

IN THE SUPREME COURT OF GUAM

MARGARITA D. PEREZ and JESSE C. TOVES,
Plaintiffs-Appellants,

vs.

GUAM HOUSING AND URBAN RENEWAL AUTHORITY (GHURA),
A Government of Guam Public Body Corporate and Politic
Defendant-Appellee.

OPINION

Filed: December 28, 2000

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Supreme Court Case No.: CVA00-010
Superior Court Case No.: CV0410-99

Appeal from the Superior Court of Guam
Submitted on the Briefs, September 14, 2000
Hagåtña, Guam

Appearing for the Plaintiffs-Appellants:

Margarita D. Perez, *Pro Se*
P.O. Box 21021
GMF, Guam 96921

Jesse C. Toves, *Pro Se*
P.O. Box 25043
GMF, Guam 96921

Appearing for the Defendant-Appellee:

David Ledger, Esq.
Carlsmith Ball, LLP
Bank of Hawaii Bldg., Suite 401
134 W. Soledad Avenue
Hagåtña, Guam 96910

BEFORE: BENJAMIN J.F. CRUZ, Chief Justice; PETER C. SIGUENZA, JR., Associate Justice; and JOHN A. MANGLONA, Designated Justice.

CRUZ, C.J.:

[1] Plaintiffs filed this wrongful termination action against the Guam Housing and Urban Renewal Authority, an agency of the government of Guam. The authority moved for dismissal alleging that the trial court lacked jurisdiction because the action was filed nearly two years after expiration of the statute of limitations in the Government Claims Act. The trial court dismissed the Complaint for lack of jurisdiction and this appeal followed. We agree with the trial court and affirm its decision.

I.

[2] Plaintiffs-Appellants Margarita D. Perez (“Perez”) and Jesse C. Toves (“Toves”) were employed by the Guam Housing and Urban Renewal Authority (“GHURA”) as unclassified employees. In November of 1994, the unclassified positions occupied by Perez and Toves were changed to classified positions by resolution of GHURA’s Board of Commissioners (“Board”). Perez and Toves then became classified employees. Shortly thereafter, in February of 1995, the Board revoked the classified status of the positions held by Perez and Toves and redesignated them as unclassified positions. On March 3, 1995, Perez and Toves were terminated from employment.

[3] On March 21, 1995, pursuant to the Government Claims Act (“Claims Act”), Perez and Toves, through legal counsel, filed claims against the government with the Attorney General of Guam. Their claims were denied by the Attorney General on July 11, 1995, and by GHURA on September 20, 1995.

[4] On April 12, 1995, Perez and Toves filed an appeal of their terminations with the Civil Service Commission. On November 14, 1995, Perez and Toves stipulated to dismiss this appeal.

[5] Sometime after their terminations, Perez and Toves, still represented by legal counsel, brought legal action against GHURA in federal court. The District Court of Guam dismissed this action for failure to comply with the statute of limitations.

[6] On February 26, 1999, Perez and Toves, representing themselves, filed the instant action, Civil Case No. CV0410-99, in the Superior Court, alleging wrongful and malicious termination from employment in violation of the Organic Act and the United States Constitution. Perez and Toves sought reinstatement of employment at GHURA, and monetary and punitive damages.

[7] In lieu of an answer, GHURA filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. The trial court found that it had no subject matter jurisdiction and that Perez and Toves failed to state claims upon which relief could be granted because they failed to file their action within the statute of limitations. This appeal followed.

II.

[8] This court has jurisdiction over this appeal from a final judgment. Title 7 GCA § 3107, (1994).

[9] Review of the trial court's grant of a motion to dismiss is *de novo*. *Wood v. Guam Power Authority*, 2000 Guam 18, ¶ 8 (citations omitted). Construing the provisions of the Claims Act are issues of statutory construction that are reviewed *de novo*. *People v. Quichocho*, 1997 Guam 13, ¶ 3.

III.

[10] No agency of the government of Guam may be sued unless sovereign immunity is specifically waived. *Wood*, 2000 Guam 18, at ¶ 10 (citing 48 U.S.C. § 1421a (1987)). Perez and Toves assert that GHURA does not enjoy sovereign immunity because it does not perform any sovereign functions, and therefore, the Claims Act does not apply to GHURA. Thus, they reason that the trial court erred in finding that it did not have subject matter jurisdiction due to their failure to comply with the statute of limitations in the Claims Act.

[11] Whether GHURA enjoys sovereign immunity is not at issue because the Legislature granted this agency the right to sue and be sued in its enabling legislation. *See* Title 12 GCA ¶ 5104 (2), (1996); *see also Guam Economic Development Agency v. Island Equipment Co.*, 1998 Guam 7, ¶ 8 (observing that the Guam Legislature can waive sovereign immunity of a public entity by granting it the right to sue and be sued). However, this is not to imply that GHURA is to be excluded from the operation of the Claims Act. The Claims Act provides:

This Chapter applies, except as provided in § 6104 of the Chapter, to the entire government of Guam, as specifically stated herein. **No government agency, whether denominated as a line department, an agency, or a public corporation, is excluded from the scope of this Chapter. The fact that an agency or instrumentality has or has not the right to sue or to be sued in its own name does not exclude such agency or instrumentality from the scope of this Chapter.**

Title 5 GCA § 6102, (1993) (emphasis added).¹ The Legislature created GHURA as a public corporation.

Title 12 GCA § 5103(a), (1996) (“There is hereby created a public body corporate and politic to be

¹ Section 6104 exempts only tax refunds, the Workers Compensation Law and the Retirement Fund, and does not exempt GHURA.

known as the ‘Guam Housing and Urban Renewal Authority.’”). Thus, the Claims Act is applicable to GHURA and the waiver of sovereign immunity is within the limits prescribed by the act. The act provides in relevant part:

Limitations on Actions and Filing.

(a) All claims under this Act must be filed within 18 months from the date the claim arose, but any claims timely filed under the predecessor of this Act shall be considered to have been timely filed under this Chapter.

(b) Every action filed under this Chapter shall be barred unless commenced within 18 months from the time the notice that the claim was rejected was served as provided in Article 2 of this Chapter, or within 24 months after the claim was filed in cases where the government does not reject the claim.

Title 5 GCA § 6106, (1993).

[12] Turning to the facts of this case, Perez and Toves were terminated from employment on March 3, 1995. They filed claims with the Attorney General’s Office pursuant to the Claims Act on March 21, 1995. Their claims were denied by the Attorney General on July 11, 1995, and by GHURA on September 20, 1995. Under the Claims Act, Perez and Toves had eighteen months from the date they received notice of rejection of their claim by GHURA. *See* 5 GCA § 6106. Although the exact date of receipt of this notice cannot be ascertained from the record, Perez and Toves do not dispute receiving the notice of rejection from GHURA. Perez and Toves filed the instant case on February 26, 1999. Thus, well over three years passed from the denial of the claim by GHURA to the filing of the instant suit by Perez and Toves and it cannot be disputed that this suit was filed far beyond the Claims Act’s statute of limitations.

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[13] Perez and Toves argue that they filed their claims with the Attorney General of Guam not with GHURA. Thus, they insist that they did not file a government claim with GHURA and that somehow the claims act's statute of limitations is therefore rendered inapplicable. This argument offers no support and is self-defeating. In addition, this position directly contradicts statements given by affidavit that their claims were filed with "both the Attorney General of Guam and GHURA." Appellee's Supplemental Excerpts of Record at C-18 and 47, Perez and Toves Affidavits. How GHURA obtained their claims is unimportant. The undisputed facts are that GHURA was in receipt of claims filed pursuant to the Claims Act by Perez and Toves, and that GHURA denied these claims in writing.

[14] In order to sue the government or any agency thereof, autonomous or non-autonomous, the procedures of the Claims Act must first be followed. *See* 5 GCA § 6102. Failure to file a claim prior to filing a suit warrants dismissal on a jurisdictional ground. *See e.g. Ciesiolka v. San Nicolas*, 1991 WL 336902, at *3 (D. Guam Ap. Div. June 11, 1991). Further, this court recently held that the filing of a untimely claim against the government pursuant to the Procurement Act, Chapter 5 of Title 5 Guam Code Annotated, leaves the trial court without jurisdiction over the case. *Pacific Rock Corp. v. Dept. of Education*, 2000 Guam 19, ¶ 31. This court has recognized that the Procurement Act and the Claims Act set the parameters within which a suit may be brought against the government. *Wood*, 2000 Guam 18, ¶ 11. Nonetheless, Perez and Toves argue that the trial court should have invoked its jurisdiction on equitable grounds.

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[15] Historically, courts have been hesitant to allow the assertion of equitable estoppel against a statute of limitations defense in an suit against a sovereign. *See Houston v. United States Postal Service*, 823 F.2d 896, 902 (5th Cir. 1987). This position is based upon the doctrine of sovereign immunity under which the government's liability can be no greater than it permits. *Id.* Thus, equitable considerations that may waive or toll a limitation period in litigation between private parties do not have the same effect in a suit against a sovereign. *Id.*

[16] Perez and Toves argue that GHURA is equitably estopped from asserting a statute of limitations defense because the agency led them to believe that they would receive a "due process" hearing on their terminations. They claim that they stipulated to the dismissal of their Civil Service Commission appeals due to GHURA's promised hearing. This hearing, they allege, was scheduled for November 23, 1995 but never held. Perez and Toves assert that this hearing has been continuously denied by GHURA resulting in continuing harm to them thus tolling the statute of limitations.

[17] This argument is of little weight. The facts presented by Perez and Toves, show that from the date of the initially scheduled "due process" hearing, they waited more than three years to file the instant case. However, their prior conduct indicates they were well aware of the Claims Act's application in their case. Indeed, they obtained legal counsel and filed claims with the Attorney General's Office within three weeks of being fired. These claims were denied by the Attorney General and by GHURA and Perez and Toves were aware of such denials. While they are now *pro se*, the record indicates that Perez and Toves initiated legal action on these same grounds in the District Court of Guam and possibly in the Superior Court prior to filing the instant case. These facts indicate that their neglect in filing the Complaint in this case well

beyond the Claims Act limitations period is not excusable.

IV.

[18] The Claims Act sets forth the specific parameters for filing a suit against GHURA. Perez and Toves filed their Complaint two years beyond the expiration of statute of limitations contained in the Claims Act and have failed to show that their neglect is excusable. The trial court's dismissal for lack of jurisdiction is **AFFIRMED**.

PETER C. SIGUENZA, JR.
Associate Justice

JOHN A. MANGLONA
Designated Justice

BENJAMIN J. F. CRUZ
Chief Justice