

NO. 29073

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

BANK OF NEW YORK AS TRUSTEE FOR THE BENEFIT  
OF THE CERTIFICATEHOLDERS OF CWABS 2005-02, Plaintiff-Appellee

v.

MELITON BAGOYO BATAD, and  
DWAYNE CONRAD BATAD, Defendants-Appellants,

and

DIRECTOR, DEPARTMENT OF TAXATION,  
STATE OF HAWAII, Defendants,  
(CIVIL NO. 07-1-0919)

and

MELITON BAGOYO BATAD and  
DWAYNE CONRAD BATAD, Appellants-Appellants,

v.

BANK OF NEW YORK, AS TRUSTEE FOR THE BENEFIT  
OF THE CERTIFICATEHOLDERS OF CWABS 2005-02 BY COUNTRYWIDE  
HOME LOANS, INC., a New York Corporation, As Attorney-In-Fact,  
COUNTRYWIDE HOME LOANS, INC., a New York Corporation,  
Appellees-Appellees,

and

NAFETALAI FINAU and ANA MANU FINAU, husband and wife,  
Appellees  
(CIVIL NO. 07-1-0934)

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT

EM. RIMANDO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2009 APR 17 AM 8:14

FILED

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Defendants-Counterclaimants-Appellants/  
Plaintiffs-Appellants Meliton Bagoyo Batad and Dwayne Conrad Batad (**Batads**) appeal the Judgment on Order Granting Plaintiff's Motion for Summary Judgment against (1) All Defendants on Complaint filed 5/18/07, (2) Counterclaim filed 8/2/07, and (3) Appeal Filed 5/22/07, Filed on 10/15/07 in favor of Plaintiff-Counterclaim Defendant-Appellee/Defendant-Appellee Bank of New York as Trustee for the Benefit of the Certificate Holders of CWABS 2005-02 (**BONY**) filed on February 21, 2008 (**Judgment**), in the Circuit Court of the First Circuit (**Circuit Court**) for consolidated Civ. Nos. 07-1-0919 and 07-1-0934.<sup>1/</sup>

On appeal, the Batads' sole contention is that the Circuit Court erred in granting summary judgment in favor of BONY by failing to hold that the foreclosure procedure followed by BONY was defective in that it did not comply with Part II of Hawaii Revised Statutes (**HRS**) Chapter 667. The Batads admit "the trial court found that the procedure used complied with Part I of Chapter 667, and if Part I applies, that is a correct ruling."

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 the Batads' point of error as follows:

Part II of HRS Chapter 667, entitled "Alternate Power of Sale Foreclosure Process," provides an alternative to the procedures specified in Part I of HRS Chapter 667. See HRS §° 667-5 and 667 21(a) ("The process in this part is an alternative power of sale process to the foreclosure by action and the foreclosure by power of sale in Part I."); Hse. Stand. Comm. Report No. 721-98 (1998) ("This measure will establish an additional method by which a lender can foreclose on a mortgage

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<sup>1</sup> / The Honorable Eden Elizabeth Hifo presided.

under a power of sale without filing a lawsuit."). BONY properly utilized Part I of HRS Chapter 667 to foreclose upon the subject property and was not required to use Part II of HRS Chapter 667.

Therefore, the Circuit Court's February 21, 2008 Judgment is affirmed.

DATED: Honolulu, Hawai'i, April 17, 2009.

On the briefs:

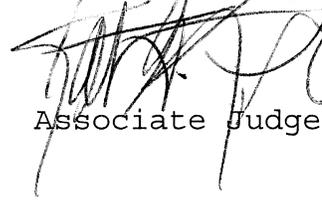
Francis T. O'Brien  
for Defendants-Appellants,  
Appellants-Appellants  
MELITON BAGOYO BATAD and  
DWAYNE CONRAD BATAD

Steven T. Iwamura  
Robert M. Ehrhorn, Jr.  
(Clay Chapman Crumpton Iwamura  
& Pulice)  
for Plaintiff-Appellee,  
Appellees-Appellees  
BANK OF NEW YORK AS TRUSTEE FOR THE  
BENEFIT OF THE CERTIFICATEHOLDERS OF  
CWABS 2005-02 and COUNTRYWIDE HOME  
LOANS, INC.

Christopher J. Muzzi  
(Moseley Biehl Tsugawa Lau  
& Muzzi LLLC)  
for Appellees NAFETALAI FINAU  
and ANA MANU FINAU

  
Presiding Judge

  
Associate Judge

  
Associate Judge