

IN THE SUPREME COURT OF GUAM

**OLIVER D. WOOD,
Plaintiff-Appellant**

vs.

**GUAM POWER AUTHORITY, GOVERNMENT OF GUAM,
Defendant-Appellee**

OPINION

Supreme Court Case No.: CVA99-018
Superior Court Case No.: CV1415-97

Filed: June 2, 2000

Cite as: 2000 Guam 18

Appeal from the Superior Court of Guam
Argued and submitted March 9, 2000
Hagåtña, Guam

For Plaintiff-Appellant:
Curtis C. Van de veld, Esq.
The Vandeveld Law Offices, P.C.
Union Bank Bldg., Suite 213
194 Hernan Cortes Ave.
Hagåtña, Guam 96910

For Defendant-Appellee:
Frederick J. Horecky, Esq.
Law Offices of Horecky & Associates
1st Floor, J. Perez Bldg.
138 Seaton Blvd.
Hagåtña, Guam 96910

BEFORE: BENJAMIN J. F. CRUZ, Chief Justice; PETER C. SIGUENZA, Associate Justice; and MICHAEL J. BORDALLO, Designated Justice.

CRUZ, C.J.:

This is an appeal of the Superior Court's grant of a Motion to Dismiss, or in the alternative, for Summary Judgment. The Superior Court dismissed the case with prejudice after finding that Plaintiff-Appellant Oliver D. Wood's case was precluded from raising the issues in his complaint and that he had not complied with the Government Claims Act. We agree with Defendant-Appellee Guam Power Authority that Wood's suit is not comprehended under Guam's waiver of sovereign immunity and dismiss Wood's appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff-Appellant, Oliver D. Wood (hereinafter "Wood"), was employed by Defendant-Appellee, Guam Power Authority, Government of Guam (hereinafter "GPA"), as a Special Projects Engineer. GPA terminated Wood's employment on October 10, 1995. Wood filed an administrative appeal of his dismissal on October 30, 1995, with the Government of Guam Civil Service Commission (hereinafter "CSC"). The CSC, upon GPA's Motion to Dismiss Adverse Action Appeal, issued a written decision in which it concluded that Wood was an unclassified employee without the right of appeal, and that it therefore lacked jurisdiction to hear Wood's appeal.

Wood then filed a Notice of Application and Application for Writ of Mandate with Memorandum in Support Thereof in the Superior Court of Guam on November 4, 1996, challenging the CSC's findings that Wood was unclassified and that the CSC lacked jurisdiction. On January 6, 1997, GPA filed a motion to dismiss. A hearing was set but subsequently continued, at Wood's request. A new hearing date was scheduled for May 9, 1997, and Wood's response or opposition to GPA's motion was due on or before April 18, 1997. Wood failed to respond or oppose the motion, and at the hearing which eventually took place on May 16, 1997, GPA's motion was granted due to Wood's failure to oppose. The court

dismissed Wood's case with prejudice.¹

On June 19, 1997, Wood appealed the Superior Court's ruling with this court. GPA moved to dismiss. On August 22, 1997, we denied GPA's motion and set a briefing schedule. Wood did not comply with the briefing schedule, and GPA filed a Motion to Dismiss based on Wood's failure to timely file an appellate brief. On September 19, 1997, a hearing was held, at which time Wood attempted to file his appellate brief. The Supreme Court did not accept the brief. Instead, on October 1, 1997, it dismissed Wood's appeal due to his failure to comply with the briefing schedule.² On October 10, 1997, Wood filed the Complaint from which the instant appeal arises. GPA filed a Notice of Motion and Motion to Dismiss or in the alternative for Summary Judgment, as well as a request for sanctions, on January 16, 1998. The Superior Court dismissed Wood's Complaint, with prejudice, in a Decision and Order dated March 23, 1998.³ The court entered judgment for GPA on April 26, 1999, and judgment was entered on the docket on April 21, 1999. Wood initially filed this appeal on April 22, 1998, and filed a Further Notice of Appeal on May 26, 1999.⁴

On appeal, GPA argues that Wood's suit is not comprehended under Guam's waiver of sovereign immunity, and that even if it is, Wood has not complied satisfactorily with the requirements of the Government Claims Act, Title 5 GCA § 6101 *et seq.*, (1993). GPA further argues that Wood is precluded from maintaining this appeal under the theories of claim preclusion, issue preclusion, and the law of the case. In contrast, Wood argues that the Government Claims Act is inapplicable to his case because his suit is outside those excepted in the waiver of sovereign immunity. Additionally, he argues that even if his case does fall within the waiver and under the Government Claims Act, he has substantially complied with its

¹ *Wood v. Government of Guam, Civil Serv. Comm'n*, SP0292-96 (Super. Ct. Guam May 19, 1997).

² *Wood v. Government of Guam, Civil Service Comm'n*, CVA97-028 (Order Oct. 1, 1997).

³ *Wood v. Guam Power Auth., Gov't of Guam*, CV1415-97 (Super. Ct. Guam Mar. 23, 1998).

⁴ When Wood initially tried to appeal the Superior Court's second dismissal, the Supreme Court dismissed his suit without prejudice due to the fact that the judgment had not yet been entered by the Superior Court. Judgment by the Superior Court was then entered, and Wood subsequently refiled. Hence, there are two filing dates for this appeal one year apart in time.

provisions. Wood also contends that this appeal involves an entirely separate claim and issue from his previous appeal so that he is not precluded from maintaining this suit. Because we dispose of this case on the grounds of sovereign immunity, we do not have occasion to reach the preclusion nor the substantial compliance arguments.

ANALYSIS

As this is an appeal of a judgment from the trial court, this court has jurisdiction pursuant to 7 GCA §§ 3107, 3108 (1994). However, if Wood's case is not covered by the waiver of sovereign immunity, then this court lacks jurisdiction to hear this appeal. The issue of the court's jurisdiction is the subject of both the Motion to Dismiss and this appeal.

Review of the trial court's grant of a motion to dismiss is *de novo*. *Pacific Equity and Capital Enters. v. Baba Corp.*, Civ. No. 90-00068A., 1991 WL 336903, at *2, (D. Guam App. Div. June 11, 1991); *see also Maquera v. RCA Global Comm'n*, Civ. No. 87-00074A, 1988 WL 242616, at *2 (D. Guam App. Div. Nov. 7, 1988). Construing the provisions of the Organic Act and the Government Claims Act are issues of statutory construction that are reviewed *de novo*. *People v. Quichocho*, 1997 Guam 13, ¶ 3.

In his appeal, Wood argues that by not being placed in the merit system, his Organic Act rights have been violated. Moreover, Wood asserts that the action for which he is suing is an "intentional act," clearly not "within the scope of the Sovereign Immunity of Guam, nor within the scope of the Government Claims Act." Plaintiff-Appellant's Brief at 23.

As the alleged wrong Wood seeks to redress against the Government of Guam is indeed an intentional act, he is without recourse. *See Munoz v. Government of Guam*, Civ. No. 76-16A, 1978 WL 13511, at *1 (D. Guam App. Div. Mar. 13, 1978). In order for someone to sue the Government of Guam or any governmental agency, sovereign immunity must be waived. Unless a sovereign specifically waives suit by duly enacted law, it may not be sued. *See generally Guam Econ. Dev. Auth. and Guam Visitors Bureau v. Island Equip. Co.*, 1998 Guam 7, ¶ 6 ("There is no doubt that the doctrine of sovereign

immunity applies to Guam.”) (citing *Marx v. Government of Guam*, 866 F.2d 294, 298, 301 (9th Cir. 1989))⁵; see also *McMillan v. Department of Interior*, 907 F.Supp. 322, 325 (D. Nev. 1995) (“The party suing the United States must point to an unequivocal waiver of sovereign immunity.”) (citation omitted). Without such a waiver, the courts lack subject matter jurisdiction over the claim. See *Pacific Drilling, Inc. v. Marianas Drilling, Inc.*, DCA Civ. No. 85-0016A, 1985 WL 56585, at *3 (D. Guam App. Div. Sept. 27, 1985) (citations omitted).

Neither caselaw nor statute support a suit against the Government of Guam premised on an intentional tort. The authority of the Government of Guam to waive sovereign immunity is derived from the Organic Act:

Guam is hereby declared to be an unincorporated territory of the United States and the capital and seat of government thereof shall be located at the city of Agana, Guam. The government of Guam shall have the powers set forth in this Act, shall have power to sue by such name, and, *with the consent of the legislature evidenced by enacted law, may be sued upon any contract entered into with respect to, or any tort committed incident to, the exercise by the government of Guam of any of its lawful powers.* The government of Guam shall consist of three branches, executive, legislative and judicial, and its relations with the Federal Government in all matters not the program responsibility of another Federal department or agency, shall be under the general administrative supervision of the Secretary of Interior.

48 U.S.C. § 1421a (1987) (emphasis added) (footnotes omitted). The Government of Guam’s sovereign immunity may be waived, then, only by statute enacted by the Legislature. See 1 GCA § 405 (1995) (“The

⁵ In *Island Equipment*, we held that since plaintiffs were not instrumentalities of the government they were not afforded the protections of “sovereign immunity.” The determination that neither plaintiff was an instrumentality was based on two Ninth Circuit cases, *Laguana v. Guam Visitor’s Bureau*, 725 F.2d 519 (9th Cir. 1984), which seemed to emphasize the unique character of the Guam Visitors Bureau (GVB), and *Bordallo v. Reyes*, 763 F.2d 1098 (9th Cir. 1985), which held that GVB was not a government entity and suggested that neither was Guam Economic Development Authority (GEDA). GPA, however, is one of the four agencies that are explicitly deemed instrumentalities in *Bordallo*. *Bordallo*, 763 F.2d at 1103. Moreover, *Island Equipment*’s holding was modified with respect to GEDA in *Guam Radio Serv., Inc. v. Guam Econ. Dev. Auth.*, 2000 Guam 1, ¶ 17-18, which determined that GEDA was an “official body” under the Sunshine Act.

Although *Island Equipment* could be read as holding that sovereign immunity was summarily waived with respect to GEDA and GVB even if they were deemed instrumentalities due to the fact that they were granted the power to “sue and be sued” in the Guam Code Annotated, such a broad reading would be incorrect. The court in *Guam Radio Services* interpreted a passage from *Island Equipment* as in fact holding that “the Government Claims Act applies to GEDA by virtue of the fact that GEDA is a public corporation.” *Id.* at ¶ 20. Indeed, the holding in *Island Equipment* was specifically limited to garnishment proceedings. *Id.* at ¶ 9 (“This Court therefore finds that GEDA and GVB may be subject to garnishment proceedings.”).

authority and power to waive the immunity to suit of the government of Guam, or any of its authorities, departments, agencies, or instrumentalities is vested *solely* in the Guam Legislature.”) (emphasis added); *Guam Econ. Dev. Auth.*, 1998 Guam 7 at ¶ 6 (citing *Marx*, 866 F.2d at 298).

Accordingly, the Legislature has established two broad measures which waive sovereign immunity and set the parameters within which a suit against the Government of Guam may be maintained: the Procurement Act, which is inapplicable in this case, and the Government Claims Act.⁶ Specifically, the Government Claims Act provides in part:

Pursuant to Section 3 of the Organic Act of Guam, the Government of Guam hereby waives immunity from suit, but only as hereinafter provided:

(b) for claims in tort, arising from the negligent acts of its employees acting for and at the direction of the government of Guam, even though occurring in an activity to which private persons do not engage.

5 GCA § 6105 (1993).

GPA and the lower court are correct in asserting that a plaintiff may only sue the Government of Guam under these specific exceptions to sovereign immunity contained in section 6105. Unless Wood’s claim falls within the specific exceptions of section 6105, his suit is barred for lack of subject matter jurisdiction. Wood cannot point to any statute which waives the Government of Guam’s sovereign immunity with respect to intentional torts because none exists. The Government Claims Act does not waive sovereign immunity for intentional torts. *See* 5 GCA § 6105. Indeed, rather than premising his claim on a subsection of section 6105, Wood explicitly admits that his claim is not encompassed by the Government Claims Act. Wood’s claim’s falls outside of the purview of the Government Claims Act and so is barred due to lack of jurisdiction.

Wood remarks that since intentional acts are not encompassed by section 6105, if the Government Claims Act were to apply then he would be “deprived” of his rights to proceed with his Organic Act claim, and this would “stand the Organic Act on its head ... making the Organic Act subservient to the laws

⁶ One section of the Government Claims Act states, “This Chapter applies, except as provided in § 6104 of the Chapter, to the entire government of Guam, as specifically stated herein.” 5 GCA § 6102 (1993). Section 6104 is not relevant to the instant case.

enacted by the Legislature of the government of Guam.” Plaintiff-Appellant’s Brief at 24. *See also* Plaintiff-Appellant’s Reply Brief at 4-5. However, Wood misunderstands the statutory structure in place and the nature of sovereign immunity. The Organic Act is not “subservient” to the laws made by the Legislature; it grants the Legislature the power to waive sovereign immunity as it sees fit. *See Munoz*, 1978 WL 13511, at *1. Moreover, the Ninth Circuit construing federal law stated “it is pellucid that the United States cannot be sued on the theory that there has been a violation of [the appellant’s] constitutional rights.” *Roundtree v. United States*, 40 F.3d 1036, 1038 (9th Cir. 1994) (citing *FDIC v. Meyer*, 510 U.S. 471, 482-86, 114 S.Ct. 996, 1001, 1004-06 (1994)). By crafting exceptions to sovereign immunity, the Legislature has not violated or superceded the Organic Act; instead, it has followed the directives contained in the Organic Act. The Legislature did not waive sovereign immunity for intentional torts, and Wood is barred from maintaining his suit due to lack of jurisdiction.

CONCLUSION

Guam’s sovereign immunity has not been waived with respect to intentional torts. Without a waiver of sovereign immunity, courts lack jurisdiction to hear a suit against the Government of Guam. Wood himself asserts that his suit is founded upon an intentional tort. Therefore, this court is without jurisdiction to hear the suit, and this appeal is hereby **DISMISSED**.

PETER C. SIGUENZA
Associate Justice

MICHAEL J. BORDALLO
Designated Justice

BENJAMIN J. F. CRUZ
Chief Justice