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NO. CAAP-24-0000837

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

U.S. BANK TRUST NATIONAL ASSOCIATION,
AS TRUSTEE OF THE CHALET SERIES IV TRUST,
Plaintiff/Counterclaim Defendant-Appellee, v.
ROSY ESPRECIÓN THOMAS,
Defendant/Cross-claim Defendant-Appellant, et al.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1CC161001976)

SUMMARY DISPOSITION ORDER

(By: Nakasone, Chief Judge, Leonard and Hiraoka, JJ.)

Rosy Esprecion **Thomas** (now known as Rosy Sotto Esprecion), representing herself, appeals from the *Amended Judgment* for U.S. **Bank** Trust National Association entered by the Circuit Court of the First Circuit.¹ We affirm.

Bank sued Thomas and others in 2016 to foreclose a residential mortgage. Bank's first two motions for summary judgment were denied. Bank filed a third motion for summary judgment and interlocutory decree of foreclosure on July 24, 2024. An amended order granting the motion was entered on October 14, 2024. The Amended Judgment was entered on November 8, 2024.

On November 21, 2024, Thomas filed a motion. It did not cite the rule under which it was filed, but it asked for

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The Honorable Steven R. Nichols presided.

reconsideration of the Amended Judgment and entry of a default judgment against Bank. We construe her motion as having been made under Hawai'i Rules of Civil Procedure (**HRC**P) Rule 60(b). It was filed before the deadline to appeal from the Amended Judgment, so it tolled the time for Thomas to file a notice of appeal until thirty days after entry of an order disposing of it. Mālama Kakanilua v. Dep't of Pub. Works, 157 Hawai'i 280, 289, 576 P.3d 793, 802 (2025). The motion was heard and orally denied on December 19, 2024. Thomas filed a notice of appeal on December 23, 2024; it was deemed filed on March 6, 2025, when the circuit court entered a written order denying the motion. Hawai'i Rules of Appellate Procedure (**H**RAP) Rule 4(a)(2).

Thomas's opening brief does not comply with HRAP Rule 28(b).² To promote access to justice, we do not automatically foreclose a self-represented litigant from appellate review for not complying with court rules. Erum v. Llego, 147 Hawai'i 368, 380-81, 465 P.3d 815, 827-28 (2020). We read the brief generously, and attempt to discern what Thomas is trying to convey.

We review a grant of summary judgment *de novo*. Wells Fargo Bank v. Behrendt, 142 Hawai'i 37, 41, 414 P.3d 89, 93 (2018). Thomas appears to make three arguments: (1) Bank failed to show it had standing to enforce the note when its complaint was filed, and it is precluded from showing standing based on the law of the case and *res judicata*; (2) the promissory note was forged; and (3) there was a genuine issue of material fact about authenticity of the note.

(1) To establish standing, a foreclosing plaintiff must show it was entitled to enforce the defaulted note when the

² Thomas's brief cites Gapero v. K.J.K. Corp., 126 Hawai'i 387, 271 P.3d 1211 (App. 2012), Kekauoha-Alisa, 141 Hawai'i 80, 404 P.3d 276 (2017), and Harris v. Palm Beach County (no reporter stated). These cases do not exist. Thomas cites several authorities – cases, statutes, and court rules – for propositions they do not even remotely support. These are violations of HRC P Rule 11(b)(2), made applicable by HRAP Rule 2.1(a).

It is concerning that Bank's answering brief did not call our attention to any of the hallucinations.

foreclosure action was filed. Bank of Am. v. Reyes-Toledo, 139 Hawai'i 361, 368, 390 P.3d 1248, 1255 (2017).

Bank's third motion for summary judgment was supported by the declaration of a paralegal in the law firm that filed Bank's complaint in this case. The declaration and the law firm's appended business records showed that the law firm had the original indorsed-in-blank note when it filed Bank's complaint. Bank thus established standing to enforce the note as "the holder of the instrument[.]" Hawaii Revised Statutes (**HRS**) § 490:3-301 (2008). The burden then shifted to Thomas to "demonstrate specific facts, as opposed to general allegations, that present a genuine issue worthy of trial." Nozawa v. Operating Engineers Local Union No. 3, 142 Hawai'i 331, 342, 418 P.3d 1187, 1198 (2018).

Bank's motion for summary judgment was set for hearing on August 28, 2024.³ Thomas did not file a memorandum in opposition to Bank's motion. But she did file *Defendant's **Motion to Dismiss** Plaintiff's Renewed Motion for Summary Judgment With Prejudice* on August 5, 2024. Although a separate hearing date was set for Thomas's motion, we will treat it as a memorandum in opposition for purposes of this appeal because it was in the record when Bank's motion for summary judgment was heard.

Thomas's Motion to Dismiss argued that Bank's 2021 motion for summary judgment was denied because Bank failed to establish standing, and "the previous ruling on standing is binding and precludes Plaintiff [Bank] from re-litigating the issue . . . in accordance with the doctrines of law of the case and res judicata." Attached to the motion was the circuit court's March 10, 2022 minute order denying Bank's December 24, 2021 motion for summary judgment.

Bank's 2021 motion was denied because Bank "failed to establish its standing to foreclose with admissible evidence." The minute order stated that the declaration supporting the motion "failed to lay the requisite foundation for the admission

³ No transcript of the hearing is in the record.

of records of regularly conducted activity pursuant to Rule 803(b) (6) of the Hawaii Rules of Evidence," citing U.S. Bank Tr. v. Verhagen, 149 Hawai'i 315, 325-26, 489 P.3d 419, 429-30 (2021).

The 2022 minute order was not the law of the case on Bank's standing because it was based on an evidentiary issue; the court did not rule as a matter of law that Bank did not have standing to enforce the note when its complaint was filed.

Nor did the minute order have preclusive effect, because it was an interlocutory order entered in the same case. PennyMac Corp. v. Godinez, 148 Hawai'i 323, 327, 474 P.3d 264, 268 (2020) ("By definition, the doctrine of res judicata only applies to new suits: It is inapplicable in a continuation of the same suit.").

Thomas's Motion to Dismiss was not supported by an affidavit, declaration, or evidentiary exhibits. Thomas did not raise a genuine issue of material fact. The circuit court did not err by granting Bank's motion for summary judgment.

(2) Thomas's Motion to Dismiss did not argue the note was forged. There is no other document in the record that could be construed as an opposition to Bank's motion for summary judgment. The forgery issue is waived. Hawaii Ventures, LLC v. Otaka, Inc., 114 Hawai'i 438, 500, 164 P.3d 696, 758 (2007) (stating "if a party does not raise an argument at the circuit court level, that argument will be deemed to have been waived on appeal") (brackets omitted); 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.").

There are sound reasons for the rule. It is unfair to the circuit court to reverse on a ground that no one even suggested might be error. It is unfair to the opposing party, who might have met the argument not made below. Finally, it does not comport with the concept of an orderly and efficient method of administration of justice.

Otaka, 114 Hawai'i at 500, 164 P.3d at 758 (brackets omitted).

(3) Thomas's Motion to Dismiss was not supported by an affidavit, declaration, or evidentiary exhibit that could have created a genuine issue of material fact.

The November 8, 2024 Amended Judgment is affirmed.

DATED: Honolulu, Hawai'i, October 8, 2026.

On the briefs:

Rosy Esprecion Thomas,
Self-represented
Defendant/Cross-claim
Defendant-Appellant.

/s/ Karen T. Nakasone
Chief Judge

/s/ Katherine G. Leonard
Associate Judge

Lansen H.G. Leu,
for Plaintiff/Counterclaim
Defendant-Appellee
U.S. Bank Trust N.A.,
as Trustee.

/s/ Keith K. Hiraoka
Associate Judge