

NO. 25974

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR SALOMON
BROTHERS MORTGAGE SECURITIES VII, INC., ASSET-BACKED
FLOATING RATE CERTIFICATES SERIES 1998-NC6,
Plaintiff-Appellee,

v.

JOYCE RIOPTA RAGASA and BONIFACIO G. TUMANENG,
Defendants-Appellants,

and

JAMES LOPES, JUDY LOPES, and JOHN and MARY
DOES 1-10, Defendants

APPEAL FROM THE FIFTH CIRCUIT COURT
(CIVIL NO. 03-1-0007)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Lim and Foley, JJ.)

EM. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

Defendants-Appellants Joyce Riopta Ragasa (Ragasa) and Bonifacio G. Tumaneng (Tumaneng) (collectively, Appellants) appeal from the Judgment filed on May 7, 2003 in the Circuit Court of the Fifth Circuit (circuit court).^{1/} The Judgment expressly directed that the circuit court's "Order Granting Plaintiff's Motion for Summary Judgment, and for Writ of Ejectment Against Defendants Joyce Riopta Ragasa, Bonifacio G. Tumaneng, James Lopes and Judy Lopes" be entered as a final

^{1/} The Honorable George M. Masuoka presided.

judgment in favor of Plaintiff U.S. Bank National Association as Trustee for Salomon Brothers Mortgage Securities VII, Inc., Asset-Backed Floating Rate Certificates Series 1998-NC6 (U.S. Bank) and against all Defendants.

Appellants contend on appeal that: (1) the circuit court did not have the power to enforce the non-judicial foreclosure because U.S. Bank failed to conform to the requirements of Hawaii Revised Statutes (HRS) § 667-5 (1993) and (2) the circuit court erred by granting summary judgment because (a) the power of sale clause was unconscionable, "which is a factual issue not susceptible of summary adjudication in this State," and (b) U.S. Bank failed to plead or place into evidence "the loan general ledger, nor any actual proof of default or that a proper and timely notice of default had been given by it and that a proper acceleration occurred."

Upon careful review of the record and the briefs submitted by the parties, we hold that the circuit court did not err by granting summary judgment in favor of U.S. Bank because Appellants failed to come forward, through affidavit or other evidence, with specific facts showing that there was a genuine issue of material fact. Miller v. Manuel, 9 Haw. App. 56, 828 P.2d 286 (1991); Hawai'i Rules of Civil Procedure Rule 56.

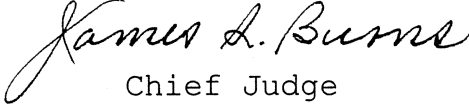
Therefore,

IT IS HEREBY ORDERED that the Judgment filed on May 7, 2003 in the Circuit Court of the Fifth Circuit is affirmed.

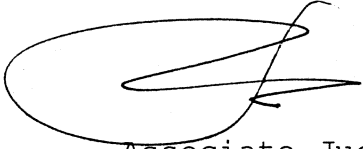
DATED: Honolulu, Hawai'i, July 7, 2005.

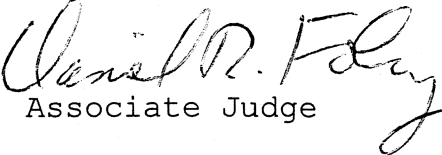
On the briefs:

Gary Victor Dubin
for defendants-appellants.


Chief Judge

Robert E. Chapman and
Mary Martin
(Stanton Clay Chapman
Crompton & Iwamura)
for plaintiff-appellee.


Associate Judge


Associate Judge