

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 26634

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

WELLS FARGO HOME MORTGAGE, INC., a California corporation,
Plaintiff/Counterclaim Defendant-Appellee/Cross-
Appellee, v. JOSEPH A. DE REGO, GWENDOLYN K. DE REGO,
Defendants/Cross-Claim Defendants-Appellants/Cross-
Appellees, ICI FUNDING CORPORATION, and JOHN and MARY
DOES 1-20, DOE PARTNERSHIPS, CORPORATIONS or OTHER
ENTITIES 1-20, Defendants/Cross-Claim Defendants-
Appellees, and PAMELA CAMERON, Intervening Defendant/
Counterclaimant/Cross-Claimant Appellee/Cross-
Appellant

APPEAL FROM THE CIRCUIT OF THE SECOND CIRCUIT
(Civ. No. 99-0175(1))

SUMMARY DISPOSITION ORDER

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

Defendants/Cross-Claim Defendants-Appellants/Cross-
Appellees Joseph A. De Rego and Gwendolyn K. De Rego
(collectively "De Regos") appeal from the judgments of the
Circuit Court of the Second Circuit (circuit court)¹ in favor of
Intervening Defendant/Counterclaimant/Cross-Claimant
Appellee/Cross-Appellant Pamela Cameron (Cameron). Specifically,
the De Regos appeal the May 13, 2003 order and judgment granting
in part Cameron's cross-motion for summary judgment, and the
May 17, 2004 Amended Final Judgment.

Cameron cross-appeals from the circuit court's
May 13, 2003 order and judgment denying her request for
reasonable attorneys' fees and costs pursuant to Hawaii Revised

¹ The Honorable Joel E. August presided.

KHAMAKAOU
CLERK, APPELLATE COURTS
STATE OF HAWAII

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Statutes (HRS) § 607-14.5 (Supp. 2006) and the May 17, 2004 Amended Final Judgment.

This appeal and cross-appeal arose from the foreclosure and sale by Plaintiff/Counterclaim Defendant-Appellee/Cross-Appellee Wells Fargo Home Mortgage, Inc. (Wells Fargo)² of a property owned and mortgaged by the De Regos located in the County of Maui (Property). Cameron purchased the Property at the foreclosure sale.

After a careful review of the issues raised, arguments advanced, law relied upon, and the record in the instant case, we dispose of the De Regos' appeal and Cameron's cross-appeal as follows:

1. The circuit court did not err when it granted summary judgment in favor of Cameron. Based on City Bank v. Saje Ventures II, 7 Haw. App. 130, 133, 748 P.2d 812, 814 (1988), "the right of a good faith purchaser to receive property acquired at a judicial sale cannot be affected by the reversal of an order ratifying the sale where a supersedeas bond has not been filed" (internal brackets and quotation marks omitted). Here, the De Regos failed to file a supersedeas bond required to obtain a stay under Hawai'i Rules of Civil Procedure Rule 62(d) which permitted Plaintiff Norwest Mortgage, Inc. to proceed with the

² On April 11, 2003, the Circuit Court of the Second Circuit substituted Plaintiff/Counterclaim Defendant-Appellee/Cross-Appellee Wells Fargo Home Mortgage, Inc. as Plaintiff in place of the original Plaintiff, Norwest Mortgage, Inc.

sale of the Property to Cameron. They thereby failed to avail themselves of the mechanism that would have preserved the issue for review. Thus, the sale of the Property cannot be undone and Cameron was entitled to judgment as a matter of law.

2. In addition, the De Regos' argument that the alleged Truth-in-Lending violation created a jurisdictional defect that rendered the foreclosure sale void is without merit. The De Regos fail to provide any discernible argument as to the nature or the applicability of the term "subject matter enforcement jurisdiction." Under Citicorp Mortgage, Inc. v. Bartolome, 94 Hawaii 422, 434, 16 P.3d 827, 839 (App. 2000), even if the Note and Mortgage were void and unenforceable under the Truth-in-Lending Act, that determination "would not oust personal or subject matter jurisdiction." Thus, the circuit court's jurisdiction over the summary judgment motion was proper.

3. Lastly, the circuit court did not err in denying Cameron's request for attorneys' fees pursuant to HRS § 607-14.5. The circuit court did not make a specific finding in writing that the De Regos claims and defenses were, in whole or in part, frivolous, and Cameron failed to demonstrate that the De Regos claims were manifestly and palpably without merit. See Coll v. McCarthy, 72 Haw. 20, 804 P.2d 881 (1991). Thus, the circuit court did not abuse its discretion in denying Cameron's request for attorneys' fees.

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Therefore,

IT IS HEREBY ORDERED that the May 13, 2003 order and judgment and the May 17, 2004 Amended Final Judgment of the Circuit Court of the Second Circuit are affirmed.

DATED: Honolulu, Hawai'i, May 17, 2007.

On the briefs:

Gary Victor Dubin,
for Defendants/Cross-Claim
Defendants-Appellants/Cross-
Appellees.



Chief Judge

Wayne Nasser
Kevin W. Herring
(Ashford & Wriston),
for Intervening Defendant/
Counterclaimant/Cross-
Claimant Appellee/Cross-
Appellant.



Associate Judge



Associate Judge