

NO. 24004

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

INTERNATIONAL SAVINGS AND LOAN ASSOCIATION, LIMITED,  
Plaintiff-Appellee, v. JOSEPH RUFUS THAMES,  
Defendant-Appellant, and ASSOCIATION OF APARTMENT  
OWNERS OF 404/404-A KALAMA STREET; DIRECTOR OF  
BUDGET AND FISCAL SERVICES, CITY AND COUNTY OF  
HONOLULU; JOHN DOES 1-50; JANE DOES 1-50; DOE  
PARTNERSHIPS 1-50; DOE CORPORATIONS 1-50; DOE  
"NON-PROFIT" CORPORATIONS 1-50; and DOE  
GOVERNMENTAL UNITS 1-50, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 00-1-0070)

MEMORANDUM OPINION

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

Defendant-Appellant Joseph Rufus Thames (Thames)  
appeals from the December 6, 2000 Judgment entered by First  
Circuit Court Judge Kevin S. C. Chang in favor of Plaintiff-  
Appellee International Savings and Loan Association, Limited  
(IS&L). In this appeal, Thames challenges the December 6, 2000  
"Findings of Fact, Conclusions of Law, Order Granting Plaintiff's  
Motion for Summary Judgment on All Claims and Against All  
Parties, Interlocutory Decree of Foreclosure and Order of Sale  
Filed on March 9, 2000" (FsOF, CsOL, and Order). We affirm.

BACKGROUND

On or about November 13, 1997, IS&L made a loan (Loan)  
to Thames in the principal amount of ONE HUNDRED SIXTY THOUSAND

SIX HUNDRED AND NO/100 DOLLARS (\$160,600.00). Thames executed and delivered to IS&L a thirty-year note dated November 13, 1997 (Note), in the principal amount of ONE HUNDRED SIXTY THOUSAND SIX HUNDRED AND NO/100 DOLLARS (\$160,600.00), plus interest at a yearly rate of 7.5%, payable in monthly payments of \$1,122.94 commencing January 1, 1998.

As security for the repayment of the Loan and performance and observance of the obligations of Thames under the Note, Thames executed and delivered to IS&L a Mortgage dated November 13, 1997 (Mortgage), which was recorded in the Land Court, State of Hawai'i, granting IS&L a first mortgage lien and security interest in and to the property located at 404-A Kalama Street, Kailua, Hawai'i 96734, Tax Map Key No. 4-3-039-003(1), H.P.R. No. 0002 (Mortgaged Property).

Thames defaulted on the amounts due and owing under the Note and Mortgage when he failed to pay the principal sum and interest at the times and in the manner provided in the Note. Despite due and proper demand made upon Thames by IS&L, Thames failed, neglected, and refused, and continues to fail, neglect, and refuse to pay the same to IS&L. Due to Thames' default based on his failure to make payment of all amounts due and owing, IS&L accelerated the payments and the entire amount became immediately due and payable in accordance with the terms of the Note and Mortgage. IS&L filed its complaint on January 10, 2000, and

"Plaintiff's Motion for Summary Judgment on All Claims and Against All Parties, Interlocutory Decree of Foreclosure and Order of Sale" on March 9, 2000. As of September 19, 2000, Thames was indebted to IS&L in the amount of \$166,415.39 plus interest, late charges, and attorneys' fees and costs.

On December 6, 2000, the court entered its FsOF, CsOL, and Order and its Judgment in favor of IS&L. On January 4, 2001, Thames filed a notice of appeal. On May 22, 2001, Thames filed an opening brief.

#### STANDARD OF REVIEW

We review a circuit court's award of summary judgment *de novo* under the same standard applied by the circuit court. Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 104, 839 P.2d 10, 22, *reconsideration denied*, 74 Haw. 650, 843 P.2d 144 (1992) (citation omitted). As we have often articulated:

[s]ummary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

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Id. (citations and internal quotation marks omitted); see Hawai'i Rules of Civil Procedure (HRCP) Rule 56(c) (1990). "A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties." Hulsman v. Hemmeter Dev. Corp., 65 Haw. 58, 61, 647 P.2d 713, 716 (1982) (citations omitted).

Morinoue v. Roy, 86 Hawai'i 76, 80, 947 P.2d 944, 948 (1997))

(brackets omitted). "[W]e must view all of the evidence and the inferences drawn therefrom in the light most favorable to the party opposing the motion." Morinoue, 86 Hawai'i at 80, 947 P.2d at 948 (quoting Maguire v. Hilton Hotels Corp., 79 Hawai'i 110, 112, 899 P.2d 393, 395 (1995)) (brackets omitted).

## DISCUSSION

The first paragraph of the "OPENING BRIEF (INTERMEDIATE)" filed by Thames states as follows, without "sics" to indicate mistakes:

This subject brief is an intermediate response. The Commissioner, without consent of Respondant, Defendant and Appellant, through and with direction and assistance of the Plaintiff and State (Hawaii) took possession of the subject property on or about April 4, 2001. Respondant's/Defendant's/Appellant's vehicle (van) with enclosed, locked and secured contents (legal documents) were stolen, illegally removed without authority and or knowledge of Respondant/Defendant/Appellant from the subject property to whereabouts unknown. Legal documents are documents necessary for the contents of the opening brief. Respondant/Defendant/Appellant is unable to complete and prejudiced against completing the opening brief. Beyond the controls of Respondant/Defendant/Appellant but due to the responsibility, negligence, and or intentions of Plaintiff and State; Respondant/Defendant/Appellant does not have possession of the necessary documents to adequately and appropriately respond.

In other words, Thames alleges that he does not have possession of the documents necessary to prepare an opening brief in compliance with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28 because his van vehicle containing his locked and secured legal documents was stolen or illegally removed from the subject property to whereabouts unknown without authority from him or his knowledge and that this was done "due to the responsibility, negligence, and or intentions of" IS&L and the State of Hawai'i.

The allegation that Thames does not know the whereabouts of the van vehicle "due to the responsibility, negligence, and or intentions of" IS&L and the State of Hawai'i is unsupported by the parts of the record that may be considered

when deciding a motion for a summary judgment.<sup>1</sup> The implication that IS&L is liable for the acts of the State of Hawai'i is unsupported by the record or by any citation of law.

The allegation by Thames that he could not complete his opening brief because the necessary legal documents were stolen is without basis in fact. The only record that Thames could use in preparing his appeal is the record on appeal, and Thames had access to that record on appeal. See HRAP Rules 10, 11, and 28 (2000). It contained all of the information he needed to prepare his opening brief.

The opening brief filed by Thames fails to comply with many of the requirements of HRAP Rule 28(b). The failure by Thames to conform his opening brief to the requirements of HRAP Rule 28(b) burdens IS&L in preparing its response to his opening brief, burdens the appellate court in attempting to render an informed judgment, and "forces [the appellate] court to speculate on the what and the why of the appeal. It also forces [the appellate court] to do the work that is more properly done by the appellant." Wright v. Chatman, 2 Haw. App. 74, 76, 625 P.2d 1060, 1062 (1981). Such noncompliance is sufficient grounds for the dismissal of the appeal. See Housing Finance and Dev. Corp. v. Ferguson, 91 Hawai'i 81, 85-6, 979 P.2d 1107, 1111-12 (1999).

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<sup>1</sup> Hawai'i Rules of Civil Procedure Rule 56(c) (2000) states that when deciding a motion for a summary judgment, the following may be considered: "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any[.]"

See also Bettencourt v. Bettencourt, 80 Hawai'i 225, 228, 909 P.2d 553, 556 (1995). "However, the policies of this court are to permit litigants to appeal and to have their cases heard on the merits, where possible." O'Connor v. Diocese of Honolulu, 77 Hawai'i 383, 386, 885 P.2d 361, 364 (1994) (citations omitted).

The granting of summary judgment is appropriate if, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 104, 839 P.2d 10, 22, *reconsideration denied*, 74 Haw. 650, 843 P.2d 144 (1992) (internal quotation marks and citation omitted).

It is alleged by Thames in his opening brief that the "Bank has not produced true accounting of mortgage. Respondant/Defendant/Appellant was not in Default. Court erred [sic] in awarding Summary Judgment." The parts of the record that may be considered do not support this allegation. On the contrary, the parts of the record that may be considered show that IS&L properly provided the circuit court with an accounting of all of the relevant debits and credits showing that Thames was in default and the amount due. Thames did not provide the court with any evidence contradicting IS&L's presentations or showing a genuine issue of material fact. Consequently, this court

concludes that the parts of the record that may be considered support the entry of the summary judgment in favor of IS&L.

CONCLUSION

Accordingly, we affirm the circuit court's (1) December 6, 2000 Findings of Fact, Conclusions of Law, Order Granting Plaintiff's Motion for Summary Judgment on All Claims and Against All Parties, Interlocutory Decree of Foreclosure and Order of Sale Filed on March 9, 2000; and the (2) December 6, 2000 Judgment.

DATED: Honolulu, Hawai'i, February 8, 2002.

On the briefs:

Joseph R. Thames,  
Defendant-Appellant, *pro se*.

Chief Judge

Mitzi A. Lee and  
Damien Elefante  
(Hisaka Stone Goto  
Yoshida Cosgrove & Ching,  
of counsel)  
for Plaintiff-Appellee.

Associate Judge

Associate Judge