

*** NOT FOR PUBLICATION ***

NO. 25508

IN THE SUPREME COURT OF THE STATE OF HAWAII

BANK OF HAWAII, Plaintiff-Appellee

vs.

LAKEVIEW HOME, INC., EDWARD AQUAS ALQUERO,
and ARLENE TOLENTINO ALQUERO, Defendants-Appellants

and

DEPARTMENT OF TAXATION, STATE OF HAWAII;
DIRECTOR OF BUDGET AND FISCAL SERVICES, CITY AND COUNTY OF
HONOLULU; JOHN DOES 1-50; DOE ENTITIES 1-50, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 01-1-0998)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears we do not have jurisdiction over Defendants-Appellants Lakeview Home, Inc., Edward Aquas Alquero, and Arlene Tolentino Alquero's (the Appellants) appeal from the Honorable Karen N. Blondin's November 4, 2002 "Order Granting Plaintiff's Motion for Confirmation of Sale, for Deficiency Judgment, for Writ of Possession and Cancellation of Notice of Pendency of Action Filed on June 20, 2002," or her January 22, 2003 "Judgment." We have "previously noted that foreclosure cases are bifurcated into two separately appealable parts: (1) the decree of foreclosure and the order of sale, if the order of sale is incorporated within the decree; and (2) all other orders." Beneficial Hawai'i, Inc. v. Casey, 98 Hawai'i 159, 165, 45 P.3d 359, 365 (2002) (citations

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and internal quotation marks omitted). Therefore, although the foreclosure decree in part-one of a foreclosure case is immediately appealable upon entry, the "matters subsequent to the foreclosure decree, such as the confirmation of sale or the issuance and enforcement of the writ of possession . . . would have to wait until entry of the circuit court's final order in the case." Id. (citation omitted). "In foreclosure cases which result in a deficiency, the last and final order . . . is usually the deficiency judgment." Security Pacific Mortgage Corporation v. Miller, 71 Haw. 65, 70, 783 P.2d 855, 858 (1989) (citation and internal quotation marks omitted); Hoge v. Kane, 4 Haw. App. 246, 247, 663 P.2d 645, 647 (1983) ("In foreclosure cases, which result in a deficiency, the last and final order . . . is usually the deficiency judgment."). The Appellants are attempting to appeal from part-two of this foreclosure case, but the circuit court has not entered a deficiency judgment in a specific amount.

We note that, on May 27, 2003, Governor Linda Lingle signed into law 2003 Hawai'i Session Laws Act 89 (2003 H.B. No. 1076). Under Act 89, a judgment in part-two of a foreclosure case is final and appealable if the circuit court (1) enters the judgment on an order confirming the sale of the foreclosed property and (2) certifies the judgment as final pursuant to Rule 54(b) of the Hawai'i Rules of Civil Procedure. 2003 H.B. No. 1076 § 2. Nevertheless, Act 89 was not yet in effect when the

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circuit court entered the January 22, 2003 judgment, and, thus, Act 89 does not apply to this case.

HRS § 641-1(a) (1993) authorizes appeals only from final judgments, orders, or decrees. According to Hawai'i law during the relevant time period, absent the entry of a deficiency judgment, this appeal is premature and we lack appellate jurisdiction. Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of jurisdiction.

DATED: Honolulu, Hawai'i, August 4, 2003.