



Empty rectangular input fields at the top of the page.

Mail

Buttons for 'Move to inbox' and 'More'.

COMPOSE

Steel Building Sale - www.freedomsteel.com - Selling Overstocked Steel Buildings Call For A Quote 561-330-0447

Inbox (8,090)

Fwd: FW: Incoming received at 3:53 p.m. on 7th floor CV1461-10 Decision and Order

Inbox x

Starred

Important

Sent Mail

Drafts (66)

Circles

Follow up

Misc

Notes

Priority



Ed Pocaigue

Forwarded message From: Rennae Meno <rennae@guamlegisla...>



Speaker Won Pat <speaker@judiwonpat.com> to Guam

8/2/2013 8:10:23 AM Office of the Attorney General-Via E-mail Civil Case No. CV1461-10, Decision and Order 32-13-658

Ufisinan I Etmás Ge'helo'Gi Liheslaturan Guahan
Office of Speaker Judith T. Won Pat Ed.D.
Kumiten Idukasion yan Laibirihan Publeko
Committee on Education and Public Libraries & Women's Affairs
155 Hesler Place, Suite 201, Hagatna, Guam 96910
www.guamlegislature.com / speaker@judiwonpat.com

07-29-13 SCt CV1461-10.pdf
271K View Download



Click here to Reply or Forward

Steel Building Sale
Selling Overstocked Steel Buildings Call For A Quote 561-330-0447
www.freedomsteel.com

2013 AUG -2 AM 8:23

Tel: 66

Search, chat, or SMS

- Ed Pocaigue
Therese Hart
Faith San Nicolas
Robert Tupaz
Colleen Weller
Frank Torres
Rennae Meno
Wil Castro
Steven Dierking
therese



Office of the speaker
Judith T. Won Pat, Ed.D.
Date 8/2/13
Time 8:10 AM
Received by [Signature]

07.30.13 Di

AGS - Civil  
B. Bischoff

FILED  
SUPERIOR COURT  
OF GUAM

2013 JUL 29 PM 3:44

CLERK OF COURT

By: \_\_\_\_\_

**IN THE SUPERIOR COURT OF GUAM**

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

Plaintiffs,

v.

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

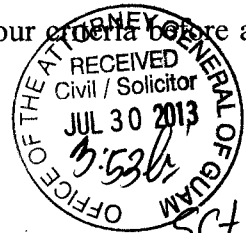
CIVIL CASE NO. CV 1461-10

**DECISION AND ORDER**

**INTRODUCTION**

This matter came before the Honorable Arthur R. Barcinas on the 15<sup>th</sup> day of February, 2013, for hearing on applicant for intervention Vicente P. Crawford's Motion to Intervene. Attorney Curtis Van de veld represented the Plaintiffs, Assistant Attorney General William Bischoff represented the Defendants, and Attorney Michael Phillips represented the applicant for intervention. For the reasons set forth below, the Court DENIES the Motion to Intervene.

Under Rule 24 of the Guam Rules of Civil Procedure and *Limtiaco v. Camacho*, 2009 Guam 7, ¶ 10, "[a]n applicant for intervention must satisfy the following four criteria before a



10.0276 BB

SC4 BOX 80

1 motion to intervene can be granted: (1) the motion to intervene must be timely; (2) the applicant  
2 must have a “significantly protectable interest” relating to the property or transaction that is the  
3 subject of the suit; (3) the applicant must be so situated that disposition of the action may, as a  
4 practical matter, impair or impede the applicant’s ability to protect that interest; and (4) the  
5 applicant’s interest must be inadequately represented by the existing parties.” These factors are  
6 construed broadly in favor of intervention. *Id.*

#### 8 A. Timeliness

9 Under *Sablan v. GLUC*, 2011 Guam 12, ¶ 12, in considering the timeliness of a motion  
10 to intervene, the Court considers three factors: “(1) the stage of the proceedings at the time the  
11 applicant seeks to intervene; (2) the prejudice to the other parties if the motion is granted; and  
12 (3) the reason for and length of the delay.” Here, the applicant sought intervention during the  
13 pendency of summary judgment. While the applicant could perhaps have been more prompt in  
14 filing its motion, the Court, in considering the first timeliness factor, finds nothing weighing  
15 against intervention. Jumping forward to the third timeliness factor, the Court notes that the  
16 applicant provides no reason for a somewhat lengthy delay, and this weighs against  
17 intervention.  
18  
19

20 However, “the most important consideration in deciding whether a motion for  
21 intervention is untimely is whether the delay in moving for intervention will prejudice the  
22 existing parties to the case.” *Sablan v. GLUC*, 2011 Guam 12 at ¶ 15 (quoting Wright and  
23 Miller). The Plaintiffs have not argued convincingly that any prejudice would result from  
24 granting intervention at this stage of the litigation, and the Court cannot see that any would.  
25 Accordingly, the Court concludes that the second timeliness factors weighs in favor of  
26 intervention, and, in light of this factor’s preeminent importance in the timeliness analysis, the  
27  
28

1 Court concludes that the motion for intervention was timely. The Court thus proceeds to  
2 analysis of the other three requirements.

3 B. Applicant's Interest

4 The applicant here argues that he has an ownership interest in a Tiyan property retained  
5 by the GIAA, and that this is enough to constitute a significantly protectable interest in this  
6 litigation for purposes of granting intervention. He points to the report of the Tiyan Taskforce,  
7 of which he himself was apparently the chair, attached to Public Law 30-158. He also provides  
8 documentation that he argues establishes his decedent Josefina Palacios Crawford's ownership  
9 of and interest in a retained Tiyan lot.  
10

11 The Plaintiffs argue that the applicant's interest is too contingent and too remote from  
12 this litigation to justify intervention, citing *Washington Electric Cooperative, Inc. v.*  
13 *Massachusetts Municipal Wholesale Electric Co.*, 922 F.2d 92, 97 (2d Cir. 1990), in support of  
14 the proposition that, where an applicant's legal claim awaits consummation by a merits  
15 adjudication at the time of attempted intervention, that claim is not yet sufficiently direct or  
16 substantial for purposes of determining whether intervention is appropriate.  
17  
18

19 As the Plaintiffs point out, Guam law explicitly delegates authority to the GALC to  
20 determine the validity of ancestral lands claims. This Court plainly does not have the authority  
21 to rule on the merits of the applicant's claim to the retained Tiyan lot in which he argues he has  
22 an ownership interest. This Court cannot grant intervention based on its own conjecture as to  
23 how the GALC would rule on the applicant's claim. The Court has reviewed the applicant's  
24 submissions in support of his motion, and it does not appear to the Court that the GALC has  
25 rendered any ruling that the applicant has a valid claim to a retained Tiyan property within the  
26 meaning of Public Law 30-158. Accordingly, the Court concludes that the applicant's interest in  
27  
28

1 this litigation is not yet sufficiently direct or substantial enough to support intervention. On  
2 these grounds alone, intervention could be denied, as an applicant for intervention must satisfy  
3 all four of the requirements enumerated in *Sablan v. GLUC*, 2011 Guam 12 at ¶ 12.

4 C. Effect of Disposition

5 For intervention to be properly granted, the applicant must also be situated such that the  
6 denial of intervention would impair his ability to protect his interest. Having determined, as  
7 detailed above, that the applicant here has no legally cognizable interest in this litigation, the  
8 Court concludes that this requirement is moot in this instance.

9  
10 However, even if the applicant had a legally cognizable interest in this litigation, the  
11 Court would not find him to be situated such that intervention would be necessary for him to  
12 protect it. In light of the Attorney General’s vigorous defense of this suit and the applicant’s  
13 apparent lack of any interest or argument distinct from those adequately protected and advanced  
14 by the Attorney General, the Court would deny the motion.

15  
16 D. Inadequacy of Representation by Parties

17 An applicant for intervention must also show that his interest is inadequately represented  
18 by the existing parties. Having already determined that the applicant here has no legally  
19 cognizable interest in this litigation, the Court concludes that this requirement is also moot.

20  
21 However, even if the applicant had the interest he claims to have this litigation, the  
22 Court would not find the representation of the existing parties inadequate to protect it. The  
23 applicant cites *United States v. Stringfellow*, 783 F.2d 821, 827 (9<sup>th</sup> Cir. 1986), for the  
24 proposition that a proposed intervenor is required only to show that representation by the  
25 existing parties “may be” inadequate, and that “the burden of making that showing is minimal.”  
26 Even applying that lenient standard, rather than the rule of *United States v. Hooker Chemicals*  
27  
28

1 & *Plastics Corp.*, 749 F.2d 968, 987 (2d Cir. 1984) (requiring that an applicant make a “strong  
2 showing” of inadequate representation where, as here, the government is acting on behalf of the  
3 applicant), the Court finds nothing in the applicant’s motion or attachments that would carry  
4 even a “minimal” burden to show that representation by the Government “may be” inadequate.

5 The applicant argues that “none of the current parties in this litigation have  
6 demonstrated that they can or will adequately represent [his] interest.” Reply to Plaintiff’s  
7 Opposition to Motion to Intervene, 4; *see also* Memorandum and Points of Authority In Support  
8 of Motion to Intervene, 5. But the burden is not on the current parties to demonstrate that their  
9 representation is adequate; the burden, however “minimal” it may be, is on applicant to show  
10 that representation by the parties is inadequate.  
11

12 The applicant’s assertion, for which he provides no evidence, that the “Defendants at  
13 one time or another, have spoken out against Public law 30-158,” Reply to Plaintiff’s  
14 Opposition to Motion to Intervene, 3, is, even if true, insufficient to carry even a “minimal”  
15 burden. The Court cannot accept this unverified allegation of fact, but even if it could, the  
16 participation of the Attorney General’s office in the deliberative process of lawmaking in a  
17 democratic society casts no shadow on its ability to uphold, enforce, and defend a properly  
18 enacted law.  
19

20 The applicant’s undeveloped arguments attempting distinguish his interest in upholding  
21 Public Law 30-158 from the Government’s interest in “administration and policy,” Reply to  
22 Plaintiff’s Opposition to Motion to Intervene, 3, likewise fail. The applicant provides no  
23 reasoning in support of these claims, and the Court is not convinced of their cogency.  
24

25 Accordingly, the Court concludes that the applicant’s interests are adequately  
26 represented by the existing parties. On these grounds alone, intervention could be denied.  
27  
28

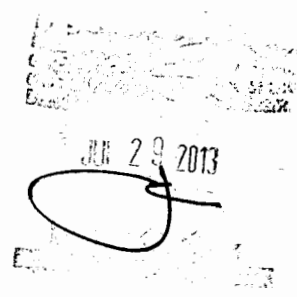
**CONCLUSION**

1  
2 For the reasons set forth above, the Court finds that neither intervention of right nor  
3 permissive intervention are appropriate in this case. Accordingly, the Motion to Intervene is  
4 DENIED.

5  
6 **JUL 29 2013**

7 **IT IS SO ORDERED** this \_\_\_\_ day of July, 2013.

8  
9   
10 **HONORABLE ARTHUR R. BARCINAS**  
11 Judge, Superior Court of Guam

12  
13  
14  
15  
16  
17   
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28