

NO. 25935

IN THE SUPREME COURT OF THE STATE OF HAWAII

ONE KALAKAUA SENIOR LIVING ASSOCIATION, Petitioner,

vs.

THE HONORABLE ELIZABETH E. HIFO, ALICE P. CLAY, et al.,
Respondents,
(CIV. NO. 02-1-1042 (EEH))

ONE KALAKAUA SENIOR LIVING ASSOCIATION, Petitioner,

vs.

THE HONORABLE ELIZABETH E. HIFO, ALICE P. CLAY, et al.,
Respondents.
(CIV. NO. 02-1-1649 (EEH))

ORIGINAL PROCEEDING

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

(By: Moon, C.J., Levinson, Acoba, and Duffy, JJ., and
Circuit Judge Kochi, in place of Nakayama, J., recused)

Upon consideration of Petitioner One Kalakaua Senior Living Association's petition for a writ of mandamus directed to the Honorable Judge Elizabeth E. Hifo and for an order staying investigation by special master pending determination of petition, the papers in support and opposition, and the records and files herein, it appears that: (1) Petitioner seeks review of an order appointing a special master in Clay v. One Kalakaua Senior Living Association, Civil No. 02-1-1042, and Hawaii First, Inc. v. Moscatello, Civil No. 02-1-1649, presently pending in the Circuit Court of the First Circuit; (2) a reference to a special

master is generally reviewable on appeal from a final judgment. Burlington Northern Railroad Company v. Dept. of Revenue of State of Washington, 934 F.2d 1064, 1071 (9th Cir. 1991); (3) under exceptional circumstances, however, a court may review a reference order in a mandamus proceeding. La Buy v. Howes Leather Co. Inc., 352 U.S. 248, 256 (1957); (4) review of a reference order in a mandamus proceeding is appropriate where the reference order: (a) presents a special risk of significant irreparable harm; and (b) is palpably erroneous. 9 Moore's Federal Practice § 53-31[2] (citations omitted); (5) on September 9, 2003, the respondent judge entered an order: (a) staying all proceedings by the special master pending further order of the circuit court; and (b) lifting the stay of discovery; (6) the respondent judge also conducted a hearing on the motion to appoint a receiver and orally denied the motion on December 5, 2003; (7) Petitioner fails to establish that there are exceptional circumstances requiring immediate review of the order appointing a special master; and (8) Petitioner can seek relief in the circuit court and Petitioner can seek review of the order appointing a special master on appeal from any adverse judgment. See Kema v. Gaddis, 91 Hawai'i 200, 204-205, 982 P.2d 334, 338-339 (1999) (citing Straub Clinic & Hospital v. Kochi, 81 Hawai'i 410, 414, 917 P.2d 1284, 1288 (1996)) (a writ of mandamus is not intended to serve as a legal remedy in lieu of normal appellate procedures). Therefore,

IT IS HEREBY ORDERED that the petition for a writ of mandamus is denied without prejudice to any remedy Petitioner may have in the pending circuit court proceeding and without prejudice to any remedy by way of appeal from any adverse judgment.

DATED: Honolulu, Hawai'i, December 19, 2003.

Corey Y.S. Park (Paul
Johnson Park & Niles)
and James Van Buren
(Van Buren Campbell
& Shimizu) for
petitioner

Lyle S. Hosoda for
respondents Hawaii
First, Inc. and
Richard Emery