IN THE SUPREME COURT OF GUAM

GOVERNMENT OF GUAM,
Plaintiff,

v.

162.40 SQUARE METERS OF LAND MORE OR LESS, SITUATED IN THE MUNICIPALITY OF AGANA AND UNKNOWN OWNERS,
Defendants.

ENGRACIA UNGACTA AND FELIX F. UNGACTA,
Real Parties in Interest-Appellants

ARTEMIO M. ILAGAN AND CARMELITA ILAGAN,
Real Parties in Interest-Appellees.

Supreme Court Case No. CVA10-004
Superior Court Case No. CV0863-81

OPINION

Cite as: 2011 Guam 17

Appeal from the Superior Court of Guam
Argued and submitted December 1, 2010
Hagåtña, Guam

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BEFORE: MIGUEL S. DEMAPAN[1], Presiding Chief Justice *Pro Tempore*; ALEXANDRO C. CASTRO, Justice *Pro Tempore*; JOHN A. MANGLONA, Justice *Pro Tempore*[2].

PER CURIAM:

[1] This appeal stems from a condemnation action of a piece of property in Hagåtña, Guam. In 1981, the Government of Guam condemned Lot 237-3-2-1 from Appellees Artemio M. Ilagan and Carmelita Ilagan ("Ilagans"), which it thereafter sold to Appellants Engracia Ungacta and Felix F. Ungacta ("Ungactas").[3] The Ungactas appeal the trial court's finding that the condemnation was wrongful, arguing that the taking was part of a wider and more comprehensive economic development plan. Accordingly, they submit that the taking satisfied the Public Use Clause of the Fifth Amendment. Following United States Supreme Court precedent, we conclude that the taking was part of the Agana Plan, and was done pursuant to a valid public purpose. We, therefore, reverse the judgment, and remand this case to the trial court to determine whether just compensation was paid.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Prior to World War II, the village of Hagåtña had grown with oddly shaped lots and twisting, crooked streets. *See Gov't of Guam v. Moylan*, 407 F.2d 567, 567 (9th Cir. 1969).[4] The village was essentially destroyed by the reoccupation of American forces in 1944. Transcripts

[1] Chief Justice Miguel S. Demapan heard oral argument in this case. Prior to the issuance of this Opinion, he retired as Chief Justice from the Supreme Court of the Commonwealth of the Northern Mariana Islands.

[2] All three justices recused themselves from this matter. On October 14, 2010, pursuant to 7 GCA § 6108(a) and the Rule of Necessity, then Chief Justice Torres appointed the Honorable Miguel S. Demapan as Presiding Chief Justice *Pro Tempore* in this matter. Alexandro C. Castro and John A. Manglona, Associate Justices of the Supreme Court of the Commonwealth of the Northern Mariana Islands sit as Justices *Pro Tempore*.

[3] The property at issue was sold to Engracia, who subsequently transferred her interest in the property to Felix and his wife, Evelyn Ungacta. In the opinion, we refer to Engracia and Felix as Ungactas, as well as each separately by name.

[4] In *Moylan*, the Ninth Circuit Court of Appeals discussed the economic development scheme at issue in this case and found it to be valid.

("Tr.") at 15 (Bench Trial, Jan. 21, 2009); Appellants' Excerpts of Record ("ER") at 62 (The Agana Fractional Lot Affair, Paul B. Souder). The U.S. military and local government agreed to reconstruct the war-ravaged village, but recognized that following the pre-war lot lines could potentially create an unsanitary environment and turn Agana[5] into a slum. *Id.* They created the Agana Plan to straighten the village lot lines and streets into modern, geometric blocks, which they acknowledged would result in some abandoned streets and fractional pieces of the old lots. Tr. at 14-16 (Bench Trial, Jan. 21, 2009); *Moylan*, 407 F.2d at 567. Realizing that many of the existing private lots in Agana were sub-standard in size and that the Agana Plan with new lot lines would inevitably result in multiple ownerships, the government decided that the private land problem could be most expeditiously handled by purchasing all lands in Agana and selling to private owners, as modern sized lots, any land not required for public purposes. ER at 62-63 (The Agana Fractional Lot Affair, Paul B. Souder). The resulting fractional lots would then be consolidated with the larger, rectangular lots. *Moylan*, 407 F.2d at 567; Tr. at 16-17, 21 (Bench Trial, Jan. 21, 2009); ER at 62 (The Agana Fractional Lot Affair, Paul B. Souder). The Agana Plan was also intended to consolidate fractional lots outside of Agana, such as Agat, Barrigada, Santa Rita, Talofofo, and Yona. Tr. at 52-53 (Bench Trial, Jan. 21, 2009).

[3] Under the Rules and Regulations for the Disposition of Agana Fractional Lots and Other Government Land in Agana ("Rules & Regulation of the Agana Plan"), the contiguous landowner with the largest area in terms of square meters had first priority in purchasing a fractional piece within a particular lot. Appellees' Supplemental Excerpts of Record ("SER"), at 99 (Rules and Regulations for the Disposition of Agana Fractional Lots and Other Government

[5] The area known as Agana in the Agana Plan is now legally known as Hagåtña. *See* Guam Pub. L. 24-152, amending 1 GCA § 403(b).

Lands in Agana ("Rules & Regs. of the Agana Plan"). "If the first preference . . . d[id] not exercise their interest, the second largest property owners shall be considered." *Id.* If not, then "all other property owners within Agana will be eligible to purchase the lot." *Id.* The Agana Plan was actively executed between 1947 and 1974. ER at 51 (Finds. Fact & Conc. L., Jan. 26, 2010). Pursuant to the Agana Plan, the government condemned a public road adjacent to the Ungactas' property, which eliminated a public access and caused the Ungactas' property to become landlocked. Tr. at 85-86 (Bench Trial, Jan. 21, 2009). Years later, Felix Ungacta retained an appraiser to value a portion of an adjacent property, Lot 237-3-2-1, owned by the Ilagans. SER at 1-2 (Decl. of Taking, Nov. 27, 1981). The property was appraised at $9,750.00. SER at 225-32 (Letter from J.C. Concepcion to Felix Ungacta re Appraisal of Lot No. 237-3-2-2, Mar. 19, 1981). In November 1981, the government filed a Declaration of Taking. SER at 1-2 (Decl. of Taking). The government deposited $9,744.00 as just compensation to the Court Registry. *Id.* In October 1982, the legislature passed Public Law 16-118, which provides in pertinent part:

> Notwithstanding any other provisions of law with respect to the sale of government land including but not limited to the Chamorro Land Trust Act and the laws requiring the concurrence of the Legislature in the sale of government land, the Governor shall sell at fair market value to Engracia F. Ungacta, government real property located in the municipality of Agana, particularly described as follows:
>
> > Agana Fractional Lot No. 237-3-2-1, containing an area of 162.40 square meters, situated within Lot 35, Block No. 10, New Agana, Land Management Drawing No. 14-81T149.

SER at 4 (Supplemental Compl., Feb. 26, 1985). In November 1982, the government and Engracia entered into a written contract for the sale of the property described in Guam Public Law 16-118. SER at 17 (Contract to Deed, Nov. 15, 1982). In September 1984, Engracia transferred her interest in the property to Felix and his wife, Evelyn Ungacta. SER at 250-52

(Warranty Deed, Sept. 11, 1984). Two years after the original condemnation, the Ilagans amended their answer to contest the condemnation, alleging that the government's taking of the property sold to Engracia was in violation of law. SER at 4 (Supplemental Compl.). In February 1985, the government filed a supplemental complaint, naming Engracia and Felix as indispensable parties. SER at 3-5 (Supplemental Compl.). In April 1988, the government executed a deed of conveyance to Engracia. SER at 253 (Deed of Conveyance, Apr. 26, 1988). The Department of Land Management issued a Certificate of Title for the property to Felix and Evelyn Ungacta in September 1988. SER at 255 (Certificate of Title, Sept. 23, 1988).

[4] After a three-day bench trial, the Superior Court issued its Findings of Fact and Conclusions of Law, holding that the taking of Lot 237-3-2-1 was not part of the Agana Plan and, therefore, was not condemned pursuant to a valid public purpose. A final Judgment was entered on February 15, 2010, and the Ungactas timely appealed. ER at 48-49 (Judgment, Feb. 15, 2010); ER at 46 (Not. of Appeal, Mar. 10, 2010).

II. JURISDICTION

[5] This court has jurisdiction over appeals from final judgment. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 112-28 (Aug. 12, 2011)); 7 GCA §§ 3107, 3108(a) (2005).

III. STANDARD OF REVIEW

[6] The trial court's findings of fact are reviewed under a clear error standard, while the trial court's conclusions of law are reviewed *de novo. Guam Econ. Dev. Agency v. Island Equip. Co.*, 1998 Guam 7 ¶ 4 (citations omitted). Mixed questions of law and fact are subject to *de novo* review. *See Fargo Pac., Inc. v. Korando Corp.*, 2006 Guam 22 ¶ 20. We review issues of statutory construction and interpretation *de novo. Bank of Guam v. Reidy*, 2001 Guam 14 ¶ 16; *Pangelinan v. Gutierrez*, 2000 Guam 11 ¶ 7.

IV. ANALYSIS

[7] The Ungactas claim three errors on appeal. First, they argue that the trial court erred in suggesting that eminent domain jurisprudence requires multiple, contemporaneous takings to establish an economic development plan. Second, they maintain that the trial court misapplied eminent domain jurisprudence in analyzing the government's taking of Lot 237-3-2-1. Third, they argue that the trial court erred in holding that the taking of Lot 237-3-2-1 was for an improper purpose as it was not part of the original Agana Plan. The Ilagans own an apartment building on Lots 238 and 237-3-2, and was in business before Lot 237-3-2-1 was condemned. SER at 92-94 (Aff. of Artemio M. Ilagan, Dec. 15, 1999). They contend that the condemnation resulted in the loss of five parking spaces, relocation of the apartment dumpster, and limited access to the upstairs units, which collectively reduced the rental income from the apartments. Tr. at 103-05 (Bench Trial, Jan. 21, 2009. Before we address each claim of error, we must confront the threshold issue of whether the Ungactas have standing to appeal this case.

A. Standing to Appeal

[8] Standing was never raised by the trial court because the Ungactas were indispensable parties to the condemnation proceedings. SER at 13 (Am. Answer to Supplemental Compl. and Countercl., June 25, 1985). Although the Ungactas timely appealed the adverse judgment of the trial court, the government has decided not to challenge the judgment and did not file an appeal. The Ilagans, therefore, contend that because the government, as the sole party with eminent domain power, has not appealed, the Ungactas lack standing to appeal this case. Appellee's Br. at 22 (Oct. 4, 2010). We disagree.

[9] One of the basic prerequisites of appellate jurisdiction is that the appellant has standing to appeal. *See* 15A Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice*

and Procedure § 3902 (2d ed.1992). "Standing is a threshold jurisdictional matter." *Benavente v. Taitano*, 2006 Guam 15 ¶ 14 (quoting *Guam Imaging Consultants, Inc. v. Guam Mem'l Hosp. Auth.*, 2004 Guam 15 ¶ 17). "The standing Article III requirements must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance." *Arizonans for Official Engl. v. Arizona*, 520 U.S. 43, 64 (1997) (citing *Diamond v. Charles*, 476 U.S. 54, 62 (1986)); *see also Benavente v. Taitano*, 2006 Guam 15 ¶ 14. In *Benavente*, this court noted, that "while we recognize that Guam courts are not bound by Article III standing requirements, we do not reject such principles." *Benavente v. Taitano*, 2006 Guam 15 ¶ 17.

[10] Although governed by substantially similar principles, the body of doctrine that governs standing to appeal as an appellant is distinct from that which controls standing to bring suit as a plaintiff. *See Knight v. State of Ala.*, 14 F.3d 1534, 1555 (11th Cir. 1994); *see also Benavente v. Taitano*, 2006 Guam 15 ¶ 17.[6] One of the main differences is that unlike standing to bring suit, which focuses on the injury caused by the underlying facts, standing to appeal focuses on the injury caused by the judgment. 15A Charles Alan Wright et al, *Federal Practice and Procedure* § 3902 (1992). Only a party who is aggrieved by the judgment or order may pursue an appeal. *See Dairyland Ins. Co. v. Makover,* 654 F.2d 1120, 1123 (5th Cir. 1981) (citing *Goldstein v. Andresen & Co.,* 465 F.2d 972, 973 n.1 (5th Cir.1972). Standing to appeal is granted "if the

[6] In *Benavente*, the court adopted the three elements of Article III standing articulated by the U.S. Supreme Court:

> First, the plaintiff must have suffered an injury in fact-an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. . . . Second, there must be a causal connection between the injury and the conduct complained of-the injury has to be fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Benavente, 2006 Guam 15 ¶ 15 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (citations, footnote, and quotation marks omitted).

appellant can show an adverse effect of the judgment, and denied if no adverse effect can be shown." 15A Charles Alan Wright et al, *Federal Practice and Procedure* § 3902 (1992). In cases involving multiple parties, "a plaintiff or defendant does not have standing to appeal unless the party herself is adversely affected by the judgment, her claims or defenses are joint with those of a coparty who is directly injured, or she has standing to assert rights that nominally belong to her aggrieved coparty." Joan Steinman, *Irregulars: The Appellate Rights of Persons Who Are Not Full-Fledged Parties*, 39 GA. L. REV. 411, 419 (2005). Likewise, "a party may not appeal to protect the rights of others." 15A Charles Alan Wright et al, *Federal Practice and Procedure* § 3902 (1992).

[11] Furthermore, while it has been long recognized that "'where only one of several parties appeals from a judgment, the appeal includes only that portion of the judgment adverse to the appealing party's interest,'" this court recognizes the exception to that rule. *In re Application of Leon Guerrero*, 2001 Guam 22, ¶ 25 (quoting *Estate of McDill*, 537 P.2d 874, 879-80 (Cal. 1975). Specifically, this court has affirmed the exception that: "'[W]here the part [of a judgment] appealed from is so interwoven and connected with the remainder . . . that the appeal from a part of it . . . involves a consideration of the whole . . . if a reversal is ordered it should extend to the entire judgment.'" *Id.* at ¶ 27 (quoting *Estate of McDill*, 537 P.2d 874, 879-80 (Cal. 1975)). Other jurisdictions have similarly held that "[when] the interests of the non-appealing party are so commingled with those of the appealing parties as to be inseparable, an appellate court may reverse the lower court's decision as to the non-appealing party." *Shelter Mut. Ins. Co. v. Briggs*, 793 S.W.2d 862, 864 (Mo. 1990); *see also Gino's Pizza of E. Hartford, Inc. v. Kaplan*, 475 A.2d 305, 309 (Conn. 1984) (allowing a third-party defendant to assert on appeal claims of error in the main case even though the defendant/third-party plaintiff did not

appeal from that judgment); *Kuhn v. Kuhn*, 301 N.W.2d 148, 151-52 (N.D. 1981) (recognizing that there is an exception to the rule that a non-appealing party is bound by the decision of the lower court); *State ex rel. LTV Steel Co. v. Gwin*, 594 N.E.2d 616, 621 (Ohio 1992) ("[T]he interests of two parties may be so inseparable that if one party prevails on appeal and the other party does not appeal at all, the appealing party could be denied the fruits of its success unless relief is extended to the nonappealing party. . . . [We] acknowledged a court of appeals' power to protect a prevailing appellant's interests by providing a windfall to a nonappealing coparty. . . . "). As a California Court of Appeal remarked:

> Parties have standing to appeal only if legally aggrieved by the judgment or order appealed from. A party is considered legally aggrieved such that he or she has standing to appeal only if his or her rights or interests are injuriously affected by the judgment. Further, the rights or interests injuriously affected must be immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment. Thus, a party may not take an appeal based upon an error that injuriously affects only a nonappealing third party.

Bratcher v. Buckner, 109 Cal. Rptr. 2d 534, 538 (Cal. Ct. App. 2001) (citations and internal quotations omitted).

[12] In this case, the Ungactas have standing to appeal from the trial court's judgment. The judgment is adverse to the Ungactas insofar as it deprives them of their right and interest to enjoy the land that they purchased from the government. Stated another way, the Ungactas have been aggrieved because the trial court's judgment terminated the Ungactas' legally protected interest in Lot 237-3-2-1. Under 21 GCA § 25101, "[a]n action may be brought by any person against another who claims an estate or interest in real or personal property, adverse to him, for the purpose of determining such adverse claim. . . ." 21 GCA § 25101 (2005). Engracia purchased Lot 237-3-2-1 for $9,744.00 after the government condemned it pursuant to the Agana Plan. Furthermore, Public Law 16-118 authorized the sale of Lot 237-3-2-1 to Engracia. SER at 4

(Supplemental Compl.). Indeed, Lot 237-3-2-1 is registered to Engracia. By purchasing Lot 237-3-2-1, the Ungactas have a claim of ownership to the land, an interest legally protected by 21 GCA § 25101. The trial court's decision to invalidate the initial taking had the effect of terminating the Ungactas' interest in the land, thereby directly injuring them. Moreover, the Ungactas' interest in Lot No. 237-3-2-1 are intertwined and not severable from the government's interest. The condemnation was initiated when Engracia, as the majority landowner of Lot 35, in Block 10, exercised her option under the Rules & Regulations of the Agana Plan to purchase the contiguous Lot 237-3-2-1. In allowing for such sale, the government achieved its own interest of consolidating two oddly shaped lots into a geometric block. We also acknowledge that the government caused the Ungactas' property to become landlocked when it partially implemented the Agana Plan and condemned Legaspi Street. Because the ultimate goal of the Agana Plan was to promote the economic development of Guam, which includes providing public access to all properties, the taking of Lot 237-3-2-1 was a clear government interest.

[13] In rebuttal, the Ilagans maintain that no benefit would inure to the government because the latter would suffer serious financial harm if the judgment is reversed and the condemnation is found valid. We decline to address this argument because the trial court did not determine whether the compensation of $9,744.00 already given for the property was just. As such, the Ungactas have standing to pursue this appeal.

B. Fifth Amendment and the Public Use Doctrine

[14] We next address the principal issue of whether the government's taking of Lot No. 237-3-2-1 was valid. Because the taking of Lot No. 237-3-2-1 occurred many years after the government's last known condemnation proceeding under the Agana Plan, the trial court found that the taking was not commenced as part of the Agana Plan and was, therefore, improper. The

trial court observed that "[t]here were no other contemporaneous takings of land in the neighborhood 'despite clear evidence that such takings would be required if the Agana Plan were in fact being followed.'" ER at 56 (Finds. Fact & Conc. L.). On appeal, the Ungactas argue that the trial court erred in suggesting that case law precedent required multiple contemporaneous takings in order to constitute a valid economic development under the Public Use Clause of Fifth Amendment. Appellant's Br. at 8-11 (Sept. 14, 2010).

[15] The power of the government to take private property is stated in the Takings Clause of the Fifth Amendment, which provides, "nor shall private property be taken for public use, without just compensation." U.S. CONST. amend. V. This clause of the Fifth Amendment has been incorporated into the Fourteenth Amendment and is, therefore, binding on state and local governments. *See, e.g., Chicago, B. & Q.R. Co. v. City of Chi.*, 166 U.S. 226, 239 (1897). The Fifth Amendment has also been incorporated to apply against Guam through 48 U.S.C.A, § 1421(b)(u) (West). While courts have long recognized that the sovereign's power of eminent domain is inherent, necessary, and sweepingly broad, such power is not without limits. *See Norwood v. Horney*, 853 N.E.2d 1115, 1129 (Ohio 2006). As an important check on government power, the Fifth Amendment ensures that "one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid." *Thompson v. Consol. Gas Utils. Corp.*, 300 U.S. 55, 80 (1937); *see also Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 245 (1984) ("A purely private taking could not withstand the scrutiny of the public use requirement; it would serve no legitimate purpose of government and would thus be void."). The Takings Clause guarantees that the state has power to condemn private property, but conditions the exercise of that authority upon fulfillment of two concurring principles: that the taking is for a "public use" and that "just compensation" is paid to the

property owner. *See Norwood*, 853 N.E.2d at 1129-30; *see also Kelo v. City of New London*, 545 U.S. 469, 477 (2005); *Brown v. Legal Found. of Wash.*, 538 U.S. 216, 231-32 (2003). Like many eminent domain cases, the issue before this court is whether the particular taking satisfies the "public use" doctrine.

[16] Traditionally, the term "public use" was strictly construed and satisfied only when the government maintains ownership of the land and utilizes it to promote the general welfare of the public. *See, e.g., Gaylord v. Sanitary Dist. of Chi.*, 68 N.E. 522, 524-25 (Ill. 1903); *Jacobs v. Clearview Water Supply Co.*, 69 A. 870, 872 (Pa. 1908). As the eminent domain doctrine developed over the years, the concept of "public use" has become malleable, elusive and often confusing to attorneys and jurists. *Norwood*, 853 N.E.2d at 1131. Modernly, courts have broadened the definition of "public use" to include any "public purpose" and have upheld takings under the guise of economic development in which the subsequent owner of the private property condemned by the government is another private property. *See, e.g., Kelo*, 545 U.S. at 480-84; *Midkiff*, 467 U.S. at 241-42; *Berman v. Parker*, 348 U.S. 26, 32-34 (1954). In the seminal case of *Kelo v. City of New London*, the United States Supreme Court solidified an expansive interpretation of the eminent domain power – first articulated in *Berman*, and later *Midkiff* – that governments may take one's private property and give it to another for the purpose of promoting economic development. *Kelo*, 545 U.S. at 478-80. The standard, Justice Stevens explained, was "public purpose," which was to be defined "broadly, reflecting [the] long-standing policy of deference to legislative judgments in this field." *Kelo*, 545 U.S. at 480.

[17] Here, neither party questions the validity of the original Agana Plan as an economic development plan, nor do the parties challenge the premise that a taking for economic development satisfies the "public use" requirement. *See, e.g., Franco v. Nat'l Capital*

Revitalization Corp., 930 A.2d 160, 168 (D.C. 2007) ("Promoting economic development is a traditional and long accepted function of government . . . . Clearly, there is no basis for exempting economic development from our traditionally broad understanding of public purpose.") (quoting *Kelo*, 545 U.S. at 484-85). In fact, the Ninth Circuit in *Moylan* held that the Agana Plan qualifies as a valid "public purpose" under the Public Use Doctrine. *See Moylan*, 407 F.2d at 568. The Ungactas argue that by comparing the Agana Plan to the economic development schemes in *Kelo* and *Berman*, the trial court impermissibly suggested that only multiple, contemporaneous takings will constitute a pattern of economic development. The trial court stated, "[u]nlike *Kelo* (90 acres, 115 property owners), *Berman* ("The population of Area B amounted to 5,012 persons") or *Moylan* (22 parcels, approximately 24 owners)[,] in 1981 the Government decided to condemn only this single piece of property." ER at 56 (Finds. Fact & Conc. L.). The Ungactas instead submit that the Agana Plan is similar to the statutory scheme in *Midkiff*. Appellant's Br. at 9. The inquiry of whether contemporaneous takings are necessary in an economic development case is an issue of first impression for this court.

[18] In *Kelo*, the Court affirmed the City of New London's plan to transfer ninety acres of land from existing homeowners and businesses to private developers as part of a comprehensive development plan for the city's failed downtown and waterfront. *Kelo*, 545 U.S. at 474-75, 482-83. In *Berman*, the Court upheld the constitutionality of Washington D.C.'s Redevelopment Act of 1945. *Berman*, 348 U.S. at 34-35. The Act targeted blighted areas, although the plan authorized the taking of all of the property in the city of 5,012 people, including non-blighted areas. *Id.* at 28-30. The fact that the takings involved in *Kelo* and *Berman* occurred in short periods of time and en masse, however, is not dispositive on whether a particular economic development plan is valid. Rather, the Constitution requires us only to look at the taking's

purpose, and not its mechanics, to determine whether the Public Use Doctrine is met. *See Kelo*, 545 U.S. at 482 (quoting *Midkiff*, 467 U.S. at 230-31). "The Takings Clause is not a means for federal courts to second-guess the legislature's choices about the best mechanisms to achieve what are undeniably public policy goals." *Fideicomiso De La Tierra Del Cano Martin Pena v. Fortuno*, 604 F.3d 7, 19 (1st Cir. 2010), *cert. denied*, 131 S. Ct. 1600 (2011).

[19] As the Ungactas contend, the statutory scheme in *Midkiff*[7] bears a resemblance to the circumstances of the instant case. Appellant's Br. at 9. In *Midkiff*, the Hawaii government sought to eliminate the land oligopoly that was skewing Hawaii's real estate market and inflating land prices. *Midkiff*, 467 U.S. at 231-32. In 1967, the Hawaii legislature passed the Land Reform Act which authorizes the government to use its power of eminent domain to condemn land held by the few. *Id.* In a unanimous opinion authored by Justice O'Connor, the United States Supreme Court held that a taking of a private property by the government in an effort to divide a land oligopoly was constitutional. *Id.* at 241-42. The Act permitted tenants to request governmental condemnations of their landlord's property and the option to purchase the property for a nominal fee. *Id.* at 233-34. Under the Act:

> [T]enants . . . are entitled to ask the Hawaii Housing Authority (HHA) to condemn the property on which they live. When 25 eligible tenants, or tenants on half the lots in the tract, whichever is less, file appropriate applications, the Act authorizes HHA to hold a public hearing to determine whether acquisition by the State of all or part of the tract will "effectuate the public purposes" of the Act. If HHA finds that these public purposes will be served, it is authorized to designate some or all of the lots in the tract for acquisition. It then acquires, at prices set either by condemnation trial or by negotiation between lessors and lessees, the former fee owners' full "right, title, and interest" in the land. After compensation has been set, HHA may sell the land titles to tenants who have applied for fee simple ownership.

[7] In *Kelo*, the U.S. Supreme Court upheld the validity of *Midkiff*. *Kelo*, 545 U.S. at 484-85.

Id. at 233-34 (citations to statute omitted). Because the Act allowed tenants the option to buy the land on which they live, the State's ability to condemn is necessarily ongoing. Indeed, imposing a time limitation may likely deter tenants who lacked the immediate funds to purchase the condemned property from doing so.

[20] Moreover, we find persuasive the reasoning in *Norfolk Redevelopment & Housing Authority v. C & C Real Estate, Inc.*, 630 S.E.2d 505 (Va. 2006), where the Supreme Court of Virginia confronted an issue similar to the circumstances before us. In 1988, the Norfolk City Council determined that an area of Norfolk was blighted and adopted a conservation plan allowing the Housing Authority to acquire property by exercising its power of eminent domain. *Norfolk Redev. & Hous. Auth. v. C & C Real Estate, Inc.*, 630 S.E.2d at 508-09. Condemnation proceedings, however, did not occur until fifteen years later. *Id.* at 508. The lower court dismissed the Housing Authority's condemnation petition based in part on a finding that the delay in seeking condemnation raised due process concerns. *Id.* The Housing Authority appealed. *Id.* On appeal, the court acknowledged that while the original plan was presumptively valid, the current status of the property must be examined to determine whether the original purpose of the acquisition remained viable at the time the taking occurred. *Id.* at 509-10. If a property has changed such that it no longer meets the original criteria, taking pursuant to the plan would no longer be authorized. *Id.* at 510. The court concluded that the evidence was insufficient to rebut the Housing Authority's finding that the property was condemnable pursuant to the original plan. *Id.* As the court explained, "there is no limitations period defined by statute for acquiring property under a conservation plan." *Id.* at 511. The court compared the language of the conservation plan with other redevelopment plans and remarked that the "absence of a

limitations period for conservation plans is reasonable because conservation projects are by nature long-term undertakings." *Id.*

[21] Like *Midkiff* and *Norfolk*, the Agana Plan imposes no limitations period for acquiring private property and uniting fractional lots to contingent landowners. A primary purpose of the Agana Plan is to straighten out the village along modern geometric lines and "establish[] order out of chaos in the new Agana." *Moylan*, 407 F.2d at 568. While there is no evidence presented as to whether the government had a time limitation in mind, its actions suggest that it knew, or should have known, that the plan would involve a long and arduous process. The absence of a limitations period is reasonable because economic developments are by nature long-term undertakings. To effectuate its original goal of straightening Agana's lines and consolidating the fractional lots, the government apparently employed several mechanisms such as private dealings and public bids, which would necessarily depend on the actions of private parties. Indeed, it was only when such alternatives failed that the government initiated condemnation proceedings.

[22] Even when the government resorted to its eminent domain power, such proceedings apparently proceeded very slowly. *Id.* During trial, the government's execution of the Agana Plan was described as "selective" and "sporadic," in part because the government found it difficult to locate the original landowners, and in part because it lacked the funding necessary for these condemnation proceedings. Tr. at 66-67 (Bench Trial, Jan. 21, 2009). As such, there were very few concerted efforts to execute the Agana Plan on a larger scale and finalize the numerous condemnation cases that were filed in the 1940s, 1950s, 1960s and 1970s. Tr. at 47 (Bench Trial, Jan. 21, 2009). In fact, it was the government's inconsistent and somewhat haphazard execution of the plan that prompted the Inspector General to issue a report in 1970 concerning irregularities in the government's execution of the plan. *Id.* In response to the Inspector

General's memorandum, the governor ordered the Department of Land Management and Bureau of Planning to revisit the disposition of condemned fractional lots, focusing on the sale of such lots to private landowners. *Id.* The government's effort to resuscitate the Agana Plan in 1970, as well as its genuine attempts to address the still existing fractional lot problem, convinces us that the Agana Plan was not abandoned at the time of the taking. *Id.* That the taking of Lot 237-3-2-1 occurred many years after any last known taking does not mitigate the fact that it achieved the goals of the original Agana Plan. One could criticize the government's chosen means to achieve its ends. There are a number of hypothetical ways to resolve the fractional lot problem that would have been more efficient and effective than that which the government employed. It is, however, not our function to substitute our judgments for that of the legislature on this matter. *See Kelo*, 545 U.S. at 480.

C. Taking of Lot No. 237-3-2-1 was for a Public Purpose

[23] The next question is whether the taking of Lot No. 237-3-2-1 was for a public purpose. The Ungactas maintain that the trial court misapplied eminent domain jurisprudence in analyzing the government's taking of Lot No. 237-3-2-1. Reflecting the direction of the United States Supreme Court in *Berman*, *Midkiff*, and *Kelo*, when reviewing a government's decision to take property pursuant to its inherent eminent domain power, the standard is one of deferential review. *Kelo*, 545 U.S. at 480 ("Without exception, our cases have defined [public use] broadly, reflecting our longstanding policy of deference to legislative judgments in this field."); *Midkiff*, 467 U.S. at 230; *Berman,* 348 U.S. at 32 ("[W]hen the legislature has spoken, the public interest has been declared in terms well-nigh conclusive."). The Court has repeatedly clarified that lower courts may not "substitute [their] judgment for a legislature's judgment as to what constitutes a public use 'unless the use be palpably without reasonable foundation.'" *Midkiff*, 467 U.S. at 230

(quoting *United States v. Gettysburg Elec. Ry. Co.*, 160 U.S. 668, 680 (1896)). The standard that we adopt is one of a limited review such that "where the exercise of the eminent domain power is rationally related to a conceivable public purpose, the Court has never held a compensated taking to be proscribed by the Public Use Clause." *Midkiff*, 467 U.S. at 241. The rationale behind the deferential scope of review is summarized by Justice O'Connor in *Midkiff*:

> Judicial deference is required because, in our system of government, legislatures are better able to assess what public purposes should be advanced by an exercise of the taking power. State legislatures are as capable as Congress of making such determinations within their respective spheres of authority. Thus, if a legislature, state or federal, determines there are substantial reasons for an exercise of the taking power, courts must defer to its determination that the taking will serve a public use.

467 U.S. at 244 (internal citation omitted).

[24] With this deferential standard in mind, we find that there is sufficient evidence that Lot No. 237-3-2-1 was taken pursuant to the Agana Plan. The stated public purpose of the Agana Plan is to promote the economic development of the city and "establishing order out of chaos" by straightening the border lines and uniting fractional lots in order to form geometric, orderly blocks. *Moylan*, 407 F.2d at 568. Under the Agana Plan's administrative policy, all new block lots were to be sold to the original owners. Tr. at 37 (Bench Trial, Jan. 21, 2009). Furthermore, under the Rules & Regulations of the Agana Plan, "property owners who have the largest area in terms of square meters . . . whose property has been condemned" have first priority. SER at 99 (Rules & Regs. of the Agana Plan). It is undisputed that Engracia owned the larger, bottom part of Lot 35. Because Lot 237-3-2-1 is located on the upper part of Lot 35, it is logical that Engracia would be considered the majority landowner that holds the first priority in acquiring the contingent Lot 237-3-2-1, which she exercised and for which she paid valuable consideration. It

is clear that the acquisition of Lot 237-3-2-1 was in accordance with the Plan's policies, as well as previous executions of the Plan.

[25] Furthermore, we cannot distinguish the taking that occurred in this case from the takings that occurred in *Moylan.* In both instances, lands held by private parties were taken to consolidate oddly shaped properties, reunify the fractional lots, and create geometric shaped lots in the village of Agana. The fact that 22 parcels of land and about two dozen owners were involved in *Moylan* is not dispositive. The takings in *Moylan* were based on the original Agana Plan, as is the taking of Lot 237-3-2-1. As to legislative authorization, the legislature passed Public Law 16-118, which clearly authorized the taking of Lot No. 237-3-2-1. Accordingly, we conclude that the trial court erred in holding that the government's taking of Lot 237-3-2-1 was invalid.

D. Agana Plan and the Chamorro Land Trust Act

[26] In a similar vein, the trial court and the Ilagans described the Agana Plan as being "superseded" by the 1975 Chamorro Land Trust Act, codified at 21 GCA Chapter 75. ER at 51 (Finds. Fact & Concl. L.). At oral argument, the Ungactas contended that the trial court erred in suggesting that the Agana Plan was no longer valid. Digital Recordings at 10:57:30 (Oral Arguments, Dec. 1, 2010). As such, the validity of the Agana Plan turns on whether it was ever repealed or superseded expressly or impliedly by the Chamorro Land Trust Act.

[27] In determining whether there is an implied repeal, courts resort to rules of statutory construction. *See Sumitomo Const., Co., Ltd. v. Gov't of Guam,* 2001 Guam 23 ¶ 75. At the outset, courts must first look to the language of the statute itself. *Sumitomo,* 2001 Guam 23 ¶ 17; *Pangelinan,* 2000 Guam 11 ¶ 23. "Absent clear legislative intent to the contrary, the plain

meaning prevails." *Sumitomo*, 2001 Guam 23 ¶ 17. Moreover, in determining legislative intent, a statute must be read as a whole, as well as to its objects and policy. *Id.*

[28] Neither the government nor the Ungactas referred to clear legislative intent that the Chamorro Land Trust was intended to repeal section 17050.1 of the Guam Government Code, codified as 21 GCA § 61202. Section 75105 of the Chamorro Land Trust Act provides:

> Upon and after the enactment of this Chapter, all available lands shall immediately assume the status of Chamorro homelands and shall be under the control of the Commission to be used and disposed of in accordance with the provisions of this Chapter, except that:
>
> > (c) The department *may sell to any contiguous landowner any fractional lot placed under its management which was created by the adoption of the standard block system.*

5 GCA § 75105 (2005) (emphasis added). Subsection (c) gives the Department of Land Management the continued authority to dispose of fractionalized lots taken over or owned by the government. One could argue that because section 75105(c) addresses Guam's fractional lots and the standard block system, the legislature may have intended to supersede any law relating to the standard block system, including the Agana Plan. We are reluctant, however, to find legislative intent when there is none. "Absurdity may result when the legislature drafts a statute using language that is broader and more sweeping than that which the legislature intended. In such cases, the court can interpret the broad language in a limited fashion in an effort to effectuate legislative intent." *Sumitomo*, 2001 Guam 23 ¶ 17. The mere fact that separate statutes govern the standard block system of Guam is not dispositive of the validity of 21 GCA § 61202. The Chamorro Land Trust Act directs the disposition and management of land already owned by the government. By contrast, 21 GCA § 61201 aims to straighten the lines of the village of Agana, and unify fractional lots that are not necessarily owned by the government.

Because the Chamorro Land Trust Act does not squarely address the problems underlying 21 GCA § 61201, we find that the former does not conflict nor does it impliedly repeal the latter. *See People v. Quinata,* 1982 WL 30546, at * 2. As such, we do not find that the Agana Plan was repealed or superseded by the Chamorro Land Trust Act.

E. Irregularities in the Condemnation Procedure

[29] The Ilagans offer alternative reasons to affirm the trial court's holding that the governmental taking of Lot No. 237-3-2-1 was invalid. First, they argue that there were irregularities in the transactions after the purported taking. Appellees' Br. at 37. The Ilagans cite only the *Moylan* case to suggest that a taking is invalid when there are irregularities in the condemnation procedure. Specifically, the Ilagans argue that the government did not follow the preference system outlined in the Rules and Regulations of the Agana Plan. Appellees' Br. at 37; SER at 98-100 (Rules & Regs. of the Agana Plan). According to the Ilagans, had the government followed the Rules and Regulations of the Agana Plan, then the property at issue should have been offered for sale to the Ilagans. Appellees' Br. at 38. As such, they contend that the "book on the procedure" was not followed. *Id.* at 38.

[30] *Moylan* merely states that "[t]here may be a lot of policy reasons against the taking of one man's property to sell to another (and sometimes at a loss to the government) but under all modern federal decisions ou[r] hands are tied – *if the book on the procedure is followed.*" *Moylan*, 407 F.2d at 569 (emphasis added). This, however, is dicta and cannot be considered as holding any precedential value. *Moylan* did not discuss the issue of whether a taking is invalid merely because the "book on the procedure" was not followed with precision. *Id.* As discussed above, the government employed several different mechanisms to further its goal of consolidating the oddly shaped lots and reconstruct Agana along modern lines. The

government's taking of Lot 237-3-2-1 and subsequent sale to Engracia was a proper execution of the Agana Plan as it allowed a majority landowner, like Engracia, to acquire condemned land in order to unify fractional lots. ER at 37 (Bench Trial, Jan. 20, 2009).

F. Ilagans' "Class of One" Equal Protection Rights

[31] The Ilagans also argue that the taking of Lot 237-3-2-1 violated their equal protection rights. Appellees' Br. at 38. The Equal Protection Clause, part of the Fourteenth Amendment of the U.S. Constitution, provides:

> No State shall make or enforce law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV. This clause is extended to Guam through the Guam Organic Act, 48 U.S.C.A, §1421b(u) (West).

[32] To support their claim, the Ilagans point to a line of cases that have recognized a "class of one" denial of equal protection, in which an individual who has not been singled out because of race or some other trigger of invidious discrimination can still obtain a remedy under the equal protection clause. Appellees' Br. at 39. Such broad extension of the equal protection clause to a "class of one" was first articulated in the United States Supreme Court case *Village of Willowbrook v. Olech*. 528 U.S. 562, 563 (2000). The Court stated that "[o]ur cases have recognized successful equal protection claims brought by a 'class of one,' where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Id.* at 564 (citations omitted). Such cases, the Court noted, support the principle that "[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by

its improper execution through duly constituted agents." *Id.* (internal quotation and citation omitted). Notably, however, the Court did not address whether subjective ill will or malice is a necessary element to state a claim for a class of one. Rather, the Court stated, it will "not reach the alternative theory of 'subjective ill will' relied on by the Seventh Circuit." *Id.* at 565. The Court explained that Olech's allegations of differential treatment and irrationality, "quite apart from the Village's subjective motivation, are sufficient to state a claim for relief under traditional equal protection analysis." *Id.*

[33] Following *Olech*, courts have suggested differing "class of one" standards. *See* Michael S. Giaimo, *Challenging Improper Land Use Decision-Making Under the Equal Protection Clause,* 15 Fordham L. Rev. 335 (2004) ("The [*Olech*] decision was a mere five paragraphs long, and seemingly very straightforward, but it has prompted varied reactions and considerable disagreement in the lower courts."). "Some courts, taking the lead of Justice Breyer, have attempted to cabin the reach of class-of-one equal protection cases by demanding that plaintiffs present evidence not merely of arbitrariness but of malice or ill-will against the plaintiff." *Lindquist v. City of Pasadena*, 656 F. Supp. 2d 662, 680 (S.D. Tex. 2009) (quoting *Jennings v. City of Stillwater,* 383 F.3d 1199, 1210-11 (10th Cir. 2004). One circuit suggested that subjective ill will is not required. *See Jackson v. Burke,* 256 F.3d 93, 97 (2d Cir. 2001) (per curiam) ("To be sure, proof of subjective ill will is not an essential element of a 'class of one' equal protection claim."). By contrast, the Seventh Circuit has explicitly construed *Olech* as requiring subjective animus. *See Hilton v. City of Wheeling*, 209 F.3d 1005, 1008 (7th Cir. 2000) ("We described the class of equal protection cases illustrated by *Olech* as 'vindictive action' cases and said that they require 'proof that the cause of the differential treatment of which the plaintiff complains was a totally illegitimate animus toward the plaintiff by the defendant.'").

We need not reconcile the conflict here. Because the facts suggest that there were other landowners similarly treated in this area, we do not find that this case compels us to adopt any "class of one" test, and we therefore decline to do so. Mere exclusion from a widespread implementation of the Agana Plan in Block 10, without more, is insufficient. Therefore, the Ilagans' equal protection argument must fail.

G. Excess Condemnation

[34] The Ilagans alternatively argue that the taking constituted excess condemnation. Appellee's Br. at 41. Specifically, they contend that the government took more than what was necessary to create a public access to the Ungactas' landlocked lot. *Id.* It was established during the bench trial that ten to twenty feet of land would be sufficient for a panhandle or easement. *Id.* at 42. The Ilagans maintain that if the real purpose of the condemnation was to provide access to a landlocked lot, the government condemned in excess of the public purpose, since only ten to twenty feet is required for a panhandle or easement. As the trial court noted, however, "[n]o authority has been provided for the premise that provision of public road access to a private lot can be considered a public purpose, or that such a taking (rather than an easement by necessity or otherwise) would be the proper solution to the problems of a landlocked parcel." ER at 57 (Finds. Fact & Conc. L.,). To support their claim, the Ilagans cite *In the Matter of Acquisition of Land by Eminent Domain, Kansas Gas and Electric Co. v. Will Investments, Inc.*, 928 P.2d 73 (Kan. 1996). Appellees' Br. at 42. *Will Investments* is factually distinguishable and not applicable in this case. Unlike *Will Investments*, the case before us presents a unique set of facts in which the government itself, by condemnation of Legaspi Street pursuant to the Agana Plan, caused the circumstances leading to a need for public access to a landlocked property. In straightening two adjacent lots, the government not only resolved a problem it initially caused,

but it also successfully furthered its goals to modernize Agana. More importantly, this is not a case that involves merely providing an easement to a private party as the Ilagans suggest. The taking of Lot 237-3-2-1 was part of a larger and more comprehensive economic development plan and was, therefore, for a public purpose. The mere fact that the taking provided an incidental benefit to a private party does not invalidate the taking as long as there is a valid public purpose.

[35] The Ilagans also contend that the taking was invalid because the purported purpose of providing public access was never mentioned in the original Complaint in Condemnation. The Complaint in Condemnation states that the property was taken "to promote the economic development of Guam, particularly the economic, aesthetic, and community development of Agana." ER at 60 (Comp. in Condemnation, Dec. 1, 1981). The Ilagans cite to *Middletown Township v. Lands of Stone*, 939 A.2d 331, 338 (Pa. 2007), where the Pennsylvania Supreme Court noted that "the government is not free to give mere lip service to its authorized purpose or to act precipitously and offer retroactive justification." Rather, the court must look at the true purpose, which "must primarily benefit the public." *Id.* at 337. As mentioned above, the purpose of condemning the land was to further the goals of the original Agana Plan. The taking of Lot 237-3-2-1 consolidated two oddly shaped lots and turned them into a neat, geometric block. That the result of the taking provided public access to a private party is not fatal to a finding of public purpose. It is common knowledge that a landlocked property would have remained unmarketable without a public access, not to mention unduly cumbersome to the Department of Land Management, utilities providers and land developers. In providing public access to a landlocked property, the government further promoted the economic and aesthetic development of Agana.

H. Just Compensation

[36] Lastly, the Ilagans assert that the amount of $9,744.00 deposited in the Court Registry for the taking cannot be considered just compensation. Appellee's Br. at 44. The trial court did not undertake any factual inquiry to determine whether the compensation of $9,744.00 was just. In order for a government's exercise of eminent domain to pass constitutional muster, the taking must not only be for a public use; just compensation must be paid as well. Accordingly, we remand this matter to the trial court for the purpose of determining just compensation.

V. CONCLUSION

[37] We hold first that the Ungactas have standing to appeal. Second, we hold that the taking of Lot 237-3-2-1 was part of the Agana Plan and was done pursuant to a valid public purpose. Furthermore, we hold that the taking did not violate the Ilagans' equal protections rights and did not constitute excess condemnation. Accordingly, we **REVERSE** the judgment, and **REMAND** this matter to the trial court to determine the issue of whether just compensation was paid.

Original Signed By: **Alexandro C. Castro**
ALEXANDRO C. CASTRO
Justice *Pro Tempore*

Original Signed By: **John A. Manglona**
JOHN A. MANGLONA
Justice *Pro Tempore*