

NO. 29834

IN THE SUPREME COURT OF THE STATE OF HAWAII

DARRELL SIU, Petitioner,

vs.

THE HONORABLE BARBARA P. RICHARDSON, JUDGE OF DISTRICT
 COURT OF THE FIRST CIRCUIT, STATE OF HAWAII,
 SHARON A.F. BERINOBIS, Respondents.

ORIGINAL PROCEEDING
 (CIVIL NO. 1RC07-1-3660)

K. MAITAKADO
 CLERK, DISTRICT COURTS
 STATE OF HAWAII

2009 JUN 23 AM 11:49

FILED

ORDER

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

Upon consideration of petitioner Darrell Siu's petition for a writ of mandamus and/or prohibition, the papers in support, and the respondents' answers, it appears that the filing of petitioner's November 21, 2007 notice of appeal did not divest the district court of jurisdiction to enter the July 2, 2008 order staying the October 24, 2007 judgment pending appeal. See HRAP 8. Concomitantly, the district court had jurisdiction, during the pendency of petitioner's appeal, to lift the July 2, 2008 stay as necessary to protect the interest of respondent Berinobis, whose Letter of Credit expires on August 11, 2009. The district court, having lifted the stay, had jurisdiction to enforce the October 24, 2007 judgment. See MDG Supply, Inc. v. Diversified Investments, Inc., 51 Haw. 375, 381, 462 P.2d 525, 529 (1969). The lifting of the stay and the enforcement of the October 24, 2007 judgment were within the discretion of the respondent judge and were not flagrant and manifest abuses of discretion. Therefore, petitioner is not entitled to extraordinary relief. See Kema v. Gaddis, 91 Hawai'i 200, 204,

982 P.2d 334, 338 (1999) (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 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 or prohibition 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 and/or prohibition is denied.

DATED: Honolulu, Hawai'i, June 23, 2009.



Anna C. Radermann



Mark E. Radermann

Mark E. Radermann