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IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

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UMB BANK, N.A., NOT IN ITS INDIVIDUAL CAPACITY,
BUT SOLELY AS LEGAL TITLE TRUSTEE FOR LVS TITLE TRUST XIII,
Respondent/Plaintiff-Appellee,

vs.

SA TUPULUA; GLADYS ULU TUPULUA,
Petitioners/Defendants-Appellants,

and

CITI BANK (SOUTH DAKOTA), N.A.; NOHOKAI AT SEA COUNTRY,
Respondents/Defendants-Appellees.

SCWC-24-0000333

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-24-0000333; CASE NO. 1CC151000083)

AUGUST 24, 2026

DEVENS, C.J., McKENNA, EDDINS, AND GINOZA, JJ.,
AND CIRCUIT JUDGE CATALDO, ASSIGNED BY REASON OF VACANCY

OPINION OF THE COURT BY DEVENS, C.J.

I. INTRODUCTION

This appeal raises the question of whether standing was established by a mortgagee to foreclose on a mortgage.

Wells Fargo Bank, N.A. (Wells Fargo) filed suit against Petitioners/Defendants-Appellants Sa and Gladys Ulu Tupulua (Petitioners) and others to foreclose on a mortgage on their property in Waiʻanae. Respondent/Plaintiff-Appellee UMB Bank, National Association (UMB) was later substituted as the real party in interest after Wells Fargo assigned the mortgage to UMB.

At the summary judgment stage of the case, UMB asserted that Wells Fargo possessed the original promissory note (Note) on the date suit was filed and that it thus had standing to foreclose. Relevant to the standing issue, UMB submitted declarations from two Wells Fargo employees and business records pertaining to the holder of the Note. The Circuit Court of the First Circuit (circuit court) determined that UMB satisfied its burden of proving Wells Fargo's possession of the Note, thereby establishing standing to foreclose.

Following the circuit court's summary judgment ruling but prior to trial, the parties stipulated that Wells Fargo (1) had possession of the Note prior to initiating this lawsuit and (2) was the current holder of the Note (i.e., as of the date of the stipulation). The written stipulation did <u>not</u> specify that Wells Fargo was the holder of the Note at the time it filed suit.

The circuit court later granted an interlocutory decree of foreclosure in favor of UMB.

On appeal to the Intermediate Court of Appeals (ICA), Petitioners challenged the circuit court's determination that UMB had standing to foreclose. Holding that the terms of the parties' stipulation should be enforced, the ICA affirmed the circuit court.

We respectfully disagree. First, the ICA did not address whether the circuit court, at the summary judgment stage, was correct in concluding that Wells Fargo possessed the Note at the time it commenced this action. Based on this record, there is a genuine issue of material fact with respect to Wells Fargo's possession of the Note. UMB submitted Wells Fargo's business records purportedly establishing that Wells Fargo held the Note when it filed suit. Those records, however, contain numerous undefined and ambiguous terms, with UMB failing to adequately explain how to parse that information. Absent any such explanation, the records present genuine issues of material fact as to UMB's standing.

Second, the parties' stipulation did not separately and independently establish UMB's standing. The stipulation was nonspecific as to how long Wells Fargo possessed the Note before commencing the action and did not expressly state that Wells Fargo possessed the Note at the time of its filing. Further, because the parties filed the stipulation after the circuit court's erroneous summary judgment standing ruling, it was inequitable for the ICA to enforce the stipulation as establishing UMB's standing. At that point in the litigation, the circuit court had already decided the standing issue, thus binding the parties to the court's summary judgment ruling.

Based on the foregoing, we vacate and remand to the circuit court for proceedings consistent with this opinion.

II. BACKGROUND

A. Mortgage

Petitioners initially executed the Note in favor of DHI Mortgage Electronic Registrations System, Inc. which was recorded on March 31, 2008 (Mortgage). The Mortgage was assigned to Wells Fargo on February 25, 2010, and thereafter Wells Fargo endorsed the Note in blank. The Mortgage was assigned to UMB on August 19, 2021.

B. Relevant Circuit Court Proceedings

On January 20, 2015, Wells Fargo filed a complaint (Complaint) seeking foreclosure of the Mortgage.[1] Wells Fargo and UMB (as Wells Fargo's successor in interest) subsequently moved for summary judgment five times; two of those motions are relevant to this appeal.

[1] The Honorable Jeannette H. Castagnetti presided.

1. Wells Fargo's Renewed Motion for Summary Judgment

On September 9, 2019, Wells Fargo filed a "renewed" motion for summary judgment (Renewed MSJ), arguing that it possessed the Note when the Complaint was filed and therefore had standing to foreclose on the Mortgage. To establish possession, Wells Fargo relied on a certification of possession signed by Yang Thao (Thao), a Wells Fargo Vice President of Loan Documentation (Thao Declaration). Thao certified that Wells Fargo had possession of the Note as of October 22, 2013.

On October 14, 2019, the circuit court entered a minute order denying the Renewed MSJ and holding that Wells Fargo "failed to establish through admissible evidence its standing to foreclose at the time the complaint was filed." (Capitalization altered.) The court reasoned that "possession of the original note on October 22, 2013, does not establish possession of the same when the complaint was filed on January 20, 2015." (Capitalization altered and citations omitted.)

2. UMB's Third Renewed Motion for Summary Judgment

On September 6, 2022, UMB filed a "third renewed" motion for summary judgment (Third Renewed MSJ).[2] UMB again argued that it had standing to foreclose because Wells Fargo had possession

[2] The Honorable James H. Ashford presided. UMB was substituted as the plaintiff in place of Wells Fargo on December 3, 2021.

of the Note on the day the Complaint was filed. This time, UMB included a Certification of Possession of Original Promissory Note signed by Joanne Thoma-Ball (Thoma-Ball), a Wells Fargo Business Initiatives Consultant (Thoma-Ball Declaration).

Thoma-Ball declared that, based on her review of Wells Fargo's records, Wells Fargo was in possession of the Note at the time the Complaint was filed. Her declaration attested that a copy of Wells Fargo's business records (Spreadsheet) "regarding the location of the original Note <u>setting forth these facts</u>" was attached and incorporated. (Emphasis added.) In other words, Thoma-Ball attested that the Spreadsheet was the basis for her statement that Wells Fargo possessed the Note when the Complaint was filed. She explained that between October 23, 2013 and August 26, 2019, Wells Fargo "had physical possession of the original Note[.]" The Thao Declaration was also included with her declaration.

In opposition, Petitioners argued that the Thoma-Ball Declaration should be disregarded as conclusory and inadmissible.

The circuit court's January 17, 2023 minute order denied the Third Renewed MSJ (on grounds unrelated to this appeal). However, the circuit court determined that UMB "carried the burden of showing it had standing" by establishing Wells Fargo's possession of the Note on the date the Complaint was filed.

3. Circuit Court's Findings of Fact and Conclusions of Law; Order Granting Interlocutory Decree of Foreclosure

On December 28, 2023, the circuit court held a one-day bench trial to decide whether Petitioners were provided with notice of, and an opportunity to cure, their default. Petitioners do not claim any trial error, nor is the substance of the trial relevant to this appeal.

Instead, what is relevant to this appeal is a joint stipulation relating to the established facts for trial that the parties signed and submitted before the bench trial. Relevant here is Paragraph 6 of the stipulation that stated:

> 6. Prior to the commencement of this foreclosure action, the Note was indorsed "in blank" and the original of the Note (with the indorsement "in blank") was delivered to and held by Wells Fargo Bank, N.A., which was the Plaintiff at the time this foreclosure action <u>was commenced</u>. [UMB] is the <u>current</u> holder of the Note, which is secured by the Mortgage.

(Emphasis in original.) Six days after trial, the parties signed and submitted an amended stipulation (Stipulation) with no changes made to Paragraph 6.

On March 28, 2024, the circuit court entered findings of fact (FOFs), conclusions of law (COLs), and an order granting interlocutory decree of foreclosure in favor of UMB. Relevantly, the circuit court made the following FOFs:

> 7. On January 20, 2015, the Note had been indorsed "in blank", which thereby converted the Note into a bearer negotiable instrument, and the original of the Note (with the indorsement "in blank") had been delivered to and was

> held by [Wells Fargo], which was the Plaintiff at the time this foreclosure action was commenced.[3]
>
> . . .
>
> 24. By reason of the facts hereinbefore set forth and alleged, [UMB] is entitled to the foreclosure of its Mortgage and the sale of the Mortgaged Property.

(Cleaned up.)

C. ICA's Summary Disposition Order

The ICA affirmed the circuit court's judgment and explained that it would be inequitable not to enforce the Stipulation as establishing Wells Fargo's possession of the Note when the Complaint was filed.

We accepted Petitioners' certiorari application.

III. STANDARDS OF REVIEW

A. Standing

The issue of standing is reviewed de novo on appeal. Tax Found. of Hawaiʻi v. State, 144 Hawaiʻi 175, 185, 439 P.3d 127, 137 (2019) (citation omitted).

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[3] Specifically, [Wells Fargo] received the original indorsed Note in 2008 and retained it in its exclusive possession through 2019. In the [Thoma-Ball Declaration], Thoma-Ball authenticated the business records of her employer, [Wells Fargo], and explained how said records evidenced that: (i) on January 30, 2009, the original Note was reviewed and imaged by [Wells Fargo]; (ii) [Wells Fargo] directly or through its subsidiary Wells Fargo Home Mortgage, Inc., retained and was in possession of the original Note during the entire period of time between April 10, 2008 until August 29, 2019, at which time the original Note was sent to [UMB's] current counsel of record herein; and (iii) thus, [Wells Fargo] was in possession of the original note when this foreclosure action was commenced.

(Emphasis added.) (Cleaned up.)

B. Summary Judgment

We review a grant of summary judgment de novo. Nozawa v. Operating Engineers Local Union No. 3, 142 Hawaiʻi 331, 338, 418 P.3d 1187, 1194 (2018) (citation omitted). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Hawaiʻi Rules of Civil Procedure (HRCP) Rule 56(c) (eff. 2000).

C. Findings of Fact and Conclusions of Law

"We review a circuit court's findings of fact under a 'clearly erroneous standard,' and we review its conclusions of law de novo." State v. Rodrigues, 145 Hawaiʻi 487, 494, 454 P.3d 428, 435 (2019) (citing Mikelson v. United Servs. Auto. Ass'n, 107 Hawaiʻi 192, 197, 111 P.3d 601, 606 (2005)).

A finding of fact is clearly erroneous when the record lacks substantial evidence to support the finding. Birano v. State, 143 Hawaiʻi 163, 181, 426 P.3d 387, 405 (2018) (citation omitted). This court has defined "substantial evidence" as credible evidence of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion.

Leslie v. Estate of Tavares, 91 Hawaiʻi 394, 399, 984 P.2d 1220, 1225 (1999) (citations omitted).

D. Admissibility of Evidence

> Where admissibility of evidence is determined by application of the hearsay rule, there can only be one correct result, and the appropriate standard for appellate review is the right/wrong standard. . . . However, when the trial court bases its ruling of admissibility on the "judgment call" of whether the sources of information or other circumstances related to the records indicate a lack of trustworthiness, we review for abuse of discretion.

Nationstar Mortg. LLC v. Kanahele, 144 Hawaiʻi 394, 402, 443 P.3d 86, 94 (2019) (cleaned up).

IV. DISCUSSION

This appeal turns on whether UMB established that Wells Fargo, UMB's predecessor in interest, possessed the Note when the Complaint was filed.

The foreclosing plaintiff must establish standing at the time the foreclosure complaint is filed. Bank of Am., N.A. v. Reyes-Toledo, 139 Hawaiʻi 361, 368-69, 390 P.3d 1248, 1255-56 (2017). In the mortgage foreclosure context, "the requirement of standing overlaps with a plaintiff's burden of proving its entitlement to enforce the subject promissory note." U.S. Bank Tr., N.A. v. Verhagen, 149 Hawaiʻi 315, 327, 489 P.3d 419, 431 (2021) (citing Reyes-Toledo, 139 Hawaiʻi at 367, 390 P.3d at 1254).

The "holder of the instrument" is entitled to enforce it. HRS § 490:3-301 (2008). The holder is the person in possession of an instrument "payable either to bearer or to an identified person that is the person in possession[.]" HRS § 490:1-201 (2008). And "[w]hen indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone unless specially indorsed." HRS § 490:3-205 (2008).

UMB maintains that it had standing to foreclose because Wells Fargo held the indorsed-in-blank Note when it filed suit. However, at summary judgment, there was a genuine issue of material fact as to whether Wells Fargo possessed the Note at the time it initiated this action. Furthermore, the circuit court clearly erred in issuing FOF 7 and incorrectly issued FOF 24.

A. UMB's evidence did not establish standing to foreclose.

UMB argues that it established Wells Fargo's possession of the Note via the Thoma-Ball Declaration (which included the Spreadsheet) and the Thao Declaration submitted with its Third Renewed MSJ.

Petitioners counter that the two declarations should be disregarded as "conclusory" and that the Spreadsheet is inadmissible. Although we find these contentions unsupported, we also find there is a genuine issue as to whether Wells Fargo possessed the Note on the day it filed the Complaint.

1. The Thao Declaration and Thoma-Ball Declaration need not be disregarded and the Spreadsheet is admissible.

A declaration in support of a summary judgment motion must be based on personal knowledge, set forth such facts as would be admissible in evidence, and show affirmatively that the declarant is competent to testify to the matters contained within the declaration. See HRCP Rule 56(e) (eff. 2000).

The Thao Declaration stated, in relevant part, the following: (1) Thao is "Vice President Loan Documentation of [Wells Fargo]"; (2) Thao "personally reviewed the original promissory note ('Note') . . . on 10/22/2013 at 2:19:33 [p.m.]"; and (3) Wells Fargo "has possession of the Note." (Capitalization altered.) The Thao Declaration was undated.

Credence cannot be given to Thao's third statement, which generally provided Wells Fargo had possession of the Note. His declaration was undated and his statement failed to specify the timeframe of possession. However, Thao's remaining statements had proper foundation, as they were made on personal knowledge, set forth facts that would be admissible in evidence, and showed that Thao was competent to testify to his review of the Note on October 22, 2013. We may therefore consider statements (1) and (2) from the Thao Declaration.

Next, Thoma-Ball laid proper and relevant foundation for her representations. The Thoma-Ball Declaration, signed on February 18, 2020 (i.e., prior to Wells Fargo's assignment of the Mortgage to UMB), reads in pertinent part as follows:

> 1. <u>I, Joanne M Thoma-Ball, am employed by [Wells Fargo] as Business Initiatives Consultant.</u> In such capacity, I am authorized to make this declaration regarding the [Mortgage]. . . .
>
> 2. I have access to and am familiar with [Wells Fargo's] books and records regarding the [Mortgage], including [Wells Fargo's] servicing records and copies of the applicable loan documents. I am familiar with the manner in which [Wells Fargo] maintains its books and records, including computer records relating to the servicing of the [Mortgage]. [Wells Fargo's] records are made at or near the time of the occurrence of the matters set forth in such records, by an employee or representative with knowledge of the acts or events recorded. Such records are obtained, kept and maintained by [Wells Fargo] in the regular course of [Wells Fargo's] business. [Wells Fargo] relies on such records in the ordinary course of its business. <u>I am authorized as custodian of [Wells Fargo's] electronic records for the [Mortgage].</u>
>
> . . .
>
> 4. <u>At the time the Complaint was filed on January 20, 2015, [Wells Fargo] was in possession of the original [Note] and entitled to enforce the Note. My personal knowledge of this statement . . . is based on my review of [Wells Fargo's] records for the [Mortgage]."</u>
>
> 5. A true and correct copy of the original Note imaged by [Wells Fargo] on January 30, 2009, is attached hereto as [Exhibit 1] and incorporated herein by reference. . . .
>
> 6. [Wells Fargo's] [r]ecords for the [Mortgage] show the following: (1) On April 10, 2008, [Wells Fargo] first received physical possession of the original Note; (2) From April 10, 2008 to on or about January 23, 2009, [Wells Fargo] was in physical possession of the original Note; (3) On or about January 23, 2009, [Wells Fargo] released the original Note to Wells Fargo Home Mortgage, Inc.,(Wells Fargo Home Mortgage, Inc. is a subsidiary of [Wells Fargo]); (4) On June 9, 2009, the original Note was returned to [Wells Fargo]; (5) From June 9, 2009, until on or about October 22, 2013, [Wells Fargo] was in physical possession of the original Note; (6) On or about October 22, 2013, the original Note was sent to Wells Fargo Home

> Mortgage, Inc.; (7) On October 22, 2013, Wells Fargo Home Mortgage, Inc. received the original Note and a representative of [Wells Fargo], Yang Thao, reviewed the original Note, and executed a CERTIFICATION OF POSSESSION OF ORIGINAL PROMISSORY NOTE [(Thao Declaration)]; (8) On October 22, 2013, Wells Fargo Home Mortgage, Inc. shipped the original Note to [Wells Fargo]; (9) On October 23, 2013, [Wells Fargo] confirmed possession of the original Note; (10) <u>From October 23, 2013 to August 26, 2019 [Wells Fargo] had physical possession of the original Note and therefore [Wells Fargo] was in possession of the original Note and entitled to enforce the Note on January 20, 2015</u> . . . . <u>A true and correct copy of [Wells Fargo's] business records [(i.e., the Spreadsheet)] regarding the location of the original Note setting forth these facts are attached hereto as [Exhibit 2] and incorporated herein by reference.</u> . . . A true and correct copy of the [Thao Declaration] is attached hereto as [Exhibit 3] and incorporated herein by reference. . . . The details in these records were recorded by the custodian of [Wells Fargo] at or near the time of event, by someone with personal knowledge of the act or event.

(Emphases altered.)

Petitioners argue that the Thoma-Ball Declaration "contain[ed] conclusory statements with no basis of personal knowledge." Contrary to this assertion, Thoma-Ball clearly indicated the bases for her statements. She expressly stated that she was the authorized custodian of Wells Fargo's electronic records pertaining to the Mortgage, stated her familiarity with such records, and based her conclusions on her review of the Spreadsheet, which she included with her declaration.

Petitioners also contend that the Spreadsheet is inadmissible "because the Thoma-Ball [D]eclaration [was] insufficient to authenticate it[.]"

Hawaiʻi Rules of Evidence (HRE) Rule 803(b)(6) (2016) establishes a business records hearsay exception for "records of regularly conducted activity." It provides that the following is not excluded by the hearsay rule:

> 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.

HRE Rule 803(b)(6).

As Wells Fargo's custodian of records, Thoma-Bell attested that the Spreadsheet was a true and correct copy of Wells Fargo's business records relating to the location of the Note, made in the regular course of Wells Fargo's business, and prepared at or near the time of the occurrence of the matters set forth in such records. Lacking any indication of untrustworthiness, the Thoma-Ball Declaration properly authenticated the document. The circuit court also correctly applied the business records hearsay exception to the Spreadsheet.

Accordingly, the Thao Declaration, Thoma-Ball Declaration, and Spreadsheet were properly before the circuit court.

2. There was a genuine issue as to whether Wells Fargo possessed the Note on the date the Complaint was filed.

As the issue of standing was addressed on summary judgment, UMB's burden was to show that there was no genuine issue of material fact with respect to standing. HRCP Rule 56(c).

We review the evidence in the light most favorable to Petitioners as the non-movants. Nozawa, 142 Hawaiʻi at 342, 418 P.3d at 1198 (citation omitted). UMB's primary evidence was the Spreadsheet, which served as the basis for Thoma-Ball's statement that Wells Fargo possessed the Note on the date the Complaint was filed. The Spreadsheet appears to contain several dated entries that indicate the occurrence of certain transactions. The Thoma-Ball Declaration stated that these transactions pertained to the location of the Note. Indeed, some of the dates appear to correspond to the dates listed in Paragraph 6 of the Thoma-Ball Declaration. For instance, the declaration stated that on or about January 23, 2009, Wells Fargo released the Note to Wells Fargo Home Mortgage, and the Spreadsheet contains an entry indicating that a transaction of "Release (Int. to Ext.)" occurred on the same date.

However, as Petitioners correctly point out, Thoma-Ball did not sufficiently explain the Spreadsheet. The Spreadsheet contains a myriad of ambiguous codes and categories of transactions. Although one could infer the meaning of some of these labels in favor of UMB from their apparent correspondence to the dates referenced in Paragraph 6 of the Thoma-Ball Declaration, the declaration did not indicate or explain how to interpret many of the codes and transactions listed in the Spreadsheet. For example, several entries are described as "Location Move" in the Spreadsheet, including the entry on November 4, 2013. The Thoma-Ball Declaration did not define that term. Viewing the evidence in the light most favorable to Petitioners, "Location Move" could have signified that the Note was moved to the possession of a third party on November 4, 2013. This creates a genuine issue of material fact as to Thoma-Ball's statement that "[f]rom October 23, 2013 to August 26, 2019 [Wells Fargo] had physical possession of the original Note and therefore [Wells Fargo] was in possession of the original Note and entitled to enforce the Note on January 20, 2015."

The Thao Declaration left this fact issue open and unresolved. In <u>Verhagen</u>, we addressed whether the foreclosing plaintiff, U.S. Bank, established that it had standing at the time it filed suit. U.S. Bank submitted documentary evidence showing that it possessed the note "a mere six weeks before the filing of the complaint and at the time of summary judgment."

Verhagen, 149 Hawaiʻi at 327–28, 489 P.3d at 431–32. We held that the evidence collectively established U.S. Bank's possession of the note on the day the complaint was filed. Id. at 328, 489 P.3d at 432. Importantly, we reached this conclusion in part because U.S. Bank demonstrated that it held the note "less than two months" prior to filing its complaint. Id. at 328 n.10, 489 P.3d at 432 n.10.

Here, the Thao Declaration certified possession on October 22, 2013--more than a year before Wells Fargo initiated this action. Such a gap between the date of certification and that of the Complaint being filed, viewed in the light most favorable to Petitioners on this record, left ample room for a genuine issue as to whether Wells Fargo possessed the Note when it sued Petitioners over a year later. See id.

UMB did not establish Wells Fargo's continuous and uninterrupted possession from October 22, 2013 through January 20, 2015 when the Complaint was filed. Accordingly, we find that summary judgment should not have been granted on the issue of Wells Fargo's possession of the Note when it filed the Complaint.

B. FOF 7 was clearly erroneous and FOF 24 was incorrect.

FOF 7 stated that Wells Fargo "was in possession of the original note when this foreclosure action was commenced." And

FOF 24, a conclusion of law in substance, provided that UMB was entitled to the foreclosure of the Mortgage.[4]

Setting aside the circuit court's ruling on the Third Renewed MSJ as to UMB's standing, the Stipulation was the only other basis that could have supported the circuit court's factual finding that Wells Fargo had possession of the Note when it filed the Complaint. But any reliance on the Stipulation was misplaced as the stipulated language was imprecise and ambiguous.

As stated, Paragraph 6 of the Stipulation provided:

> 6. Prior to the commencement of this foreclosure action, the Note was indorsed "in blank" and the original of the Note (with the indorsement "in blank") was delivered to and held by Wells Fargo Bank, N.A., which was the Plaintiff at the time this foreclosure action was commenced. [UMB] is the current holder of the Note, which is secured by the Mortgage.

(Emphases altered.)

[4] Petitioners do not explicitly challenge FOFs 7 and 24 in their application for writ of certiorari as required by Hawaiʻi Rules of Appellate Procedure (HRAP) Rule 28(b)(4)(C) (eff. 2022). However, "noncompliance with Rule 28 does not always result in dismissal of the claims, and this court has consistently adhered to the policy of affording litigants the opportunity to have their cases heard on the merits, where possible. This is particularly so where the remaining sections of the brief provide the necessary information to identify the party's argument." Marvin v. Pflueger, 127 Hawaiʻi 490, 496, 280 P.3d 88, 94 (2012) (cleaned up). Here, Petitioners explicitly challenged FOFs 7 and 24 in their ICA briefing. Their writ application clearly challenges the ICA's reliance on the Stipulation, and the Stipulation appears to be the circuit court's only basis for making those FOFs, since Wells Fargo's possession of the Note was not at issue at trial. We therefore construe Petitioners' writ application as challenging FOFs 7 and 24.

The Stipulation established that Wells Fargo possessed the Note (1) prior to filing the Complaint and (2) as of the date the Stipulation was filed, which was after the Complaint was filed. It did not pinpoint a date of possession prior to the action's commencement. Did Wells Fargo hold the Note two days before? Two months before? Two years before? The longer the gap, the more room for a "genuine issue" as to whether Wells Fargo possessed the Note when it sued Petitioners. See id. Indeed, the Stipulation left open the possibility that although Wells Fargo held the Note prior to filing the Complaint, the Note was transferred to a third party and was not returned to Wells Fargo until after this action was initiated.

Because of this ambiguity, FOF 7 was not supported by substantial evidence and was therefore clearly erroneous. And without FOF 7, UMB was unable to establish its entitlement to foreclose on the Mortgage. See Reyes-Toledo, 139 Hawaiʻi at 368-69, 390 P.3d at 1255-56. Accordingly, FOF 24 was incorrect.

UMB further argues that Petitioners admitted to Wells Fargo's possession of the Note at the commencement of this action through the Stipulation. Even if we were to accept UMB's argument, such a construal would be inequitable to Petitioners.

"In an equitable foreclosure proceeding, a trial court should enforce the terms of a stipulation unless doing so would be inequitable." Provident Funding Assocs., L.P. v. Gardner, 149 Hawaiʻi 288, 300, 488 P.3d 1267, 1279 (2021) (citation omitted); see State v. Foster, 44 Haw. 403, 423, 354 P.2d 960, 971 (1960), overruled on other grounds by State v. Kelekolio, 74 Haw. 479, 849 P.2d 58 (1993) ("[A] stipulation made inadvertently, inadvisedly[,] or improvidently should be permitted to be withdrawn by the court when inequity will result to one side and the other party will not be prejudiced thereby.").

Here, the Stipulation was filed after the circuit court's erroneous summary judgment ruling that UMB satisfied its burden of establishing standing. At that point in the proceedings, Petitioners were bound to the court's summary judgment determination as law of the case. See PennyMac Corp. v. Godinez, 148 Hawaiʻi 323, 331, 474 P.3d 264, 272 (2020) ("A fundamental precept of common-law adjudication is that an issue once determined by a competent court is conclusive. This general principle of finality and repose is embodied in the law of the case doctrine, which provides that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." (cleaned up)).

We hold that the Stipulation did not establish Wells Fargo's possession of the Note on the day the Complaint was filed. On remand, the parties will have an opportunity to resolve this genuine issue of material fact.

V. CONCLUSION

We conclude that the ICA erred in vacating the circuit court's Judgment entered on March 28, 2024. Therefore, we vacate the ICA's April 15, 2026 Judgment on Appeal and remand the case to the circuit court for proceedings consistent with this opinion.

Keith M. Kiuchi
for petitioners

Matthew P. Holm
for respondent

/s/ Vladimir P. Devens

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

/s/ Lisa M. Ginoza

/s/ Lisa W. Cataldo