IN THE SUPREME COURT OF GUAM

GEORGE P. MACRIS, M.D.
Plaintiff-Appellee,

v.

GUAM MEMORIAL HOSPITAL AUTHORITY,
an autonomous agency of the government of Guam, and
PETERJOHN D. CAMACHO
Defendants-Appellants

Supreme Court Case No.: CVA07-011
Superior Court Case No.: CV0117-07

OPINION

Cite as: 2008 Guam 6

Appeal from the Superior Court of Guam
Argued and submitted on February 13, 2008
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, JR., Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; J. BRADLEY KLEMM, Justice *Pro Tempore*.

CARBULLIDO, J.:

[1] Defendant-Appellant Guam Memorial Hospital Authority refused to release certain audio tapes that Plaintiff-Appellee Dr. George Macris ("Macris") requested pursuant to the Sunshine Reform Act of 1999. Macris filed a complaint seeking an order to produce the audio tapes and the imposition of a statutory fine against Defendant-Appellant Peter John Camacho ("Camacho"), the director of the agency. Guam Memorial Hospital Authority and Camacho filed a motion to dismiss the complaint claiming that Macris did not have standing. The Superior Court denied the motion to dismiss, ordered Guam Memorial Hospital Authority to release the audio tapes and imposed the fine against Camacho. Guam Memorial Hospital Authority and Camacho appealed the order and judgment, again challenging Macris' standing. We hold that Macris did not have standing because an undisclosed principal who makes a request for information through an agent does not have standing under the Sunshine Reform Act of 1999 to challenge the denial of access to the requested information. We therefore reverse and vacate the lower court's order and judgment requiring Guam Memorial Hospital Authority to release the audio tapes and imposing the fine against Camacho.

I.

[2] Attorney Seaton Woodley sent a written request to Guam Memorial Hospital Authority ("GMHA") for the written minutes and audio tape recordings of its October 26, 2006 board of trustees meeting, pursuant to the Sunshine Reform Act of 1999 ("Sunshine Act"). Camacho sent a letter to Woodley indicating that only the written minutes would be provided, and enclosed the written minutes with the letter. Woodley replied with a letter "renewing" the request for the audio tapes.

[3] The "renewed" request for the audio tapes was denied by GMHA because the "[t]apes are audio media not 'writings' as defined under the Sunshine Act" pursuant to 5 GCA § 10102(d).

Appellant's Excerpts of Record ("ER"), p. 11 (Complaint, Ex. E, Jan. 18, 2007 Letter from Concepcion to Woodley); ER, p. 2 (Complaint, Jan. 27, 2007).

[4] Macris filed a complaint against GMHA and Camacho, stating that he "caused to be delivered" a Sunshine Act request for information through a letter written by "plaintiff's counsel," and seeking an order to produce the audio tapes and payment of attorney fees, costs and a statutory fine. ER, pp. 1-4 (Complaint). Woodley's letters to GMHA did not indicate that the requests for information were made on behalf of Macris. GMHA filed a motion to dismiss, claiming that Macris lacked standing to proceed with his complaint.

[5] Macris filed his opposition to GMHA's motion to dismiss, and an affidavit wherein he stated that he "retained the services of Attorney SEATON M. WOODLEY, III, concerning making a SUNSHINE ACT REQUEST from the hospital." ER, p. 36 (Affidavit June 5, 2007). The Superior Court issued an order denying GMHA's motion to dismiss and a judgment requiring GMHA to release the audio tapes, and imposing a fine of $100 against Camacho.

[6] GMHA timely filed its notice of appeal. Guam R. App. P. 4(a)(1) (2007). Macris did not file an appellate brief and thus waived oral argument.[1]

II.

[7] This court has jurisdiction over an appeal from a final judgment and order of the Superior Court. 48 U.S.C.A. § 1424-1(a)(2) (West through Pub. L. 110-180 (2008)); 7 GCA §§ 3107(b), 3108(a) (2005).

III.

[8] "A trial court's decision on whether a party has standing is reviewed *de novo*." *Benavente v. Taitano*, 2006 Guam 15 ¶ 10 (citing *Taitano v. Lujan*, 2005 Guam 26 ¶ 15). "Issues of statutory interpretation are reviewed *de novo*." *Ada v. Guam Tel. Auth.*, 1999 Guam 10 ¶ 10.

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[1] Attorney Woodley did not withdraw as counsel of record for Macris and his failure to file an appellate brief in the present case and corresponding waiver of oral argument constitute a disservice to Macris on appeal. *See* GRAP 17(e)(2); Guam R. of Prof'l Conduct 1.3, 1.16(a)(1) (2003).

IV.

[9] This court must first address the issue of whether Macris had standing to proceed with his complaint on GMHA's refusal to accommodate Woodley's request for audio tapes.

[10] GMHA argues that Macris' claim of standing based on Woodley's request was "simply not tenable" under section 10111 of the Sunshine Act because Macris was not a "person making a request" and was not bringing suit "to enforce that person's right" under the terms of the provision. Appellants' Opening Brief, p. 12 (Oct. 15, 2007). It further asserts that Macris lacks standing based on the common law standing principles of Article III of the United States Constitution because "[h]aving filed no such request, he suffered no 'injury-in-fact' as to any legally-protected interest." *Id.* at 14. GMHA also contends that the lower court misapplied agency principles by relying on another lower court decision. It additionally maintains that "[s]ince there is no material difference between the [federal Freedom of Information Act] and the Sunshine Act, there is every reason for this Court to follow the compelling weight of authority interpreting the FOIA to prohibit an undisclosed client from bringing an action to enforce a Sunshine-Act request initiated by his attorney." *Id.* at 22. GMHA also argues that "a clear majority of state courts addressing the matter have also held that undisclosed clients lack standing to bring information-act suits." *Id.* at 27. It further asserts that the Legislature did not intend to protect anonymity and that the Sunshine Act should not be interpreted to allow persons requesting information to remain anonymous. GMHA lastly contends that "absent the restriction that the plaintiff be the same person who made the Sunshine Act request, such a view would presumably permit multiple persons to bring actions to enforce the same right," which would be an "absurd result." *Id.* at 30-31.

[11] "Standing is a threshold jurisdictional matter." *Benavente*, 2006 Guam 15 ¶ 14 (quoting *Guam Imaging Consultants, Inc. v. Guam Mem'l Hosp. Auth.*, 2004 Guam 15 ¶ 17). "Thus, we have held that a court has no subject matter jurisdiction to hear a claim when a party lacks standing." *Id.*; *see also Taitano v. Lujan*, 2005 Guam 26 ¶ 15.

[12] This court has previously held that:

> [S]tanding may be predicated upon the statutory grant of such standing by the legislature or the common-law standing principles of Article III. Therefore, where standing is statutorily conferred, we look first to the language of the relevant statute to determine whether a party has statutory standing. Where standing is not conferred by statute, we turn to the common law principles of Article III to determine whether a litigant satisfies such standing requirements. . . .
>
> Thus, in determining whether Petitioners have standing, our analysis begins by examining if any statutory authority exists for the claims asserted.

Benavente, 2006 Guam 15 ¶¶ 20-21.

[13] The lower court in its order "concur[red]" with *Macris v. Guam Mem'l Hosp. Auth.*, CV1799-01 (Super. Ct. Guam Feb. 5, 2002) ("*Macris I*"), which "deals, among other things, with the issue of the attorney making the request being the agent of an undisclosed principal, who instituted the proceedings." ER, p. 46 (Order July 10, 2007). The court concluded that Macris "does have standing and adopts the reasoning of Judge UNPINGCO in the earlier decision," stating that "[c]learly if anyone would have a right to bring this action, it would be the principal rather than the agent." ER, p. 46 (Order).

[14] The *Macris I* court held that "Macris was authorized to institute proceedings pursuant to 5 [GCA] § 10111 as the principal who requested the information via his agent," finding that he "exhausted his administrative remedies by making a Sunshine Act request through his attorney. . . ." ER, p. 33 (Opposition, Ex. A, *Macris I*). It determined that "[b]ased on the very broad and general terms contained in the statute, the Court finds that the actual identity of a person making a Sunshine Act request bears little importance in the scheme of the statute's purpose," stating that "just as the purpose of a Sunshine Act request is irrelevant as stated in § 10110, it follows that the identity of the requester is also unimportant since the Government agency would be required to comply regardless of the purpose or identity of the requester." ER, p. 34 (Opposition, Ex. A, *Macris I*). The *Macris I* court concluded that "Macris did make a Sunshine Act request, albeit anonymously through his attorney, and therefore has standing to institute proceedings after the Defendants allegedly failed

to respond." ER, p. 34 (Opposition, Ex. A, *Macris I*).

[15] GMHA challenges Macris' standing under the Sunshine Act to institute proceedings on Woodley's request for the audio tapes. "Thus, we look to this statute to determine upon whom the Legislature conferred standing and whether the claimant in question falls in that category." *Benavente*, 2006 Guam 15 ¶ 21.

[16] Title 5 GCA § 10111(b) states that:

> *Any person* may institute proceedings for injunctive or declarative relief or writ of mandate in the Superior Court of Guam to enforce *that person's right* to inspect or to receive a copy of any public record or class of public records under this Chapter.

5 GCA § 10111(b) (2005) (emphasis added).

[17] Section 10111(b) authorizes "any person" to institute proceedings to enforce "that person's right." Macris asserted below that he properly instituted proceedings to enforce his right pursuant to section 10111(b). GMHA essentially contends that Macris was without rights to enforce under the provision because Woodley requested the audio tapes, not Macris. This court must determine whether Woodley's request gave rise to rights under the Sunshine Act that Macris could enforce pursuant to section 10111(b).

A. Context

[18] Section 10111(b) does not expressly preclude a person who requests information through an agent from instituting proceedings. Our review is not limited to this provision.

[19] "[T]he language of the statute cannot be read in isolation." *Aguon v. Gutierrez*, 2002 Guam 14 ¶ 9. "[W]ords and people are known by their companions." *Gutierrez v. Ada*, 528 U.S. 250, 255 (2000). Statutory language "must be examined within its *context*," which "includes looking at other provisions of the same statute and other related statutes." *Aguon*, 2002 Guam 14 ¶ 9 (emphasis added).

[20] Section 10103(b) of Title 5 Guam Code Annotated states that "[a]ny segregable portion of a record shall be available for inspection by *any person requesting* the record after deletion of the

portions that are exempted by law." 5 GCA § 10103(b) (2005) (emphasis added). "The pertinent words of . . . (a statute) must control so far as they are plain and unambiguous and convey a clear and definite meaning." *Jones v. Ingling*, 191 F. Supp. 559, 562 (D.C. Guam 1961) (quoting *Guam Bowling Ctr., Inc. v. Ingling*, 188 F. Supp. 104, 105 (D.C. Guam 1960)) (internal quotation marks omitted); *accord Sumitomo Const., Co., v. Gov't of Guam*, 2001 Guam 23 ¶ 17; *People v. Angoco*, 1998 Guam 10 ¶ 5.[2] Section 10103(b) seems to mean that the right to inspect the portions of the requested information subject to disclosure is possessed by "any person requesting" the information.

[21] Section 10103(d) provides that "[*i*]*f* the records in whole contain information *not* disclosable by this Chapter or another law, and contain no information that can be released, the agency shall notify the *person requesting* the records . . . ." 5 GCA § 10103(d) (2005) (third emphasis added). This provision states that the right to receive notification that the requested information cannot be disclosed is possessed by the "person requesting" the information.

[22] Section 10111(a) states that "[*a*]*ny person making a request* in any agency for public records pursuant to § 10103 shall be deemed to have exhausted his administrative remedies with respect to *such request* if the agency fails to comply with the applicable time limit provisions of that section." 5 GCA § 10111(a) (2005) (emphasis added). This provision notes that the right to have one's request qualify as an automatic exhaustion of remedies is possessed by "any person making a request."

[23] These companion provisions indicate that the "person requesting" the information possesses rights under the Sunshine Act. Therefore, the "person making the request" has standing to institute proceedings because the Sunshine Act expressly bestows rights on that specific person that he or she can enforce pursuant to section 10111(b). The context of section 10111(b) thus demonstrates that

[2] "It is a cardinal rule of statutory construction that courts must look first to the language of the statute itself." *Sumitomo Const., Co., Ltd. v. Gov't of Guam*, 2001 Guam 23 ¶ 17. "The plain meaning rule for statutory interpretation provides that 'if the language of a statute is clear and there is no ambiguity, then there is no need to 'interpret' the language by resorting to the legislative history or other extrinsic aids.'" *People v. Angoco*, 1998 Guam 10 ¶ 5 (quoting *Church of Scientology of Cal. v. U.S. Dep't. of Justice*, 612 F.2d 417, 421 (9th Cir. 1979)).

Macris did not attain rights under the Sunshine Act through Woodley's request because Woodley was the "person making the request," not Macris.

B. FOIA

[24] GMHA concedes that the Sunshine Act does not preclude Macris from requesting information through an agent. It asserts that proceedings may be instituted by a disclosed principal, but not an undisclosed principal. GMHA contends that Macris could not institute proceedings because the agency relationship between Macris and Woodley was not disclosed to GMHA. It maintains that cases interpreting the federal Freedom of Information Act ("FOIA") support this contention.

[25] FOIA does not contain a provision that is "nearly identical" to section 10111(b) of the Sunshine Act. *See Guam Radio Servs., Inc. v. Guam Econ. Dev. Auth.*, 2000 Guam 23 ¶ 7 (relying on FOIA cases in interpreting the Sunshine Act because of the "nearly identical" language of 5 GCA § 10107(d) and 5 U.S.C.A. § 552(a)(4)(E)). However, "[q]uestions of statutory interpretation may be aided by reference to the prevailing interpretation of other statutes that share the same language and either have the same general purpose or deal with the same general subject as the statute under consideration." *Aguon*, 2002 Guam 14 ¶ 11 (quoting *de los Santos v. INS*, 525 F. Supp. 655, 666 (S.D.N.Y. 1981)). Certain language in the Sunshine Act is mirrored in FOIA.[3] The Sunshine Act and FOIA are alike in purpose and subject matter.[4] The similarities between the Sunshine Act and FOIA are sufficient to warrant consideration of cases that have interpreted FOIA.

[26] "[O]ther courts have found that an attorney must adequately identify that he is making the FOIA request for his client in order for the client to have standing to pursue a FOIA action." *Three*

[3] The identical terms "any person," "person requesting," and "person making a request" appear in 5 U.S.C.A. §§ 552(a)(2)(D), (a)(3)(A), (a)(4)(A)(ii), (a)(6)(C)(I), (a)(6)(D)(ii), (a)(6)(E)(i)(I), (a)(6)(E)(vi) and (b) (2007). The nearly identical terms "person making *such* request" and "person making *the* request" appear in 5 U.S.C.A. §§ 552(a)(6)(A)(i), (a)(6)(A)(ii), (a)(6)(B)(i), (a)(6)(B)(ii), (a)(6)(C)(i), (a)(6)(E)(ii)(I) and (a)(6)(F) (2007).

[4] The Sunshine Act and FOIA authorize public access to certain government agency records and information. 5 GCA § 10103(a) (2005); 5 U.S.C.A. § 552(a).

Forks Ranch Corp. v. Bureau of Land Mgmt., Little Snake Field Office, 358 F. Supp. 2d 1, 3 (D.D.C. 2005) (citing *McDonnell v. United States*, 4 F.3d 1227, 1238 n.6 (3d. Cir. 1993)); *see also Mahtesian v. U.S. Office of Pers. Mamt*, 388 F. Supp. 2d 1047, 1048 (N.D. Cal. 2005) ("[A]n attorney can submit a FOIA request on the express behalf of a *clearly identified* client. . . .") "If a person's name does not appear on a FOIA request, that person has not made a formal request within the meaning of the statute and 'may not sue in district court when the agency refuses to release requested documents because he has not administratively asserted a right to receive them in the first place.'" *Unigard Ins. Co. v. Dep't of Treasury*, 997 F. Supp. 1339, 1342 (S.D. Cal. 1997) (quoting *McDonnell*, 4 F.3d at 1237). "Consistent with this law, several courts have dismissed FOIA claims for lack of standing where plaintiff's counsel submitted a request for documents to an agency without including the plaintiff's name on the request or stating that the request was being filed on behalf of the plaintiff." *Brown v. U.S. Envtl. Prot. Agency*, 384 F. Supp. 2d 271, 276 (D.D.C. 2005) (citing *Three Forks Ranch Corp.*, 358 F. Supp. 2d at 2-3; *MAXXAM, Inc. v. FDIC*, No. 98-0989, 1999 WL 33912624, at *5 (D.D.C. Jan. 29, 1999) (unreported); *Unigard*, 997 F. Supp. at 1343).

[27] GMHA's contention that Macris could not institute proceedings because he was an undisclosed principal is indeed supported by case law interpreting FOIA. These cases are sound and compelling. We therefore hold that an undisclosed principal who makes a request for information through an agent does not have standing under section 10111(b) to challenge the denial of the requested information. Under the Sunshine Act, the agent must identify the principal in making the information request, for the principal to have standing to institute proceedings pursuant to section 10111(b). We further hold that a plaintiff's complaint filed pursuant to section 10111(b) will be dismissed for lack of standing where plaintiff's counsel previously submitted a request for information without including the plaintiff's name on the request or stating that the request was being filed on behalf of the plaintiff.

C. Authorities

[28] The lower court based its decision to grant standing on the reasoning of *Macris I*. *Macris I* relied on cases and statutes that are inapposite because the authorities do not address the grant or denial of standing to undisclosed principals under the Sunshine Act or FOIA.[5]

[29] GMHA references *Kleven v. City of Des Moines* and *Citizens Against Taxpayer Abuse, Inc. v. City of Oklahoma City*, wherein standing was extended to undisclosed principals, but asserts that the cases are distinguishable. The Washington appellate court in *Kleven v. City of Des Moines* stated that "[o]ur courts have repeatedly refused to apply FOIA cases when interpreting provisions in the PDA [Public Disclosure Act] that differ significantly from the parallel provisions in the federal act." *Kleven v. City of Des Moines*, 44 P.3d 887, 890 (Wash. Ct. App. 2002). It then determined that "[b]ecause *Unigard* and *McDonnell* were decided under significantly different statutory provisions and regulations, they are not helpful." *Id.* at 891. This court, in contrast, has determined that the Sunshine Act and FOIA are sufficiently similar to warrant consideration of cases interpreting FOIA. *Citizens Against Taxpayer Abuse, Inc. v. City of Oklahoma City* involved two attorneys who submitted a request for information on behalf of a corporation. *Citizens Against Taxpayer Abuse, Inc. v. City of Oklahoma City*, 2003 OK 65, ¶ 8, 73 P.3d 871, 874. The corporation's certificate of incorporation indicated that the two attorneys were also incorporators of the corporation. *Id.* The Oklahoma district court held that there was a "sufficient connection between [the law firm] and [the corporation] as it relates to the Open Records request to support [the corporation's] standing to pursue this appeal." *Id.*, ¶ 9, 73 P.3d at 874. This distinctive fact undermines the applicability of the reasoning in *Citizens Against Taxpayer Abuse* to the present case. We therefore agree with GMHA that *Kleven* and *Citizens Against Taxpayer Abuse* are distinguishable and do not support the grant of standing to undisclosed principals.

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[5] *Macris I* cited *Link v. Wabash R.R. Co.*, 370 U.S. 626, 633 (1962); *Clinton v. Miller*, 226 P.2d 487, 493 (Mont. 1951); 18 GCA §§ 20301, 20305 (2005); and 5 GCA §§ 10102(c), 10110, 10111 (2005).

[30] The lower court and Macris, in the proceedings below, did not direct this court to authority supporting the extension of standing to undisclosed principals under the Sunshine Act. This court has not found any authority under FOIA or other statutes enacted with similar purposes or subject matter which extends standing to undisclosed principals. The cases interpreting FOIA provide this court with sound and compelling guidance. Accordingly, this court holds that Macris could not institute proceedings pursuant to section 10111(b) of the Sunshine Act because he was an undisclosed principal who requested information through an agent. The lower court's decision to grant standing to Macris is therefore reversed.

[31] Furthermore, because this court finds that standing was improperly granted to Macris, we need not consider the propriety of the fine imposed against Camacho pursuant to section 10112(a) of the Sunshine Act.[6] Therefore, the lower court's decision to impose the fine is also reversed and vacated.

V.

[32] Though section 10111(b) of the Sunshine Reform Act of 1999 does not expressly preclude a person requesting information through an agent from instituting proceedings, its companion provisions indicate that the "person requesting" the information possesses rights under the Sunshine Act. We therefore hold that the "person making the request" has standing to institute proceedings because the Sunshine Act expressly bestows rights on that specific person that he or she can enforce pursuant to section 10111(b).

[33] Because the Sunshine Act and FOIA are alike in language, purpose and subject matter, cases interpreting FOIA provide this court with sound and compelling guidance on interpreting the Sunshine Act. Accordingly, this court holds that an undisclosed principal who makes a request for

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[6] The lower court imposed the fine against Camacho apparently because it found that the audio tapes were a "**public record** under 5 GCA 10102(d). . . . even though the audio tapes are not a writing." ER, p. 48 (Judgment July 10, 2007). Because we have determined that the lower court was without jurisdiction to impose the fine against Camacho, we additionally need not consider the issue of whether the requested audio tapes qualified as public records pursuant to section 10102(d).

information through an agent does not have standing to challenge the denial of access to the requested information under the Sunshine Act because the agent must adequately identify that the agent is making a Sunshine Act request on behalf of the principal for the principal to have standing to institute proceedings pursuant to section 10111(b). We further hold that a plaintiff's complaint filed pursuant to section 10111(b) will be dismissed for lack of standing where plaintiff's counsel previously submitted a request for information without including the plaintiff's name on the request or stating that the request was being filed on behalf of the plaintiff. The lower court and Macris fail to direct this court to authority supporting the extension of standing to undisclosed principals under the Sunshine Act and this court has not found authority so extending standing.

[34] Therefore, we hold that Macris did not have standing to institute proceedings pursuant to section 10111(b) of the Sunshine Act because he was an undisclosed principal who made a request for information through an agent. Furthermore, we hold that we need not consider the propriety of the fine imposed against Camacho pursuant to section 10112(a) of the Sunshine Act because the lower court was without jurisdiction to hear the complaint filed by Macris. Accordingly, the lower court's decision to grant standing to Macris and impose a fine against Camacho is **REVERSED** and **VACATED**.

Original Signed By: **J. Bradley Klemm**

J. BRADLEY KLEMM
Justice *Pro Tempore*

Original Signed By: **F. Philip Carbullido**

F. PHILIP CARBULLIDO
Associate Justice

Original Signed By: **Robert J. Torres**

ROBERT J. TORRES, JR.
Chief Justice