

**Ass'n of Apt. Owners of Century Ctr. Inc. v. Thai Hawaiian Massage, Inc.**

Intermediate Court of Appeals of Hawai'i

June 24, 2016, Decided; June 24, 2016, Filed

NOS. CAAP-14-0000436 AND CAAP-14-0001238

**Reporter**

2016 Haw. App. LEXIS 289 \*; 138 Haw. 140; 377 P.3d 1058; 2016 WL 3524592

ASSOCIATION OF APARTMENT OWNERS OF CENTURY CENTER INC., BY AND THROUGH ITS BOARD OF DIRECTORS, Plaintiff-Appellee, v. THAI HAWAIIAN MASSAGE, INC.; POJJANEE VARNEY; Defendants-Appellants, and JOHN DOES 1-20; JANE DOES 1-20; DOE PARTNERSHIPS 1-20; DOE CORPORATIONS 1-20; AND DOE ENTITIES 1-20, Defendants and CK ENTERPRISES, LLC, Intervenor-Appellant; ASSOCIATION OF APARTMENT, OWNERS OF CENTURY CENTER INC., BY AND THROUGH ITS BOARD OF DIRECTORS, Plaintiff-Appellee, v. THAI HAWAIIAN MASSAGE, INC.; POJJANEE VARNEY; CHARLES VARNEY, Defendants-Appellants, and JOHN DOES 1-20; JANE DOES 1-20; DOE PARTNERSHIPS 1-20; DOE CORPORATIONS 1-20; AND DOE ENTITIES 1-20, Defendants and CK ENTERPRISES, LLC, Intervenor-Appellant

**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. Thai Hawaiian Massage, Inc., 2016 Haw. LEXIS 297 (Haw., Nov. 25, 2016)

**Prior History:** [\*1] APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT. (Honolulu Division). CIVIL NO. 1RC13-1-8808. APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT. (Honolulu Division). CIVIL NO. 1RC13-1-8808.

**Core Terms**

district court, non-judicial, foreclosure, lack of jurisdiction, motion to dismiss, maintenance fee, appeals, workout, summary judgment motion, power of sale, documents

**Case Summary**

**Overview**

**HOLDINGS:** [1]-Pursuant to Haw. Rev. Stat. § 604-5(d), the district court lacked jurisdiction over an apartment owners

association's summary possession complaint because an occupant of an apartment unit raised a defense to the association's summary possession complaint, which placed title to unit in question; [2]-The occupant sufficiently set forth the scope, nature, and extent of its claim to title to the unit, and therefore, the district court lacked jurisdiction under § 604-5(d) because title to the unit was in question, Haw. Dist. Ct. R. Civ. P. 12.1.

### **Outcome**

Judgments for possession vacated.

**Counsel:** On the briefs: Gary Victor Dubin, Frederick J. Arensmeyer, Daniel J. O'Meara (Dubin Law Offices), for Defendants-Appellants and Intervenor-Appellant.

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

**Judges:** By: Nakamura, Chief Judge, and Foley and Leonard, JJ.

### **Opinion**

#### SUMMARY DISPOSITION ORDER

After conducting a non-judicial foreclosure of its lien for outstanding maintenance fees, the Association of Apartment Owners of Century Center, Inc. (AOAO) acquired its interest in the subject apartment unit (Unit 3201) by quitclaim assignment of lease. The AOAO thereafter filed a summary possession complaint in the District

Court of the First Circuit (District Court) seeking to evict the occupants of Unit 3201. The appeal in No. CAAP-14-0000436 relates to the Judgment for Possession, and the accompanying Writ of Possession, for Unit 3201 obtained by the AOAO on February 13, 2014, against CK Enterprises LLC (CK Enterprises), Thai Hawaiian Massage, Inc. (Thai Hawaiian Massage), [\*2] and Pojjanee Varney (Pojjanee). The appeal in No. CAAP-14-0001238 relates to the Judgment for Possession, and the accompanying Writ of Possession, for Unit 3201 obtained by the AOAO on September 30, 2014, against Charles Varney (Charles).<sup>1</sup>

In both appeals, the Appellants<sup>2</sup> 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 comes in question . . ."). 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 non-judicial foreclosure, and therefore, the non-

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<sup>1</sup> The two appeals were consolidated by order of this court.

<sup>2</sup> The appellants in No. CAAP-14-0000436 are CK Enterprises, Thai Hawaiian Massage, and Pojjanee. The appellants in No. CAAP-14-0001238 are CK Enterprises, Thai Hawaiian Massage, Pojjanee, and Charles. We will collectively refer to the appellants in both appeals as "Appellants."

judicial foreclosure by which the AOA acquired its interest in Unit 3201 was void. We recently considered essentially the same claim to title presented by Appellants in Association of Apartment Owners of Century Center, Inc. v. Nomura, CAAP-15-0000119, 138 Haw. 51, 375 P.3d 1289, 2016 Haw. App. LEXIS 179, 2016 WL 2940855 (Hawaii App. May 11, 2016) (Memorandum Opinion). Consistent with Nomura, we conclude that Appellants' claim [\*3] to title was sufficient to divest the District Court of Jurisdiction. Accordingly, we vacate the Judgments for Possession entered by the District Court and remand the case to the District Court with instruction to dismiss the summary possession action for lack of jurisdiction.

I.

On March 19, 2009, Young Hui Kim (Kim) purchased the leasehold interest in Unit 3201, an apartment unit of the condominium project known as Century Center, from Henry Lee Jensen (Jensen). In connection with the purchase, Kim obtained a loan from Jensen and executed a Purchase Money Real Property Mortgage in favor of Jensen. As the owner of Unit 3201, Kim was responsible for paying maintenance fees to the AOA.

According to Kim, after she purchased Unit 3201, she did not receive any invoices for maintenance fees from the AOA or its management company and assumed her tenant was paying the fees. In late 2011, she was informed

there were outstanding [\*4] maintenance fees, made efforts to cure the default, discussed and took steps to enter into a "workout" plan with the AOA's Treasurer, and was informed that the AOA Board had approved the workout. plan. However, Kim subsequently received a letter from the AOA's attorney which stated that the AOA had rejected her workout plan and demanded full payment on terms less favorable than her workout plan of the outstanding balance. Further efforts to resolve the maintenance fee dispute were unsuccessful.

On October 10, 2012, Kim assigned her interest in Unit 3201 to CK Enterprises, an entity in which Kim asserts she is the sole member, manager, and beneficiary, through an Assignment of Lease and Sublease recorded in the Land Court of the State of Hawaii (Land Court) on October 11, 2012.

The AOA pursued a non-judicial foreclosure of its lien for the maintenance fees assessed against Unit 3201. The AOA submitted a "Notice of Default and Intention to Foreclose," which was recorded in the Land Court on September 27, 2012. The AOA held a public auction on July 18, 2013, and purchased Unit 3201 for one dollar, no other bidders being present. On August 15, 2013, the AOA recorded a "Quitclaim [\*5] Assignment of Lease" in the Land Court, transferring Unit 3201 to itself.

On December 13, 2013, the AOA filed

a summary possession complaint seeking to evict the occupants of Unit 3201 and naming as defendants Thai Hawaiian Massage, Pojjanee, and Doe individuals and entities. Kim and CK Enterprises moved to intervene and together with Thai Hawaiian Massage and Pojjanee (collectively, "Movants") moved to dismiss the AOA's complaint "for lack of subject matter jurisdiction because this case is an action in which the title to real property is in dispute over which this district court does not have cognizance." Movants asserted that the applicable statutes only permitted the AOA to conduct a non-judicial foreclosure by power of sale if it was authorized by the AOA's governing documents; that the AOA's governing documents did not authorize a non-judicial foreclosure by power of sale; and therefore, the non-judicial foreclosure by power of sale through which the AOA had obtained its interest in Unit 3201 was void. Movants further asserted that CK Enterprises and Kim, who had acquired their interest in Unit 3201 through purchase from the prior owner Jensen, had a superior claim to title [\*6] than the AOA. In support of their motion, Movants submitted Kim's declaration, in which she identified and authenticated documents (attached as exhibits) verifying her purchase of Unit 3201 from Jensen and transfer to CK Enterprises; described her attempts to enter into a workout plan and referred to a letter from her counsel to the AOA (attached as an exhibit) asserting that the AOA

was not authorized by its governing documents or applicable law to conduct a non-judicial foreclosure; and stated that she and CK Enterprises claimed "superior title" to Unit 3201.

In their reply to the AOA's opposition to the motion to dismiss, Movants attached a copy of a Land Court Petition filed by CK Enterprises and Kim to remove the references to the AOA's interest in Unit 3201 obtained through the non-judicial foreclosure and quitclaim assignment of lease from the chain of title. The Petition alleged that the AOA's non-judicial foreclosure was void, that the AOA engaged in fraud and unfair and deceptive practices regarding the workout plan which invalidated the non-judicial foreclosure, and that petitioners were entitled to exercise their right of redemption. Attached to the Petition was a [\*7] declaration signed by Kim under penalty of law that the factual allegations set forth in the Petition were true and correct to the best of her knowledge, information, and belief.

The District Court granted CK Enterprises' motion to intervene but denied Kim's motion to intervene. The District Court denied Movants' motion to dismiss and filed its order denying the motion to dismiss on January 31, 2014. Movants filed a motion for reconsideration of the denial of their motion to dismiss, which the District Court denied on February 4, 2014. Thereafter, on February 13, 2014, a Judgment for Possession and Writ of

Possession were filed in favor of the AOA and against CK Enterprises, Thai Hawaiian Massage, and Pojjanee.

On February 14, 2014, CK Enterprises, Thai Hawaiian Massage, and Pojjanee filed their notice of appeal in No. CAAP-14-000436, appealing from the February 13, 2014, Judgment for Possession.

On February 24, 2014, the AOA submitted an ex parte motion to certify Charles as John Doe 1 in its summary possession complaint. The District Court granted the AOA's motion. On May 27, 2014, the AOA filed a motion for summary judgment as to its claims against Charles. CK Enterprises, Thai [\*8] Hawaiian Massage, Pojjanee, and Charles filed an opposition to the summary judgment motion and asked that the case be dismissed for lack of jurisdiction. Following a hearing, the District Court denied the AOA's motion for summary judgment, concluding that questions over title and jurisdiction precluded the grant of summary judgment. The District Court filed its order denying the AOA's motion for summary judgment as to Charles on July 24, 2014.

CK Enterprises, Thai Hawaiian Massage, Pojjanee, and Charles filed a renewed motion to dismiss the case for lack of jurisdiction, which the District Court denied by order filed on August 13, 2014.

The AOA filed a motion for reconsideration of the order denying its

motion for summary judgment as to Charles. The District Court granted the AOA's motion for reconsideration and granted summary judgment in favor of the AOA and against Charles. On September 30, 2014, the District Court entered a Judgment for Possession and a Writ of Possession in favor of the AOA and against Charles. On October 13, 2014, Appellants filed their notice of appeal in No. CAAP-14-0001238, appealing from the September 30, 2014, Judgment for Possession.

## II.

In No. CAAP-14-0000436, [\*9]<sup>3</sup> Appellants contend that: (1) pursuant to HRS § 604-5(d), the District Court lacked jurisdiction over the AOA's summary possession complaint; and (2) the District Court erred in denying Kim's motion for intervention. In No. CAAP-14-0001238,<sup>4</sup> Appellants contend that: (1) pursuant to HRS § 604-5(d), the District Court lacked jurisdiction over the AOA's summary possession complaint; (2) HRS § 667-102(b) (Supp. 2015) does not bar Kim and CK Enterprises from disputing title to Unit 3201 in the instant case; and (3) the District Court lacked jurisdiction to enter the September 30, 2014, Judgment for Possession and Writ of Possession because the appeal in No. CAAP-14-

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<sup>3</sup>The Honorable Hillary B. Gangnes issued the order denying Movants' motion to dismiss, and the Honorable James S. Kawashima issued the February 13, 2014, Judgment for Possession.

<sup>4</sup>The Honorable Michael K. Tanigawa presided.

0000436 was pending.

We conclude that pursuant to HRS § 604-5(d), the District Court lacked jurisdiction over the AOA's summary possession complaint because CK Enterprises raised a defense to the AOA's summary possession complaint which placed title to Unit 3201 in question. In Nomura, No. CAAP-15-0000119, 2016 Haw. App. LEXIS 179, 2016 WL 2940855, this court recently addressed essentially the same claim to [\*10] title raised by Appellants, which was asserted by the Nomura defendants as a defense to a summary possession action brought by the AOA.

As in this case, the AOA in Nomura had acquired its interest in the subject unit through a non-judicial foreclosure of a lien for payments owed to the AOA, and the AOA thereafter filed a summary possession complaint in District Court. The Nomura defendants filed a motion to dismiss, supported by their joint declaration, asserting that they had purchased the unit and obtained title through a quitclaim deed, which they attached as an exhibit; that the non-judicial foreclosure under power of sale by which the AOA had acquired its interest was invalid because the AOA's governing documents did not authorize it to conduct a non-judicial foreclosure by power of sale; and therefore, the District Court lacked subject matter jurisdiction because the case was an action in which the title to real property is in

dispute." Nomura, 2016 Haw. App. LEXIS 179, 2016 WL 2940855, at \*2-4. We held in Nomura that the Nomura defendants "have sufficiently set forth the scope, nature, and extent of their claim to title to the land in question[.]" and "[t]herefore, the district court was without jurisdiction under HRS § 604-5(d) because title to the land [\*11] in question was at issue." 2016 Haw. App. LEXIS 179, [WL] at \*5.

Similarly, in this case, we conclude that CK Enterprises sufficiently set forth the scope, nature, and extent of its claim to title to Unit 3201, and therefore, the District Court lacked jurisdiction under HRS § 604-5(d) because title to Unit 3201 was in question. See HRS § 604-5(d); District Court Rules of Civil Procedure Rule 12.1; Nomura, 2016 Haw. App. LEXIS 179, 2016 WL 2940855, at \*5; Fukumoto v. Onogi, No. 28561, 2009 Haw. App. LEXIS 73, 2009 WL 475788 (Hawai'i App. Feb. 26, 2009). Because we conclude that the District Court lacked jurisdiction under HRS § 604-5(d), we need not address the other issues raised by Appellants in their appeals.

III.

Based on the foregoing, we vacate the Judgments for Possession entered on February 13, 2014, and September 30, 2014, by the District Court, and we remand the case to the District Court with instructions to dismiss the AOA's summary possession action for lack of jurisdiction.

DATED: Honolulu, Hawai'i, June 24,  
2016.

/s/ Craig H. Nakamura

Chief Judge

/s/ Daniel R. Foley

Associate Judge

/s/ Katherine G. Leonard

Associate Judge

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