

NO. 28990

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

THE KAILUAN, INC., Petitioner,

vs.

THE HONORABLE GLENN J. KIM, JUDGE OF THE CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAI'I and CASTLE FAMILY LLC, Respondents.

NORMA T. YARA
CLERK, APPELLATE CLERK
STATE OF HAWAII

2008 FEB 14 PM 3:30

FILED

ORIGINAL PROCEEDING
(CIV. NO. 08-1-0012-01)

ORDER

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

Upon consideration of the petition for a writ of mandamus filed by petitioner The Kailuan, Inc. and the papers in support, it appears that petitioner can litigate the circuit court's jurisdiction and authority to enforce compliance with the Consent Agreement at a trial on the merits. The respondent judge did not flagrantly and manifestly abuse his discretion in requiring a bond of an amount based on administrative penalties, potential civil fines, real property taxes and estimated exposure to claims.

It further appears that a writ of ejectment is immediately appealable and petitioner can seek a stay of such writ pending appeal. See Penn v. Transportation Lease Haw., Ltd., 2 Haw. App. 272, 274, 630 P.2d 646, 649 (1981); Ciesla v. Reddish, 78 Hawai'i 18, 889 P.2d 702 (1995); HRAP 8. Therefore, petitioner is not entitled to mandamus relief. See Kema v. Gaddis, 91 Hawai'i 200, 204-05, 982 P.2d 334, 338-39 (1999) (A writ of mandamus is an extraordinary remedy that will not issue unless the petitioner demonstrates a clear and indisputable right

to relief and a lack of alternative means to redress adequately the alleged wrong or obtain the requested action. Such writs are not intended to supersede the legal discretionary authority of the lower courts, nor are they intended to serve as legal remedies in lieu of normal appellate procedures. Where a 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.). Accordingly,

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

DATED: Honolulu, Hawai'i, February 14, 2008.



Steven H. Leimison

Puna O'ahu



Vanessa E. Dulligan