

*I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN*  
2012 (SECOND) Regular Session

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Bill No. 539-31 (con)

Introduced By:

T.R. MUÑA BARNES

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**AN ACT TO AUTHORIZE TAX CREDITS IN LIEU OF  
PAYMENT FOR THE OFF SITE INFRASTRUCTURE WORK  
SERVICING THE LADA ESTATES AFFORDABLE HOUSING  
PROJECT.**

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

**Section 1. Legislative Findings and Intent.** The Lada Estates Project, started 23 years ago by the Twentieth Guam Legislature with Public Law No. 20-225, was an endeavor to provide affordable housing to the people of Guam. Since 2004, the Lada Estates Project has been the subject of a lengthy lawsuit wherein Maeda Pacific Corporation sought payment for both the on site and off site infrastructure work that it performed for the Lada Estates Project. The claims regarding payment for on site infrastructure work was finally adjudicated and concluded by the Decision and Order of the Superior Court of Guam on January 6, 2012 in Civil Case No. 0135-04 and the passage of Bill 416-31 on March 16, 2012, which ratified the terms of this Decision and Order. However, the off site infrastructure work remains unpaid for despite the Judgment and Decision and Order of the Superior Court of Guam on March 8, 2011 in the same above case which ordered the Government of Guam to pay to Maeda Pacific Corporation Two Million Nine Hundred Fifteen Thousand Dollars (\$2,915,000) for the off site

1 infrastructure work that it performed. A copy of this Judgment and Decision and  
2 Order is attached hereto as *Exhibit A*.

3 *I Liheslaturan Guåhan* also finds that in order to bring complete closure to  
4 the prior disputes and controversy involving the Lada Estates Project and to ensure  
5 that affordable housing is in fact developed within six (6) years by a private non-  
6 profit organization in accordance with Guam law, it is necessary for the  
7 Government of Guam to pay for the off site infrastructure work which it had  
8 agreed to pay for in accordance with Public Laws 20-225 and 25-116 and the  
9 March 8, 2011 Judgment and Decision and Order of the Superior Court of Guam.

10 *I Liheslaturan Guåhan* also finds that the Government of Guam is  
11 financially strapped and may not be able to afford to pay for the off-site  
12 infrastructure work servicing the affordable homes. It is therefore the intent of *I*  
13 *Lehislatura* to authorize tax credits to Maeda Pacific Corporation as accord and  
14 satisfaction of the Judgment against the Government of Guam in the amount of  
15 Two Million Nine Hundred Fifteen Thousand Dollars (\$2,915,000).

16 **Section 2. Payment for Off-Site Infrastructure Work.** In lieu of any  
17 cash payment from the Government of Guam for the off-site infrastructure work in  
18 accordance with the Judgment of the Superior Court of Guam, the Government is  
19 hereby authorized to issue tax credits. The tax credit authorized by this Act shall  
20 be permitted as follows:

21 (a) Maeda Pacific Corporation may utilize tax credits against  
22 income tax payable to the Government of Guam under the Guam Territorial  
23 Income Tax Law.

24 (b) Said tax credits may be used during one or more years provided  
25 the total amount of tax credits used do not exceed Two Million Nine  
26 Hundred Fifteen Thousand Dollars (\$2,915,000). Any portion of the tax  
27 credits not used within five (5) years shall expire.

1           (c) The tax credit authorized herein shall be freely assignable and  
2 transferable to any party, company, partnership or corporation. The  
3 assignment and transfer may be by gift or may be for legal consideration.  
4 Any assignment and/or transfer shall be in writing, notarized, and an original  
5 thereof shall be filed with the Department of Revenue and Taxation.

6           **Section 3.** As a condition to the utilization of the subject tax credits,  
7 Maeda Pacific shall provide the Government of Guam its agreement in writing that  
8 the availability of these tax credits through this legislation constitutes an accord  
9 and satisfaction of all amounts owed to it by the Government of Guam pursuant to  
10 the Judgment of the Superior Court of Guam dated March 8, 2011 in Civil Case  
11 No. 0135-04.

12           **Section 4. Effective Date.** The provisions of this act shall take effect  
13 immediately upon the enactment of this Act.

14           **Section 5. Severability.** *If* any provision of this Law or its application to  
15 any person or circumstance is found to be invalid or contrary to law, such  
16 invalidity *shall* not affect other provisions or applications of this Law which can be  
17 given effect without the invalid provisions or application, and to this end the  
18 provisions of this Law are severable.

# **EXHIBIT A**

**Civil Case No. 0135-04**

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FILED  
SUPERIOR COURT

IN THE SUPERIOR COURT OF GUAM

MAR 08 2011

1  
2  
3 MAEDA PACIFIC CORPORATION, )  
4 )  
5 Plaintiff, )  
6 vs. )  
7 GOVERNMENT OF GUAM and GUAM )  
8 HOUSING CORPORATION, )  
9 Defendants. )

CLERK OF COURT

CIVIL CASE NO. CV0135-04

JUDGMENT

10  
11 Based upon the Decision and Order granting summary judgment filed contemporaneously  
12 herewith, Judgment is hereby entered in favor of Plaintiff Maeda Pacific Corporation against  
13 Defendant Government of Guam in the amount of \$2,915,000.00.

14  
15 SO ORDERED this 8<sup>th</sup> day of March, 2011.

16  
17 Original Signed By:  
18 Hon. Steven S. Unpingco  
19 HONORABLE STEVEN S. UNPINGCO  
20 Judge, Superior Court of Guam

21  
22 **Tekoa Torres & Tebet, P.C.**  
23 **RECEIVED**  
24 **MAR 08 2011**  
25 Time: \_\_\_\_\_  
26 By: MAC

27 I do hereby certify that the foregoing  
is a true and correct copy of the  
original on file in the office of the  
Clerk of the Superior Court of Guam  
Dated at Hagatña, Guam.

MAR 08 2011

28 Joseph L. Bamba  
Clerk of Court

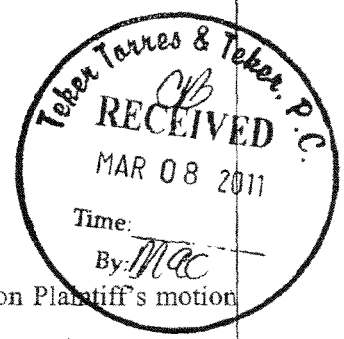
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CLERK OF COURT

IN THE SUPERIOR COURT OF GUAM

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3 MAEDA PACIFIC CORPORATION, )  
4 )  
5 Plaintiff, )  
6 vs. )  
7 GOVERNMENT OF GUAM and GUAM )  
8 HOUSING CORPORATION, )  
9 Defendants. )

CIVIL CASE NO. CV0135-04  
DECISION AND ORDER



INTRODUCTION

This matter came before the Honorable Judge Steven S. Unpingco on Plaintiff's motion for summary judgment, filed September 9, 2010, and Defendant Government of Guam's cross motion for summary judgment, filed September 22, 2010. Oral arguments were heard on October 13, 2010. Attorney Lawrence J. Teker represented the Plaintiff, Assistant Attorney General Philip D. Issac appeared on behalf of Defendant Government of Guam, and Attorney Cynthia V. Ecube represented Defendant Guam Housing Corporation. Having considered the parties' briefs, oral arguments, and the applicable law, the Court now issues the following Decision and Order.

BACKGROUND

In this public contract matter, Plaintiff Maeda Pacific Corporation ("Maeda") seeks payment for infrastructure construction of the Lada Estates public housing against Defendants Government of Guam ("Government") and Guam Housing Corporation ("GHC"), an autonomous agency of the Government.

In 1991, the Guam Legislature passed an act to develop and sell the Lada Estates as affordable housing and provided that, "The cost of off-site infrastructure and off-site access roads shall be the responsibility of the Government of Guam." See Guam Pub. L. No. 20-225:6. Maeda won the public bid to construct the Lada Estates' infrastructure and signed a contract with the Defendants in August of 1997. See Declaration of Jose P. Morcilla Jr., "Exhibit 2" (Mar. 5,

1 2004). The contract incorporates Maeda's bid to build the off-site infrastructure in exchange for  
2 \$2,820,000.00 and memorializes the Government's promise to pay that amount for Maeda's  
3 performance. See *Id* at 2 and Declaration of Jose P. Morcilla Jr., "Exhibit 1" (Mar. 5, 2004).  
4 The parties do not dispute that a change order of \$95,000.00 was later added to the cost of the  
5 off-site infrastructure for a total cost of \$2,915,000.00. See Government Answer (July 20, 2006);  
6 GHC Answer (Aug. 21, 2006).

7 The contract also incorporates a document entitled "Addendum No. 4", dated July 18,  
8 1997, which makes the following clarifications:

9 12. Regarding the financial guarantee of the government for payment of Phase 1:

10 The successful bidder of Phase 2 will be obligated to pay for the cost of  
11 Phase 1. This cost will ultimately be borne by the home buyer on Phase 2  
12 of this project.

13 13. Regarding the Government providing a guarantee for payment upon  
14 completion of Phase 1:

15 Public Law 20-225 states that the government is responsible for the off-  
16 site part of the infrastructure. However, the government cannot provide  
17 any guarantees regarding payment. Eventually all costs will be based on  
18 the sales of the units.

19 See *Id* at 1 and Declaration of Jose P. Morcilla Jr., "Exhibit 3" (Mar. 5, 2004).

20 Macda completed construction of the Lada Estates infrastructure pursuant to the contract  
21 and obtained a certificate of substantial completion from the Department of Public Works on  
22 July 24, 1998. See Declaration of Jose P. Morcilla Jr., "Exhibit 5" (Mar. 5, 2004). On  
23 September 15, 1998, the Guam Legislature amended Public Law No. 20-225:6 and removed the  
24 provision regarding government responsibility for off-site costs in order to permit GHC to pay  
25 Maeda through the sale of Lada Estate units. See Guam Pub. L. No. 24-81:14. Thereafter, GHC  
26 could not find a contractor to complete construction of the Lada Estates and Maeda was not paid  
27 for its performance.

28 On March 24, 2000, the Guam Legislature amended Public Law Nos. 20-225 and 24-81  
to reincorporate the Government's liability and provide that, "The costs of off-site infrastructure

1 and off-site access roads shall be the responsibility of the government of Guam.” See Guam Pub.  
2 L. No. 25-116:5. The Legislature found that this amendment was necessary to render the Lada  
3 Estates project viable due to the inability of construction bidders to reimburse Maeda for the  
4 infrastructure construction. See P.L. No. 25-116:3. Despite these amendments, the Lada Estates  
5 project was not completed and Maeda was not paid for its performance.

6 Maeda filed a government claim in 2002 and the present civil action in 2004. The  
7 Defendants initially moved to dismiss Maeda’s complaint on the basis of untimeliness pursuant  
8 to Guam procurement law and the Government Claims Act. The Court rejected these arguments  
9 on the basis of Pacific Rock Corp. v. Dept. of Education, 2001 Guam 21, *inter alia*. See  
10 Decision and Order Denying Motion to Dismiss (Oct. 24, 2005).

11 The case languished while the parties attempted settle the matter and Maeda filed the  
12 present motion for summary judgment against Defendant Government on September 9, 2010.  
13 Maeda seeks judgment for \$2,915,000.00 against the Government as a matter of law on the basis  
14 of liability by statute under Public Law Nos. 20-225 and 25-116. In response, the Government  
15 moves for cross summary judgment and argues that no award can be granted as a matter of law  
16 for the following reasons: 1) Maeda’s claim is untimely pursuant to procurement laws and the  
17 Government Claims Act; 2) the Government cannot expend unappropriated funds pursuant to 1  
18 GCA § 716; and 3) the fourth contract addendum explains that the Government will not pay  
19 Maeda.

#### 20 DISCUSSION

21 A motion for summary judgment is governed by Guam R. Civ. P. Rule 56, which  
22 provides that “The judgment sought shall be rendered forthwith if...there is no genuine issue as to  
23 any material fact and that the moving party is entitled to a judgment as a matter of law.”

24 In this case, the parties do not dispute any material fact and both Maeda and the  
25 Government move for summary judgment as a matter of law. On this basis, summary judgment  
26 is appropriate and may be granted.

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1 **1. Timeliness and the Government Claims Act**

2 Under Guam law and the law of the case doctrine, issues previously decided may not be  
3 reconsidered and are binding unless: 1) the first decision was clearly erroneous; 2) an intervening  
4 change in the law has occurred; 3) the evidence on remand is substantially different; 4) other  
5 changed circumstances exist; or 5) a manifest injustice would otherwise result. *See People v.*  
6 *Gutierrez*, 2005 Guam 19, ¶ 40.

7 In this case, the Government seeks summary judgment on the basis of time limitation  
8 defenses in Guam procurement law and the Government Claims Act. The Government first  
9 raised this issue in a motion to dismiss on September 28, 2004. The Court denied the motion on  
10 the basis of an extension by agreement under 5 GCA § 5427(f) and equitable tolling as it applies  
11 to the Government Claims Act. *See Decision and Order Denying Motion to Dismiss* (Oct. 24,  
12 2005). The Government renews these defenses and does not allege error, manifest injustice, or a  
13 change in law, evidence or circumstances. Similarly, the Court cannot find an exception to the  
14 law of the case doctrine and the previously decided issue of timeliness shall be binding.  
15 Therefore Macda's claim remains timely and summary judgment shall not be granted on this  
16 basis.

17 **2. Unappropriated Expenditures**

18 Pursuant to Title 1 GCA § 716, a law which does not appropriate funds for an  
19 expenditure gives the government the authority to take all necessary steps to accomplish the law  
20 except for the obligation of the expenditure.

21 In this case, the Government moves for summary judgment on the basis of 1 GCA § 716  
22 because Public Law Nos. 20-225 and 25-116 do not appropriate funds to fulfill the  
23 Government's responsibility for off-site infrastructure costs. The Government contends that  
24 without appropriation, it has no obligation to pay for the costs of off-site infrastructure.  
25 However, the Government does not provide authority to demonstrate that this appropriation rule  
26 may absolve public contract liabilities. Without authority, the Court shall decline to apply a  
27 directive for carrying laws into effect despite appropriation as a defense against government  
28

1 liability in public contracts. For this reason, summary judgment shall not be granted on this  
2 basis.

3 **3. Contract Addendum No. 4**

4 Under Guam law, a contract provision which is contrary to an express provision of law is  
5 unlawful and may render an entire contract unenforceable. *See* 18 GCA § 88101(1) *and*  
6 Pangelinan v. Camacho, 2008 Guam 4.

7 In this case, the Government asserts that the language of Addendum No. 4 to its contract  
8 with Maeda demonstrates that the parties knew that the Government would not pay for the costs  
9 of off-site infrastructure despite the legislative mandate to do so. *See* P.L. No. 20-225. The  
10 Government asserts that based upon this understanding, it is free of liability to Maeda as a matter  
11 of law. The Government does not provide authority to demonstrate how to enforce such a  
12 contractual understanding which may be contrary to public law. Absent clear authority, the  
13 Court shall not apply the language of Addendum No. 4 to relieve the Government from liability  
14 as a matter of law where the language may be contrary to Public Law Nos. 20-225 and 25-116.  
15 For this reason, summary judgment shall not be granted on this basis.

16 **4. Liability Created by Statute**

17 Guam law provides a three year statute of limitations for, "An action upon a liability  
18 created by law." *See* 7 GCA § 11305(1). While a liability created by law is not expressly  
19 defined in Guam law, other jurisdictions have defined a liability created by statute as a liability  
20 that is: 1) not based upon an agreement; and 2) would not exist but for a statute. *See* Shewry v.  
21 Begil, 128 Cal.App.4th 639, 644 (4th Dist. 2005) *citing* Travelers Express Co., Inc. v. Cory, 664  
22 F.2d 763 (9th Cir. 1981); *see also* Rondelli v. Pima County, 586 P.2d 1295, 1298 (Ariz.App.  
23 1978); McAuliffe v. W. States Import Co., Inc., 651 N.E.2d 957, 960 (Ohio 1995). This  
24 definition is used to determine which statute of limitation applies to a cause of action which may  
25 or may not arise from a statute. *See* Id and Lehman v. Superior Court, 145 Cal.App.4th 109 (2d  
26 Dist. 2006).

27 In this case, Maeda asserts that it is entitled to judgment as a matter of law on the basis of  
28 a liability created by statute. Maeda relies on the concept of a liability created by statute to argue

1 that Public Law Nos. 20-225 and 25-116 create a liability for the Government to pay Maeda for  
2 the costs of off-site infrastructure. However, the concept of a liability created by statute is used  
3 to determine the applicable statute of limitations, as the language of 7 GCA § 11305(1) suggests.  
4 The applicability of 7 GCA § 11305(1) is not at issue in this case and absent clear authority, the  
5 Court shall not apply a principle of limitations to interpret Public Law Nos. 20-225 and 25-116  
6 and grant summary judgment.

7 Under Guam law and general jurisprudence, a clear and unambiguous statute must be  
8 applied according to its plain meaning. *See People v. Lau*, 2007 Guam 4, ¶ 14 and 73 Am. Jur.  
9 2d Statutes §§ 113, 115, 124 (2001).

10 In this case, Public Law Nos. 20-225 and 25-116 each provide that, “The costs of off-site  
11 infrastructure and off-site access roads shall be the responsibility of the government of Guam.”  
12 The parties do not challenge this unambiguous language and as this Court has previously stated,  
13 these laws, “could not more clearly require GovGuam to pay for the off-site portion of the  
14 infrastructure.” *See* Decision and Order Denying Motion to Dismiss, 15 (Oct. 24, 2005). It is  
15 undisputed that Maeda built the off-site infrastructure at a cost of \$2,915,000.00 pursuant to  
16 contract and Public Law Nos. 20-225 and 25-116. According to the plain meaning of the  
17 aforementioned language, the Government is responsible to pay Maeda a total of \$2,915,000.00.  
18 On this basis, the Court must apply Public Law Nos. 20-225 and 25-116 according to their plain  
19 meaning and find that the Government is responsible for payment to Maeda in the amount of  
20 \$2,915,000.00 for the costs of off-site infrastructure. To this extent, summary judgment shall be  
21 granted.

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**CONCLUSION**

Based upon the foregoing, Plaintiff Maeda Pacific Corporation's Motion for Summary Judgment is hereby GRANTED and Defendant Government of Guam's Cross Motion for Summary Judgment is hereby DENIED. Judgment shall be entered accordingly.

SO ORDERED this 8<sup>th</sup> day of March, 2011.

Original Signed By:  
*Steven S. Unpingco*  
HONORABLE STEVEN S. UNPINGCO  
Judge, Superior Court of Guam

I do hereby certify that the foregoing is a full and true copy of the original on file in my office of the clerk of the Superior Court of Guam.  
Dated at San Jose, Guam.

MAR 08 2011

*Joseph L. Barba*  
Joseph L. Barba  
Clerk of the Superior Court of Guam