

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28231

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

ASSOCIATION OF APARTMENT OWNERS OF REGENCY TOWER
by its Board of Directors,
Plaintiff-Appellee,
v.

PENNI IRWIN SKATES, also known as Penni Skates-Irwin,
Successor Trustee of the Betty M. Skates
Revocable Trust dated August 9, 1996,
Defendant-Appellant,
and

DIRECTOR OF TAXATION, STATE OF HAWAII, JOHN DOES 1-5, et al.,
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CV. NO. 06-1-0049)

ORDER DISMISSING APPEAL

(By: Watanabe, Presiding J., Lim and Foley, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over Defendant-Appellant Penny Irwin Skates's appeal from the Honorable Karen N. Blondin's November 14, 2006 order granting in part and denying in part Plaintiff-Appellee Association of Apartment Owners of Regency Tower's motion to quash a subpoena duces tecum, because the November 14, 2006 order is not an appealable order under HRS § 667-51 (Supp. 2005) or HRS § 641-1 (Supp. 2005).

HRS § 667-51 (Supp. 2005) authorizes a party in a foreclosure action to assert an appeal from (1) a judgment on a decree of foreclosure, (2) an HRCF Rule 54(b) certified judgment on an order confirming the sale of the foreclosed property, and

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(3) a deficiency judgment. HRS § 667-51(a) (Supp. 2005).

However, the November 14, 2006 order does not belong to any of these categories of orders that are appealable under HRS § 667-51 (Supp. 2005). Therefore, the November 14, 2006 order is not appealable under HRS § 667-51 (Supp. 2005).

HRS § 641-1(a) (Supp. 2005) authorizes appeals from "final judgments, orders, or decrees[.]" The supreme court "has previously noted that foreclosure cases are bifurcated into two separately appealable parts: (1) the decree of foreclosure and the order of sale, if the order of sale is incorporated within the decree; and (2) all other orders." Beneficial Hawai'i, Inc. v. Casey, 98 Hawai'i 159, 165, 45 P.3d 359, 365 (2002) (citations and internal quotation marks omitted). Although the June 6, 2006 decree of foreclosure in part one of this case was immediately appealable upon entry, no party in this case asserted a timely appeal from the June 6, 2006 decree of foreclosure and the "matters subsequent to the foreclosure decree, such as the confirmation of sale or the issuance and enforcement of the writ of possession . . . would have to wait until entry of the circuit court's final order in the case." Id. (citation omitted) (emphasis added). "In foreclosure cases which result in a deficiency, the last and final order . . . is usually the deficiency judgment." Security Pacific Mortgage Corporation v. Miller, 71 Haw. 65, 70, 783 P.2d 855, 858 (1989) (citation and internal quotation marks omitted) (emphases added); Hoge v. Kane,

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4 Haw. App. 246, 247, 663 P.2d 645, 647 (1983) ("In foreclosure cases, which result in a deficiency, the last and final order . . . is usually the deficiency judgment."). The November 14, 2006 order is an interlocutory order, and the circuit court has not entered a deficiency judgment or a judgment confirming the sale of the subject property in part two of this foreclosure case. Therefore, the November 14, 2006 order is not an appealable final order under HRS § 641-1(a) (Supp. 2005).

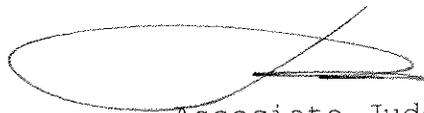
HRS § 641-1(b) (Supp. 2005) authorizes a circuit court to certify an interlocutory order for an immediate interlocutory appeal. However, the circuit court did not certify the November 14, 2006 order for an interlocutory appeal. Therefore, the November 14, 2006 order is not appealable pursuant to HRS § 641-1(b) (Supp. 2005). Accordingly,

IT IS HEREBY ORDERED that this appeal in appellate court case number 28231 is dismissed for lack of appellate jurisdiction.

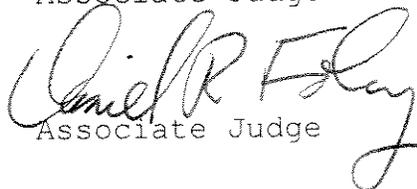
DATED: Honolulu, Hawaii, January 30, 2007.



Presiding Judge



Associate Judge



Associate Judge