

LEONARDO M. RAPADAS
Attorney General



PHILLIP J. TYDINGCO
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

32nd Guam Legislature
Committee on Appropriations
Senator Vicente C. Pangelinan, Chairperson
155 Hesler Street
Hagatna, Guam 96910

December 18, 2013

32-13-1090
Office of the Speaker
Judith T. Won Pat, Ed. D.
Date 12.19.13
Time 3:21 pm
Received by: [Signature]

Re: Request by Department of Public Works (DPW) for Appropriation of \$25,000 to Settle 34-Year Old Inverse Condemnation Case: Castro v. Government of Guam Superior Court of Guam Civil Case No. CV1158-12

Dear Senator Pangelinan:

Background

This case involves an inverse condemnation filed in the Superior Court of Guam by Vincent C. Castro and Menilia C. Castro *aka* Millie C. Castro (collectively, the "Castros"). The taking occurred on January 29, 1979 and related to the widening of Chelenko Road, Municipality of Sinajana, located in the village of Ordot. For the road widening project, the Government of Guam acquired property from the two neighboring properties, but for some inexplicable reason, the Government did not list the Castro property in the 1979 eminent domain case.

For many years the Castros have been seeking resolution of this matter with the Government of Guam. The Castros have waited patiently for a response from the Government while knowing that their neighbors received compensation over three decades ago. And the Government has been using the property for the entire time. Moreover, the Castros have continued to pay real estate taxes on the property.

Through their lawyer, Attorney Georgette Bello Concepcion, the Castros filed a claim against the Government under the Government Claims Act. The claim was properly filed pursuant to 5 G.C.A. Chapter 6 in order to exhaust their administrative remedies before seeking relief from the court. No action was taken by the Government on the Castro's government claim. Thereafter, through their counsel, the Castros filed a verified complaint in the Superior Court on October 12, 2012 which was served on the Government, along with a summons.

Since the filing of the Complaint, our office has met with the Castros and their attorney. Based on the title work done, and meetings held with personnel from Land Management and the

Rights-of-Way Division of the Department of Public Works, we have concluded that the Castros are correct in their assertion that the land in question was taken by the Government without compensation.

Typically, a claim for inverse condemnation arising so many years ago would be barred by the statute of limitations. However, on Guam we have a special statute which tolls the statute of limitation for condemnations occurring between 1950 and 1994 for which either no compensation or grossly inadequate compensation was given. See 7 G.C.A. § 11311.1. Since the taking of the Castro Property occurred on January 29, 1979, the Castro's inverse condemnation claim is not time barred by virtue of 7 G.C.A. § 11311.1. Having determined that liability exists on the Government, the next question is to determine the amount of just compensation to be paid to the Castros.

Government's Exposure - Just Compensation

For purposes of determining just compensation in an eminent domain case, the property taken is valued as of the date of the taking. In this case, the date of value is January 29, 1979. According to our records, the 1979 land values paid to the two neighboring property owners were \$9.00 per sq. m. (to the owners of Lot 3336-New-1-G) and \$8.25 per sq. m. (to the owners of Lot 3244-IG). For settlement purposes, using a value of \$9.00 per sq. m., the value of the part taken from the Castros (i.e., 1.66 sq. m.) would yield an amount of \$1,494.00.

When the government takes only a portion of a larger tract of land, just compensation consists of the fair market value of the part taken, as well as any damages to the remaining property in the landowner's possession resulting from the government's activities on the condemned land. Typically, damages between 10%-50% as a result of dust and noise from the traffic are customary in such cases. For settlement purposes, using a damages percentage of 25% applied to the remaining property (i.e., \$9.00 x 25% x 763 sq. m.) would yield an amount of \$1,717.00.

In addition to just compensation, the special Guam statute referred to previously (7 G.C.A. § 11311.1) allows the landowners to recover simple interest at a rate of 6% per annum from the date of take (January 29, 1979) until judgment is paid. The statute also requires the Government to pay the landowners' attorney fees. All of these factors must be taken into account in assessing the settlement value of this case. Applying a 6% interest rate on the above amounts for a period of 34 ½ years, yields an amount of \$6,647. The Government recognizes that the Castros have overpaid property taxes for all of these years and agrees that they should be reimbursed.

If this case proceeds to trial, we would also need to retain an expert appraisal witness to produce an appraisal report and testify. Trial would be expected to last approximately 5 days. Land Management and the Rights-of-Way Department of the Department of Public Works would have to prepare trial exhibits and be prepared to testify at trial.

Based on the following calculations, we would expect the Government's exposure in the case to be between \$27,000.00 and \$42,000.00:

Exposure based on \$9.00 per sq. m. and 25% damages:

Part Taken.....	\$1.66 sq. m. x \$9.00 = \$1,494
Damages to Remainder.....	\$9.00 x 25% x 763 sq. m. = \$1,717
Interest at 6% for 34 ½ yrs.....	\$3211 x 6% x 34.5 = \$6,647
Overpaid Property Taxes.....	\$6,835
Incl interest	
Attys' Fees Based on 5 day trial.....	<u>\$10,000</u>
Total	\$26,693.00

Exposure based on \$15.00 per sq. m. and 50% damages:

Part Taken.....	\$1.66 sq. m. x \$15.00 = \$2,490
Damages to Remainder.....	\$15.00 x 50% x 763 sq. m. = \$5,723
Interest at 6% for 34 ½ yrs.....	\$8,213 x 6% x 34.5 = \$17,000
Overpaid Property Taxes.....	\$6,835
Incl interest	
Attys' Fees Based on 5 day trial.....	<u>\$10,000</u>
Total	\$42,000.00

With the inclusion of expert witness fees these amounts would increase between \$5,000.00 and \$10,000.00, bringing the Government's exposure to upwards of \$52,000.00.

Reasonable Settlement Amount

Based on the foregoing, 7 months ago, in May 2013, we recommended a reasonable settlement amount to be in the area of \$20,000.00 to \$25,000.00, inclusive of all interest and attorneys' fees payable to the Castros. This case is set for trial in the Guam Superior Court on February 12, 2014. Through their attorney, the property owners have recently indicated that they would accept a settlement amount of \$25,000.00. In order to avoid trial and the Government's added exposure and costs associated therewith, this Office recommends the case be settled for \$25,000.00, inclusive of all interest and attorneys' fees payable pursuant to 7 G.C.A. § 11311.1.

DPW's Request for Appropriation

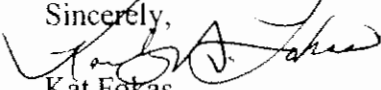
Before the Attorney General's Office may settle this case, legislative approval or a specific appropriation must be made. See 1 G.C.A. §18201.¹ DPW agrees with our settlement

¹1 G.C.A. §18201 provides:

No office, department, instrumentality, agency, institution, board, bureau, commission, council, authority, committee of territorial government or branch of the government of Guam may enter into any consent decree, stipulated order or other settlement agreement with any party seeking a claim against the government of Guam, that requires the payment of cash, financing, or future financing of the government of Guam without the approval of *Liheslatura* [the Legislature] or specific appropriation for that claim. Any proposed settlement agreement, supra, that requires legislative appropriation or authorization, by an Office, Department, Instrumentality, Agency or Branch, purporting a consent decree, stipulated order or

recommendation, however has advised this office that it does not have any funding available to assist in the payment of this settlement. *See* letter dated December 18, 2013, from DPW Director to Office of the Attorney General, enclosed herewith.

Therefore, DPW is requesting an appropriation of \$25,000 to settle this 34-year old inverse condemnation case: *Castro v. Government of Guam*; Superior Court of Guam Civil Case No. CV1158-12. In light of the imminent trial date, DPW also requests that the bill relating to this appropriation be presented to the Legislature at the next scheduled Legislative session.

Sincerely,

Kat Fokas
Assistant Attorney General

Enclosure (Letter from DPW Director dated December 18, 2013)

cc: Honorable Judith T. Won Pat, Ed.D., Speaker
Sandra Miller, Governor's Legal Counsel
Carl V. Dominguez, Director, DPW
J. Patrick Mason, Deputy Attorney General
Attorney Georgette Concepcion (Counsel for Property Owners)

other settlement with the government of Guam *shall* be transmitted to *Lihe*slatura which, by statute, may amend, approve, or disapprove the plan or action taken within forty-five (45) days or said plan or action *shall* be deemed approved. This Section *shall not* apply to claims against the government arising from the provisions of the Government Claims Act (Chapter 6, 5GCA), the actions authorized by Public Law of the Civil Service Commission or other settlement expressly authorized by Public Law.



The Honorable
Eddie Baza Calvo
Governor

The Honorable
Ray Tenorio
Lieutenant Governor



Carl V. Dominguez
Director
Jessie B. Palican
Deputy Director

December 17, 2013

Kat Fokas, Assistant Attorney General
Office of the Guam Attorney General
590 S. Marine Corps Drive, Suite 706
Tamuning, Guam 96913

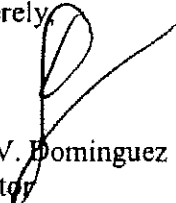
Re: Castro v. Government of Guam
Superior Court of Guam Civil Case No. CV1158-12

Dear Assistant Attorney General Fokas:

This case involves an inverse condemnation filed in the Superior Court of Guam by Vincent C. Castro and Menilia C. Castro *aka* Millie C. Castro (collectively, the "Castros"). The taking occurred on January 29, 1979 and related to the widening of Chelenko Road, Municipality of Sinajana, located in the village of Ordot. For the road widening project, the Government of Guam acquired property from the two neighboring properties, but for some inexplicable reason, did not list the Castro property in the 1979 eminent domain case. Although the Government did not condemn the Castros property, the Government has been using their property as a road since 1979, without ever having compensated the Castros for the Government's acquisition of their land.

The Department of Public Works (DPW) agrees with the settlement recommendation set forth in your memorandum dated May 20, 2013 (a copy of which is attached). However, DPW does not have any funding available to assist in the payment of this settlement.

Sincerely,


Carl V. Dominguez
Director

Enclosure

cc: Sandra Miller, Governor's Legal Counsel

05/21/13 am

LEONARDO M. RAPADAS
Attorney General



PHILLIP J. TYDINGCO
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY CLIENT PRIVILEGED COMMUNICATION

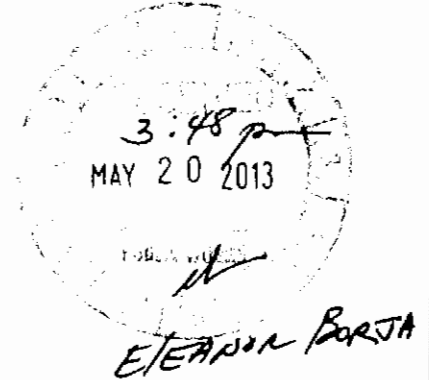
DATE: May 20, 2013

TO: Carl Dominquez, Director, Department of Public Works

CC: J. Patrick Mason, Deputy Attorney General
Glenn Eay, Rights-of-Way, Department of Public Works

FR: Kat Fokas, Assistant Attorney General ~~AK~~

RE: *Castro v. Government of Guam*, Guam Superior Court Case No. CV1158-12
Inverse Condemnation case, Chalon Pago
Request for Settlement Authority and Certification



I. Introduction

This memorandum seeks settlement authority for a condemnation which occurred almost 34 ½ years ago. Please pay particular attention to Section VI below regarding prerequisites to obtaining settlement authority from government agencies.

This case involves an inverse condemnation filed in the Superior Court of Guam by Vincent C. Castro and Menilia C. Castro *aka* Millie C. Castro (collectively, the "Castros"). The taking occurred on January 29, 1979 and related to the widening of Chelenko Road, Municipality of Sinajana, located in the village of Ordot. For the road widening project, the Government of Guam acquired property from the two neighboring properties, but for some inexplicable reason, did not list the Castro property in the eminent domain case. A copy of the 1979 Declaration of Taking omitting the Castro property is attached as Exhibit A.

COPY

II. The Castro Property

The Castro Property includes Lot No 3340-2-2 (now known as Lot 3340-2-R1). The area of the taking is 166 sq. m. ±, and is shown as the cross-hatched area on Exhibit B.

III. Procedural Aspects

For many years the Castros have been seeking resolution of this matter with the Government of Guam. The Castros have waited patiently for a response from the Government while knowing that their neighbors received compensation over three decades ago. And the Government has been using the property for the entire time. Moreover, the Castros have continued to pay real estate taxes on the property.

The Castros hired a lawyer, Attorney Georgette Bello Concepcion, and filed a claim against the Government under the Government Claims Act. The claim was properly filed pursuant to 5 G.C.A. Chapter 6 in order to exhaust their administrative remedies before seeking relief from the court. No action was taken by the Government on the Castro's government claim. Thereafter, through their counsel, the Castros filed a verified complaint in the Superior Court on October 12, 2012 (attached as Exhibit C) which was served on the Government, along with a Summons (attached as Exhibit D).

Since the filing of the Complaint, our office has met with the Castros and their attorney. Based on the title work done, and meetings held with personnel from Land Management and the Rights-of-Way Division of the Department of Public Works, we have concluded that the Castros are correct in their assertion that the land in question was taken by the government without compensation.

Typically, a claim for inverse condemnation arising so many years ago would be barred by the statute of limitations. However, on Guam we have a special statute which tolls the statute of limitation for condemnations occurring between 1950 and 1994 for which either no compensation or grossly inadequate compensation was given. See 7 G.C.A. § 11311.1. Since the taking of the Castro Property occurred on January 29, 1979, the Castro's inverse condemnation claim is not time barred by virtue of 7 G.C.A. § 11311.1. Having determined that liability exists on the Government, the next question is to determine the amount of just compensation to be paid to the Castros.

IV. Government's Exposure - Just Compensation

When the government takes only a portion of a larger tract of land, just compensation consists of the fair market value of the part taken, as well as any damages to the remaining property in the landowner's possession resulting from the government's activities on the condemned land.

In this case, the date of value is January 29, 1979. The Government of Guam has not obtained an appraisal, however land values are available for the acquisitions of the two neighboring properties as of January 29, 1979. Namely, the owners of Lot 3336-New-1-G were

paid \$9.00 per sq. m. and the owners of Lot 3244-1G were paid \$8.25 per sq. m. While the Government would assert that there is no damage to the remainder property, at trial the Castros will inevitably argue damages between 25-50% as a result of dust and noise from the traffic, as is customary in such cases.

In addition to just compensation, the special Guam statute referred to previously (7 G.C.A. § 11311.1) allows the landowners to recover simple interest at a rate of 6% per annum from the date of take (January 29, 1979) until judgment is paid. The statute also requires the Government to pay the landowners' attorney fees. All of these factors must be taken into account in assessing the Government's exposure in this case should it proceed to trial.

If this case proceeds to trial, we would also need to retain an expert appraisal witness to produce an appraisal report and testify. Trial would be expected to last approximately 5 days. Land Management and the rights-of-way department of the Department of Public Works would have to prepare trial exhibits and be prepared to testify at trial.

Based on the following calculations, we would expect the Government's exposure in the case to be between \$27,000.00 and \$42,000.00. With the inclusion of expert witness fees these amounts would increase between \$5,000.00 and \$10,000.00, bring the Governments exposure to upwards of \$52,000.00.

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Overpaid Property Taxes.....	\$6,835
Incl interest	
Attys' Fees Based on 5 day trial.....	<u>\$10,000</u>
Total	\$42,000.00

V. Reasonable Settlement Amount

Based on the foregoing, we judge a reasonable settlement to be in the area of \$20,000.00 to \$25,000.00, inclusive of all interest and attorneys' fees payable to the Castros.

VI. DPW's Certification

Before the Attorney General's Office may settle a case, the agency involved in the case must certify that the following statute has been complied with:

No agency shall contract or agree to spend money for goods or services or in settlement of a lawsuit or claim in excess of the amount appropriated by the Legislature (the Legislature) to that agency for such goods, services, claim, or settlement, and BBMR shall not allot funds to that agency for the payment of any amount towards such goods, services, claim, or settlement if the total amount of goods, services, claim, or settlement is more than the amount appropriated or amount allotted by BBMR. Any contract or agreement made in violation hereof shall be void. Any agency head or certifying officer who knowingly contracts or agrees to spend any money in excess of said allotments shall be guilty of a misdemeanor.

P.L. 31-77:XII Section 13.

Under the statute, a settlement cannot be entered into unless the total amount of the settlement amount has been appropriated or allotted by BBMR. Therefore, to move forward with the settlement of this Superior Court case, I must receive your settlement authority and a certification that the above-referenced law has been complied with.

Please forward a letter to me providing settlement authority and the necessary certification and we will pursue settlement of this matter, including drafting and/or filing the necessary releases, title documents and court papers. Please feel free to call me with any questions you may have.

Attachments

FILED

IN THE SUPERIOR COURT OF
TERRITORY OF GUAM

JAN 29 9 52 AM '79
SUPERIOR COURT
125-0018

THE GOVERNMENT OF GUAM,)
Plaintiff,)
vs.)
4,513 Square Meters of Land,)
more or less, situated in)
the Municipality of Sinajana,)
and Dolores C. Shultice, Et.,)
Al., and Unknown Owners,)
Defendants.)

CIVIL CASE NO. 1-79

COMPLAINT IN CONDEMNATION

OFFICE OF THE ATTORNEY GENERAL
Government of Guam
7th Floor, Pacific Home Building
Post Office Box 90
Agaña, Guam 96906
TEL: 472-8849/8844

1. This is an action of a civil nature brought by the Government of Guam for the taking of private properties under the power of eminent domain and for the ascertainment and award of just compensation to the owners and parties in interest.

2. The authority for the taking is based on the Organic Act of Guam, 48 USC §§ 1421b(f) and 1423a; Guam Code of Civil Procedure §§ 1237 through 1245, and Guam Civil Code § 1001.

3. The use for which said lands are to be taken is for the realignment and improvement of Chelenko Road to provide access to the Jose U. Atoigue Baseball Field, together with access for purposes necessary or incidental to said construction project.

4. The interests to be taken in said lands are in fee simple absolute and are delineated in Schedule A and Exhibits A, B, and Map-1, attached hereto and made a part hereof. Schedule A is a street sheet in which the lot number

EXHIBIT A

Interests taken, public uses, owners' names, area taken, and estimated compensation are summarized, Exhibits A, B, and Map-1 describe more fully the particular lands taken.

5. The persons having or claiming interests in the property to be taken, whose names are now known, are as shown on Schedule A, attached hereto and made a part hereof.

6. In addition to the persons named, there are or may be others who have or claim interests in the property to be taken, whose names are unknown to the plaintiff and such persons are made parties to this action under the designation "Unknown Owners".

WHEREFORE, the plaintiff demands judgment that the property herein described be condemned; that just compensation for the taking be ascertained and awarded; and for such other relief as may be lawful and proper.

Dated this 29th day of September, 1978.

DANIEL DEL PRIORE
Attorney General, Acting

John Poppe
BY JOHN POPPE
Assistant Attorney General

SPREAD SHEET

CIVIL CASE NO. _____

PROJECT: CHELENKO ROAD, CHALAN PAGO

DATED _____

SCHEMATIC

TRACT NO.	BASIC LOT	LOT WITHIN RIGHT OF WAY	AREA WITHIN RIGHT OF WAY (SQ.M.)	OWNER	ESTIMATED COMPENSATION
1	3336-NEW	3336-NEW-1G	624 sq. m.	Dejores C. Shultice	\$ 1,616.00
2	3244	3244-1G	3,889 sq. m.	H.O. Nicolas Mendiola Castro (deceased) JUAN C. AGUON, admr.	\$32,084.00
TOTAL			<u>4,513 sq. m.</u>		<u>\$ 37,700.00</u>
		<p>2-1G + 2-2G 8.25 psm. = 3,819.75</p>			

LOT # 3336-NEW-1G, SINAJANA, GUAM

Beginning at a point located at N 84° 04' 56" W, 130.75'
from C.G.T.N. G.2:

thence S 7° 47' 51" W, 9.84' to a point;

S 82° 12' 09" E, 141.08' to a point;

S 5° 02' 01" W, 10.17' to a point;

N 82° 12' 09" W, 404.37' to a point;

N 0° 52' 00" E, 20.11' to a point;

S 82° 12' 09" E, 264.88' to the point of

beginning; containing an area of 624 square meters more or less.

All points referred to above are more particularly described on
D.P.W. Drawing No. P.W. 75-M1 and also labelled Land Management
check Data 209-FY 78 and entitled "Severance Plat Chelenko Road
Lots 3340-R2, 2-3, 2-1, 2-2, 3349-1, 2, 3244; 3336-NEW, 3371-4-4."

EXHIBIT "A"

LOT # 3244-1G, SINAJANA, GUAM

Beginning to a point located at N 85° 33' 49" W, 489.77'
from G.G.I.N. G.2;

thence S 60° 29' 00" W, 511.85' to a point;

N 21° 15' 14" W, 78.51' to a point;

N 58° 42' 34" E, 302.37' to a point;

then along a circular curve, concave to the
right having a radius 426.34', a delta 39°
05' 17" a length, 290.85' and a chord bearing
N 78° 15' 12.5" E, 285.25' to a point;

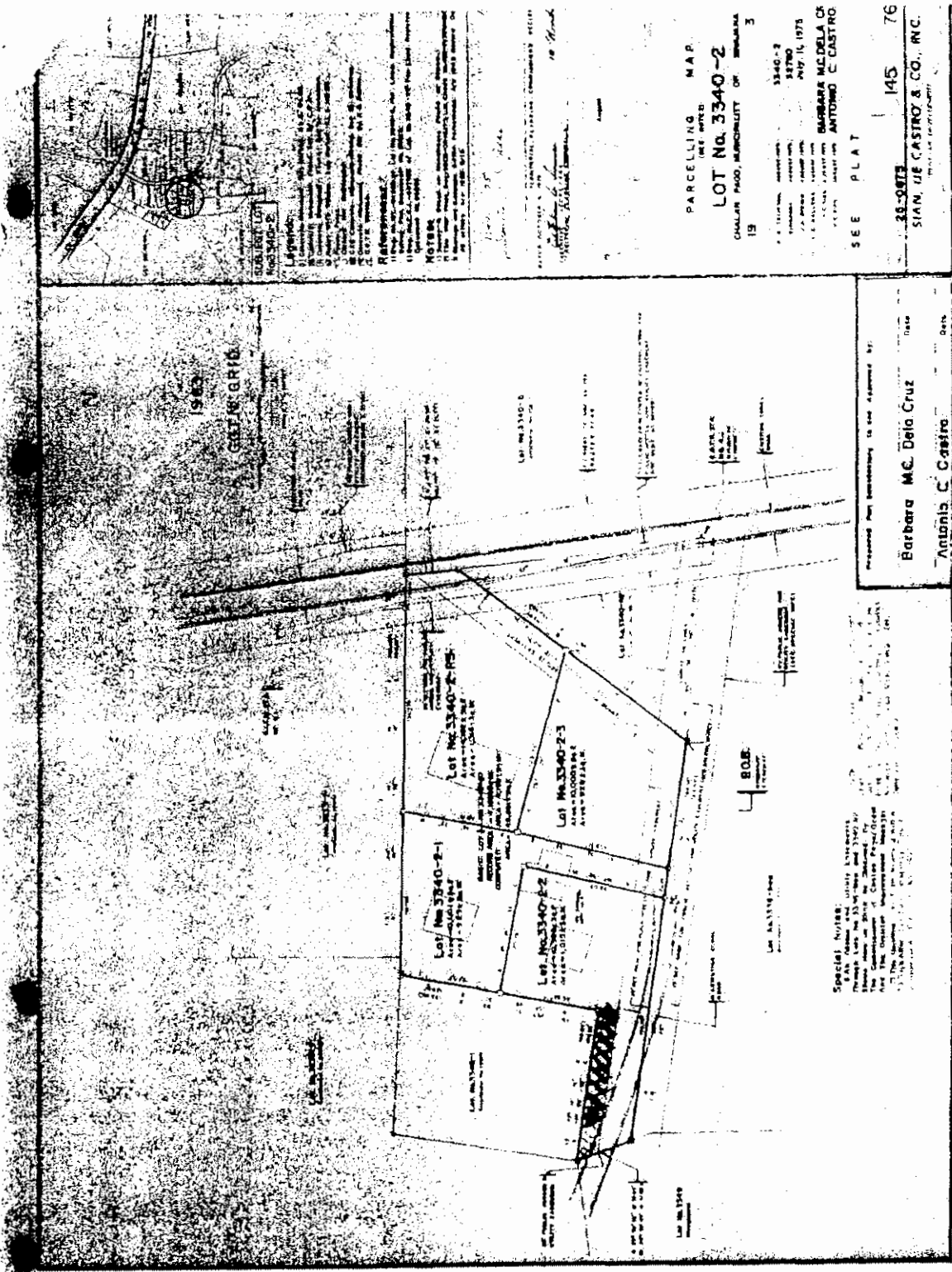
then S 60° 29' 00" W, 73.29' to the point of
beginning containing an area of 3889 ± square
meters more or less.

All points referred to above are more particularly described on
D.P.W. Drawing No. P.W. 78-M1 under L.M. check Dwg. No. 209-FY 78
and labeled "Severance Plat Chelenko Road."

EXHIBIT 'B'

EXHIBIT B

2296



Lot No.3233-9
Certificate No.38283

Lot
Certif

(S S 89° 89°

107.50'

Lot No.3340-2-

Area = 10,001 ± Sq.F
Area = 929 ± Sq.M.

Lot No.3340-1
Certificate No.15681

BASIC RECORD

79' 14" 27" E
(5.15')

Lot No.3340-2-2

Area = 10,928 ± Sq.F
Area = 1,015 ± Sq.M.

SEE SPECIAL NOTE NO.1

(S S 82° 12' 51" E 100.00'
82° 05' 56" E 100.38'

(N N 10° 10' 65.96'

93.05' N 149' 32" N 149' 32"

20' SET BACK FOR PUBLIC ACCESS AND

AND

ACCESS & EASEMENT

W 37.63'
W 37.60'

(N N

88°

TERRITORY OF GUAM
DEPARTMENT OF LAND MANAGEMENT
CERTIFICATE OF TITLE

353507
353507

Certificate of Title Number 53507

Document No. _____

Originally registered 27 January, 1965 Certificate No. _____
 Municipality of _____ Page _____ Government Title No. _____
 Transfer from Number C.T. No. 53507

TERRITORY OF GUAM)
 AGANA, GUAM) ss.

This is to certify that Vicente C. Castro and Manilia C. Castro
husband and wife

now residing at the territory of Agaña

Certificate of Identification No. _____ and by occupation _____
 the owner of an estate in Fee Simple, in that certain piece or parcel
 municipality of Sinajana, territory of _____

Cadastral Lot Number 3340-2-2, Chalan Pago, Sinajana, Guam, Santa Fe

containing an area of 1,015 square meters, as shown on Map No. _____
V.C. Sien, RLS No. 23, dated November 7, 1975;

subject, however, to the estate, easements, liens, charges and encumbrances hereon
are over 21 years; civil status Married

Said owner is of the age of _____ years; civil status _____, and
 under no disability.

The sale, gift or devise to aliens of lands in the territory of Guam is prohibited, except as provided
 in Section 672, Civil Code of Guam.

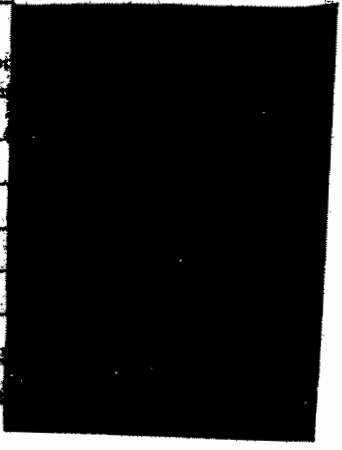
IN WITNESS WHEREOF, I have hereunto set my hand and caused my official seal to be affixed
 this 6th day of January 19 76

[Signature]

 Register of Title
 In and for the Territory of Guam

Memorial of estates, assessments, liens, charges or encumbrances on the land described in the above
 Certificate of Title, other than taxes, for non-payment of which said property has not yet been sold.

Document No.	Kind of Instrument	Registration		Amount	in favor of	Date
		Date	Time			



1 Law Office of Georgette Bello Concepcion, P.C.
173 Aspinall Avenue, Suite 203
2 Hagatna, Guam 96910
Telephone: 671.477.8305
3 Facsimile: 671.477.5873

4 *Attorneys for Plaintiffs Vicente C. Castro
and Menilia C. Castro aka Millie D.C. Castro*

SUPERIOR COURT OF GUAM
OCT 08 2012 11:35
CV 11158-12

5 IN THE SUPERIOR COURT OF GUAM,

CV 11158-12

7 VICENTE C. CASTRO and MENILIA C.
8 CASTRO aka MILLIE D.C. CASTRO,

CIVIL CASE NO. _____

9 Plaintiffs,

**VERIFIED
COMPLAINT**

10 vs.

11 GOVERNMENT OF GUAM,

12 Defendant.

13
14 **I.**

JURISDICTIONAL FACTS

15
16 The Court has jurisdiction over this matter pursuant to 7 GCA §§ 3105 and
17 11311.1.

18
19 1. Plaintiffs, Vicente C. Castro and Menilia S. Castro aka Millie C. Castro
20 (hereinafter collectively as "Plaintiffs") are residents of Guam and are the owners of Lot
21 No. 3340-2-2 (now Lot No. 3340-2-R1) and Lot No. 3340-2-3 (now Lot No. 3340-2-3-
22 R1), in the municipality of Sinajana, Guam.

23 2. The Department of Public Works is an agency of Defendant Government
24 of Guam.

25 *Castro v. Gov't of Guam, CV _____*
Verified Complaint
Page 1 of 5

EXHIBIT C

OCT 08 2012

4:44 *deu*

1 3. Defendant Government of Guam (hereinafter "Defendant") has been
2 vested with the power of eminent domain pursuant to the Organic Act of Guam.

3 4. Plaintiffs filed a claim for unlawful taking pursuant to the Government
4 Claims Act (P.L. 17-29) on March 29, 2012 which was denied as more than six months
5 have passed without disposition of Plaintiffs' claim by Defendant.

6 5. Plaintiffs' claim for unlawful taking is not time barred pursuant to 7 GCA
7 11311.1.

8 **III.**

9 **CLAIM FOR UNLAWFUL TAKING**

10 6. On or about December 21, 1977, Plaintiffs executed a Right of Entry
11 Agreement" (hereinafter "Agreement") wherein they grant Defendant Government of
12 Guam, Department of Public Works permission to enter upon said lot "to construct and
13 maintain The Chelenko Road."

14 7. The Government required Plaintiffs' permission to enter their property to
15 survey the property as to the location of the proposed road.

16 8. Pursuant to the Agreement "it was understood and agreed that the
17 owner(s) will receive compensation for the said land upon completion of an appraisal the
18 Government will cause to be made which would estimate the fair market value of the
19 land needed for the _____ [sic] and severance damages, if any as of December 21, 1977."

20 6. In 2009, Plaintiffs engaged the services of an appraiser as to Lot No.
21 3340-2-2 (now Lot No. 3340-2-R1) and it was not until then did Plaintiffs learn the
22 government had taken a portion of their property without being compensated accordingly.
23

24 7. The area of Lot No. 3340-2-2 (now Lot No. 3340-2-R1) was reduced from
25

1,015 square meters to 589 square meters.

8. Plaintiffs also learned that their adjacent property, Lot No. 3340-2-3 (now Lot No. 3340-2-3-R1), had also been reduced in size.

9. The area of Lot No. 3340-2-3 (now Lot No. 3340-2-3-R1) was reduced from 929 square meters to 763 square meters.

10. Defendant did not obtain a Right of Entry Agreement from Plaintiffs in 1977 as to Lot No. 3340-2-3 (now Lot No. 3340-2-3-R1) as Defendant had done with regard to Lot No. 3340-2-2 (now Lot No. 3340-2-R1).

11. Plaintiffs have paid property taxes on these properties based on the original sizes of the lots.

12. Plaintiffs have been denied the use and enjoyment of their property as their property continues to be used as public easement.

13. Since the date of entry onto Plaintiffs' land and continuing to the date of the filing of this action Defendant, Plaintiffs have not been justly compensated for the unlawful taking of their property by Defendants nor has Defendant made any offers of compensation.

14. Further, to date, Defendant has failed to institute eminent domain proceedings so that damage to Plaintiffs' property could be assessed.

15. Defendant's actions have resulted in the taking of Plaintiffs' private property for public use since 1977 for public use pursuant to Defendant's right of eminent domain.

1 WHEREFORE, Plaintiffs respectfully request:

2 1. Judgment against Defendant for damages in an amount to be proven at
3 trial;

4 2. Reimbursement of property taxes overpaid by them in accordance with the
5 reduction in size of each of Plaintiffs' properties since December 21, 1977;

6 3. Interest as allowed under the laws of Guam for said damages as of
7 December 21, 1977


8 4. Injunctive relief precluding Defendant from further actions injurious to
9 Plaintiffs' property;

10 4. Attorney's fees and costs of suit as allowed pursuant to 7 GCA § 11311.1 ;
11 and

12 5. Such other and further relief as the court may deem just and proper.

13 Submitted this 8th day of October, 2012.
14


15
16 Law Office of Georgette Bello Concepcion, P.C.

17
18 By: 
19 **Georgette Bello Concepcion, Esq.**
20 *Attorney for Plaintiffs*

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VERIFICATION

We, **Vicente C. Castro and Menilia C. Castro, aka Millie C. Castro**, being first
duly sworn, depose and state: That we are the Plaintiffs in the above-entitled matter; that
we have read the foregoing Complaint and know the contents thereof, and certify that the
same is true of our own knowledge, except as to those matters which are therein stated
upon our information or belief, and as to those matters, we believe them to be true.



Vicente C. Castro



Menilia C. Castro aka Millie C. Castro

SERVICE REQUEST

05/20/13 CV1158-12

CASTRO vs. GG

Pleading(s) Correspondence Legal Memo/Opinion Other

1) ATTORNEY CLIENT PRIVILEGED COMMUNICATION 2) EXHIBIT A 3) EXHIBIT B 4) EXHIBIT C

Superior Court District Court Other

SERVE and/or HAND DELIVER:
CARL DOMINQUEZ, DPW 05/20/13 @ 348

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KFOKAS 5/20/2013

SERVICE REQUEST

05/20/13 CV1158-12

CASTRO vs. GG

Pleading(s) Correspondence Legal Memo/Opinion Other 0

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Superior Court District Court Other

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