

NOT FOR PUBLICATION

NO. 24686

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

THE BANK OF NEW YORK, AS TRUSTEE OF AMRESCO RESIDENTIAL
SECURITIES CORPORATION MORTGAGE LOAN TRUST 1997-2 UNDER
THE POOLING AND SERVICE AGREEMENT DATED AS OF JUNE 1,
1997, Plaintiff-Appellee, v. MELVIN TOSHIHIKO YAMAMOTO,
ELAINE SHIGEMOTO YAMAMOTO, MAXINE HARUKO TAMPON,
ASSOCIATES FINANCIAL SERVICES COMPANY OF HAWAII, INC.,
and JOHN and MARY DOES 1-20, Defendants-Appellants

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(Civ. No. 98-0206)

SUMMARY DISPOSITION ORDER

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

Defendants-Appellants Melvin Toshihiko Yamamoto, Elaine Shigemoto Yamamoto, and Maxine Haruko Tampon (collectively, "Appellants") appeal from the Judgment¹ entered on October 12, 2001 by the Circuit Court of the Fifth Circuit (the circuit court), Judge George M. Masuoka presiding, granting the Motion for Summary Judgment, and for Interlocutory Decree of Foreclosure Against All Parties, filed on August 23, 2001 by Plaintiff-Appellee The Bank of New York, as Trustee of Amresco Residential Securities Corporation Mortgage Loan Trust 1997-2

¹ The Judgment directed that the "Order Granting [Plaintiff-Appellee The Bank of New York's, as Trustee of Amresco Residential Securities Corporation Mortgage Loan Trust 1997-2 Under the Pooling and Service Agreement Dated as of June 1, 1997] Motion for Summary Judgment, and for Interlocutory Decree of Foreclosure Against All Parties" be entered as a final judgment for appeal purposes, pursuant to Hawaii's Rules of Civil Procedure Rule 54(b).

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Under the Pooling and Service Agreement Dated as of June 1, 1997 (Bank).

Appellants contend that the circuit court erred by granting summary judgment in Bank's favor because they had canceled the mortgage loan being foreclosed upon due to violations of the federal Truth in Lending Act (TILA) by Bank's predecessor-in-interest.

The record shows, however, that on May 18, 1999, Appellants brought a lawsuit against Bank in the United States District Court for the District of Hawai'i, seeking rescission of their mortgage and statutory damages under TILA. That lawsuit was dismissed on the merits by Senior District Judge Samuel P. King (Judge King) on June 19, 2001 (Judge King's dismissal order), after Appellants failed to show they could repay the amount of their loan to Bank, a condition of a TILA rescission, or substitute the trustee in their bankruptcy proceeding as the plaintiff in their lawsuit. On May 29, 2003, the Ninth Circuit Court of Appeals affirmed Judge King's dismissal order. See Yamamoto v. Bank of New York, 329 F.3d 1167 (9th Cir. Hawai'i).

Inasmuch as Appellants' TILA rescission defense has already been litigated on the merits and disposed of by the federal courts, we conclude that we are bound to honor Judge King's dismissal order and are thus precluded from

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revisiting the TILA rescission issue in this case. See Watkins v. Resorts Int'l Hotel & Casino, Inc., 591 A.2d 592, 595-97 (N.J. 1991) (holding that "[a] fundamental feature of the relationship between state and federal courts is that the courts of each system must respect the judgments of courts of the other system. That respect is essential to the fair and efficient functioning of our federalist system of justice. The rule that state courts must accord preclusive effect to prior federal court judgments is so settled that it is accepted as axiomatic.").

Accordingly, we affirm the circuit court's October 12, 2001 Judgment.

DATED: Honolulu, Hawai'i, June 20, 2003.

Gary Victor Dubin for
defendants-appellants
(Melvin T. Yamamoto, Elaine S.
Yamamoto, and Maxine H.
Tampon, defendants-appellants,
pro se, on the brief).

Robert E. Chapman and Mary
Martin (Stanton Clay Chapman
Crumpton & Iwamura, of counsel)
for plaintiff-appellee on the
brief.