

NO. 25172

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

VICTOR C. QUITAN, JR., Plaintiff-Appellee

vs.

JULIA FRANCESCA COELHO, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CIV. NO. 1RC01-4789)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Upon review of the record, it appears that the June 6, 2002 judgment for possession filed in Civil No. 1RC01-4789 is immediately appealable under the Forgay doctrine, even though the claim for damages and the counterclaim have not been resolved. See Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995). The June 20, 2002 notice of appeal, which designates the June 6, 2002 writ of possession as the judgment appealed, fairly implies an intent to appeal the June 6, 2002 judgment for possession. See City & County of Honolulu v. Midkiff, 57 Haw. 273, 275-76, 554 P.2d 233, 235 (1976). However, the appeal of the judgment for possession is moot inasmuch appellant legally cannot regain possession of the subject premises if the judgment for possession is vacated on appeal. See Exit Co. Ltd.

Partnership v. Airlines Capital Corp., 7 Haw. App. 363, 766 P.2d
129 (1988). Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed as
moot.

DATED: Honolulu, Hawai'i, September 10, 2002.