



By the order of the court, Judge David A Wiseman

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FOR PUBLICATION

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

CHRISTINA-MARIE SABLAN)
)
 Plaintiff,)
)
 vs.)
)
 BENIGNO R. FITIAL, in his official)
 capacity as GOVERNOR of the)
 COMMONWEALTH OF THE)
 NORTHERN MARIANA ISLANDS,)
 ELOY INOS, in his official capacity as)
 SECRETARY OF FINANCE.)
)
 Defendants.)
)
 _____)

CIVIL ACTION NO. 09-0066E

ORDER DENYING DEFENDANTS'
MOTION FOR STAY PENDING APPEAL

On June 18, 2009, this Court issued an Order Releasing Requested Documents Pursuant to the Open Government Act (hereinafter "Order"). Defendants have filed the instant motion asking for a stay of the directives in that Order pending appeal. For the reasons set forth below, Defendant's Motion is hereby denied.

I. DISCUSSION

Defendants move this Court to stay the proceedings pursuant to Commonwealth Rule of Civil Procedure 62(e) and Commonwealth Rule of Appellate Procedure 8. However, the Open Government Act (hereinafter "OGA") explicitly describes the standard upon which a court may issue a stay following an order to open documents to a requesting party. Regardless of the standards this Court

1 applies in determining whether or not a stay is warranted, Defendants' Motion should be denied.

2 The OGA states that:

3 [a] stay shall not be issued unless the court determines that there is a
4 substantial probability that opening the records for inspection will result in
5 significant damage. 1 CMC § 9916 (b)(3).

6 For reasons summarized below and discussed in the Order, there is no probability that opening
7 the records will result in damage, let alone significant damage.

8 Defendant argues that the Order "essentially held that the government's need to be treated the
9 same as any litigant before a tribunal is clearly unnecessary to a vital government function." Def.
10 Motion For Stay Pending an Appeal at 2 (hereinafter "Def. Motion"). Further, Defendant asserts that
11 "the different treatment that this Court's Order subjects the Commonwealth to is, in and of itself, a
12 disadvantage and harmful because, as pointed out to this Court, litigants, generally, are not forced to
13 describe to their adversaries the amount of money they pay their attorneys." and the "universally
14 excepted [sic] reason for this is that this type of knowledge allows one side to pressure the other at the
15 settlement table or press on in litigation when it might otherwise not." Def. Motion at 3.

16 As pointed out by this Court in its Order, a government litigant is not in the same position as a
17 private party litigant and thus, treating a government litigant as any other litigant is nonsensical. Unlike
18 private litigants, the expected litigation budget is *already* a matter of public knowledge and what a
19 government normally pays its attorney (i.e. Attorney Generals) is also a matter of public knowledge.
20 Merely claiming that the government *should* be treated exactly as a private litigant falls extremely short
21 considering the stark differences between what is already known by the public regarding government
22 litigant versus what is known by the public regarding private litigants.

23 Lastly, as pointed out by this Court, nothing in the documents indicates a maximum amount the
24 Commonwealth is willing to dedicate to the 903 Lawsuit. Thus, the pressure which may result at the
25 'settlement table' that results from revealing a party's financial posture is a nonissue. Since Defendants
have reasserted this argument without addressing the fact that the government's financial posture is

1 already known, there is nothing which indicates that releasing the documents will disadvantage the
2 government in the 903 Lawsuit.

3 If Defendants' request for a stay was not pursuant to a decision rendered under the OGA, then
4 the standard Defendants articulate in their Motion would be appropriate. Under that standard,
5 Defendants would be entitled to the stay if they showed (1) a combination of probable success on the
6 merits and the possibility of irreparable injury, or (2) that serious questions are raised and the balance of
7 hardship tips sharply in appellants' favor. *Vaughn v. Bank of Guam*, 1 N.M.I. 318 (1990). Defendants
8 have failed to articulate a single reason how releasing the documents will disadvantage the 903 Lawsuit
9 which actually takes into account the already public status of the CNMI's financial posture and the
10 already public status of the expected litigation budget. Thus, the likelihood of success on appeal is nil.

11 Additionally, Defendant has failed to show that the balance of hardships tip sharply in their favor
12 or that serious questions of law are raised. The OGA must be construed liberally in favor of open
13 records and against the nondisclosure of records. Without a concrete showing that the revelation of this
14 information is harmful, the OGA shall be construed in favor of open records. Further, nothing in the
15 released documents reveals strategy, litigation intention, or otherwise harmful information regarding the
16 financial posture of the CNMI. Thus, there is no real question of whether or not the government should
17 disclose how much taxpayer money is being spent on the 903 Lawsuit and where the funding is coming
18 from. Thus, even under the standard espoused in the Rules of Civil Procedure and accompanying case
19 law, albeit an improper standard in the context of the OGA, the stay should be denied.

20 For the foregoing reasons, Defendants' Motion For a Stay is **HEREBY DENIED**.

21
22 **SO ORDERED this 19th day of June, 2009.**

23
24 / s /
25 DAVID A. WISEMAN, ASSOCIATE JUDGE