*****NOT FOR PUBLICATION*****

NO. 23441

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

REALTY FINANCE, INC., Respondent/Plaintiff-Appellee

vs.

THOMAS FRANK SCHMIDT; LORINNA JHINCIL SCHMIDT; and AMERASIAN LAND CO., a Nevada corporation, Petitioners/Defendants-Appellants

and

KALOKO TWO PARTNERSHIP, a Hawaiʻi limited partnership; et al., Defendants

and

TURLINGTON CORPORATION, as Successor-In-Interest to Defendant John Rapp, Party-In-Interest-Appellant

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CIV. NO. 97-1235-03)

MEMORANDUM OPINION
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Certiorari was granted herein on August 1, 2002. As there are grave errors of law, the June 27, 2002 memorandum opinion of the Intermediate Court of Appeals (the ICA) is reversed and the case remanded to the first circuit court (the court) for proceedings consistent with this opinion. Hawaiʻi Revised Statutes (HRS) § 602-59(a) (1993).[1]

[1] "[T]he acceptance or rejection of . . . [an application for writ of certiorari is] discretionary upon the supreme court." HRS § 602-59(a). This court reviews a writ of certiorari for "(1) grave errors of law or of fact, or (2) obvious inconsistencies in the decision of the intermediate appellate court with that of the supreme court, federal decisions, or its own decision, and the magnitude of such errors or inconsistencies dictating the need for further appeal." HRS § 602-59(b) (1993).

I.

Petitioners/Defendants-Appellants Thomas Frank Schmidt, Lorina Jhincil Schmidt (collectively the Schmidts) and Amerasian Land Co. (Amerasian), with Party-In-Interest-Appellant Turlington Corporation[2] (collectively the Petitioners), appealed from an order entered on June 9, 2000 by the court, granting the motion of Respondent/Plaintiff-Appellee Realty Finance, Inc. (Realty) for an order allowing additional attorneys' fees and costs and for deficiency judgment.[3] The case was assigned to the ICA. The ICA ultimately affirmed the court in an unpublished memorandum opinion.[4] See Realty Finance v. Schmidt, No. 23441 (Jun. 27, 2002) (mem.).

On July 26, 2002, Petitioners filed an application for writ of certiorari, which was granted as aforesaid.

II.

On or about June 10, 1991, the Schmidts executed and delivered a promissory note secured by a mortgage on property located at the Marco Polo Apartments to Investors Finance, Inc. (Investors), in the amount of $228,853.72 (Marco Polo Note and

[2] Turlington Corp. is the successor-in-interest to Defendant John Rapp who was named a defendant on account of the judgment entered in his favor against Thomas Frank Schmidt and Lorinna Schmidt on August 29, 1995 and October 23, 1995 in Civil No. 94-0903-03 in the first circuit court resulting in a judgment lien against the real property owned by the Schmidts. On May 13, 1999, in Civil No. 98-1491-03, John Rapp notified the court and all parties of the assignment of the judgment and other claims to Turlington Corp.

[3] The Honorable Kevin S. Chang entered the order.

[4] The memorandum opinion was issued by Chief Judge James S. Burns and Associate Judges Corinne K.A. Watanabe and John S.W. Lim.

Mortgage). On or about July 11, 1995, the Schmidts also executed and delivered a promissory note secured by a mortgage on lots 4 and 5 of the Kaloko II Subdivision to Investors in the amount of $225,000.00 (Kaloko Note and Mortgage) [the Marco Polo Note and Mortgage and the Kaloko Note and Mortgage are hereinafter collectively referred to as "Notes and Mortgages"]. These loans were construction loans.

According to the affidavit of Harris Hirata, Realty's executive vice-president, Investors assigned and transferred all of its beneficial interest in the Notes and Mortgages to Realty on October 31, 1995.

On or about December 1, 1995, the Schmidts apparently deeded lot 5 of the Kaloko II subdivsion to Amerasian.[5]

Realty and the Schmidts executed a Loan Extension and Modification Agreement on or about May 16, 1996, covering the Notes and Mortgages.

The Schmidts subsequently defaulted on the Notes and Mortgages. On or about March 27, 1997, Realty filed a complaint for foreclosure against the Schmidts and any other party that might have a claim or interest in the Notes and Mortgages. Realty also filed a Notice of Pendency of Action on March 27,

[5] Amerasian was named as a defendant because of its ownership of one of the mortgaged properties. According to the complaint filed March 27, 1997, Amerasian may have a claim in lot 5 of the Kaloko subdivision "by virture of transfers by Deed dated July 13, 1995, recorded in the Bureau of Conveyances . . . from Kaloko II to T. Schmidt and L. Schmidt, and by Deed dated December 1, 1995, recorded in the Bureau of Conveyances . . . from T. Schmidt and L. Schmidt to Amerasian. Thomas Schmidt was the vice-president of Amerasian.

1997, pursuant to HRS §§ 501-151 (1993) and 634-51 (1993). Amerasian was included as a defendant because of its apparent interest in lot 5 of the Kaloko II Subdivision. Petitioners denied liability and counterclaimed against Realty claiming, inter alia, mismanagement of funds, fraud, and civil conspiracy.

Realty filed a motion for summary judgment against the Schmidts and all other defendants and for interlocutory decree of foreclosure. The Schmidts claimed that there were genuine issues of material fact and that they did not owe Realty the amounts alleged. Realty countered that the Schmidts could not assert personal defenses against Realty because Realty was a holder in due course of the promissory notes.

On February 24, 1998, the court granted Realty's motion for summary judgment and for interlocutory decree of foreclosure against all defendants. In its findings of fact (finding) 12 the court found that on June 10, 1991, the Schmidts executed a note "in the face amount of $140,000 . . . with total payments due in the amount of $228,853.72 . . . ("June Note")" which was secured by a mortgage on the Marco Polo apartment unit 2. In finding 18, the court found that the Schmidts "have failed, neglected, and refused and continue to fail, neglect, and refuse to cure their default" with regard to the June note. The court also found in finding 19 that on July 11, 1995, the Schmidts executed and delivered a promissory note in the amount of $225,000 (July Note)

secured by lots 4 and 5 of the Kaloko II subdivision. In finding 23, the court stated that the Schmidts "are in default under the terms of the July Note . . . in that they have breached their covenant to pay the sums due thereunder."

In its conclusion of law A, the court held that "[p]ursuant to the June and July Assignment, and H.R.S. §§ 490:3-302 and 490:3-305(a), Plaintiff REALTY FINANCE, as a holder in due course, may enforce the subject Notes and Mortgages free of any personal defenses Defendants SCHMIDT may have or may assert." The decision determined the amounts of principal and interest owed by the Schmidts on the Notes and Mortgages. The court held in conclusions of law B and C that as of February 13, 1997, there was due and owing from the Schmidts to Plaintiff Realty under the June Note and July Note, the principal balance of $121,134.18 and $224,968.67, respectively. Additionally, as of February 13, 1997, interest had accrued in the amount of $9,363.82 (June Note) and $15,098.99 (July Note), with interest continuing to accrue at a rate of $44.8031 (June Note) and $73.9623 (July Note) per day from and including February 13 1997, "together with such other and further amounts as the [c]ourt shall subsequently determine to be lawfully chargeable under the provision of [the June and July Note] . . . including interest, costs, expenses, other charges, and attorneys' fees, as the [c]ourt shall determine."

In its February 24, 1998 judgment, the court held that Realty "shall recover from [Schmidts] . . . 1) the sum of

$121,123.18 . . . plus [accrued] interest . . . in the amount of $9,363.82 . . . plus interest at the rate of $44.8031 per day . . . [and] 2) the sum of $224,968.67 . . . plus [accrued] interest . . . in the amount of $15,098.99 . . . plus interest at the rate of $73.9623 per day[.]" The court also adjudged in its judgment that the "mortgages are in default and secure $130,487.00 . . . and $240,067.66 . . . plus interest owed to Plaintiff REALTY FINANCE by Defendants SCHMIDT" as specified above. The court ruled in conclusion E and stated in its judgment that Realty was entitled to foreclose on its mortgages and that the properties would be sold free and clear of all liens and mortgages. The court, in its judgment, also reserved jurisdiction to confirm the foreclosure sale and to determine any deficiency owing after the sale and other fees and costs attributable to the proceedings.[6]

On or about March 6, 1998, Petitioners filed a motion for reconsideration, which was denied by the court on June 3, 1998. Petitioners did not appeal from the court's February 24, 1998 judgment. Realty filed a motion for summary judgment to dismiss Petitioners' counterclaims, and judgment was entered in

[6] The court reserved ruling on

> (1) the amount of real property taxes due, if any; (2) the fees, costs and expenses to be awarded to the Commissioner and the attorneys; (3) any additional sums owed to . . . [Realty] under its mortgages, including interest and advances under the mortgages subsequent to the entry of this Judgment; (4) if applicable, the amount of any deficiency judgment to be entered against . . . Schmidt[s], jointly and severally; and (5) if applicable, the disposition of any surplus from the proceeds of the foreclosure sale.

favor of Realty on or about September 8, 1999. This judgment was also not appealed by Petitioners.

III.

Realty assigned the Notes and Mortgages to Waikiki Investments in a document dated December 31, 1998 entitled Purchase and Sale Agreement (Sale Agreement). On January 7, 1999, Realty also filed with the Bureau of Conveyances a document entitled Assignment of Notes and Mortgages. Under the Sale Agreement, Waikiki Investments purchased the Notes and Mortgages for $450,000. The terms of the Sale Agreement provided that Waikiki Investments was to pay Realty $100,000 on or before January 8, 1999, and the remaining amount with ten percent interest by June 30, 1999, with a possibility of a three month extension if certain conditions were met. Waikiki Investments paid Realty $100,000 as a downpayment under the Sale Agreement. This amount was deducted from the amounts owing on the Notes and Mortgages by the Schmidts.[7]

As security for the purchase price of the Notes and Mortgages, Waikiki Investments agreed in a document entitled "Assignment of Notes and Mortgages as Security and Security

[7] The court's January 31, 2000 findings of fact and conclusions of law and order granting Realty's motion for order approving commissioner's report and for distribution of proceeds states in finding 19 that "Waikiki 418 timely paid Realty Finance the initial $100,000 payment [sic] down payment, and Realty Finance applied this payment towards the outstanding loan balances." It is noteworthy that in conclusion of law 2, a credit of $82,943.99 on the judgment amount of $121,123.18 for the first loan secured by the Marco Polo unit is shown as payment to principal on January 5, 1999. It is unclear from the record whether this represents a partial credit for the $100,000 payment made by Waikiki Investments to Realty.

Agreement," also dated December 31, 1998 (Security Agreement),[8] to assign the Notes and Mortgages back to Realty in the event of Waikiki Investments' default. Waikiki Investments also assigned to Realty "all sums payable under . . . [the Notes and Mortgages], including without limitation, principal and interest, as they respectively become due, and the right to enforce the . . . [Notes and Mortgages]."

Pursuant to the Security Agreement, Waikiki Investments had, so long as Waikiki Investments "shall not be in default under the Sale Agreement, under this instrument, or under any other instrument or agreement evidencing or securing the Sale Agreement," "a revocable license to collect the sums accruing by virtue of the Loan Documents [Notes and Mortgages], and to enforce said instrument, . . . [provided that the] license shall be automatically revoked without notice upon the occurrence of any event of default[]" by Waikiki Investments.

IV.

On May 13, 1999, Realty filed in the court a notice of transfer of real party in interest, notifying the court and all parties "that on December 31, 1998, the Real Party in Interest as defined by Hawai‘i Rules of Civil Procedure (HRCP) Rule 17(a) . . . became WAIKIKI INVESTMENTS 418, INC. . . . , in place of

[8] The Sale Agreement assigning the Notes and Mortgages to Waikiki Investments, the Assignment of Notes and Mortgages filed in the bureau of conveyances, and the security agreement were attached as exhibits to Turlington Corp.'s December 21, 1991 memorandum in opposition to Realty's motion for order approving commissioner's report and for distribution of proceeds.

Realty Finance, Inc." HRCP Rule 17(a) (2003) states in relevant part:

> Every action shall be prosecuted in the name of the real party in interest . . . . No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(Emphasis added.)

On or about June 23, 1999, while not in default, Waikiki Investments collected a total of $309,000 from Amerasian[9] and $225,000 from Lulani Properties, LLC[10] (Lulani) on the Notes and Mortgages. According to the declarations of Thomas Schmidt, vice-president of Amerasian, and Larry White, managing agent and general mangaer of Lulani, these monies were paid to Waikiki Investments to purchase the properties.

Subsequently, Waikiki Investments breached its agreement with Realty and failed to pay Realty the amounts due on the Sale Agreement's purchase price.

On July 7, 1999, Realty filed with the court a notice of transfer of real party in interest from Waikiki Investments back to Realty because Waikiki Investments had defaulted on its

[9] In his affidavit, Thomas Schmidt of Amerasian stated that Amerasian paid $309,000 in order to "obtain a release of the mortgage encumbering" lot 5 of the Kaloko Subdivision and the Marco Polo unit.

[10] Lulani stated that it paid $225,000 to Waikiki Investments to purchase lot 4 of the Kaloko Subdivision II. Lulani also explained that it acquired from Phoenix Investments a deed for Kaloko lot 4. It is not clear from the record who Phoenix Investments is, but the deed was recorded in the bureau of conveyances on June 28, 1999 from Phoenix Investments to Lulani.

obligations.[11] Realty then revived the foreclosure proceeding against all parties.

V.

On or about October 25, 1999, Realty filed with the court a motion to confirm a private sale of the abovementioned properties. Turlington Corp. argued, inter alia, that Waikiki Investments, as the assignee of the Notes and Mortgages, had the right to receive payments on the mortgages. In the alternative, Turlington Corp. maintained that if the loan purchase agreements were treated as equivalent to an assignment of the judgment, judgments, like contracts, can be assigned. Therefore, Turlington Corp. argued that Realty must credit the payments made to Waikiki Investments on the mortgages to the mortgage debt. On December 14, 1999, Realty filed a motion for order approving commissioner's report and for distribution of proceeds and allowing attorneys' fees and expenses. On December 21, 1999, Turlington Corp. filed a memorandum in opposition to Realty's motion, in which the Schmidts and Amerasian joined. Also on December 21, 1999, the order granting Realty's motion for order approving confirmation of private sale of subject properties was filed.

The order confirmed that the properties were sold for $500,000, as follows: Amerasian paid $30,000 for the Marco Polo

[11] Pursuant to the December 31, 1998 Security Agreement, "assignee [Realty] shall immediately record the Assignment of the Loan Documents from Assignor [Waikiki Investments] back to Assignee to be executed by Assignor concurrently[.]"

property; Lulani paid $300,000 for lot 4 of the Kaloko II Subdivision; and Amerasian paid $170,000 for lot 5 of the Kaloko II Subdivision. On December 30, 1999, Realty filed a motion to amend the December 21, 1999 order approving Realty's motion for order approving confirmation of private sale because it did not reflect the proper apportionment of the proceeds for the subject properties or, in the alternative, Realty requested that the order be vacated. On January 31, 2000, the court filed findings of fact and conclusions of law, which determined the amounts owed by the Schmidts.

The court ordered that as of December 31, [1999],[12] the Schmidts owed Realty $475,406.31, apportioned as follows: $128,997.51 on the promissory note secured by the Marco Polo unit; and $346,408.80 for second promissory note secured by the Kaloko II subdivision lots 4 and 5. The amount included, inter alia, interest, attorneys' fees, real estate appraisals, commissioner's fees, late charges, and loan balances. The court further ordered that the commissioner pay the following out of the $500,000 purchase price: (1) real property taxes as of closing date, (2) the sum of $4,078.67 to the commissioner (fees plus expenses), (3) $86,277.24 to the attorneys for Realty, and (4) escrow fees and costs not otherwise chargeable to the purchasers or their nominees. The remainder was ordered held in

[12] The order states December 31, 2000, however, it appears that the date should be December 31, 1999.

escrow subject to order of the court. Any surplus was to be later distributed by the court.

On or about March 9, 2000, Realty filed a motion for additional attorneys' fees and costs, and for a deficiency judgment against the Schmidts. The court granted the motion on or about June 9, 2000, and concluded that the Schmidts owed Realty a total amount of $9,662.50 for its attorneys' fees and the deficiency judgment.

VI.

On appeal before the ICA, Petitioners argued that the court erred as follows: (1) concluding that the mortgage debt owed to Realty on the Notes and Mortgages was not reduced by the Amerasian and Lulani payments made to Waikiki Investments, the mortgage purchaser and assignee of Realty; (2) ordering that Realty was entitled to collect late fees not awarded by the February 24, 1998 judgment; (3) ordering that Realty's attorneys' fees, costs, and late fees constituted a first lien on the property; and (4) concluding that Realty was a holder in due course, was not subject to personal defenses and was therefore entitled to collect the claimed amount on the Kaloko Note and Mortgage.

On June 5, 2002, the ICA filed its first memorandum opinion affirming the court in all respects. The ICA held that Waikiki Investments did not collect the money paid on the mortgages from Amerasian and Lulani for Realty; "it collected the

money for itself, and the money it collected should not be deducted from the remaining balance owed on the mortgage indebtedness as if the payment had been received by an agent of Realty[.]" ICA opinion at 29-30. Also, the ICA held that, in the alternative, assuming arguendo that Waikiki Investments was acting as Realty's agent, the payments received by Waikiki Investments should not be credited towards the amounts owed on the promissory notes because Waikiki Investments was not a holder in due course pursuant to HRS § 490:3-301 (1993); therefore, Waikiki Investments was not entitled to enforce the notes. ICA opinion at 37-38. Additionally, the ICA reasoned that Realty was not entitled to collect late fees, and remanded the case to the circuit court for recalculation of the final judgment. ICA opinion at 38. Realty filed a motion for reconsideration on June 17, 2002, and alleged that the February 24, 1998 judgment of foreclosure reserved the determination of late fees until after the foreclosure sale.

The ICA granted Realty's motion for reconsideration, vacated its prior opinion, and issued a new unpublished memorandum opinion on June 27, 2002, holding that Realty was entitled to collect late fees because the court, in the February 24, 1998 judgment, specifically reserved "jurisdiction to . . . determine . . . any additional sums owed to [Realty Finance] under its mortgages[.]" ICA opinion at 38. As

mentioned above, the ICA's final opinion affirmed the court's February 24, 1998 final judgment.

VII.

In Petitioners' application for certiorari, they argue that the ICA erred in affirming the court's holding that the mortgage debt owed to Realty on the Notes and Mortgages was not reduced by the Amerasian and Lulani payments made to Waikiki Investments, the mortgage purchaser and assignee of Realty. In their application, Petitioners framed the issues as follows:

> A. In a real estate foreclosure action in which the judgment of foreclosure became final and the plaintiff assigned the notes and mortgages which were merged in the decree and judgment of foreclosure to a new real party-in-interest who, during the period of assignment, receives $534,000 as plaintiff and assignee, was the foreclosure judgment satisfied and were the judgment debtors entitled to a credit on said judgment of foreclosure?
>
> B. Under the circumstances set forth in ¶ A, if the payments received by both the judgment creditor and its assignee during the period of assignment exceed the total amount due under the foreclosure judgment, are the judgment debtors and the buyers of the premises in the second foreclosure sale entitled to a refund of the appropriate amount computed by deducting the balance due on the mortgage foreclosure judgment with costs and attorneys' fees and interest from the total amount paid on the judgment?[13]

The Schmidts and Amerasian argue in their application for certiorari that the ICA's decision "is flawed and places upon the Petitioners [Schmidts and Amerasian] the wrong legal burden of having to pay over $1,000,000 for a $564,000 judgment [and that] correspondingly, the decision entitles Realty and its assignees to collect over $1,000,000 on a $564,000 judgment."

[13] Both of these arguments were presented in the initial appeal.

VIII.

In connection with the question raised in "A," it would appear that the Notes and Mortgages merged into the February 24, 1998 judgment. See Midyett v. Rennat, 831 P.2d 868, 869 (Ariz. 1992) (explaining that "breach of contract action was merged into the judgment for damages caused by the breach and the foreclosure of the lien created by the contract"). With regard to a "judgment rendered upon negotiable promissory notes[, a]s the title to the debt merged in the judgment, its negotiability, as commercial paper, ceased[.]" Livingston State Bank & Trust Co. v. N.L. Fairchild, 248 So.2d 14, 16 (La. App. 1971); see also Adair v. Hustace, 55 Haw. 445, 448 n.3, 521 P.2d 869, 871 n.3 (1974) (holding that cross-claim and final judgment in prior action barred subsequent consideration of similar action because all claims merge into the judgment; "thereafter plaintiff's rights with respect to that claim or cause of action are confined to proceedings for the enforcement of the judgment").

Once the promissory notes and mortgages merged into the February 24, 1998 judgment, they could not be assigned. See Mortgage Invs. Corp. v. Battle Mountain Corp., 70 P.3d 1176, 1185 (Colo.), motion for rehearing denied (2003) ("When a creditor elects to sue on a promissory note after a debtor defaults and the creditor obtains a judgment, the note loses its identity and merges into the judgment."); see also Restatement (Second) Judgments § 18 comment a (2003) (explaining that [w]hen the

plaintiff recovers a valid and final personal judgment, his original claim is extinguished and rights upon the judgment are substituted for it"); Midyett, 831 P.2d at 870 (explaining that the rendition of the judgment extinguishes original cause of action, thereby making the judgment the "sole measure of the rights and obligations of the parties, and any proceeding to enforce the parties' respective rights and obligations is founded solely on the judgment").

IX.

A.

Realty, however, purported to assign the Notes and Mortgages that had been the subject of the February 24, 1998 judgment. In effect Realty assigned the right to proceeds owing under the judgment to Waikiki Investments. See Mall v. Labow, 635 A.2d 871, 873 (Conn. App. 1994) (clarifying that "[j]udgments are assignable"); Dunn v. Snell, 15 Mass. 481, 485 (1819) (holding that equitable assignment of judgment is effective because a "judgment is only evidence of the debt, and if the execution is delivered over, with intent to transfer the debt, upon a fair bargain [and] upon a valuable consideration" the transaction is binding); HRS § 636-3 (Supp. 2003) (providing for requirements of assigning a judgment). Moreover, the December 31, 1998 Security Agreement gave Waikiki Investments a license to collect the sums due on the outstanding mortgages. The Security Agreement stated that "Assignor [Waikiki

Investments] shall have a revocable license to collect the sums accruing by virtue of the Loan Documents, and to enforce said documents." Thus, Waikiki Investments agreed to collect payments on the mortgages.

B.

In line with its assignment and license to collect sums accruing under the loan, Realty notified the court and the parties of the transfer of real party in interest status in the foreclosure proceedings to Waikiki Investments. Amerasian and Lulani subsequently paid Waikiki Investments on the debts underlying the February 24, 1998 judgment. At the time Waikiki Investments collected the payment from Amerasian and Lulani for the release of the mortgages on the subject properties, Waikiki Investments was entitled to collect on the Notes and Mortgages under the Sale Agreement, the Assignment of Notes and Mortgages, and the Security Agreement.

The payments from Amerasian and Lulani on the Notes and Mortgages was on June 23, 1999, prior to the June 30, 1999 payment deadline. According to the Declaration of Robert Austin, president and general manager of Waikiki Investments, Waikiki Investments collected $309,000 from Amerasian and $225,000 from Lulani for the release of mortgages encumbering both the Marco Polo unit and the Kaloko subdivision lots. Accompanying Austin's declaration is a receipt acknowledging $534,000 "on promissary [sic] notes and Mortgages assigned to Waikiki Investments 418,

Inc. by Assignment of Notes and Mortgages Recorded January 7, 1999," which was signed by Austin. Additionally, according to Thomas Schmidt, vice-president of Amerasian, Amerasian paid $309,000 with the understanding that the money would be applied to the mortgage of one of the Kaloko lots and the Marco Polo unit. A check for $309,000 to Waikiki Investments dated June 23, 1999, evidencing the transaction, accompanied the declaration. The managing agent and general manager of Lulani also attested in his declaration that Lulani paid $225,000 "as payment in full of the mortgage encumbering [Kaloko] Lot 4." The check to Waikiki Investments in the amount of $225,000 accompanied the declaration.

C.

When Amerasian and Lulani paid Waikiki Investments on the mortgages on the Marco Polo unit and lots 4 and 5 of the Kaloko subdivision, they paid the debts identified in the February 24, 1998 judgment. Accordingly, Amerasian and Lulani paid down the judgment.

In Livingston State Bank & Trust Co., the Livingston State Bank filed suit on a promissory note against Fairchild. Livingston State Bank, 248 So. 2d at 14. The court rendered a judgment against Fairchild. Id. Subsequently, the bank assigned the judgment to Kennard but Fairchild claimed he was never informed of the assignment. Id. at 15. Fairchild then filed a petition for bankruptcy and listed the judgment which was

discharged. Id. After the discharge of the judgment, Kennard filed a petition for garnishment which was granted by the trial court. Id. Fairchild then moved to dissolve the garnishment which was denied. Id. Fairchild appealed and the Louisiana Appellate Court reversed the trial court. Id.

The Louisiana court reasoned that "[w]hen a suit is based on a promissory note, and a judgment rendered, the promissory note becomes part and parcel of the judgment, and the two are nondistinguishable." Id. Therefore, the assignee of the judgment is not collecting his claim under the promissory note but, rather, under the "judgment assigned to him." Id. Consequently, the Louisiana court applied its statute reflecting the general law of contract assignment that "[t]he transferee [or assignee] is only possessed [of the claims under the judgment], as it regards third persons, after notice has been given to the debtor of the transfer having taken place." Id.

Similarly, in this case, the Notes and Mortgages merged into the February 24, 1998 judgment as the judgment set out the amounts owed on the notes and mortgages. Amerasian and Lulani apparently received notice of the assignment by way of the May 13, 1999 notice of transfer of real party in interest and the January 7, 1999 filing of the assignment of notes and mortgages in the bureau of conveyances that Waikiki Investments was the real party in interest. Amerasian and Lulani made payments on the mortgages which Waikiki Investments was authorized to accept.

Therefore, the mortgage debts owed on the Notes and Mortgages were reduced by the Amerasian and Lulani payments made to Waikiki Investments.

X.

Consequently, as to (B), we remand to the court to determine an appropriate accounting and for further proceedings consistent with the opinion.

XI.

For the foregoing reasons, the ICA's June 27, 2002 opinion is reversed, the June 9, 2000 judgment of the court is vacated, and the case is remanded for further proceedings consistent with this opinion.

DATED: Honolulu, Hawai‘i, March 18, 2004.

R. Steven Geshell, on the
writ for petitioners/
defendants-appellants.