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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

XEROX CORPORATION,
Petitioner-Appellant,

v.

OFFICE OF PUBLIC ACCOUNTABILITY,
Respondent-Appellee.

Supreme Court Case No. CVA13-018
Superior Court Case No. SP0145-12

OPINION

Cite as: 2014 Guam 14

Appeal from the Superior Court of Guam
Argued and submitted on February 19, 2014
Hagåtña, Guam

Appearing for Petitioner-Appellant:

Elyze McDonald Iriarte, *Esq.*
Carlsmith Ball LLP
Bank of Hawaii Bldg.
134 W. Soledad Ave., Ste. 401
Hagåtña, GU 96910

Appearing for Respondent-Appellee:

Anthony R. Camacho, *Esq.*
Law Office of Anthony R. Camacho, *Esq.*
GCIC Bldg.
414 W. Soledad Ave., Ste. 808
Hagåtña, GU 96910

BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice;
KATHERINE A. MARAMAN, Associate Justice.

CARBULLIDO, J.:

[1] Xerox Corporation (“Xerox”) filed a Verified Petition for Writ of Review against the Office of Public Accountability (“OPA”), asserting that OPA did not have jurisdiction to hear a procurement appeal filed by a competitor stemming from a bid protest with the Guam Department of Education (“DOE”) in which Xerox was an affected party.

[2] The trial court granted the writ of review and held that Xerox did not demonstrate that OPA exceeded its jurisdiction when it heard the procurement appeal and affirmed OPA’s decision.

[3] Xerox appealed, arguing that the trial court erred when it concluded that OPA had jurisdiction to review its competitor’s protest appeal.

[4] We reverse. We do not reach the merits of the appeal because we find that the trial court did not have jurisdiction to hear the Verified Petition for Writ of Review and should have dismissed the Petition.

I. FACTUAL AND PROCEDURAL BACKGROUND

[5] DOE issued an Invitation for Bids (“IFB”) No. 022–2010 for the lease of photocopiers and related equipment. Town House Department Stores, Inc., doing business as Island Business Systems and Supplies (“IBSS”) and Xerox submitted the only bids, with Xerox submitting the lower bid on all items.

[6] DOE awarded the contract to Xerox. Xerox prepared and DOE approved a purchase order for quantities of photocopiers different from the quantities specified in the original IFB. Xerox began performance on the contract.

[7] Upon learning of the bid specification and contract discrepancy, IBSS filed a protest with DOE, arguing that the changes were made in violation of the Procurement Law. DOE denied IBSS's protest on the grounds of untimeliness. IBSS filed its appeal with OPA. OPA assumed jurisdiction, ruled in favor of IBSS, and terminated the contract between Xerox and DOE.

[8] As a result of OPA's decision, Xerox initiated a special proceeding (SP0145-12) by filing a Verified Petition for Writ of Review with the trial court, as well as a separate civil action (CV0968-12) by filing a Verified Complaint. Superior Court Case No. SP0145-12 addresses issues pertaining only to OPA's jurisdiction, whereas CV0968-12 involves both the issue of OPA's jurisdiction and the merits of its protest decision.

[9] After a hearing on the Writ of Review, the trial court held that OPA did have jurisdiction to review IBSS's bid protest appeal and denied all relief requested by Xerox in the Writ of Review. Xerox filed a timely notice of appeal. Superior Court Case No. CV0968-12 remains pending with the Superior Court.

II. JURISDICTION

[10] This court has jurisdiction over this appeal pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through Pub. L. 113-93 (2014)) and 7 GCA §§ 3107(b) and 3108(a) (2005).

III. STANDARD OF REVIEW

[11] We review *de novo* whether the trial court has jurisdiction over a Verified Petition for Writ of Review when it asserts jurisdiction via statutory interpretation of Guam's procurement laws. See *Blas v. Guam Customs & Quarantine Agency*, 2000 Guam 12 ¶ 12; *Sule v. Guam Bd. of Dental Exam'rs*, 2008 Guam 20 ¶ 8 (“[P]ure questions of law that were determined by the trial court based on undisputed facts are reviewed *de novo*.” (citing *Answer Ins. Servs., Inc. v. Kelso*, 99 Cal. Rptr. 2d 357, 362 (Ct. App. 2000))).

IV. ANALYSIS

[12] Xerox raises two issues on appeal: (1) whether OPA exceeded its jurisdiction when it terminated the DOE-Xerox contract without first consulting with the Attorney General; and (2) whether OPA exceeded its jurisdiction when it failed to decline jurisdiction over OPA-PA-11-002 while the Supreme Court was considering *Town House Department Stores, Inc. v. Department of Education*, 2012 Guam 25 (“*Town House*”). However, before addressing these issues, we must first determine as a threshold matter whether the trial court lacked jurisdiction to hear SP0145-12 because Xerox filed its petition as a special proceeding instead of as a civil action. *See Town House*, 2012 Guam 25 ¶¶ 28-29.

[13] The trial court exercised jurisdiction over this case pursuant to 7 GCA §§ 31102¹ and 31108² and limited its review “to the question of whether the OPA exceeded its jurisdiction.” Record on Appeal (“RA”), tab 33 at 2 (J. Writ of Review, May 6, 2013). It did “not reach the merits of the underlying case, focusing instead on the specific jurisdictional challenges raised by Xerox.” *Id.*

[14] OPA argues that the trial court lacked jurisdiction because Xerox filed its petition as a special proceeding as opposed to a civil action as required by section 5480(a)³ of the Guam

¹ Section 31102, which specifies when a writ of review may be granted, provides:

A writ of review may be granted by any court, when an inferior tribunal, board, or officer, exercising judicial functions, has exceed [sic] the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.

7 GCA § 31102 (2005).

² Section 31108 states:

The review upon this writ cannot be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer.

7 GCA § 31108 (2005).

³ Section 5480 provides, in relevant part:

Procurement Law and the seminal case of *Town House*. See Resp't-Appellee's Br. at 10-11 (Oct. 10, 2013); RA, tab 18 at 4-6 (Resp't's Answer Verified Pet. Writ of Review, Oct. 25, 2012) (stating as its first affirmative defense that the trial court lacks jurisdiction to grant petitioner extraordinary writ relief).

[15] In *Town House*, we interpreted 5 GCA § 5480 to require parties seeking judicial review of the OPA's procurement protest decision to file a civil action in the Superior Court as opposed to a writ or other special proceeding. See 2012 Guam 25 ¶¶ 24–29, 36. We specifically held:

[T]he term “action” in 5 GCA § 5480(a) means a “civil action.” 5 GCA § 5480(a). The law in Guam distinguishes between civil actions and special proceedings, providing different procedures and rules for each. Compare 7 GCA Div. 2, with 7 GCA Div. 3. Because the type of appeal gives rise to different rules and procedures, and because the Legislature specifically called for “an action” under these circumstances, we determine that it means a “civil action.” 5 GCA § 5480(a).

Id. ¶ 28. Because section 5480 gives the Superior Court jurisdiction to entertain a civil action, a writ initiating a special proceeding under 7 GCA § 31102 would not be appropriate in this case because Xerox had a plain, speedy, and adequate remedy in that it was obligated under section 5480 to bring a civil action, which it did when it concurrently filed a separate action—CV0689-12. See 7 GCA § 31102; *Town House*, 2012 Guam 25 ¶ 29 (holding that a writ of review was not appropriate because the petitioner “had a plain, speedy, and adequate remedy by bringing a civil action under the terms of 5 GCA § 5480(a), and where such a remedy exists, a writ is not an appropriate substitute” (citing *Duque v. Superior Court of Guam*, 2007 Guam 15 ¶ 12)).

(a) Solicitation and Award of Contracts. The Superior Court of Guam shall have jurisdiction over an action between the Territory and a bidder, offeror, or contractor, either actual or prospective, to determine whether a solicitation or award of a contract is in accordance with the statutes, regulations, and the terms and conditions of the solicitation. The Superior Court shall have such jurisdiction in actions at law or in equity, and whether the actions are for monetary damages or for declaratory, or other equitable relief.

5 GCA § 5480(a) (2005).

Therefore, because a plain, speedy, and adequate remedy at law exists for Xerox, the trial court erred in finding that it had jurisdiction over SP0145-12.

[16] Xerox also argues that the trial court has jurisdiction in accordance with our decision in *Data Management Resources, Inc. v. Office of Public Accountability*, 2013 Guam 27 (“DMR”). See Oral Argument at 10:47:50-10:48:50 (Feb. 19, 2014). *DMR*, however, is distinguishable.

[17] *DMR* included a similar issue—whether Guam’s statutory laws governing procurement protests require the aggrieved party to file a civil action as opposed to a writ initiating a special proceeding. 2013 Guam 27 ¶ 19. In that case, we revisited our *Town House* decision and stated that “[o]ur focus was on providing formal notice to the adverse parties of the lawsuit.” *Id.* ¶ 26. We found in *DMR* formal notice in part because DMR named two parties in its petition, namely, OPA and DOE, when seeking declaratory and equitable relief. *Id.* “By doing so, DMR furnished formal notice to these agencies sufficient to allow them to respond to the Petition and defend the lawsuit.” *Id.* ¶ 27. Moreover, we recognized that “[t]hough complex and irregular, DMR’s Petition for Judicial Review, coupled with a petition for an alternative writ of review, should not be equivocated with a writ or special proceeding standing alone.”⁴ *Id.* ¶ 28.

[18] In this case, Xerox did not name DOE in the Verified Petition for Writ of Review. See generally RA, tab 3 (Verified Pet. Writ of Review, Aug. 22, 2012). Further, Xerox filed two separate and distinct lawsuits—the instant Verified Petition and a companion civil action that similarly challenged OPA’s jurisdiction to hear IBSS’s protest appeal and additional claims relating to DOE’s termination of Xerox’s contract. Compare *id.*, with RA, tab 18, Ex. C (Verified Compl., Aug. 22, 2012). The Verified Petition for Writ of Review standing alone

⁴ Of course, the grant of a writ of review is not appropriate if there is any plain, speedy, and adequate remedy, but DMR’s petition was not merely a petition for an alternative writ of review.

requires that there not be any plain, speedy or adequate remedy at law. *See Town House*, 2012 Guam 25 ¶ 29. The filing of the separate, but companion civil action, shows on its face that Xerox had an adequate remedy at law; where such a remedy exists, a writ is not an appropriate remedy. 7 GCA § 31102.

[19] Xerox also argues that this court possesses jurisdiction to hear matters that “raise[] new and important problems, or issues of law or first impression[.]” Appellant’s Revised Br. at 3 (Sept. 12, 2013) (quoting *People v. Superior Court of Guam (Quint)*, 1997 Guam 7 ¶ 8; 7 GCA § 31401 (2005)); Appellant’s Reply Br. at 2 (Oct. 25, 2013).⁵ *Quint* involved the application for writ of mandamus, which requires courts to balance five factors including “[w]hether the party seeking the writ has no other adequate means, such as direct appeal, to attain the desired relief” 1997 Guam 7 ¶ 7 (quoting *Guam Publns, Inc. v. Superior Court of Guam*, 1996 Guam 6 ¶ 10). *Quint* and *Guam Publications*, however, involve petitions directly to this court, requesting that this court invoke its original jurisdiction. We generally exercise our supervisory original jurisdiction in rare instances to correct manifest injustice or address issues of great public importance. *See, e.g., Gutierrez v. Guam Election Comm’n*, 2011 Guam 3 (exercising original jurisdiction over gubernatorial election contest matter). At issue here, however, is whether the trial court (not this court) has jurisdiction, and as we stated in *Town House* (and then in *DMR*), a civil action (not a writ) must be filed in procurement protest cases. This case is an appeal from a procurement dispute to the Superior Court under 5 GCA § 5480(a), not an extraordinary writ to this court. In this instance, the discussion should end with *Town House* and *DMR*. However, to the extent that Xerox argues that the principles of *Quint* and *Guam Publications* apply in a

⁵ Section 31401 states, “Writs of review, mandate and prohibition issued by the Supreme Court or by the Superior Court may in the discretion of the court issuing the writ, be made returnable, and a hearing thereon be had at any time.” 7 GCA § 31401.

procurement protest appeal from the OPA to the Superior Court under a writ of judicial review, we reject such a comparison. Even if the principles did apply, the commercial dispute in this case between two private entities is hardly a case of great public importance that would warrant the trial court's exercise of its extraordinary writ jurisdiction.

[20] Xerox also cites to *Guam Police Department v. Superior Court of Guam (Lujan)* for the proposition that we have “on at least one occasion granted a writ in order to address an issue of public significance.” Appellant’s Revised Br. at 4 (citing *Guam Police Dep’t v. Superior Court of Guam (Lujan)*, 2011 Guam 8). Lujan dealt with an application for writ of prohibition, which contains “three threshold criteria that must be satisfied before a writ of prohibition may properly issue: (1) petitioner is without a plain, speedy, and adequate remedy at law; (2) petitioner is a beneficially interested party; and (3) proceedings without or in excess of a tribunal’s jurisdiction.” *Lujan*, 2011 Guam 8 ¶ 18 (citing *People v. Superior Court of Guam (Laxamana)*, 2001 Guam 26 ¶ 5; 7 GCA §§ 31301, 31302 (2005)). In this case, because we find that Xerox had an adequate remedy at law, Xerox does not satisfy the first threshold criterion. Additionally, because the primary relief Xerox is seeking is remedial in nature, relief is not available under a writ of prohibition. See *Gutierrez v. Guam Election Comm’n*, 2011 Guam 3 ¶ 5 (“[a] writ of prohibition is a preventive, not remedial measure.” (alteration in original) (quoting *Laxamana*, 2001 Guam 26 ¶ 10)). Therefore, a writ of prohibition is not appropriate here.

[21] For the reasons stated above, the trial court erred in finding it had jurisdiction over SP0145-12. Because the trial court lacked jurisdiction, we will not address the remaining issues concerning OPA’s jurisdiction to terminate the Xerox contract.

V. CONCLUSION

[22] We reiterate that a party seeking review of an OPA decision in the Superior Court must do so by way of a civil action and not a special proceeding. As such, we do not reach the merits of this appeal because the trial court lacked jurisdiction to hear Xerox's Verified Petition for Writ of Review. Accordingly, the trial court's decision is **REVERSED**, and the case is **REMANDED** to vacate the Judgment on Writ of Review and dismiss the Verified Petition for Writ of Review for lack of jurisdiction.

Original Signed : **F. Philip Carbullido**
By

Original Signed : **Katherine A. Maraman**
By

F. PHILIP CARBULLIDO
Associate Justice

KATHERINE A. MARAMAN
Associate Justice

Original Signed : **Robert J. Torres**
By

ROBERT J. TORRES
Chief Justice

I do hereby certify that the foregoing
is a full true and correct copy of the
original on file in the office of the
clerk of the Supreme Court of Guam.

JUN 11 2014

By: **Charlene T. Santos**
Deputy Clerk
Supreme Court of Guam