

NO. 28860

IN THE SUPREME COURT OF THE STATE OF HAWAII

ANDREA BROWER, Petitioner,

vs.

THE HONORABLE JOSEPH E. CARDOZA, JUDGE OF THE CIRCUIT COURT
OF THE SECOND CIRCUIT, STATE OF HAWAII, Respondent.

THE SIERRA CLUB, a California non-profit corporation
registered to do business in the State of Hawaii;
MAUI TOMORROW, INC., a Hawaiian non-profit corporation;
KAHULUI HARBOR COALITION, an unincorporated association;
THE DEPARTMENT OF TRANSPORTATION OF THE STATE OF HAWAII;
BARRY FUKUNAGA, in his capacity as Director of the
Department of Transportation of the State of Hawaii;
MICHAEL FORMBY, in his capacity as the Director of
Harbors of the Department of Transportation of the State
of Hawaii; and HAWAII SUPERFERRY, INC., Respondents,
Real Parties in Interest.

ORIGINAL PROCEEDING
(CIV. NO. 05-1-0114)

ORDER

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

Upon consideration of petitioner Andrea Brower's
petition for a writ of mandamus and the papers in support, it
appears that (1) the setting of the December 14, 2007 hearing
date on petitioner's motion to intervene in Civil No. 05-1-0114
was within the discretion of the respondent judge and was not a
flagrant and manifest abuse of discretion, and (2) petitioner's
challenges to Civil No. 05-1-0114 may be raised in the circuit
court if petitioner is granted intervention. Therefore,
petitioner is not entitled to mandamus relief. See Kema v.
Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (1999) (A writ of
mandamus is an extraordinary remedy that will not issue unless
the petitioner demonstrates a clear and indisputable right to

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STATE OF HAWAII

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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,

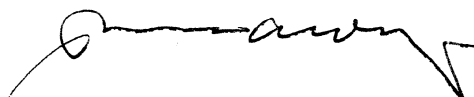
IT IS HEREBY ORDERED that the petition for a writ of mandamus is denied.

DATED: Honolulu, Hawai'i, December 7, 2007.



Steven J. Steinson

Anna C. Takayan



James E. Duggan, Jr.