

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 27453

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

WESTERN FINANCIAL BANK, F.S.B., a United States corporation,
Plaintiff-Appellee, v. ADOLFO DIZA RARAS, Defendant-Appellant,
and JOSEPHINE AGUILAR RARAS; INDYMAC BANK, F.S.B.; Defendant-
Appellees, and JOHN and MARY DOES 1-20, DOE PARTNERSHIPS,
CORPORATIONS or OTHER ENTITIES 1-20, Defendants
(Civ. No. 99-0-3656)

and

INDYMAC BANK, F.S.B., Plaintiff-Appellee, v. ADOLFO DIZA RARAS,
Defendant-Appellant, and JOSEPHINE AGUILAR RARAS, WESTERN
FINANCIAL BANK, F.S.B., a United States corporation, Defendants-
Appellees, and JOHN and MARY DOES 1-20, DOE PARTNERSHIPS,
CORPORATIONS or OTHER ENTITIES 1-20, Defendants
(Civ. No. 00-1-0369)

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Watanabe and Fujise, JJ.)

This is an appeal of consolidated cases, Civil Nos. 99-0-3656 and 00-1-0369. In Civil No. 99-0-3656, Plaintiff-Appellee Western Financial's (Western Financial) complaint sought to foreclose on a Second Mortgage and was filed on September 29, 1999 against Defendant-Appellant Adolfo Diza Raras (Raras), Josephine Aguilar Raras, and The Bank of New York Trustee Under the Pooling and Servicing Agreement Series 1998-A (BNY).¹ Defendant-Appellee/Plaintiff-Appellee IndyMac Bank, F.S.B. (IndyMac) was substituted for BNY on September 20, 2004.

In Civil No. 00-1-0369, Independent National Mortgage Corporation's (INMC) complaint sought to foreclose on a First Mortgage on the same property and was filed on February 2, 2000.

¹ Although the complaint named The Bank of New York Trustee Under the Pooling and Servicing Agreement Series 1997-A, by order entered August 10, 2004, the Circuit Court of the First Circuit corrected the caption to read "The Bank of New York Trustee Under the Pooling and Servicing Agreement Series 1998-A."

K. HANAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

On September 20, 2004, the Circuit Court of the First Circuit (circuit court) approved the substitution of IndyMac in place of INMC.

Raras challenges the Order Granting Indymac Bank F.S.B.'s Motion for Order Confirming Foreclosure Sale, Allowance of Costs, Commissions and Fees, Directing Conveyance and for Judgment for Deficiency, filed on July 25, 2005 (Confirmation Order), and appeals from the July 25, 2005 Judgment on Order Granting Indymac Bank F.S.B.'s Motion for Order Confirming Foreclosure Sale, Allowance of Costs, Commissions and Fees, Directing Conveyance and for Judgment for Deficiency, filed on June 3, 2005 (Judgment), in the circuit court² in Civil No. 99-0-3656.³

On appeal, Raras contends that (1) it was reversible error for the lower court to have granted summary judgment and a decree of foreclosure in favor of IndyMac, properly and timely appealed in Appellate Case No. 27097, thus requiring reversal of the confirmation order and judgment as well, while there remained a genuine issue of material fact concerning whether IndyMac had standing to foreclose in the first place; (2) it was reversible error and in direct violation of the Hawai'i Supreme Court's judicial reassignment order for IndyMac's confirmation of sale motion to have been calendared by IndyMac before the Honorable Karen N. Blondin, and heard and decided other than by the Honorable Karen S.S. Ahn to whom the case had been reassigned at the time; and (3) IndyMac's confirmation of sale fee and cost request, approved by the lower court, was mostly improper in form and not chargeable to Raras.

² The Honorable Karen N. Blondin presided.

³ Although the Confirmation Order specifically addressed both the Second Mortgage, which was the subject of the suit in Civil No. 99-0-3656 and the First Mortgage, which was the subject of the lawsuit in Civil No. 00-1-0369, it was filed only in Civil No. 99-0-3656.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Raras's points of error as follows:

1. Raras cites six instances where he raised the issue of IndyMac's standing in Civ. No. 99-0-3656. However, each instance cited was either to an objection made before IndyMac was a party; to a document filed by IndyMac, not Raras; to a document that did not contain an objection to standing; or was made after assignment of the mortgage to IndyMac had already been recorded.

In any event, absent a demonstration that a plaintiff has such a sufficient personal stake in the dispute, a court lacks jurisdiction and cannot exercise its remedial powers to resolve the matter. In re Application of Matson Navigation Co. v. Fed. Deposit Ins. Corp., 81 Hawai'i 270, 275, 916 P.2d 680, 685 (1996). However, contrary to Raras's arguments, the record supports the circuit court's finding that "IndyMac is now the owner of said note [Document Number 2414403]." By the time IndyMac was substituted for BNY, the note and First Mortgage originally given to Western Financial Bank by Raras on October 29, 1997 had been assigned by Western Financial Bank to BNY on November 26, 1997, assigned by BNY to IndyMac on July 20, 2004, and recorded with the Assistant Registrar of the Land Court of this state. These transactions were established not only by copies of the assignment documents filed with the Land Court, but by a certified copy of the Land Court Certificate of Title that shows the assignment of the mortgage to BNY, the conveyance disputed by Raras. This is conclusive evidence of this assignment. Hawaii Revised Statutes (HRS) § 501-88 (1993).⁴

⁴ HRS § 501-88 provides,

Certificate as evidence. The original certificate in the registration book, and any copy thereof duly certified under the signature of the registrar or assistant registrar, and the seal of the court, shall be received as evidence in all courts of the State and shall be conclusive as to all

(continued...)

Based on this record, we find no error in the circuit court's determination that IndyMac held the mortgage at issue here.

2. With respect to Raras's second point of error on appeal, Raras has failed to cite any authority for his argument that a substitute circuit court judge or another circuit court judge lacks authority to hear and decide motions that have been assigned to a specific circuit court judge in the same judicial circuit.

3. With respect to Raras's third point of error, we agree that the circuit court abused its discretion in awarding IndyMac's request for attorneys' fees and costs.

IndyMac requested \$19,221.25 for attorneys' fees incurred, \$1,350.00 for expected attorneys' fees to be incurred, and \$1,980.50 for costs incurred. The circuit court awarded IndyMac \$18,438.86 for attorneys' fees and \$1,980.50 for costs.

First, it was an abuse of discretion to award IndyMac attorneys' fees for work performed prior to July 20, 2004. IndyMac was assigned the First Note and First Mortgage on July 20, 2004. Yet, IndyMac requested attorneys' fees beginning on April 1, 2004, almost four months prior to IndyMac obtaining an interest in the First Note and First Mortgage. Raras is not responsible for attorneys' fees incurred by IndyMac to acquire the First Note and First Mortgage.

Second, the circuit court abused its discretion to the extent that it awarded fees and costs to IndyMac for items related to Civil No. 99-0-3656. IndyMac was the substituted plaintiff and prevailed in Civil No. 00-1-0369. However, in Civil No. 99-0-3656, IndyMac was a defendant who did not institute the action and was not granted any relief or damages. Therefore, IndyMac's fees and costs associated with Civ. No. 99-0-3656 are not taxable to Raras. IndyMac's request did not itemize the fees and costs incurred for each case.

⁴(...continued)

matters contained therein, except as otherwise provided in this chapter.

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Lastly, the circuit court abused its discretion in awarding costs to IndyMac. IndyMac's request for fees and costs did not state the statutory basis for recovering costs. However, HRS § 607-9 (1993) allows recovery of "all actual disbursements." IndyMac included only a summary of its costs, without providing specific information such as the dates when the costs were incurred, specific amounts, the parties that sent or received facsimiles, the parties that incurred long distance charges, and the reason for incurring postage and copy costs. Without this documentation, there was insufficient proof that IndyMac's costs were actually incurred. Further, the circuit court erred by awarding computer-assisted legal research costs of \$24.68 which are not recoverable. Bjornen v. State Farm Fire & Cas. Co., 81 Hawai'i 105, 107, 912 P.2d 602, 604 (App. 1996).

Upon remand to the circuit court, IndyMac may submit an amended request for attorneys' fees and costs incurred on or after July 20, 2004 that provides dates and an explanation of the fees and costs incurred with adequate proof, which excludes computer legal research and fees and costs incurred in Civil No. 99-0-3656. Indymac should provide "specific descriptions, identifying the particular issues researched or worked on," including "sufficiently documented hours devoted to the various tasks," so that "a reasonably accurate determination can be made regarding allowable fees." Hawaii Ventures, LLC v. Otaka, Inc., 116 Hawai'i 465, 478-79, 173 P.3d 1122, 1135-36 (2007). If the circuit court awards fees and/or costs that are different from IndyMac's requested fees and costs, it shall provide an explanation if the reason is not obvious from the record. Finley v. Home Ins. Co., 90 Hawai'i 25, 39, 975 P.2d 1145, 1159 (1998).

THEREFORE,

IT IS HEREBY ORDERED that the July 25, 2005 Judgment on Order Granting Indymac Bank F.S.B.'s Motion for Order Confirming Foreclosure Sale, Allowance of Costs, Commissions and Fees, Directing Conveyance and for Judgment for Deficiency, filed on June 3, 2005, entered by the Circuit Court of the First Circuit

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is affirmed in part, vacated in part, and remanded for further proceedings.

DATED: Honolulu, Hawai'i, June 12, 2008.

On the briefs:

Gary V. Dubin,
for Defendant-Appellant.


Chief Judge

Steven T. Iwamura and
Robert M. Ehrhorn, Jr.,
(Clay Chapman Crumpton Iwamura
& Pulice),
for Plaintiff-Appellee.


Associate Judge


Associate Judge