

NO. 23930

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

MELLON MORTGAGE COMPANY, a Colorado corporation,
Plaintiff-Appellee, v. EDWARD BARGAS BUMANGLAG, SR.,
Defendant-Appellant, and ROSALIND BUMANGLAG; AMERICAN
GENERAL FINANCE, INC.; JOHN AND MARY DOES 1-20; DOE
PARTNERSHIPS, CORPORATIONS or OTHER ENTITIES 1-20,
Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 97-4720)

ORDER DENYING MOTION FOR RECONSIDERATION
(By: Burns, C.J., Watanabe and Lim, JJ.)

In this appeal No. 23930, we filed a Memorandum Opinion on January 24, 2002, (1) vacating the circuit court's (a) November 14, 2000 Findings of Fact; Conclusions of Law; Order Granting Plaintiff's Motion for Summary Judgment Against Edward Bargas Bumanglag, Sr., and All Other Defendants, and for Interlocutory Decree of Foreclosure; and (b) the November 14, 2000 Judgment entering a summary judgment and an interlocutory decree of foreclosure; and (2) remanding this case for further proceedings consistent with the Memorandum Opinion.

On February 4, 2002, Plaintiff-Appellee Mellon Mortgage Company filed its motion for reconsideration, alleging the following facts:

1. Defendant-Appellant Edward Bargas Bumanglag, Sr. did not obtain a stay of the November 14, 2000 interlocutory decree of foreclosure.

2. The circuit court's Order Confirming Sale, Distribution of Proceeds, Deficiency Judgment, and for Writ of Possession (a) was entered on September 17, 2001, (b) was finalized pursuant to Hawai'i Rules of Civil Procedure Rule 54(b), (c) authorized the payment of the proceeds of the sale to various individuals and entities, and (d) authorized the entry of a deficiency judgment against Defendant-Appellant.

In City Bank v. Saje Ventures II, 7 Haw. App. 130, 748 P.2d 812 (1988), the Saje defendants sought (1) a reversal of the circuit court's order confirming the commissioner's public auction sale and (2) a remand for a new sale. Since the Saje defendants did not obtain a stay of the confirmation order and since there had been a closing of the sale, this court decided that it could not grant the relief sought and dismissed the appeal because it was moot.

Based on City Bank, Plaintiff-Appellee alleges that this appeal is moot and requests this court to reconsider its January 24, 2002 Memorandum Opinion.

As noted above, there is more to the circuit court's November 14, 2000 Judgment than authorization for the sale. It may be that there has been a closing of the sale which cannot be

undone. The circuit court can decide that question. However, the questions of whether the decree of foreclosure and everything that happened after it were authorized and, if not, what redress Defendant-Appellant is entitled to and from whom are not moot. On remand, the circuit court can decide those questions.

Therefore, IT IS HEREBY ORDERED that the February 4, 2002 motion for reconsideration is denied.

We note that "[t]he failure to make disclosure of a material fact to a tribunal is the equivalent of affirmative misrepresentation." AIG Hawai'i Ins. Co. v. Bateman, 82 Hawai'i 453, 460, 923 P.2d 395, 402 (1996) (citation omitted). When the sale occurred and this court's holding in City Bank became relevant, it was the duty of Plaintiff-Appellee and its attorneys to inform this court of that fact. That duty was violated.

DATED: Honolulu, Hawai'i, February 14, 2002.

On the briefs:

Gary Victor Dubin
for Defendant-Appellant.

Chief Judge

Lester K. M. Leu and
Gary Y. Okuda
for Plaintiff-Appellee.

Associate Judge

Associate Judge