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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

**TELEGUAM HOLDINGS, LLC, AND
ITS WHOLLY OWNED SUBSIDIARIES,**
Plaintiff-Appellant,

v.

**TERRITORY OF GUAM; DEPARTMENT OF ADMINISTRATION,
GENERAL SERVICES AGENCY; THE OFFICE OF PUBLIC
ACCOUNTABILITY; PACIFIC DATA SYSTEMS, INC.,**
Defendants-Appellees.

Supreme Court Case No.: CVA14-012
Superior Court Case No.: CV0333-13

OPINION

Cite as: 2015 Guam 13

Appeal from the Superior Court of Guam
Argued and submitted on October 22, 2014
Dededo, Guam

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

CARBULLIDO, J.:

[1] This appeal arises from a civil action involving a procurement protest of telephone instruments and services. Plaintiff-Appellant Teleguam Holdings, LLC (“Teleguam”) was unsuccessful in its bid, and Defendant-Appellee General Services Agency (“GSA”) awarded the contract to Defendant-Appellee Pacific Data Systems (“Pacific Data”). Teleguam appealed GSA’s decision with Defendant-Appellee Office of Public Accountability (“OPA”), but was again unsuccessful. Following the decision of the OPA, GSA issued purchase orders to Pacific Data. Teleguam filed an action in the Superior Court of Guam pursuant to Title 5, Chapter 5 of the Guam Code Annotated (“GCA”) (i.e., Guam procurement law) within the required time period but after GSA issued purchase orders to Pacific Data. The Superior Court initially granted Teleguam’s request for a Temporary Restraining Order (“TRO”) against GSA and Pacific Data, but dismissed the case following a bench trial. The trial court then awarded the bond Teleguam posted to secure the TRO to prevailing parties GSA and Pacific Data.

[2] Teleguam brought this appeal contending: (1) the automatic stay provision of Guam’s procurement law was in effect during the period between the OPA’s decision and commencement of a civil suit in Superior Court; (2) the trial court erroneously required Teleguam to post a bond to secure a TRO in light of the automatic stay requirement; and (3) the court erroneously awarded the bond to GSA and Pacific Data. For the reasons set forth below, we agree with Teleguam that the automatic stay was in effect during the interim period between OPA’s decision on a procurement protest and the Superior Court’s resolution of the action filed

to review the OPA's decision. However, we affirm the trial court's decision to require a bond to secure the TRO in this case, and to award that bond to prevailing parties GSA and Pacific Data.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Bid Issuance, Award, and Administrative Appeal

[3] The GSA issued Invitation for Bid ("IFB") GSA-064-11 to procure various telecommunications products and services for the Government of Guam ("Government"). The initial bid forms were replaced with the Revised Bid Forms ("RBF") 1-15 in response to questions submitted by prospective bidders. Teleguam responded to the first three RBFs for Part "A" of IFB GSA-064-11 related to Central Office/Centrex Telephone Services. Teleguam and Pacific Data were the only bidders to submit on RBFs 1-3.

[4] Teleguam's response to RBF 1 did not comply with bid specification numbers 26 and 27.¹ Additionally, Teleguam did not properly respond to RBF 3 because the phone Teleguam provided in the bid form did not include a digital display capable of supporting the caller ID service as required. GSA sent Teleguam a request for clarification, and Teleguam updated their RBF 3 response by substituting the noncompliant Cisco SPA501G phone with the compliant Cisco SPA508G phone at the same price of \$3.52. However, the original RBF 3 response provided by Teleguam showed the price of the noncompliant Cisco SPA501G was \$3.52 monthly whereas the compliant Cisco SPA508G was \$5.87.

[5] GSA initially recommended an award of RBF 2 and RBF 3 to Teleguam. Pacific Data protested this award, and upon further research GSA noticed that Teleguam's bid was noncompliant. This prompted GSA to determine Pacific Data was the lowest compliant bidder.

¹ RBF 1, #26 provided: "Feature Phone-The Centrex service must operate in tandem with Feature Phones bid in Bid Form 3." Record on Appeal ("RA"), tab 42 at 3 (Finds. Fact & Concl. L., Oct. 31, 2013). Also, RBF 1, #27 provided: "Caller ID-The Bidder shall provide Caller ID (name and number) on all display phones." *Id.*

GSA found Teleguam's attempted price substitution was contrary to Guam procurement law, and a substitution of the compliant Cisco SPA508G no longer made Teleguam the lowest bidder.

[6] GSA issued a Revised Bid Status recommending that RBF 2 and 3 of the IFB be awarded to Pacific Data because it was the lowest bidder. Teleguam filed a timely protest on the GSA's Revised Bid Status, which GSA denied.

[7] Teleguam appealed GSA's decision to the OPA. On March 6, 2013, the OPA issued a decision upholding GSA's award of Bid Forms 2 and 3 to Pacific Data. In its decision, the OPA also concluded Pacific Data submitted the lowest priced phone compliant with the IFB.

B. Superior Court Proceedings

1. Pre-trial

[8] On March 20, 2013, Teleguam filed a Verified Complaint in the Superior Court of Guam appealing the OPA's March 6, 2013 decision (OPA-PA-12-016). The Complaint had three counts. The first cause of action contended that OPA's determination that Pacific Data submitted a lower priced compliant phone than Teleguam was "Arbitrary, Capricious, Clearly Erroneous, or Contrary to Law." Record on Appeal ("RA"), tab 2 at 10 (Compl., Mar. 20, 2013). The second maintained the same allegation against OPA's award to Pacific Data. The third count requested the court to vacate GSA's award to Pacific Data on the ground that the award violated Guam's procurement law.

[9] A number of purchase orders were issued by GSA to Pacific Data for telecommunications services within the period between OPA's decision on March 6, 2013 and Teleguam's commencement of a civil suit on March 20, 2013. This prompted Teleguam to file an *Ex Parte* Motion for TRO to prevent GSA from continuing to award purchase orders to Pacific Data under IFB GSA-064-11 Bid Forms 2 & 3. The Motion for TRO was brought

pursuant to Guam Rules of Civil Procedure (“GRCP”) Rule 65(b). Teleguam’s Motion for TRO mentioned the automatic stay provision of 5 GCA § 5425(g), to argue that GSA and Pacific Data’s actions were void and to buttress Teleguam’s argument that they were entitled to a TRO, but enforcement of the automatic stay absent a bond was not explicitly requested.

[10] Upon finding Teleguam would “suffer immediate and irreparable harm if [Pacific Data and GSA were] not prohibited from said awarding of purchase orders,” the trial court issued a TRO against GSA restricting issuance of purchase orders “until further Order of the Court permitting it to do so.” RA, tab 22 at 1-2 (Order Granting Mot. for TRO, May 3, 2013). Pacific Data was ordered to take no action on previously issued purchase orders and to disconnect service to agencies receiving service under RBFs 2 and 3 “pending further Order of this Court.” *Id.* at 2. Teleguam was ordered to post a surety bond in the amount of \$44,661.00 pursuant to GRCP 65(c). The trial court did not affirmatively declare the purchase orders void.

[11] The minutes of the TRO hearings do not reflect any objection by Teleguam to the required bond. Moreover, GSA posted the bond without objection and did not state the bond was submitted “under protest.” RA, tab 21 (Notice of Posting Bond, May 3, 2013).

2. Trial

[12] Following a bench trial, the trial court issued its Findings of Fact and Conclusions of Law, dismissing Teleguam’s Complaint. The trial court determined Teleguam “failed to sustain its burden of proof to prove that the OPA’s Decision was arbitrary, capricious, fraudulent, clearly erroneous or contrary to law.” RA, tab 42 at 8 (Finds. Fact & Concl. L., Oct. 31, 2013). The trial court also found that Teleguam was not the lowest responsive and responsible bidder because Teleguam’s attempt to change its bid by lowering the monthly price of the Cisco

SPA508G phone from \$5.87 to \$3.52 after opening was illegal, not negligible, could not be justified as a minor informality, and was not evident on the face of the bid.

[13] Teleguam’s request for a permanent injunction was then denied because it failed to show a substantial likelihood of success on the merits and also was unable show irreparable damage would result from the Government “proceeding with purchase order [sic] issued.” *Id.* The trial court noted it was “in the public[’s] interest to save limited general funds by reinstating the purchase orders.” *Id.* Further, the court determined that its Findings of Fact and Conclusions of Law constituted “a final determination of the case on the merits,” and accordingly “dismiss[e]d [Teleguam]’s Complaint with prejudice and sustain[ed] the decision of OPA” *Id.* at 9.

3. Post-Trial

[14] In November 2013, GSA again issued purchase orders to Pacific Data. This prompted Teleguam to file an *ex parte* Motion for Contempt alleging the November 2013 purchase orders violated the TRO and the automatic stay provision of Guam’s procurement law found in 5 GCA § 5425. The Government and Pacific Data opposed the Motion, contending there was “no [TRO] to violate because the Court’s Findings of Fact and Conclusions of Law resolved the case in [their] favor, dissolved the restraining order, and thereby permitted subsequent issuance of purchase orders.” RA, tab 60 at 3 (Dec. & Order, Pl.’s Mot. Contempt, Mar. 10, 2014). In resolving Teleguam’s motion, the trial court noted the original TRO was only in effect until further determination by the court, and the denial of Teleguam’s request for permanent injunction dismissed Teleguam’s complaint, sustained the OPA’s decision, and did, in fact, dissolve the TRO. The trial court determined “it would be a harsh and absurd result to find Defendants in contempt for actions reasonably taken in conformance with the plain language of this Court’s Findings of Fact and Conclusions of Law.” *Id.* at 4. Teleguam’s contention that the

final determination was not a final judgment sufficient to dissolve the TRO did not persuade the trial court.

[15] Teleguam also requested a Return of Bond, arguing “the bond should be returned in full to Plaintiff because Defendants were not wrongfully enjoined.” *Id.* at 2. The Government and Pacific Data opposed and argued full release of the bond proportionate to their losses because they were wrongfully enjoined. The trial court was not persuaded by Teleguam’s argument and found the Government and Pacific Data wrongfully enjoined as the prevailing parties. Thereafter, the trial court granted GSA and Pacific Data’s request for the \$44,661.00 bond.

[16] Teleguam then filed a timely Notice of Appeal.

II. JURISDICTION

[17] This court has jurisdiction over appeals from a final judgment. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 113-163 (2014)); 7 GCA §§ 3107, 3108(a) (2005); *see also* 7 GCA §§ 25101, 25102 (2005).

III. STANDARD OF REVIEW

A. Statutory Interpretation

[18] “The interpretation of a statute is a legal question subject to *de novo* review.” *Data Mgmt. Res., LLC v. Office of Pub. Accountability*, 2013 Guam 27 ¶ 17 (quoting *Guerrero v. Santo Thomas*, 2010 Guam 11 ¶ 8). Statutory interpretation always begins with the language of the statute. *Aguon v. Gutierrez*, 2002 Guam 14 ¶ 6; *see also Pangelinan v. Gutierrez*, 2000 Guam 11 ¶ 23. The plain meaning will prevail where there is no clearly stated legislative intent to the contrary. *Sumitomo Constr. Co. v. Gov’t of Guam*, 2001 Guam 23 ¶ 17 (“[I]n determining legislative intent, a statute should be read as a whole, and therefore, courts should construe each section in conjunction with other sections.”).

B. Release of Security Bond

[19] The Circuits are split with respect to the applicable standard for reviewing a trial court's decision to execute a bond. *Nintendo of Am., Inc. v. Lewis Galoob Toys, Inc.*, 16 F.3d 1032, 1036 (9th Cir. 1994). Some courts treat the issue under a typical abuse of discretion standard. *See H & R Block, Inc. v. McCaslin*, 541 F.2d 1098, 1099 (5th Cir. 1976) (per curiam); *Page Commc'ns Eng'g, Inc. v. Froehlke*, 475 F.2d 994, 997 (D.C. Cir. 1973) (per curiam). Other courts apply a *de novo* standard. *See Nintendo*, 16 F.3d at 1036; *see also Matek v. Murat*, 862 F.2d 720, 733 (9th Cir. 1988), *abrogated on other grounds by Hocking v. Dubois*, 885 F.2d 1449, 1461 (9th Cir. 1989); *Coyne-Delany Co. v. Capital Dev. Bd.*, 717 F.2d 385, 392 (7th Cir. 1983); *Atomic Oil Co. v. Bardahl Oil Co.*, 419 F.2d 1097, 1102 (10th Cir. 1969).

[20] We recognize that the *de novo* standard is particularly appropriate in cases involving statutory interpretation. However, when the trial court is required to make certain factual determinations with respect to the execution of a bond, that decision is reviewed for an abuse of discretion. In this case, because the trial court was required to make a factual determination based upon GSA and Pacific Data's evidence of damages, we conclude that an abuse of discretion standard is appropriate.

IV. ANALYSIS

A. Whether the Automatic Stay Requirement of 5 GCA § 5425(g) Applies After the Office of Public Accountability Rejects a Protest, but Before the Matter is Appealed to the Superior Court.

[21] The parties in this case offer different interpretations of Guam's relevant procurement law. Teleguam and OPA argue the automatic stay requirement within Guam's procurement law applies during the period after the OPA issues a decision at the administrative level, but before a party appeals the OPA's decision to the Superior Court. Appellant's Br. at 8 (June 30, 2014);

Appellee OPA's Br. at 10 (July 31, 2014). The Government and Pacific Data, on the other hand, contend the procurement law does not provide for a stay during this interim period. Appellee Government's Br. at 7-8 (Aug. 14, 2014); Appellee Pacific Data's Br. at 3-4 (Aug. 13, 2014). To resolve the issue of whether the automatic stay continues during this interim period, we must first review the relevant provisions of Guam's procurement law.

1. Guam's procurement law

[22] Title 5 GCA, Chapter 5 and 2 Guam Administrative Rules and Regulations ("GAR"), Div. 4, Chapter 9, govern procurement protest procedures applicable to purchasing agencies. The first statutory step to challenge a bid award requires a "protest to the Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency . . . in writing within fourteen (14) days after such aggrieved person knows or should know of the facts giving rise thereto." 5 GCA § 5425(a) (2005). If the protestant disagrees with the purchasing agency's decision, the second step a protestant may take is to appeal the agency's decision to the OPA "within fifteen (15) days after receipt by the protestant of the notice of decision." 5 GCA § 5425(e). This decision by the OPA is final "unless a person adversely affected by the decision commences an action in the Superior Court in accordance with [5 GCA § 5480(a)]," the statutory provision waiving sovereign immunity in procurement disputes. 5 GCA § 5425(f); *see also* 5 GCA § 5480(a) (2005). Finally, the disappointed bidder has the option of challenging the OPA's adverse decision by bringing an appeal to the Superior Court within fourteen days of receipt. 5 GCA §§ 5480(a), 5481(a) (2005).

[23] The regulations governing the GSA set forth comparable protest procedures in 2 GAR §§ 9101-9109. Under these regulations, an aggrieved party must file their protest with the "Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency . . .

within [fourteen (14)] days after the protestor knows or should have known of the facts giving rise thereto.” 2 GAR § 9101(c)(1). If the protestor is unsuccessful at the agency level, 2 GAR § 12201 provides that a protestor may appeal an agency’s decision under 5 GCA § 5425 to the OPA within fifteen days of receipt of an adverse decision. 2 GAR § 12201. The regulations also state that an agency’s decision is final “unless a person adversely affected by the decision commences an action in the Superior Court.” 2 GAR § 9101.1. The OPA’s decision is likewise final unless appealed to the Superior Court. *See* 2 GAR § 12111.

[24] Once a party brings a timely protest, an automatic stay of procurement until final resolution of that protest is required by both 5 GCA, Chapter 5, and 2 GAR, Div. 4, Chapter 9. The automatic stay provision of 5 GCA, Chapter 5, is found at 5 GCA § 5425(g) and states as follows:

In the event of a timely protest under Subsection (a) of this Section or under Subsection (a) of § 5480 of this Chapter, the Territory shall not proceed further with the solicitation or with the award of the contract prior to final resolution of such protest, and any such further action is void

5 GCA § 5425(g). The statute further provides conditions allowing the purchasing agency to continue with an appealed award if “necessary to protect substantial interests of the Territory”² 5 GCA § 5425(g)(1).

² The stay is lifted if:

(1) The Chief Procurement Officer or the Director of Public Works after consultation with and written concurrence of the head of the using or purchasing agency and the Attorney General or designated Deputy Attorney General, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the Territory; and

(2) Absent a declaration of emergency by the Governor, the protestant has been given at least two (2) days notice (exclusive of territorial holidays); and

(3) If the protest is pending before the Public Auditor or the Court, the Public Auditor or Court has confirmed such determination, or if no such protest is pending, no protest to the Public Auditor of such determination is filed prior to expiration of the two (2) day period specified in Item (2) of Subsection (g) of this Section.

[25] Procurement regulation 2 GAR § 9101(e) closely mirrors the statutory automatic stay requirement:

Stay of Procurement During Protest. When a protest has been filed within [fourteen (14)] days and before an award has been made, the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency shall make no award of the contract prior to final resolution of such protest, and any such further action is void

2 GAR § 9101(e). The regulations provide similar necessity exceptions to 5 GCA § 5425(g).³ *Id.* Thus, under applicable statutes and regulations, the GSA was required to refrain from further action on the bids at issue until “final resolution” of GSA’s protest unless it chose to invoke a necessity exception.

2. Statutory interpretation of Guam’s procurement law

[26] The parties in this case offer different interpretations of whether the 5 GCA § 5425(g) automatic stay was in effect during the allowable fourteen-day interim period between the OPA’s issuance of their decision and Teleguam’s initiation of a civil suit under 5 GCA § 5481(a). This stems from conflict over the meaning of the term “final resolution” in 5 GCA § 5425(g). To resolve this issue, we must evaluate the language of the relevant authority set forth above. Our task in looking at the statute’s language is to determine whether or not the statutory language is “plain and unambiguous.” *Aguon*, 2002 Guam 14 ¶ 6 (citing *Robinson v. Shell Oil Co.*, 519 U.S.

³ The regulations provide that the stay is lifted if:

1. The Chief Procurement Officer, the Director of Public Works, or the head of the Purchasing Agency, makes a written determination that the award of the contract without delay is necessary to protect the substantial interests of the government of Guam; and
2. Absent a declaration of emergency by the Governor, the protestor has been given at least two-days notice (exclusive of government of Guam holidays); and
3. If the protest is pending before the Board or Court, the Board or Court has confirmed such determination, or if no such protest is pending, no protest to the Board of such determination if filed prior to the expiration of the two-day period specified in item 2 of this subsection.

2 GAR § 9101(e)(1)-(3).

337, 340 (1997)). “The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Robinson*, 519 U.S. at 341 (citations omitted).

[27] According to Teleguam’s interpretation of Guam procurement law, the plain meaning of 5 GCA § 5425(g) prohibits the Government from proceeding with the award of a contract prior to the final resolution of a procurement protest. Appellant’s Br. at 8. In Teleguam’s view, 5 GCA § 5425(f) “clearly indicates that the OPA’s decision on a procurement protest is not final if an action is filed in the Superior Court challenging the OPA’s decision.” Appellant’s Br. at 8-9. In this case, Teleguam contends the OPA’s decision was not a final resolution because Teleguam filed a timely, pre-award civil action in Superior Court triggering 5 GCA § 5425(g)’s automatic stay provision. Appellant’s Br. at 9-10. Teleguam asserts that 5 GCA § 5425(f) restricts GSA from proceeding with an award and “holds the finality of the OPA’s decision in abeyance until the time to file a civil action under section 5480 expires.” Appellant’s Br. at 10.

[28] OPA agrees with Teleguam’s position that the 5 GCA § 5425(g) stay continues until the procurement matter is resolved by the Superior Court of Guam. See Appellee OPA’s Br. at 10. In OPA’s assessment, 5 GCA § 5425(g) and 2 GAR § 9101(e) do not permit a purchasing agency to proceed further with solicitations or awards prior to final resolution of a protest unless the necessity requirements of either provision are met. Appellee OPA Br. at 10. The OPA believes that its final administrative decision on a protest is not a final resolution for 5 GCA § 5425(f) purposes that would lift 5 GCA § 5425(g)’s automatic stay if a protestor chooses to appeal the OPA’s decision to the Superior Court. See Appellee OPA Br. at 10-11.

[29] The Government offers a different interpretation of 5 GCA § 5425(g)’s language. First, they contend 5 GCA § 5425(g) identifies two “events” triggering an automatic stay. Appellee

Government's Br. at 7. In its reading, the use of "or" within section 5425(g) functions as an alternative conjunction representing independent "events" within the sentence structure. *Id.* at 7-8. The first "event" triggering the automatic stay is the administrative adjudication process outlined in 5 GCA § 5425(a) and is resolved when the OPA renders its final decision. *Id.* The second "event" triggering the automatic stay is the 5 GCA § 5480(a) judicial adjudication process. *Id.* at 7. The Government urges that each time a protest is filed under either "event," the government must not proceed further with the solicitation or with the award until that individual process is resolved. *Id.* Furthermore, the Government tries to distinguish 5 GCA § 5425(f) as requiring the protestor to commence a 5 GCA § 5480(a) action while section 5425(g) requires the government to refrain from proceeding with the solicitation or award once the section 5480(a) action has commenced. *Id.* at 13.

[30] Pacific Data agrees with the Government and stresses the most reasonable construction of 5 GCA § 5425(f) is that the decision of the OPA is final when issued. Appellee Pacific Data's Br. at 5. It contends the OPA's decision remains final unless a person adversely affected by it subsequently commences an action in the Superior Court. *Id.* Pacific Data argues that in this case, the automatic stay was not in effect during the interim period between the OPA's denial of Teleguam's protest and the filing of Teleguam's Complaint in Superior Court. *Id.* Once Teleguam filed the Complaint, it believes the automatic stay was triggered a second time. *Id.*

[31] We are persuaded by Teleguam and OPA's interpretation of the finality requirement and not by GSA and Pacific Data's strained analysis of 5 GCA § 5425(f) and (g). The meaning of the term "final resolution" in 5 GCA § 5425(g) is found within 5 GCA § 5425(f). Under the plain language of 5 GCA § 5425(f), the OPA's decision on a procurement protest is not final if an action is filed in the Superior Court challenging the OPA's decision. This presents two

options for the disappointed bidder after the OPA issues a decision on the dispute: (1) to seek judicial review of the OPA's decision within the requisite fourteen days under 5 GCA § 5481(a), or (2) to refrain from seeking judicial review and allowing the procurement process to go forward upon expiration of the fourteen days. Under the foregoing interpretation, we hold that in a procurement controversy under 5 GCA § 5425, the automatic stay set forth in section 5425(g) remains in effect during the fourteen-day period following OPA's decision and commencement of a civil suit within the Superior Court and continues until final resolution of the action by the Superior Court. The Government should refrain from taking action (e.g., issuing purchase orders to its chosen bidder) on a procurement award until the fourteen-day period has expired and a civil action has not been filed in the Superior Court to review the OPA's decision. There is no clearly stated legislative intent contrary to this interpretation. *See* 5 GCA §§ 5001-5908 (2005).

[32] Turning to this case, the OPA's decision was not a final resolution of the dispute because Teleguam exercised its right to seek judicial review of the OPA's decision within the requisite fourteen days. GSA was obligated to abstain from issuing the purchase orders to Pacific Data until Teleguam's fourteen-day period to appeal the OPA's decision to the Superior Court expired. Because Teleguam timely filed for review of the OPA's decision, the stay remained in effect until final resolution by the Superior Court. Therefore, because no necessity determination to lift the stay by the Attorney General of Guam or GSA's Chief Procurement Officer was made as required by 5 GCA § 5425(g)(3) and 2 GAR § 9101(e)(3), the automatic stay was in effect at the time GSA issued the March 2013 purchase orders to Pacific Data.

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B. Whether a Court may Require Posting a Bond Under GRCP 65 Despite the Automatic Stay Provision found within Guam Procurement Law.

[33] Teleguam next contends the automatic stay provision found within 5 GCA § 5425 prohibits a trial court from requiring the protestant in a procurement dispute to post a surety bond following a TRO request. Appellant's Br. at 14. The trial court's power to issue injunctive relief in procurement disputes is granted by 5 GCA § 5480(c). Procedures for obtaining injunctive relief from a trial court are set forth in GRCP 65, with GRCP 65(b) governing the issuance of a TRO. The decision to grant or deny GRCP 65 injunctive relief is within the court's discretion. *See Miss. Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1985).

[34] To secure a restraining order or injunction, GRCP 65(c) requires an applicant to post a bond:

Security. No restraining order or preliminary injunctions shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the Government of Guam or of an officer or agency thereof, or of a party in a domestic relations case or in a case involving the cessation of abuse.

Guam R. Civ. P. 65(c). Much like the extensive discretion to grant or deny an injunction, the trial court "is afforded wide discretion in setting the amount of the bond" required for that injunction. *Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 321 F.3d 878, 882 (9th Cir. 2003). The court may even exercise its discretion to set the bond amount to "zero if there is no evidence the party will suffer damages from the injunction." *Id.* Accordingly, the trial court clearly has discretion to require a protestant to post a bond when that protestant requests relief under GRCP 65.

[35] “While parties may pursue their litigation strategies of choice, they must be prepared to accept the attendant risks.” *McCarthy v. Option One Mortg. Corp.*, 362 F.3d 1008, 1012 (7th Cir. 2004). In this case, Teleguam made the affirmative litigation choice to move for a TRO under GRCP 65(b). RA, tab 14 at 4-5 (*Ex Parte* Mot. for TRO, Apr. 25, 2013). Teleguam was not required to request injunctive relief pursuant to GRCP 65 to preserve the 5 GCA § 5425 automatic stay while the procurement dispute was being decided by the trial court. Guam procurement law allows a protestor appealing an OPA final administrative decision concerning a procurement protest to seek declaratory relief. 5 GCA § 5480(a). Teleguam could have sought a declaratory judgment under 5 GCA § 5480(a) that GSA and Pacific Data’s contracts issued within the interim period violated the law.⁴ Instead, Teleguam sought relief under GRCP 65 that requires a bond for payment of such costs and damages as may be incurred or suffered by any party found to have been wrongfully enjoined or restrained as determined by the trial court. RA, tab 14 at 4-5 (*Ex Parte* Mot. for TRO); Guam R. Civ. P. 65(c).

[36] Teleguam’s Motion for TRO mentioned the automatic stay provision of 5 GCA § 5425(g) only to argue that GSA and Pacific Data’s actions were void and to reinforce Teleguam’s argument that it was entitled to a TRO. RA, tab 14 at 5-7 (*Ex Parte* Mot. for TRO). However, a request for enforcement of the automatic stay absent a bond was not explicitly requested. *See id.* Likewise, the minutes of the TRO hearings do not clearly reflect any objection by Teleguam to the required bond pursuant to 5 GCA § 5425(g)’s automatic stay provision. *See* RA, tab 16 (Mins., Apr. 26, 2013); RA, tab 18 (Mins., Apr. 29, 2013); RA, tab 19 (Mins., May 3, 2013).

⁴ The Decision and Order granting the TRO made no determination voiding the purchase orders from GSA to Pacific Data or that they violated the automatic stay provision of 5 GCA § 5425, nor is the trial court’s failure to void the purchase orders at issue on appeal. *See* RA, tab 22 at 1-2 (Order Granting Mot. for TRO).

Instead, Teleguam submitted the bond without any indication the bond was submitted “under protest.” See RA, tab 21 (Notice of Posting Bond, May 3, 2013).

[37] Teleguam did not seem to argue against the propriety of the bond in light of 5 GCA § 5425(g) until it requested the return of the bond. RA, tab 49 at 1 (Br. on Return of Bond, Dec. 5, 2013). Teleguam then argued for the first time that the bond should be returned in full because the defendants were not wrongfully enjoined. *Id.* GSA and Pacific Data were enjoined and forced to disconnect services as Teleguam requested. RA, tab 22 at 1-2 (Order Granting Mot. for TRO). The parties and the court then proceeded through months of litigation without an objection by Teleguam to the bond. Thus, the trial court properly exercised its discretion to grant Teleguam’s TRO request and determined \$44,661.00 was an appropriate bond amount. *Id.*

C. The Trial Court did not Err in Releasing the Bond to the Prevailing Defendants.

[38] As stated above, when the release of a bond is predicated on factual determinations by the trial court, an abuse of discretion standard is appropriate. In this case, because the trial court was required to make a factual determination based upon GSA and Pacific Data’s evidence of damages, an abuse of discretion standard is proper. RA, tab 60 at 6 (Dec. & Order, Pl.’s Mot. Contempt).

[39] Teleguam maintains that a bond should issue under GRCP 65(c) only if the enjoined party is “wrongfully enjoined.” Appellant’s Br. at 17. According to Teleguam, a party has been “wrongfully enjoined” in the injunction context:

if it is ultimately found that the enjoined party had at all times the right to do the enjoined act. The focus of the “wrongfulness” inquiry is whether, in hindsight in light of the ultimate decision on the merits after a full hearing, the injunction should not have issued in the first instance.

Id. (quoting *Blumenthal v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 910 F.2d 1049, 1054 (2d Cir. 1990)) (internal quotation marks omitted).

[40] After Teleguam failed to meet its burden at the permanent injunction trial, the court determined that GSA and Pacific Data were wrongfully enjoined or restrained because they were the prevailing parties. RA, tab 60 at 5-6 (Dec. & Order, Pl.’s Mot. Contempt). Teleguam contends the trial court erred because it “failed to address” Teleguam’s argument that a party who violated the automatic stay provision of 5 GCA § 5425(g) could not be “wrongfully enjoined.” Appellant’s Br. at 18.

[41] Despite Teleguam’s assertion, the trial court did address its “wrongfulness argument,” but reached a result contrary to Teleguam’s preferred outcome. *See* RA, tab 60 at 4-5 (Dec. & Order, Pl.’s Mot. Contempt). Relying on *Nintendo*, the trial court reasoned that a party prevailing in the underlying litigation is wrongfully enjoined. RA, tab 60 at 5 (Dec. & Order, Pl.’s Mot. Contempt) (citing *Nintendo*, 16 F.3d at 1036-38). In *Nintendo*, the gaming company Nintendo obtained a preliminary injunction enjoining Lewis Galoob Toys (“Galoob”) from selling a device enhancing Nintendo gameplay called the “Game Genie.” 16 F.3d at 1036. Galoob prevailed on appeal and was permitted to sell the Game Genie. *Id.* The court held that because Galoob prevailed, it was wrongfully enjoined. *Id.*; *see also Buddy Sys., Inc. v. Exer-Genie, Inc.*, 545 F.2d 1164, 1169 n.10 (9th Cir. 1976) (reversal of a permanent injunction on direct appeal provides a basis for finding that a preliminary injunction was wrongfully issued); *Qualcomm, Inc. v. Motorola Inc.*, 185 F.R.D. 285, 287 (S.D. Cal. 1999) (“This Court finds that a party is ‘wrongfully restrained’ when a contested TRO is dissolved because the party seeking the preliminary injunction fails to carry its burden at the preliminary injunction hearing.”).

[42] There is a rebuttable presumption that the wrongfully enjoined party is entitled to recover damages up to the amount of the bond to “discourag[e] parties from requesting injunctions based on tenuous legal grounds.” *Nintendo*, 16 F.3d at 1036-37. A court may, however, decline to award the bond upon “good reason.”⁵ *Nokia Corp. v. InterDigital, Inc.*, 645 F.3d 553, 559 (2d Cir. 2011) (citing *Global Naps, Inc. v. Verizon New England, Inc.*, 489 F.3d 13, 23 (1st Cir. 2007); *Milan Exp., Inc. v. Averitt Exp., Inc.*, 254 F.3d 966, 981 (11th Cir. 2001)). The burden of demonstrating that recovery should be denied is on the party opposing recovery, in this case Teleguam. *See id.* Also, as stated previously, the trial court has wide discretion in setting the amount of the bond, and could have set the bond at zero if GSA and Pacific Data presented no evidence of suffering damages as a result of the TRO. *See Conn. Gen. Life Ins.*, 321 F.3d at 882.

[43] In this case, the trial court was “satisfied from [GSA and Pacific Data’s] detailed exhibits that [GSA and Pacific Data] incurred damages up to the amount of the bond.”⁶ RA, tab 60 at 6 (Dec. & Order, Pl.’s Mot. Contempt). Although mindful that it may decline to award the bond upon “good reason” under *Nokia*, the trial court was “unconvinced by [Teleguam’s] argument that [GSA and Pacific Data] should not be awarded the bond because the restraint resulted in savings.” *Id.* Therefore, the trial court properly exercised its authority in releasing the bond to GSA and Pacific Data.

V. CONCLUSION

[44] For the reasons stated above, we hold that the automatic stay found in 5 GCA § 5425(g) is in effect during the fourteen-day period between the OPA’s decision and the protestant’s

⁵ An example of a “good reason” to not award damages to a prevailing defendant in an injunction case would be if that defendant failed to mitigate their damages. *Coyne-Delany Co.*, 717 F.2d at 392.

⁶ For example, Pacific Data submitted several exhibits showing its expenses and lost profits it incurred as a result of the TRO. RA, tab 50 (Br. Regarding the Bond, Dec. 12, 2013).

deadline to file a civil action in the Superior Court. If a protestant files an action for review of the OPA's decision, the stay continues until final resolution of the action by the Superior Court. We further hold that the trial court properly exercised its discretion in requiring Teleguam to post a bond because Teleguam moved for a TRO under GRCP 65 and did not expressly request enforcement of the automatic stay. We also hold that the trial court did not abuse its discretion in releasing that bond to GSA and Pacific Data. Therefore, both the trial court's decision to require Teleguam to post a bond to secure a TRO, as well as its decision to release that bond to GSA and Pacific Data, are **AFFIRMED**.

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

Original Signed : **Katherine A. Maraman**
By

F. PHILIP CARBULLIDO
Associate Justice

KATHERINE A. MARAMAN
Associate Justice

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

ROBERT J. TORRES
Chief Justice

I do hereby certify that the foregoing
is a full true and correct copy of the
original on file in the office of the
clerk of the Supreme Court of Guam.

APR 22 2015

By: Charlene I. Santos
Deputy Clerk
Supreme Court of Guam

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F. PHILIP CARBULLIDO
Associate Justice



KATHERINE A. MARAMAN
Associate Justice



ROBERT J. TORRES
Chief Justice