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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

In re	)	CV 14-00453 SOM-BMK
	)	
GABI KIM COLLINS,	)	Honolulu, Hawaii
	)	November 20, 2014
Debtor/	)	2:00 P.M.
Appellant.	)	
	)	Various Motions
	)	
	)	
	)	

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE SUSAN OKI MOLLWAY  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

Debtor/Appellant Pro Se:	GABI KIM COLLINS 94-1221 Ka Uka Blvd., #108-136 Waipahu, HI 96797
For the Appellee Countrywide Home Loans, Inc.:	THEODORE D. C. YOUNG Cades Schutte 1000 Bishop St., 12th Fl. Honolulu, HI 96813
For the Secured Creditor AOAO of Kemoo by the Lake:	ARLETTE S. HARADA Ekimoto & Morris 888 Mililani St., 2nd Fl. Honolulu, HI 96813
For the Secured Creditor Bayview Loan Servicing:	MICHAEL WONG Clay Chapman Iwamura Pulice & Nervell 700 Bishop St., Ste. 2100 Honolulu, HI 96813
Official Court Reporter:	Debra Kekuna Chun, RPR, CRR United States District Court 300 Ala Moana Blvd. Ste. C285 Honolulu, HI 96850 (808) 541-2061

Proceedings recorded by machine shorthand, transcript produced with computer-aided transcription (CAT).

1 THURSDAY, NOVEMBER 20, 2014 2:00 O'CLOCK P.M.

2 THE CLERK: Civil 14-453 SOM-BMK, In Re: Gabi  
3 Collins. This case has been called for Various Motions.  
4 Counsel, please make your appearances for the record.

5 THE COURT: Okay. Miss Collins, how about you state  
6 your name.

7 MS. COLLINS: Hi, I'm Gabi Collins. I'm the  
8 appellant/debtor.

9 THE COURT: Okay.

10 MS. HARADA: Good afternoon, Your Honor. Arlette  
11 Harada for the AOA0 Kemoo by the Lake.

12 MR. YOUNG: Good afternoon, Your Honor. Theodore  
13 Young for Countrywide Home Loans, Inc.

14 MR. WONG: Good afternoon, Your Honor. Michael Wong  
15 on behalf of Bayview Loan Servicing.

16 THE COURT: Okay. Why don't I have you all sit down  
17 for now.

18 First I want to start with something that doesn't  
19 have really much to do with the matters I have to decide but  
20 may have to do with who's going to participate in this hearing.

21 Mr. Young, you are here representing Countrywide. In  
22 one of the filings -- it was the AOA0's opposition to the  
23 motion for stay pending appeal. This document was filed on  
24 November 6th of this year -- there's a statement at page 4 of  
25 the memo, and it says that on September 15th, 2011, the law

1 firm of Ekimoto & Morris was contacted by Philip Leas, who was  
2 following up on the September 9, 2011 letter. It's a letter  
3 from Miss Collins. Leas claimed not to represent debtor but  
4 attempted to assert the new non-judicial foreclosure provisions  
5 on her behalf.

6           So if Mr. Leas was trying to do something on behalf  
7 of Miss Collins -- I don't know if this is an accurate  
8 description -- then I'm really confused about your -- this is  
9 your partner; so I'm really confused about the role of your law  
10 firm. Here you are opposing her position here on behalf of  
11 Countrywide. The AOA's counsel describes your partner as at  
12 least some years back having made a telephone call asserting  
13 something on behalf of the debtor. I don't know if there's a  
14 conflict or what. It just seems a little odd; so I thought I  
15 better raise that.

16           MR. YOUNG: Perhaps I may explain. As Your Honor  
17 knows, we're here this afternoon on an emergency motion. We  
18 were contacted by Countrywide, who, obviously, our firm has  
19 done work before. And it's my understanding that Countrywide  
20 was named in the underlying proceeding, the bankruptcy  
21 adversary proceeding, as a defendant. Countrywide, it's my  
22 understanding, was the original lender and/or servicer on the  
23 subject loans that are involved here.

24           It's my further understanding that -- I understand  
25 what Your Honor is referring to with regard to Mr. Leas'

1 communication. It's my understanding that that situation was  
2 not substantially related to the proposed current  
3 representation of Countrywide here because Countrywide's role  
4 here is, basically, as a defendant in the adversary proceeding,  
5 and, obviously, we're not coming in as counsel for the  
6 association, but we are counsel for Countrywide in its capacity  
7 as a defendant and now an appellee in the context of this  
8 bankruptcy appeal.

9 THE COURT: Yeah, but in the course of the adversary  
10 proceeding and on this appeal you are adverse to Miss Collins;  
11 right?

12 MR. YOUNG: No, I understand that Countrywide decided  
13 to file an opposition to that emergency motion; correct, Your  
14 Honor. Correct.

15 THE COURT: Right. So you're now adverse to  
16 Miss Collins. But at least in this description in the AOA's  
17 filing, at one time Mr. Leas was advocating something on behalf  
18 of Miss Collins, although not representing her. So that's the  
19 problem I'm having. They may be unrelated matters, but here  
20 you are clearly adverse to Miss Collins --

21 MR. YOUNG: I understand, Your Honor.

22 THE COURT: -- and allegedly at one time, although  
23 not representing her, advocating on her behalf. So, you know,  
24 how do I reconcile this?

25 MR. YOUNG: I think our current situation, Your

1 Honor, as I said this was an emergency motion, Countrywide  
2 wanted to file a response, and our firm did so on behalf of  
3 Countrywide.

4 Now, I can further look into this situation, Your  
5 Honor.

6 THE COURT: Yeah, I don't know if you're conflicted  
7 out or not.

8 MR. YOUNG: Correct, Your Honor. And I appreciate  
9 the court's comments and concerns, and we will further look  
10 into this situation and decide what course of action needs to  
11 be taken and take the appropriate course of action.

12 THE COURT: Okay. So I'm not really sure how you  
13 should proceed today, but, anyway, we'll figure this out as we  
14 go in this hearing, I guess. Okay?

15 MR. YOUNG: Right. Thank you very much, Your Honor.  
16 I appreciate it.

17 THE COURT: Okay. So, Miss Collins, this is your  
18 motion, and, in fact, today I have a new emergency motion for  
19 you -- from you, and you want monetary sanctions, but I don't  
20 understand why a monetary sanction motion is an emergency  
21 motion. So, typically, when you want money, that's not an  
22 emergency, okay, because an emergency is supposed to be  
23 something that's irreparable harm, and usually getting money  
24 from somebody you can always get money; so it's not  
25 irreparable. "Irreparable" means you can't get it later. If

1 you don't get it today, getting it later is not good enough.  
2 But money, hey, if you get it today or tomorrow, it's the same  
3 money; so it's not usually irreparable.

4 So I'm actually not able to see why this is an  
5 emergency motion.

6 MS. COLLINS: It's actually for the vacate also  
7 because --

8 THE COURT: Yeah, I know, but this vacating thing is  
9 you already have a motion on file where you're seeking --

10 MS. COLLINS: But she's not honoring anything.

11 THE COURT: I'm sorry, I can't hear you. You need to  
12 talk --

13 MS. COLLINS: She's already taken the property. I  
14 have nowhere to get mail, no rights have been determined yet in  
15 this property, and that's where the problem comes in.

16 THE COURT: When you say you have nowhere to get  
17 mail --

18 MS. COLLINS: That was my home where I had my home  
19 base.

20 THE COURT: Okay. I have an address here on your --  
21 what you filed. Do you live at this Wahiawa address?

22 MS. COLLINS: I'm unable to live there because they  
23 don't do pest control, but I've never been able to get my mail  
24 anywhere else; so I keep that as my main address. I've had  
25 utilities on the whole time. I get my mail.

1 THE COURT: So I'm looking at a Wahiawa address --

2 MS. COLLINS: Uh-huh.

3 THE COURT: -- on the document that you filed in this  
4 court today. Is this Wahiawa address where the court should  
5 mail you things?

6 MS. COLLINS: Up till she took the property, yes.  
7 That's the only place I've ever -- because the current place I  
8 live is not giving me a mail key, and that's the other place  
9 that has already sold the property I bought at auction right  
10 out from under me. It's really a complicated mess.

11 THE COURT: So this Wahiawa address is the Kemoo --

12 MS. COLLINS: Yes.

13 THE COURT: So wait, now. You were living at the  
14 apartment?

15 MS. COLLINS: I remodeled it, and I intended to --

16 THE COURT: Not answering my question.

17 MS. COLLINS: -- but I haven't because they don't do  
18 pest control.

19 THE COURT: Not answering my question. Were you or  
20 were you not living --

21 MS. COLLINS: Physically living, no.

22 THE COURT: Okay. Where were you living then?

23 MS. COLLINS: It's in Mililani at the property I  
24 was -- I bought at the auction. But I can't get mail there; so  
25 they never allowed me to.

1 THE COURT: You were living in Mililani.

2 MS. COLLINS: 'Aina Makua Drive, but I've never used  
3 it for mail.

4 THE COURT: Why?

5 MS. COLLINS: Because they won't give me a mail key.  
6 I finally bought the property, and the AOA attorney completely  
7 violated the escrow, and I've been unable to close it during  
8 the bankruptcy state. My family and I were buying that  
9 property.

10 THE COURT: Okay. So wait. You have been living in  
11 Mililani since what month? What year?

12 MS. COLLINS: Probably, like, five years now.

13 THE COURT: Oh, for five years.

14 MS. COLLINS: Yes. As a renter.

15 THE COURT: As a rental?

16 MS. COLLINS: As a renter, yes.

17 THE COURT: And you bought it when?

18 MS. COLLINS: I bought it at sale June of 2013, and  
19 yet we've never been able to close it because of the AOA  
20 attorney was conflict of interest there, too. He didn't want  
21 me to own it. But I won it twice at auction. That's the  
22 second property we're dealing with in bankruptcy.

23 THE COURT: That's not in front of me. Okay?

24 MS. COLLINS: It's included in the bankruptcy case.

25 THE COURT: Not in front of me on these emergency

1 motions --

2 MS. COLLINS: Right. That's correct.

3 THE COURT: -- which is the only thing I'm looking at  
4 today.

5 So you need to give me an address. Assume for the  
6 moment that you cannot use this address in Wahiawa. I need an  
7 address.

8 MS. COLLINS: I don't have one now. That's why I'm  
9 saying this never should have happened. I don't have --

10 THE COURT: You must have a friend who can get mail  
11 for you. You must. So you know what --

12 MS. COLLINS: My friend here can.

13 THE COURT: Okay. Okay. We're going to go off the  
14 record. I need you to give me that address. Okay.

15 And, Counsel, take this address.

16 (Discussion off the record.)

17 THE COURT: So I'm going to go back on the record.  
18 Okay.

19 So while we were off the record we got an Alakea  
20 Street address to use as a mailing address, and I'll ask the  
21 courtroom manager to make sure that gets put into the docket  
22 sheet so we know where to mail things. The e-mail and the  
23 phone number that we have on file according to Miss Collins can  
24 still be used.

25 Okay. Let me ask a question of Miss Harada, and then

1 I'll turn it over for argument.

2 So, Miss Harada, the AOA, having been the high  
3 bidder at the non-judicial foreclosure action, indicated in  
4 papers it filed that the AOA was contemplating renting out the  
5 apartment, and if Miss Collins won her appeal in front of me,  
6 then the AOA would be able to convey the property back to her.  
7 In light of that representation my question is whether the AOA  
8 will agree not to sell the property to some other person or  
9 entity until I have ruled on the pending appeal, which is  
10 likely to be in early 2015.

11 MS. HARADA: Your Honor, I can make that  
12 representation. This property was sold subject to the  
13 mortgages of record, and so we are junior to them, and there  
14 really is going to be no market for the property; so I can make  
15 that representation to you, yes.

16 THE COURT: That you will not dispose of it.

17 MS. HARADA: Yes.

18 THE COURT: Okay. Thank you. That's it.

19 Okay. Miss Collins, I'm going to turn over to you  
20 the microphone so that you can argue in favor of your  
21 motions.

22 MS. COLLINS: Okay. Today I just filed a motion  
23 regarding Act 182. And because Arlette Harada is the one who  
24 puts out the legislative updates to clarify any condo law  
25 amendments, I'm curious why under HRS 421J(a) where it says

1 that "provided that if the owner of a unit subject to a lien of  
2 the association files a petition for relief under the U.S.  
3 Bankruptcy Code, the period of time for instituting proceedings  
4 to enforce the association's lien shall be tolled until 30 days  
5 after the automatic stay of proceedings under section 362 of  
6 the U.S. Bankruptcy Code," that would make me question how they  
7 were able to -- the day the case got dismissed in bankruptcy  
8 court she had the publication up already to sell my property  
9 without giving me my right to tolling so I could get my orders  
10 together, get my motions together, get my things from the unit,  
11 if that were the case. She went right to sell that property.

12 THE COURT: But this statute as I'm reading it, as  
13 you've quoted it, doesn't give you 30 days. The 30 days is to  
14 help the AOA, not to help you.

15 In other words, this statute says the AOA gets six  
16 years to bring an action to collect money owed to the AOA.  
17 And if it files after the six years, then it's too late. But  
18 the running of that six years stops, it gets tolled, if you  
19 file for bankruptcy until 30 days after the automatic stay.

20 So it just lengthens the time the AOA has to seek to  
21 collect money the AOA claims you owe. It doesn't give you a  
22 30-day protection period. It says the time for the AOA to  
23 institute proceedings is tolled. That means it stops running,  
24 means the AOA gets more time, until 30 days after the  
25 automatic stay is lifted.

1           So this is not a statute that helps you. This is a  
2 statute that simply states the time for the AOA to collect  
3 money, and it lengthens the time the AOA gets when you file  
4 for bankruptcy.

5           MS. COLLINS: It specifically refers to if the owner  
6 of the unit files for bankruptcy --

7           THE COURT: Right. Then it says --

8           MS. COLLINS: -- the period of time to enforce it  
9 shall -- meaning "required" -- be tolled until 30 days after  
10 the automatic stay. The automatic stay refers to me. I got  
11 the protection of the automatic stay.

12          THE COURT: Yes, you get the protection of the  
13 automatic stay, but the period of time for the AOA to  
14 institute proceedings is tolled. That means it stops running.  
15 When it stops running, that means you're not counting the days.

16          So let's just say day number one for a year, day  
17 number two for a year, day number three for a year, goes till  
18 the end of six years. When you stop -- when you toll the time,  
19 the clock isn't running.

20          So if it takes you a year in bankruptcy court and the  
21 automatic stay is not lifted for a whole year, then the AOA's  
22 six-year period stops being counted for that year. In essence,  
23 the AOA gets seven years then to bring its action against you.  
24 That's how I read this statute. It doesn't help you.

25          MS. COLLINS: The law is very clear --

1 THE COURT: It's clear to me, too.

2 MS. COLLINS: Okay. We may be at an impasse there,  
3 but I believe that it gives me 30 days reprieve after something  
4 like what happened to me in bankruptcy court.

5 THE COURT: So you know what, you might want to move  
6 to another argument because I'm not going to stay here all day  
7 and argue this with you.

8 MS. COLLINS: Okay. Let's move on.

9 Miss Harada has violated the bankruptcy stay three  
10 times on me while we were in bankruptcy. For her to be allowed  
11 to take my property, the only reason I entered bankruptcy was  
12 because she took my property without ever conducting a sale,  
13 knowing it was not abandoned. And she took it. They never  
14 told me they took it. They never served me before they took  
15 it.

16 When she had the notice of default and intention to  
17 foreclose that she submitted to the court now, I never received  
18 that until two months after that was filed. That gave me till  
19 January 9th of 2013 to cure the default. I didn't receive that  
20 document till March 9th. And this -- she did so many  
21 violations against me. I tried to cure that default.

22 Looking at their bill to me at \$25,000 that was in  
23 that notice of default, this is non-judicial. They didn't have  
24 a sale yet, they never had a lawsuit yet, they never entered my  
25 property yet, and the bill went from 10,000, which it was --

1 when I went to court or when I went to pay it off as a cure, it  
2 was 10,000. All of a sudden it became \$25,000 without ever  
3 doing anything but writing letters and reviewing my offers to  
4 cure. And those offers to cure were not her decision. They  
5 were the board of directors'.

6 She prevented me from getting to negotiate, to work  
7 with my board of directors, and I was completely violated and  
8 should not even be here if she obeyed her fiduciary duty.

9 THE COURT: Okay. Did you have anything else? I  
10 have looked at your papers. Did you have anything else --

11 MS. COLLINS: No.

12 THE COURT: -- you wanted to add?

13 MS. COLLINS: No.

14 THE COURT: Okay.

15 MS. HARADA: Your Honor, first of all, on the 6 --  
16 421J, that chapter has to do with homeowners associations and  
17 not condo associations; so really the applicable chapter is  
18 514B.

19 As far as the violation of the bankruptcy stay, what  
20 we are here today for is a motion to seek a stay pending  
21 appeal. And, you know, many of the things she mentioned just  
22 now are factually inaccurate or make -- it's not correct. And  
23 the \$10,000 was owed in 2011. I don't know if it was \$25,000  
24 as she says, but the time period she's talking about is 2013,  
25 and during that period of time she was not making payments. So

1 much of the amounts that are owed at that point are due to  
2 nonpayment of the current assessments, which continue to accrue  
3 during the period that she's not making payments.

4           So -- okay. As far as the motion for -- I mean, the  
5 notice of default and intention to foreclose, we were trying to  
6 make service of that upon her. We had contacted her -- we  
7 could contact her by phone, but she would never accept things  
8 or make herself available to make service upon her, and she --  
9 we knew she was not in the unit, but we had to make service --  
10 try and make service there and so forth, but she wouldn't tell  
11 us where she was.

12           So, you know, there is a provision under the  
13 non-judicial foreclosure statute, 667-92(f), which allows us,  
14 if we are unable to make service, to take possession of a  
15 vacant unit. And that unit was vacant. We knew it was vacant.

16           We did take possession of it, and as soon as she  
17 found out that we had taken possession, she contacted us, and  
18 she said, "I want the keys." And so we gave her the keys, but  
19 we also gave her a copy of the non-judicial foreclosure notice.

20           And we also extended the time for her to be able to  
21 respond to that. Under that statute she is allowed to either  
22 make a proposal within 30 days of having been served -- she  
23 didn't make any sort of offer at that time -- and/or she could  
24 make payment in full. And that would have stopped everything  
25 right in its track. But she didn't do that, and so we ended up

1 moving forward.

2           And we were on the eve of an auction when her counsel  
3 stepped in and brought an action in Circuit Court; so we ended  
4 up being in there -- being at Circuit Court for, you know, a  
5 motion for restraining order. And we prevailed there, and  
6 there was a determination made by the Circuit Court that she  
7 would not prevail on the merits.

8           Right after that order entered she filed the  
9 bankruptcy, and so, you know, that's why we're here. We've  
10 incurred a lot of attorneys' fees, I agree, but they're  
11 necessary because she keeps filing things that we have to  
12 respond to.

13           I have nothing further, unless you have some  
14 questions, Your Honor. Thank you.

15           THE COURT: Okay. You want to respond?

16           MS. COLLINS: Yes. Thank you.

17           What Miss Harada has said, a lot of it is inaccurate,  
18 and we are going back and forth with this because we're not  
19 seeming to get anywhere. But I would not be fighting this hard  
20 if I was wrong. I have followed the law. I have reviewed with  
21 lawyers and understood that Act 48 when it came out was to  
22 protect homeowners. I made offers to cure that were completely  
23 intercepted and blocked from ever getting to the  
24 decisionmakers. That is the only reason I ended up unable to  
25 pay off any more maintenance fees because everything I was

1 doing she was taking it to foreclosure. Instead of helping the  
2 board and myself get together, she was taking it upon herself  
3 to block those offers because I didn't account for all of her  
4 excessive fees.

5           And this is the document that was with the notice of  
6 default. \$25,000 that she claims was because I was not  
7 accepting service? That is abusive. There is no reason to  
8 have done that, and there's no way to ever cure it again  
9 because of how excessive it is. Even Judge Faris told us in  
10 court that it is higher than most fees of anything he's seen.  
11 So how could it go from 10,000 to twenty-five without ever  
12 having a lawsuit? This is why it's been abusive.

13           She's didn't -- in my motion the other day I filed  
14 different letters I attached to it that literally said that she  
15 was demanding this whole amount in six months or all in full.  
16 The law gave me no guideline as far as how long it would take  
17 to be able to pay off your debt, but it did require negotiation  
18 with the board.

19           Even Arlette had a lot to do with this document.  
20 It's a condominium property regime's owner rights and  
21 responsibilities. It says foreclosure will be the last resort.  
22 It also says that it allows homeowners to work directly with  
23 their associations. It says fair treatment regarding financial  
24 and other obligations, including the opportunity to discuss  
25 payment plans and options with the association before

1 foreclosure is initiated.

2           This document says Ekimoto & Morris recommend you do  
3 this and this; so she knew this was available. She didn't let  
4 me get together with my board at all. She intercepted it.  
5 That's why I couldn't pay any more fees because she would take  
6 it anyway to foreclosure. This is where the abuse has  
7 happened.

8           She has to allow associations to work with their  
9 owners because I was able to cure it. It was a temporary  
10 hardship. Thank you.

11           THE COURT: Okay. If there isn't any other comment,  
12 then what I'm going to do is I'll take this under advisement.  
13 I'm highly likely to rule in a short time in a written ruling,  
14 and I'm going to use the address that you gave me --

15           MS. COLLINS: Thank you.

16           THE COURT: -- to send it to you. And that's likely  
17 to get to you probably within 10 days, something like that.  
18 Okay?

19           Thank you very much.

20           MS. HARADA: Thank you.

21           (Court recessed at 2:30 P.M.)

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COURT REPORTER'S CERTIFICATE

I, Debra Kekuna Chun, Official Court Reporter, United States District Court, District of Hawaii, do hereby certify that pursuant to 28 U.S.C. §753 the foregoing is a complete, true, and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

DATED at Honolulu, Hawaii, March 3, 2015.

/s/ Debra Chun

DEBRA KEKUNA CHUN

RPR, CRR