

*** NOT FOR PUBLICATION ***

NO. 23844

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

JOHN L. OLSON, Personal Representative of the Estate of Soledad
Santa Cruz Coronel, aka Soledad S. Coronel, Deceased,
Plaintiff-Appellee

vs.

PAUL KAY CORONEL, Defendant-Appellee/Cross-Appellant

and

AMERICAN SAVINGS BANK, F.S.B., formerly American Savings and Loan
Association, Defendant-Appellant/Cross-Appellee

and

SHERRIE KAY CORONEL, Defendant-Appellee

AMERICAN SAVINGS BANK, F.S.B., formerly American Savings and Loan
Association, Plaintiff-Appellant/Cross-Appellee

vs.

PAUL KAY CORONEL, Defendant-Appellee/Cross-Appellant

and

SHERRIE KAY CORONEL, JOHN L. OLSON, Personal Representative of
the Estate of Soledad Santa Cruz Coronel, aka Soledad S. Coronel,
Deceased, JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10,
DOE CORPORATIONS 1-10, DOE ENTITIES 1-10, DOE GOVERNMENTAL UNITS
1-10, Defendants-Appellees

APPEAL FROM THE THIRD CIRCUIT COURT
(CIV. NOS. 87-0061 AND 93-354K)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ)

Defendant-appellee/cross-appellant and defendant-
appellee/cross-appellant Paul Kay Coronel (Coronel) appeals from
the June 15, 2000 judgment of the circuit court of the third

*** NOT FOR PUBLICATION ***

circuit, the Honorable Ronald Ibarra presiding, invalidating a deed to property located in Kailua-Kona, Hawai'i (the Property). Defendant-appellant/cross-appellee and plaintiff-appellant/cross-appellee American Savings Bank, F.S.B. (ASB), and Coronel also appeal from the October 23, 2000 judgment of the circuit court (1) taxing against Coronel ASB's attorneys' fees and costs of foreclosing a mortgage (the ASB Mortgage) on the Property, and (2) denying ASB's request to satisfy those fees and costs from the foreclosure proceeds.

On appeal from the June 15, 2000 judgment, Coronel contends that: (1) the circuit court erred in not dismissing a complaint filed by John L. Olson (Olson), personal representative for Coronel's mother, Soledad Santa Cruz Coronel (Soledad), insofar as the complaint stated a claim for wrongful death that was barred by the statute of limitations; (2) the circuit court "punished" Coronel by entering orders adverse to him even though the wrongful death claim against him was dismissed; (3) the circuit court violated federal and state prohibitions against double jeopardy by subjecting Coronel to a second prosecution and multiple punishments; (4) as a "prevailing party," Coronel is entitled to attorneys' fees and costs; (5) the circuit court erred in denying Coronel's motion to amend the judgment; (6) the circuit court committed error in retroactively sanctioning Coronel based upon a disability absent the required notice and hearing; and (7) ASB's theory of the case ignores basic record facts and law violations.

On appeal from the October 23, 2000 judgment, ASB argues that the circuit court abused its discretion in declining to allocate the foreclosure proceeds to satisfy its fees and costs because: (1) the ASB Mortgage secured repayment of all reasonable attorneys' fees and costs of foreclosing the mortgage;

*** NOT FOR PUBLICATION ***

(2) insofar as ASB's loan to Coronel discharged a prior mortgage encumbering the Property, equitable subrogation entitled ASB to (a) enforce the prior mortgagee's right to attorneys' fees and costs, and (b) revive the discharged mortgage to secure repayment of those fees and costs from the foreclosure proceeds; (3) ASB is entitled to attorneys' fees under Hawai'i Revised Statutes (HRS) § 607-14; (4) ASB is entitled to its costs; (5) the allocation of foreclosure proceeds was patently inequitable; and (6) the court's allocation of foreclosure proceeds rewrote the ASB Mortgage and the promissory note it secured.

Also appealing from the October 23, 2000 judgment, Coronel argues that the circuit court erred in taxing ASB's attorneys' fees and costs against him, inasmuch as he is a "prevailing party" under HRS § 607-14 and is therefore not liable for any such fees or costs.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advanced and the issues raised, we hold that: (1) this court has no appellate jurisdiction over Coronel's appeal from the June 15, 2000 judgment because Coronel's notice of appeal was untimely, see Hawai'i Rules of Appellate Procedure 4(a)(3); (2) as Coronel had no mortgagable interest in the Property to grant, the ASB Mortgage was invalid and of no security for ASB's attorneys' fees and costs, see, e.g., Pennock v. Coe, 64 U.S. (23 How.) 117, 128 (1859) ("[W]henever a [party] undertakes, by deed or mortgage, to grant property, real or personal, in presenti, which does not belong to him or has no existence, the deed or mortgage, as the case may be, is inoperative and void, and this either in a court of law or equity."); Ladder Energy Co. v. Intrust Bank, 931 P.2d 83, 85 (Okla. Civ. App. 1996) ("It is fundamental that a party may not

*** NOT FOR PUBLICATION ***

mortgage an interest in property greater than that which it owns," such that "a party cannot give a valid mortgage in property in which it has no interest."); Lange v. Wyoming Nat'l Bank of Casper, 706 P.2d 659, 663 (Wyo. 1985) ("The mortgage is void by virtue of the fact that it was based on an invalid deed."); Jennings Realty Corp. v. First Nat'l Bank of N. Vernon, 485 N.E.2d 149, 152 (Ind. Ct. App. 1985) ("Generally, one who has no ownership interest in property has no right to mortgage it without the owner's consent."); Ins. Co. of N. Am. v. First Nat'l Bank of Cincinnati, 444 N.E.2d 456, 459 (Ohio Ct. App. 1981) (declaring mortgage a "nullity" and "of no legal consequence" when given by one not having "legal and equitable titles to the subject property"); (3) the circuit court did not abuse its discretion in declining to deduct ASB's attorneys' fees and costs from the foreclosure proceeds, inasmuch as (a) the doctrine of equitable subrogation does not require the subrogee to be equitably assigned the entire obligation owed the subrogor when equitable considerations warrant only a partial assignment, (b) in this case, the circuit court ordered Olson to file the quiet title action that challenged the ASB Mortgage's validity, and (c) in light of that order, the circuit court was within its discretion to conclude that, as a matter of equity, ASB should not be subrogated to the prior mortgagee's right to recover the fees and costs of foreclosure, see generally, Jenkins v. Wise, 58 Haw. 592, 598, 574 P.2d 1337, 1342 (1978) (trial courts have equitable power "to fashion a decree to conform to the equitable requirements of the situation"); Fleming v. Napili Kai, Ltd., 50 Haw. 66, 70, 430 P.2d 316, 319 (1967) ("One of the glories of equity jurisprudence is that it . . . can mold its decrees to do justice amid all the vicissitudes and intricacies of life."); (4) ASB's remaining arguments are duplicative and therefore without

*** NOT FOR PUBLICATION ***

merit; and (5) the circuit court did not abuse its discretion in taxing attorneys' fees and costs against Coronel, inasmuch as (a) Coronel executed and delivered the promissory note upon which ASB's foreclosure action was based, (b) the note obligated Coronel to pay ASB's attorneys' fees and costs in the event of default, and (c) Coronel defaulted on the note. Therefore,

IT IS HEREBY ORDERED that Coronel's appeal from the June 15, 2000 judgment is dismissed, and the October 23, 2000 judgment is affirmed.

DATED: Honolulu, Hawai'i, February 11, 2005.

On the briefs:

Neil F. Hulbert & Jade Lynne
Ching of Alston, Hunt, Floyd &
Ing for the defendant-appellant/
cross-appellee and plaintiff-
appellant/cross-appellee
American Savings Bank, F.S.B.

John L. Olson, for plaintiff-
appellee and defendant-appellee
Personal Representative of the
Estate of Soledad Santa Cruz
Coronel

Paul Kay Coronel, defendant-
appellee/cross-appellant pro se