NO. 26507

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

CHASE MANHATTAN MORTGAGE CORPORATION, Plaintiff-Appellee, v. ROBERT MORALES and THERESA MARIE MORALES, Defendants-Appellants, and JOHN DOES 1-50, JANE DOES 1-50, DOE PARTNERSHIPS 1-50, DOE CORPORATIONS 1-50, DOE ENTITIES 1-50, and DOE GOVERNMENTAL UNITS 1-50, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Civ. No. 03-1-1414)

SUMMARY DISPOSITION ORDER
(By: Watanabe, Presiding Judge, Lim and Fujise, JJ.)

Defendant-Appellants Robert Morales (Robert) and Theresa Marie Morales (Theresa) (collectively Appellants) appeal from the final judgment entered on March 12, 2004, in the Circuit Court of the First Circuit (circuit court).[1] Final judgment was entered in favor of Plaintiff-Appellee Chase Manhattan Mortgage Corporation (Chase Manhattan) and against Appellants based on the circuit court's March 12, 2004 order granting the motion for summary judgment on all claims and upon a finding of no just reason for delay pursuant to Hawai'i Rules of Civil Procedure (HRCP) Rule 54(b). After a careful review of the issues raised, arguments advanced, law relied upon, and the record in the instant case, we conclude that the circuit court did not err. Consequently, we affirm.

1. Neither of Appellants' arguments, that Chase Manhattan failed to demonstrate facts establishing that they are

[1] The Honorable Karen N. Blondin presided.

entitled to judgment as a matter of law, or that genuine issues of material fact existed at the time the circuit court granted the motion for summary judgment, are borne out by the record. Consequently, the circuit court did not err in granting the motion for summary judgment. French v. Hawaii Pizza Hut, Inc., 105 Hawai'i 462, 470, 99 P.3d 1046, 1054 (2004).

With respect to the document entitled "Declaration in Support of Motion," assuming, arguendo, that it is inadmissible under HRCP Rule 56(e), the contents of the declaration were not necessary to establish a prima facie showing of ejectment. Aames Funding Corp. v. Mores, 107 Hawai'i 95, 104, 110 P.3d 1042, 1051 (2005); Carter v. Kaikainahaole, 14 Haw. 515, 516 (1902). Consent is not a substantive element of ejectment, rather it is an affirmative defense. Id. The party moving for summary judgment is not required initially to produce material facts which negate the opposing party's claims, rather they are only required to do so when the opposing party comes forward with evidence establishing a defense. Mednick v. Davey, 87 Hawai'i 450, 457 n.5, 959 P.2d 439, 446 n.5 (1998); GECC Fin. Corp. v. Jaffarian, 80 Hawai'i 118, 119, 905 P.2d 624, 625 (1995). Appellants failed to raise, and have not offered any evidence tending to establish, consent as a defense. As such, the circuit court did not err in finding that Chase Manhattan had established a prima facie showing for ejectment.

Whether the company that originally executed the mortgage was a licensed lending company at the time of the

execution of the mortgage does not create a genuine issue of material fact. According to Hawaii Revised Statutes § 454-1, a person licensed as a mortgage broker may "for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly make[], negotiate[], acquire[], or offer[] to make, negotiate, or acquire a mortgage loan on behalf of a borrower seeking a mortgage loan." As per the documents supplied by Appellants in their opposition papers, the company alleged to have originally executed the mortgage was licensed as a mortgage broker, and as such was competent to execute the instant mortgage loan. Consequently, the circuit court did not err in finding that Appellants had not raised a triable issue of material fact.

Therefore,

The Circuit Court of the First Circuit's March 12, 2004, final judgment is affirmed.

DATED: Honolulu, Hawai'i, December 27, 2006.

On the briefs:

Marshall D. Chinen,
for Defendants-Appellants.

Walter Beh, II,
(Rush Moore Craven Sutton Morry & Beh)
for Plaintiff-Appellee.

Corinne K.A. Watanabe
Presiding Judge

Associate Judge

Associate Judge