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32-13-225

IN THE SUPERIOR COURT OF GUAM

HAGÁTÑA, GUAM

MARIA A. GANGE, JESUS CRUZ )  
CHARFAUROS, ANA A. CHARGUALAF, )  
JESUS G. AGUIGUI, for themselves and on )  
behalf of all others similarly situated. )

Plaintiffs, )

vs. )

GOVERNMENT OF GUAM, GUAM )  
ANCESTRAL LANDS COMMISSION by and )  
through its individual Commissioners (for )  
injunctive relief only to prevent a transfer )  
and DOES One (1) through Three hundred )  
(300), inclusive. )

Defendants. )

Civil Case No. CV1461-10

PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
REPLY TO THE GOVERNMENT'S  
POSITION ON THE ISSUES THE  
COURT ORDERED BRIEFED ON  
NOVEMBER 30, 2012 AND REAL-  
PARTY-IN-INTEREST'S POSITION  
OF THE ISSUES THE COURT  
ORDERED BRIEFED ON  
NOVEMBER 30, 2012

COMES NOW Curtis C. Van de veld Esq. of THE VANDEVELD LAW OFFICES, P.C.,  
counsel for the Plaintiffs, who hereby files this Memorandum of Points and Authorities in  
Reply to the Government's Position on the Issues the Court Ordered Briefed on November

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1 30, 2012 and Real-Party-In-Interest's Position of the Issues the Court Ordered Briefed on  
2 November 30, 2012.

3 **I. INTRODUCTION**

4 This Counsel participated in the November 30, 2012 hearing telephonically while he  
5 was off-island. The phone connection was marginal at best, and this Counsel could not  
6 adequately hear what issues the Court wished briefed. This Counsel filed an *Ex Parte*  
7 Application for Clarification of these issues on January 4, 2013. This Counsel is informed  
8 that the Court has been in a criminal trial and therefore was unable to address the  
9 Application. This Counsel therefore files this Reply brief instead, and if accepted by the  
10 Court, withdraws the Plaintiffs' pending *Ex Part* Application.

11 **II DISCUSSION**

12 **A. IS INJUNCTIVE RELIEF THE PROPER REMEDY?**

13 The Plaintiffs agree with the Government's position on Issues # 2 and # 3 that if Public  
14 Law 30-158 effected a taking of the Plaintiffs' private property, regardless of whether for a  
15 public or non-public purpose, that injunctive relief is the proper remedy.

16 The Guam Legislature did not budget compensation for the Plaintiffs. As the  
17 Government has pointed out, this compensation amounts to many tens of millions of dollars.  
18 Given the well publicized budgetary constraints of the Government of Guam, the Guam  
19 Legislature probably would not and could not justly compensate the Plaintiffs for such a  
20 taking. If the Court issues the requested injunction, the Guam Legislature can always pass  
21 new legislation specifically condemning the Plaintiffs' property and providing them with  
22 immediate and just compensation for their condemned property.  
23  
24  
25

1 Plaintiffs disagree with the Proposed Intervener's position that the Plaintiffs are not  
2 entitled to injunctive relief because they are not entitled to the stream of income from the  
3 property specifically held in trust for their specific benefit. The real property affected by  
4 Public Law 30-158 has been transferred by the Government of Guam to a trust specifically  
5 for Plaintiffs' benefit. If this *corpus* is taken from Plaintiffs' trust they will not have the  
6 income generated by that property and there is no statutory procedure for them to obtain just  
7 compensation for this taking of their personal property. This is the key point that the  
8 Proposed Intervener's overlook - that the Plaintiffs have no statutory remedy to obtain  
9 immediate and just compensation for their deprived stream of income. And given the current  
10 financial state of the Government of Guam Plaintiffs will have no means of collecting this  
11 compensation. Therefore, injunctive relief is the proper remedy in this case.

12  
13 The Plaintiffs' further agree with the Government that the taking at issue was not for a  
14 public purpose and was for a private purpose.

15 B. DOES PUBLIC LAW 30-158 EFFECT A TAKING OF PRIVATE PROPERTY?

16 Plaintiffs disagree with the Government that the *A.B.A.T.E.*<sup>1</sup> case is controlling here.  
17 The facts in *A.B.A.T.E.* are significantly different than the facts in this case. In *A.B.A.T.E.* the  
18 beneficiaries of the trust were not a set group of individuals as we have here - they would  
19 change over time and perhaps even daily; the future revenues of the *A.B.A.T.E.* trust derived  
20 from taxes and licensing fees. Critically, here the revenues funding the stream of income to  
21 be paid to the Plaintiffs comes strictly from private sources and is not subject to the taxing  
22 and spending powers of the Guam Legislature; and the *A.B.A.T.E.* trust was to accomplish a  
23

24  
25 <sup>1</sup> *A.B.A.T.E. of Illinois, Inc. v. Giannoulis, Treasurer, State of Illinois, et al.*, 2010 WL 2222801 (Ill. App.4Dist. 2010).

1 continuing public benefit while in this case the *corpus* transferred to the trust was established  
2 by a single transfer as a one-time compensation to a specific aggrieved group of former  
3 landowners whose property continues to be used by either the Federal or local governments -  
4 there is little difference between this transfer to accomplish a stream of income payment and  
5 a single transfer of a parcel of real property to a single individual to accomplish the same  
6 purpose.

7 The facts and circumstances in this case are more analogous to those found in *Illinois*  
8 *Clean Energy*<sup>2</sup> and *Tellis*<sup>3</sup>. Decision and Order filed January 23, 2012 at pp. 23-28.

9 Moreover, while the property forming the *corpus* of the trust in this case originated as crown  
10 lands, all future income derived from this property to compensate the Plaintiffs will be  
11 generated from private sources and does not implicate the taxing and spending power of the  
12 Guam Legislature. The *A.B.A.T.E.* trust's corpus was funded exclusively by annual fees  
13 subject to Illinois Legislature's taxing and spending authority. Thus the principle that a prior  
14 legislature may not bind a future one, elucidated in *A.B.A.T.E.*, is not implicated here because  
15 no future fees or taxes imposed and maintained by the Guam Legislature funds the GALC  
16 Land Bank since all income to be distributed to the Plaintiffs comes solely from private  
17 sources.  
18

19 The *A.B.A.T.E.* Court itself recognized this distinction as follows:

20 However, both *Thompson*<sup>4</sup> and *Illinois Clean Energy* are  
21 distinguishable from the case *sub judice* in that the fees collected  
22 and placed into the CRST Fund are fees charged by the State for  
23 the privilege of operating a motorcycle. The fees are not received  
24 from insurance premiums and held by a separate corporation such

24 <sup>2</sup> *Illinois Clean Energy Community Foundation v. Filan*, 392 F.3d 934 (7th Cir. 2004).

25 <sup>3</sup> *Tellis v. Godinez*, 5 F.3d 1314 (9th Cir. 1993).

<sup>4</sup> *Thompson v. Kentucky Reinsurance Ass'n*, 710 S.W. 2d 854 (Ky.1986).

1 as the KRA as in *Thompson*. Similarly, the monies in the CRST  
2 Fund are not from the sale of a private corporation's assets with the  
3 proceeds being used, at the State's direction, to create a foundation  
4 or trust as in *Illinois Clean Energy*.

5 The case here is also different from *City of Chicago v.*  
6 *Holland*, 206 Ill.2d 480, 493, 276 Ill.Dec. 887, 795 N.E.2d 240,  
7 248 (2003), another case cited by plaintiffs, where the funds at  
8 issue were primarily generated through federal grants and self-  
9 generated revenue through fees paid by airlines, passengers, and  
10 tenants of airports. The money in the CRST Fund is collected by  
11 the Secretary of State from motorcyclists who are paying for the  
12 privilege of operating a motorcycle in Illinois (much like owners of  
13 automobiles pay fees to register their cars), held by the State  
14 Treasurer, and administered by the Defendant.

15 *A.B.A.T.E.* at 401 Ill.App.3d 326, 332, 929 N.E.2d 1188, 1193, 341 Ill.Dec. 109, 114-115.

16 The situation found here is more analogous to that in *Thompson* than *A.B.A.T.E.*  
17 where the Court concluded that funds generated from private sources to pay specific private  
18 liabilities is private funds protected against an uncompensated taking. The *Thompson* Court  
19 reasoned that:

20 Its [Kentucky reinsurance Association] sole corporate purpose is to  
21 fund all claims and liabilities of the Special Fund. Its sole income  
22 is from premiums charged its subscribers—insurance carriers, self-  
23 insurance groups, and self-insured employees. The amount of the  
24 premiums is to be determined—actuarially—to be that amount of  
25 dollars necessary to fund the Special Fund—*whatever the amount*  
If the premiums and premium increases are insufficient to meet  
those needs, the amount of premiums is pro forma increased. The  
funding source of KRA is solely and exclusively from private  
sources.

26 *Thompson* at 710 S.W.2d 857

27 Here the compensation due the original dispossessed landowners for the continued use  
28 of their land by the Government is to be funded exclusively by rental or investment income  
29 generated from the Land Bank trust's corpus whatever the amount. Nor does the fact that the  
30 original corpus stated out as a state asset change this calculus where individuals are

1 specifically to be compensated from government funds. Funds collected by the State but  
2 specifically earmarked for compensation to private individuals must be paid to these private  
3 individuals. *Ross v. Gross*<sup>5</sup>.

4 For the reasons stated, the Land Bank corpus and income generated therefrom for the  
5 benefit of the Dispossessed Ancestral Landowners is private and protected against  
6 uncompensated takings by the Government of Guam.

7 Finally, should the Court see fit to issue a permanent injunctive in Plaintiffs' favor, the  
8 Plaintiffs respectfully requests that this Court certify the class and apply the injunctive relief  
9 to all class members to ensure its just and durable application to all affected Dispossessed  
10 Ancestral Landowners.

### 11 III. CONCLUSION

12 For these reasons, the Court should certify the Plaintiff class and issue a permanent  
13 injunction against the Government of Guam preventing the transfer of all the parcels of real  
14 property referenced in Public Law 30-158.

15 Dated this 17<sup>th</sup> day of February 2017.

16  
17 THE VANDEVELD LAW OFFICES, P.C.

18  
19 **Original Signed By**  
Curtis C. Van de Veld, Esq.

20  
21 Curtis C. Van de Veld, Esq.  
Attorney for Plaintiffs

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23  
24  
25 <sup>5</sup> *Ross v. Gross*, 300 Ky. 337, 188 S.W.2d 475, 477 (1945).