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IN THE SUPREME COURT OF GUAM

**GUAM ECONOMIC DEVELOPMENT)
AUTHORITY and GUAM VISITORS)
BUREAU,)**

Movants-Appellants,)

vs.)

ISLAND EQUIPMENT COMPANY, INC.,)

Plaintiff-Appellee;)

**CUISINE INTERNATIONAL, INC., dba)
SEAFOOD MARKET and ROMEO S. GO,)**

Defendants-Appellees.)

**SUPREME CT. CASE NO. CVA97-030
SUPERIOR CT. CASE NO.CV0323-94**

OPINION

Filed May 28, 1998
Cite as: 1998 Guam 7
Appeal from the Superior Court of Guam
Argued and submitted on 12 December 1997
Hagåtña, Guam

Appearing for Movants-Appellants:
F. Randall Cunliffe, Esq.
CUNLIFFE & COOK
Suite 200, 210 Archbishop Flores Street
Hagåtña, Guam 96910

Appearing for the Plaintiff-Appellee:
Daniel J. Berman, Esq.
BERMAN O'CONNOR & MANN
Suite 503, Bank of Guam Building
111 Chalan Santo Papa
Hagåtña, Guam 96910

Appearing for the Amicus Curiae:
Kenneth D. Orcutt, Assistant Attorney General
Office of the Attorney General
Suite 2-200E, Judicial Center Building
120 West O'Brien Drive
Hagåtña, Guam 96910

BEFORE: PETER C. SIGUENZA, Chief Justice; JANET HEALY WEEKS, Associate Justice; and JOSE I. LEON GUERRERO, Associate Justice.

WEEKS, J.:

[1] Appellants Guam Economic Development Authority (“GEDA”) and the Guam Visitor’s Bureau (“GVB”) are appealing an order which denied their Motion to Quash a writ of execution. The trial court ordered GEDA and GVB to pay over monies owed RSG Philippines, Inc. (“RSG”) to the Office of the Marshal for the Superior Court of Guam. The monies were to satisfy a judgment entered against RSG’s alter ego, Judgment-Debtor Romeo S. Go (“Go”) in favor of Plaintiff Island Equipment Company, Inc. (“Island Equipment”). This Court finds that the trial court properly granted the writ of execution, and we hereby affirm the trial court’s ruling.

I.

[2] Plaintiff-Appellee Island Equipment filed a complaint for money damages against Defendants Cuisine International, Inc. and Romeo S. Go. Island Equipment obtained a consent judgment on 23 September 1994 and began enforcing the judgment against Cuisine International, Inc. and Go. Island Equipment conducted depositions upon representatives from GEDA and GVB. In the course of such depositions, Island Equipment discovered that GEDA and GVB had entered into a Liaison Office and Marketing Representation Agreement (“Liaison Agreement”) with RSG Philippines on 1 April 1996. The agreement provided that RSG would receive a monthly retainer of eight thousand dollars (\$8,000) for its liaison and marketing services in the Philippines for the term of the agreement. Go is the president of RSG. On 9 September 1996, Island Equipment obtained a writ of execution against Go and/or RSG Philippines, Inc. GEDA, GVB and the Department of Administration for the Government of Guam were served a Notice of Levy and Attachment and were ordered to deliver any payments owed RSG or Romeo S. Go to the Marshal of the Superior Court of Guam.

[3] GEDA and GVB moved to quash the writ. GEDA and GVB admitted to owing money to RSG, but denied owing money to Go. The Department of Administration did not join in the motion to quash the writ of execution. Neither RSG nor Go supported the motion to quash. On 10 June 1997 the trial court denied the motion to quash. The court determined that the execution laws did

not preclude attachment or garnishment where a government agency is a creditor of the judgment debtor. Furthermore, the court ruled that RSG is the alter ego of Romeo S. Go and that the issuance of a Writ of Execution upon the contract between RSG and GEDA and GVB was proper.

II.

[4] This Court has jurisdiction over the order pursuant to 7 GCA § 25102 (1993), and 7 GCA §§ 3107 and 3108 (1994). Whether GEDA and GVB are exempt from the execution statutes is a question of law which this Court will review *de novo*. *Camacho v. Camacho*, 1997 Guam 5, ¶24 (reviewing questions of law *de novo*). Whether the alter ego doctrine can be used to require GEDA and GVB to pay over monies owed to RSG to Romeo S. Go's judgment creditor is also a question of law which this Court reviews *de novo*. *Wolfe v. United States*, 798 F.2d 1241, 1243 n.1 (9th Cir. 1986). However, whether RSG is the alter ego of Romeo S. Go is a factual determination which is reviewed under the clearly erroneous standard. *Id.* at n.2. We address these questions in turn.

III.

[5] Appellants GEDA and GVB, as well as the amicus curiae,¹ argue the general principle that government agencies are not subject to the laws executing judgments (i.e., attachment and garnishment) because of the doctrine of sovereign immunity. This viewpoint assumes without support that GEDA and GVB are public entities entitled to the full protection of the doctrine of sovereign immunity.

[6] There is no doubt that the doctrine of sovereign immunity applies to Guam. *Marx v. Government of Guam*, 866 F.2d 294, 298 (9th Cir. 1989). The Organic Act of Guam allows Guam to sue and be sued, upon any contract or upon a tort committed in the exercise of any of its lawful powers. 48 U.S.C. §1421(a) (1987). However, such suit is permitted only upon the consent of the legislature as evidenced by duly enacted law. *Id.* In the present case we need not reach the issue

¹It is unclear why the Office of the Attorney General as amicus curiae for Appellants waited until the issues contained herein were presented upon appeal. The Department of Administration was named in the Notice of Levy and Attachment and served with the appropriate documents.

1 of whether a governmental instrumentality may be subjected to the general laws regarding the
2 execution of judgments because, as Appellee points out, neither GEDA nor GVB is a governmental
3 entity extended the protection of the sovereign immunity doctrine. Appellant has failed to address
4 either *Laguana v. Guam Visitor's Bureau* 725 F.2d 519 (9th Cir. 1984) or *Bordallo v. Reyes*, 763 F.2d
5 1098 (9th Cir. 1985). Both cases stand for the proposition that GVB is not a governmental entity and
6 suggest that GEDA falls in the same category. *Laguana*, 725 F.2d at 521; *Bordallo*, 763 F.2d at
7 1103.
8

9 [7] In *Laguana*, the GVB argued that their employees are not public employees afforded
10 protection from patronage dismissals.² *Id.* at 520. The Ninth Circuit determined that when the
11 Guam Legislature created the GVB as a non-profit corporation, it did not make it a public entity and
12 thus its employees are not considered public employees. *Id.* at 521. The Guam Legislature then
13 amended the legal status of the GVB, indicating that it would be a public corporation instead of a
14 non-profit corporation. *See* Guam Pub. L. No.17-32 (Nov. 22, 1983). Subsequent to the enactment
15 of Pub. L. No. 17-32, the Ninth Circuit, in *Bordallo*, once again found that the GVB, despite its
16 legal status as a public corporation, was not an instrumentality of the government. *Bordallo*, 763
17 F.2d at 1103. The Ninth Circuit reasoned that the Legislature created certain public corporations and
18 designated them as instrumentalities of the government, specifically, the Guam Airport Authority,
19 the Guam Telephone Authority, the Guam Power Authority and the Port Authority of Guam, while
20 other public corporations were not designated as instrumentalities of the government, e.g., GVB and
21 GEDA. *Id.* From the reasoning of *Laguana* and *Bordallo*, GEDA, as well, should be treated as a
22 public corporation, but not an instrumentality of the government. *See also* 12 GCA § 50101 (1994).
23 Neither GEDA nor GVB is an instrumentality of the government exercising governmental functions.
24 *See Home Owners' Loan Corp. v. Hardie & Caudle*, 100 S.W. 2d 238, 239 (Tenn. 1936) (holding
25 that the government could not abandon its assumed character and seek immunity under the cloak of
26 government where the sovereign divested itself of the attributes of government and descended to the
27 level of a trafficker in private affairs under the guise of a public corporation).
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²The Court notes GVB's dual status attempt: GVB seeks sovereign immunity protection here, but shuns public entity status when it requires civil service protection for its employees.

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2 **[8]** But even if it were assumed that GEDA and GVB are public entities performing
3 governmental functions, the Guam Legislature has waived the doctrine of sovereign immunity by
4 granting both public corporations the right to sue and be sued. 12 GCA § 50104(d) (1994)(GEDA
5 shall have the right to sue and be sued); 12 GCA § 9105(c) (1993) (GVB shall have the power to
6 “[s]ue or be sued in its own corporate name.”). The plain meaning of these provisions is clear and
7 should be used “in their usual and ordinary sense.” *Fed. Hous. Admin. v. Burr*, 309 U.S. 242, 246,
8 60 S.Ct. 488, 491 (1940). In *Burr*, the U.S. Supreme Court set forth a presumption that the power
9 to “sue and be sued” encompassed all civil processes and gave the federal corporation the same legal
10 status as a private enterprise. 309 U.S. at 245. 60 S.Ct. at 490. The Supreme Court determined that
11 such a presumption can only be overcome by a “grave interference” with a government function.
12 *Id.* at 492. The Court further added:

13 [C]onsiderations of convenience, cost and efficiency which have been
14 urged here are for Congress which, as we have said, has full authority
15 to make such restrictions on the ‘sue and be sued’ clause as seem to
it appropriate or necessary.

16 *Id.* The Eighth Circuit Court of Appeals has since held that when Congress created the United States
17 Postal Service, and vested such Service with the right to “sue and be sued,” there were no limitations
18 placed on such power to sue and be sued relating to garnishment proceedings and that the USPS
19 could not therefore quash a garnishment proceeding. *May Dept. Stores Co. v. Williamson*, 549 F.2d
20 1147, 1148 (8th Cir. 1977); *see also Standard Oil v. Starks*, 528 F.2d 201, 204 (7th Cir. 1975)
21 (holding that the USPS is not immune to garnishment procedures to effect judgment in state courts).
22 The Eighth Circuit acknowledged that the Federal Torts Claims Act applied to the USPS and was
23 a limitation on the power to sue and be sued, but indicated that the act providing for the USPS was
24 “silent as to garnishment.” *Williamson*, 549 F.2d at 1149.

25 **[9]** In the present case, GEDA and GVB are non-governmental entities and the doctrine of
26 sovereign immunity does not apply. Furthermore, the Guam Legislature has afforded both GEDA
27 and GVB the right to sue and be sued. 12 GCA §§ 50104(d) and 9105(c). While the Guam
28 Legislature restricted suits against GEDA and GVB by making the Government Claims Act
applicable to those public corporations, the Guam Legislature did not provide for a specific

1 restriction dealing with garnishments. *See Burr*, 309 U.S. at 247, 60 S.Ct. at 491 (presumption
2 against restrictions on right to sue and be sued absent a proviso prohibiting garnishment and
3 attachment); *see also Williamson*, 549 F.2d 1149 (applicability of federal tort claim act to USPS,
4 with no express restriction against garnishment proceedings permits USPS to be subject to
5 garnishment). This Court therefore finds that GEDA and GVB may be subject to garnishment
6 proceedings.

7
8 **[10]** The remaining issue involves the trial court's determination that RSG was the alter ego of
9 the Debtor-Defendant Romeo S. Go. But a preliminary question must first be answered. The
10 Appellants contend that the trial court lacked the statutory authority to order the execution of the
11 monies owed RSG because the Appellants denied the debt. 7 GCA § 23204 (1994). While
12 Appellants GEDA and GVB as garnishees have denied owing money to Defendant Romeo S. Go,
13 they have not denied owing money to the corporation RSG. In fact, no party disputes the existence
14 of a contractual relationship between RSG and Appellants. They contend that, pursuant to 7 GCA
15 § 23205 (1994),³ the most the Court could have done was to enjoin the transfer of the monies until
16 the judgment creditor could commence and prosecute to final judgment an action to establish the
17 existence of the debt. We are not persuaded by Appellants' arguments that a separate action to
18 determine the alter ego issue was necessary.⁴ Instead, we find support in *Valley Mechanical*
19 *Contractors, Inc. v. Gonzales*, 894 S.W.2d 832 (Tex.App. 1995), where the court made an alter ego
20 finding at a garnishment hearing. Here, where Appellants deny the debt to the defendant but not to
21 its alleged alter ego, we find that the trial court appropriately handled the alter ego issue before it

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23 ³§ 23205. **Proceedings Upon Claim of Another Party.** If it appears that a person or corporation, alleged to
24 have property of the judgment debtor, or to be indebted to him, claims an interest in the property adverse to him, or
25 denies the debt, the judgment creditor may maintain an action against such person or corporation for the recovery of
26 such interest or debt, and the judge or referee may, by order, forbid a transfer or other disposition of such interest or
27 debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the
28 judge or referee granting the same or the court in which the action is brought, at any time, upon such terms as may be
just.

⁴Appellants cite *Thomas v. Thomas*, 192 Cal.App.2d 771, 13 Cal.Rptr. 872 (Cal.Dist.Ct.App. 1961), *Farmers
and Merchants Bank v. Bank of Italy*, 216 Cal. 452, 14 P.2d 527 (Cal.Dist.Ct.App. 1932), *Staniels v. Copeland*, 48
Cal.App.2d 124, 119 P.2d 396 (Cal.Dist.Ct.App. 1941) and others as authorities for their position. While we find these
cases to have merit, none deals with the issue of alter ego at a garnishment proceeding or at an independent action to
the garnishment proceeding. We view these cases as instructive but not persuasive to the case at bar.

1 without the necessity of a separate action. We are further persuaded by Appellee's argument that
2 "a denial of indebtedness by a garnishee will not prevent the court from ordering that the money be
3 applied to the satisfaction of a judgment, where other admissions and averments of the garnishee
4 confess the debt". 19 Cal. Jur.2d Executions, § 221 (1969), citing *Finch v. Finch*, 12 Cal.App. 274,
5 107 P. 594, 598 (Cal.Dist.Ct.App.1909). In *Finch*, the court found that the trial court was not bound
6 by the garnishee's denial of the debt if the facts show that the debt existed at the time of service of
7 the writ, and that it was not sufficient to divest the court of jurisdiction to order the garnishee to pay
8 the debt where the denial of indebtedness by the garnishee was shown by other averments and
9 admissions to be an erroneous conclusion. *Id.* at 596. We agree with the reasoning in *Finch*. In the
10 instant case, where the Appellee has furnished such evidence in the nature of depositions and
11 correspondence, and the Appellants have admitted a contractual relationship with the alleged alter
12 ego RSG, we believe the trial court acted within its authority in determining the issue of alter ego
13 in this execution proceeding.

14
15 [11] The final remaining issue is whether RSG is the alter ego of Romeo S. Go. The alter ego
16 doctrine is applicable where the trial court determines, "(1) that there is such a unity of interest and
17 ownership that the separate personalities of the corporation and the individuals no longer exist and
18 (2) that failure to disregard the corporation would result in fraud or injustice." *Associated Ins.*
19 *Underwriters, Inc. v. Guam Int'l Insurers, Inc.*, Civ. No. 90-00059A (D. Guam App. Div.1991).
20 Fraudulent intent is also a factor to consider. *Id.*

21 [12] The court found the following facts in support of such a conclusion: (1) RSG is incorporated
22 for the sole purpose of the sale of bakery goods and has not filed a corporate report in the last ten
23 (10) years; (2) RSG is not licensed or permitted to do business on Guam or the City of Manila in the
24 Philippines; (3) the judgment debtor requested that payments to RSG be made into the personal
25 accounts of Romeo S. Go; (4) there is no corporate office for RSG, and its corporate address is the
26 personal residence of Romeo S. Go; (5) Go is the president of RSG. Additional evidence from the
27 record demonstrates that the Liaison Contract between GEDA and GVB was entered on 1 April
28 1996, after the judgment was secured against Romeo S. Go. RSG was incorporated for the purpose

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2 of manufacturing baked goods. Yet the purpose of the Liaison Contract was not to manufacture
3 baked goods, but to expand the tourism industry and to encourage business development on Guam.
4 The trial court determined that piercing the corporate veil was necessary to avoid a grave injustice
5 and to prevent a fraud.

6 **[13]** The facts above support the conclusion that there is no separate identity between RSG and
7 Romeo S. Go, and the trial court's finding that RSG is the alter ego of Romeo S. Go is not clearly
8 erroneous. As a procedural matter, alter ego findings can be made in a garnishment proceeding. *See*
9 *Valley Mechanical Contractors*, 894 S.W.2d at 832. The trial court could have even gone further
10 and amended the judgment to identify RSG as a judgment debtor. *See Associated Ins. Underwriters*,
11 Civ. No. 90-00059A at 6. Both Romeo S. Go and RSG had an opportunity to oppose the piercing
12 of the corporate veil at the garnishment proceedings.

13 14 CONCLUSION

15 **[14]** The trial court properly ruled that GEDA and GVB are not governmental agencies protected
16 by the doctrine of sovereign immunity. Additionally, the Guam Legislature has vested both GEDA
17 and GVB with the power to sue and be sued. Without language expressly limiting such a general
18 waiver of immunity, this Court cannot impute limitations. There is also no statutory restriction
19 against garnishment proceedings involving GEDA and GVB.

20 **[15]** Furthermore, we find that the trial court was within its authority in making its determination
21 on the alter ego issue at the execution hearing, and that no separate action to establish the existence
22 of such a debt was necessary under 7 GCA § 23205. The court could properly order the satisfaction
23 of the judgment with the monies held by garnishees GEDA and GVB which were due and owing to
24 RSG.

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[16] Finally, a garnishment proceeding is a proper vehicle to determine the alter ego status of the judgment debtor. This Court agrees with the trial court's ruling that RSG was the alter ego of Romeo S. Go, and the order appealed from below is AFFIRMED.

JOSE I. LEON GUERRERO, Associate Justice

JANET HEALY WEEKS, Associate Justice

PETER C. SIGUENZA, Chief Justice