

CAAP-13-0000033

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

FEDERAL LAND BANK ASSOCIATION OF HAWAI'I, FLCA,
Plaintiff-Appellee,

v.

Morton E. BASSAN, JR., also known as MORTON BASSAN, JR.
and as MORTON BASSAN, and KEIKO BASSAN, Defendants-Appellants,
and

CITRUS MANAGEMENT SERVICES, INC., ORCHARD SERVICES, INC.,
BANK OF HAWAI'I, STATE OF HAWAI'I, acting by and through its
Department of Agriculture, HAWAII ELECTRIC LIGHT COMPANY, INC.,
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 05-1-0193)

ORDER GRANTING PLAINTIFF-APPELLEE'S MOTION TO DISMISS
(By: Nakamura, C.J., Foley and Leonard, JJ.)

On April 22, 2013, Plaintiff-Appellee Federal Land Bank Association of Hawaii, FLCA (FLBA) filed a motion to dismiss the appeal filed by Defendants-Appellants Morton E. Bassan, Jr., and Kekio Bassan (collectively, "Appellants"). Appellants filed a notice of appeal from the "Order Denying Defendants Bassan's Non-Hearing Motion for Stay of Execution of Writ of Possession and Judgment for Possession & Attached Orders Pending Appeal" (Order Denying Motion for Stay of Execution) that was entered by the

Circuit Court of the Third Circuit (Circuit Court)¹ on December 24, 2012.

In support of its motion to dismiss, FLBA asserts that: (1) Appellants have filed a separate appeal, Appeal No. CAAP-12-0000866, from the Circuit Court's "Order Denying Motion for Reconsideration of Findings of Fact, Conclusions of Law, Order Granting FLBA's Motion for Summary Judgment and For Decree of Foreclosure," which is still pending in this court; (2) after the Circuit Court issued its Order Denying Motion for Stay of Execution, Appellants filed a motion for stay pending appeal in Appeal No. CAAP-12-0000866, seeking the same relief that the Circuit Court had denied its Order Denying Motion for Stay of Execution; and (3) this court denied the motion for stay pending appeal filed by Appellants in Appeal No. CAAP-12-0000886.

FLBA argues that Appellants' appeal from the Order Denying Motion for Stay of Execution should be dismissed as moot because the Writ of Possession has already been executed and Appellants are no longer occupying the subject premises. In support of its claim that this appeal is moot, FLBA submitted a "Return of Service -- Writ of Possession" filed in the Circuit Court on February 21, 2013, in which the authorized process server certified that the Writ of Possession had been duly executed and completed and that Appellants and other occupants have removed themselves from the subject premises. Appellants do not provide any basis: (1) to dispute FLBA's assertion that the Writ of Possession has been executed and that they are no longer occupying the subject premises or (2) for this court to conclude that an exception to the mootness doctrine applies.

FLBA additionally argues that the appeal should be dismissed because this court already denied Appellants' motion for a stay pending appeal in Appeal No. CAAP-12-0000886.

Upon consideration of FLBA's motion to dismiss the appeal and the records and files in this case, we conclude that

¹ The Honorable Glenn S. Hara presided.

Appellants' appeal from the Order Denying Motion for Stay of Execution is moot. See Lathrop v. Sakatani, 111 Hawai'i 307, 312, 141 P.3d 480, 485 (2006) (stating that the court has a duty to avoid giving "opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it"); Johnson v. Martofel, 797 A.2d 943, 946-47 (Pa. Super. Ct. 2002) (concluding that the sheriff's execution of the writ of possession rendered the request for stay of the execution moot).

IT IS HEREBY ORDERED that FLBA's motion to dismiss the appeal is granted, and this appeal is dismissed.

DATED: Honolulu, Hawai'i, May 29, 2013.

Chief Judge

Associate Judge

Associate Judge