

NO. 28574

IN THE SUPREME COURT OF THE STATE OF HAWAII

JAMES H. PFLUEGER, PFLUEGER PROPERTIES, and
PFLUEGER MANAGEMENT, LLC, Petitioners

vs.

THE HONORABLE GARY W.B. CHANG, JUDGE OF THE FIRST CIRCUIT
COURT, STATE OF HAWAII; STATE OF HAWAII; C. BREWER
AND COMPANY, LTD.; C. BREWER PROPERTIES, INC.; C. BREWER
HOMES, INC.; HAWAII LAND AND FARMING COMPANY, INC.;
KEHALANI HOLDINGS COMPANY, INC.; KILAUEA IRRIGATION
COMPANY, INC.; THOMAS A. HITCH; HITCH CO.; JOHN DOES 1-10;
JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10;
DOE UNINCORPORATED ASSOCIATIONS 1-10, Respondents.

ORIGINAL PROCEEDING
(CIV. NO. 06-1-1391)

ORDER

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

Upon consideration of the petition for a writ of mandamus or prohibition filed by petitioners James H. Pflueger, Pflueger Properties, and Pflueger Management, LLC and the papers in support, it appears that the change of venue of Civil No. 06-1-1391 to the fifth circuit court was within the discretion of the respondent judge. Petitioners fail to demonstrate that the respondent judge flagrantly and manifestly abused his discretion in changing venue without prejudice to a re-transfer by the fifth circuit court and that irreparable and immediate harm would otherwise be the necessary consequence. The change of venue or a re-transfer of venue is reviewable on appeal from a final judgment in Civil No. 06-1-1391. Thus, petitioners are not entitled to a writ of mandamus or prohibition. See Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (1999) (A writ of

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mandamus 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 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.). Therefore,

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

DATED: Honolulu, Hawai'i, July 3, 2007.



Steven H. Levinson

Fania C. Nakayama



James E. Duffy, Jr.