

IN THE SUPREME COURT OF GUAM

SORENSEN TELEVISION SYSTEMS, INC.
dba: PACIFIC NEWS CENTER,
Petitioner,

vs.

THE SUPERIOR COURT OF GUAM,
Respondent,

LINA'LA SIN CASINO, JOSEPH DUENAS,
GUAM ELECTION COMMISSION, COMMITTEE TO
REVITALIZE TOURISM, JODIE VIDA,
JOHN PAUL CALVO, JANET GERBER CALVO,
DEBRALYNNE QUINATA and CARLO J.N. BRANCH,
Real Parties in Interest.

Supreme Court Case No.: WRM06-002
Superior Court Case No.: SP0165-06

OPINION

Filed: December 29, 2006

Cite as: 2006 Guam 21

Verified Petition for a Writ of Review or Mandamus filed November 6, 2006
Hagåtña, Guam

For Petitioner:

Ladd A. Baumann, Esq.
L.A. Baumann & Associates
Suite 903, Pacific News Building
Hagåtña, GU 96910

For Respondent:

Bruce A. Bradley, *Esq.*
Staff Attorney
Judiciary of Guam
238 Archbishop F.B. Flores Street
120 W. O'Brien Drive
Hagåtña, GU 96910

For Real Parties in Interest Lina'la Sin
Casino:

Joaquin C. Arriola, Jr., *Esq.*
Arriola, Cowan & Arriola
Suite 201, C&A Building
259 Martyr Street
Hagåtña, GU 96910

For Real Parties in Interest Guam Election
Commission:

Rawlen M.T. Mantanona, *Esq.*
Cabot Mantanona LLP
Bank Pacific Bldg., Second Fl.
825 S. Marine Corps Dr.
Tamuning, Guam 96913

For Real Parties in Interest Committee to
Revitalize Tourism, Jodie Vida, John Paul
Calvo, Janet Gerber Calvo, Debralyne Quinata
and Carlo J.N. Branch:

Richard A. Pipes, *Esq.*
Suite 201, Orlean Pacific Plaza
865 S. Marine Corps Dr.
Tamuning, Guam 96913

BEFORE: F. PHILIP CARBULLIDO, Chief Justice; RICHARD H. BENSON, Justice *Pro Tempore*; J. BRADLEY KLEMM, Justice *Pro Tempore*.

CARBULLIDO, C.J.:

[1] This matter comes before the court upon a Verified Petition for a Writ of Review or Mandamus filed by Petitioner Sorensen Television Systems, Inc., dba Pacific News Center on November 6, 2006.

[2] We hold that because Guam law imposes a legal duty upon the Guam Election Commission (“Commission”) to tabulate and make available to the public the results of the votes canvassed in the General Election, the issuance of a writ of mandate, the effect of which is to allow the Commission to carry out its legal and ministerial duties, is appropriate in this case. Accordingly, the Petition for Writ of Mandate is granted.¹

I.

[3] This proceeding arises from the challenge to the inclusion of Proposal B on the November 7, 2006 General Election ballot, filed by various parties as *Lina'La Sin Casino v. Guam Election Commission*, Superior Court Special Proceeding No. SP0165-06. On November 4, 2006, a Stipulation and Order was entered into by the parties in the Superior Court; and pursuant to this stipulation, the court *inter alia* enjoined the Commission from publicly disseminating the results of the Proposal B vote tabulation and stayed further proceedings in the case until after the General Election. As a result, the Petitioner, a news media outlet, seeks from this court a writ of mandate directing the Superior Court to stay or remove such provision from its order and ordering the Commission to comply with the laws of Guam that mandate that the results of the vote tabulation for the General Election be made available to the public.

¹ This Opinion supersedes the Order filed on November 7, 2006.

II.

[4] We have original jurisdiction over this petition for writ of mandamus pursuant to 48 U.S.C. § 1424-1(a)(1) (West, Westlaw through Pub. L. 109-414 (excluding Pub. L. 109-401) (approved Dec. 18, 2006)) and 7 GCA § 3107(b) (2005).

III.

[5] The Petitioner essentially argues that the Superior Court of Guam is without authority to order the Commission to “not [] release or disclose any information on the vote count for or against Proposal B to any person or the general public.” Verified Pet. for a Writ of Review or Mandamus, Ex. 1 at 3 (Stip. and Order). Petitioner contends, *inter alia*, that because Guam law mandates that the Commission publish the results of the vote tabulation, the Superior Court cannot, even by stipulation of the parties, order otherwise. We agree.

A. Effect of the Stipulation and Order

[6] Courts have held that parties “by their stipulations may in many ways make the law for any legal proceeding to which they are parties, which not only binds them, but which the courts are bound to enforce.” *In re N.Y., Lackawanna & W. R.R. Co.*, 98 N.Y. 447, 453 (N.Y. 1885). Indeed, courts have also recognized that stipulations which are “not unreasonable, not against good morals, or sound public policy, have been and will be enforced.” *Id.* See also *In re Moss' Estate*, 248 N.E.2d 513, 516 (Ill. App. Ct. 1969) (recognizing state case law “that stipulations by parties or their attorneys affecting the conduct of suits will be enforced, unless there is proper showing that any stipulation is unreasonable, violative of public morals or the result of fraud”).

[7] Moreover, because a stipulation is a contract, its enforceability is governed by contract law principles. *Maroun v. Wyreless Sys., Inc.*, 114 P.3d 974, 981 (Idaho 2005) (“A stipulation is a contract and its enforceability is determined by contract principles.”); *Modern Med. Lab. Inc. v.*

Dowling, 648 N.Y.S.2d 820, 822 (N.Y. App. Div. 1996) (“It is well established that a stipulation is a contract that is governed by the principles of contract law.”); *Emerick ex rel. Howley v. Sanchez*, 547 N.W.2d 109, 112 (Minn. Ct. App. 1996) (“Stipulations are treated and interpreted as binding contracts.”); *Fourticq v. Fireman’s Fund Ins. Co.*, 679 S.W.2d 562, 566 (Tex. App. 1984) (“Stipulations between parties amount to a contract between the parties, and they are subject to judicial interpretation and construction.”). We therefore look to contract law principles in determining the validity of a portion of the stipulation entered into by the parties, and ordered by the court, which prohibits the Commission from making the results of the Proposal B initiative immediately available to the general public. To begin with, it is well-settled law that “a contract to do an act forbidden by law is void, and cannot be enforced in a court of justice.” *Tiffany v. Boatman’s Inst.*, 85 U.S. 375, 385 (1873); *see also Quinn v. Gulf & W. Corp.*, 644 F.2d 89, 92 (2d Cir. 1981) (“It is well established that a contract between private parties . . . [which violates] Federal [law] will not be enforced.”); *Am. Ass’n of Meat Processors v. Cas. Reciprocal Exch.*, 588 A.2d 491, 495 (3d Cir. 1991) (referencing “the general rule that an agreement which violates a provision of a statute, or which cannot be performed without violation of such a provision, is illegal and void”); *In re Loretto Winery Ltd.*, 898 F.2d 715, 723 (9th Cir. 1990) (stating that “[c]ontracts for transactions that violate the law are illegal and void under California law”); *Baksi v. Wallman*, 65 N.Y.S.2d 894, 897 (N.Y. App. Div. 1946) (refusing to enforce a stipulation because enforcement would result in “enforcing the illegal underlying contract”); *Schneider v. Manion*, 46 So. 2d 58, 61 (La. 1950) (dismissing an appeal, where the parties had stipulated to the time for filing the appeal, because “the law relating to the delay in taking and perfecting appeals is mandatory and cannot be abrogated by a stipulation entered into by counsel on both sides”).

[8] Similarly, courts have also refused to enforce contracts that are entered into in violation of public policy. See *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 42 (1987) (noting the general doctrine rooted in common law “that a court may refuse to enforce contracts that violate law or public policy”); *Lingle v. Snyder*, 160 F. 627, 630 (8th Cir. 1908) (“It is a familiar rule that a contract to violate the law or to do that which is immoral or contravenes the settled public policy of state or nation is void”); *Cal. State Auto. Ass’n. Inter-Ins. Bureau v. Super. Ct.*, 788 P.2d 1156, 1159 (Cal.1990) (recognizing that a court may “reject a stipulation that is contrary to public policy”); *Miller v. Commercial Contractors Equip., Inc.*, 711 N.W.2d 893, 907-908 (Neb. Ct. App. 2006) (stating that “parties are free to make stipulations . . . and such stipulations will be respected and enforced by courts so long as the agreement is not contrary to public policy or good morals.”); see also *1029 Sixth, LLC v. Riniv Corp.*, 777 N.Y.S.2d 122, 125 (N.Y. App. Div. 2004) (“Stipulations have long been a favored means of resolving disputes absent an affront to public policy.”).

[9] Based on the above principles, we next consider whether the provision at issue in the instant case is in violation of Guam law or against public policy.

B. Guam Elections Law and the Duties of the Guam Election Commission

[10] Pursuant to the provisions of the Elections Law, the Commission has the legal duty to tabulate the votes, and upon such tabulation, make such results available to the public. To begin with, 3 GCA § 11126 (2005), entitled “Tabulation and Publication of Election Results,” expressly provides that “[u]pon tabulation of each of the precinct votes, the Commission shall tabulate or cause to be tabulated the cumulative results and make these results known to the public.” In addition, 3 GCA § 11127 (2005), entitled “Returns Open to Public Inspection,” provides that “[i]mmediately upon completion of the tabulation by the Commission of all of the ballots from all of the precincts, the election results shall be declared opened for public inspection.”

[11] We find the trial court's prohibition against the Commission performing its statutory duties is in direct contravention of sections 11126 and 11127 of the Guam Elections Law. While it is true that the parties in this case, including the Commission, stipulated to such provision, we find that the trial court was obligated to refuse enforcement of such provision. This is because an order enjoining the Commission from releasing and disclosing the results of the vote tabulation is not only a violation of the express terms of the Commission's statutory duties, but is against public policy. In accepting the stipulation and thereby enjoining the Commission from performing its legal and ministerial duties, the trial court acted in excess of its jurisdiction. *Cf. City of Los Angeles v. Super. Ct.*, 333 P.2d 745, 748 (Cal. 1959) ("A court acts in excess of its jurisdiction if it attempts to enjoin the enactment or enforcement of a valid public statute or ordinance."); *People ex rel. Widmeyer v. Grunert*, 202 N.Y.S. 135, 136 (N.Y. Sup. Ct. 1923) ("[T]here is no inherent power in the courts to interfere in the matter of the orderly canvass of the votes cast at an election and the determination of the results thereof in the manner provided by the Election Law. . . .").

C. Writ of Mandate

[12] Guam's writ statute requires that a beneficially interested party establish that he has no "plain, speedy, and adequate remedy available in the ordinary course of law." 7 GCA § 31203 (2005); *see People v. Super. Ct. (Laxamana)*, 2001 Guam 26 ¶ 12. The petitioner has the burden of showing that a writ should issue. *See People v. Super. Ct. (Bruneman)*, 1998 Guam 24 ¶ 3. The issuance of a writ of mandamus is an extraordinary remedy employed in extreme situations. *A.B. Won Pat Guam Int'l Airport Auth. ("GIAA") v. Moylan*, 2005 Guam 5 ¶ 10. The decision of whether to issue an extraordinary writ lies within the discretion of the court. 7 GCA § 31401 (2005).

[13] A writ of mandamus may be used to compel the performance of a legal duty. 7 GCA § 31202 (2005) ("[A writ of mandate] may be issued by any court . . . to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins, as a duty

resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.”) (alteration in original); *e.g.* *GIAA*, 2005 Guam 5 ¶ 10. As a general rule, mandamus will not issue to compel the exercise of discretion in a particular manner. *Holmes v. Terr. Land Use Comm’n*, 1998 Guam 8 ¶ 10. However, mandamus will issue to compel the performance of a statutorily required ministerial act. *Id.* ¶ 11 (observing that mandamus is appropriate where there is a “clear, present and ministerial duty to act.”). Furthermore, mandamus is appropriate “where the exercise of discretion, or the failure to exercise such discretion is so fraudulent, arbitrary, or palpably unreasonable that it constitutes an abuse of discretion as a matter of law” *Id.* ¶ 12.

[14] Having already determined that the trial court acted in excess of its jurisdiction, we now consider whether Petitioner herein is a beneficially interested party and thereby entitled to seek redress under our writ statute. “A beneficially interested party is a person that ‘has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.’” *Laxamana*, 2001 Guam 26 ¶ 24 (quoting *Cartsen v. Psychology Examining Comm.*, 614 P.2d 276, 278 (Cal. 1980)).

[15] We find that the Petitioner in this case, a media outlet, has a sufficient interest, not possessed by the citizens generally, and is therefore a beneficially interested party for the purposes of writ relief. *Cf. Nowack v. Fuller*, 219 N.W. 749, 751 (Mich. 1928) (holding that a newspaper editor wishing to inspect public records had a sufficient “special interest, not possessed by the citizens generally,” entitling him to the aid of a court by a writ of mandamus).

[16] We next consider whether, under the facts of this case, the Petitioner is without a plain, speedy, and adequate remedy at law. 7 GCA § 31203. We find that in the face of the Superior Court order forbidding the Commission from otherwise complying with its statutory duty to tabulate the

votes of Proposal B and publish such tabulation results to the general public, and further, because the election polls are literally hours away from closing,² Petitioner is without a plain, speedy, and adequate remedy at law. *Cf. Sioux Falls Argus Leader v. Miller*, 610 N.W.2d 76, 80 (S.D. 2000) (assessing an analogous situation where print and broadcast media sought a writ of prohibition against a trial court's gag order, the court determined that "[t]here being no 'plain, speedy and adequate remedy' available to it in the ordinary course of law, and concluding Media has a beneficial interest in the outcome, we deem it appropriate to review the trial court's gag order in this prohibition action") (quoting S.D. Codified Laws § 21-30-2)).

[17] Accordingly, we hold that the issuance of a writ of mandate, the effect of which is to allow the Commission to carry out its legal and ministerial duties, is appropriate in this case. *Martinez v. Slagle*, 717 S.W.2d 709, 711 (Tex. App. 1986) (stating "Mandamus is the proper remedy for compelling an election official to perform a duty required by law. This includes the ministerial duty to canvass election returns.") (citations omitted)); *Ex parte Krages*, 689 So.2d 799, 805 (Ala. 1997); (noting that "[t]he duty to canvass election returns and certify a winner is ministerial in nature" and explaining that, in a situation where the law required a municipal governing body to canvass election returns and issue a certificate of election, "the judiciary may not order a municipal governing body to disobey or disregard its clearly expressed statutory duty") *see also Kumalae v. Kalauokalani*, 25 Haw. 1 (1919) (stating that "the duty of the canvassing officer in the matter of canvassing the returns . . . is purely ministerial."); *Goff v. Kimbrel*, 849 P.2d 914, 917 (Colo. Ct. App. 1993) (stating that "the canvassing board had a duty to certify the election results as they were certified by the election judges on the returns, and since its canvassing duties are ministerial in nature, mandamus is proper when a canvassing board refused to perform its duty to certify an election."); *Reed v. State ex rel.*

² See note 1, *supra*.

Davis, 174 So. 498, 500 (Ala. 1937) (“It is well settled that the duties of election inspectors are purely ministerial, and that mandamus is the appropriate writ to compel them to perform their duties”).

IV.

[18] A Writ of Mandate shall issue commanding the Superior Court of Guam to stay that portion of paragraph 3 of the Stipulation and Order of November 4, 2006, which states: “Until ordered or permitted by this Court, or as set forth herein, the GEC will not (a) release or disclose any information on the vote count for or against Proposal B to any person for the general public.” The Writ of Mandate shall further command the Superior Court of Guam to refrain from any further interference with the Commission’s legal duties as provided by 3 GCA §§ 11126 and 11127.