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SUPREME COURT OF GUAM

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IN THE SUPREME COURT OF GUAM

Supreme Court Case No. CVA2024-0007
Superior Court Case No. CV1198-18

GOVERNMENT OF GUAM, MICHAEL J.B. BORJA,
in his capacity as Director of Land Management

and

GUAM WATERWORKS AUTHORITY,
A Guam Public Corporation,
Plaintiffs-Counterclaim Defendants,

vs.

CORE TECH INTERNATIONAL CORPORATION, YOUNEX
ENTERPRISES CORPORATION,
Defendants-Counterclaimants.

ON PETITION FOR PERMISSION TO FILE INTERLOCUTORY APPEAL BY GUAM
WATERWORKS AUTHORITY

BRIEF AMICUS CURIAE OF
I MINA' TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
37th GUAM LEGISLATURE
IN SUPPORT OF INTERLOCUTORY APPEAL

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Guam Legislature is a co-equal branch of the government of Guam. 48 U.S.C. § 1421a (“The government of Guam shall consist of three branches, executive, legislative, and judicial....”). This case threatens that equality.

The disposition of government property on Guam is controlled by the Legislature. The United States Congress granted the Legislature authority to legislate over such property as it desires. 48 U.S.C. § 1421f.

The Legislature directed that ownership of the land under the Northern District Wastewater Treatment Plant (“NDWWTP”) was to be held by the Guam Waterworks Authority (“GWA”). It also prohibited the transfer of such land to any other party without Legislative approval, which has never been provided.

The Superior Court’s Decision and Order Re Core Tech International Corporation’s Motion to Dismiss and Motion for Summary Judgment and Guam Waterworks Authority’s Second Motion for Summary Judgment, filed on August 14, 2023 (“Aug. 14 D&O”), and the Superior Court’s Decision and Order Re Motions to Reconsider, filed on April 16, 2024 (“April 16 D&O”), found title to the land under the NDWWTP passed to a private party, Core Tech International Corporation (“Core Tech”). Aug. 14 D&O at 37. This finding violates the unqualified Legislative mandates vesting ownership of the land in GWA and prohibiting any transfer from GWA without Legislative approval. See, *Guam YTK Corporation v. Port Authority*

of Guam, 2019 Guam 12 (“[W]here any land owned by the Government of Guam is transferred without legislative consent, the purported transfer or the possession of land by the transferee is illegal.”). Contracts are “null and void” if their “terms violate section 1423j of the Organic Act of Guam and section 22401 of Title 5 of the Guam Code Annotated.” *Pangelinan v. Gutierrez*, 2004 Guam 16, ¶1.

The Legislature appears as *amicus curiae* to assert its prerogative to legislate as to the disposition of government property on Guam and to clarify that it directed that GWA assume ownership of the NDWWTP, including the real property underlying the NDWWTP, and has never authorized the transfer of this essential government asset to any other party. The Legislature further submits that the Superior Court’s Aug. 14 D&O and April 16 D&O inorganically divest the Legislature of its exclusive power to legislate regarding government property.¹

The Legislature has a strong interest in having these issues resolved as soon as possible on interlocutory review. Interlocutory review is appropriate to decide important questions related to the separation of powers and the prerogatives protected thereunder. *See Nixon v. Fitzgerald*, 457 U.S. 731, 743 (1982); *People v. Villapando*, 1999 Guam 31 ¶¶ 3, 50.

¹ The Legislature submits this brief pursuant to Rule 14(a) of the Guam Rules of Appellate Procedure.

Interlocutory review is also warranted to end the uncertainty regarding the ownership of the NDWWTP as soon as possible. The water system depends on the NDWWTP. It is important to resolve the uncertainty over its ownership quickly. If Core Tech does own the land, interlocutory review would give the Legislative and Executive Branches the greatest lead time to plan for the loss of this critical asset, and thereby help mitigate the burdens that will fall on the people of Guam. If Core Tech does not own the land, interlocutory review would avoid the enormous waste of resources planning for an emergency that does not exist and instead allow the government to focus on other pressing issues related to the health and safety of the water system.

INTRODUCTION

The government of Guam is founded on the principle of three separate but equal branches of government. *See* 48 U.S.C. § 1421a. “[U]nder the separation of powers doctrine, one branch of government is prohibited from ... aggrandizing its powers by reserving for itself the powers given to another branch.” *In re Request of Gutierrez*, 2002 Guam 1 ¶ 35; *see also Hamlet v. Charfauros*, 1999 Guam 18 ¶ 8. The Superior Court’s Aug. 14 D&O and April 16 D&O violate the separation of powers doctrine. These orders unduly interfere with the Legislature’s exclusive authority to legislate regarding government property and to structure the management and operation of Guam’s water systems.

The United States Congress, through the Organic Act, provided the Legislature of Guam with authority over all property owned by the government of Guam. 48 U.S.C. § 1421f.

Based on this authority, the Legislature directed ownership of the real property underlying the NDWWTP be held by GWA. The Legislature created GWA to oversee the management and distribution of water on Guam, including the treatment and disposal of waste water. 12 GCA §§ 14103, 14104. The entity that previously managed those operations and owned the NDWWTP was the Public Utility Agency of Guam (“PUAG”). The Legislature abolished the PUAG and directed all real property assets of the PUAG – including the NDWWTP – be assumed by GWA. 12 GCA § 14110(a). The Legislature prohibited GWA from transferring any real property interests, including the land under the NDWWTP, without prior legislative approval. 12 GCA § 14116; 1 GCA § 1800; P.L. 23-97 § 5; *see also* 21 GCA § 60112. The Legislature never granted such approval.

The Legislature directed certain real estate on Guam be transferred to ancestral landowners, but expressly prohibited transfer of any land being utilized for public easements, including water or sewer use, or any other such government utility or infrastructure use, which includes the NDWWTP. P.L. 22-145. *See also* P.L. 23-141, 23-97 §5 (any transfer of PUAG assets to be used “exclusively to fund system

repairs, maintenance and upgrades as provided or *later required*’.) (emphasis added).

Each of these unqualified Legislative mandates are now being nullified or materially impaired by the Superior Court’s Orders. In finding that title to the land under the NDWWTP had passed via a mortgage foreclosure sale to a private party, the Superior Court disregarded the applicable Legislative mandates and arrogated to itself and the executive branch the authority to dispose of government property. By removing government ownership of a crucial public asset, the Superior Court and executive branch also interfered with the Legislature’s prerogative to structure the management and operation of the water system. Because the Superior Court’s orders effectively prevent the Legislature from carrying out its functions, or materially impair those functions, they violate the separation of powers doctrine.

The Legislature respectfully submits that the Court should immediately review the Superior Court’s Aug. 14 D&O and April 16 D&O, as requested by GWA, so that the threatened nullification or material impairment of Legislative mandates are resolved as quickly as possible, and to minimize the burdens the Superior Court’s orders will place on the people of Guam.

ARGUMENT

- I. THE SUPERIOR COURT’S ORDERS VIOLATE THE SEPARATION OF POWERS DOCTRINE**
 - A. The Legislature Has Exclusive Control to Legislate over Government Property, including the NDWWTP**

The United States Congress, through the Organic Act, provided the Legislature of Guam with authority to legislate with respect to all property owned by the government of Guam:

All other property, real and personal, owned by the United States in Guam, not reserved by the President of the United States within ninety days after August 1, 1950, is placed under the control of the government of Guam, to be administered for the benefit of the people of Guam, **and the legislature shall have authority ... to legislate with respect to such property, real and personal, in such manner as it may deem desirable.**

48 U.S.C. § 1421f (emphasis added).

Consistent with this authority, the Legislature has directed that no government real property can be transferred without Legislative approval:

No office, department, agency, institution, board, bureau, commission, council, authority, committee of territorial government, branch, or the Guam Visitors Bureau, of the government of Guam may . . . transfer any real property of the government of Guam without the approval of the Legislature.

1 GCA § 1800 (emphasis added). The Legislature has also directed that no government real property can be transferred unless it is both approved by the Legislature and the property is specifically identified by legislation:

Notwithstanding any other provisions of law, government-owned real property shall not be sold, leased, exchanged or otherwise transferred without the prior approval of the Legislature by duly enacted legislation which specifically authorizes a particular sale, lease, exchange or transfer and includes the real property description of the government-owned real property with particularity.

21 GCA § 60112(a) (emphasis added).

Because the Legislature never authorized the sale or transfer of the land under the NDWWTP from GWA to any party, much less a private party, and never specifically identified such property in any legislation authorizing sale to a non-governmental party, the Superior Court's orders finding that Core Tech holds title to the property violate the plain terms of the Organic Act and Guam law. *See* 48 U.S.C. § 1421f; 1 GCA § 1800; 12 GCA § 14116; P.L. 23-97 § 5; 21 GCA § 60112.

B. The Legislature Mandated that GWA Assume Ownership of the NDWWTP

In addition to the general prohibitions against the transfer of government property without Legislative approval, the Legislature also specifically mandated all land serving Guam's water utilities, such as the NDWWTP, be owned by GWA and not be transferred without Legislative approval.

Through Public Law 23-119, the Legislature created GWA and abolished the PUAG, see 12 GCA § 14103, and directed that "all real property" and other "assets" be conveyed from PUAG to GWA without limitation:

[T]he *Authority shall assume in writing* from the Government of Guam and the Public Utility Agency of Guam (the Agency): (1) *all real property under the Agency's administration* and items of property, materials and supplies which the Agency owns or controls, including construction work in progress. (2) *all* working capital, cash, accounts payable and receivable, deposits, advances payable and receivable, all books, records and maps and all other rights, obligations, *assets*, liabilities, agreements, and privileges of the Agency or attributable to the Agency.

12 GCA § 14110(a) (emphasis added).

One of the instruments carrying out this mandate is the 1997 Grant Deed, which conveyed the title to the land under the NDWWTP as well over 200 other properties. (Aug. 14 D&O at 6, 27.) The 1997 Grant Deed provided the transfer was in “fee simple absolute” as to “all real property interests for only that area required by the Grantee.” (*Id.* at 13, 27.) The purpose of identifying the area “required” by GWA was to allow GWA to sever out any property that it did not need. The property under the NDWWTP did not contain any property subject to severance, as reflected in existing recorded and registered real estate requirement maps and GWA’s active operation of a sewage plant on the property. (*Id.* at 27.) Despite these undisputed facts, the Superior Court found that GWA had not submitted a new survey map per the 1997 Deed and therefore the entire property automatically reverted to Gov. Guam. (*Id.* at 27-28.)

The Superior Court’s finding cannot be reconciled with the clear Legislative mandate in 12 GCA § 14110 that GWA was to serve as the owner in fee simple absolute of the property held by the PUAG, including the NDWWTP.

The finding also cannot be reconciled with the Legislature’s prohibition against the transfer of real property from GWA without Legislative approval. The Legislature directed that, “the provisions of 1 GCA § 1800 shall be applicable to” GWA. 12 GCA § 14116. In turn, 1 GCA § 1800 prohibited the transfer of “**any real**

property of the government of Guam without the approval of I Liheslatura.”

1 GCA § 1800 (emphasis added). Accordingly, GWA was prohibited from transferring real property without legislative approval.

Any transfers in violation of these mandates were “void.” P.L. 23-97 § 5 (“[s]tatutory approval of any sale, lease or transfer of Government of Guam land and buildings thereon used or occupied on January 1, 1996 or thereafter by the [PUAG] must be had prior to any sale, transfer or lease of such lands or assets . . .” and “[a]ny sale, lease or transfer in violation of this Section is void”).

The record is undisputed that the Legislature never authorized GWA to transfer the NDWWTP property to any other another party, including via an “automatic reversion” to Gov. Guam. Any transfer without Legislative approval was void as a matter of law. The Superior Court effectively disregarded these mandates and thereby nullified or materially impaired the Legislature’s prerogative to legislate regarding the disposition of government property.

C. The Legislature Mandated that Property Used for Public Utilities Could Not Be Released to Ancestral Landowners

The Superior Court also disregarded Legislative mandates specifying that land being used for utilities could not be transferred to ancestral landowners.

The chain of title traced by the Superior Court in the Aug. 14 D&O was based on Guam laws that returned land to ancestral landowners. Specifically, the Superior Court determined that after the land reverted to Gov. Guam in 2009, it passed via a

quitclaim deed that had been executed by Gov. Guam seven years earlier, in 2002, to the Guam Ancestral Lands Commission ("GALC"). (Aug. 14 D&O at 7-8.) Because the land was not held by Gov. Guam when it executed the quitclaim deed, the land was deemed to have passed to GALC under the "after-acquired title doctrine." (*Id.* at 28-31.) The land then passed via a quitclaim deed executed by the GALC three years earlier, in 2006, to the Estate of ancestral landowner Jose Martinez Torres ("Torres Estate"). (*Id.* at 8.) Again, because the GALC did not hold title to this land when it executed its quitclaim deed, the Superior Court again found that title had passed under the after-acquired title doctrine. (*Id.* at 28-31.) That is, the Superior Court found that, despite the Legislative mandates prohibiting the transfer of government land without the express and specific authorization from the Legislature, the land passed from the government to a private party without any arm of the government either knowing or intending that such transfers were taking place.

In addition to disregarding the mandates described above, this also violated mandates exempting public utilities from transfer to ancestral landowners. The Legislature prohibited any property constituting "public easement" utilities on excess lands from being transferred. Public Law 22-145 provides:

Any land that is presently utilized for public easements such as roadways, water, power, sewer or underground telephone or communication lines ***or other such government utility use or infrastructure uses essential to the public's safety, welfare, health and protection*** is exempt from the provisions of this Act and ***shall not be released*** by the government of Guam to their former owners or heirs.

P.L. 22-145, § 8 (emphasis added); *see also* P.L. 23-141; *see also*, P.L. 24-171 (land use plan). The NDWWTP was utilized for utility or infrastructure uses “essential to the public’s safety, welfare, health and protection” and therefore could not be released by the government. The Superior Court’s orders nullify or materially impair this clear directive.

D. The Superior Court Orders Finding that Title Passed to a Private Party Via Mortgage Foreclosure Sale

The reason the Organic Act gave the Legislature authority to legislate as to government property, and the reason the Legislature passed multiple overlapping statutes mandating that no government real property could be transferred without the consent of the Legislature, was to ensure that public land is used to serve the people of Guam. *See* 48 U.S.C. § 1421f. The Superior Court’s orders nullified or materially impaired the right and ability of the Legislature to control this land for the public’s benefit.

This is underscored by the fact that the current title to the property was determined, according to the Superior Court, by a public foreclosure sale to Core Tech, meaning that there were absolutely no governmental limits or controls on who was entitled to purchase or own the property. (Aug. 14 D&O at 10-11.) While Core Tech has stated that it does not intend to seize control of the land, what legal doctrine prohibits it from changing its mind, or from excluding GWA from the site? Or, from selling the NDWWTP to a hostile foreign entity? It is the Legislature’s control of

government property that is supposed to prevent such outcomes. However, this safeguard was nullified or materially impaired by the Superior Court.

II. IMMEDIATE REVIEW IS WARRANTED

This Court has discretion to hear an appeal of an interlocutory order if “resolution of the questions of law on which the order is based will:

- (1) Materially advance the termination of the litigation or clarify further proceedings therein;
- (2) Protect a party from substantial and irreparable injury; or
- (3) Clarify issues of general importance in the administration of justice.”

7 GCA § 3108(b). These criteria are satisfied here by the need to review the violation of the separation of powers doctrine and the immediate harm that the people of Guam will suffer from the dispossession of the NDWWTP.

A. Interlocutory Review is Warranted to Address the Violation of the Separation of Powers Doctrine

In providing that the government of Guam shall consist of three branches, see 48 U.S.C. § 1421(a), “the Organic Act requires application of the constitutional doctrine of separation of powers to government of Guam functions.” *Taisipic v. Marion*, 1996 Guam 9 ¶ 26 (citation omitted). “Through strict adherence to the doctrine of separation of powers, courts throughout the United States have sought to protect the legislative and executive branches of government from judicial interference.” *Id.* ¶ 27 (collecting cases). This Court has “zealously protected” the doctrine of separation of powers. *Hamlet v. Charfauros*, 1999 Guam 18 ¶ 9.

A violation of the separation of powers doctrine is evident when one branch “prevents” another “from accomplishing its constitutionally assigned functions” or “materially impairs” it.² *In re Request of Gutierrez*, 2002 Guam 1 ¶ 34 (quoting *Perez*, 1999 Guam 2 ¶ 17 (quoting *Nixon v. Administrator of General Services*, 433 U.S. 425, 443 (1977))); *People of Guam v. Wai Kam Ho*, 2009 Guam 18 ¶ 29.

The Superior Court disregarded the Legislature’s mandates that property be transferred to GWA, that government property cannot be alienated without the express and specific consent of the Legislature, and that property being used for utilities cannot be released to ancestral landowners. 12 GCA §§ 14110(a), 14116; 1 GCA § 1800; 21 GCA § 60112; P.L. 23-97 § 5; P.L. 22-145, § 8. The practical impact of the Superior Court’s actions was to usurp or materially impair the Legislature’s prerogatives to legislate regarding government property, which violated the separation of powers doctrine. *See* 48 U.S.C. § 1421f; *Taisipic v. Marion*, 1996 Guam 9 ¶ 33 (judicial order usurped Legislative authority that had vested parole board decisions in executive board); *cf. Hamlet v. Charfauros*, 1999 Guam 18 (judiciary could not interfere with speech and debate on legislative floor).

Addressing violations of the separation of powers doctrine would “[c]larify issues of general importance in the administration of justice.” 7 GCA § 3108(b).

² “Until Guam creates its own Constitution, the Organic Act of Guam is the equivalent of Guam’s Constitution.” *People v. Perez*, 1999 Guam 2 ¶ 15 *overruled on other grounds by People v. Shimizu*, 2017 Guam 11 (citation omitted).

Indeed, both this Court and the United States Supreme Court have recognized that interlocutory review is appropriate to address the separation of powers doctrine. *See Nixon*, 457 U.S. at 743 (interlocutory review warranted to resolve potential breach of “prerogatives under the separation of powers”) (citations omitted); *see also Will v. Hallock*, 546 U.S. 345, 352–53 (2006); *People v. Villapando*, 1999 Guam 31 ¶¶ 3, 50 (addressing separation of powers issues on interlocutory review under 7 GCA § 3108(b)). Absent interlocutory review, the Legislature’s mandates will be in a state of nullification or material impairment for an indefinite period of time, which itself is an offense to the Organic Act and warrants action.

B. Interlocutory Review is Warranted to Clarify the Ownership of the NDWWTP

The Legislature mandated the land held by the PUAG be transferred to GWA because such transfer was necessary to operate the water system and thereby maintain the health, safety, and well-being of the people of Guam. The Superior Court has now removed a critical asset of the water system. Resolving the resulting uncertainty over the ownership of the NDWWTP would both “[p]rotect a party from substantial and irreparable injury” and “[m]aterially advance the termination of the litigation or clarify further proceedings therein.” 7 GCA § 3108(b).

The substantial and irreparable injuries at risk here are self-evident. A critical asset of Guam, worth hundreds of millions of dollars and essential to the safety of the water and health of the people, is now purportedly owned by a private party. It

is not clear what this will mean for water rates or future water projects to protect water quality. It is not clear if Core Tech is legally entitled to exclude the government from the NDWWTP or sell the land to a third party. It is not clear what actions the United States or Department of Defense will take, in light of this decision given it strips the Government of a national security asset – the waste water system that supports Camp Blaz and Anderson Airforce Base – centers of vital importance to the defense of the Country and our Region. All of these issues, however, must be resolved as soon as possible to help mitigate the potential impact and disruptions that would follow if the Superior Court's orders were allowed to stand.

Interlocutory review would also materially advance the termination of the litigation. Absent such review, the case before the Superior Court will eventually (after unknown delays) proceed to a lengthy trial regarding damages. It is unknown when any appeal of the issues would be completed, but in the meantime the government would be forced to take countless emergency measures to mitigate the harm arising from the potential loss of the NDWWTP (including related to the operation and control of the water system itself, adjustments to the water rates, and national security issues related thereto). Advancing the resolution of the issues underlying the case would clarify whether these measures, which will be burdensome and expensive, are necessary.

CONCLUSION

The Legislature respectfully requests the Court grant interlocutory review to address the issues raised in GWA's Petition and herein.

Dated this 28th day of May, 2024.

*I MINA' TRENTAI SIETTE NA
LIHESLATURAN GUÁHAN*

By: 

DARLEEN E. HITON
Legislative Counsel

CERTIFICATE OF SERVICE

I, Darleen E. Hiton, do hereby certify that on May 29, 2024, I caused to have a true and correct copy of the **BRIEF AMICUS CURIAE OF *I MINA' TRENTAI SIETTE NA LIHESLATURAN GUÅHAN*** to be served by electronic mail and/or by the Supreme Court of Guam's E-Filing system upon the following parties and attorneys of record:

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