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7:41 JUN 23 AM 11: 20

IN THE SUPREME COURT OF GUAM

SUPREME COURT
OF GUAM

ATTORNEY GENERAL OF GUAM,
Plaintiff-Appellee,

v.

CARL T.C. GUTIERREZ,
DAVINA M. LUJAN, and DOES A-M,
Defendants-Appellants.

Supreme Court Case No. CVA09-024
Superior Court Case No. CV166-03

OPINION

Cite as: 2011 Guam 10

Appeal from the Superior Court of Guam
Argued and Submitted November 30, 2010
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice¹; MIGUEL S. DEMAPAN, Justice *Pro Tempore*; ALEXANDER C. CASTRO, Justice *Pro Tempore*.

TORRES, C.J.:

[1] Defendants-Appellants Dr. Davina M. Lujan and former Governor Carl T.C. Gutierrez appeal personal judgments against them in the amounts of \$100,000.00 and \$300,000.00, respectively, obtained as a result of an action filed by the Attorney General of Guam pursuant to the Enforcement of Proper Government Spending Act, 5 GCA § 7101 *et seq.*² The money judgments were based on the trial court’s finding that both Lujan and Gutierrez violated their fiduciary duties as officers or employees of the Executive Branch of the government of Guam under 5 GCA § 7102 and spent money without proper authority under 5 GCA § 7103.

[2] The trial court found that Lujan and Gutierrez violated 5 GCA § 7102 because payments to Dr. Vivien Batoyan without her first filing a claim under the Government Claims Act were “not solely in the interest of the people of Guam and . . . not authorized with the care, skill, prudence and diligence, of a similarly situated prudent person.” Appellant Lujan’s Excerpts of Record (“Lujan’s ER”), vol. II, tab 6.1 at 11 (Finds. Fact & Concl. L., June 4, 2009). Lujan and Gutierrez were held personally liable for the amounts under 5 GCA § 7103 since “payment of Government funds to settle with Batoyan” without “the filing of a government claim and . . . authority to settle” was contrary to law and not authorized. *Id.* at 17.

[3] Although the Attorney General is not a taxpayer with standing to sue within the meaning of 5 GCA § 7103, the Attorney General has standing under its common law or statutory powers

¹ On January 18, 2011, Chief Justice Robert J. Torres assumed the title of Associate Justice. The signatures in this opinion reflect the titles of the justices at the time this matter was considered and determined.

² The total money judgment award to the Government of Guam was only \$300,000.00, with Lujan and Gutierrez jointly and severally liable for \$100,000.00 of the total judgment of \$300,000.00.

to sue to recover government funds spent contrary to law. Nevertheless, we reverse the trial court because a government claim was not necessarily required to be filed before the payments to Batoyan were made, and the court's holding that payment of the funds without a government claim being filed was "not skillful, prudent, or diligent as analyzed from a similarly situated reasonable person standard" was in error. *Id.* at 13. Moreover, even though Acting Attorney General Robert Kono testified that "he did not approve the Batoyan settlement for content and only reviewed it as to form," *id.* at 7, 10 GCA § 80104(e)(2)³ requires that "[n]o contract requiring an expenditure of more than Ten Thousand Dollars (\$10,000) shall be entered unless the Attorney General shall have approved its form and found that its purpose is within the powers of the hospital." 10 GCA § 80104(e)(2) (2005). Therefore, it was reasonable for Lujan and Gutierrez to believe the settlement agreement was within the hospital's powers given Kono's approval of the contract and to rely on the advice provided by other attorneys. Accordingly, we reverse the trial court's holding that without the filing of a government claim and authority to settle, the expenditures were illegal, contrary to law or without proper authority to allow personal recovery against Lujan and Gutierrez.

I. FACTUAL AND PROCEDURAL BACKGROUND

[4] Guam Memorial Hospital Authority ("GMHA") is an autonomous agency of the Government of Guam. From June 16, 2000 until January 13, 2001, former Governor Carl T.C. Gutierrez, through seven Declarations of Emergency, exercised his Organic Act authority to maintain and operate public health services on Guam, including hospitals.⁴

³ In August 2010, Chapter 80 of Title 10 of the Guam Code Annotated was repealed and reenacted. Section 80104(e)(2) is no longer in force. However, it was in effect through August 2006. *See* Pub. L. 30-190. It is therefore applicable in this case.

⁴ The majority of facts contained herein were obtained from the parties' Stipulation of Undisputed Facts which was incorporated by the trial court in its Findings of Fact and Conclusions of Law.

[5] Dr. Vivien Batoyan was a duly licensed physician who had been accorded hospital privileges by the Board of Trustees of GMHA. One of Batoyan's patients filed a complaint against her with the Board of Trustees of GMHA. Lujan's ER, vol. I, tab 3 at 2 ¶ 6 (Stipulation of Undisputed Facts, Apr. 20, 2009). GMHA's Peer Review Board of Trustees took disciplinary action against Batoyan based upon the complaint. Soon thereafter, Batoyan, through her attorney Anita Sukola, submitted to the GMHA Fair Hearing Committee a Hearing Memorandum, wherein, among other things, she stated various claims Batoyan had against the hospital, such as loss of income, pain and suffering, and damage to her reputation. She requested relief from the hospital including approximately \$1,875,000.00. Thereafter, the GMHA Fair Hearing Committee issued a report that conditionally restored Batoyan's obstetrical privileges.

[6] Gutierrez's office subsequently solicited the assistance of Jerry Hogan, Legal Counsel for the Guam Civil Service Commission, to conduct an independent review of Batoyan's claims.⁵ Hogan advised Gutierrez that Batoyan's rights had been violated by the disciplinary actions taken against her and by the manner in which those actions were taken. As a result, Gutierrez approved a settlement in the amount of \$300,000.00.

[7] A few months later, GMHA released a check in the amount of \$100,000.00, made payable to and received by Batoyan. GMHA released a second check in the amount \$100,000.00 to Batoyan nearly a month later. At the time Batoyan received the first two \$100,000.00 payments, there was no written release of claims.

⁵ It is acknowledged that the trial court found Gutierrez not credible. Regardless of who made the request to Hogan, the memorandum from Hogan is addressed to Gutierrez and starts off with "You ask that I review the file in the above matter to give you an independent evaluation" See Lujan's ER, vol. II, tab 5.11 at 1 (Letter from Atty. Jerry E. Hogan to Gov. Gutierrez, July 18, 2000). Gutierrez received the memorandum and subsequently acted upon this advice.

[8] Sometime after the second check was issued, Dr. Davina M. Lujan was appointed Hospital Administrator by Gutierrez, while maintaining her position as GMHA Medical Director.

[9] Soon thereafter, GMHA retained the law firm of Brooks Lynch Tydingco & Quan, LLP as private counsel. Prior to this, the Attorney General served as legal counsel to GMHA. Phillip J. Tydingco, an attorney from Brooks Lynch Tydingco & Quan, LLP, prepared a Release and Settlement Agreement (“Settlement Agreement”) to memorialize the settlement reached with Batoyan. Tydingco advised Lujan to sign the Settlement Agreement in her capacity as Hospital Administrator, in order to protect the hospital. Following his advice, Lujan signed the Settlement Agreement.

[10] The Settlement Agreement was also signed by Batoyan, Attorney Sukola, Attorney Tydingco, Acting Attorney General Robert H. Kono, and Gutierrez. Tydingco and Kono both approved the Settlement Agreement “as to form.” Lujan’s ER, vol. II, tab 5.4 at 7 (Release and Settlement Agreement, June 6, 2001). Gutierrez signed the Settlement Agreement in his capacity as Governor of Guam after it was executed by all other parties. The third check for \$100,000.00 was released to Batoyan after the Settlement Agreement was fully executed.

[11] Several months later, the newly elected Attorney General of Guam filed a complaint against Gutierrez, Lujan, Kono, Tydingco, the law firm of Brooks Lynch Tydingco & Quan, LLP and Batoyan. The complaint was brought pursuant to the Enforcement of Proper Government Spending Act, 5 GCA §§ 7101 *et seq.*, “for the return of public money spent without proper appropriation, without proper authority, illegally or contrary to law, and to obtain a personal judgment as permitted by 5 G.C.A. §§ 7101 and 7103 against Defendants in favor of the Guam

Memorial Hospital Authority ('GMHA') and the Government of Guam." Lujan's ER, vol. I, tab 1 at 2 (Compl., Feb. 21, 2003).

[12] The complaint alleged that Gutierrez, Lujan, Kono and Tydingco signed the Settlement Agreement with Batoyan "in derogation of their duties as officers, employees or contractors of the Executive Branch of the government of Guam with respect to public money, inasmuch as the ratification of payment of public money without legal authority was contrary to the fiduciary duties of those persons as set forth in 5 G.C.A. § 7102." *Id.* at 6. The Attorney General asserted that "GMHA standard operating procedures and Guam law mandates [sic] that a claim be submitted *prior* to any payment of government funds to a claimant, and that the GMHA Claims Officer review said claims," but that Batoyan never filed a claim and the GMHA Claims Officer did not review or approve the Settlement. *Id.* at 6-7. The complaint further alleged that Tydingco and the law firm committed legal malpractice in allowing an illegal and excessive payment and requested Batoyan repay the amounts she received under the theory of unjust enrichment.

[13] After the filing of motions to dismiss, the trial court dismissed the claims against Batoyan, Kono, Tydingco and Tydingco's law firm. The Enforcement of Proper Government Spending Act claims against Kono and Tydingco were dismissed with prejudice.⁶ The legal malpractice claims against Tydingco's firm were dismissed without prejudice. The unjust enrichment claim against Batoyan was dismissed without prejudice.

⁶ The court stated that there may be "some other theory of liability against Defendant Kono that may be properly pled, and this holding should in no way be construed to bar such claims if properly pled." Supplemental Excerpts of Record ("SER") at 31 (Dec. & Order, May 14, 2003).

[14] Lujan and Gutierrez's motions to dismiss, however, were denied. Subsequently, partial summary judgment was granted in favor of Lujan, absolving her from responsibility for the first \$200,000.00 paid to Batoyan.⁷

[15] After a bench trial, the court issued its Findings of Fact and Conclusions of Law determining that both Lujan and Gutierrez violated their fiduciary duties under 5 GCA § 7102 and were personally liable because they spent money without proper authority under 5 GCA § 7103. The trial court found that without some showing that Lujan and Gutierrez "considered how Dr. Batoyan's potential causes of action were not barred by Guam's sovereign immunity" and in the absence of a government claim filed by Batoyan under the Government Claims Act, the "expenditure was not solely in the interest of the people of Guam and was not authorized with the care, skill, prudence and diligence, of a similarly situated prudent person." Lujan's ER, vol. II, tab 6.1 at 11-12 (Finds. Fact & Concl. L.). Similarly, the payment of government funds were found to be expended without proper authority within the meaning of 5 GCA § 7103 because a government claim had not been filed and Kono, as the Acting Attorney General, had not approved the Settlement Agreement except as to form. The trial court, however, dismissed the Attorney General's claim that Lujan and Gutierrez violated GMHA's standard operating procedure because there was no evidence that GMHA's standard operating procedure required the GMHA Claims Officer to review all claims prior to settlement. The court also dismissed the cause of action claiming violation of the Government Claims Act, 5 GCA § 6206(b), because the

⁷ In support of partial summary judgment, Lujan asserted that she could not be accountable for the first two payments totaling \$200,000.00 since the funds were disbursed before she was appointed GMHA Administrator. The Attorney General did not file an Opposition or Non-Opposition to Lujan's motion and failed to present any good cause justifying their failure to file, which the trial court said was "tantamount to a non-opposition." Record on Appeal ("RA"), vol. I, part III at 119 p. 4 (Dec. & Order, Nov. 26, 2004). During the hearing on the motion, the Attorney General ultimately "conceded that Lujan is not responsible for the first two payments made under the settlement at issue because she was not the Hospital Administrator at the time those payments were made." *Id.*

language of this act did not require the GMHA Administrator or the Governor of Guam to obtain the approval of the GMHA Claims Officer.

[16] Lujan and Gutierrez jointly filed a motion for reconsideration of the trial court's Findings of Fact and Conclusions of Law or in the alternative for a new trial, which was denied. Lujan and Gutierrez then jointly appealed from the decision and order denying reconsideration, the Final Judgment and the Findings of Fact and Conclusions of Law.

II. JURISDICTION AND STANDARD OF REVIEW

[17] This court has jurisdiction over appeals from final judgment. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 112-9 (2011)); 7 GCA §§ 3107, 3108(a) (2005).

[18] “The standard of review following a bench trial is that the trial court’s findings of fact, whether based on oral or documentation evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses.” *Guam United Warehouse Corp. v. De Witt Transp.*, 2003 Guam 20 ¶ 13 (internal quotation marks omitted). However, conclusions of law are reviewed *de novo*. *Id.* Mixed questions of law and fact are reviewed *de novo*. *Town House Dep’t Stores, Inc. v. Ahn*, 2000 Guam 29 ¶ 6. This court reviews issues of statutory interpretation under a *de novo* standard of review. *Quichocho v. Macy’s Dep’t Stores, Inc.*, 2008 Guam 9 ¶ 13. The denial of a motion for reconsideration is reviewed for an abuse of discretion. *Quitugua v. Flores*, 2004 Guam 19 ¶ 12.

III. ANALYSIS

[19] On appeal, Lujan and Gutierrez argue that the trial court erred in holding that both Lujan and Gutierrez violated their fiduciary duties under 5 GCA § 7102 and were personally liable because they spent money without proper authority under 5 GCA § 7103. Lujan and Gutierrez submit that the trial court’s conclusion that the filing of a claim under the Government Claims

Act was necessary in order to settle the matter with Batoyan was reversible error. They also assert that the Office of the Attorney General did not have standing to file a lawsuit pursuant to 5 GCA § 7103 of the Enforcement of Proper Government Spending Act and had a conflict of interest that should have disqualified the Office from prosecuting the case. Lujan also maintains the court erred in denying her Motion for Judgment on the Pleadings on the grounds of estoppel. Gutierrez separately claims 5 GCA § 7103 only permits action against the Government of Guam and its officers, not against former officers and, at the time the lawsuit was filed, Gutierrez was not an officer of the Government of Guam and could not be enjoined from expending money without proper authorization. Lastly, Gutierrez contends the complaint should fail because it was brought against him in his capacity as Governor, and since the Government of Guam includes the Governor, sovereign immunity applies and the Attorney General (“AG”) cannot bring an action against the Governor except in accordance with the Government Claims Act.

[20] We will first address the threshold issue of the AG’s standing to sue to control illegal spending under 5 GCA § 7103 of the Enforcement of Proper Government Spending Act.

A. Standing

[21] Standing is a critical component of the case or controversy requirement of Article III of the U.S. Constitution. *See People v. Tennesen*, 2011 Guam 2 ¶ 14; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (holding that in order to achieve standing, parties must demonstrate “‘concrete and particularized,’ ‘actual or imminent’ . . . ‘invasion of a legally protected interest.’”). Moreover, if a plaintiff does not suffer an injury or will not stand to profit in some personal interest, the plaintiff has no standing and courts are without jurisdiction to consider the action. *See Allen v. Wright*, 468 U.S. 737, 751 (1984). The AG has the burden of proving that standing exists. *See Tennesen*, 2011 Guam 2 ¶ 14 (“It is the responsibility of the

complainant clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers." (quoting *Renne v. Geary*, 501 U.S. 312, 316 (1991))). We must examine whether the AG is conferred standing under 5 GCA § 7103 or if standing is granted by some other statute or common law power.

1. 5 GCA § 7103 Standing

[22] Guam's Enforcement of Proper Government Spending Act expressly provides Guam taxpayers standing to enjoin government officials from irresponsibly expending government funds. Specifically, "[a]ny taxpayer who is a resident of Guam shall have standing to sue . . . [to] enjoin[] any officer . . . or employee of the Executive Branch of the government of Guam from expending money without proper appropriation, without proper authority, illegally, or contrary to law, and to obtain a personal judgment in the courts of Guam" 5 GCA § 7103 (2005). On its face and in its purpose, the statute is meant to empower taxpayers to enforce laws pertaining to proper government spending. *Id.*

[23] The AG argues that under the Organic Act, it serves as the "Chief Legal Officer of the Government of Guam." Appellee's Br. at 19 (Oct. 12, 2010). The AG adds that in Guam, and elsewhere, this title allows the AG great authority to act in the interest of the public. *Id.* The AG also cites to the legislative intent behind the Enforcement of Proper Government Spending Act, which reads:

It is the intent of the Legislature that the government of Guam practice fiscal responsibility, and that the persons who spend the taxpayer's money follow the mandates of law in expending government funds. Historically, there have been many instances of government officials in the government of Guam spending and obligating money without appropriation or contrary to law. Since the Attorney General is the only officer empowered to bring court actions to control such illegal spending and the only officer who can represent the government in recovering such money, and since the Attorney General is an appointed member of the Governor's cabinet, laws relating to improper spending of funds by the

Executive Branch have generally not been enforced, and in some instances been openly ignored.

5 GCA § 7101 (2005). The AG argues that this legislative intent recognizes that its office is empowered to bring actions under the Enforcement of Proper Government Spending Act. Appellee's Br. at 21.

[24] On the other hand, Lujan argues that "nothing in [5 GCA § 7103] authorizes the Attorney General to bring this taxpayer's lawsuit." Appellant Lujan's Br. ("Lujan's Br.") at 36 (Aug. 23, 2010). Lujan cites to 5 GCA § 30103 to examine the scope of authority of the AG. Title 5 GCA § 30103 states,

The Attorney General shall have, in addition to the powers expressly conferred upon him by this Chapter, those common law powers which include, but are not limited to, the right to bring suit to challenge laws which he believes to be unconstitutional and *to bring action on behalf of the Territory representing the citizens as a whole for redress of grievances which the citizens individually cannot achieve*, unless expressly limited by any law of Guam to the contrary.

5 GCA § 30103 (2005) (emphasis added). Lujan argues that because 5 GCA § 7103 allows individual taxpayers the ability to sue, 5 GCA § 30103 prohibits the AG from bringing this case. Lujan's Br. at 37.⁸ In contrast, Gutierrez focuses on the argument that 5 GCA § 7103 does not allow the AG to bring the case because 5 GCA § 7103 provides that "[a]ny taxpayer who is a resident of Guam shall have standing to sue the Government of Guam." 5 GCA § 7103. Gutierrez argues that the AG is not a taxpayer, but rather, a position within the Government of Guam.

[25] This court agrees with Gutierrez's interpretation that 5 GCA § 7103 does not grant standing to the AG since the AG in his official capacity is not a taxpayer. While the AG states

⁸ Lujan's argument that the enactment of 5 GCA § 7103 somehow limits the Attorney General's power to bring suits to control illegal spending is disingenuous and will be addressed later in our discussion on the AG's common law and statutory powers.

that it has authority to bring this case to trial as the “Chief Legal Officer” of the territory, 5 GCA § 7103 is explicit in granting standing only to *any taxpayer who is a resident of Guam* to enjoin any officer from expending money without proper authorization, and the title of the section itself is “Taxpayer Standing to Sue.” *Id.*

[26] “[I]t is a cardinal rule of statutory construction that courts must look first to the language of the statute itself.” *Sumitomo Const., Co., Ltd. v. Gov’t of Guam*, 2001 Guam 23 ¶ 17. “The plain meaning rule for statutory interpretation provides that ‘if the language of a statute is clear and there is no ambiguity, then there is no need to “interpret” the language by resorting to the legislative history or other extrinsic aids.’” *People v. Angoco*, 1998 Guam 10 ¶ 5. Recently, this court has stated that “[i]f there is no ambiguity in the language, we presume the Legislature meant what it said, and the plain meaning of the statute governs.” *People v. Tennesen*, 2010 Guam 12 ¶ 18 (quoting *Curle v. Super. Ct. (Gleason)*, 16 P.3d 166, 170 (Cal. 2001)).

[27] Here, the statute on its face is explicit in granting taxpayer standing and makes no mention of conferring standing to sue on the AG. Without this provision, taxpayers would not have standing to bring court actions to control illegal spending. Taxpayer standing statutes traditionally enable “taxpayers” to challenge governmental acts that may otherwise go unchallenged because of standing requirements. *See County of Santa Clara v. Super. Ct. (Naymark)*, 89 Cal. Rptr. 3d 520, 528 (Ct. App. 2009) (“The purpose of [California’s Taxpayer Statute] is to enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement.” (citation and internal quotation marks omitted)); *In re Biester*, 409 A.2d 848, 852 (Pa. 1979) (“[T]he fundamental reason for granting [taxpayer] standing is simply that otherwise a large body of governmental activity would go unchallenged in the courts.” (quoting *Faden v. Phila. Hous.*

Auth., 227 A.2d 619, 621-22 (1967))). Since 5 GCA § 7103 explicitly mentions “Taxpayer Standing” in its title, and attempts to clarify who is a “taxpayer” in the body of the statute, it is obvious this section of the code was meant to provide taxpayers standing.

[28] The clear language of the statute renders a review of the legislative intent unnecessary. However, a review of the legislative intent of the code leads to the same conclusion. Section 7101, entitled “Legislative Intent,” states that the AG “is the only officer empowered to bring court actions to control such illegal spending and the only officer who can represent the government in recovering such money.” 5 GCA § 7101. This language reaffirms that even before the enactment of this statute, the AG could have brought suit to recover government funds spent contrary to law. This statute was not enacted to empower the AG to sue to recover government funds spent contrary to law but rather to remedy the situation of the AG not using its powers to bring such cases. The act does this by providing standing to taxpayers, who without the statute would not otherwise meet standing requirements. *See Allen*, 468 U.S. at 751. Consequently, we hold that 5 GCA §§ 7101 and 7103 do not grant standing to the AG. Our inquiry, however, does not end there.

[29] Although the AG does not have standing under 5 GCA §§ 7101 and 7103, we still must determine whether some other statutory authority or common law power enables the AG to bring suit for the enforcement of proper government spending. Once identified, this court can then apply the standards established in 5 GCA § 7102.⁹

⁹ Title 5 GCA § 7102 will be reviewed since it was pled in the AG’s initial complaint and because the trial court conducted a lengthy analysis of it. The standards set forth in 5 GCA § 7102 are not only applicable to taxpayer actions but also, as in this case, other actions concerning illegal expenditures or the enforcement of proper government spending.

2. Standing Pursuant to Statutory or Common Law Powers

[30] In addition to the Enforcement of Proper Government Spending Act, the AG asserts that it is entitled to commence these actions on behalf of the Government of Guam pursuant to 5 GCA §§ 30102, 30103 and 30109. Appellee's Br. at 19-21. Chapter 30 of Title 5 of the Guam Code confers upon the AG statutory and common law powers. *See* 5 GCA §§ 30102, 30103, 30109 (2005); *A.B. Won Pat Guam Int'l Airport Auth. v. Moylan*, 2005 Guam 5 ¶ 2 (holding that under the Organic Act the AG has common law powers and duties subject to increase, alteration or abridgement by the Guam Legislature.). This section will review the AG's statutory and common law powers to bring suit against government officials who spend and obligate government funds without appropriation, illegally or contrary to law.

a. Statutory authority

[31] According to Guam's Organic Act, "The Attorney General of Guam shall be the Chief Legal Officer of the Government of Guam." Appellee's Br. at 19 (citing 48 U.S.C.A. § 1421g(d)(1) (Westlaw current through Pub. L. 112-9 (2011))). The AG adds that the "[l]egislature has given the Attorney General broad authority to act in the public interest." *Id.* at 20. One such authority to act can be found in 5 GCA § 30102(a). The statute states,

Notwithstanding any other provision of law, the Attorney General shall have cognizance of all legal matters, excluding the Legislative and Judicial Branches of the government of Guam, involving the Executive Branch of the government of Guam, its agencies, instrumentalities, public corporations, autonomous agencies and the Mayors Council

5 GCA § 30102; Appellee's Br. at 20. The AG argues that GMHA is "an instrumentality of the government of Guam," and as such, "the Attorney General has cognizance of all legal matters involving GMHA." Appellee's Br. at 20. Although correct, there are other statutory provisions

that provide the AG with more specific authority to bring this action beyond having cognizance of all legal matters as set forth in 5 GCA § 30102(a).

[32] The AG, in addition to the powers expressly conferred by Chapter 30 of Title 5, has certain common law powers,

which include, but are not limited to, the right to bring suit to challenge laws which he believes to be unconstitutional and to bring action on behalf of the Territory representing the citizens as a whole for redress of grievances which the citizens individually cannot achieve, unless expressly limited by any law of Guam to the contrary.

5 GCA § 30103. Lujan and Gutierrez argue that since citizens individually, as taxpayers, can achieve redress of grievances under the Enforcement of Proper Government Spending Act, the AG is not authorized under 5 GCA § 30103 to bring such a suit. Appellant Gutierrez's Br. ("Gutierrez's Br.") at 13 (Aug. 23, 2010); Lujan's Br. at 37. This argument, however, overlooks the preceding statement in the statute: "The Attorney General shall have, in addition to the powers expressly conferred by this Chapter, those common law powers which include, *but are not limited to . . .*" 5 GCA § 30103 (emphasis added). Thus, the ability of citizens individually to achieve relief under 5 GCA § 7103 cannot be interpreted as limiting the AG from bringing suit to control illegal spending of government funds; section 30103 does not prohibit the AG from bringing suit simply because individual citizens have the ability to seek redress.

[33] Furthermore, 5 GCA § 7101 acknowledges that "the Attorney General is the only officer empowered to bring court actions to control such illegal spending and the only officer who can represent the government in recovering such money" 5 GCA § 7101. This statement makes obvious the fact that the AG has the power to bring actions to control illegal spending. Title 5 GCA § 7103 is best read as a statute that enables taxpayers to pursue actions concerning illegal government spending of funds but not to abolish or to restrict the AG's ability to bring such

actions. In fact, in many jurisdictions with taxpayer standing statutes, both the taxpayer and the Attorney General can pursue actions involving illegal spending of government funds. *See* ARIZ. REV. STAT. § 35-213(A) (Westlaw 2011) (“If for sixty days after request made by a taxpayer of the state in writing, the attorney general fails to institute an action as provided in §35-212, any taxpayer of the state may institute the action in his own name”); OHIO REV. CODE ANN. § 309.13 (Westlaw 2011) (“If the prosecuting attorney fails, upon the written request of a taxpayer . . . [to] institute the civil action . . . such taxpayer may bring any suit or institute any such proceedings against any county officer . . . for misconduct”); *Daily Journal Corp. v. County of Los Angeles*, 92 Cal. Rptr. 3d 219, 225 (Ct. App. 2009) (“Taxpayer suits are authorized only if the government body has a duty to act and has refused to do so.”).

i. Attorney General as public prosecutor

[34] Pursuant to 5 GCA § 30104, “[t]he Attorney General shall have cognizance of all matters pertaining to public prosecution, including the prosecution of any public officials.” 5 GCA § 30104 (2005). Viewing the AG as public prosecutor is not unique to Guam. *See* LA. CODE CIV. PROC. ANN. art. 971(E) (2005) (stating that the Attorney General may act as a public prosecutor); *Consumer Advocacy Grp., Inc. v. ExxonMobil Corp.*, 86 Cal. Rptr. 3d 39, 49 (Ct. App. 2008) (stating that the Attorney General is an example of a public prosecutor.); *In re House of Representatives (Special Prosecutor)*, 575 A.2d 176, 179 (R.I. 1990) (“This court has held that the essential duty of the Attorney General is that of ‘public prosecutor.’” (citing *Suitor v. Nugent*, 199 A.2d 722, 723 (R.I. 1964))).

[35] Public prosecutors have special duties and rights. For instance, the Rhode Island Supreme Court has held that “[i]t is well settled in this state that the Attorney General is the only state official vested with prosecutorial discretion.” *State v. Rollins*, 359 A.2d 315, 318 (R.I.

1976).¹⁰ According to the California Supreme Court, public prosecutors have “broad discretion over the entire course of the . . . proceedings, from the investigation and gathering of evidence, through the decisions of whom to charge and what charges to bring, to the numerous choices at trial to accept, oppose, or challenge judicial rulings.” *Hambarian v. Super. Ct. (People)*, 44 P.3d 102, 111 (Cal. 2002). Moreover, federal courts have held,

[T]he public prosecutor . . . is the representative of the public in whom is lodged a discretion which is not to be controlled by the courts, or by an interested individual, or by a group of interested individuals who seek redress for wrongs committed against them by use of the criminal process.

United States v. Cox, 342 F.2d 167, 192 (5th Cir. 1965) (citation omitted). These duties and rights conferred to public prosecutors allow for great discretion in pursuing violations of the law.

[36] Although 5 GCA § 7103 only provides taxpayers standing to enforce proper government spending, the AG has discretion to investigate and prosecute all illegal acts as public prosecutor. Lujan and Gutierrez allegedly spent money without authorization and contrary to law. Given the AG’s broad power to investigate claims, it is therefore within its discretion to investigate Lujan and Gutierrez’s actions and seek to recover any funds spent without authority or contrary to law. See 4 GCA § 14101 *et seq.* (2005) (providing restitution to the government of Guam for the amount of any illegal, improper or incorrect payment); 9 GCA § 49.90 (2005) (defining “official misconduct”). Thus, although 5 GCA § 7103 does not provide the AG standing, 5 GCA § 30104 does. There are, however, even other statutory provisions which support the AG’s standing to bring the actions against Lujan and Gutierrez.

¹⁰ Prosecutorial discretion concerns the ability to decide what claims to file and when to file them. *State v. Tsosie*, 832 P.2d 700, 702 (Ariz. Ct. App. 1992).

ii. The Attorney General's duties.

[37] As the public prosecutor, the AG has broad authority to investigate and prosecute claims and perform other duties required by law. Under 5 GCA § 30109(f), the AG must “[b]e diligent in protecting the rights and properties of the government of Guam.” 5 GCA § 30109(f). This duty has long been considered a responsibility of the Attorney General’s Office, and its predecessor, the Island Attorney. *See* Guam Govt. Code § 7101 (1953). Section 30109 further provides that the AG shall also “[p]erform such other duties as are required by law.” 5 GCA § 30109(h). Clearly, the AG has broad statutory authority to investigate and prosecute violations of the law, including spending or obligating taxpayer money without appropriation or contrary to law.

[38] In this case, Lujan and Gutierrez were accused of violating the Enforcement of Proper Government Spending Act by: (1) not complying with the Government Claims Act, and (2) making two payments without a written contract. These actions allegedly constitute an unlawful handling of the “the rights and properties of the government of Guam.” 5 GCA § 3109(f). Therefore, it is wholly within the statutory powers of the AG to pursue Lujan and Gutierrez even without standing under 5 GCA § 7103.

b. Other common law powers

[39] In *Moylan*, 2005 Guam 5, this court stated that in the absence of legislative intent, the AG may act in the public interest. In that case, we cited with approval a case from the Supreme Court of Maine, wherein the court stated,

The Attorney General, in this State, is a constitutional officer endowed with common law powers. As the chief law officer of the State, he may, in the absence of some . . . legislative restriction to the contrary, exercise all such power and authority as public interests may, from time to time require, and may institute, conduct, and maintain all such actions and proceedings

Moylan, 2005 Guam 5 ¶ 59 (quoting *Superintendent of Ins. v. Attorney Gen.*, 558 A.2d 1197, 1200 (Me. 1989)). Moreover, many states provide the Attorney General with common law powers limited by statute. See *Botelho v. Griffin*, 25 P.3d 689, 692 (Alaska 2001) (“Generally, an attorney general has those powers which existed at common law except where they are limited by statute or conferred upon some other state official.”) (citation omitted)); *State v. Douglas*, 349 N.W.2d 870, 891 (Neb. 1984) (“[T]he Attorney General is clothed and charged with all such common-law powers and duties except insofar as they have been limited by statute...”). *State v. Chastain*, 871 S.W.2d 661, 664 (Tenn. 1994), (“[T]he Attorney General has . . . broad common-law powers of the office except where these powers have been limited by statute.”). Therefore, Guam’s granting of common law powers to the AG is not uncommon.

[40] Here, it is in the best interests of the people of Guam that the AG investigate any violations of the Government Claims Act or the disbursement of funds without authority or contrary to law. Fiscal responsibility and proper expenditure of government funds are important public interests which need to be protected. Since the AG pursuant to its common law powers may institute, conduct, and maintain prosecution to protect public interests, it has standing to bring this suit to enforce proper spending by officers or employees of the Executive Branch of the Government of Guam.¹¹

B. Violation of 5 GCA § 7102

[41] Having determined that the AG has standing to bring this suit, we must review whether Lujan and Gutierrez breached the standards established for handling money required by 5 GCA §

¹¹ Our analysis is similar here to the approach taken by the trial court, which stated, “[T]he provision of §7103 conferring taxpayer standing was meant only to add individual taxpayers to the class of potential plaintiffs. However, the Attorney General retains his traditional standing recognized in §7101, to sue for recovery of improperly spent government funds.” SER at 23 (Dec. & Order).

7102 and whether a personal judgment may be obtained for expending money without proper authority, illegally, or contrary to law. The trial court found that “the Government Claims Act requires that prior to a waiver of immunity, a claim as delineated by the act, be filed” and payment of public funds to Batoyan “was not skillful, prudent, or diligent as analyzed from a similarly situated reasonable person standard” because “it is outside the realm of reason to expend public money on a cause of action not yet actionable.” Lujan’s ER, vol. II, tab 6.1 at 12-13 (Finds. Fact & Concl. L.). Moreover, the court held that the Claims Act’s limited waiver of immunity required not only the filing of a government claim, but limited the authority to settle the claim to the AG or the claims officer for GMHA. The court determined there was no evidence that a claims officer was appointed for GMHA, therefore, the only person authorized to approve the settlement payments was Acting Attorney General Kono, and Kono had not approved the settlement payments.¹²

[42] The trial court’s holding that the filing of a government claim was required before any payments could be made to Batoyan is misplaced since the failure to file a formal claim under the Government Claims Act is not a bar to the settlement with Batoyan.

1. Failure to File a Government Claim

[43] Lujan and Gutierrez argue that the trial court’s conclusion that a claim had to have been filed under the Government Claims Act in order to execute the Settlement Agreement is reversible error. In evaluating whether the disbursement of funds violated the Government Claims Act, the trial court relied on our decision in *People v. Lau*, 2007 Guam 4, to establish that

¹² In the findings of fact the trial court found that Kono did not approve the Batoyan settlement for content and only reviewed it as to form, and in the conclusions of law, the court held that only the Attorney General or claims officer could settle a suit against the government of Guam and the settlement payments were not approved by Kono. Lujan’s ER, vol. II, tab 6.1 at 7, 17 (Finds. Fact & Concl. L.). Apparently, the trial court believed that Kono’s approval of the settlement agreement as to form was not sufficient approval.

a court looks at the language and the structure of an act to determine if a statute is ambiguous.¹³ The court then quotes 5 GCA §§ 6108 and 6106(b) of the Government Claims Act, and concludes that the “scope and intent of these statutes [are] not ambiguous.” Lujan’s ER, vol. II, tab 6.1 at 13 (Finds. Fact & Concl. L.). The court then found that prior to any waiver of immunity, a claim, as delineated by the act, must be filed and “it is outside of the realm of reason to expend public money on a cause of action not yet actionable.” *Id.*

[44] A closer examination of the Government Claims Act, however, exposes the trial court’s fundamental misunderstanding that a formal government claim was required to be filed before any payments could be made to Batoyan. Its conclusion in this regard is not supported by the language or plain meaning of the Government Claims Act. The usage of the term “suit” throughout the Government Claims Act implies that a claim is required to be filed administratively before a claimant is able to file an action against the government. *See Guam Police Dep’t v. Super. Ct. (Lujan)*, 2011 Guam 8 ¶ 32 (Where the plaintiff fails to timely file a Claim before the expiration of the statute of limitations sovereign immunity is not statutorily waived.); *Mace-Main v. City of Omaha*, 773 N.W.2d 152, 157 (Neb. Ct. App. 2009) (affirming a motion to dismiss because plaintiff failed to file a claim within statutory limits in Nebraska’s Political Subdivision Tort Claims Act [NEB. REV. ST. § 13-920(1)], which also uses the word “suit”). It does not follow, however, that a claim is required to be filed administratively before

¹³ The trial court cites the following language in *Lau*:

In order to determine whether a statute is ambiguous, the court examines the language of the statute and the structure of the law as a whole including its object and policy. The inquiry into whether a statute is ambiguous begins with looking at the plain meaning of the language in question, and, when looking at the language, the court’s task is to determine if the language is plain and unambiguous. ‘The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.’ A statute’s context includes looking at other provisions of the same statute and other related statutes.

Lujan’s ER, vol. II, tab 6.1 at 12 (Finds. Fact & Concl. L.) (quoting *Lau*, 2007 Guam 4 ¶ 14).

the government can make any payments on account of such claim. *See Miss. Dep't of Pub. Safety v. Stringer*, 97-IA-00187-SCT (¶¶ 5-8) (Miss. 1999) (stating that the government attempted several times to settle claim before plaintiff filed a notice of claim); *Woodard v. Lincoln*, 588 N.W.2d 831, 834 (Neb. 1999) (demonstrating that city can negotiate with parties to settle without the need to file a claim). Indeed, the procedure for filing claims found in 5 GCA § 6201 expressly contemplates that a claimant may have received payments even before a government claim is filed. This section requires that each claim filed contain “[a] statement of whether or not the claimant has received any payment on account of such claim, and if so, the amount received.” 5 GCA § 6201(e) (2005). “[T]he overarching policy of sovereign immunity [] is to protect the government from unnecessary suits.” *Pac. Rock Corp. v. Dep't of Educ.*, 2001 Guam 21 ¶ 37. The ability to make payments before the filing of a government claim is consistent with this policy and the legislative intent to discourage lawsuits where settlement is possible. *Id.* Cf. 2 Guam Admin. R. & Regs. § 9103(a)(1) (2002) (“It is the territory’s policy to resolve all [contract] controversies by mutual agreement without litigation.”).

[45] Further support that a government claim is not always required in order to settle with a claimant is found in other sections of the Government Claims Act. For instance, section 6105 of the Act states,

Pursuant to Section 3 of the Organic Act of Guam, the Government of Guam *hereby waives immunity from suit*, but only as hereinafter provided:

(a) for all expenses incurred in reliance upon a contract to which the Government of Guam is a party, but if the contract has been substantially completed, expectation damages may be awarded;

(b) for claims in tort, arising from the negligent acts of its employees acting for and at the direction of the government of Guam, even though occurring in an activity to which private persons do not engage. For the purposes of this chapter, any officer or enlisted person of the Guam National Guard on territorial duty or any nursing student acting

for and at the direction of the University of Guam or of the Guam Community College shall be deemed an employee of the government.

(c) The Government of Guam shall not be liable for claims arising from an exercise of discretion in making policy.

5 GCA § 6105 (2005). We read this section of the Government Claims Act to mean that the Government of Guam waives immunity to be sued when it commits a contract or tort violation. The phrase “waives immunity from suit” illustrates the statute’s intention to apply to lawsuits and not to payments pursuant to a settlement made before the filing of a claim. According to a recent Ninth Circuit opinion,

To sue is “[t]o institute a lawsuit against (another party).” BLACK’S LAW DICTIONARY 1473 (Bryan A. Garner ed., 8th ed., 2004). For “lawsuit,” Black’s directs us to “suit,” *id.* at 905, which is defined as: “[a]ny proceeding by a party or parties against another *in a court of law*.” *Id.* at 1475 (emphasis added); *see also* *Weston v. City Council of Charleston*, 27 U.S. (Pet) 449, 464, 7 L.Ed. 481 (1829) (defining “suit” as “any proceeding *in a court of justice*, by which an individual pursues that remedy in a court of justice, which the law affords him”) (emphasis added).

Greenwood v. CompuCredit Corp., 615 F.3d 1204, 1208 (9th Cir. 2010) (alterations in original).

Therefore, the Government of Guam is explicitly waiving its immunity “by unequivocally expressing its consent to the court’s jurisdiction” when a government claim is filed. *Marx v. Gov’t of Guam*, 866 F.2d 294, 301 (9th Cir. 1989).

[46] The word “suit” is also used in the other sections relied on by the trial court. In 5 GCA § 6108, the term “suit” is used in conjunction with other words that reiterate the fact that the Government Claims Act requires a government claim be filed prior to a lawsuit:

This Chapter shall apply to all *pending litigation* in the courts of Guam, or which are on appeal, which were commenced without *first filing an administrative claim as would be required by this Chapter had it applied at the time the suit was filed*.

5 GCA § 6108 (2005) (emphases added). This language signals to this court that an administrative claim must be filed before a claimant is able to *sue* the government. *See Roberts*

v. *County of Los Angeles*, 96 Cal. Rptr. 3d 60, 64 (Ct. App. 2009) (stating that California's Government Claims Act, which also uses the term "suit," requires the filing of a claim as a prerequisite to filing suit or commencing litigation). If, as in this case, the government and the claimant negotiate and settle, then no filing of a claim is necessary.¹⁴ There appears to be no legitimate reason to require a claimant to expend additional time, effort and resources to file an administrative claim if there is desire and agreement between the government and claimant to immediately settle a claim. However, if negotiations fail, sovereign immunity bars suit against the government without the filing of a government claim. See *Newby v. Gov't of Guam*, 2010 Guam 4 ¶ 31.¹⁵ It may be in the best interest of the claimant to file a government claim to preserve their right to sue the government. This is especially so because 5 GCA § 6106 requires claims to be filed within 18 months from the date the claim arose. 5 GCA § 6106(a) (2005). If a claimant fails to file a government claim within 18 months, any suit based on the unfiled claim will be barred. 5 GCA § 6106(b).¹⁶

¹⁴ It should be noted, however, that if the Government Claims Act applies to a tort claim, and parties decide to settle before a claim is filed, the nature of the claim is still subject to 5 GCA § 6301(b), which states, "The government of Guam, in the case of line agencies, shall be liable in tort for not more than \$100,000 in an action for wrongful death, nor for more than \$300,000 in any other tort action." 5 GCA § 6301(b) (2005); see also 2 GAR § 9103(c) ("The settlement or resolution of controversies involving claims is subject to the Government Claims Act.").

¹⁵ In *Newby*, this court clearly laid out the Government of Guam's sovereign immunity. *Newby*, 2010 Guam 4 ¶ 31 ("The Government enjoys broad sovereign immunity. Sovereign immunity can only be waived by duly enacted legislation; absent such legislation, the Government cannot be sued." (citations omitted)).

¹⁶ See *Linton v. United States*, No. 99-16684, 2001 WL 8332, at *2 (9th Cir. 2001) (holding that when plaintiff failed to file a government claim because she relied on a telephonic settlement offer, once the statute of limitation from date of alleged injury ran, lawsuit was barred); *McGee v. State*, 487 S.E.2d 671, 672 (Ga. Ct. App. 1997) (upholding a trial court's dismissal of suit when plaintiff refused to accept settlement agreement and subsequently failed to file within the state's Tort Claims Act statute of limitations); *Garcia v. Essex County Sheriff's Dep't*, 837 N.E.2d 284, 290 (Mass. App. Ct. 2005) (barring suit due to plaintiff's failure to meet presentment [similar to Guam's filing requirements] in spite of plaintiff's argument that the government lulled plaintiff into believing presentment was not at issue since the government sent letters discussing ongoing investigations and made a settlement offer); *Black v. Lexington Sch. Dist. No. 2*, 488 S.E.2d 327, 330 (S.C. 1997) (holding that settlement negotiations did not toll statute of limitations in state's Tort Claims Act).

[47] The Guam Legislature intended to provide a limited waiver of the Government of Guam's sovereign immunity through the Government Claims Act. 5 GCA § 6101 *et seq.* "Under the statute, the defense of sovereign immunity is waived where a plaintiff timely files a valid complaint in compliance with the Government Claims Act." *Guam Police Dep't*, 2011 Guam 8 ¶ 8. A waiver of sovereign immunity is necessary to sue the government, not settle with it. The Government Claims Act applies when one intends to file suit against the government and does not bar settlement in the absence of a filed government claim.

[48] The trial court's holding that payment of the funds without a government claim being filed was "not skillful, prudent, or diligent as analyzed from a similarly situated reasonable person standard" and violated the standards established by 5 GCA § 7102 was erroneous. Lujan's ER, vol. II, tab 6.1 at 13 (Finds. Fact & Concl. L.). We are further persuaded that the trial court committed error when it allowed personal recovery against Lujan and Gutierrez because of the specific obligations and responsibilities imposed on the AG under the Guam Health Act of 1977 to ensure that before approval of a contract requiring an expenditure of more than \$10,000.00, that the purpose of the expenditure be within the hospital's powers. In allowing a personal judgment to be entered, the court held that without the filing of a government claim and without authority to settle from the AG, the expenditures were illegal, contrary to law or without proper authority. The trial court, however, fails to acknowledge that Kono's approval, even as to form, warrants the expenditure is within the powers of the hospital.

2. Kono's Approval of Settlement Agreement

[49] In its Findings of Fact and Conclusions of Law, the trial court found that Lujan and Gutierrez "asserted that they relied upon the advice of legal counsel prior to directing that payment be made[; h]owever they failed to assert or introduce any evidence of what was

discussed and why their reliance upon that advice was either reasonable or prudent.” *Id.* at 12. The trial court held that the “Government Claims Act requires that prior to any waiver of immunity, a claim, as delineated by the act, [must] be filed,” and “[a]bsent some showing that Defendants were aware of and considered how Dr. Batoyan’s potential causes of actions were not barred by Guam’s sovereign immunity the court is unable to find they complied with 5 GCA § 7102.” *Id.*

[50] The parties also argue over whether the Attorney General’s interactions with Lujan and Gutierrez were sufficient to justify making the disbursements to Batoyan since Acting Attorney General Robert Kono merely approved the settlement agreement “as to form.” The AG argues that because Kono signed the agreement “as to form,” he did not review it as to content. Appellee’s Br. at 46. Lujan and Gutierrez, however, argue that the AG’s office had to have known about the content. *See* Gutierrez’s Br. at 16-17; Lujan’s Br. 32-34. They add that Lujan and Gutierrez only signed the agreement after the AG’s office approved of it. *Id.* The trial court found to be credible and true Kono’s assertion that he did not approve the Batoyan settlement for content and only reviewed it as to form.

[51] Notwithstanding this finding by the trial court, we do not believe the Attorney General should be permitted to so easily disavow their legal obligations in reviewing contracts. According to 10 GCA § 80104(e)(2), “[n]o contract requiring an expenditure of more than Ten Thousand Dollars (\$10,000) shall be entered unless the Attorney General shall have approved its form and found that its purpose is within the powers of the hospital.” 10 GCA § 80104(e)(2).

[52] Lujan and Gutierrez acted within their authority by seeking the approval of Acting Attorney General Kono, who signed the agreement “as to form.” Kono’s approval of the contract under law necessarily implies that the expenditure of the funds was within the powers of

the hospital, and it appears prudent and reasonable for Lujan and Gutierrez to rely on Kono's approval. If Kono did not undertake the requisite task of reviewing the purpose and legality of the payments to Batoyan, he should not have approved the settlement agreement.

[53] There also appears to be no dispute that GMHA has the power to adopt rules and regulations pursuant to the Administrative Adjudication Act as may be necessary for the exercise of the hospital's power, performance of its duties and administration of its operations. The Administrative Adjudication Act, codified in Chapter 9 of Title 5 of the Guam Code, provides for the procedures to adjudicate over the "legal rights, duties or privileges of specific parties." 5 GCA § 9200 (2005). The provisions in Chapter 80 of Title 10 demonstrate that it was within the powers of the hospital to negotiate Batoyan's settlement agreement. Therefore, it seems reasonable for Lujan and Gutierrez to conclude that the Settlement Agreement between Batoyan and the GMHA, approved by Kono, was with authority and within the purpose and powers of the hospital. Moreover, there is other evidence in the record which buttresses Lujan and Gutierrez's arguments that their reliance on legal advice was reasonable and prudent.

[54] The parties stipulated to the fact that Attorney Hogan, Legal Counsel for the Civil Service Commission, sent a memorandum to Gutierrez on July 18, 2000, indicating his opinion that Batoyan's rights had been violated. At trial, Gutierrez testified that his office had initiated the memorandum. Transcripts ("Tr."), Day 3 at 65 (Bench Trial, April 24, 2009). In his memorandum, Hogan states, "My opinion is that various procedural failures amounted, when taken as a whole, to a violation of Dr. Batoyan's due process rights to a fair hearing." Lujan's ER, vol. II, tab 5.11 at 1 (Letter from Atty. Jerry E. Hogan to Gov. Gutierrez).

[55] The parties also stipulated that Attorney Tydingco was hired to prepare a Release and Settlement Agreement. Tydingco advised Lujan to sign the Settlement Agreement in order to

protect the hospital. *Id.* Thereafter, Lujan signed the Settlement Agreement. After Batoyan, Attorney Sukola, Attorney Tydingco, Acting Attorney General Kono, and Lujan signed the document, Gutierrez signed it.

[56] Lujan and Gutierrez relied on the legal advice of Attorney Hogan, signed the Settlement Agreement only after GMHA's legal counsel advised them to do so and with the approval and authority of Acting Attorney General Kono. The trial court's holding that the expenditure was without proper authority to allow personal recovery against Lujan and Gutierrez was in error.

[57] Our analysis of 5 GCA §§ 7102 and 7103 render the remaining issues moot. Therefore we do not reach the merits of whether: (1) the AG had a conflict of interest that should have disqualified the Office from prosecuting the case; (2) the trial court erred in denying Lujan's Motion for Judgment on the Pleadings on the grounds of estoppel; (3) 5 GCA § 7103 permits action only against the Government of Guam and its officers, not against former officers; (4) sovereign immunity applies to Gutierrez in his capacity as Governor; and (5) the trial court erred in denying Lujan and Gutierrez' joint motion for reconsideration.

IV. CONCLUSION

[58] We reverse the trial court's holding that without the filing of a government claim and authority to settle, the expenditures were illegal, contrary to law or without proper authority to allow personal recovery against Lujan and Gutierrez.

[59] We hold that Guam's Enforcement of Proper Government Spending Act expressly provides Guam taxpayers standing to enjoin government officials from improperly expending government funds. As a result, the AG does not have standing under 5 GCA § 7103 to bring this case. We further hold that even if the AG brings this suit under its other statutory authority and common law powers, the facts presented do not constitute a violation of the standard found in 5

GCA § 7102 and do not permit personal recovery against Lujan and Gutierrez. Contrary to the trial court's holding, a government claim was not required to be filed before the payments to Batoyan were made. Moreover, under 10 GCA § 80104(e)(2), Acting Attorney General Kono's approval of the contract as to form necessarily implies that the expenditure of the funds was within the powers of the hospital, and it appears prudent and reasonable for Lujan and Gutierrez to rely on Kono's approval and to rely on the advice provided by other attorneys.

[60] Accordingly, the judgment below is **REVERSED**.

MIGUEL S. DEMAPAN

MIGUEL S. DEMAPAN
Justice *Pro Tempore*

ALEXANDRO C. CASTRO

ALEXANDRO C. CASTRO
Justice *Pro Tempore*

ROBERT J. TORRES

ROBERT J. TORRES
Chief Justice