

**Electronically Filed
Intermediate Court of Appeals
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NO. CAAP-20-0000760

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

U. S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE FOR ADJUSTABLE RATE MORTGAGE TRUST 2005-2,
ADJUSTABLE RATE MORTGAGE-BACKED PASSTHROUGH CERTIFICATES,
SERIES 2005-2, Plaintiff-Appellee, v.
THE ESTATE OF STUART D. EDWARDS also known as
STUART DENZIL EDWARDS; KELLY EDWARDS also known as
KELLY ANNE EDWARDS, INDIVIDUALLY, AND AS TRUSTEE OF THE EDWARDS
FAMILY TRUST U/D/T DATED SEPTEMBER 19, 1996,
Defendants-Appellants,
and DOES 1 through 20, inclusive, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 3CC15100031K)

ORDER

(By: Hiraoka, Presiding Judge, Wadsworth and Nakasone, JJ.)

Upon consideration of self-represented Defendant-Appellant Kelly Anne Edwards's (**Edwards**) March 18, 2021 "Motion for Reconsideration of Order Dismissing Appeal for Lack of Appellate Jurisdiction Entered on March 9, 2021 (**Dismissal Order**)" (**Motion to Reconsider Dismissal Order**), the papers in support, and the record, it appears that the court misapprehended the effective filing date of Edwards's "Non-Hearing Motion (1) for Reconsideration of the Order Granting in Part and Denying in Part, that Portion of the Order Denying [Edwards's], et al., Non-Hearing Motion for Order for 60 Day Leave of Court to File Counterclaim and Enjoin Necessary Parties to Plaintiff's

Complaint Filed January 30, 2015, filed April 22 2020" (**Motion to Reconsider Circuit Court Order**). Consequently, the Motion to Reconsider Circuit Court Order tolled the time to file the notice of appeal, and the notice of appeal was filed on December 16, 2020, within thirty days after entry of the November 17, 2020 order denying the Motion to Reconsider Circuit Court Order. See Hawai'i Rules of Appellate Procedure (**HRAP**) Rules 4(a)(3) & 40(b); Ass'n of Condo. Homeowners of Tropics at Waikele ex rel. Bd. of Directors v. Sakuma, 131 Hawai'i 254, 256, 318 P.3d 94, 96 (2013); Simpson v. Dep't of Land & Nat. Res., 8 Haw. App. 16, 21, 791 P.2d 1267, 1272 (1990), *overruled on other grounds by Kaniakapupu v. Land Use Comm'n*, 111 Hawai'i 124, 139 P.3d 712; Doe v. Doe, 98 Hawai'i 144, 151, 44 P.3d 108, 1092 (2002); HSBC Bank USA Nat'l Ass'n v. Collman, No. CAAP-13-0005087, 2014 WL 138945, at *1 (App. Apr. 9, 2014) (order granting HRAP Rule 40 motion for reconsideration of order dismissing appeal for lack of appellate jurisdiction and reinstating appeal).

However, Edwards has not presented any point of law or fact that the court overlooked or misapprehended when it held in its Dismissal Order that the Circuit Court of the Third Circuit's September 1, 2020 "Order Granting in Part and Denying in Part [Edwards's], et al., Non-Hearing Motion for Order for 60 Day Leave of Court to File First Amended Answer to Edwards's Complaint Filed January 30, 2015; and to File Counterclaims and Enjoin Necessary Parties, filed April 22, 2020" (**Circuit Court Order**) is not final and appealable or independently appealable. See HRAP Rule 40(b).

Therefore, IT IS HEREBY ORDERED that the Motion to Reconsider Dismissal Order is granted in part and denied in part as follows:

1. The request to reconsider the holding that the appeal is dismissed as untimely is granted, and that part of the Dismissal Order is vacated.

2. The request to reconsider the court's holding that the appeal is dismissed because the Circuit Court Order is not final and appealable or independently appealable is denied.

DATED: Honolulu, Hawai'i, April 1, 2021.

/s/ Keith K. Hiraoka
Presiding Judge

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Karen T. Nakasone
Associate Judge