

I requested this relief in the district court or other lower court: Yes No

If not, why not:

[Redacted]

I notified 9th Circuit court staff via voicemail or email about the filing of this motion: Yes No

If not, why not:

An emergency exists because of Judge Kay's 14 September 2021 minute order, a copy of which is in ECF # 185 in the District Court of Hawaii and attached.

I have notified all counsel and any unrepresented party of the filing of this motion:

On (date): [Redacted] date of filing this emergency stay motion

By (method): [Redacted] Electronic filing

Position of other parties: [Redacted] MLB will undoubtedly oppose this.

Name and best contact information for each counsel/party notified:

Lester K.M. Leu, Esq. lester@leu-okuda.com

Daniel K. Kikawa danielk@leu-okuda.com

222 Merchant Street

Honolulu, HI 96813

Attorneys for Defendant- Appellee MLB, Sub I, LLC

I declare under penalty of perjury that the foregoing is true.

Signature R. Steven Geshell

Date 15 September 2021

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

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)

40

LEU OKUDA & DOI

LESTER K.M. LEU
GARY Y. OKUDA
KARYN A. DOI
LANSEN LEU
DANIEL KIKAWA

ATTORNEYS AT LAW
A LAW PARTNERSHIP
THE MERCHANT HOUSE
222 MERCHANT STREET, MAIN FLOOR
HONOLULU, HAWAII 96813

TELEPHONE
(808) 538-1921
FACSIMILE
(808) 523-9585

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Re: No. 21-393
In re: Sanford A. Mohr, et al. vs. MLB, Sub I, LLC; et al.

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**Dionna Lei Lazo for Daniel K. Kikawa, Esq.
Leu Okuda & Doi, Attorneys at Law**

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SUPREME COURT OF THE UNITED STATES

No. 21-393

Sanford A. Mohr, et al

(Petitioner)

MLB, SUB I, LLC

v.

(Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check the appropriate box:

- I am filing this waiver on behalf of all respondents.
- I only represent some respondents. I am filing this waiver on behalf of the following respondent(s):

MLB, SUB I, LLC

Please check the appropriate box:

- I am a member of the Bar of the Supreme Court of the United States. (Filing Instructions: File a signed Waiver in the Supreme Court Electronic Filing System. The system will prompt you to enter your appearance first.)
- I am not presently a member of the Bar of this Court. Should a response be requested, the response will be filed by a Bar member. (Filing Instructions: Mail the original signed form to: Supreme Court, Attn: Clerk's Office, 1 First Street, NE, Washington, D.C. 20543).

Signature: 

Date: 9/15/21

(Type or print) Name DANIEL K. KIKAWA

Mr.

Ms.

Mrs.

Miss

Firm

Leu Okuda & Doi, Attorneys at Law

Address

222 Merchant St., Main Floor

City & State

Honolulu, HI

Zip 96813

Phone

808-538-1921

Email danielk@leu-okuda.com

A copy of this form must be sent to petitioner's counsel or to petitioner if *pro se*. Please indicate below the name(s) of the recipient(s) of a copy of this form. No additional certificate of service or cover letter is required.

cc: R. Steven Geshell
345 Queen St., Ste. 709
Honolulu, HI 96813
geshlaw@lava.net; geshlaw@yahoo.com

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R. Steven Gesell

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LEU OKUDA & DOI
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THE MERCHANT HOUSE
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SUPREME COURT OF THE UNITED STATES

No. 21-393

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(Petitioner)

MLB, SUB I, LLC

v.

(Respondent)

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Please check the appropriate box:

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Signature:



Date:

9/15/21

(Type or print) Name DANIEL K. KIKAWA

Mr.

Ms.

Mrs.

Miss

Firm

Leu Okuda & Doi, Attorneys at Law

Address

222 Merchant St., Main Floor

City & State

Honolulu, HI

Zip 96813

Phone

808-538-1921

Email danielk@leu-okuda.com

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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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.

Appellants' emergency motion to stay district court and/or appellate proceedings pending resolution of the petition for certiorari, construed in part as a motion to recall this court's August 20, 2021 mandate, is denied. *See Calderon v. Thompson*, 523 U.S. 538, 550 (1998) (requiring "extraordinary circumstances" to recall the mandate).

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

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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

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

Plaintiffs,

vs.

MLB, SUB I, LLC and
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.,
JOHN DOES 1-20; JANE DOES
1-20; DOE PARTNERSHIPS 1-20;
DOE CORPORATIONS 1-20;
DOE ENTITIES 1-20, AND DOE
GOVERNMENTAL ENTITIES 1-
20,

Defendants.

Case No. 16-cv-00493-ACK-WRP
(Declaratory Judgment)
(Other Civil Action)

PLAINTIFFS' OBJECTION TO
THE COURT'S 14 SEPTEMBER
2021 MINUTE ORDER IN ECF #
185;
CERTIFICATE OF SERVICE

Judge: Honorable Alan C. Kay

**PLAINTIFFS' OBJECTION TO THE COURT'S 14 SEPTEMBER 2021
MINUTE ORDER IN ECF # 185**

COME NOW Plaintiffs Sanford A. Mohr and Tina A. Mohr, individually and as Co-Trustees of their October 15, 1996 unrecorded revocable trust (hereafter "Mohrs"), and pursuant to and in response to the Court's 14 September 2021 minute order in **ECF # 185** respectfully object to that because on 15 September 2021 they filed in the Ninth Circuit Court of Appeals their emergency motion for a stay pending the Supreme Court's decision on Mohrs' 8 September 2021 Petition for a Writ of Certiorari. On 17 September 2021, the Ninth Circuit Court of Appeals denied Mohrs' emergency motion for stay, which is also now in the record here in **ECF # 186**. Now, Mohrs will be filing their stay motion in the Supreme Court so Mohrs therefore respectfully request the effect of the minute order be further stayed.

The current stay order is found in **ECF # 167** filed 7 July 2020, which Mohrs respectfully request be continued in full force and effect while their Petition for Certiorari is pending until that case is decided. The Court allowed and Mohrs again request the Court continue to allow their home to act as surety per said Order. MLB Sub I, LLC (MLB)'s counsel advised the Court earlier, MLB would not be seeking a deficiency from Mohrs. Please see **ECF # 150**, at page 36 in footnote 25. It should be noted in the record, that if Mohrs prevail in the Supreme Court, and their home is sold,

then MLB Sub I, LLC and its attorneys maybe subject to treble damages of \$1,800,000 per their UDAP claim in this case. One wonders why MLB Sub I, LLC is willing to gamble that by selling the home now??

Accordingly, Mohrs request the Court continue 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. The real estate taxes are current.

Dated: Honolulu, Hawaii, this 17 th 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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

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

Plaintiffs,

v.

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1-20; DOE PARTNERSHIPS 1-20;
DOE CORPORATIONS 1-20;
DOE ENTITIES 1-20, AND DOE
GOVERNMENTAL ENTITIES 1-
20,

Defendants

Case No. 16-cv-00493-ACK-WRP
(Declaratory Judgment)
(Other Civil Action)

CERTIFICATE OF SERVICE

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

rebecca@rcolvinlaw.com

Commissioner

Rebecca H. Colvin, Esq.

75-165 Hualalai Road, Suite #202

Kailua-Kona, HI 96740

DATED: Honolulu, Hawaii, this 17th 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