

NOT FOR PUBLICATION

NO. 26146

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

BANKERS TRUST COMPANY, as Trustee,  
a California corporation, Plaintiff-Appellee

v.

EDITHA CASTANAGA BLANCO, DWYER IMANAKA SCRAFF  
KUKO MEYER & FUJIMOTO, a Hawai'i Law corporation,  
CHICAGO TITLE INSURANCE COMPANY,  
and LORRIE C. RUMBAUGH, Defendants-Appellees,

and

TERESITA A. QUINTA, JOHN and MARY DOES 1-10,  
DOE PARTNERSHIPS, CORPORATIONS OR  
OTHER ENTITIES 1-20, Defendants

and

CHICAGO TITLE INSURANCE COMPANY,  
Third-Party Plaintiff-Appellee,

v.

A. EDUARDO G. BRINGAS,  
Third-Party Defendant-Appellant,

and

ALFRED ANTHONY; CLAUDIA A. ANTHONY,  
Trustee of the Claudia A. Anthony Trust, and unrecorded  
Semi-Revocable Living Trust dated March 15, 1991;  
FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF AMERICA,  
a federally chartered savings and loan association;  
ASSOCIATION OF APARTMENT OWNERS OF 3300 HINANO STREET;  
EMERITA EUSEBIO, JAIMIE DEL ANGEL SIVEYRA; ELVA SILVEYRA,  
FRED K. ANTONE, NANINOHEA D. ANTONE, SONNY NGUYEN, MAI-THANH  
NGUYEN, JULIEANNE NGUYEN, NEW AMERICA FINANCIAL, INC.,  
and JOHN and MARY DOES 1-20, DOE PARTNERSHIPS,  
CORPORATIONS OR OTHER ENTITIES 1-20, Third-Party Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 98-0276)

NORMA T. YARRA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2006 MAY -5 AM 10:19

FILED

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SUMMARY DISPOSITION ORDER

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

Third-Party Defendant-Appellant A. Eduardo G. Bringas (Bringas) appeals from the circuit court's<sup>1/</sup> September 10, 2003 "First Amended Judgment Re: (1) Judgment Entered on August 3, 2001 [against all Defendants except Lorrie C. Rumbaugh] and (2) Judgment Entered on August 3, 2001 [against Lorrie C. Rumbaugh]" (First Amended Judgment). This First Amended Judgment (1) was in favor of Defendant and Third-Party Plaintiff-Appellee Chicago Title Insurance Company<sup>2/</sup> (Chicago Title), and (2) each of the two judgments contained therein concluded with the following statement: "This Court expressly directs that said judgment be entered as a final judgment as there is no just reason for delay pursuant to Rule 54(b) of the Hawai'i Rules of Civil Procedure."

Defendant-Appellee Editha Castanaga Blanco (Blanco) was the owner of "Lot 13, area 8,912 square feet, more or less, of the 'HAWAII LOA RIDGE, PHASE VI'" (The Property). Various documents indicate that The Property is located at "794 Moaniala Drive".

On July 17, 1996, to secure a \$495,000 debt, Blanco mortgaged The Property to Quality Mortgage USA, Inc. (Quality Mortgage), a California corporation. On July 17, 1996, Quality Mortgage assigned its interest to Plaintiff-Appellee Banker's

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<sup>1/</sup> Judge Karen N. Blondin presided.

<sup>2/</sup> At one place, the record indicates that Defendant and Third-Party Plaintiff-Appellee Chicago Title Insurance Company (Chicago Title) is a Minnesota corporation. At another place, the record indicates that it is a Missouri corporation.

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Trust Company (Banker's Trust), a California corporation. Subsequently, to secure a \$43,952.32 debt, Blanco mortgaged The Property to Defendant Teresita A. Quintua (Quintua). Subsequently, to secure a \$75,000 debt, Blanco mortgaged The Property to Defendant-Appellee Dwyer Imanaka Schraff Kudo Meyer & Fujimoto, now known as Dwyer Schraff Meyer Jossem & Bushnell (Dwyer), a Hawai'i law corporation. Subsequently, to secure a \$138,203 debt, Blanco mortgaged The Property to Defendant-Appellee Lorrie Rumbaugh (Rumbaugh).

A foreclosure case was commenced by Banker's Trust against Blanco, Quintua, and others on January 22, 1998. On July 7, 1998, Quintua filed "Defendant Teresita A. Quintua's Answer to Plaintiff's Complaint Filed on January 22, 1998; Counterclaim of Defendant Teresita A. Quintua Against Plaintiff; Cross-Claim of Defendant Teresita A. Quintua Against All Other Defendants; Third Party Complaint." On July 13, 1998, Quintua filed a Lis Pendens. On July 31, 1998, Quintua assigned her interest in the July 26, 1996 \$43,952.32 Note and July 26, 1996 Mortgage to Chicago Title.

On September 17, 1998, Judge Virginia L. Crandall entered an "Order Granting Defendant and Third-Party Plaintiff Teresita A. Quintua's Motion for Substitution of Party, Filed on August 14, 1998," which substituted Chicago Title as a party in the place of Quintua.

On February 24, 2000, via a Quitclaim Deed, Blanco conveyed her interest in The Property to Third-Party Defendant-

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Appellant A. Eduardo G. Bringas (Bringas). This Quitclaim Deed was recorded in the Bureau of Conveyances on December 7, 2000.

On October 11, 2000, Judge Kevin S.C. Chang entered an "Order Granting Defendant and Third-Party Plaintiff Chicago Title Insurance Company's Renewed Motion for Partial Summary Judgment Against Defendant Lorrie C. Rumbaugh, Filed on June 16, 2000."

On April 10, 2001, Chicago Title filed "Defendant Chicago Title Insurance Company's Motion for: (1) Summary Judgment Against All Parties (Except Defendant Lorrie C. Rumbaugh) and for Decree of Foreclosure, and (2) Rule 54(b) Certification of the Order Granting Defendant and Third-Party Plaintiff Chicago Title Insurance Company's Renewed Motion for Partial Summary Judgment Against Defendant Lorrie C. Rumbaugh, Filed on June 16, 2000 [Filed October 11, 2000]." This motion was supported by the Declaration of William T. Weisbecker, a Vice-President of Chicago Title, which concluded with the statement: "I declare under penalty of perjury that the foregoing is true and correct."

On August 3, 2001, the court entered "Findings of Fact; Conclusions of Law; and Order Granting Defendant Chicago Title Insurance Company's Motion for (1) Summary Judgment Against All Parties (Except Defendant Lorrie C. Rumbaugh) and For Decree of Foreclosure, and (2) Rule 54(b) Certification of the Order Granting Defendant and Third-Party Plaintiff Chicago Title Insurance Company's Renewed Motion for Partial Summary Judgment Against Defendant Lorrie C. Rumbaugh, Filed on June 16, 2000 [Filed October 11, 2000], Filed on April 10, 2001."

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On August 3, 2001, the court entered (1) a judgment in favor of Chicago Title and against Rumbaugh, and (2) a judgment in favor of Chicago Title and against all defendants except Rumbaugh.

On July 26, 2002, Chicago Title filed "Defendant Chicago Title Insurance Company's Third-Party Complaint Against Defendant A. Eduardo G. Bringas and Doe Defendants." On August 30, 2002, Bringas filed an answer, a counterclaim against Chicago Title, and a cross-claim against Banker's Trust. In the counterclaim against Chicago Title, Bringas alleged, in relevant part, as follows:

Count I - Unfair and Deceptive Acts and Practices

. . . . .

16. [Chicago Title] has violated Chapter 480 of the Hawaii Revised Statutes . . . . .

17. [Chicago Title's] attempts to collect the debt, including the improper foreclosure, was excessive, immoral, unethical, oppressive, unscrupulous, and substantially injurious to Blanco and Bringas as consumers, had the capacity to mislead and created a likelihood of confusion, and were unfair and deceptive, in violation of H.R.S. Chapter 480.

. . . . .

Count II - Declaratory Relief

. . . . .

21. Bringas is entitled to a declaratory judgment affirming that he is the real party in interest in this foreclosure action, that the quitclaim deed in his favor is valid, that the Hawaii Loa Ridge Property belongs to him, and that the Third Party Plaintiff has no valid claim against Bringas or against the Hawaii Loa Ridge Property.

On July 3, 2003, Chicago Title moved for summary judgment against Bringas. On August 14, 2003, the court entered an "Order Granting Defendant/Third-Party Plaintiff Chicago Title Insurance Company's Motion for Summary Judgment Against Defendant

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A. Eduardo G. Bringas as to (1) Third-Party Complaint Filed July 26, 2002, and (2) Counterclaim Against Chicago Title Insurance Company Filed August 30, 2002, Filed on July 3, 2003." As noted above, on September 10, 2003, the court entered the First Amended Judgment.

Bringas filed a notice of appeal on October 9, 2003. This case was assigned to this court on April 23, 2004.

On appeal, Bringas argues that Chicago Title failed to comply with Hawai'i Rules of Civil Procedure Rule 56(e) (Supp. 2006)<sup>3/</sup> and, therefore, the circuit court erred in granting summary judgment in favor of Chicago Title and against Bringas. Bringas challenges various Findings of Fact and Conclusions of Law entered by the court on August 3, 2001 on the ground that "the Court accepted and relied upon unverified, and unauthenticated exhibits, and an unsworn declaration to arrive at such decision for purposes of summary judgment. No objection was

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<sup>3/</sup> Hawai'i Rules of Civil Procedure Rule 56(e) states as follows:

Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

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made, but none was necessary."<sup>4/</sup> Upon a review of the record, we conclude that these challenges have no merit because Rule 7(g) of the Rules of the Circuit Courts of the State of Hawai'i (Supp. 2006) states as follows:

**Declaration in lieu of affidavit.** In lieu of an affidavit, an unsworn declaration may be made by a person, in writing, subscribed as true under penalty of law, and dated, in substantially the following form:

I, (name of person), do declare under penalty of law that the foregoing is true and correct.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Bringas challenges the summary judgment against him on the ground that "the Circuit Court exclusively relied upon the outcome of Chicago Title's April 10, 2001 motion for summary judgment against Blanco, which was based on unverified, and unauthenticated exhibits, and an unsworn declaration." Upon a review of the record, we conclude that this challenge has no merit. We further conclude that Bringas failed to satisfy the following burden imposed upon him:

"Once the movant has satisfied the initial burden of showing that there is no genuine issue of material fact, the opposing

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<sup>4/</sup> On May 4, 2004, in support of the position of Chicago Title that the argument by Third-Party Defendant-Appellant A. Eduardo G. Bringas that the "declaration" did not satisfy the applicable rules, attorneys Neil F. Hulbert, Jade Lynne Ching, and Laura P. Couch of the law firm of Alston Hunt Floyd & Ing filed a supplemental declaration citing this court's Summary Disposition Order entered on January 26, 2004, in appeal No. 24391, and stating that "[a]lthough not a published decision, Chicago Title brings it to this Court's attention because in its decision to uphold an award of summary judgment, the Court in [appeal No. 24391] relied upon the declaration - not the affidavit[.]" This citation is a clear violation of the Hawai'i Rules of Appellate Procedure Rule 35(c) (Supp. 2006) which states: "*Citation.* A memorandum opinion or unpublished dispositional order shall not be cited in any other action or proceeding except when the opinion or unpublished dispositional order establishes the law of the pending case, *res judicata* or collateral estoppel, or in a criminal action or proceeding involving the same respondent." In the future, sanctions will be imposed for such a violation of the applicable rules.

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party must come forward, through affidavit or other evidence, with specific facts showing that there is a genuine issue of material fact." [Miller v. Manuel, 9 Haw. App. 56, 65, 828 P.2d 286, 292 (1991) (Citation omitted)]. If the non-moving party fails to meet this burden, the moving party is entitled to summary judgment as a matter of law.

Hall v. State, 7 Haw. App. 274, 284, 756 P.2d 1048, 1055 (1988).

Thus, "[a] party opposing a motion for summary judgment cannot discharge his or her burden by alleging conclusions, 'nor is [the party] entitled to a trial on the basis of a hope that [the party] can produce some evidence at that time.'" Henderson v. Prof'l Coatings Corp., 72 Haw. 387, 401, 819 P.2d 84, 92 (1991) (quoting 10A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure: Civil 2d § 2727 (1983)).

Joy A. McElroy, M.D., Inc. v. Maryl Group, Inc., 107 Hawai'i 423, 429, 114 P.3d 929, 935 (App. 2005).

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the circuit court's September 10, 2003 First Amended Judgment Re: (1) Judgment Entered on August 3, 2001 [against all Defendants except Lorrie C. Rumbaugh] and (2) Judgment Entered on August 3, 2001 [against Lorrie C. Rumbaugh] is affirmed.

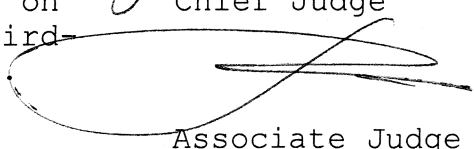
DATED: Honolulu, Hawai'i, May 5, 2006.

On the briefs:

Brian K. Yomono on the reply brief (Ronald T. Fujiwara on the opening brief) for Third-Party Defendant-Appellant.

  
Chief Judge

Neil F. Hulbert,  
Jade Lynne Ching, and  
Laura P. Couch  
(Alston Hunt Floyd & Ing)  
for Third-Party Defendant-  
Appellee Chicago Title  
Insurance Company.

  
Associate Judge

  
Associate Judge