

NO. 25453

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

JAMES HARDIE BUILDING PRODUCTS, INC. and
JAMES HARDIE INDUSTRIES (USA), INC., Petitioners,

vs.

THE HONORABLE RICHARD W. POLLACK, Circuit Court Judge
of the First Circuit, State of Hawai'i; KYO-YA COMPANY, LTD.,
formerly known as HONOLULU ROOFING CO., LTD.;
JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10;
DOE CORPORATIONS 1-10; and DOE GOVERNMENTAL ENTITIES 1-10,
Respondents.

PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION
(Civ. No. 01-1-0865)

ORDER DENYING PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

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

Upon consideration of the Petition for Writ of Mandamus or Prohibition submitted by Petitioners James Hardie Building Products, Inc. and James Hardie Industries (USA), Inc., it appears Petitioners seek a writ compelling the Honorable Richard W. Pollack to vacate his decision allowing discovery of certain information characterized as trade secrets, subject to a protective order limiting use of the discovered information.

A writ of mandamus and/or prohibition is an extraordinary remedy that will not issue unless the petitioner demonstrates a clear and indisputable right to the relief requested and a lack of other means to redress adequately the alleged wrong or to obtain the requested action. Such writs are not meant to supersede the legal discretionary authority of the lower court, nor are they meant to serve as legal remedies in

lieu of normal appellate procedures. Where a trial court has discretion to act, mandamus will not lie to interfere with or control the exercise of that discretion, even when the judge has acted erroneously, unless the judge has exceeded his or her jurisdiction, has committed a flagrant and manifest abuse of discretion, or has refused to act on a subject properly before the court under circumstances in which it has a legal duty to act. Kema v. Gaddis, 91 Hawai'i 200, 204-205, 982 P.2d 334, 338-339 (1999) (Citations omitted). Under Rule 26(c) of the Hawai'i Rules of Civil Procedure, the trial court has broad discretion to determine appropriate protective orders, and the trial court's rulings are subject to review by way of appeal after entry of judgment. See, e.g., Kukui Nuts of Hawaii Inc. v. R. Baird & Co., Inc., 7 Haw.App. 598, 620-621, 789 P.2d 501, 515 (1990), cert denied.

Petitioners fail to demonstrate that Respondent Pollack acted in excess of his jurisdiction or manifestly abused his discretion. Therefore,

IT IS HEREBY ORDERED that the petition for writ of mandamus or prohibition is denied.

DATED: Honolulu, Hawai'i, November 21, 2002.