

SUPREME COURT OF THE STATE OF HAWAI‘I

Bank of America, N.A. v. Panzo

Panzo · No. SCWC-14-0001356 · Decided September 17, 2015

SUMMARY

The Supreme Court of Hawai‘i accepted Michael Jean Panzo’s application for a writ of certiorari and vacated the Intermediate Court of Appeals’ dismissal of his appeal for lack of jurisdiction. The court held that the prematurely filed notice of appeal became effective when the circuit court entered its written order denying Panzo’s HRCP Rule 60(b) motion, and remanded the appeal to the ICA for briefing and disposition.

CASE DETAILS

COURT	Supreme Court of the State of Hawai‘i
WRITING FOR THE COURT	Mark E. Recktenwald, C.J.; Paula A. Nakayama, J.; Sabrina S. McKenna, J.; Richard W. Pollack, J.; Michael D. Wilson, J.
JURISDICTION	Hawaii
DECIDED	September 17, 2015
DOCKET	SCWC-14-0001356
DISPOSITION	vacated
PROCEDURAL POSTURE	Petitioner sought certiorari review of the Intermediate Court of Appeals' order dismissing his appeal for lack of jurisdiction.
STANDARD OF REVIEW	Whether the ICA had appellate jurisdiction based on the effect of a prematurely filed notice of appeal after entry of the written order appealed from.
PRECEDENTIAL VALUE	Published
PARTIES	Michael Jean Panzo v. Bank of America, N.A., Ewa by Gentry Community Association

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QUESTIONS PRESENTED

1. Whether a prematurely filed notice of appeal becomes effective and vests the ICA with jurisdiction when the circuit court subsequently enters the written final order from which the appeal is taken.
2. Whether the ICA erred by dismissing Panzo's appeal for lack of jurisdiction.

HOLDINGS

1. A prematurely filed notice of appeal becomes effective upon entry of the written final and appealable order, thereby vesting the ICA with jurisdiction when that order is entered before transmission of the appellate record.

KEY QUOTATIONS

“Once the circuit court entered the January 20, 2015 written order, the prematurely filed notice of appeal vested the ICA with jurisdiction over the appeal.” (2)

“The notice of appeal is therefore no longer premature, and the ICA has jurisdiction to consider the appeal.” (2)

FACTUAL BACKGROUND

The circuit court entered a decree of foreclosure and Panzo later filed a motion under Hawai‘i Rules of Civil Procedure Rule 60(b) seeking relief from the judgment and an evidentiary hearing. Although Panzo filed a notice of appeal before the written order denying that motion was entered, the circuit court filed the written order on January 20, 2015, before the record on appeal was transmitted to the ICA. The written order was omitted from the transmitted appellate record.

PROCEDURAL HISTORY

Panzo appealed from proceedings concerning a Rule 60(b) motion for relief from a foreclosure judgment. The ICA dismissed the appeal as jurisdictionally defective because the notice of appeal had initially been filed before entry of the written order denying the Rule 60(b) motion. The Supreme Court accepted certiorari, vacated the ICA's dismissal order, and remanded for briefing and disposition after determining that the written order had been entered before transmission of the appellate record.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The ICA's June 10, 2015 order dismissing the appeal for lack of jurisdiction was vacated. The appeal was remanded to the ICA for briefing and disposition. The clerk of the First Circuit Court was ordered to file in the ICA, within twenty days, a supplemental record containing the January 20, 2015 written order denying Panzo's HRCF Rule 60(b) motion.

CASES CITED

- Shimabuku v. Montgomery Elevator Co., 79 Hawai'i 352, 903 P.2d 48 (1995)
- Makaneole v. Pacific Ins. Co., 77 Hawai'i 417, 886 P.2d 754 (1994)

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