

SUPREME COURT OF THE STATE OF HAWAI‘I

Fung v. Hoi

No. SCWC-23-0000347, Supreme Court of the State of Hawai‘i (February 4, 2026)

SUMMARY

The Supreme Court of Hawai‘i dismissed without prejudice the petitioners’ application for a writ of certiorari. The court concluded that the Intermediate Court of Appeals had not filed its judgment on appeal when the application was filed and directed that any renewed application comply with Hawai‘i Rules of Appellate Procedure Rule 40.1(a).

CASE DETAILS

COURT	Supreme Court of the State of Hawai‘i
WRITING FOR THE COURT	Sabrina S. McKenna, Acting Chief Justice; Todd W. Eddins, Justice; Lisa M. Ginoza, Justice; Vladimir P. Devens, Justice; Jeannette H. Castagnetti, Circuit Judge, assigned by reason of vacancy
JURISDICTION	Supreme Court of the State of Hawai‘i
DECIDED	February 4, 2026
DOCKET	SCWC-23-0000347
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioners appealed to the Intermediate Court of Appeals and filed an application for writ of certiorari before the ICA filed its judgment on appeal.
PRECEDENTIAL VALUE	Published
PARTIES	Wei Ling Fung, Fugang Xia aka Summer v. Wa Cham Hoi

TOPICS

- writ of certiorari
- appellate jurisdiction
- final judgment rule
- appellate procedure
- civil procedure

PRACTICE AREAS

- appellate procedure
- civil procedure

QUESTIONS PRESENTED

1. Whether an application for writ of certiorari may be filed before the Intermediate Court of Appeals files its judgment on appeal.

HOLDINGS

1. An application for writ of certiorari filed before the Intermediate Court of Appeals files its judgment on appeal is premature and must be dismissed without prejudice to refiling after the judgment or dismissal order is filed.

KEY QUOTATIONS

“The application shall be filed within thirty days after the filing of the intermediate court of appeals’ judgment on appeal or dismissal order, unless the time for filing the application is extended in accordance with this rule.” (2)

FACTUAL BACKGROUND

The application for writ of certiorari concerned an appeal pending before the Intermediate Court of Appeals. When Petitioners filed the application on February 2, 2026, the ICA had not yet filed its judgment on appeal.

PROCEDURAL HISTORY

The matter arose from District Court of the First Circuit, Honolulu Division, case no. 1DRC-XX-XXXXXXX, and was on appeal to the Intermediate Court of Appeals under case no. CAAP-XX-XXXXXXX. The Hawai‘i Supreme Court dismissed the application for writ of certiorari because the ICA had not yet filed its judgment on appeal when the application was filed, without prejudice to refiling under Hawai‘i Rules of Appellate Procedure Rule 40.1(a).

DISPOSITION

dismissed

REMAND INSTRUCTIONS

No remand was ordered. Petitioners may refile the application pursuant to Hawai‘i Rules of Appellate Procedure Rule 40.1(a) after the ICA files its judgment on appeal or dismissal order.

OPINION

Fung v. Hoi

PER CURIAM.

Electronically Filed Supreme Court

SCWC-XX-XXXXXXX

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SCWC-XX-XXXXXXX

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

WEI LING FUNG,

Petitioner/Plaintiff/Counterclaim Defendant-Appellant, vs.

WA CHAM HOI,

Respondent/Defendant/Counterclaimant/ Third-Party Plaintiff-Appellee, and FUGANG XIA aka SUMMER, Petitioner/Third-Party Defendant-Appellant.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS

(CAAP-XX-XXXXXXX; CASE. NO. 1DRC-XX-XXXXXXX)

ORDER DISMISSING APPLICATION FOR WRIT OF CERTIORARI

(By: McKenna, Acting C.J., Eddins, Ginoza, and Devens, JJ., and Circuit Judge Castagnetti, assigned by reason of vacancy) It appearing that the judgment on appeal in the above- referenced matter not having been filed by the Intermediate Court of Appeals at the time the application for writ of certiorari was filed, see Hawai‘i Revised Statutes § 602-59(a)

(2017); see also Hawai‘i Rules of Appellate Procedure (HRAP)

Rule 36(b)(1) (2016), It is ordered that Petitioners’ application for writ of certiorari, filed February 2, 2026, is dismissed without prejudice to re-filing the application pursuant to HRAP Rule 40.1(a) (2023) (“The application shall be filed within thirty days after the filing of the intermediate court of appeals’ judgment on appeal or dismissal order, unless the time for filing the application is extended in accordance with this rule.”). DATED: Honolulu, Hawai‘i, February 4, 2026. /s/ Sabrina S. McKenna /s/ Todd W. Eddins /s/ Lisa M. Ginoza /s/ Vladimir P. Devens /s/ Jeannette H. Castagnetti 2