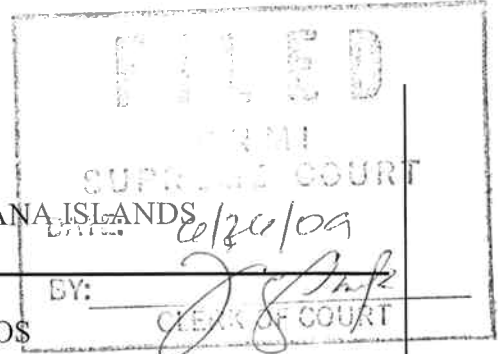


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IN THE SUPREME COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS



BENIGNO R. FITIAL and ELOY S. INOS
Defendants-Appellants

v.

CHRISTINA-MARIE E. SABLAN
Plaintiff-Appellee.

Supreme Court No. 09-2009-SCC-0031-CIV
Superior Court Case No. 09-0066 CV

**MOTION FOR RECONSIDERATION OF
SUPREME COURT ORDER STAYING RELEASE OF REQUESTED DOCUMENTS**

Christina-Marie E. Sablan
PO Box 500994
Saipan, MP 96950

Tel: (670) 285-3935
Email: tinasablan@gmail.com

Pro Se

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I. INTRODUCTION

Under binding Commonwealth law, this Honorable Court shall not issue a stay prohibiting the release of court-ordered documents “unless the court determines that there is a substantial probability that opening the records for inspection will result in significant damage.” 1 CMC §9916(b)(3). At present, the record is devoid of any finding of “substantial probability” or evidence of “significant damage.” Accordingly, absent these mandatory and prerequisite findings, the instant stay clearly violates applicable and binding Commonwealth law and therefore must be lifted.

COMES NOW CHRISTINA-MARIE E. SABLAN, Plaintiff-Appellee (hereinafter, “Appellee”), and files this Motion for Reconsideration of Supreme Court Order Staying Release of Requested Documents Pending Appeal. As set forth in greater detail below, the express letter of the law simply does not allow this court the discretion to grant a stay where the government has failed to meet its prerequisite burden. Moreover, public policy favoring the spirit of transparency all but compels this court to end the secrecy and compel reasonable disclosure.

I. BACKGROUND

On June 18, 2009, after a series of hearings and briefings pursuant to Ms. Sablan’s requests for such records and subsequent petition for mandamus submitted under 1 CMC § 9901 *et seq.*, the Open Government Act (hereinafter, “OGA” or “Act”), the trial court ordered Defendants-Appellants Governor Benigno R. Fitial and then-Secretary of Finance Eloy S. Inos¹ (hereinafter, “Appellants”) to release certain records relating to *CNMI v. USA, et al.*, 1:08-cv-01572 (hereinafter, “903 lawsuit”). Order Releasing Documents Requested Pursuant to the Open

¹ Appellant Inos is now serving as Lieutenant Governor of the CNMI.

1 Government Act (hereinafter, "Order Releasing Documents"). These records contained
2 information regarding funding sources, summaries of billing invoices, and expenditures for the
3 CNMI's 903 lawsuit.

4 In its Final Judgment, the trial court stipulated that the records were to be released by
5 11:30am on June 20, 2009, in accordance with 1 CMC § 9916(b)(2), requiring the disclosure of
6 records within 48 hours of the court order. On June 19, 2009, Appellants filed a Motion for Stay
7 of the Order Releasing Documents in both the trial court and this court. On the same day, the trial
8 court denied the motion in its Order Denying Defendants' Motion for Stay Pending Appeal
9 (hereinafter, "Order Denying Stay"), while this Court granted the motion in its Order Staying
10 Release of Requested Documents Pending Appeal (hereinafter, "Order Staying Release").

11 **II. ARGUMENT**

12 **A. THE MOTION FOR STAY FAILS TO ESTABLISH THAT THERE IS SUBSTANTIAL 13 PROBABILITY FOR SIGNIFICANT DAMAGE.**

14 According to 1 CMC § 9916(b)(2), an agency must comply with a court order to open its
15 records for inspection "within 48 hours, unless otherwise provided by the court issuing such order,
16 or unless the appellate court issues a stay order within such 48 hour period." Further, 1 CMC §
17 9916(b)(3) provides that "[a] stay order shall not be issued unless the court determines that there is
18 a substantial probability that opening the records for inspection will result in significant damage."
19 Under the Open Government Act, the determination of a substantial probability for significant
20 harm is the only proper standard upon which court-ordered stays may be granted. Appellants not
21 only fail to meet the OGA standard in their Motion for Stay, they completely ignore it, citing
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1 instead another standard that is improper in the context of the OGA for reasons discussed further
2 below.

3 The OGA standard for stays on court-ordered disclosure is necessarily a difficult one to
4 meet, consistent with the express legislative intent of the Act. According to 1 CMC § 9901, the
5 intent of the Act is to ensure that the actions of the government be made openly, and that the
6 people remain informed so that they may retain control over the instruments of government they
7 have created. Further, 1 CMC § 9901 clearly provides that the Open Government Act must be
8 liberally construed in favor of open records: “the provisions requiring open meetings and records
9 shall be liberally construed, and the provisions providing for exceptions to the Act shall be strictly
10 construed against closed meetings and nondisclosure of records.” Exemptions are provided under
11 1 CMC § 9918(a), but even those exemptions are inapplicable to the extent that records may be
12 released in redacted form to protect personal privacy or a vital government function, or to the
13 extent that the Superior Court finds, after a hearing, that the nondisclosure of records in whole or
14 in part would be clearly unnecessary to protect personal privacy or a vital government function. 1
15 CMC § 9918(b)-(c).

16 After a number of briefings and hearings on the case, including an *in camera* judicial
17 review of all the requested records, Appellants were clearly unable to persuade the trial court that
18 the billing summaries, voucher/payment records, memoranda and letters between the Governor,
19 Secretary of Finance, and the Bank of Guam, journal entries reflecting fund transfers, and the
20 Governor’s Account Ledger should not be disclosed. The trial court found that although the
21 litigation exemption applied, these records should still be released pursuant to 1 CMC § 9918(c)
22 because nondisclosure was clearly unnecessary to protect a vital government function and
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1 disclosure of such records could in no way disadvantage the CNMI in the 903 lawsuit. Order
2 Releasing Documents, at 14-16.

3 The trial court further rejected Appellants' argument that the government has a right to be
4 treated the same as any litigant, finding that Appellants had failed to provide "any articulated
5 reason or explanation why releasing the documents disadvantages them and the argument is void
6 of case law which supports the proposition that government spending for litigation is not subject to
7 public disclosure." Order Releasing Documents, at 10. The trial court observed that the CNMI
8 government's estimated litigation budget, government attorney salaries, and general budget are
9 already matters of public knowledge, and that nothing in the records it had ordered for release
10 indicated a maximum amount that the CNMI government would be willing to pay for litigation,
11 nor would these records reveal strategy, litigation intention, or any information that would create a
12 disadvantage for the CNMI in the 903 litigation.

13 Significantly, Appellants have not disputed, nor can they dispute, the trial court's findings
14 that the CNMI government's estimated litigation budget, government attorney salaries, and
15 general budget are already matters of public knowledge. The fact that the CNMI government's
16 financial posture is already known renders illogical any argument Appellants have made that the
17 government must be treated the same as any other litigant and that revealing the government's
18 financial posture would create a tactical disadvantage in the 903 lawsuit. Further, the trial court
19 found that none of the information contained in the documents indicates any cap or maximum
20 allowance for the litigation budget that would thereby imply that the litigation would end when the
21 maximum amount is spent. Order Releasing Documents, at 10. In denying Appellants' Motion
22 for Stay, the trial court found that Appellants had simply reasserted their arguments without
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1 addressing these aforementioned facts, and had failed to produce any evidence that substantial
2 probability of significant damage existed in disclosure. Order Denying Stay, at 2-3.

3 Appellants' Motion for Stay before the trial court is substantially similar to their Motion
4 for Stay before this court, and similarly lacks any evidence that substantial probability of
5 significant damage exists in disclosure. Appellants once again merely reiterate before this court
6 stale arguments that have already been rejected by the trial court, ignore facts that render those
7 arguments illogical, and ask for more time to perfect their appeal. Appellants even go so far as to
8 assert that "the trial court's reasoning allows for the exceptions contained within the OGA to be
9 eviscerated, in contravention of express Legislative intent," but ignore the express legislative
10 intent that the Open Government Act shall be construed in favor of open records, the express
11 legislative intent that the exceptions are inapplicable to the extent that records may be released in
12 redacted form to protect personal privacy or a vital government interest, and the express legislative
13 intent that the trial court shall have the discretion to release exempted records in whole or in part
14 upon a finding that nondisclosure would be clearly unnecessary to protect a vital government
15 function. Motion for Stay of Superior Court Decision, at 6; 1 CMC § 9901; 1 CMC 9918(b) – (c).

16 In its Order Staying Release, this court stated that "[a]t this stage of the proceedings, it is
17 difficult, if not impossible . . . to make the determination whether opening the documents will
18 result in significant damage . . ." and that it was unable to conduct a review of the record and the
19 documents in question within the 48-hour timeframe required by the trial court under 1 CMC §
20 9916(b)(2). Order Granting Stay, at 2-3. Appellee respectfully asks this court to consider that in
21 liberally construing the Open Government Act in favor of open records, a stay need not and should
22 not be granted on the trial court's order of disclosure when Appellants have clearly failed to
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1 produce any evidence before this court within the 48-hour timeframe established by law that there
2 is a substantial probability of significant damage in disclosure.
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4 **B. THE MOTION FOR STAY IS BASED UPON AN IMPROPER STANDARD IN THE**
5 **CONTEXT OF THE OPEN GOVERNMENT ACT.**

6 As previously noted, in their Motion for Stay Appellants completely ignore the standard
7 explicitly described in the Open Government Act at 1 CMC § 9916(b)(2), the only standard upon
8 which stays on court orders for disclosure may properly be granted – that is, a determination of
9 substantial probability of significant damage as a result of disclosure. Appellants rely instead on
10 *Vaughn v. Bank of Guam*, which held that litigants would be entitled to a stay if they can show “a
11 combination of probable success on the merits and possibility of irreparable injury, or that serious
12 questions are raised and the balance of hardship tips sharply in the appellants’ favor.” Motion for
13 Stay of Superior Court Decision, at 3.

14 Even under the *Vaughn* standard, however, Appellants’ arguments in their Motion for Stay
15 are insufficient to establish any probability of success on the merits, any possibility of irreparable
16 injury, any serious question raised, or a balance of hardship tipped sharply in their favor. Once
17 again Appellants fail to address the fact that the CNMI’s estimated litigation budget, government
18 attorney salaries, and general budget are already matters of public knowledge, and also fail to
19 articulate a single reason why the disclosure of the requested records would create any
20 disadvantage for the CNMI in the 903 lawsuit given the already public status of the CNMI’s
21 financial posture. Indeed, in rejecting Appellants’ Motion for Stay the trial court described
22 Appellants’ likelihood of success on appeal as “nil” and found that they had failed to demonstrate
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