NOT FOR PUBLICATION

NO. 25512

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

THE BANK OF NEW YORK, AS TRUSTEE OF AMRESCO RESIDENTIAL SECURITIES CORPORATION MORTGAGE LOAN TRUST 1997-2 UNDER THE POOLING AND SERVICING AGREEMENT DATED AS OF JUNE 1, 1997, Plaintiff-Appellee

vs.

LOLITA VALDEZ QUEVEDO aka LOLITA QUEVEDO, Defendant-Appellant

and

AVELINO JARA MILLO QUEVEDO aka AVELINO QUEVEDO, JOHN and MARY DOES 1-20, DOE PARTNERSHIPS, CORPORATIONS or OTHER ENTITIES 1-20, Defendants

APPEAL FROM THE THIRD CIRCUIT COURT
(CIV. NO. 99-117)

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

Defendant-Appellant Lolita Valdez Quevedo (Appellant) appeals from a November 4, 2002 order of the circuit court of the third circuit[1] (the court) denying Appellant's Hawai'i Rules of Civil Procedure (HRCP) Rule 59(e)[2] motion for reconsideration of

[1] The Honorable Riki May Amano presided.

[2] HRCP Rule 59(e) (2003) states:

Rule 59. NEW TRIALS; AMENDMENT OF JUDGMENTS.

. . . .

(e) Motion to alter or amend judgment. Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

an August 29, 2002 order denying Appellant's HRCP Rule 60(b)[3] motion to set aside judgment and decree of foreclosure. We affirm.

On appeal, Appellant contends that the court erred in granting summary judgment and a decree of foreclosure because (1) the only loan ledger introduced at the summary judgment hearing was that of a different borrower, pertaining to a different mortgage loan, (2) Appellant had submitted a sworn declaration that she and her husband (the Quevedos) had not received, at loan closing, two completed copies of the notice of the right to cancel the mortgage transaction and had sent timely notices of cancellation of their secured loan, copies of which were introduced into evidence without objection, (3) Appellant, previously discharged in bankruptcy, was not asserting an affirmative claim but a Truth-in-Lending Act (TILA) recoupment defense which she had standing jointly with her bankruptcy trustee to allege, (4) the court should have considered the merits of Appellant's affirmative defenses and not merely decided whether Plaintiff-Appellee, The Bank of New York, as Trustee of AMRESCO Residential Securities Corporation Mortgage Loan Trust 1997-2 under the Pooling and Servicing Agreement Dated as of June 1, 1997 (Appellee) satisfied the test for foreclosures set forth

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[3] HRCP Rule 60(b) (2003) states in relevant part as follows:

Rule 60. RELIEF FROM JUDGMENT OR ORDER.

. . . .

(b) Mistakes; inadvertance; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (4) the judgment is void; . . . or (6) any other reason justifying relief from the operation of the judgment. . . .

in Bank of Honolulu, N.A. v. Anderson, 3 Haw. App. 545, 654 P.2d 1370 (1982), and (5) Appellant is entitled to HRCP Rule 60(b) relief as the errors committed by the court are, in part, not only jurisdictional, but amount to a serious violation of due process and equal protection of the law.

"HRCP [Rule] 59(e) motions for reconsideration are reviewed under the abuse of discretion standard." Kaneohe Bay Cruises, Inc. v. Hirata, 75 Haw. 250, 258, 861 P.2d 1, 6 (1993). Generally, HRCP Rule 60(b) motions are also reviewed for abuse of discretion. See Hawai'i Hous. Auth. v. Uyehara, 77 Hawai'i 144, 147, 883 P.2d 65, 68 (1994) (citing Paxton v. State, 2 Haw. App. 46, 48, 625 P.2d 1052, 1054 (1981)). However, in the application of HRCP Rule 60(b)(4), this court has said that "[i]n the sound interest of finality, the concept of void judgment must be narrowly restricted," and thus, "[a] judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law." Meindl v. Genesys Pac. Techs., Inc. (In re Genesys Data Techs., Inc.), 95 Hawai'i 33, 38, 18 P.3d 895, 900 (2001) (internal quotation marks and citations omitted). As such, HRCP Rule 60(b)(4) motions are reviewed under the right/wrong standard. See Kepo'o v. Kane, 106 Hawai'i 270, 281, 103 P.3d 939, 950 (2005).

As to her first contention, Appellant argues that Appellee failed to meet its burden of proof on its motion for summary judgment inasmuch as its submission of an incorrect ledger amounted to inadmissible hearsay. However, Appellant admitted, under direct questioning by the judge and with her attorney present, that she had not made mortgage payments for two or possibly three years. Appellant's statements made in court

and on the record were admissions made by a party-opponent. In its summary judgment motion and at the hearing, Appellee pointed out that Appellant had failed to deny Appellee's interrogatory request for an admission that she had "not made all the payments due and owing" under the mortgage. See HRCP Rule 36(a) (2001). Moreover, the court extended Appellant an opportunity to correct the ledger discrepancies in the record by supplementing Appellant's written opposition to the summary judgment motion, an opportunity that Appellant did not act upon.

In light of these considerations, the court properly granted summary judgment and a decree of foreclosure in favor of Appellee. The incorrect ledger, while indeed inadmissible, was rendered immaterial by Appellant's own admissions of nonpayment at the summary judgment hearing and by the failure to respond to the aforesaid interrogatory. Thus, the court did not abuse its discretion in denying both Appellant's HRCP Rule 60(b) motion to set aside the summary judgment and the subsequent HRCP Rule 59(e) motion to reconsider.

Appellant appears to argue that G.E. Capital Hawai'i, Inc. v. Yonenaka, 96 Hawai'i 32, 25 P.3d 807 (App. 2001), holds that the submission of an erroneous ledger renders the order granting a motion for summary judgment per se reversible. However, this court overturned Yonenaka in part. See Price v. AIG Haw. Ins. Co., 107 Hawai'i 106, 111-12, 111 P.3d 1, 7-8 (2005) (holding that absent plain error, "a party who fails to object to inadmissible affidavits and exhibits waives the right to do so on appeal").

As to her fourth contention, Appellant argues that the court erred in applying the four-prong test set forth in

Anderson[4] without considering the merits of Appellant's "affirmative defenses."[5] An examination of the record indicates that although Appellant raised certain defenses in her initial pleading, she argued only the mistakenly submitted ledger and a TILA defense in subsequent filings with the court. Generally, this court will "disregard [a] particular contention" if the appellant "makes no discernible argument in support of that position[.]" Norton v. Admin. Dir. of the Court, 80 Hawai'i 197, 200, 908 P.2d 545, 548 (1995), recon. denied, 80 Hawai'i 357, 910 P.2d 128 (1996). See Hawai'i Rules of Appellate Procedure Rule 28(b)(7) ("Points not argued may be deemed waived."). Based on the record, Appellant has not made a discernible argument with respect to the defenses listed in her Answer, except insofar as the TILA defense may be impliedly incorporated.

As to Appellant's second and third arguments, she claims that the court incorrectly ruled that she lacked standing to raise the TILA defense that Appellee failed to comply with mandatory federal disclosure requirements at loan closing.

> TILA's "buyer's remorse" provision allows borrowers three business days to rescind, without penalty, a consumer loan that uses their principal dwelling as security. 15 U.S.C § 1635(a).[6] TILA and its regulations, issued by the

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[4] In Anderson, the Intermediate Court of Appeals established that on a motion for summary judgment, mortgage foreclosures require proof of (1) the existence of the Agreement, (2) the terms of the Agreement, (3) default by the borrower under the terms of the Agreement, and (4) notice by the lender of cancellation to the borrower. 3 Haw. App. at 551, 654 P.2d at 1375.

[5] See GECC Fin. Corp. v. Jaffarian, 79 Hawai'i 516, 526, 904 P.2d 530, 540 (App.) (Acoba, J., concurring) ("An affirmative defense is one that will defeat the plaintiff's claim if it is accepted by the court." (Internal quotation marks, brackets, and citation omitted.)), aff'd, 80 Hawai'i 118, 905 P.2d 624 (1995).

[6] 15 U.S.C. § 1635(a) (1997) states:

> § 1635. Right of rescission as to certain transactions.
> (a) Disclosure of obligor's right to rescind.
> Except as otherwise provided in this section, in the case of any consumer credit transaction (including opening

> Federal Reserve System, 12 C.F.R. §§ 226.1-29 ("Reg Z"), require the lender to provide a form stating the specific date on which the three-day rescission period expires. 15 U.S.C. § 1635(a); 12 C.F.R. § 226.23(b)(5).[7]

Semar v. Platte Valley Fed. Sav. & Loan Ass'n, 791 F.2d 699, 701-02 (9th Cir. 1986). If the lender fails to deliver the required notice of material disclosures, the borrower may rescind the loan within three years after consummation. 15 U.S.C. § 1635(f) (1997);[8] 12 C.F.R. § 226.23(a)(3) (1997).[9] See also Semar, 791

> or increasing the credit limit for an open end credit plan) in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required under this section together with a statement containing the material disclosures required under this subchapter, whichever is later, by notifying the creditor, in accordance with regulations of the Board, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.

(Emphases added.)

[7] 12 C.F.R. 226.23(b) (1997) states in relevant part:

> (b)(1) Notice of right to rescind. In a transaction subject to rescission, a creditor shall deliver 2 copies of the notice of the right to rescind to each consumer entitled to rescind. The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:
>
> . . . .
>
> (v) The date the rescission period expires.

(Emphases added.)

[8] 15 U.S.C. 1635(f) (1997) states:

> (f) Time limit for exercise of right
>
> An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first,

F.2d at 701-02.

As to the standing question, the court held that Appellant lacked standing to raise a TILA defense because she had been discharged in bankruptcy. In a bankruptcy matter, the estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case."[10] 11

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notwithstanding the fact that the information and forms required under this section or any other disclosures required under this part have not been delivered to the obligor, except that if (1) any agency empowered to enforce the provisions of this subchapter institutes a proceeding to enforce the provisions of this section within three years after the date of consummation of the transaction, (2) such agency finds a violation of this section, and (3) the obligor's right to rescind is based in whole or in part on any matter involved in such proceeding, then the obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the earlier sale of the property, or upon the expiration of one year following the conclusion of the proceeding, or any judicial review or period for judicial review thereof, whichever is later.

(Emphasis added.)

[9] 12 C.F.R. § 226.23(a)(3) (1997) states:

(a) Consumer's right to rescind.

. . . .

(3) The consumer may exercise the right to rescind until midnight of the third business day following consummation, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures, whichever occurs last. If the required notice or material disclosures are not delivered, the right to rescind shall expire 3 years after consummation, upon transfer of all of the consumer's interest in the property, upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with section 125(f) of the act.

(Emphasis added.)

[10] 11 U.S.C. § 541(a)(1) (1998) states:

§ 541. Property of the estate.

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2)

U.S.C. § 541(a)(1) (1998). Additionally, inasmuch as 11 U.S.C. § 323[11] states that "the trustee in a [bankruptcy case] has capacity to sue and be sued," Appellee asserts that a discharged debtor's causes of action belong to the bankruptcy trustee.

In Rowland v. Novus Financial Corp., 949 F. Supp. 1447 (D. Haw. 1996), the plaintiff-borrower sought rescission of a refinanced mortgage, alleging TILA violations by defendant-mortgagor. Id. at 1450. The plaintiff subsequently filed for Chapter 7 bankruptcy. Id. at 1451. For this reason, the United States District Court for the District of Hawai'i held that the plaintiff lacked standing to bring his suit, inasmuch as his "TILA cause of action existed prior to the bankruptcy and therefore [was] included in the bankruptcy estate." Id. at 1453. Consequently, the "bankruptcy estate [was] the proper plaintiff in [that] case." Id.

Likewise here, Appellant's cause of action existed prior to her filing for bankruptcy. Appellee refinanced the Quevedos' loan on March 10, 1997. Thus, any TILA cause of action, including the purported failure to provide notice of the right to cancel the mortgage, would have accrued on this date. Appellant filed for bankruptcy on October 6, 1998 and was discharged from bankruptcy on January 6, 1999. Because her TILA cause of action was in existence prior to these dates, it constituted "property" belonging to the bankruptcy estate, see

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of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

[11] 11 U.S.C. § 323 (1998) states:

§ 323. Role and capacity of trustee.
(a) The trustee in a case under this title is the representative of the estate.
(b) The trustee in a case under this title has capacity to sue and be sued.

id. ("[C]ourts have long held that the definition of 'property' extends [to] causes of action, including TILA claims. As the 7th Circuit has articulated, there is 'no question . . . that the bankruptcy estate includes causes of action such as truth in lending claims.'" (Quoting In re Smith, 640 F.2d 888, 890, 892 (7th Cir. 1981).) (brackets omitted)), and, hence, "must [have been] asserted by the bankruptcy trustee rather than" Appellant, id. Thus, pursuant to the general rule under Rowland, Appellant lacked standing to raise a TILA claim.

The Rowland court, however, noted two exceptions to the general rule. Plaintiffs-debtors may raise a TILA claim if they "can show either (1) that the TILA cause of action falls under the bankruptcy exemption or (2) that the bankruptcy trustee has abandoned the TILA claims." Id. Because the plaintiff in Rowland had not even alleged that his TILA cause of action was exempted from the bankruptcy estate or that it had been abandoned by the bankruptcy trustee, the court held that "[i]n the absence of such a showing, the bankruptcy trustee [was] the proper plaintiff for [that] suit." Id. at 1454.

Similarly, in the present case, Appellant has not shown that her TILA right of rescission was exempted from the bankruptcy estate or that it was abandoned by the bankruptcy trustee. The court's conditional grant of summary judgment offered Appellant the opportunity to supplement the record with documentation of her exemption and reaffirmation of the subject property following bankruptcy, but Appellant failed to submit this to the court. Therefore, to the court's knowledge at the summary judgment phase, the TILA cause of action based on the right to rescind belonged to the bankruptcy estate and could only be asserted by the bankruptcy trustee, not Appellant.

Nonetheless, Appellant submits that a discharged debtor and the debtor's bankruptcy trustee both have the right to assert a TILA recoupment defense. Appellant cites to Pacific Concrete Federal Credit Union v. Kauanoe, 62 Haw. 334, 614 P.2d 939 (1980), and a number of federal cases regarding the standing issue. In Pacific Concrete, this court recognized appellant-debtor's counterclaim against appellee-credit union as a recoupment defense based on the credit union's TILA violations, and held that, in contrast to an affirmative claim, such a defense may be brought regardless of the one-year statute of limitations. Id. at 337, 614 P.2d at 938-939. Pacific Concrete, however, is distinguishable as it does not address the rights of a debtor who has been discharged in bankruptcy.[12] Moreover, the case does not support Appellant's characterization of her TILA claim as a recoupment defense.

Pacific Concrete did not involve a foreclosure action. Rather, the plaintiff lender in that case was suing the defendant for the outstanding balance owing on the loans. Id. at 335, 614 P.2d at 937. The TILA defense in that case was held to be "in the nature of a recoupment defense" because it "arose out of the same loan transaction as [the lender's] suit and . . . [could]

[12] Appellant also cites to certain federal cases, including Texas Trust Savings Bank v. Nasr (In re Nasr), 120 B.R. 855, 858 (Bankr. S.D. Tex. 1990) (holding that, in the context of plaintiff-bank's complaint to determine defendant-debtor's dischargeability, the debtor's TILA setoff and recoupment defenses were not exclusive to the bankruptcy trustee, and thus, the debtor had standing to raise them), Sylvester v. Martin (In re Martin), 130 B.R. 930, 939 (Bankr. N.D. Ill. 1991) (recognizing defendant-debtor's right to assert setoff as a defense, pursuant to 11 U.S.C. § 558, against plaintiffs' adversary proceeding to defendant's Chapter 7 bankruptcy case, where plaintiffs sought to hold nondischargeable a judgment-debt they had previously obtained against defendant in a separate federal case), and Beach v. Ocwen Fed. Bank, 523 U.S. 410, 419 (1998) (concluding that TILA "permits no federal right to rescind, defensively or otherwise, after the 3-year period of [15 U.S.C.] § 1635 has run"). Like Pacific Concrete, however, these cases do not specifically address the issue of a discharged debtor's right to raise a TILA defense in a subsequent mortgage foreclosure proceeding.

diminish [the lender's] recovery." Id. at 341, 614 P.2d at 940 (emphases added). Appellant does not explain how her TILA claims could "diminish" any "recovery" by Appellee in a foreclosure action. As Appellee notes, "there is nothing in the record to indicate that [the alleged TILA violations] cost her anything which would be true recoupment."[13] Pacific Concrete, then, does not transform Appellant's TILA claim into a recoupment defense.

Appellant also emphasizes that she is not seeking to prosecute a claim or counterclaim against Appellee; rather, she is alleging TILA violations as a defense to Appellee's foreclosure action. She argues that "while it is true, as [Appellee's] counsel below correctly argued, that upon the filing of a bankruptcy petition[,] all of the claims of a debtor are considered to be property of the debtor's estate, transferring exclusive power to the estate's trustee to prosecute all such claims, pursuant to [11 U.S.C. § 541], [the rule] does not apply to a debtor's defenses[.]" Appellant contends that a trustee would have no interest in raising a TILA claim on behalf of an estate where the "secured creditor seeks to foreclose in state court after the debtor's discharge," and therefore, "it would make no sense to hold that [the] TILA recoupment had somehow been lost to the discharged debtor who, unlike the trustee, is faced with a loss of his or her property[.]" Within the context of a bankruptcy proceeding, the court in Texas Trust Savings Bank v. Nasr (In re Nasr), 120 B.R. 855, 858 (Bankr. S.D. Tex. 1990), reasoned that "[a] trustee has no incentive to raise defenses in a complaint to determine dischargeability since this would

[13] Appellee points out that "[a]pplying [the] theory [in Pacific Concrete] to the instant case, where the lender waived any right to a deficiency judgment, recoupment, as a defensive tactic, is meaningless."

provide little or no benefit to the estate, but no reason has been shown to bar debtor from raising these defenses."

The Nasr court was persuaded by the reasoning supplied by Collier on Bankruptcy. Id. According to the treatise, the Bankruptcy Code, at 11 U.S.C. § 558, "deals with all the debtor's defenses," and "provides the trustee with every defensive weapon available to the debtor." 5 Collier on Bankruptcy ¶ 558.01[1][a] (Alan N. Resnick et al. eds., 15th ed. 2002). The treatise further reasons:

> The trustee is entitled to use a defense to its fullest extent, without preventing the debtor from raising the same defense if later sued on the same claim. In this respect, the trustee's right under [11 U.S.C. § 558] to assert the debtor's defenses differs from the trustee's exclusive right to assert the debtor's causes of action. The reason for this difference is clear. A cause of action is an asset of the estate to be used as the trustee sees fit. By contrast, a defense is something that may prevent an unjust claim against the estate. If a defense can be raised by both the trustee and the debtor, the possibility of recovery from the estate is minimized.

Id. (emphases added). Nasr and Collier on Bankruptcy, however, only address the right of rescission as it may be used defensively during a bankruptcy proceeding, and do not shed light on the use of such a right following a debtor's bankruptcy discharge. Allowing Appellant to raise a TILA violation defense in this case would not "prevent an unjust claim against" or "minimize" the "possibility of recovery from the estate" inasmuch as the bankruptcy case is now closed.

To reiterate, Appellant has been discharged in bankruptcy. Appellant has said that she has standing to raise a right of recoupment defensively, even if such a right belongs to the bankruptcy trustee as a cause of action. But ultimately, the remedy that Appellant seeks is rescission of a mortgage based on the bank's alleged TILA violations. The effect of such a remedy -- voiding of the mortgage -- is the same, regardless of whether

the right to rescind is exercised as a claim or a defense. As Appellee observes,

> [c]onstruing the TILA rescission right as an estate asset is very logical, as the rescission remedy under TILA clearly affects all of the assets of the estate which are available to other creditors. Specifically, if the debtor is granted rescission, the lender joins the ranks of unsecured creditors because its lien is stripped off of the property; if the trustee were to then sell the property, the proceeds would be split among the unsecured creditors, rather than being applied to pay the lender's priority position.

Notably, Appellant had not documented to the court that the debt had actually been exempted and reaffirmed, nor has she taken this argument up on appeal.[14] Despite Appellant's claims that the subject mortgage had been exempted and that she intended to reaffirm the debt, Appellant never filed bankruptcy documents to support this contention.[15] The only bankruptcy documents in the record were provided by Appellee and not Appellant. In its opposition to Appellant's HRCP Rule 60(b) motion, Appellee submitted bankruptcy documents that indicate Appellant elected to exempt and intended to reaffirm the subject mortgage. However, Appellant failed to point out the relevance of the bankruptcy documents to her claim of standing, either (1) in her own HRCP Rule 60(b) motion papers, (2) at the motion's July 19, 2002 hearing, or (3) in later filings and motions to the court. In

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[14] Appellant last argued that she intended to exempt from bankruptcy and reaffirm the subject mortgage at the October 3, 2001 summary judgment hearing. Appellant does not advance this argument either in subsequent motions to the court or on appeal.

[15] Appellee submits that it filed these bankruptcy documents merely to show that Appellant had been discharged "from all dischargeable debts" on January 6, 1999. In its opposition papers, Appellee argued that "although [Appellant] indicated an intention in [her] bankruptcy documents to 'reaffirm' the subject loan, [she] never properly documented any reaffirmation pursuant to bankruptcy rules, thus nullifying the intention." See In re Kamps, 217 B.R. 836, 840-842 (Bankr. C.D. Cal. 1998) (holding that the Bankruptcy Code's "reaffirmation rules are intended to protect debtors from compromising their fresh start by making unwise agreements to repay dischargeable debts[,]" and therefore, reaffirmation agreements are binding only if made in compliance with the lengthy and substantial requirements set forth in [11 U.S.C.] § 524(c) and (d)).

light of the record, Appellant failed to establish standing to assert a right of rescission. Thus, the court below did not abuse its discretion and properly held that Appellant lacked standing to raise her TILA defense.[16]

In her fifth and final argument, Appellant maintains that the TILA violations rendered her mortgage unenforceable and void as a matter of federal law, and therefore, the court's granting of summary judgment was "clearly in excess of its subject matter enforcement jurisdiction until the underlying merits of that TILA issue could be determined." Appellant posits that, under 15 U.S.C. 1635(b),[17] if a borrower cancels a secured

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[16] Inasmuch as the court was correct in determining that Appellant did not have standing to raise a TILA defense, her argument that pursuant to Hawai'i Community. Federal Credit Union v. Keka, 94 Hawai'i 213, 223-25, 11 P.3d 1, 11-13 (2000), federal law allows her to defensively assert a right of rescission within three years of making the loan if a lender does not deliver two mandatory "notices of right to cancel" to a borrower, need not be addressed. The discussion on standing also disposes of Appellant's arguments on the merits of her TILA claim.

[17] 15 U.S.C. 1635(b) (1997) states:

> (b) Return of money or property following rescission. When an obligor exercises his right to rescind under subsection (a) of this section, he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it. The procedures prescribed by this subsection shall apply except when otherwise ordered by a court.

loan transaction, then the underlying security interest is to be considered void by operation of federal law, preempting state court enforcement under the Supremacy and Interstate Commerce Clauses. It does not appear that 15 U.S.C. 1635(b) expressly supports Appellant's assertion. In any event, as stated supra, Appellant did not establish standing to raise the TILA defense.

Further, Appellant places great emphasis on the court not having "subject matter enforcement jurisdiction," but does not clearly define or substantiate it. Although Appellant cites to a number of cases, she fails to provide any discernible argument as to the applicability of the term "subject matter enforcement jurisdiction." See Wisconsin v. Pettit, 492 N.W.2d 633, 642 (Wis. Ct. App. 1992) (declining to address portions of a brief "so lacking in organization and substance that for [the court] to decide [the] issues, [it] would first have to develop them[,] . . . [and] serve as both advocate and judge"). Moreover, Appellee asserts that the court did have proper jurisdiction. See Citicorp Mortgage, Inc. v. Bartolome, 94 Hawai'i 422, 434, 16 P.3d 827, 839 (App. 2000) (holding that a determination under TILA that a note and mortgage were void and unenforceable "would not oust personal or subject matter jurisdiction"). Therefore,

In accordance with HRAP Rule 35, after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the court's November 4, 2002 order denying Appellant's HRCP Rule 59(e) motion to reconsider

(Emphases added.)

the August 29, 2002 order denying Appellant's HRCP Rule 60(b) motion is affirmed.

DATED: Honolulu, Hawai'i, August 17, 2005.

On the briefs:

Gary Victor Dubin for defendant-appellant.

Robert E. Chapman and Mary Martin (Stanton Clay Chapman Crumpton & Iwamura) for plaintiff-appellee.