



1. Dr. Joseph is the owner in fee simple of two parcels of real property described as Lot 5328-REM-R2, Mangilao, Guam and Lot 5328-REM-2, Mangilao, Guam. Plaintiff's Complaint, ¶5 (Dec. 18, 2024).

2. There are currently no structures or buildings on Dr. Joseph's lots. Declaration of Dr. Joseph ("Joseph Decl."), ¶3 (July 10, 2025).

3. GHURA has not complied with the statutory requirements under 12 Guam CODE ANNOTATED ("G.C.A.") Section 5111 for the area in which Dr. Joseph's lots are located. Transcript of Deposition of Plaintiff, taken June 4, 2025, attached as "Exhibit A" to the Declaration of George B. Castro ("GHURA Depo."), p. 24, ll. 8-12 (July 10, 2025).

4. The stated purpose for GHURA's use of eminent domain to condemn Dr. Joseph's lots is for "use as a site for a new hospital and medical complex" and unspecified community development projects. Plaintiff's Complaint, ¶3.

5. GHURA has not developed a project for the housing for low income families to be built on the real property of Dr. Joseph. GHURA Depo., p. 18, ll. 22-25; p. 21, ll. 13-16.

6. GHURA has not developed an urban renewal project to be built on the real property of Dr. Joseph. GHURA Depo., p. 21, ll. 23-25.

7. GHURA has not made any determination that the real property of Dr. Joseph is either slum or blighted. GHURA Depo., p.26, ll. 16-21; p. 27, ll. 7-10.

8. GHURA has not made any determination that the real property of HYT is either slum or blighted. GHURA Depo., p. 27, ll. 24-25; p. 28, ll. 1-5.

**B. Statement of Issues to be Decided.**

Dr. Joseph submits the following statement of issues to be decided, pursuant to LOCAL CIVIL RULE ("CVR") 56.1:

1. Has GHURA complied with the applicable statutorily imposed requirements for its use of eminent domain in trying to condemn Dr. Joseph's lots?

## II. STANDARD FOR SUMMARY JUDGMENT

Under GRCP Rule 56, summary judgment is proper when the filings show there is no genuine issue of material fact, and the movant is entitled to judgment as a matter of law. Guerrero v. McDonald's Int'l. Property, Co., 2006 Guam 2, ¶7. A genuine issue of fact exists if there is sufficient evidence which establishes a factual dispute over a material fact, which is a fact that is relevant to an element of a claim or defense. Edwards v. Pacific Fin. Corp., 2000 Guam 27, ¶7.

Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment. Iizuka Corp. v. Kawasho Int'l. (Guam) Inc., 1997 Guam 10, ¶7. The movant cannot merely rely on allegations contained in the complaint, but must produce significant probative evidence tending to support the complaint. *Ibid.*, ¶8.

As set forth below, there is no genuine dispute as to the pertinent material facts, such that Dr. Joseph is entitled to summary judgment in his favor.

## III. THE COURT SHOULD GRANT SUMMARY JUDGMENT IN FAVOR OF DR. JOSEPH

### A. Statutes Which Delegate the Power of Eminent Domain are Strictly Construed.

Statutes which delegate the power of eminent domain are to be strictly construed and restricted to their expression and intention. Clarke County Reservoir Commission v. Robins, 862 N.W.2d 166, 171 (Iowa 2015). When the legislature delegates its power of eminent domain, the agency must both allege and prove compliance with statutory procedural requires. City of Charlotte v. McNeely, 175 S.E.2d 348, 351 (N.C. App. 1970). In construing statutes which

delegate the power of eminent domain, the application of such laws shall be restricted to only those cases clearly falling within their terms. Burch v. City of San Antonio, 518 S.W.2d 540, 545 (Tex. App. 1975).

As discussed below, Plaintiff has not complied with the statutory procedural requirements for it to properly exercise its delegated power of eminent domain. Further, Plaintiff's attempt to condemn Dr. Joseph's lots does not comply with the purpose behind the Legislature's delegation of that power.

**B. GHURA's Power of Eminent Domain is Limited.**

GHURA has been tasked by the Legislature to eliminate "slums and blighted areas," and to provide "safe, sanitary and decent housing for low income families on Guam." 12 G.C.A. §5101(f). A slum area is defined as an area with a predominance of dilapidated, deteriorated, or otherwise unsanitary or healthy conditions. 12 G.C.A. §5102(a)(7). A blighted area is defined as an area which retards the provision of housing or is a menace to public health, safety morals or welfare. 12 G.C.A. §5102(a)(8). The real property of Dr. Joseph and HYT, which are the subjects of this condemnation action, are raw land, and there is no evidence or findings that either lot is a slum or blighted.

As the real property of Dr. Joseph and HYT is neither a slum or blighted, there is no basis for GHURA to condemn that real property. The Legislature limited GHURA's ability to condemn to slum or blighted property.

The Legislature also defined urban renewal project to mean a project which eliminates or prevents the development or spread of slums and blight. 12 G.C.A. §5102(a)(12). The Legislature defined "housing project" to mean the provision of living accommodation for

families of low income. 12 G.C.A. §5102(a)(11) Plaintiff's complaint states that the proposed use of Dr. Joseph's lots is for "a new hospital and medical complex." Plaintiff's Complaint, ¶3.

The Guam Legislature delegated authority to GHURA to acquire by condemnation real property "for or in connection with any project *under this Article.*" 12 G.C.A. §5104(13) (emphasis added). GHURA is thus authorized to condemn real property for either a Housing Project or an Urban Renewal project. As discussed below, the purpose for which GHURA seeks to condemn the subject real property in this case is neither for a housing project or an urban renewal project.

#### **1. Not a Housing Project**

Plaintiff's Complaint states that the purpose of the condemnation of the real property of Dr. Joseph and HYT is for the construction of a new hospital and related projects. Plaintiff's Complaint, ¶3. At its deposition, GHURA acknowledged that it has not developed a plan or portion of the project which would constitute living accommodation for families of low income. GHURA Depo., p. 2, ll. 13-16. Instead, the project is to consist of a new four story hospital, and medical complex. Such project does not fall under the statutory definition of a housing project.

In this case, GHURA has not complied with the statutory requirements for a Housing Project. GHURA thus has no authority to condemn the real property of Dr. Joseph or HYT as a Housing Project.

#### **2. Not an Urban Renewal Project**

The Legislature has limited and conditioned the authority of GHURA to condemn real property for an urban renewal project, requiring compliance with statutory obligations, such that GHURA:

*shall not acquire real property for*, nor otherwise undertake an urban renewal project unless the urban renewal project has been approved in accordance with this Section.

12 G.C.A. §5111(a) (emphasis added).

The Legislature mandated a detailed process for the approval of an urban renewal project which includes submission of the proposed plan to the Guam Land Use Commission for its review and comment. 12 G.C.A. §5111(b). GHURA must then notice and hold a public hearing regarding the proposed plan. 12 G.C.A. §5111(c). If GHURA approves the proposed plan, it must then send it to the Governor for further review and consideration. 12 G.C.A. §5111(e). If the Governor approves the proposed plan, it must then be submitted to the Legislature for review and consideration. 12 G.C.A. §5111(f).

In this case, GJHURA has not complied with any of the statutory requirements for an Urban Renewal Project. GHURA Depo., p. 24, ll. 8-12. GHURA thus has no authority to condemn the real property of Dr. Joseph or HYT for an urban renewal project.

**C. GHURA's Attempt to Condemn Dr. Joseph's Lots is Outside its Statutory Authority.**

The Office of the Attorney General ("OAG") recently concluded that GHURA has acted outside of and in excess of its authority in attempting to exercise eminent domain to acquire the real property which is the subject of this action. In Legal Opinion Hospital Construction & Eminent Domain, Opinion No. 24-0630, the OAG concluded that GHURA did not comply with Guam law in attempting to use eminent domain to acquire Dr. Joseph's lots. A copy of opinion No. 24-0630 was previously submitted herein as "Appendix B" to Dr. Joseph's Memorandum of Points and Authorities in Support of Motion to Stay Proceedings (Jan 17, 2025).

While the opinion of the OAG in construing statutes is not conclusive or binding on this Court, it is to be accorded substantial weight. Guam v. Marfega Trading Co., Inc., 1998 Guam 4,

¶25. Other courts have accorded such opinions similar weight. See State of California v. Superior Court, 11 Cal.4th 50, 71, 44 Cal.Rptr.2d 399, 900 P.2d 648 (1995); Freedom Newspapers, Inc. v. Orange County Retirement System, 6 Cal.4th 821, 830, 25 Cal.Rptr.2d 148, 863 P.2d 218 (1993); Vine Street Clinic v. HealthLink, Inc., 856 N.E.2d 422, 428 (Ill. 2006).

In addition to issuing a well-supported legal opinion, the OAG has now filed suit asserting, *inter alia*, that GHURA has acted outside the scope of its authority in attempting to condemn Dr. Joseph's lots.<sup>1</sup> The Court should accord substantial weight to the OAG opinion in question.

#### IV. CONCLUSION

GHURA's attempt to exercise eminent domain to condemn the real property of Dr. Joseph and HYT is outside its statutory authority. The subject real property is neither slum nor blighted. The proposed use for the subject property is neither a Housing Project nor an Urban Renewal Project. GHURA's actions in this regard are *ultra vires* and in derogation of Guam law. The Court should grant summary judgment in favor of Dr. Joseph on Plaintiff's Complaint herein.

Dated this 10<sup>th</sup> day of July, 2025.

THOMPSON THOMPSON & ALCANTARA, P.C.  
Attorneys for Defendant Joel Joseph, DVM

By: 

MITCHELL F. THOMPSON

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<sup>1</sup> A copy of the Verified Complaint in Government of Guam v. Leon Guerrero, et al., District Court of Guam Civil Action 24-00029, without attachments, was previously attached as "Appendix A" to the Memorandum of Points and Authorities in Support of Dr. Joseph's Motion to Stay Proceedings (Jan. 17, 2025).



3. There are currently no structures or buildings on the Mangilao lots. There are three containers on site, containing construction-related materials. I previously obtained a building permit for the construction of a facility for crematory and veterinary services on the Mangilao lots.

4. I paid over Sixty Thousand Dollars (\$60,000.00) for blueprints and building plans for such facilities to be constructed on the Mangilao lots. I have also spent approximately One Hundred Fifty Thousand Dollars (\$150,000.00) for frame and roof construction materials for the project. I have also spent over Thirteen Thousand Dollars (\$13,000.00) for archeological survey and related services for this project.

5. I also spent approximately One Hundred Fifty Thousand Dollars (\$150,000.00) for the cremation equipment for the facility to be built on the Mangilao lots.

I declare under penalty of perjury of the laws of Guam that the foregoing is true and correct. Executed at Hagåtña, Guam on June 20, 2025.



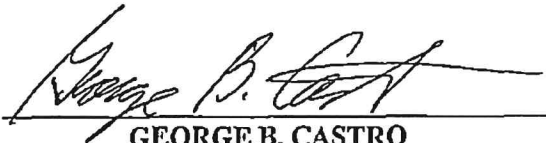
JOEL JOSEPH DVM

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above proceeding. The transcript thereof was prepared under my direction and the transcript was a full, true and correct record of such testimony and oral proceedings. All of the pages attached collectively hereto as "Exhibit A" are true and correct copies of the transcript of the deposition taken on that June 4, 2025.

I declare under penalty of perjury under the laws of the Guam that the foregoing is true and correct. Executed at Vancouver, Washington on June 16, 2025.

  
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GEORGE B. CASTRO

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