

APPENDIX A

**ORDER GRANTING PLAINTIFF LCP-MAUI,
LLC'S MOTION FOR DETERMINATION OF
DEFICIENCY AMOUNT, [MOTION] FILED
NOVEMBER 12, 2014, FILED JANUARY 29, 2015**

**IN THE CIRCUIT COURT OF THE SECOND
CIRCUIT, STATE OF HAWAII**

LCP-MAUI, LLC,	)	CIVIL NO. 12-1-0462(3)
)	
Plaintiff,	)	ORDER GRANTING
	)	PLAINTIFF LCP-
v.	)	MAUI, LLC'S MOTION
	)	FOR
AMANDA D. TUCKER.,	)	DETERMINATION OF
et al.,	)	DEFICIENCY
	)	AMOUNT, [MOTION]
Defendants.	)	FILED NOVEMBER
	)	12, 2014

**ORDER GRANTING PLAINTIFF LCP-MAUI,
LLC'S MOTION FOR DETERMINATION OF
DEFICIENCY AMOUNT, [MOTION] FILED
NOVEMBER 12, 2014**

Plaintiff LCP-MAUI, LLC's ("***LCP-Maui***") Motion for Determination of Deficiency Amount ("***Motion***") came on for hearing before the Honorable Joseph E. Cardoza on December 10, 2014. Stephanie E.W. Thompson, Esq. appeared on behalf of LCP-Maui, and Andrew Chianese, Esq. appeared on behalf of Defendant Amanda D. Tucker aka Amanda Dawn Tucker aka Amanda D. Tucker-Meuse ("***Tucker***").

Having been duly informed of the status of the case, and the records and files herein, and upon consideration of the Motion, the memorandum in support, the declarations and exhibits attached thereto, the records and files herein, and argument of counsel, and good cause appearing therefore,

THE COURT HEREBY ORDERS, ADJUDGES AND DECREES THAT THE MOTION IS GRANTED as follows:

1. LCP-Maui is entitled to a deficiency judgment pursuant to the Findings of Fact, Conclusions of Law, and Order Granting LCP-Maui, LLC's Renewed Motion for Summary Judgment and for Decree of Foreclosure, entered in this matter on January 29, 2014;

2. The amount of the deficiency judgment in favor of LCP-Maui and against Defendant Tucker is \$1,293,835.69, as of November 10, 2014 ("***Deficiency Judgment***").

2. Statutory post-judgment interest at the rate of 10% per annum shall accrue on the Deficiency Judgment until the date of payment in full by Defendant Tucker.

3. This Court reserves jurisdiction to consider any further motion for attorneys' fees and costs; and

4. Pursuant to 54(b) of the Hawaii Rules of Civil Procedure, the Court determines and directs that this order is a final judgment, and there is no just reason for delay.

DATED: Wailuku, Maui; January 28, 2015.

/s/ Joseph E. Cardoza (Seal)
Judge of the Above-Entitled Court

APPENDIX B

JUDGMENT, FILED JANUARY 29, 2015
(Re: Order Granting Plaintiff LCP-Maui, LLC's
Motion for Determination of Deficiency Amount,
[Motion] Filed November 12, 2014)

IN THE CIRCUIT COURT OF THE SECOND
CIRCUIT, STATE OF HAWAII

LCP-MAUI, LLC,	)	CIVIL NO. 12-1-0462(3)
)	
Plaintiff,	)	JUDGMENT (Re: Order
	)	Granting Plaintiff LCP-
v.	)	Maui, LLC's Motion for
	)	Determination of
AMANDA D. TUCKER.,	)	Deficiency Amount,
et al.,	)	[Motion] Filed
	)	November 12, 2014)
Defendants.)	
_____)	

JUDGMENT

Pursuant to: (i) Rules 58 and 54(b) of the Hawaii Rules of Civil Procedure, (ii) the Findings of Fact, Conclusions of Law, and Order Granting LCP-Maui, LLC's Renewed Motion for Summary Judgment and for Decree of Foreclosure, entered in this matter on January 29, 2014 ("FOF/COL"), (iii) the Judgment On Findings Of Fact, Conclusions Of Law, and Order Granting LCP-Maui, LLC's Renewed Motion For

Summary Judgment and For Decree Of Foreclosure Filed June 17, 2013, filed on March 20, 2014 (“**Confirmation Order**”), and (iv) the Order Granting Plaintiff LCP-Maui-LLC’s Motion for Determination of Deficiency Amount, Filed November 12, 2014 entered approximately concurrently with this Judgment (“**Deficiency Order**”),

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that JUDGMENT is entered in favor of Plaintiff LCP-MAUI, LLC (n.k.a. Legacy Capital Partners, LLC (“**LCP-Maui**”)) and against Defendant Amanda D. Tucker aka Amanda Dawn Tucker aka Amanda D. Tucker-Meuse (“**Tucker**”), as follows:

1. The deficiency amount owed by Tucker and due LCP-Maui is \$1,293,835.69 as of November 10, 2014 (“**Deficiency Amount**”)

2. Statutory post-judgment interest at the rate of 10% per annum shall accrue on the Deficiency Amount until the date of payment in full.

3. This Judgment disposes of all claims, counterclaims, and/or cross-claims that have been, or could have been brought in the above-entitled action. There are no more remaining parties and/or claims in this action.

4. The Court retains jurisdiction regarding entitlement to attorneys’ fees and costs via post-judgment motion.

5. This judgment is entered pursuant to Rules 54(b) and 58 of the Hawaii Rules of Civil Procedure. There is no just reason for delay, and this Judgment shall be entered as a final judgment.

DATED: Wailuku, Maui; January 28, 2015.

/s/ Joseph E. Cardoza (Seal)
Judge of the Above-Entitled Court

APPENDIX C

SUMMARY DISPOSITION ORDER,
FILED FEBRUARY 28, 2018

CAAP-15-0000109

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

LCP-MAUI, LLC,
Plaintiff-Appellee,

vs.

AMANDA D. TUCKER AKA AMANDA DAWN TUCKER
AKA AMANDA D. TUCKER-MEUSE,
Defendant-Appellant,

and

UNITED STATES OF AMERICA, DIRECTOR OF
TAXATION, STATE OF HAWAII,
VIC ZAPIEN, DUSTIN P. MEUSE, and DOES 1 through
20 inclusive,
Defendants.

ON APPEAL FROM THE SECOND CIRCUIT COURT
IN CIVIL NO. 12-1-0462(3)

(By: Fujise, Presiding Judge, Ginoza and Chan, JJ.)

Defendant-Appellant Amanda D. Tucker aka
Amanda Dawn Tucker aka Amanda D.
Tucker-Meuse (**Tucker**) appeals from the following
entered by the Circuit Court of the Second Circuit
(**circuit court**) [FN 1] on January 29, 2015:

(1) the “Order Granting Plaintiff LCP–Maui, LLC’s Motion for Determination of Deficiency Amount, Filed November 12, 2014” (**1/29/15 Order Granting Deficiency Amount**); and

(2) the related Judgment (**1/29/15 Deficiency Judgment**) in favor of LCP–Maui, LLC (**LCP–Maui**).

On appeal, Tucker contends that the circuit court erred by denying her procedural and substantive due process rights under the Hawai’i State Constitution and the United States Constitution by depriving her of property without an evidentiary hearing to determine that fair market value of her property at the time of the confirmation sale.

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, as well as the relevant statutory and case law, we resolve Tucker’s points of error as follows and affirm as set forth below.

This dispute arises from a judicial foreclosure action in which Tucker appeals from the 1/29/15 Deficiency Judgment.

On November 12, 2014, after the circuit court had entered a foreclosure judgment in its favor, LCP–Maui filed its Motion for Determination of Deficiency Amount (**Deficiency Motion**). On December 3, 2014, Tucker filed her opposition to the Deficiency

Motion arguing that LCP–Maui’s Deficiency Motion was in violation of due process of law and that an evidentiary hearing should be held to determine fair market value of the subject properties at the time of the sale confirmation. The circuit court subsequently entered the 1/29/15 Order Granting Deficiency Amount and the 1/29/15 Deficiency Judgment in favor of LCP–Maui and against Tucker in the amount of \$1,293, 835.69.

Tucker asserts in this appeal that the process in Hawai’i for determining deficiency judgments violates her procedural due process rights. Tucker argues that in calculating the deficiency judgment, an evidentiary hearing should have been held to determine the fair market value of the foreclosed properties and such fair market value should have then been used to calculate the applicable deficiency.

In response, LCP–Maui argues that this appeal should be dismissed for lack of jurisdiction because Tucker was required to raise her due process issues in a prior appeal. Specifically, Tucker previously appealed and challenged the circuit court’s “Findings of Fact, Conclusions of Law, and Order Granting LCP–Maui, LLC’s Renewed Motion for Summary Judgment and For Decree of Foreclosure” filed on January 29, 2014 (**1/29/14 FOF/COL/Order**), and the related Judgment filed on March 20, 2014 (**3/20/14 Foreclosure Judgment**), which resulted in appellate case CAAP-14-0000513 (**First Appeal**). LCP–Maui, LLC v. Tucker, No. CAAP-14-0000513, 2016 WL 3615281 (Hawai’i App. Jun. 30, 2016). In the First

Appeal, Tucker raised various issues challenging the foreclosure decree and judgment in favor of LCP–Maui, but did not raise any point of error relating to Tucker’s liability for a deficiency judgment or how a deficiency judgment would be calculated. Id. at *1.

However, the 1/29/14 FOF/COL/Order addressed the method by which the deficiency judgment would be determined, specifically in conclusions of law (COL) No. 4, which provided:

LCP–Maui is entitled to a deficiency judgment under the Notes and Mortgages for the difference between the amount owed to LCP–Maui under the Notes and Mortgages, and the foreclosure sale proceeds applied thereto; provided, however, that a deficiency judgment shall not be entered against Defendant Tucker unless and until authorized by the Bankruptcy Court or otherwise permitted under bankruptcy law.

(Emphasis added.) Moreover, the related 3/20/14 Foreclosure Judgment specified that “[t]he provisions of the [1/29/14 FOF/COL/Order], which include a decree of foreclosure, an order of sale, and an adjudication as to the entitlement to a deficiency judgment among other things, are incorporated herein.” (Emphasis added.)

As LCP–Maui argues, some case law suggests that in this circumstance, the appeal should be dismissed for lack of appellate jurisdiction. See Security Pacific Mortg. Corp. v. Miller, 71 Haw. 65, 783 P.2d 855 (1989); Citicorp Mortg., Inc. v. Bartolome, 94 Hawai'i 422, 16 P.3d 827 (App. 2000). More recently, however, in Mortg. Elec Registration Svs., Inc. v. Wise, 130 Hawai'i 11, 304 P.3d 1192 (2013), the Hawai'i Supreme Court exercised appellate jurisdiction but held in a judicial foreclosure action that challenges to a foreclosure judgment were barred by *res judicata* where the defendants failed to appeal from the initial foreclosure judgment.

In this case, similar to Wise, we exercise appellate jurisdiction but hold that Tucker is precluded from challenging the method of calculating her deficiency judgment. LCP–Maui's right to a deficiency judgment and the method for calculating the deficiency judgment were adjudicated and set forth in the 1/29/14 FOF/COL/Order, and incorporated into the related 3/20/14 Judgment. In the instant appeal, although Tucker timely appealed from the subsequent 1/29/15 Deficiency Judgment, she is only entitled to challenge the errors unique to that 1/29/15 Deficiency Judgment. See Id. at 16, 304 P.3d at 1197; see also Ke Kailani Partners, LLC v. Ke Kailani Dev. LLC, Nos. CAAP-12-0000758 and CAAP-12-0000070, 2016 WL 2941054, at *7 (Haw. App. Apr. 29, 2016) (Mem. Op.), cert. denied, 2016 WL 4651424, at *1 (Haw. Sept. 6, 2016) (holding, *inter alia*, that appellants had waived their challenge to the method used to determine a deficiency judgment by

dismissing a prior appeal from a foreclosure order that had set forth the entitlement to a deficiency judgment and the method for determining the amount).

In sum, the 1/29/15 Deficiency Judgment in this case did not adjudicate the method by which the deficiency would be calculated, but rather was incident to the enforcement of the earlier 3/20/14 Foreclosure Judgment. See Wise, 130 Hawai'i at 16, 304 P.3d at 1197.

Therefore, IT IS HEREBY ORDERED that the Judgment, entered on January 29, 2015, in the Circuit Court of the Second Circuit is affirmed.

DATED: Honolulu, Hawai'i, February 28, 2018.

On the briefs:

Gary Victor Dubin,
Frederick J. Arensmeyer,
Dan J. O'Meara,
for Defendant–Appellant.

Sharon V. Lovejoy,
Stephanie E.W. Thompson,
for Plaintiff–Appellee.

/s/ Alexa D. M. Fujise
Presiding Judge

/s/ Lisa M. Ginoza
Associate Judge

/s/ Derrick H. M. Chan
Associate Judge

[FN 1] The Honorable Joseph E. Cardoza presided.

APPENDIX D
ORDER REJECTING APPLICATION FOR WRIT
OF CERTIORARI, FILED JUNE 8, 2018

SCWC-15-0000109
IN THE SUPREME COURT OF THE STATE OF
HAWAII
LCP-MAUI, LLC,
Plaintiff-Appellee/Respondent,
vs.
AMANDA D. TUCKER AKA AMANDA DAWN TUCKER
AKA AMANDA D. TUCKER-MEUSE,
Defendant-Appellant/Petitioner,
and
UNITED STATES OF AMERICA, DIRECTOR OF
TAXATION, STATE OF HAWAII,
VIC ZAPIEN, DUSTIN P. MEUSE, and DOES 1 through
20 inclusive,
Defendants/Respondents.
To the Intermediate Court of Appeals of the State of
Hawaii in CAAP-15-0000109
(Fujise, Presiding, Ginoza and Chan, JJ.)
On Appeal from the Second Circuit Court
in Civil No. 12-1-0462(3)
(The Honorable Joseph E. Cardoza, Presiding)

APPLICATION FOR WRIT OF CERTIORARI TO
REVIEW THE FEBRUARY 28, 2018 SUMMARY
DISPOSITION ORDER AND THE MARCH 29, 2018
JUDGMENT ON APPEAL ENTERED BY THE
INTERMEDIATE COURT OF APPEALS IN
CAAP-15-0000109

(By: Recktenwald, C.J., Nakayama, McKenna,
Pollack, and Wilson, JJ.)

Petitioner/Defendant–Appellant Amanda D.
Tucker’s application for writ of certiorari filed on
April 28, 2018, is hereby rejected.

DATED: Honolulu, Hawai’i, June 8, 2018.

/s/ Mark E. Recktenwald
/s/ Paula A. Nakayama
/s/ Sabrina S. McKenna
/s/ Richard W. Pollack
/s/ Michael D. Wilson

APPENDIX E

FIFTH AMENDMENT TO THE
UNITED STATES CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation.
[Emphasis Added]