

NO. 22371

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

BANK OF AMERICA, FSB, fka HONOLULU MORTGAGE COMPANY INC.
nka, BANK OF AMERICA NATIONAL TRUST & SAVINGS
ASSOCIATION, Plaintiff-Appellee, v. RODNEY COLE
OLAIVAR; ANTHONY LEONILLO UNCIANO AND EDNA UNCIANO,
Defendant-Appellants, and ELLEN LARITA OLAIVAR;
JOHN DOES 1-10, JANE DOES 1-10; AND DOE
PARTNERSHIPS, CORPORATIONS OR ENTITIES 1-20,
Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIVIL NO. 98-1034)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Lim and Foley, JJ.)

Defendants-appellants Anthony Leonillo Unciano and Edna Unciano (the Uncianos) appeal from (1) the first circuit court's March 4, 1999 Judgment in favor of Plaintiff-Appellee Bank of America, FSB, fka Honolulu Mortgage Company Inc. nka, Bank of America National Trust & Savings Association, and (2) its March 4, 1999 Findings of Fact, Conclusions of Law, and Order Granting Plaintiff's Motion for Summary Judgment Against All Defendants and for Decree of Foreclosure.

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 by the parties, we resolve the Uncianos' points of error as follows:

(1) The Uncianos contend that the circuit court erroneously denied their motion to dismiss, which they ostensibly brought pursuant to Hawai'i Rules of Civil Procedure (HRCP) Rules 12(b)(1) through (5). We conclude that the circuit court correctly denied the Uncianos' motion, because the circuit court had personal and subject matter jurisdiction, venue was proper in the first circuit court, the note underlying the mortgage transaction was not fraudulently altered, and the transaction was supported by consideration.

(2) The Uncianos also take issue with the circuit court's order granting Plaintiff's motion to substitute. The Uncianos, however, fail to "refer to the alleged error committed by the court[.]'" O'Connor v. Diocese of Honolulu, 77 Hawai'i 383, 385, 885 P.2d 361, 363 (1994) (quoting Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(4)). The Uncianos also fail to present any discernible argument on this point. Thus, although it is "the polic[y] of [the appellate courts] . . . to permit litigants to appeal and to have their cases heard on the merits," id. at 386, 885 P.2d at 364, we must conclude that the Uncianos waived the point where no record reference or comprehensible argument is presented on appeal. See HRAP Rule 28(b)(4).

(3) The Uncianos contend that the circuit court erred in denying their motion to compel discovery of Plaintiff. Because the Uncianos failed to first request inspection of the

sought-after documents under HRCF Rule 34, and their motion to compel was therefore premature, we decide that the circuit court did not abuse its discretion in denying the Uncianos' motion. Additionally, we conclude that the circuit court had jurisdiction to deny the motion to compel, notwithstanding the circuit court's disclaimer of jurisdiction. Reyes v. Kuboyama, 76 Hawai'i 137, 140, 870 P.2d 1281, 1284 (1994) (holding that "where the circuit court's decision is correct, its conclusion will not be disturbed on the ground that it gave the wrong reason for its ruling").

(4) The Uncianos argue that the circuit court abused its discretion in granting Plaintiff's ex parte motion for first extension to file pretrial statement. Because we hold, infra, that the circuit court correctly granted Plaintiff's motion for summary judgment, the circuit court did not err in granting Plaintiff an extension. In any event, the Uncianos were not prejudiced in any way by the circuit court's order.

(5) The Uncianos argue that the circuit court improperly disregarded their untimely Answer to Complaint when the court heard Plaintiff's Motion for Summary Judgment and Decree of Foreclosure. We conclude that the circuit court did not err in this respect because default had been entered against the Uncianos, the default had not been set aside, and there were no grounds for setting aside the default.

(6) The Uncianos contend that genuine issues of material fact precluded summary judgment. We conclude that

Plaintiff was entitled to summary judgment in its favor because default had been entered against the Uncianos, and absent an order setting aside the default, the circuit court properly deemed the facts alleged in the complaint admitted. 10 U. Moore, Moore's Federal Practice ¶ 55.12[1] (3d. 1999). Hence, no genuine issue of material fact precluded summary judgment in favor of Plaintiff.

Therefore,

IT IS HEREBY ORDERED that the March 4, 1999 judgment and its underlying order are affirmed.

DATED: Honolulu, Hawai'i, February 28, 2001.

On the briefs:

Anthony Leonillo Unciano
and Edna Unciano,
defendant-appellants pro se.

Chief Judge

John R. Dwyer, Jr.
and Adelbert Green
(Dwyer Imanaka Schraff Kudo
Meyer & Fujimoto) for
plaintiff-appellee.

Associate Judge

Associate Judge