Electronically Filed
Supreme Court
SCMF-20-0000152
28-AUG-2020
08:15 AM

SCMF-20-0000152

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

In the Matter of the Judiciary's Response
to the COVID-19 Outbreak

ORDER EXTENDING JUNE 26, 2020 ORDER REGARDING FORECLOSURE OR NON-JUDICIAL FORECLOSURE RELATED ACTIONS: CERTIFICATION OF COMPLIANCE WITH THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT IN FORECLOSURES

(By: Recktenwald, C.J., Nakayama, McKenna, and Wilson, JJ., and Intermediate Court of Appeals Chief Judge Ginoza, assigned by reason of vacancy)

On March 27, 2020, the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act was adopted into law. The CARES Act provided for a nationwide moratorium on some, but not all, foreclosure proceedings. Specifically, the Act provided foreclosure relief for "federally backed loans." Under the CARES Act, unless the subject property was vacant or abandoned, a servicer of a federally backed loan could not initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment, order a sale, or execute a foreclosure-related eviction or foreclosure sale.

A majority of the foreclosure or non-judicial foreclosure related actions filed in our trial courts involve or arise out of mortgage agreements. Whether a mortgage that is the subject of a foreclosure or an action arising out of a non-judicial foreclosure is (or is not) a federally backed mortgage within the protections of the federal CARES Act is not information necessarily contained in the court record.

Thus, on June 26, 2020, this court entered the "Order Regarding Foreclosure or Non-Judicial Foreclosure Related Actions: Certification of Compliance with the Coronavirus Aid, Relief, and Economic Security Act in Foreclosures," which set forth a certification process to ensure that foreclosure or non-judicial foreclosure related actions filed or pending in our trial courts were in compliance with the protections provided under the federal CARES Act. The order expires on August 31, 2020.

Although the foreclosure moratorium under the CARES Act has expired, federal agencies, including the Federal Housing Finance Agency and the U.S. Department of Housing and Urban Development, have extended the moratorium on foreclosures of federally backed loans covered under the CARES Act through December 31, 2020.

Given the number of foreclosure cases currently pending in the trial courts at various stages of the foreclosure process, it is necessary for the certification process to remain in effect to ensure continued compliance with the protections provided under federal law.

Therefore, pursuant to Article VI, section 7 of the Hawai‘i Constitution and Hawai‘i Revised Statutes § 602-5(a)(6),

IT IS HEREBY ORDERED that the June 26, 2020 "Order Regarding Foreclosure or Non-Judicial Foreclosure Related Actions: Certification of Compliance with the Coronavirus Aid, Relief, and Economic Security Act in Foreclosures" is extended until December 31, 2020. This Order may be further modified or extended as circumstances warrant. This Order also does not otherwise affect a judge's equitable discretion in foreclosure cases.

DATED: Honolulu, Hawai‘i, August 28, 2020.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Lisa M. Ginoza