

NO. 27552

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2008 JUN 12 AM 7:50

FILED

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.; Defendants-
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

ORDER DISMISSING APPEAL

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

Appellant-Defendant Adolfo Diza Raras (Raras) appeals the September 20, 2005 Order Granting IndyMac Bank, F.S.B.'s Motion to Expunge Notices of Pendency of Action filed by Defendant Adolfo Diza Raras, Filed August 24, 2005 in the Circuit Court of the First Circuit (circuit court).¹

On appeal, Raras contends the circuit court erred in granting Defendant-Appellee/Plaintiff-Appellee IndyMac Bank, F.S.B.'s (IndyMac) Motion to Expunge the two Notices of Pendency of Action filed by Raras on August 18, 2005. Raras argues that the Notices of Pendency of Action are valid because he appealed

¹ The Honorable Karen N. Blondin presided.

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the Decree of Foreclosure and Confirmation of Sale based on jurisdictional grounds.

In IndyMac Bank v. Miguel, Nos. 26881, 27406, and 27561, 2008 WL 1991789 (App. May 9, 2008), the appellant contended that his notices of pendency of action should not have been expunged because his appeal "sought to recover possession of the property," and that "TSA Int'l Ltd. v. Shimizu Corp., 92 Hawai'i 243, 990 P.2d 713 (1999) does not render the notices of pendency of action invalid because the pending appeals were based in part on challenges to the jurisdiction of the circuit court." Miguel, at *13. This court held that an appeal of the circuit court's expungement of a lis pendens was moot because the appellants filed "both of their motions for notice of pendency of action after the decree of foreclosure, after the order confirming the foreclosure sale was entered, and after the writ of possession had been issued by the court in favor of [appellee]." Id. at *14.

On January 5, 2005, the circuit court issued its Findings of Fact, Conclusions of Law and Order Granting IndyMac Bank, F.S.B.'s Motion for Summary Judgment and for Interlocutory Decree of Foreclosure Against All Parties. On July 25, 2005, the circuit court granted IndyMac's Motion for Order Confirming Foreclosure Sale, Allowance of Costs, Commissions and Fees, Directing Conveyance and for Judgment for Deficiency. Also on July 25, 2005, the circuit court issued a Writ of Possession to remove Raras and Josephine from the Property.

Raras did not file the Notice of Pendency of Action until August 18, 2005. Therefore, like Miguel, the sale of the property involved in this case prevents this court from granting

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any effective relief and Raras's appeal of the expungement of the notices of pendency of action is moot. Id.

Therefore,

IT IS HEREBY ORDERED that Raras's appeal of the expungement of the notices of pendency of action is moot and is dismissed.

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