

Ass'n of Apt. Owners of Century Ctr. v. Nomura

Intermediate Court of Appeals of Hawai'i

June 28, 2016, Decided; June 28, 2016, Filed

NO. CAAP-15-0000361

Reporter

2016 Haw. App. LEXIS 302 *; 138 Haw. 141; 377 P.3d 1059; 2016 WL 3548349

ASSOCIATION OF APARTMENT OWNERS OF CENTURY CENTER BY AND THROUGH ITS BOARD OF DIRECTORS, Plaintiff-Appellee, v. LILY TAI NOMURA, Defendant-Appellant, and RICHARD LEE, Applicant for Intervention-Appellant, and DANNY ROBERTS, MICHAEL SPENCER, SAMANTHA COOK, ALETTA FLEISCHINGER, KAYLA FERNANDEZ, KAYCEE HABAN, ALIX LUNSFORD, HANS BRODO, LILY LUM, CHRISTOPHER SCHULTE, LYLE NAM PAK, TOM SALT, LOGAN CROWLEY, AND ERIN BARASKY, Defendants-Appellees, and JOHN DOES 1-50 AND JANE DOES 1-50, Defendants

CIRCUIT. (Honolulu Division). (CIVIL CASE NO. 1RC14-1-7636).

Tai Nomura v. Tanigawa, 2015 Haw. LEXIS 66 (Haw., Apr. 8, 2015)

Core Terms

district court, lack of jurisdiction, non-judicial, foreclosure, divest

Counsel: On the briefs: Gary Victor Dubin, Frederick J. Arensmeyer, (Dubin Law Offices), for Defendants-Appellants.

R. Laree McGuire, Jamila E. Jarmon, (Porter McGuire Kiakona & Chow, LLP), for Plaintiff-Appellee.

Notice: PUBLISHED IN TABLE FORMAT IN THE PACIFIC REPORTER.

PUBLISHED IN TABLE FORMAT IN THE HAWAII REPORTER.

Subsequent History: Writ of certiorari denied Ass'n of Apt. Owners of Century Ctr. v. Tai Nomura, 2016 Haw. LEXIS 291 (Haw., Nov. 16, 2016)

Prior History: [*1] APPEAL FROM THE DISTRICT COURT OF THE FIRST

Judges: By: Nakamura, Chief Judge, and Fujise and Reifurth, JJ.

Opinion

SUMMARY DISPOSITION ORDER

Lilly Tai Nomura (Nomura) and Richard Lee (Lee) (collectively, Appellants)¹ appeal from the Judgment for

¹Nomura was a named defendant, and Lee moved for intervention, but his motion was denied.

Possession in favor of Plaintiff-Appellee Association of Apartment Owners of Century Center, Inc. (AOAO). The Judgment for Possession was accompanied by a Writ of Possession, and they were both filed on March 24, 2015, in the District Court of the First Circuit (District Court).

On appeal, Appellants argue that the District Court lacked jurisdiction over the AOAO's summary possession action because Appellants had sufficiently raised a claim to title to divest the District Court of jurisdiction. See Hawaii Revised Statutes (HRS) § 604-5(d) (1993) ("The district courts shall not have cognizance of real actions, nor actions in which the title to real estate [*2] comes in question . . .").² In particular, Appellants argue that their claim to title is superior to that of the AOAO because the AOAO lacked the authority to conduct a nonjudicial foreclosure, and therefore, the non-judicial foreclosure by which the AOAO acquired its interest in the subject unit was void. We recently considered essentially the same claim to title presented here by Appellants in Association of Apartment Owners of Century Center, Inc. v. Nomura, No. CAAP-15-0000119, 138 Haw. 51, 375 P.3d 1289, 2016 Haw. App. LEXIS 179, 2016 WL 2940855 (Haw. App. May 11, 2016) (Memorandum Opinion).

Consistent with our previous decision in Nomura (No. CAAP-15-0000119), we conclude that Appellants' claim to title in the instant case was sufficient to divest the District Court of Jurisdiction.

Accordingly, we vacate the March 24, 2015, Judgment for Possession issued by the District Court, and we remand the case to the District Court with instruction to dismiss the summary possession action for lack of jurisdiction. [*3]

DATED: Honolulu, Hawai'i, June 28, 2016.

/s/ Craig H. Nakamura

Chief Judge

/s/ Alexa D.M. Fujise

Associate Judge

/s/ Lawrence M. Reifurth

Associate Judge

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²The Honorable Hilary Benson Gangnes issued the order denying Appellants' joint motion to dismiss for lack of subject matter jurisdiction. The Honorable Michael K. Tanigawa issued the order granting the AOAO's motion. for summary judgment and the Judgment for Possession.