

**Electronically Filed
Supreme Court
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NO. SCPW-12-0000353

IN THE SUPREME COURT OF THE STATE OF HAWAII

DAVID VELEZ, Petitioner,

vs.

THE HONORABLE MELVIN H. FUJINO, JUDGE OF THE DISTRICT
COURT OF THE THIRD CIRCUIT, STATE OF HAWAII; and
THE BANK OF NEW YORK MELLON, Respondents.

ORIGINAL PROCEEDING
(CIVIL NO. 3RC-11-1-208H)

ORDER

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

Upon consideration of petitioner David Velez's petition for a writ of mandamus and the papers in support, it appears that the matters raised at the February 23, 2012 hearing on petitioner's motion to dismiss, including the respondent judge's refusal to take judicial notice of documents, are reviewable on appeal from the judgment for damages entered in Civil No. 3RC 11-1-208H. See Ciesla v. Reddish, 78 Hawai'i 18, 889 P.2d 702 (1995). Petitioner can obtain appellate review of the judicial notice matter by appealing from the judgment for damages and seeking a stay of the eviction pending appeal pursuant to HRAP Rule 8. 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 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). Accordingly,

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

DATED: Honolulu, Hawai'i, April 13, 2012.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.

/s/ Sabrina S. McKenna

