

**Electronically Filed  
Intermediate Court of Appeals  
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NO. CAAP-19-0000307

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR  
MASTR ADJUSTABLE RATE MORTGAGES TRUST 2006-0A1,  
MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-0A1,  
Plaintiff/Counterclaim Defendant-Appellee,  
v.  
MICHAEL DAVID GOYNE, Defendant/Counterclaimant/  
Cross-claim Plaintiff/Cross-claim Defendant-Appellant,  
and  
ASSOCIATION OF APARTMENT OWNERS OF KO OLINA KAI GOLF  
ESTATES & VILLAS, Defendant/Cross-claim Defendant/  
Cross-claim Plaintiff-Appellee,  
and  
KO OLINA COMMUNITY ASSOCIATION, INC.,  
Defendant/Cross-claim Defendant-Appellee,  
and  
AMERICAN HOME MORTGAGE; CITIBANK (SOUTH DAKOTA), N.A.;  
CAPITAL ONE BANK (USA), N.A., Defendants-Appellees,  
and  
JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10;  
DOE CORPORATIONS 1-10; DOE ENTITIES 1-10; and DOE  
GOVERNMENTAL UNITS 1-10, Defendants  
and  
HOLDEN KAMUELA KAYA LAU and EMILY COLLEEN WO,  
Intervenors-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 15-1-0441)

SUMMARY DISPOSITION ORDER

(By: Ginoza, C.J., and Wadsworth and McCullen, JJ.)

This appeal arises out of a foreclosure action brought by Plaintiff/Counterclaim Defendant-Appellee U.S. Bank National Association, as Trustee for Mastr Adjustable Rate Mortgages Trust

2006-0A1, Mortgage Pass-Through Certificates, Series 2006-0A1 (**U.S. Bank**) against Defendant/Counterclaimant/Cross-Claim Plaintiff/Cross-Claim Defendant-Appellant Michael David Goyne (**Goyne**), as well as various other defendants.<sup>1/</sup> Goyne appeals from the March 4, 2019 "Judgment on Findings of Fact, Conclusions of Law and Order Granting [U.S. Bank's] Motion for Summary Judgment and Decree of Foreclosure Against All Defendants on Complaint Filed March 12, 2015" (**Foreclosure Judgment**), entered in favor of U.S. Bank and against all defendants by the Circuit Court of the First Circuit (**Circuit Court**). Goyne also challenges the March 4, 2019, "Findings of Fact, Conclusions of Law and Order Granting [U.S. Bank's] Motion for Summary Judgment and Decree of Foreclosure Against All Defendants on Complaint Filed March 12, 2015" (**Foreclosure Decree**).<sup>2/</sup>

For the reasons discussed below, we conclude that this appeal must be dismissed as moot.

### **I. Background**

On March 12, 2015, U.S. Bank filed a complaint for foreclosure against Goyne and the Other Defendants.

On June 9, 2015, Goyne filed an answer to the complaint, a counterclaim against U.S. Bank, and a cross-claim against AOA Ko Olina and Ko Olina Community Association.

On April 9, 2015, and August 27, 2015, Ko Olina Community Association and AOA Ko Olina, respectively, filed answers to U.S. Bank's complaint. It appears that none of the remaining defendants answered the complaint.

On June 30, 2015, AOA Ko Olina filed an answer to Goyne's cross-claim and a cross-claim against Goyne. On

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<sup>1/</sup> They include Defendant/Cross-claim Defendant/Cross-claim Plaintiff-Appellee Association of Apartment Owners of Ko Olina Kai Golf Estates & Villas (**AOAO Ko Olina**), Defendant/Cross-Claim Defendant-Appellee Ko Olina Community Association, Inc. (**Ko Olina Community Association**), and Defendants-Appellees American Home Mortgage, Citibank (South Dakota), N.A., and Capital One Bank (USA), N.A. (collectively, the **Other Defendants**).

<sup>2/</sup> The Honorable Keith K. Hiraoka presided over the April 12, 2018 hearing of "[U.S. Bank's] Motion for Summary Judgment and Decree of Foreclosure Against All Defendants on Complaint Filed March 12, 2015" (**Motion for Summary Judgment and Foreclosure Decree**). The Honorable James S. Kawashima entered the Foreclosure Decree and the Foreclosure Judgment.

September 25, 2015, Ko Olina Community Association filed an answer to Goyne's cross-claim.

On November 29, 2016, Goyne filed an answer to AOA Ko Olina's cross-claim, and later the same day, AOA Ko Olina filed an amended cross-claim against Goyne. On December 14, 2016, Goyne filed an answer to AOA Ko Olina's amended cross-claim.

On March 19, 2018, U.S. Bank filed the Motion for Summary Judgment and Foreclosure Decree.

On March 4, 2019, the Circuit Court entered the Foreclosure Decree and the Foreclosure Judgment. The Foreclosure Judgment did not resolve the counterclaim or the cross-claims, which appear to remain pending in the Circuit Court.

On March 21, 2019, Goyne filed a motion to vacate the Foreclosure Decree and the Foreclosure Judgment (**Motion to Vacate**), pursuant to Hawai'i Rules of Civil Procedure (**HRCP**) Rule 60. Goyne argued that the Foreclosure Decree and the Foreclosure Judgment were void because they did not resolve all outstanding claims between the parties. The record on appeal does not contain a written order resolving the Motion to Vacate,<sup>3/</sup> and it appears that Goyne did not file a notice of appeal from such an order.

On April 1, 2019, Goyne filed a notice of appeal from the Foreclosure Judgment, initiating this appeal.

On June 19, 2019, Goyne filed in this court a "Stay Motion Pending Appeal" (**First Stay Motion**), which referred this court to an attached April 9, 2019 motion for stay filed in the Circuit Court (**Circuit Court stay motion**) and asked this court to grant a stay on the ground that "the trial court committed reversible errors."<sup>4/</sup> On July 24, 2019, this court issued an

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<sup>3/</sup> The Circuit Court docket, which is part of the record on appeal, indicates that the Circuit Court held an April 1, 2019 hearing on the Motion to Vacate, and issued an April 8, 2019 minute order denying the motion and instructing U.S. Bank's counsel to prepare the order.

<sup>4/</sup> In the Circuit Court stay motion, Goyne argued that the Circuit Court violated Bank of America v. Reyes-Toledo (Reyes-Toledo I), 139 Hawai'i 361, 390 P.3d 1248 (2017), and Bank of America v. Reyes-Toledo (Reyes-Toledo II), 143 Hawai'i 249, 428 P.3d 761 (2018), when it entered the Foreclosure Judgment without deciding the pending counterclaim and cross-claims. Goyne also requested that the court allow the foreclosed property (the **Property**) to serve as alternative security in lieu of a supersedeas bond.

order denying without prejudice the First Stay Motion on the bases that Goyme failed to present "the reasons for the relief requested and the facts relied upon" or provide "such copies of parts of the record as are relevant" as required by Hawai'i Rules of Appellate Procedure (**HRAP**) Rule 8.

On August 6, 2019, Goyme filed a "Second Stay Motion Pending Appeal" (**Second Stay Motion**) in this court. He argued that the Circuit Court violated Reyes-Toledo I and Reyes-Toledo II when it entered the Foreclosure Decree and the Foreclosure Judgment and ordered the sale of the Property while Goyme's counterclaim and "crossclaim against the Association" remained pending. Citing to Shanghai Inv. Co. v. Alteka Co., 92 Hawai'i 482, 503-04, 993 P.2d 516, 537-38 (2000), Goyme also asked the court to allow the Property to secure the stay in lieu of a supersedeas bond. Goyme stated that "[t]he trial court . . . denied Goyme's stay motion but again the record on appeal does not contain such order . . . ."<sup>5/</sup>

On August 12, 2019, U.S. Bank opposed the Second Stay Motion. U.S. Bank argued, among other things, that Goyme had failed to satisfy HRAP Rule 8(b) and the Property's value would not adequately secure U.S. Bank's interest.

On August 21, 2019, this court issued an order denying the Second Stay Motion on the bases that Goyme had failed to demonstrate: (1) entitlement to a stay, citing Life of the Land v. Ariyoshi, 59 Haw. 156, 158, 577 P.2d 1116, 1118 (1978), and Stop Rail Now v. Decosta, 120 Hawai'i 238, 243, 203 P.3d 658, 663 (App. 2008); and (2) that the Property should be allowed to serve as a supersedeas bond.

Briefing in this appeal was completed on November 7, 2019.

On July 26, 2021, Goyme filed in this appeal a "Supplemental Notice of Appeal From Post Judgment Order, Judgment and Writ of Possession" (**First Supplemental NA**). The First

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<sup>5/</sup> In fact, the record on appeal does not contain a Circuit Court order resolving the Circuit Court stay motion, and Goyme did not move to supplement the record on appeal with, or file a notice of appeal from, any such order.

Supplemental NA contains no body text; it consists of the title, the date and signature line, and appendices that appear to comprise copies of the following documents entered on July 15, 2021, by the Circuit Court:<sup>6/</sup> (1) "Order Granting Plaintiff's Motion for Confirmation of Sale by Commissioner" (**2021 Confirmation Order**); (2) "Judgment on Order Granting Plaintiff's Motion for Confirmation of Sale by Commissioner" (**2021 Confirmation Judgment**); and (3) "Writ of Possession" (**2021 Writ of Possession**). The record on appeal does not contain these three documents, and it appears that Goyne did not file a separate notice of appeal from any of them.

On April 21, 2023, Goyne filed in this appeal a "Supplemental Notice of Appeal From Post Judgment Order Confirming Sale and Distribution; Judgment Thereon and Writ of Possession" (**Second Supplemental NA**). The Second Supplemental NA contains no body text; it consists of the title, the date and signature line, and appendices that appear to comprise copies of the following documents entered on April 19, 2023, by the Circuit Court:<sup>7/</sup> (1) "Order Granting Plaintiff's Motion for Confirmation of Sale by Commissioner and Order Directing Distribution of Deposit" (**2023 Confirmation Order**); (2) "Judgment on Order Granting Plaintiff's Motion for Confirmation of Sale by Commissioner and Order Directing Distribution of Deposit" (**2023 Confirmation Judgment**); and (3) "Writ of Possession" (**2023 Writ of Possession**). The record on appeal does not contain these three documents, and it appears that Goyne did not file a separate notice of appeal from any of them.

On May 24, 2023, Intervenors-Appellees Holden Kamuela Kaya Lau (**Lau**) and Emily Colleen Wo (**Wo**) filed a motion to intervene in and dismiss this appeal (**Motion to Intervene and Dismiss**). Lau and Wo contend that they are good-faith, third-party purchasers of the Property, and the appeal should be dismissed as moot because, (1) the Property "has been conveyed

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<sup>6/</sup> The Honorable John M. Tonaki presided.

<sup>7/</sup> The Honorable John M. Tonaki presided.

via judicial sale to good-faith, third-party purchasers," i.e., Lau and Wo; (2) "Goyne failed to post a supersedeas bond and/or obtain a stay pending appeal"; (3) "Goyne has not raised any meritorious arguments on appeal contesting the Circuit Court's jurisdiction"; and (4) "Goyne failed to record a memorandum of this appeal in the Office of the Assistant Registrar of the Land Court in accordance with Section 501-151 of the Hawaii Revised Statutes [(HRS)] prior to the commissioner's conveyance of the [P]roperty" to Lau and Wo. The Motion to Intervene and Dismiss is supported by declarations of Lau and counsel for Lau and Wo, with attached certified copies of: (A) the 2023 Confirmation Order; (B) the 2023 Confirmation Judgment; (C) a "Commissioner's Apartment Deed," recorded in the Office of the Assistant Registrar of the Land Court on May 24, 2023, as Document No. T-12196079, and reflecting the conveyance of the Property to Lau and Wo; and (D) a "State of Hawaii Certificate of Title," Certificate No. 788351 (**Certificate of Title**), reflecting Goyne's prior ownership of the Property.

On May 31, 2023, Goyne filed an opposition to the Motion to Intervene and Dismiss (**Opposition**), arguing, among other things, that "the good faith purchaser acquires the property at a judicial sale free of liens existing of record," and "the buyer takes free and clear of any claims of Defendant Goyne and all other parties in the foreclosure[; t]herefore, this motion is absolutely frivolous and unjustified and so must be denied." Goyne also argues that this appeal "falls within the three exceptions to the mootness doctrine . . . ."

On June 1, 2023, U.S. Bank filed a joinder in the Motion to Intervene and Dismiss.

## **II. Discussion**

### **A. Jurisdiction**

In his corrected opening brief, Goyne asserts points of error A through E, challenging the Foreclosure Decree and the Foreclosure Judgment on various grounds. Goyne also asserts the following points of error:

- F. The Trial Court Reversibly Erred Denying Goynes motion to vacate the March 4, 2019 Findings of Fact, Conclusions of Law and Order on Motion for Summary Judgment. Currently not in the Record on Appeal and the record needs to be supplemented.
- G. The Trial Court Reversibly Erred Denying Goynes stay motion which at this time is not in the Record on Appeal.

(Emphases added.)

As to points of error F and G, we do not have jurisdiction to review Goynes contentions regarding the Motion to Vacate and the Circuit Court motion to stay. There is no written order disposing of either motion in the record, and no notice of appeal regarding either motion.<sup>8/</sup> See Beneficial Hawaii, Inc. v. Casey, 98 Hawai'i 159, 165, 45 P.3d 359, 365 (2002) (holding that a notice of appeal from the circuit court's disposition of an HRCF Rule 60(b) motion relating to the matters finally determined in a foreclosure decree must be filed within thirty days of the entry of the HRCF Rule 60(b) judgment in order for appellate jurisdiction to exist). Accordingly, we lack jurisdiction over the Motion to Vacate, the Circuit Court motion to stay, and Goynes related contentions on appeal.

Goynes, who has been represented by counsel throughout this appeal, also filed in this appeal the July 26, 2021 First Supplemental NA and the April 21, 2023 Second Supplemental NA. These "supplemental" notices of appeal purport to appeal from orders and judgments entered in the Circuit Court after entry of the Foreclosure Judgment and after the parties completed briefing in this appeal. "Since an amended notice of appeal relates back to the notice of appeal it purports to amend, it does not appeal

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<sup>8/</sup> Following the entry of an appealable final judgment, HRS § 641-1(a) authorizes an appeal from a post-judgment order that finally determines, and, thus, ends the post-judgment proceedings for a post-judgment motion. Ditto v. McCurdy, 103 Hawai'i 153, 157, 80 P.3d 974, 978 (2003) (citing Familian Northwest, Inc. v. Cent. Pac. Boiler & Piping, Ltd., 68 Haw. 368, 369, 714 P.2d 936, 937 (1986)). For example, "[a]n order denying a motion for post-judgment relief under HRCF [Rule] 60(b) is an appealable final order under HRS § 641-1(a)." Id. at 160, 80 P.3d at 981 (citing First Trust Co. of Hilo v. Reinhardt, 3 Haw. App. 589, 592, 655 P.2d 891, 893 (1982)). Furthermore, a post-judgment order that finally determines a post-judgment motion for a "stay of proceedings is an appealable final order under HRS § 641-1(a) . . . ." Chun v. Bd. of Trs. of the Emps' Ret. Sys. of the State of Hawai'i, 106 Hawai'i 416, 430 n. 13, 106 P.3d 339, 353 n. 13 (2005).

an order, judgment, or decree entered subsequent to the notice of appeal it purports to amend." Koyo Corp. v. Hirayama, No. CAAP-18-0000863, 2022 WL 3133487, at \*1 (Haw. App. Aug. 5, 2022) (quoting Enos v. Pac. Transfer & Warehouse, Inc., 80 Hawai'i 345, 355-56, 910 P.2d 116, 126-27 (1996)) (internal quotation marks omitted) (ruling that "supplemental notices of appeal" filed after the completion of briefing were invalid). Thus, the First Supplemental NA is invalid in this appeal as to the 2021 Confirmation Order, the 2021 Confirmation Judgment, and the 2021 Writ of Possession; the Second Supplemental NA is invalid in this appeal as to the 2023 Confirmation Order, the 2023 Confirmation Judgment, and the 2023 Writ of Possession.<sup>9/</sup>

## **B. Intervention**

In the Motion to Intervene and Dismiss, Lau and Wo move this court for an order granting them leave to intervene in this appeal pursuant to HRAP Rule 2.1(a)<sup>10/</sup> and HRCF Rule 24 "for the purpose of seeking dismissal in their favor on grounds of mootness".<sup>11/</sup> See Bank of New York Mellon v. R. Onaga, Inc., 140

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<sup>9/</sup> We also note that the identified orders and judgments, as well as any underlying motions, oppositions, exhibits and hearing transcripts, are not part of the record on appeal or any supplemental record on appeal. "The law is clear in this jurisdiction that the appellant has the burden of furnishing the appellate court with a sufficient record to positively show the alleged error." Bettencourt v. Bettencourt, 80 Hawai'i 225, 230, 909 P.2d 553, 558 (1995) (quoting Union Bldg. Materials Corp. v. Kakaako Corp., 5 Haw. App. 146, 151, 682 P.2d 82, 87 (1984)); see HRAP Rule 10 (setting forth the various items that an appellant must include in the record on appeal). Thus, even if Goyne had properly appealed from the identified orders and judgments, we would have no basis upon which to review the Circuit Court's decisions.

<sup>10/</sup> HRAP Rule 2.1(a) provides, in relevant part:

**Applicability of other court rules.** The Hawai'i Rules of Civil Procedure . . . are hereby adopted as part of these rules whenever applicable.

<sup>11/</sup> HRCF Rule 24(a) provides, in relevant part:

**Intervention of right.** Upon timely application anyone shall be permitted to intervene in an action: . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.



Hawai'i 358, 363, 400 P.3d 559, 564 (2017) ("The ICA permitted the [purchasers of foreclosed property] to intervene for the limited purpose of 'addressing whether the appeal is moot.'"); Wells Fargo Bank v. Erum, No. CAAP-15-0000742, 2017 WL 5508290, at \*1 (Haw. App. Nov. 17, 2017) (noting that the purchaser of foreclosed property moved to intervene to file a motion to dismiss on mootness grounds and this court granted the motion to intervene). Lau and Wo contend that they should be permitted to intervene because: (1) their motion to intervene is timely; (2) they claim an ownership interest in the Property that is the subject of the underlying foreclosure action and this appeal; (3) disposition of the appeal in their absence would deprive them of their ability to protect their ownership interest in the Property; and (4) their ownership interest in the Property is not adequately represented by the other parties to this appeal.

In his Opposition, Goyne does not specifically refute these four bases for Lau and Wo's intervention; he argues more generally that the Motion to Intervene and Dismiss by "the foreclosure sale buyers" is unnecessary, because under City Bank v. Saje Ventures II, 7 Haw. App. 130, 748 P.2d 812 (1988), "the good faith purchaser acquires the property at a judicial sale free of liens existing of record, and the sale 'cannot be affected by the reversal of an order ratifying the sale where a [supersedeas bond] has not been filed.'" In other words, Goyne appears to recognize that Lau and Wo are good-faith purchasers of the Property.

We conclude that Lau and Wo have satisfied the requirements for intervention in this appeal. See Onaga, 140 Hawai'i at 363, 400 P.3d at 564; Erum, 2017 WL 5508290, at \*1. The motion to intervene is granted for the purpose of addressing whether the appeal is moot.

### **C. Mootness**

Under Hawai'i law, mootness is an issue of justiciability. See State v. Hewitt, 153 Hawai'i 33, 42, 526 P.3d 558, 567 (2023). The mootness doctrine applies "where events subsequent to the judgment of the trial court have so

affected the relations between the parties that the two conditions for justiciability relevant on appeal – adverse interest and effective remedy – have been compromised." Hamilton ex rel. Lethem v. Lethem, 119 Hawai'i 1, 5, 193 P.3d 839, 843 (2008) (quoting Lathrop v. Sakatani, 111 Hawai'i 307, 312-13, 141 P.3d 480, 495-86 (2006)). In short, "a case is moot if the reviewing court can no longer grant effective relief." Kaho'ohanohano v. State, 114 Hawai'i 302, 332, 162 P.3d 696, 726 (2007) (emphasis and brackets omitted) (quoting Kemp v. State of Hawai'i Child Support Enf't Agency, 111 Hawai'i 367, 385, 141 P.3d 1014, 1032 (2006)).

In City Bank, this court stated:

The general rule is that 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." Leisure Campground & Country Club Ltd. Partnership v. Leisure Estates, 280 Md. 220, 223, 372 A.2d 595, 598 (1977). See also Citibank, N.A. v. Data Lease Fin. Corp., 645 F.2d 333, 336 (5th Cir. 1981). The purpose of the rule is to advance "the stability and productiveness of judicial sales." 47 Am. Jur. 2d *Judicial Sales* § 55 (1969). An exception to the rule is where the reversal is based on jurisdictional grounds. Id. at § 54. The second exception is where the purchaser is the mortgagee since he "does not free himself from the underlying dispute to which he is a party." Leisure Campground, 280 Md. at 223, 372 A.2d at 598. See also 47 Am. Jur. 2d *Judicial Sales* §§ 59-61.

7 Haw. App. at 133, 748 P.2d at 814 (brackets omitted); see also Lathrop v. Sakatani, 111 Hawai'i 307, 313, 141 P.3d 480, 486 (2006) ("[T]he sale of the property prevents the appellate court from granting any effective relief.").

In Onaga, the Hawai'i Supreme Court expressly adopted the City Bank rule "for application to Land Court properties as well as properties administered pursuant to HRS Chapter 502 (Regular System)[,]" and held that "an appellant challenging a foreclosure must post a supersedeas bond or otherwise obtain a stay pursuant to HRCP Rule 62 or Hawai'i Rules of Appellate Procedure (HRAP) Rule 8." 140 Hawai'i at 367, 400 P.3d at 568. In sum:

A party who wishes to stay an order confirming a foreclosure sale pending appeal must post a supersedeas bond or otherwise obtain a stay pursuant to HRCP Rule 62 or HRAP Rule 8. If a stay is not obtained and the property is sold

to a bona fide purchaser, the appeal should be dismissed as moot because no effective relief can be granted.

Id. at 370, 400 P.3d at 571. "An innocent or good faith purchaser is one who, by an honest contract or agreement, purchases property or acquires an interest therein, without knowledge, or means of knowledge sufficient to charge him in law with knowledge, of any infirmity in the title of the seller." Id. at 367 n.13, 400 P.3d at 568 n.13 (quoting Ka'u Agribusiness Co. v. Heirs or Assigns of Ahulau, 105 Hawai'i 182, 193, 95 P.3d 613, 624 (2004)) (internal quotation marks omitted).

Here, Lau and Wo have submitted declarations and exhibits<sup>12/</sup> with their Motion to Intervene and Dismiss showing that: (1) at the March 1, 2023 hearing on U.S. Bank's motion to confirm the foreclosure sale of the Property, bidding was reopened and the Property was sold to Lau or his nominee for \$871,238.89; (2) the sale of the Property was confirmed via the 2023 Confirmation Order and the 2023 Confirmation Judgment; (3) the Commissioner's Apartment Deed conveyed the Property to Lau and Wo, husband and wife; (4) the Commissioner's Apartment Deed was recorded in the Office of the Assistant Registrar of the Land Court on May 24, 2023, as Document No. T-12196079 on Certificate No. 788351, reflecting the issuance of Certificate No. 1253882; and (5) Lau and Wo are not affiliated with or otherwise related to any of the parties, including U.S. Bank, in the underlying case.

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<sup>12/</sup> Lau and Wo ask us to take judicial notice, pursuant to Hawai'i Rules of Evidence (HRE) Rule 201, of the 2023 Confirmation Order, the 2023 Confirmation Judgment, the Commissioner's Apartment Deed, and the Certificate of Title, attached as Exhibits A-D to the Motion to Intervene and Dismiss. We take judicial notice of Exhibits A-D and note that Goyne does not dispute any of these exhibits; indeed, he relies on Exhibits A-C in the Opposition. See HRE Rule 201; State v. Abdon, 137 Hawai'i 19, 26, 364 P.3d 917, 924 (2016) ("The most frequent use of judicial notice of ascertainable facts is in noticing the content of court records." (quoting State v. Akana, 68 Haw. 164, 165, 706 P.2d 1300, 1302 (1985))); In re Thomas H. Gentry Revocable Tr., 138 Hawai'i 158, 171 n.8, 378 P.3d 874, 887 n.8 (2016) (taking judicial notice of a warranty deed transferring property because the deed was a matter of public record and easily verifiable); U.S. Bank Trust, N.A. as Trustee for LSF9 Master Participation Trust v. Ass'n of Apartment Owners of Waikoloa Hills Condominium Phase I, 150 Hawai'i 573, 584 n.12, 506 P.3d 869, 880 n.12 (App. 2022) (taking judicial notice of commissioner's apartment deed recorded in the Bureau of Conveyances); Central Pacific Bank v. Aikona Maui Properties, LLC, No. CAAP-12-0001032, 2013 WL 6231719, at \*1 (Haw. App. Nov. 29, 2013) (taking judicial notice of commissioner's deed recorded in land court); see also *infra* note 14.

Goyne does not dispute any of the declarations or exhibits submitted with the Motion to Intervene and Dismiss; nor does he dispute that Lau and Wo are good-faith, third-party purchasers of the Property. Instead, Goyne argues based on City Bank that the motion is unnecessary, because "the good faith purchaser acquires the property at a judicial sale free of liens existing of record . . . ." In this respect, Goyne appears to concede Lau and Wo's status as good-faith purchasers.

In addition, Goyne has not established that either exception to the City Bank rule applies. As to the jurisdiction exception, Goyne did not appeal from the 2023 Confirmation Judgment and has not shown that the Circuit Court lacked jurisdiction to enter the 2023 Confirmation Order or the 2023 Confirmation Judgment.<sup>13/</sup> As to the mortgagee purchaser exception, Goyne does not dispute that Lau and Wo are third-party purchasers of the Property unrelated to U.S. Bank.<sup>14/</sup> Accordingly, the exceptions to the City Bank rule do not apply, and this appeal appears to be moot.

Goyne contends that three recognized exceptions to the mootness doctrine apply: (1) capable of repetition, yet evading review (**CRER**); (2) public interest; and (3) collateral

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<sup>13/</sup> Nor has Goyne shown that the Circuit Court lacked jurisdiction to enter the Foreclosure Decree or the Foreclosure Judgment. Goyne argues in part in the corrected opening brief that U.S. Bank "lacks standing," but even if that were true, which we do not decide, "[i]n Hawai'i state courts, standing is a prudential consideration regarding the proper – and properly limited – role of courts in a democratic society and is not an issue of subject matter jurisdiction . . . ." Tax Found. of Hawaii v. State, 144 Hawai'i 175, 188, 439 P.3d 127, 140 (2019) (internal quotation marks omitted).

<sup>14/</sup> This case is thus distinguishable from Wilmington Savings Fund Society, FSB v. Domingo, Nos. SCWC-18-000099 and SCWC-18-0000712, 2023 WL 2017392 (Haw. Feb. 15, 2023) (Mem. Op.). In Domingo, the supreme court ruled that we could not rely on new evidence submitted with a motion to dismiss on mootness grounds to determine that a purchaser of foreclosed property was a third-party, good faith purchaser, where the foreclosing mortgagee had purchased the property at the foreclosure sale and the appellants explicitly argued that the subsequent purchaser was not a third-party, good-faith purchaser. Id. at \*1, \*4 n.12, \*8. The supreme court held that in that circumstance that a temporary remand to the circuit court was required for an evidentiary hearing to determine if there was a third-party, good-faith purchaser. Id. at \*4 n. 12. In contrast, here, there is no dispute that Lau and Wo are third parties unrelated to U.S. Bank, the Property was sold to Lau or his nominee at the foreclosure sale, and Lau and Wo are good-faith purchasers of the Property. In these circumstances, there is no disputed issue of fact relevant to the mootness issue for the Circuit Court to determine.

consequences. See Lethem, 119 Hawai'i at 5-10, 193 P.3d at 843-48. Goyne invokes each of these exceptions based on his argument that "[his] counterclaims for wrongful foreclosure and unfair and deceptive trade practice[s] (UDAP) were not decided, but instead the foreclosure decree was filed allowing the property to be sold without regard to the trial court following [Reyes-Toledo I and Reyes-Toledo II]." Goyne asserts that "the buyers lack standing to moot Goyne's counterclaims[,]" and if the Motion to Intervene and Dismiss is granted, "Goyne may lose up to \$3 million in damages for his counterclaim against [U.S.] Bank . . . ."

Goyne appears to be under the misapprehension that the dismissal of this appeal on mootness grounds will also moot his counterclaim, which seeks, among other things, monetary damages. The Foreclosure Judgment from which Goyne appealed did not resolve his counterclaim; nor did it resolve the parties' cross-claims. The counterclaim and the cross-claims remain pending in the Circuit Court; they are not part of this appeal. This appeal, however, is moot, because the sale of the Property to Lau and Wo, as third-party, good-faith purchasers, cannot be undone, even if we were to vacate the Foreclosure Decree and the Foreclosure Judgment. See Onaga, 140 Hawai'i at 370, 400 P.3d at 571. Goyne has not established that an exception to the mootness doctrine applies in these circumstances.<sup>15/</sup>

It is undisputed that Goyne failed to post a supersedeas bond or otherwise obtain a stay, and Lau and Wo lawfully purchased the Property in good faith. In these circumstances, no effective relief can be granted to Goyne with respect to his appeal from the Foreclosure Judgment.

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<sup>15/</sup> We further note that the CRER and collateral consequences exceptions do not apply here, because this case would not have evaded review, and mootness could have been avoided, by the timely posting of a supersedeas bond. See Aikona Maui Properties, 2013 WL 6231719, at \*2; Central Pacific Bank v. Ancheta, No. CAAP-13-0004082, 2016 WL 765083, at \*3 (Haw. App. Feb. 25, 2016). In addition, the public interest exception does not apply to this dispute arising out of a private mortgage contract that does not involve the government, does not seek an authoritative determination for future guidance of public officers, and does not raise issues that are likely to recur unless an appellant in this situation fails to obtain a supersedeas bond or stay of the appeal. See Aikona Maui Properties, 2013 WL 6231719, at \*2.

Accordingly, this appeal must be dismissed as moot. See Onaga, 140 Hawai'i at 370, 400 P.3d at 571.

**III. Conclusion**

For the reasons discussed above, we dismiss this appeal as moot.

DATED: Honolulu, Hawai'i, September 22, 2023.

On the briefs:

R. Steven Geshell for Defendant/Counterclaimant/ Cross-claim Plaintiff/Cross- claim Defendant-Appellant Michael David Goyne.	/s/ Lisa M. Ginoza Chief Judge
	/s/ Clyde J. Wadsworth Associate Judge

Mary Martin (Clay Chapman Iwamura Pulice & Nervell) for Plaintiff/Counterclaim Defendant-Appellee U.S. Bank National Association, as Trustee for Mastr Adjustable Rate Mortgages Trust 2006-0A1, Mortgage Pass-Through Certificates, Series 2006-0A1.	/s/ Sonja M.P. McCullen Associate Judge
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Christopher Shea Goodwin,  
Robert S. Alcorn, and Ann E.  
McIntire (Christopher Shea  
Goodwin AAL LLC) for  
Defendant/Cross-claim  
Defendant/Cross-claim  
Plaintiff-Appellee  
Association of Apartment  
Owners of Ko Olina Kai Golf  
Estates & Villas

On the motion:

Frederick J. Arensmeyer  
(Law Office of Frederick J.  
Arensmeyer, LLC)  
for Intervenors-Appellees  
Holden Kamuela Kaya Lau and  
Emily Colleen Wo