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**FOR PUBLICATION**

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

<b>COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,</b>	)	<b>CIVIL CASE NO. 12-0271D</b>
	)	
	)	
<b>Plaintiff,</b>	)	<b>ORDER GRANTING</b>
	)	<b>PRELIMINARY INJUNCTION</b>
<b>v.</b>	)	
	)	
<b>LUISA BORJA QUITUGUA &amp; ELBERT QUITUGUA,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	
	)	

**I. INTRODUCTION**

THIS MATTER was heard on Thursday, November 15, 2012, in Courtroom 217A on Plaintiff Commonwealth of the Northern Mariana Islands’ (“Commonwealth” or “Plaintiff”) Motion for Preliminary Injunction. The Commonwealth was represented by Assistant Attorney Generals Charles E. Brasington and David Lochabay. Defendant Elbert Quitugua (“Elbert”) appeared *pro se*. Defendant Luisa Borja Quitugua<sup>1</sup> (“Luisa”) did not appear. Having read the pleadings and heard oral arguments, the Court issued its ruling from the bench granting the Preliminary Injunction and ordering Defendant Elbert Quitugua to remove the blockages on As Teo Road by 4:30 p.m., November 15, 2012. The Court now issues this written Order.

<sup>1</sup> Luisa is Elbert’s mother.

1 **II. BACKGROUND**

2 Luisa holds title to Lots 218-5R/W and 218-6R/W. These two lots form a part of a stretch  
3 of road on Saipan known as As Teo road. In *Commonwealth v. Lot 218-5R/W*, the Commonwealth  
4 sought to condemn these lots for public purpose. *Commonwealth v. Lot 218-5R/W*, Civil Action  
5 No. 96-1158. The final judgment in that case ordered the Commonwealth to pay Luisa \$89,838 in  
6 just compensation for the taking of her property. *Id* at ¶4. To date, over \$77,137.00 remains unpaid  
7 because the Commonwealth Legislature failed to appropriate sufficient funds to pay the judgment.  
8 Title remains with Luisa until she is fully compensated.<sup>2</sup> However, the Commonwealth has the  
9 right to possession and control of Lots 218-5R/W and 218-6R/W as public easements.

10 On November 9, 2012, the Office of the Attorney General received reports that a part of As  
11 Teo Road was blocked. Upon further investigation, it was discovered that a backhoe was digging  
12 trenches across Lots 218-5R/W and/or 218-6R/W and piling the excavated dirt across the road,  
13 preventing the continuous flow of traffic on As Teo road. At the hearing, Elbert informed the Court  
14 that he hired the services of a heavy equipment company to dig the trenches and to block access  
15 onto these lots upon Luisa's instruction. The digging exposed an underground utility cable that  
16 Elbert threatened to cut. The Commonwealth's witness testified that the As Teo road was not  
17 completely blocked but large commercial and emergency vehicles could not pass through it because  
18 of the obstruction.

19 The Commonwealth filed a Motion for Emergency *Ex Parte* Temporary Restraining Order  
20 on November 9, 2012, restraining the defendants and persons working in concert with them from  
21 blocking As Teo Road and all other Commonwealth roads and requiring the defendants to remove  
22 any blockages that they had placed on the road. The Court granted the motion on the same day.

23 \_\_\_\_\_  
24 <sup>2</sup> *Commonwealth v. Lot No. 343 New G, et al.*, 2012 MP 6.

1 On Monday, November 12, 2012, the blockage still remained and the trench that had been  
2 dug had gotten larger. Second Declaration of David Lochabay. As a result, the Commonwealth  
3 filed a Motion for Contempt against the defendants. The Court will address the Contempt Motion  
4 in a separate order.

### 5 **III. LEGAL STANDARD**

6 “[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be  
7 granted unless the movant, by a clear showing, carries the burden of persuasion.” *Mazurek v.*  
8 *Armstrong*, 520 U.S. 968, 972 (1997). The purpose of a preliminary injunction is to preserve the  
9 status quo pending a final determination on the merits. *Pacific Am. Title Ins. & Escrow (CNMI),*  
10 *Inc. v. Anderson*, 6 NMI 15 ¶ 8 (1999). The status quo is the last uncontested status prior to the  
11 pending controversy. *Id.* In deciding whether to grant a preliminary injunction, Commonwealth  
12 courts consider (1) whether the plaintiff has a strong likelihood of success on the merits; (2) the  
13 level of the threat of irreparable harm to the plaintiff if the relief is not granted; (3) the balance of  
14 harms to the parties and (4) the public interest. *Villanueva v. Tinian Shipping & Transp., Inc.*, 2005  
15 MP 12 ¶ 20.

16 Alternatively, a court may issue a preliminary injunction if the moving party demonstrates  
17 either a combination of probable success on the merits and the possibility<sup>3</sup> of irreparable harm or  
18 the existence of serious questions going to the merits and a balance of hardships sharply tipping in  
19 the movant’s favor. *Pacific Am.*, 6 NMI 15 ¶ 9.

20 \_\_\_\_\_  
21 <sup>3</sup> The United States Supreme Court has held that the “possibility” standard is too lenient, writing:

22 The lower courts held that when a plaintiff demonstrates a strong likelihood of  
23 success on the merits, a preliminary injunction may be entered based only on a  
24 “possibility” of irreparable harm. The “possibility” standard is too lenient. This  
Court’s frequently reiterated standard requires plaintiffs seeking preliminary relief  
to demonstrate that irreparable injury is *likely* in the absence of an injunction.

*Winter v. NRDC, Inc.*, 555 U.S. 7, 8 (2008) (emphasis in original).

1 **IV. DISCUSSION**

2 A preliminary injunction may be granted pending a final determination on the merits after a  
3 careful consideration of (1) whether the plaintiff has a strong likelihood of success on the merits,  
4 (2) the level of the threat of irreparable harm to the plaintiff if the relief is not granted, (3) the  
5 balance of harms to the parties and (4) the public interest. *Villanueva*, 2005 MP at 20.

6 **1. Plaintiff’s likelihood of success**

7 The Commonwealth has filed for an injunction pursuing claims against the defendants for  
8 nuisance, ejectment, and trespass.

9 **a. Nuisance**

10 Under CNMI law, an individual commits the offense of nuisance “if by an act or neglect of  
11 a legal duty he or she maintains or allows to exist a thing or place in a condition which is a hazard  
12 or otherwise prejudicial to the health, comfort, safety, property, or to rights to peace, quiet and  
13 privacy of another.” 6 CMC § 3104(a). In this case, the defendants have blockaded a major  
14 roadway and threatened to cut utility lines in an effort to force the Government to comply with the  
15 payment order in the Final Judgment issued on August 1, 2005. Final Judgment, *Commonwealth v.*  
16 *Lot 218-5R/W*, Civil Action No. 96-1158.

17 In representing the interests of the residents of Saipan and every one who legally uses public  
18 roads, the Commonwealth presented concerns of utmost importance: the safety, wellbeing, and  
19 overall comfort of the community. The defendants’ choice of self-help method has placed the  
20 community at risk. Citizens and emergency personnel are unable to fully access As Teo Road, and  
21 residents in that area will be without various utilities if Elbert follows through with his threat to cut  
22 the lines. While Luisa clearly has a right to the money awarded in the taking of her land, such self-  
23 help measures that endanger the community cannot continue. The Court is sympathetic to Luisa’s  
24

1 plight, but it must also consider the lives of other residents who might be in jeopardy by defendants’  
2 actions.

3 The Commonwealth has shown a likelihood of success on the merits in an action for  
4 nuisance.

5 **b. Ejectment**

6 An ejectment action is one that seeks to restore possession of property to the person entitled  
7 to it. *Hefner v. Napoleon*, Civ. No. 93-0007 (NMI Super. Ct. Dec. 9, 1993) (Order Denying Motion  
8 to Dismiss and Motion for Judgment on the Pleadings at 11). In such an action, the movant must  
9 not only “establish a right to possession in himself, but he must also show that the defendant is in  
10 wrongful possession.” *Id.*

11 Here, the Final Judgment issued by the Superior Court in the takings case provided the  
12 Government with the right to possess and control the land in question. That the Legislature has  
13 failed to appropriate the requisite funds does not dispossess the Government of these rights. In  
14 accordance with that prior Judgment, Luisa remains the title holder until all sums have been paid to  
15 her, but the Government also retains its rights of possession and control. Thus, the Commonwealth  
16 has shown a likelihood of success on the merits on this claim.

17 **c. Trespass**

18 A trespass has been committed where a person “makes an unlawful and unauthorized entry  
19 upon or interferes with the peaceful use and enjoyment of the property of another, and upon being  
20 lawfully advised to leave to desist to promptly do so”. 6 CMC § 1804(a).

21 Here, the defendants have interfered with a public easement that the Government has  
22 maintained and control since pre-war. It has the right to possess and control As Teo road. This  
23 interference has broad ramifications not only to the Government, who is the rightful possessor, but  
24 also to the community. Prior to this action, the Commonwealth made multiple requests that the

1 defendants refrain from blocking As Teo Road. The defendants, however, continued to dig a trench  
2 and block the road. Again, the Commonwealth has shown a likelihood of success on the merits on  
3 this cause of action.

#### 4 **2. Threat of irreparable harm**

5 The threat of harm to the community is great. Here, the blockade makes it very difficult,  
6 and perhaps impossible, for citizens and emergency personnel to access the areas serviced by this  
7 roadway. This condition creates a genuine hazard to the community because emergency workers  
8 may be hampered or unable to assist people serviced by As Teo road.

9 Further, if utility lines are cut, additional hazards will be created. Citizens may be unable to  
10 place calls to emergency workers and may be without clean water and electricity, depending upon  
11 which lines are destroyed. The financial costs of repairing the lines in this instance would also be  
12 great. Thus, the injury to the public is irreparable.

#### 13 **3. Balance of harms to the parties**

14 The risk of harm to the residents living in this area is quite high while the harm to the  
15 defendants is negligible. The defendants are seeking the payment of a monetary award. Their  
16 position will remain unchanged until the legislature appropriates the requisite funds regardless of  
17 whether or not they are restrained from blockading the road and cutting utility lines. In fact, it is  
18 foreseeable that this continued self-help mechanism may cause more harm to the defendants  
19 because they may be held financially liable for damages that their actions may cause to the road and  
20 utility lines. In the balance, the hardship tips in favor of the residents of the Commonwealth and all  
21 those who legally use As Teo road.

#### 22 **4. Public interest**

23 Finally, issuing the injunction is in the best interest of the public because it will ensure that  
24 Commonwealth residents are not unduly burdened by the actions of the defendants. It will also

1 serve as a notice to others similarly situated that these types of self-help methods endanger the  
2 community and are unacceptable. The Court further finds that it is in the public's best interest to  
3 assure that Commonwealth citizens follow the law instead of taking matters into their own hands.  
4 The defendants must seek other forms of legal remedy and must refrain from using this type of self-  
5 help or protest method

6 **V. CONCLUSION**

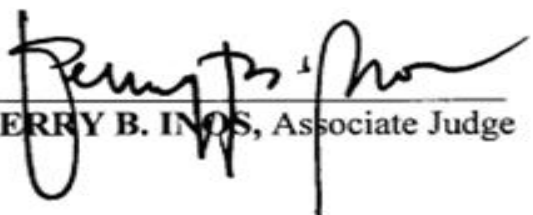
7 Based on the foregoing, the Commonwealth's Motion for Preliminary Injunction is  
8 **GRANTED**. The defendants are hereby **RESTRAINED, ENJOINED, and PROHIBITED** from:

- 9 1. Blocking As Teo Road and all other roads in the Commonwealth and  
10 2. Cutting any utility lines.

11 The defendants are further **ORDERED** to remove any blockages they have placed on the  
12 road by Thursday, November 15, 2012 at 4:30 p.m.

13 The Trial for permanent injunction in this matter is scheduled for **Tuesday, January 22,**  
14 **2013, at 9:00 a.m. in Courtroom 217A.**

15 **SO ORDERED this 16th day of November, 2012.**

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19 **PERRY B. INOS, Associate Judge**