

NO. 22563

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

ASSOCIATION OF APARTMENT OWNERS OF KALAMA TERRACE,
Plaintiff/Counterclaim Defendant, v. AVANELL M.
HAMILTON, Defendant/Cross-Claim Defendant-Appellant,
GE CAPITAL HAWAII, INC., a Hawaii corporation;
DEPARTMENT OF TAXATION, STATE OF HAWAII; and REAL
PROPERTY DIVISION, DEPARTMENT OF FINANCE, COUNTY OF
MAUI, Defendants/Cross-Claim Defendants, JOHN DOES
1-10, Defendants, and ASSOCIATES FINANCIAL SERVICES
COMPANY OF HAWAII, INC., a Hawaii corporation,
Defendant/Counterclaimant Cross-Claimant-Appellee,
v. RENEE U. ELABAN-NORTH, CHARLENE GREENE and
JOYCELYN W. UNCIANO, Add'l Cross-Claimant
Defendants-Appellants, JOHN DOES 1-10; JANE DOES
1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10;
DOE ENTITIES 1-10; and DOE GOVERNMENTAL UNITS 1-10,
Add'l Cross-Claim Defendants

APPEAL FROM THE SECOND CIRCUIT COURT
(CIVIL NO. 98-0135(3))

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Watanabe and Lim, JJ.)

Defendants-Appellants Avanel M. Hamilton, Renee U.
Elaban-North, Charlene Greene, and Joycelyn W. Unciano
(collectively Defendants-Appellants) appeal from the (1)
April 14, 1999 Judgment of the circuit court of the second
circuit, the Honorable Boyd P. Mossman, judge presiding, and (2)
the court's Findings of Fact, Conclusions of Law and Order
Granting Defendant Associates Financial Services Company of
Hawaii, Inc.'s Motion for Summary Judgment and Decree of

Foreclosure as Against All Parties on Its Counterclaim and Crossclaim, of even date.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Defendants-Appellants' points of error as follows:

(1) Defendants-Appellants contend that the circuit court erroneously denied their motion to dismiss, which they ostensibly brought pursuant to Hawai'i Rules of Civil Procedure Rules 12(b)(1) through (5). We conclude that the circuit court correctly denied Defendants-Appellants' motion, because the circuit court had subject matter and personal jurisdiction, venue was proper in the second circuit court, and Defendants-Appellants received sufficient process and service of process.

(2) Defendants-Appellants take issue with the circuit court's disregard of their contention that dismissal was warranted because Associates Financial Services Company of Hawai'i, Inc. (AFSCH) lacked standing for want of the requisite injury in fact. We conclude that the circuit court did not err in this respect because AFSCH's allegations satisfy the three-part test for an injury in fact under Akinaka v. Disciplinary Bd. of Hawai'i Supreme Court, 91 Hawai'i 51, 55, 979 P.2d 1077, 1081 (1999), and AFSCH therefore had standing to sue Defendants-Appellants.

(3) Defendants-Appellants also take issue with the circuit court's rescission of its previous order permitting them to proceed *in forma pauperis*. We conclude that inasmuch as Defendants-Appellants thereby suffered no prejudice, and inasmuch as the record does not indicate, nor do Defendants-Appellants argue, that they were otherwise hampered in the litigation by a lack of money, the circuit court did not abuse its discretion in rescinding its order.

(4) Defendants-Appellants contend that the circuit court erred by disregarding their allegation that AFSCH engaged in unfair and deceptive trade practices in violation of Hawai'i Revised Statutes § 480-2. However, Defendants-Appellants fail to provide any discernible argument on this issue. We therefore conclude that without discernible argument, we cannot and, under the law, need not, address this point. Hawai'i Rules of Appellate Procedure Rule 28(b)(7); CSEA v. Doe, 88 Hawai'i 159, 174 n.20, 963 P.2d 1135, 1150 n.20 (App. 1998); Bank of Hawai'i v. Shaw, 83 Hawai'i 50, 52, 924 P.2d 544, 546 (App. 1996).

(5) Defendants-Appellants argue that the circuit court erred in granting summary judgment and a decree of foreclosure in favor of AFSCH based upon inadmissible hearsay evidence. Defendants-Appellants take specific issue with the circuit court's reliance upon two items AFSCH offered as of proof of default: the testimonial evidence of Defendants-Appellants'

default and the balance due on their loan, based upon AFSCH's general ledger, contained in an affidavit submitted by AFSCH; and the copy of the general ledger itself showing their loan payment history. Inasmuch as both items were or contained statements, "other than one[s] made by the declarant while testifying . . . , offered in evidence to prove the truth of the matter asserted[,]" Hawai'i Rules of Evidence (HRE) Rule 801(3), we conclude that the items were hearsay. We further conclude that because AFSCH failed to demonstrate that the general ledger entries were "(a) made in the course of a regularly conducted activity, [and] (b) made at or near the time of the acts, . . . (c) as shown by the testimony of the custodian or other qualified witness[,]" GE Capital Hawai'i, Inc. v. Miguel, 92 Hawai'i 236, 242, 990 P.2d 134, 140 (App. 1999), neither the statements about the contents of the general ledger nor the general ledger copy itself came within the applicable hearsay exception provided by HRE Rule 803(b)(6). Id. at 242, 990 P.2d at 140 (stating that the hearsay exception provided by HRE Rule 803(b)(6) applies when elements (a) and (b), supra, are sworn to by (c) the custodian of the records or other qualified witness).

Therefore,

IT IS HEREBY ORDERED that the September 8, 1998 order denying Defendants-Appellants' motion to dismiss, and the September 22, 1998 order rescinding the order granting

Defendants-Appellants' motion to proceed *in forma pauperis* are affirmed. However, the April 14, 1999 judgment of the circuit court, and its findings of fact, conclusions of law, and order granting AFSCH summary judgment and a decree of foreclosure are vacated, and the matter remanded for further proceedings.

DATED: Honolulu, Hawaii, June 19, 2001.

On the briefs:

Avanell M. Hamilton,
defendant/cross-claim
defendant-appellant, pro se
and Joycelyn W. Unciano,
Renee U. Elaban-North,
Charlene Greene,
add'l cross-claimant
defendants-appellants,
pro se.

Chief Judge

Associate Judge

Steven T. Iwamura and
Mary Martin
(Stanton Clay Chapman
Crompton & Iwamura) for
defendant/counterclaimant
cross-claimant-appellee,
Associates Financial Services
Company of Hawaii, Inc.

Associate Judge

Joy Yanagida and
Wendy Laurel for
plaintiff/counterclaim
defendant, Association of
Apartment Owners of Kalama
Terrace.