

*** NOT FOR PUBLICATION ***

NO. 25682

IN THE SUPREME COURT OF THE STATE OF HAWAII

JAVA HAWAII INVESTMENTS, INC., a Hawaii corporation,
Plaintiff-Appellee,

vs.

YI SANG LEE, individually and doing business as Beach Market
and Grace Lee, individually and doing business as Beach Market,
Defendants-Appellants

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CIVIL CASE NO. 1RC02-1-6437)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that Defendant-Appellants Yi Sang Lee and Grace Lee's (the Lee Appellants) appeal from the February 11, 2003 judgment for possession and writ of possession is moot. In a summary possession action, "the judgment for possession [i]s a judgment immediately appealable under the Forgay doctrine." Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995). Nevertheless, "the termination of possession without execution of a writ of possession moots all questions about the validity of the order authorizing the issuance of the writ of possession and of the writ itself." Crown Properties, Inc. v. Financial Security Life Insurance Co., Ltd., 6 Haw. App. 105, 112, 712 P.2d 504, 509 (1985); Ideguchi v. Luna, 40 Haw. 236, 237 (1953) (concluding that the issues on appeal became moot by virtue of the appellant's having voluntarily vacated the subject premises one day prior to entry of the judgment and issuance of the writ of possession). In response to our June 10, 2003 order requiring the Lee Appellants to show cause why we should not dismiss this appeal as moot, the Lee Appellants did not contest Plaintiff-Appellee Java Hawaii Investments, Inc.'s (Appellee Java Hawaii Investments), evidence

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showing that the Lee Appellants terminated their possession of the subject property before Appellee Java Hawaii Investments attempted to execute the writ of possession. Therefore, the sole issue in this Forgay appeal, possession, has become moot. It is our duty to decide actual controversies by a judgment that can be carried into effect, and not to give opinions on questions that have become moot. In re Thomas, 73 Haw. 223, 226, 832 P.2d 253, 255 (1992). Although issues other than possession remain unresolved in this case, those issues appear to be pending before the district court. Accordingly,

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

DATED: Honolulu, Hawai'i, July 1, 2003.