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Intermediate Court of Appeals
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NO. CAAP-25-0000305

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

LAUREN LIPCON, Plaintiff-Appellant,
v.
MALIKO COFFEE COTTAGES, MAURICE SMITH, SYDNEY SMITH,
and MURPHY TAUA, individual/business, Defendants-Appellees,
DOES 1-100, Defendants.

MALIKO COFFEE COTTAGES, MAURICE SMITH, SYDNEY SMITH,
MURPHY TAU'A, HANA A. VANDERVOORT, JOSEPH B. JACOBS,
ANDREW S. FISHER, ELLEN M. FISHER and the COUNTY OF MAUI,
Counterclaimants-Appellees,

v.
LAUREN LIPCON, Counterclaim Defendant-Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CASE NO. 2CCV-23-0000074)

ORDER GRANTING MOTION TO DISMISS APPEAL
(By: Nakasone, Chief Judge, Leonard and McCullen, JJ.)

Upon consideration of Plaintiff/Counterclaim
Defendant-Appellant Lauren Lipcon's (**Lipcon**) June 5, 2026
"Notice of Mootness and Motion to Dismiss Interlocutory Appeal"
(**Motion to Dismiss Appeal**), the papers in support and in
opposition, and the record, it appears that Lipcon seeks

dismissal of her appeal challenging the Circuit Court of the Second Circuit's April 14, 2025 "Order Denying [Lipcon]'s Motion to Compel Arbitration of Amended Counterclaim".

Lipcon's appeal seeks to enforce arbitration of the Amended Counterclaim filed by Defendants/Counterclaimants-Appellees Maliko Coffee Cottages et al. (**Maliko Coffee**). After Lipcon appealed, the circuit court appears to have dismissed the Amended Counterclaim on its merits. With no Amended Counterclaim to arbitrate, Lipcon moves to dismiss her appeal as moot. See Lathrop v. Sakatani, 111 Hawai'i 307, 312, 141 P.3d 480, 485 (2006) ("Courts will not consume time deciding abstract propositions of law or moot cases, and have no jurisdiction to do so.") (citation omitted); County of Hawai'i v. Ala Loop Homeowners, 123 Hawai'i 391, 405, 253 P.3d 1103, 1117 (2010) ("A case is moot if it has lost its character as a present, live controversy" and "if the reviewing court can no longer grant effective relief.") (citations omitted).

Arbitrability "is easily severable from the merits of the underlying disputes." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 20-21 (1983); Motorola Credit Corp. v. Uzan, 388 F.3d 39, 53 (2nd Cir. 2004) ("The issue, therefore, is whether the trial of a case on the merits is 'involved in' an appeal of an order denying arbitration. The only authority in this Circuit strongly suggests that it is not."); Britton v. Co-

op Banking Grp., 916 F.2d 1405, 1412 (9th Cir. 1990) ("Since the issue of arbitrability was the only substantive issue presented in this appeal, the district court was not divested of jurisdiction to proceed with the case on the merits.") (footnote omitted), abrogated by Coinbase, Inc. v. Bielski, 599 U.S. 736, 740 (2023) ("[A] district court must stay its proceedings while the interlocutory appeal on arbitrability is ongoing.").

Because the Amended Counterclaim upon which the appeal is based has been dismissed, and because Maliko Coffee may not appeal from the circuit court's refusal to allow an appeal from its interlocutory order dismissing the Amended Counterclaim, we elect to dismiss the appeal pursuant to Hawai'i Rules of Appellate Procedure Rule 42(b).

Therefore, IT IS HEREBY ORDERED that the Motion to Dismiss Appeal is granted.

DATED: Honolulu, Hawai'i, October 5, 2026.

/s/ Karen T. Nakasone
Chief Judge

/s/ Katherine G. Leonard
Associate Judge

/s/ Sonja M.P. McCullen
Associate Judge