each in turn.

(a) In arguing that summary judgment was improper, Homeowners point to paragraph 22 of the Mortgage, which provides in relevant part:

> Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument . . . . The notice

> shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale.

(Emphasis added.) Here, MPP (MCH's predecessor) filed an Amended Complaint in 2017 seeking, among other things, "a certain sum of money . . . together with legal interest accrued, and all advances, costs and attorney's fees" as well as a deficiency judgment. The Mortgage does not mature until 2037, such that the Amended Complaint constitutes acceleration. See Bank of Hawaii v. Kunimoto, 91 Hawaiʻi 427, 437, 984 P.2d 1253, 1263 (App. 1997), orders vacated on denial of recon., 92 Hawaiʻi 146, 988 P.2d 665 (App. 1999) ("[T]he holder's initiation of a suit for the whole debt constitutes a sufficient affirmative act to communicate to the maker that he or she has chosen to exercise his or her option to accelerate."). Pursuant to the terms of the Mortgage, MCH was required to send notice to Homeowners prior to accelerating the Mortgage — that is, prior to filing the operative complaint. For this reason, summary judgment to MCH was improper: MCH was required to send notice prior to filing the operative complaint. Consequently, we vacate the Circuit Court's grant of summary judgment and remand for further proceedings.

(b) Homeowners also argue that the Mortgage required MCH to give notice directly to Homeowners, rather than to Homeowners' counsel. They point to the provision of paragraph 22 stating that "Lender shall give notice to Borrower," along with paragraph 15 of the Mortgage:

> **15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this

> Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law[4] expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address . . . . If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

The Mortgage does not say what Homeowners think it says. The Mortgage requires that "Lender shall give notice to Borrower[.]" MCH did so, by delivering a copy of the notice to Homeowners' agent — their attorney. <u>See</u> <u>Alt v. Krueger</u>, 4 Haw. App. 201, 207, 663 P.2d 1078, 1082 (1983) ("[T]he attorney-client relationship is that of principal and agent, . . . and the client is bound by the acts of his attorney within the scope of the latter's authority.") Homeowners do not argue that they never received notice. The Mortgage states that notice "shall be deemed to have been given" when sent by certain means, but it does not state that these are the exclusive methods of notice. Instead, the Mortgage required notice to the Borrower, and the Borrower received notice via counsel. For this reason alone, Homeowners' argument fails.

Moreover, there is a second reason that Homeowners' argument fails: the Mortgage contains a provision making clear that its terms are subject to (and controlled by) Hawaiʻi law. The Mortgage provides in relevant part:

> **16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law . . . .

---

[4] The Mortgage defines "Applicable Law" as "all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions."

Here, the parties were already in litigation when MCH sent the default notice. As such, MCH's counsel was required to send the notice to MCH's counsel pursuant to HRCP Rule 5:

> **(a) Service: When required.** . . . [E]very written notice, appearance, demand, brief or memorandum of law, offer of judgment, bill of costs, designation of record on appeal, and similar paper shall be served upon each of the parties. . . .
>
> **(b) Same: How made.** Whenever under these Rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court.

(Emphasis added.)

HRCP Rule 5 required service of the notice upon Homeowners' attorney, and MCH's counsel sent notice to Homeowners' counsel. The Circuit Court did not err when it concluded that sending notice to Homeowners' attorney complied with the Note and Mortgage's notice requirements.

Because we vacate the Circuit Court's grant of summary judgment as to the threshold issue of notice, we need not reach Homeowners' remaining arguments. For the foregoing reasons, we vacate the May 13, 2025 "Findings of Fact; Conclusions of Law; [and] Order Granting Plaintiff's Motion for Summary Judgment and for Interlocutory Decree for Foreclosure as to Count III of the Amended Complaint" and the May 13, 2025 Judgment, and remand for further proceedings consistent with this summary disposition order.

DATED: Honolulu, Hawaiʻi, August 31, 2026.

On the briefs:

Keith M. Kiuchi,
for Defendants-Appellants.

Daniel K. Kikawa
and Lansen H. G. Leu,
(Leu Okuda & Doi)
for Plaintiff-Appellee.

/s/ Karen T. Nakasone
Chief Judge

/s/ Kimberly T. Guidry
Associate Judge

/s/ Daniel M. Gluck
Associate Judge