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Intermediate Court of Appeals
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NO. CAAP-25-0000079

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

DEUTSCHE BANK TRUST COMPANY AMERICAS, AS TRUSTEE
FOR RESIDENTIAL ACCREDIT LOANS, INC.,
MORTGAGE ASSET-BACKED PASS-THROUGH CERTIFICATES,
SERIES 2006-QA10, Plaintiff-Appellee, v.
MICHAEL ANTHONY BOTELHO, Defendant-Appellant, and
JOHN DOES 1-20; JANE DOES 1-20; DOE CORPORATIONS 1-20;
DOE ENTITIES 1-20; and DOE GOVERNMENTAL UNITS 1-20,
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1CCV-21-0001564)

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

Michael Anthony **Botelho** appeals from the ***Judgment*** for **Deutsche Bank** Trust Company Americas entered by the Circuit Court of the First Circuit.[1] He challenges the *Findings of Fact, Conclusions of Law and **Order** Granting Plaintiff's Motion for Summary Judgment Against All Defendants and for Interlocutory Decree of Foreclosure*. We affirm.

Deutsche Bank sued Botelho to foreclose a mortgage. Deutsche Bank moved for summary judgment and an interlocutory decree of foreclosure. The circuit court entered a minute order granting the motion. The Order and Judgment were entered on January 13, 2025. This appeal followed.

[1] The Honorable James H. Ashford presided.

Botelho states three points of error, which we have reordered: (1) Deutsche Bank did not establish its incorporated documents were trustworthy; (2) Deutsche Bank did not show his note was validly indorsed by Residential Funding Company, LLC; and (3) Deutsche Bank did not present admissible evidence showing its default letter was mailed to him, and the default letter did not meet the requirements of the Mortgage. He challenges the related findings of fact and conclusions of law.

We review a circuit court's grant of summary judgment *de novo*. Wells Fargo Bank v. Behrendt, 142 Hawaiʻi 37, 41, 414 P.3d 89, 93 (2018).

(1) Botelho argues Deutsche Bank didn't show its incorporated records were trustworthy. Deutsche Bank's motion for summary judgment was supported by Juliana **Thurab**'s declaration, which authenticated business records of Deutsche Bank's loan servicing agent, **PHH** Mortgage Corporation. PHH's records included those incorporated from previous servicers of Botelho's loan, including **NewRez** LLC. Thurab's description of PHH's boarding process is considerably more detailed than the "scant" testimony held sufficient to establish "circumstances indicating the trustworthiness of" incorporated records in U.S. Bank Tr. v. Verhagen, 149 Hawaiʻi 315, 326, 489 P.3d 419, 430 (2021). Deutsche Bank established its incorporated records were trustworthy.

(2) Botelho argues "Deutsche Bank cannot prove that it validly holds [Botelho's] Note because there is an issue with the Residential Funding endorsement [sic]." The argument fails for several reasons.

Residential Funding Company, LLC specially indorsed the note to Deutsche Bank. The indorsement was signed by Judy **Faber**. Botelho's answer to Deutsche Bank's complaint did not deny that Faber was authorized to indorse the note. Hawaii Revised Statutes (**HRS**) § 490:3-308(a) (2008) provides that "the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings." Botelho waived his challenge to Faber's indorsement.

Citing only to Freddie Mac's *Single-Family Seller/Servicer Guide*, Botelho claims the signer must be "a duly authorized officer of the Seller[.]" Botelho cites no Hawaiʻi law requiring that an indorser be an officer of the transferor. HRS § 490:3-204 (2008) contains no such requirement.

Relying on an unauthenticated transcript[2] of Faber's deposition taken in another case in another jurisdiction in 2008, Botelho contends Faber admitted she was not a Residential Funding officer. The deposition transcript is inadmissible hearsay, not subject to an exception. Hawaii Rules of Evidence (**HRE**) Rule 802 (2016). Deutsche Bank preserved its objection. We decline to consider the transcript for purposes of this appeal.

Finally, even if the transcript wasn't inadmissible hearsay, and even if an indorser had to be an officer of the transferor, no foundation for admissibility was shown because Faber's indorsement is undated, and Botelho hasn't shown that Faber indorsed the note before her deposition was taken, or that Faber didn't become a Residential Funding officer before she indorsed the note.

(3) Botelho argues that Deutsche Bank didn't show its default letter was mailed to him, and that the default letter did not meet the requirements of his mortgage.

The mortgage states: "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[.]" Thurab's declaration stated that Botelho was given notice of default by first class mail, based on her inspection of the "Notice of Acceleration and Servicing Notes contained in PHH's business records regarding the Loan."

Botelho argues the Servicing Notes show the notice was mailed by "Covius Facility," but the default letter was sent on letterhead of "NewRez c/o PHH Mortgage Services." Botelho did

[2] Botelho's counsel purported to authenticate the transcript, which appears to have been filed in a case pending in the United States District Court for the Northern District of Illinois, Eastern Division, but the transcript is not certified, and counsel's declaration fails to show personal knowledge of the authenticity of the transcript or the federal filing.

not make that argument to the circuit court. It is waived. Hawaii Ventures, LLC v. Otaka, Inc., 114 Hawaiʻi 438, 500, 164 P.3d 696, 758 (2007); HRS § 641-2(b) (2016) ("The appellate court . . . need not consider a point that was not presented in the trial court in an appropriate manner."). Regardless, the proof of mailing comes from PHH's business records, which were shown to be trustworthy and admissible under HRE Rule 803(b)(6) (2016). Botelho's argument is without merit.

Botelho also argues the default letter didn't comply with the mortgage because the amount it states Botelho must pay to cure his default is different than the amount of interest, escrow balance, and costs stated in Thurab's declaration.

The amount Botelho had to pay as of April 30, 2021 (the effective date of the default letter) to cure his default was $352,050.82. It included seventy-six monthly payments totaling $333,997.31, fees and expenses of $18,531.72, less an unapplied balance of $478.21.

The total amount due under the note as of November 30, 2023 (according to Thurab's declaration) included unpaid principal of $674,197.11, fees and expenses of $37,216.12, plus accrued interest and escrow balance, less escrow credits and unapplied balance. Botelho's argument is without merit.

The circuit court's January 13, 2025 Judgment is affirmed.

DATED: Honolulu, Hawaiʻi, September 1, 2026.

On the briefs:

Keith M. Kiuchi,
for Defendant-Appellant
Michael Anthony Botelho.

David A. Nakashima,
Jade Lynne Ching,
for Plaintiff-Appellee
Deutsche Bank Trust Company
Americas, as Trustee.

/s/ Keith K. Hiraoka
Presiding Judge

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Sonja M.P. McCullen
Associate Judge