

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ANZ GUAM, INC., formerly known as CITIZENS SECURITY BANK (GUAM), INC.,
Plaintiff-Appellee,

v.

JESUS T. LIZAMA dba Victoria Hotel, J&JEV ENTERS., INC., and BANK OF GUAM
Defendants-Appellants.

SUPREME COURT NO. 2013-SCC-0011-CIV
SUPERIOR COURT NO. 00-0296D

OPINION

Cite as: 2014 MP 11

Decided October 8, 2014

Vicente T. Salas, Saipan, MP, for Defendants-Appellants Jesus T. Lizama dba Victoria Hotel, J&JEV Ent.

Robert T. Torres, Saipan, MP; and Joyce C.H. Tang and Sirena P. Cassidy, Hagatna, GU, for Plaintiff-Appellee ANZ Guam, Inc., formerly known as Citizens Security Bank (Guam), Inc.

BEFORE: JOHN A. MANGLONA, Associate Justice; PERRY B. INOS, Associate Justice; and TIMOTHY H. BELLAS, Justice Pro Tem.

MANGLONA, J.:

¶ 1 Defendants Jesus T. Lizama dba Victoria Hotel and J&JEV Enterprises (collectively, “Lizama”) appeal the trial court’s amended default judgment (“amended judgment”) and order directing a foreclosure sale (“foreclosure order”). Lizama claims (1) the trial court erred in issuing the foreclosure order because it executed an amended judgment that relied on a defective default notice by Plaintiff-Appellee ANZ Guam, Inc., formerly known as Citizens Security Bank (Guam), Inc. (“the Bank”); and (2) he cured the default. We do not reach Lizama’s claims because we lack jurisdiction over the amended judgment and foreclosure order. For the following reasons, we DISMISS the appeal.

I. Factual and Procedural Background

¶ 2 Lizama’s appeal arises from an alleged defect in the Bank’s default notice. Lizama defaulted on loan payments to the Bank two months after executing a May 1999 promissory note for \$1,990,000. In its January 2000 letter, the Bank informed Lizama of its intent to foreclose his real property due to the default. The letter stated that as of January 13, 2000, Lizama owed the Bank the principal of \$1,990,000 and accrued interest of \$105,789.37. The letter notified Lizama that he could not cure the default, but could prevent the foreclosure sale by paying the principal and interest due, as well as the Bank’s costs and attorney fees within ten days of the letter.

¶ 3 In February 2000, the Bank provided Lizama with the default notice. The notice contained: (1) the descriptions of the property used as security for the mortgage; (2) the date of the mortgage; (3) the amount of unpaid principal and accrued interest; and (4) a statement requiring Lizama to pay, within thirty days of the notice, the amount due, plus, the interest accrued from the date of the notice until the date of the payment.

¶ 4 In June 2000, the Bank filed a complaint to foreclose the mortgage, but Lizama did not file an answer. The trial court entered a default judgment that was later amended on January 30, 2001.¹ Lizama neither challenged the amended judgment nor sought to set it aside.

¶ 5 The Bank subsequently filed motions to order the foreclosure sale, one in 2002 and another in 2004. The Bank suspended each motion because Lizama agreed to bring the loan payments current. From 2002 to 2009, Lizama made loan payments to the Bank.²

¹ The amended judgment corrected the amount of principal and interest Lizama owed the Bank as of September 1, 2000: \$1,990,000 in principal plus interest.

² The parties disagree as to whether these payments brought the loan current.

¶ 6 In October 2012, the Bank filed another motion to order the foreclosure sale. Lizama opposed the motion, arguing the Bank violated the default notice provisions of the Real Estate Mortgage Law (“REML”), 2 CMC § 4534. In his opposition, Lizama contended that the notice contained an inaccurate amount due because the notice included the entire unpaid principal, plus interest, when it should have stated the “entire amount then due under the terms of the mortgage other than such portion or principal as would not then be due had no default occurred.” 2 CMC § 4536(a).

¶ 7 On February 13, 2013, the trial court granted the foreclosure order, which executed the earlier amended judgment and ordered Lizama to pay the unpaid principal balance, accrued interest, fees, and costs.

¶ 8 Lizama appeals the amended judgment and the foreclosure order.

II. Jurisdiction

¶ 9 The parties dispute whether we have jurisdiction over this appeal. Accordingly, we address the issue below and take this time to set forth our basic rule: the Court has jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3; 1 CMC § 3102(a).

III. Discussion

¶ 10 Before considering the merits of an appeal, we must address the threshold jurisdictional issue, *Commonwealth Dev. Auth. v. Camacho*, 2010 MP 19 ¶ 5: whether we have jurisdiction over the amended judgment and foreclosure order. We address the matters in turn.

A. Jurisdiction: Amended Judgment

¶ 11 Lizama appeals the default notice underlying the amended judgment and post-judgment foreclosure order. We have jurisdiction to decide an appeal only if the notice of appeal is timely filed. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 11. Under NMI Supreme Court Rule 4(a)(1), a party in a civil case has thirty days after the entry of judgment or order to appeal.³

¶ 12 Here, Lizama filed the notice of appeal of the amended judgment about twelve years after the deadline. Lizama waited to challenge the default notice underlying the amended judgment following the foreclosure order. We, therefore, do not have jurisdiction over the amended judgment.

³ See also *Jones v. Phipps*, 39 F.3d 158, 161 (7th Cir. 1994) (“[B]ecause [the appellant] waited more than thirty days to file the notice of appeal [of the default judgment], and took no action which might have tolled the running of that time period, [the appellant] forever lost the right to appeal the merits of the underlying default judgment.”); see also *Swaim v. Moltan Co.*, 73 F.3d 711, 716 (7th Cir. 1996) (noting that a Rule 60(b) motion to set aside a default judgment “resets the thirty-day period in which to file a notice of appeal” (citing FED. R. APP. P. 4(a)(4)(F)).

B. Jurisdiction: Foreclosure Order

¶ 13 Next, we look to whether we have jurisdiction of the foreclosure order. While Lizama timely filed an appeal of the foreclosure order, we only have jurisdiction over final orders. *Camacho*, 2010 MP 19 ¶ 5. We must, therefore, consider whether the foreclosure order is a final order.

¶ 14 A final order “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” *Id.* ¶ 10 (internal quotations omitted); *see also id.* ¶¶ 10-11 (explaining that a default judgment is a final order); *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 128 (2d Cir. 2011) (noting that an entry of default judgment “converts the defendant’s admission of liability into a final judgment that terminates the litigation and awards the plaintiff any relief to which the court decides it is entitled”); *Shuput v. Lauer*, 325 N.W.2d 321, 322 (Wis. 1982) (indicating “general agreement that the judgment of foreclosure and sale is a final decree; that the proceedings subsequent thereto relating to the sale are analogous to the execution of a judgment and simply enforce the parties’ rights which have been adjudicated . . .”).

¶ 15 In this matter, the foreclosure order executed the terms of the amended judgment that determined the Bank’s claims against Lizama and noted Lizama’s one-year right of redemption following the foreclosure sale. *See ANZ Guam, Inc. v. Lizama*, Civ. No. 00-0296 (NMI Super. Ct. Feb. 13, 2013) (Order Directing Forclosures [sic] Sale at 2-3) (ordering foreclosure consistent with the amended judgment). The amended judgment ended the litigation because it settled the amount Lizama owed to the Bank, the only remaining determination for the trial court before a foreclosure order, and ordered payment within three months of the judgment and order to avoid foreclosure. Therefore, the foreclosure order is not a final order for purposes of reviewing the amended judgment.

¶ 16 While the foreclosure order is not a final order in this case, we take this time to examine the scope of review for an appeal of a foreclosure order. In *Jones v. Phipps*, the appellant, after failing to timely appeal the default judgment within thirty days, filed a notice of appeal of an order denying a motion to vacate a default judgment pursuant to Federal Rule of Civil Procedure 60(b)(1). 39 F.3d at 161. Like Lizama, the appellant raised issues concerning the underpinnings of the default judgment. *Id.* at 162. In response, the court emphasized that the appeal of the order denying the Rule 60(b)(1) motion prohibits consideration of the basis for the default judgment. *Id.* at 161-62; *cf. Swaim*, 73 F.3d at 717 (“[R]eview of a denial of motion to set aside . . . a [default] judgment involves only an inquiry into the actual denial of post[-]judgment relief—not into the merits of the predicate default judgment.”). Because the court lacked jurisdiction over the default judgment, it declined to review the merits of the judgment. *Jones*, 39 F.3d at 162.

¶ 17 Similarly, in *Shuput v. Lauer*, the court held unreviewable a judgment of foreclosure and sale on an appeal from an order confirming a foreclosure sale. 325 N.W.2d at 322. Though the court considered

both the judgment and order appealable as of right, *id.* at 326, it highlighted that an appeal of the judgment limits review to the judgment itself, *id.* (citations omitted), whereas an appeal of the order only involves an evaluation of the sale proceedings, 325 N.W.2d at 322 (citations omitted). Thus, it did not review the judgment based on an appeal of the order. 325 N.W.2d at 327.

¶ 18 In this appeal, Lizama seeks review of the default notice underlying the amended judgment by challenging the foreclosure order. However, we do not reach the issue of a defect in the default notice based solely on the timely appeal of the foreclosure order, which, by definition is not a final order.⁴

IV. Conclusion

¶ 19 For the preceding reasons, we DISMISS the appeal because we lack jurisdiction to review the amended judgment and foreclosure order.

SO ORDERED this 8th day of October, 2014.

/s/ _____
JOHN A. MANGLONA
Associate Justice

/s/ _____
PERRY B. INOS
Associate Justice

/s/ _____
TIMOTHY H. BELLAS
Justice Pro Tem

⁴ While we do not reach the merits of Lizama's defective notice claim, we underscore the default notice requirements under 2 CMC § 4534. Working in conjunction with § 4532 and § 4536, the default notice must include the amount that is necessary to cure.