

SUPREME COURT OF THE STATE OF HAWAII

Bank of America, N.A. v. Panzo

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

OPINION

PER CURIAM.

Electronically Filed Supreme Court SCWC-14-0001356 17-SEP-2015 09:43 AM SCWC-14-0001356 IN THE SUPREME COURT OF THE STATE OF HAWAII#I BANK OF AMERICA, N.A., Respondent/Plaintiff-Appellee, vs. MICHAEL JEAN PANZO, Petitioner/Defendant-Appellant, and EWA BY GENTRY COMMUNITY ASSOCIATION, Respondent/Defendant-Appellee. CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS (CAAP-14-0001356; CIV.

NO. 13-1-0152) ORDER ACCEPTING APPLICATION FOR WRIT OF CERTIORARI, VACATING ICA ORDER DISMISSING APPEAL FOR LACK OF JURISDICTION, AND REMANDING APPEAL TO ICA (By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.) Petitioner/defendant-appellee Michael Jean Panzo filed a timely application for writ of certiorari on August 10, 2015 to review the intermediate court of appeals' ("ICA") June 10, 2015 order dismissing the appeal for lack of jurisdiction.

Petitioner has asserted an appeal from the circuit court's November 3, 2014 minute order on his post-judgment motion for relief from the judgment on a decree of foreclosure that was filed pursuant to Rule 60(b) of the Hawai'i Rules of Civil Procedure ("HRCP"). Upon review of the record and filings in the appeal, it appears that the circuit court's "Order Denying Defendant Michael Jean Panzo's Rule 60(b) Motion for Relief from Judgment and for Evidentiary Hearing Filed September 18, 2014," which was filed on January 20, 2015, was filed prior to the record on appeal being transmitted to the ICA but was omitted from the record on appeal that was transmitted to the ICA.

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. See HRAP Rule 4(a)(2); *Shimabuku v. Montgomery Elevator Co.*, 79 Hawai'i 352, 903 P.2d 48 (1995) (a premature notice of appeal from the court's announcement of a final and appealable order denying intervention was deemed timely upon court's entry of that order); *Makaneole v. Pacific Ins.*

Co., 77 Hawai'i 417, 886 P.2d 754 (1994) (a premature notice of appeal from the court's announcement of a final order granting summary judgment deemed timely upon the court's entry

of the order). The notice of appeal is therefore no longer premature, and the ICA has jurisdiction to consider the appeal.

Accordingly, IT IS HEREBY ORDERED that Petitioner's application for writ of certiorari is accepted. The ICA's June 10, 2015 order dismissing the appeal for lack of jurisdiction is vacated. Petitioner's appeal is remanded to the ICA for briefing and disposition. IT IS HEREBY FURTHER ORDERED that the clerk of the first circuit court shall file in the ICA, within twenty (20) days from the date of this order, a supplemental record on appeal that includes the "Order Denying Defendant Michael Jean Panzo's Rule 60(b) Motion for Relief from Judgment and for Evidentiary Hearing Filed September 18, 2014," filed on January 20, 2015.

DATED: Honolulu, Hawaii, September 17, 2015. Melodie Aduja /s/ Mark E. Recktenwald for petitioner /s/ Paula A. Nakayama /s/ Sabrina S. McKenna /s/ Richard W. Pollack /s/ Michael D. Wilson 2