

see § 490:3-309(b). Furthermore, at least in this case, the district court noted that “the foreclosure would be conditioned on MLB’s agreement to indemnify the Mohrs in the event they are faced with enforcement of the same promissory Note by another party.”

The Mohrs’ arguments to the contrary are not persuasive. First, they contend that the district court erred by relying on *Allen* because the trial court was required to apply Hawaii law.³ But as noted above, “[i]n the absence of controlling forum state law, [we] . . . may be aided by looking to well-reasoned decisions from other jurisdictions.” *Takahashi*, 625 F.2d at 316. Second, the Mohrs make numerous conclusory allegations disputing the facts underlying this litigation, contending, for example, that their mortgage was actually paid off in 2006; that MLB is not the true owner of their mortgage; and that various instances of fraud have rendered their mortgage and any subsequent assignments void. They base their allegations largely on a report from their private investigator. We agree with the district court that the investigator’s report does not create a genuine dispute as to the material facts underlying this litigation. *See Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 242 (1993) (when an expert report is

³ The Mohrs also argue that the district court’s error violated their constitutional rights. “[B]ecause this argument was not coherently developed in [their] briefs on appeal, we deem it to have been abandoned.” *United States v. Kimble*, 107 F.3d 712, 715 n.2 (9th Cir. 1997); *see also* Fed. R. App. P. 28(a)(8)(A).

“not supported by sufficient facts to validate it in the eyes of the law, or when indisputable record facts contradict or otherwise render the opinion unreasonable,” the report cannot create a genuine dispute); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986) (“[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” (internal citations omitted)).

For the above reasons, we affirm the district court’s order granting summary judgment and issuing a decree of foreclosure in favor of MLB.

AFFIRMED.⁴

⁴ We need not reach the district court’s conclusion that the Mohrs’ fraud claims are barred by res judicata. Even if the allegations were not barred, the Mohrs still fail to demonstrate a genuine dispute as to fraud or forgery.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 12 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SANFORD A. MOHR; TINA A. MOHR,
Individually and as Co-Trustees of their
October 15, 1996 unrecorded Revocable
Trust,

Plaintiffs-Appellants,

v.

MLB, SUB I, LLC; et al.,

Defendants-Appellees.

No. 20-15895

D.C. No.
1:16-cv-00493-ACK-WRP
District of Hawaii,
Honolulu

ORDER

Before: NGUYEN, OWENS, and FRIEDLAND, Circuit Judges.

The panel has voted to deny Appellants' petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it.

Appellants' petition for rehearing en banc is DENIED.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 20 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SANFORD A. MOHR and TINA A. MOHR, Individually and as Co-Trustees of their October 15, 1996 unrecorded Revocable Trust,

Plaintiffs - Appellants,

v.

MLB, SUB I, LLC; et al.,

Defendants - Appellees.

No. 20-15895

D.C. No. 1:16-cv-00493-ACK-WRP
U.S. District Court for Hawaii,
Honolulu

MANDATE

The judgment of this Court, entered July 09, 2021, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: David J. Vignol
Deputy Clerk
Ninth Circuit Rule 27-7

MINUTE ORDER

CASE NUMBER: Civ. No. 16-00493 ACK-WRP

CASE NAME: Mohr v. MLB Sub I, LLC

ATTYS FOR PLA: R. Steven Geshell

ATTYS FOR DEFT: Lester K. M. Leu and Daniel K. Kikawa

JUDGE: Alan C. Kay

REPORTER:

DATE: September 14, 2021

TIME:

COURT ACTION:

On August 20, 2021, counsel for Defendant MLB SUB I, LLC (“MLB”) requested that the Court authorize proceeding with the foreclosure as the Ninth Circuit has filed its mandate affirming the Court’s foreclosure order and the Hawaii Third Circuit Court has allowed public sale of property to proceed, notwithstanding the surge in the COVID-19 pandemic. ECF No. 176. The Court held a telephonic hearing on August 31, 2021, which included participation from Mr. Kikawa, Mr. Geshell, Commissioner Colvin, and the Mohrs.

Secondly, Mr. Geshell informed the Court that his clients will be filing a petition for a writ of certiorari to the United States Supreme Court in September and that they request the Court to stay any further action until there has been a ruling by the Supreme Court. Mr. Geshell further requested that the Mohr’s mortgaged house continue to be the only required security, as the Court permitted during the stay of the foreclosure pending the appeal before the Ninth Circuit. The Court directed each party to file a memorandum setting forth their respective positions regarding the foregoing, and each party has done so.

As stated by MLB in its memorandum, the Court has no jurisdiction to stay the mandate. Whitehead v. Frawner, No. CV 1-275 MV/KK, 2019 WL 4016334, at *1 (D.N.M. Aug. 26, 2019) (citing In re Strumes, 681 F.2d 524, 525 (9th Cir. 1982)). As noted by MLB, the decision now being appealed is not the foreclosure decree ordered by this Court, but the Ninth Circuit’s affirmation of that decision through its mandate. The governing statute provides that:

[i]n any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court[.]

28 U.S.C. § 2101(f). Accordingly, any stay would have to be granted by a judge of the Ninth Circuit or by a justice of the Supreme Court. Further, this Court dissolves the stay it ordered pending the Mohrs' appeal to the Ninth Circuit since the Ninth Circuit has rendered its mandate.

The Court additionally agrees with the reasons set forth by MLB that equitable concerns justify allowing the foreclosure to proceed.

The Court understands that given the health conditions of Mr. and Mrs. Mohr, the parties concur that the foreclosure sale should proceed without any open house being held. In view of the ongoing COVID-19 pandemic, the Court directs MLB to prepare a stipulation setting forth that the parties agree that the foreclosure sale will additionally be conducted under paragraphs numbered two and four of the First Amended Emergency Order #6 Regarding Foreclosure Cases Filed in the Circuit Court of the Third Circuit (attached as Exhibit 1 to MLB's memorandum) After the stipulation is signed by both parties it should be filed with the Court.

Any objection to the foregoing must be filed within three days.

IT IS SO ORDERED. (JUDGE ALAN C. KAY)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SANFORD A. MOHR and TINA A.
MOHR, Individually and as Co-
Trustees of their October 15, 1996
unrecorded Revocable Trust,

Plaintiffs-Appellants,

vs.

MLB, SUB I, LLC; et al.,

Defendants-Appellees.

No. 20-15895

D.C. No.1: 16-cv-00493-ACK-WRP
U.S. District Court for Hawaii,
Honolulu

PLAINTIFFS-APPELLANTS'
EMERGENCY STAY MOTION;
DECLARATION OF TINA A. MOHR
& EXH. 1-A; NINTH CIRCUIT
FORM 16; ATTACHMENTS

2021-Sept 15 Appellants' emergency stay motion

R. STEVEN GESHELL, #3349
345 Queen Street, Suite 709
Honolulu, HI 96813
Tel. No. 808.396.7701
Fax No. 808.395.8556
E-Mail: geshaw@lava.net

Attorney for Plaintiffs-Appellants
SANFORD A. MOHR and TINA A. MOHR,
Individually and as Co-Trustees of their
October 15, 1996 unrecorded Revocable Trust

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PLAINTIFFS-APPELLANTS' EMERGENCY STAY MOTION

Come now Plaintiffs-Appellants, hereafter Mohrs, and pursuant to Rule 27 of the Federal Rules of Appellate Procedure (FRAP) and Ninth Circuit Rule 27-3 move this Honorable Court for a stay of the Court's 12 August 2021 in Doc. Entry #35 denial of Mohrs' petition for rehearing en banc, and the Court's Mandate filed 20 August 2021 in Doc. Entry #36. The stay is needed to stop the expected foreclosure sale of Mohrs' home of the last 25 years valued at \$621,000. Mohrs are not in good health per the attached documents from the District Court file.

This case is now before the Supreme Court of the United States on Mohrs' Petition for a Writ of Certiorari to correct the Courts' decisions in mortgage foreclosure actions involving homeowner's claims for quiet title, wrongful foreclosure, unfair and deceptive trade practices under Hawaii law, as listed herein below. The Supreme Court Case is No. 21-393 filed on 8 September 2021. The District Court of Hawaii, the Honorable Judge Alan C. Kay ordered on 14 September 2021 in his minute order that he would not continue his prior stay order while this case was on appeal because per the cases he cited per MLB, Sub I, LLC, hereafter MLB, and 28 U.S. C. § 2101(f) he lacked the authority to continue his earlier stay order pending appeal because of this Court's mandate affirming his decision in this

action. He reasoned that any further stay must be obtained from this Court or a Justice of the Supreme Court. Please see the attached 14 September 2021 minute order.

Judge Kay allowed Mohrs' home to act as surety in lieu of a corporate surety in this case as allowed by Hawaii case law cited herein below.

The Supreme Court Rule 23 requires a stay motion be filed first in this Court so that is why this current emergency motion is filed to preserve the status quo pending the decision by the Supreme Court on Mohrs' Petition for a Writ of Certiorari. It was thought that Judge Kay would continue the stay but MLB convinced him otherwise because he lacks jurisdiction per 28 U.S.C. § 2101(f) and this Court issued its mandate on 20 August 2021.

This motion is supported by the appended Form 16 per Circuit Rule 27-3 and the appended Declaration of Tina Mohr proving the value of their home is \$621,000. MLB's counsel advised Judge Kay, MLB is not seeking a deficiency if the sale proceeds do not pay the judgment amount. Thus, the home is adequate security for the stay pending the Supreme Court's decision. It is very important to realize that if Mohrs' home is sold and Mohrs prevail in the Supreme Court, then MLB and possibly its attorneys too will be subject to liability to Mohrs for treble damages of over \$1,800,000 for the sale or the home. It makes no sense for MLB to proceed with the sale while the case is before the Supreme Court.

Accordingly, Mohrs request the Court to stay enforcement of the judgment pursuant to HRS §667-20.1 and Rule 62 of the Federal Rules of Civil

Procedure, together with Rules 7 and 8, FRAP by allowing their home to act as supersedeas bond even though it is valued by the County less than the amount claimed in the judgment. Mohrs have been paying the real estate taxes on it, and the payments are current.

This procedure by which the Court can allow the Mohrs to provide alternative security in lieu of a supersedeas bond is authorized by the case of *Shanghai Investment Company, Inc. vs. Alteka Co., Ltd.*, 92 Haw. 482, 503-504, 993 P.2d 516, 537-538 (2000). The real estate assessment on the house proves that the property is worth at least \$621,000 per Exhibit 1-A attached. This should be adequate security under the *Shanghai* case under the circumstances of this case. Mohrs will pay the taxes and maintain the property adequately insured against casualty loss during the pendency of this appeal. Additionally, Mohrs request that the ordered mortgage foreclosure sale be stayed pursuant to HRS § 667-20.1.

The following are some of the major issues in the Supreme Court :

1. Whether the trial court violated *Bank of America v. Reyes-Toledo*, 139 Haw. 361, 360 P.3d 1248 (2017) ("Toledo I").
2. Whether the trial court violated *Bank of America v. Reyes-Toledo*, 143 Haw. 249, 428 P.3d 761 (2018) ("Toledo II").
3. Whether the trial court violated the foregoing cases by denying Mohrs' complaint claims determining as a matter of law there were no genuine issues of material fact and that MLB was entitled to foreclose on a mortgage and note that have been paid and MLB

does not own.

4. Whether the trial court erroneously held MLB had standing to counterclaim seeking foreclosure when it failed to prove it was the owner of Mohrs' note and mortgage that Mohrs proved were paid and transferred into the FAMLT 2004-2 on 6 August 2004 and the MLB is not the current trustee of said trust.
5. Whether the forgoing decisions violate Mohrs' constitutional rights to due process and equal protection of the laws in failing to follow Hawaii law.

Accordingly, Mohrs respectfully request the Court to stay the decree of foreclosure and the judgment, cancel any proposed sale, and permit the subject matter home to act as collateral for the supersedeas bond according to the holding in the *Shanghai* case in which the Supreme Court said, in pertinent part at p. 504:

"We hold that the trial court, in its discretion, may allow a party to provide alternate security in lieu of a supersedeas bond. Here, Windward was provided with both a judgment lien on Alteka's real property, with a tax assessed value of at least \$15 million, and \$100,000 in a court-supervised interest bearing account. Because Alteka demonstrated that it had the 'financial strength' to proficiently respond to a money judgment and that the same financial strength and ability to respond will remain undiluted during appeal,' we hold that the trial court did not abuse its discretion in allowing Alteka to provide alternate security in lieu of a supersedeas bond."

To avoid further encumbering this record, Mohrs incorporate by reference their arguments on the merits as presented in their Petition for Rehearing En Banc, in Dkt Entry # 34-1 filed herein on 15 July 2021. Many of those same arguments and facts are now before the Supreme Court in Case # 21-393.

Mohrs' rights to due process are guaranteed to them by the Fourteenth Amendment to the United States Constitution, and Article I, Section 5 of the Hawaii Constitution. Those constitutional provisions prohibit courts from depriving persons of their life, liberty, or property without due process of law. *Romero vs. Star Markets, Ltd.*, 82 Haw. 405, 412, 922 P.2d 1018, 1025 (1996). Where a court acts in a manner inconsistent with due process, the judgment that follows is void. *In re Genesys Data Technologies, Inc.*, 95 Haw. 33, 38, 18 P.3d 895, 900 (2001).

Also of constitutional import are the equal protection provisions of the Fourteenth Amendment to the United States Constitution and Article I, Section 5 of the Hawaii Constitution prohibiting courts from depriving litigants of their equal protection of the laws. *Brescia vs. North Shore Ohana*, 115 Haw. 477, 501-503, 168 P.3d 929, 953-955 (2007); *Aloha Care vs. D.H.S.*, 127 Haw. 76, 88-90, 276 P.3d 645, 657-659 (2012). By granting summary judgment to MLB, the District Court violated Mohrs' constitutional rights to due process and equal protection by denying their property, possession, and ownership interests. *KNG Corp. vs. Kim*, 107 Haw. 73, 80-83, 110 P.3d 397, 404-407 (2005). The strict-scrutiny test

applies here under the equal protection clause argument. *Nakano vs. Matayoshi*, 68 Haw. 140, 151-152, 706 P.2d 814, 821 (1985); *Baehr vs. Lewin*, 74 Haw. 530, 570-575, 852 P.2d 44, 63-65 (1993).

CONCLUSION

The Courts clearly erred therefore this Emergency Stay Motion should be granted forthwith to stay the enforcement of the mandate and foreclosure decree while Mohrs' Petition for a Writ of Certiorari is before the Supreme Court.

DATED: Honolulu, Hawaii, this 15th day of September, 2021.

/s/ R. Steven Geshell

R. STEVEN GESHELL

Attorney for Plaintiffs-Appellants

SANFORD A. MOHR and TINA A. MOHR,
Individually and as Co-Trustees of their
October 15, 1996 unrecorded Revocable
Trust

VIII. CERTIFICATE OF COMPLIANCE

I am the attorney for Mohrs, Petitioners herein. I certify that pursuant to Circuit Rule 35-4 or 40-1, the attached motion is prepared in a format, typeface and type style that complies with Federal Rules of Appellate Procedure Rules 32(a)(4) - (6). It does not exceed 4,200 words; the margins are 1" on all four sides; the face type is proportionally spaced, 14 points; the type style is Arial; and the case names are italicized. The exact word count is 1611.

/s/ R. Steven Geshell

R. STEVEN GESHELL
Attorney for Plaintiffs-Appellants
SANFORD A. MOHR and TINA A. MOHR,
Individually and as Co-Trustees of their
October 15, 1996 unrecorded Revocable
Trust

DECLARATION OF TINA A. MOHR

1. I, Tina A. Mohr, am one of the Plaintiffs in the above-entitled case, wherefore I make this declaration upon personal knowledge of the facts contained herein.

2. Per the Kona Board of Realtors, the real estate sales market here is active because the demand exceeds the supply.
3. Attached hereto marked Exhibit 1-A is a true and correct copy of the County of Hawaii's 2021 assessment of our home value as of 8 August 2021 that I retrieved from the County's property tax website.
4. I agree with the property value being \$621,000 and that is my opinion as a co- owner of the subject property in this case that is the fair market value of our home, which appreciated during our appeal.
5. The real estate taxes on our home were paid and are current. My husband and I agree to keep the real estate taxes paid on our home.
6. I can assure the Court that if the stay is continued in place while the case is pending in the United States Supreme Court, we will keep the home adequately insured against casualty loss and continue to maintain it in the present condition so it does not depreciate.
7. I respectfully request the Court allow our home to act as a supersedeas bond in this case so the issues raised by us before the U.S. Supreme Court will be ultimately decided by the U.S. Supreme Court in our favor on Certiorari to said Court.
8. My husband and I cannot allow visitors and prospective buyers into our home as is done in open houses in foreclosure sales because

we are both immunocompromised cancer survivors undergoing cancer treatment and surgeries and are, thus, at increased risk for contracting Covid-19. There has been a recent surge in Covid-19 cases in Hawaii. Current statistical models predict a worsening Covid-19 surge and an overwhelming strain on the state's hospital capacity.

9. Conducting an open house of our home at this time will place us at increased risk of Covid-19 exposure. Such action will force us to move from our home pending our Petition for Certiorari in the U.S. Supreme Court, thereby placing an undue hardship on us as stated.
10. Therefore we respectfully request the Court grant the stay pending our petitioning the U.S. Supreme Court for certiorari in the interests of justice and reasonableness under the circumstances.

I declare under penalty of law that the foregoing is true and correct.

EXECUTED on this 15th day of September, 2021.

/s/ Tina A. Mohr
TINA A. MOHR

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date the foregoing motion for stay was duly served upon the following parties at their last known addresses as follows:

Via Electronic Filing:

lester@leu-okuda.com

danielk@leu-okuda.com

Lester K.M. Leu, Esq.

Daniel K. Kikawa, Esq.

222 Merchant Street, Main Floor

Honolulu, HI 96813

Attorneys for Defendant,

MLB SUB I, LLC

DATED: Honolulu, Hawaii, this 15th day of September, 2021.

/s/ R. Steven Geshell

R. STEVEN GESHELL

Attorney for Plaintiffs

SANFORD A. MOHR and

TINA A. MOHR,

Individually and as Co-Trustees

of their October 15, 1996

unrecorded Revocable Trust



Parcel Information

Parcel Number 730470160000
 Location Address 73-4787 HALOLANI STREET
 Project Name Kona Heavens
 Property Class HOMEOWNER For zoning information, refer to [Zone Maps](#)
 Neighborhood Code 7323-5
 Legal Information LOT 15 43,898 SF FP 1423 KONA HEAVENS
 Land Area (acres) 1.0080
 Land Area (approximate sq ft) 43,898

[View Map](#)

[Plat \(TMK\) Maps](#)

Owner Information

Owner Names
 MOHR,SANFORD A/TINA A TTEES Fee Owner

Mailing Address
 MOHR,SANFORD A/TINA A TTEES
 73-4787 HALOLANI ST
 KAILUA KONA HI 96740 9211

Assessment Information

Year	Property Class	⊕ Show Historical Assessments									
		Market Land Value	Dedicated Use Value	Assessed Land Value	Market Building Value	Assessed Building Value	Total Market Value	Total Assessed Value	Total Exemption Value	Total Taxable Value	
2021	HOMEOWNER	\$329,900	\$0	\$231,800	\$291,100	\$242,400	\$621,000	\$474,200	\$180,000	\$294,200	

Land Information

Property Class	Square Footage	Acreage	Agricultural Use Indicator
HOMEOWNER	43,908	1.008	

Residential Improvement Information

Building Number	1	Bedrooms	4
Year Built	1977	Framing	DOUBLE WALL
Eff Year Built	1977	Exterior Wall	STUCCO
Square Feet	1,600	Roof Material	SHAKES
Total Room Count	6	Heating/AC	
Full Baths	2	Fireplace	0
Half Baths	1	Grade	4-

Sketches

EXHIBIT 1 - A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 16. Circuit Rule 27-3 Certificate for Emergency Motion

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form16instructions.pdf>

9th Cir. Case Number(s) **20-15895**

Case Name **Mohr v. MLB, Sub I, LLC**

I certify the following:

The relief I request in the emergency motion that accompanies this certificate is:

for a stay pending Mohrs' Petition for a Writ of Certiorari in the Supreme Court in Case No. 21-393 filed on 9 September 2021 as the District Court refused to continue the stay filed there pending this appeal after the Mandate was issued by this Court.

Relief is needed no later than (date): **20 September 2021**

The following will happen if relief is not granted within the requested time:

Mohrs' home of 25 years will be sold in a foreclosure action causing them to lose about \$621,000 in value.

I could not have filed this motion earlier because:

I did not realize this was required as the trial court had previously stayed the foreclosure sale pending the appeal to this Court. When the mandate was issued, at the request of MLB, Sub I, LLC, (MLB), Judge Kay refused to continue his stay order as he held he lacked jurisdiction to do so.