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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

GUAM POLICE DEPARTMENT,
Petitioner,

v.

SUPERIOR COURT of GUAM,
Respondent,

v.

ANTHONY LUJAN dba BIG BEN & CO.,
Real Party in Interest.

Supreme Court Case No.: WRP10-001
Superior Court Case No.: CV0027-09

OPINION

Cite as: 2011 Guam 8

Appeal from the Superior Court of Guam
Argued and submitted on July 15, 2010
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO[1], Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

CARBULLIDO, J.:

[1] Petitioner, Guam Police Department ("GPD"), seeks a writ of prohibition restraining Respondent, the Superior Court of Guam, ("Superior Court") from proceeding in a civil suit filed by Real Party in Interest, Anthony Lujan dba Big Ben & Co. ("Big Ben") against GPD. We find that since Big Ben did not timely file its claim with the Attorney General's office under 5 GCA § 6106(a) of Guam's Government Claims Act, Big Ben's claim was barred by sovereign immunity and the Superior Court did not have jurisdiction to entertain the civil suit. Accordingly, the Petition for Writ of Prohibition is granted.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] In its complaint, Big Ben alleges that in April 2004, it entered into a non-written agreement with GPD to provide GPD with tow truck and storage services for an undetermined duration. According to Big Ben's Complaint, it began rendering services to GPD in April 2004. Big Ben filed its first government claim with the Attorney General's Office on September 28, 2005. Big Ben terminated its towing and storage services on March 7, 2006. According to its verified claim, Big Ben made repeated unsuccessful attempts to seek payment for its services including in September and October of 2007 when Big Ben demanded payment for past services rendered. The Chief of GPD sent a letter dated November 8, 2007, which denied the extent of

[1] On January 18, 2011, Associate Justice F. Philip Carbullido was sworn in as Chief Justice of the Supreme Court of Guam. The signatures in this opinion reflect the titles of the justices at the time this matter was considered and determined.

services that Big Ben billed to GPD, informed Big Ben that GPD would not pay, and recommended that Big Ben contact an attorney to assist with its legal remedies.

[3] In April 2008, Big Ben once again demanded payment from GPD and was again informed that GPD would not pay. On May 1, 2008, legal counsel for GPD sent a letter to Big Ben's counsel. In the letter, GPD's counsel stated that where there was no valid contract or purchase order, GPD could not make payment without subjecting itself to civil and/or criminal liability. GPD's counsel further concluded that if Big Ben "believe[d] it ha[d] a legitimate claim against GPD, then it should file a claim pursuant to the Government Claims Act". Pet'r's Br. at 7 n.4 (June 18, 2010).

[4] Relevant to this writ, Big Ben filed a second government claim with the Attorney General's Office on June 24, 2008 — more than eighteen (18) months after Big Ben terminated its services in March 2006. The Attorney General's Office did not reject the second claim within six months of Big Ben's filing, and on January 7, 2009, Big Ben filed a complaint for damages in the Superior Court. GPD motioned the Superior Court to dismiss both the September 2005 and the June 2008 government claims, arguing that Big Ben failed to timely file its claims pursuant to the Government Claims Act. The Superior Court found that the first claim filed on September 28, 2005 was untimely filed under the Government Claims Act because "[t]he Attorney General's Office did not officially reject said claim and[,] pursuant to statute the claim period expired six months thereafter, or March 28, 2006." *Lujan v. Guam Police Dep't*, Civil Case No. 0027-09, Decision on Motion to Dismiss (April 1, 2009). The court therefore, lacked jurisdiction to hear the first claim. Regarding the second claim filed on June 24, 2008, the Superior Court denied GPD's motion to dismiss "to the extent that the amounts claimed in the June 2008

government claim do not represent amounts previously claimed in the September 2005 claim, which are now deemed time barred." *Id.* at 2. The court therefore had subject matter jurisdiction over damages subsequent to September 26, 2005.

[5] GPD seeks a writ of prohibition from this court, to prevent the Superior Court from proceeding in the case. GPD asserts that the Superior Court lacks subject matter jurisdiction because Big Ben failed to comply with the statute of limitations prerequisite under 5 GCA § 6106(b). GPD further asserts that, as a result of Big Ben's failure to timely file their government claim, sovereign immunity under 48 U.S.C.A. § 1421a was not waived and the Superior Court lacked jurisdiction to proceed.

II. JURISDICTION

[6] This court has original jurisdiction to issue writs of prohibition pursuant to 48 U.S.C.A. § 1424-1(a)(4) (Westlaw current through Pub. L. 112-9 (2011) and 7 GCA § 3107(b) (2010); *People v. Super. Ct. (Laxamana)*, 2001 Guam 26 ¶ 5.

III. DISCUSSION

A. Governmental Sovereign Immunity

[7] As an agency of the Government of Guam, GPD has the right to invoke sovereign immunity as a defense to suit. "The Government enjoys broad sovereign immunity." *Newby v. Gov't of Guam*, 2010 Guam 4 ¶ 31. The sovereign immunity of the government exists pursuant to both the common law and the Organic Act. *Marx v. Government of Guam*, 866 F.2d 294, 297-298 (9th Cir. 1989); 48 U.S.C.A. § 1421a (2011). Furthermore, "Sovereign immunity can only be waived by duly enacted legislation [and] absent such legislation, the Government cannot be sued." *Newby* at ¶ 31.

[8] Sovereign immunity is explicitly waived by statute for certain governmental actions that are contractual in nature or that sound in tort. The Guam Legislature has specifically provided a limited waiver of the Government of Guam's sovereign immunity through the Government Claims Act ('Claims Act'). 5 GCA §§ 6101, *et seq.* Under this statute, the defense of sovereign immunity is waived where a plaintiff timely files a valid complaint in compliance with the statute of limitations requirements of the Claims Act. Where the plaintiff fails to timely file a complaint before the expiration of the statute of limitations, however, sovereign immunity is not statutorily waived.

[9] The central issue raised in this case is when the statute of limitations begins to run under 5 GCA § 6106(a) for contract and equity claims arising from unwritten agreements for services rendered over a period of time.[2] In the absence of any legislative history specifying when the statute of limitations begins to run under 5 GCA § 6106(a), we find it pragmatic to read 5 GCA § 6106(a) in *pari materia* to our other statute of limitations provided in 7 GCA § 11305(8) for claims arising from unwritten agreements. *See Dir. of Dep't of Pub. Health and Soc. Servs. v. Cruz*, Civil Action No. 85-0084A, 1987 WL 109396, at *1-2 (D. Guam App. Div. 1987) (explaining the *pari materia* rule of construction).

[10] Title 7 GCA § 11305(8) addresses the statute of limitations for oral contracts, contracts implied in fact, and *quantum meruit* claims. Section 11305(8) is substantively similar to

[2] Citing *Pacific Rock Corp. II*, Big Ben asserts that the time limit for the statute of limitations is tolled by the prerequisite of exhausting administrative remedies under our procurement statues. Real Party in Interest's Answer at 6-7 (June 25, 2010). However, in *Pacific Rock Corp. II* we clearly stated that "[o]ur opinion is restricted to breach of contract cases for contracts *procured under* the Procurement Law, which involve money owed to or by the Government of Guam." *Pac. Rock Corp. v. Dep't of Educ.*, 2001 Guam 21 ¶ 53 (emphasis added). As this case involves at most an oral contract that was not "procured under" Guam's procurement statutes, Big Ben cannot avail itself to the tolling of the statute of limitations under the procurement statutes. *See id.*

California Civil Code 339(1). *Compare* 7 GCA § 11305(8) *with* California Civil Code § 339(1).[3] Therefore we look to California case law as persuasive authority. *Sumitomo Constr., Co., Ltd. v. Zhong Ye, Inc.*, 1997 Guam 8 ¶ 7 ("Generally, when a legislature adopts a statute which is identical or similar to one in effect in another jurisdiction, it is presumed that the adopting jurisdiction applies the construction placed on the statute by the originating jurisdiction").

[11] California, however, recognizes more than one method for determining an applicable statute of limitations for an alleged breach of an oral contract. California case law has alternatively recognized that a statute of limitations on a contractual dispute may: (1) commence on the last date of services rendered, (2) from the date when payment was due per the terms of the contract, (3) at termination of the relationship, or (4) from the date of "discovery" of the injury. *Johnstone v. E & J Mfg. Co.*, 114 P.2d 658, 659 (Cal. Ct. App. 1941) (statute of limitations begins to run from the date of last services rendered); *Konjoyan v. Der Zakarian*, 12 Cal. Rptr. 389, 391 (Cal. Dist. Ct. App. 1961) (statute of limitations commences on the date money was due, absent evidence that the parties intended otherwise); *Maglica v. Maglica*, 78 Cal. Rptr 2d 101, 107 (Cal. Ct. App. 1998) (statute of limitations commenced at the termination of the relationship); *Cleveland v. Internet Specialties W., Inc.*, 88 Cal. Rptr. 3d 892, 897 (Cal. Ct. App. 2009) ("limitations period dependent upon the discovery of the cause of action begins to

[3] Section 11305(8) states in relevant part:

> An action upon a contract, obligation or liability not founded upon an instrument of writing other than that mentioned in Subsection 2 of § 11303 of this Title . . . .

7 GCA § 11305(8) (2005).

California Civil Code 339(1) states in relevant part:

> An action upon a contract, obligation or liability not founded upon an instrument of writing, except as provided in Section 2725 of the Commercial Code or subdivision 2 of Section 337 of this code . . . .

Cal. Civ. Proc. Code § 339(1) (1996).

run no later than the plaintiff learns [] the facts essential to his claim"). Because no single, uniform test exists, California courts have consistently upheld that the determination of an applicable statute of limitations is a question of fact. In an action for an alleged breach of an insurance contract, the California appellate court further clarified that "Statutes of limitation issues are normally questions of fact, unless the uncontradicted facts established through discovery are susceptible of only one legitimate inference." *Lee v. Fid. Nat'l Title Ins. Co.*, 115 Cal. Rptr. 3d 748,761 (Cal. Ct. App. 2010).

[12] The facts of the case on appeal do present only one legitimate inference – that the statute of limitations for Big Ben's claim against GPD began to run from the date of the last services rendered. The court reaches this conclusion based primarily upon the facts alleged in Big Ben's complaint. Additionally, there is no evidence before the court establishing an agreement between the parties regarding when payment was due, nor are there any allegations that the relationship between the parties continued beyond the last date of services, nor that there was any fraud or misrepresentation that prevented "discovery" of the alleged breach of contract. Conversely, the uncontested facts of the case establish that Big Ben ceased providing towing and storage services to GPD on March 7, 2006. The court accepts as true the uncontested facts provided by Big Ben in their original complaint and bases the commencement of the statute of limitations for the government claim on these uncontested facts. GPD's right to invoke sovereign immunity based upon the applicable statute of limitations has not been waived.

[13] Sovereign immunity may not apply where the government is found to be acting in a proprietary function, as opposed to a governmental function. Proprietary functions are those "conducted in [the government's] private capacity, for the benefit only of those within its

corporate limits, and not as an arm of the government." *Galveston Indep. Sch. Dist. v. Clear Lake Rehab. Hosp., L.L.C.*, 324 S.W.3d 802, 807 (Tex. App. 2010). (internal citations omitted). Such actions are distinct from governmental functions undertaken "in the performance of purely governmental matters solely for the public benefit." *Id.* Governmental functions are generally those "performed for the general public with respect to the common welfare for which no compensation or particular benefit is received." *Newman Mem'l Hosp. v. Walton Const. Co., Inc.*, 149 P.3d 525, 535-36 (Kan. Ct. App. 2007). This is in contrast to proprietary functions "exercised when an enterprise is commercial in character or is usually carried on by private individuals or is for the profit, benefit, or advantage of the governmental unit conducting the activity." *Id.* (citations omitted).

[14] GPD has acted in a governmental capacity. GPD's actions, specifically, contracting with independent businesses in order to procure towing and storage services for impounded vehicles, is indicative of a governmental action undertaken for the general welfare. GPD did not secure towing and storage services from Big Ben for "profit, benefit, or advantage," but did so in order to remove impounded vehicles for the public good. Because GPD was acting in a governmental capacity, sovereign immunity is properly invoked and is not waived.

[15] Finally, sovereign immunity may be abrogated in rare cases where justice demands relief in equity. This holds true in cases that involve a factual question of whether or not sovereign immunity has been statutorily waived based upon the commencement of a cause of action and the running of a statute of limitations. Equity requires that a party be estopped from "asserting the statute of limitations as a defense to an admittedly untimely action because his conduct has induced another into forbearing suit within the applicable limitations period." *Atwater*

Elementary Sch. Dist. v. California Dep't of Gen. Serv., 158 P.3d 794, 797 (Cal. 2007). The application of the theory of equitable estoppel "is wholly independent of the limitations period itself and takes its life ... from the equitable principle that no man [may] profit from his own wrongdoing in a court of justice." *Id.* (internal citations omitted).

[16] Successfully demonstrating that the theory of equitable estoppel prevents the Government from invoking sovereign immunity requires proof of inducement. *Id.* Big Ben has not, however, provided the court with evidence that GPD induced Big Ben into forbearing suit. Furthermore, Big Ben has not specifically alleged that GPD is equitably estopped from relying upon the statute of limitations.[4] Instead, Big Ben's complaint contains a plea for recovery under the equitable theory of *quantum meruit* that is well recognized by Guam courts. *See Tanaguchi-Ruth + Assocs. v. MDI Guam Corp.*, 2005 Guam 7. It is the theory of equitable estoppel, however, that could potentially toll the statute of limitations and bar the invocation of governmental sovereign immunity – not the equitable theory of *quantum meruit*. Accordingly, while future cases may require this court to examine the possibility of equitable tolling, remedies in equity need not be considered in the case at hand and have no bearing upon GPD's right to invoke sovereign immunity as a bar to suit.

[17] GPD has properly invoked their right to sovereign immunity. No evidence has been presented to support the assertion that GPD's sovereign immunity has been waived or that an exception to the right to invoke sovereign immunity applies. None of the above mentioned

[4] Big Ben's complaint contains three causes of action, the third of which is the claim in equity for *quantum meruit*. In support of their claim for *quantum meruit*, Big Ben states only that "Defendant promised to pay to Plaintiff, on request, for the work, labor, and services performed by Plaintiff on behalf of Defendant" and that "Plaintiff has demanded that Defendant pay the sum mentioned above, but Defendant refused, and continues to refuse, to pay plaintiff any part of it." Respondent's Comp. at 5 (Jan. 6, 2009). The complaint contains no allegations that GPD made false promises to pay Big Ben in order to have the statute of limitations elapse and foreclose suit.

waivers or exceptions are applicable to the facts of the case as presented by both the original complaint and the Superior Court proceedings. The only question remaining before the court is whether or not a writ of prohibition is the proper remedy to protect the government's sovereign immunity.

B. When a Writ of Prohibition Will Issue

[18] The issuance of a writ of prohibition "is a drastic remedy" that may only occur where certain statutory requirements are met. *See Laxamana*, 2001 Guam 26 ¶ 5; 7 GCA §§ 31203, 31302 (2005). A writ of prohibition is the appropriate remedy for relief where it is necessary to arrest "the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person." 7 GCA § 31301 (2005). Guam law therefore imposes three threshold criteria that must be satisfied before a writ of prohibition may properly issue: (1) petitioner is without a plain, speedy, and adequate remedy at law; (2) petitioner is a beneficially interested party; and (3) proceedings without or in excess of a tribunal's jurisdiction. *Laxamana*, 2001 Guam 26 ¶ 5; 7 GCA §§ 31301, 31302. The three criteria will each be examined in turn.

1. Whether Appeal is an Adequate Remedy at Law to Protect the Interests of Sovereign Immunity

[19] In determining whether to grant a writ of prohibition, we must first decide whether GPD has another adequate remedy at law. *See Duque v. Super. Ct. (Rios)*, 2007 Guam 15 ¶ 12; *Gray v. Super. Ct. (Gray)*, 1999 Guam 26 ¶¶ 13-14. Generally, a lower court's decision regarding its jurisdiction is an issue which may be addressed on appeal after final judgment and would normally provide another remedy at law. *See Gray*, 1999 Guam 26 ¶ 14 (explaining that appellate review of trial court's denial of a motion to dismiss for lack of subject matter

jurisdiction was an available remedy to the petitioner); *Laxamana*, 2001 Guam 26 ¶ 7 ("Extraordinary writs are used by courts to provide a petitioner relief not available in the ordinary course of appeal"). However, the key inquiry is not simply whether the legal remedy of appeal is available, but whether an appeal after final judgment is adequate to protect the interests involved. *See* 7 GCA § 31302; *see, e.g.*, *Long-Term Credit Bank of Japan v. Super. Ct. (Nomoto)*, 2003 Guam 10 ¶ 15.

[20] A remedy is not inadequate merely because pursuing such remedy through the ordinary course of law would be more costly and time consuming than use of an extraordinary writ. *Rios* 2007 Guam 15 ¶ 19. Rather, the adequacy of an appeal as a legal remedy turns on whether the invasion of a party's particular right, which is deemed worthy of initial protection, would cause irreparable harm if the party was forced to wait to vindicate its right through an appeal. *See Nomoto*, 2003 Guam 10 ¶ 15 (explaining that requiring a party to wait until after judgment effectively denies remedy.); *Omaha Indem. Co. v. Super. Ct.*, 258 Cal. Rptr. 66, 70 (Cal. Ct. App. 1989) (citing both mandamus and prohibition cases for the proposition that extraordinary writ is proper where "the petitioner will suffer harm or prejudice in a manner that cannot be corrected on appeal"); *Yager v. Super. Ct. in and for L.A. County*, 33 P.2d 451, 453 (Cal. Ct. App. 1934) ("As a general rule, [prohibition] will issue only in cases of special emergency, to prevent great impending present injury or extraordinary hardship").

[21] Requiring appeal after final judgment would be an inadequate remedy in this case and would render the sovereign immunity right moot. An appeal after final judgment would not undo the infringement on the Government's sovereign immunity from suit since the Government would have to relinquish its sovereign immunity right to entertain a suit. *See Mitchell v. Forsyth,*

472 U.S. 511, 526 (1985) (explaining that an order denying absolute immunity is immediately appealable because the decision is unreviewable once allowed to proceed to final judgment); *County of Santa Barbara v. Super. Ct.*, 93 Cal. Rptr. 406, 409-10 (Cal. Ct. App. 1971) ("*Santa Barbara*") (finding that a defense of sovereign immunity is appealable prior to final judgment because it raises a question of jurisdiction); *Big Band Valley of Pomo Indians v. Super. Ct.*, 35 Cal. Rptr. 3d 357, 360 (Cal. Ct. App. 2005) (stating that an immunity defense is effectively lost if the party is forced to stand trial). *Nomoto*, 2003 Guam 10 ¶ 15; *Omaha Indem. Co.*, 258 Cal. Rptr. 66 (Cal. Ct. App. 1989); *Cf. City of Huntington Beach v. Super. Ct.*, 144 Cal. Rptr. 236, 239 (Cal. Ct. App. 1978) ("Although the city could have awaited trial of the damage issue and appealed from the judgment . . . we hold that remedy to be inadequate. Relief by mandamus is appropriate where it will prevent a needless, expensive trial and an ultimate reversal, particularly where the issue presented is purely one of law and it is in the public interest to have a prompt settlement of the question presented" (internal citations omitted)).

[22] Whether an appeal after final judgment to vindicate the Government of Guam's sovereign immunity provides adequate relief under 7 GCA § 31302 is an issue of first impression for this court.[5] This court looks to California precedent to aid in interpreting section 31302. *See Laxamana*, 2001 Guam 26 ¶ 8. ("Because [7 GCA § 31301 and § 31302 are] derived from the California Code of Civil Procedure, we look to the substantial precedent developed within that state to assist in interpreting parallel Guam provisions."). In *People v. Super. Ct. of City and*

[5] It is not disputed by the parties that the doctrine of sovereign immunity applies to Guam or that GPD is a line agency of the Government of Guam. Moreover, Guam case law has clearly addressed this point. *Guam Econ. Dev. Auth. v. Island Equip. Co.*, 1998 Guam 7 ¶ 6 ("There is no doubt that the doctrine of sovereign immunity applies to Guam.") (citing *Marx v. Gov't of Guam*, 866 F.2d 294, 298 (9th Cir. 1989)); *Wood v. Guam Power Auth.*, 2000 Guam 18 at *3; *see also Newby v. Gov't of Guam*, 2010 Guam 4 ¶¶ 5, 28 (sovereign immunity applying to a line agency).

County of S.F., the California Supreme Court addressed the very argument posed by the Superior Court in this case that the proper procedure should be an appeal after final judgment, rather than a writ of prohibition, because the petitioners sought to correct an alleged error in the Superior Court's denial of the motion to dismiss. *See People v. Super. Ct. of City and County of S.F.*, 178 P.2d 1, 2 (Cal. 1947) (addressing the argument that "prohibition is . . . sought for the purpose of correcting judicial error and that the petitioner should be relegated to the remedy by appeal"). The California Supreme Court ultimately concluded that:

> Assuming that would be a remedy by appeal in the pending action, *the importance of the principal question [of whether sovereign immunity bars suit] is sufficient to support the [writ proceeding so] that the issue speedily be determined.* The fact that the peremptory writ may be denied in no way forecloses the court from exercising its constitutional and statutory power to entertain the proceeding.

Id. at 2 (emphasis added) (some internal citations omitted). We agree that although the Government could wait until final judgment and pursue a remedy by appeal, the importance of the sovereign immunity question, as presented by the specific facts of this case, is such that it should be speedily determined through the writ proceeding.

[23] The question may be speedily determined because sovereign immunity was properly invoked and was not waived by GPD. The uncontradicted fact that services to GPD ceased on March 7, 2006, determined the applicable statute of limitations and is "susceptible of only one legitimate inference" *Lee*, 115 Cal. Rptr. 3d at 761: that sovereign immunity has not been waived. Accordingly, the court's decision to review the question of sovereign immunity pursuant to a writ of prohibition is exceptional and should be narrowly applied in future cases. In *County of Sacramento*, the California Supreme Court discussed the importance of protecting sovereign immunity through writ proceedings, observing that "[p]rohibition is an appropriate

remedy where . . . it is desirable that an important jurisdictional question presented by the defense of sovereign immunity from suit should be speedily determined." *Cnty. of Sacramento v. Super. Ct.*, 503 P.2d 1382, 1383 (Cal. 1972). A writ of prohibition may be an appropriate interlocutory remedy where there exists no question that sovereign immunity is properly invoked, as presented by the specific facts of the case.

[24] California appellate courts have addressed the issue of whether writ proceedings are appropriate *after* the government lost its sovereign immunity argument at the motion to dismiss and summary judgment stages. *Santa Barbara* at 409-10; *State v. Super. Ct. for San Mateo Cnty.*, 69 Cal. Rptr. 683, 685 (Cal. Ct. App. 1968) (emphasis added). Similar to the facts in this case, the California appellate court in *Santa Barbara* found that a petition for writ was appropriate after the trial court's denial of a demurrer[6] where the government asserted that sovereign immunity barred the claim. *See Santa Barbara* at 409-10.

[25] Although the Superior Court urges that the proper procedure is for GPD to seek redress of its sovereign immunity claim in the Superior Court through interlocutory review pursuant to 7 GCA § 3108(b), or through certification pursuant to Rule 54(b) of the Guam Rules of Civil Procedure, we decline in this case to require such procedure over the writ procedure. 7 GCA § 3107(b); 7 GCA § 31302 (2005). Contrary to the Superior Court's assertion, the trial court's determination of its own jurisdiction does not necessarily imply that the court "always had proper jurisdiction." Answer at 3 (May 14, 2010). The Superior Court determines the extent of its own jurisdiction and "the Court of Appeal [the Supreme Court] has jurisdiction to review the

[6] A demurrer is comparable to a motion to dismiss. *See Swahn Group, Inc. v. Segal*, 108 Cal. Rptr. 3d 651, 662 (Cal. Ct. App. 2010) (explaining that a motion to dismiss in the federal courts is the equivalent of a demurrer in California).

superior court's determination." *People v. Williams*, 110 P.3d 1239, 1243 (Cal. 2005). It is necessary for the trial court to determine in the first instance that it has jurisdiction before a petitioner can seek a writ of prohibition. *See Shaffer v. Justice Court of Chico Judicial Dist., Butte Cnty.*, 8 Cal. Rptr. 269, 270 (Cal. Dist. Ct. App. 1960). This is true because the requirement that there is no other plain, speedy, and adequate remedy at law implies that the jurisdictional issues challenged in the writ have first been raised without success in the inferior tribunal, since seeking the trial court's decision on the matter in the first instance would be an available plain, speedy and adequate remedy. *See* 7 GCA § 31302.

[26] We agree with California precedent and find that appeal after final judgment is not a plain, speedy, and adequate remedy for GPD to protect its important sovereign immunity right from suit. *See* 48 U.S.C.A. § 1421a (Guam's sovereign immunity); 7 GCA § 31302 (requiring that petitioner is without any other plain, speedy and adequate remedy at law); *Nomoto*, 2003 Guam 10 ¶ 15 (issuing a writ before final judgment in order to ensure the petitioning party a plain, speedy and adequate remedy to prevent irreparable harm); *see e.g.*, *Cnty. of Sacramento. v. Super. Ct.*, 503 P.2d 1382, 1383 (Cal. 1972) (entertaining writ proceeding to determine important issue of sovereign immunity); *Santa Barbara* at 409-10 (finding writ proceedings to be an appropriate form of redress to protect sovereign immunity after denial of government's motion to dismiss).

2. Whether Petitioner is a Beneficially Interested Party

[27] To be successful in obtaining a writ of prohibition, GPD must be a beneficially interested party. *Laxamana*, 2001 Guam 26 ¶ 8 (quoting 7 GCA § 31302). To demonstrate that it is a beneficially interested party, GPD must show that "it has suffered an invasion of a legally

protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Laxamana*, 2001 Guam 26 ¶ 24 (quoting *Associated Builders & Contractors, Inc. v. S.F. Airports Comm'n*, 981 P.2d 499, 504 (Cal. 1999)).

[28] GPD satisfies this requirement by demonstrating that it has a concrete interest in protecting its sovereign immunity from suit under 48 U.S.C.A. § 1421a (2011). *See* 7 GCA § 31302. The invasion of GPD's legally protected interest is "actual or imminent" since it would otherwise be required to go to trial which, in itself, is an invasion of GPD's immunity from suit. *See Pac. Rock Corp. v. Perez*, 2005 Guam 15 ¶ 30 ('where there exists a "collision between the desirable principle that rights may be adequately vindicated through a single trial of an issue and the sovereign right of immunity from suit . . . the doctrine of immunity should prevail."' (quoting *U.S. v. U.S. Fid. & Guar. Co.*, 309 U.S. 506, 514-15. (1940))).

3. Whether the Proceedings Below are Without or in Excess of the Superior Court's Jurisdiction[7]

[29] In order for this court to issue a writ of prohibition, we must find that the inferior tribunal is without jurisdiction. 7 GCA § 31301 (2005). "Sovereign immunity implicates a court's subject matter jurisdiction." *Sumitomo Constr. Co., Ltd. v. Gov't of Guam*, 2001 Guam 23 ¶ 22 (citation omitted). Absent duly enacted legislation, Guam's sovereign immunity is not waived and the Government cannot be sued. 48 U.S.C.A. § 1421a (2011); *Newby*, 2010 Guam 4 ¶ 31. If

[7] GPD raised for the first time in this writ of prohibition proceeding that under 5 GCA § 6105(a) "[t]he Guam Legislature has not extended the waiver of [sovereign] immunity to oral or un-written contracts, or to any theories of recovery based in equity, contracts implied in law, quasi-contract, or *quantum meruit*." Pet'r's Reply Brief at 24 (May 19, 2010). Although we may exercise our discretion to entertain issues of law raised for the first time in writ proceedings, we decline to do so in this case since GPD's other previously presented argument of timeliness is conclusive even if applied to oral contracts or recovery based in equity. *See* 7 GCA § 31401 (2005) (writ relief discretionary); *see also Laxamana*, 2001 Guam 26 ¶ 5 (writ relief discretionary). Therefore, we leave for another day our answer to whether the Guam Legislature has extended the waiver of sovereign immunity to oral or unwritten contracts, or to any theories of recovery based in equity.

a claim against the government does not meet the prerequisites for sovereign immunity to be waived, then a tribunal lacks jurisdiction to entertain the claim. *See Wood v. Guam Power Auth.*, 2000 Guam 18 at 3 ("[Plaintiff's] claim's [sic] falls [sic] outside of the purview of the Government Claims Act and so is barred due to lack of jurisdiction."); *Pac. Rock Corp. v. Dep't of Educ.*, 2001 Guam 21 ¶ 18.

[30] Guam waives sovereign immunity for "all expenses incurred in reliance upon a contract to which the Government of Guam is a party . . . ." 5 GCA § 6105(a) (2005). Nonetheless, it still stands that the failure to timely submit a claim prevents the trial court from obtaining jurisdiction over the claim. *Perez v. Guam Hous. & Urban Renewal Auth.*, 2000 Guam 33 ¶ 14 ("*Perez*"). Title 5 GCA § 6106(a) provides:

> All claims under this Act must be filed within 18 months from the date the claim arose, but any claims timely filed under the predecessor of this Act shall be considered to have been timely filed under this Chapter.

5 GCA § 6106(a) (2010).

[31] Having determined that the statute of limitations begins to run on Big Ben's claims upon the cessation of its services to GPD, we find that Big Ben untimely filed its claim under 5 GCA § 6106(a) and the Superior Court did not have jurisdiction to entertain the second claim. *See* 5 GCA § 6106(a); *Pac. Rock Corp. v. Dep't of Educ.*, 2000 Guam 19 ¶ 31; *Perez* at ¶ 14.

[32] In summary, where properly invoked, sovereign immunity protects the Government of Guam and its line agencies by barring suit. *See* 48 U.S.C.A. § 1421a (2011). Sovereign immunity is, therefore, not merely an affirmative defense to liability; but is the sovereign's right not to be a defendant in court. *Id.* Furthermore, the Government of Guam's right to invoke sovereign immunity can only be waived or abrogated by the Legislature of Guam. *Id.*; *Wood* at

¶¶ 5-6 (citing *Guam Econ. Dev. Auth. v. Island Equip. Co.*, 1998 Guam 7 ¶ 6). Only for expressly limited causes of action and upon fulfillment of prerequisites expressly defined in Guam's Government Claims Act, has the legislature waived the Government's sovereign immunity from suit. 5 GCA §§ 6101 *et seq.* Because the real party in interest here has failed to file a timely claim and thus failed to comply with the Government Claims Act, the Superior Court does not have jurisdiction to proceed and cannot entertain this suit.

IV. CONCLUSION

[33] We hereby **ISSUE** this writ of prohibition and **ORDER** the Superior Court not to proceed with the trial in this case.

Original Signed By: F. Philip Carbullido
F. PHILIP CARBULLIDO
Associate Justice

Original Signed By: Katherine A. Maraman
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: Robert J. Torres
ROBERT J. TORRES
Chief Justice