



OFFICE OF THE PUBLIC AUDITOR
Doris Flores Brooks, CPA, CGFM
Public Auditor

PROCUREMENT APPEALS

IN THE APPEAL OF,

GUAM PACIFIC ENTERPRISES, INC.)
202 Corner Pangelinan and Blas Road)
Harmon Industrial Park Road)
Harmon, Guam 96921)
POB 23128, Tamuning, GU 96911)
)
)
)
APPELLANT)
)

APPEAL NO.: **OPA-PA-09-003**

**DECISION AND ORDER
DENYING APPELLANT'S MOTION
FOR SUMMARY JUDGEMENT**

TO:

Appellant – Guam Pacific Enterprises, Inc.
Mr. Sedfrey M. Linsangan
President
P. O. Box 23128
Tamuning, Guam 96911
VIA FACSIMILE: 671-649-6988

Attorney for Appellee – Guam Power Authority
Mr. D. Graham Botha
Legal Counsel
P.O. Box 2977
Hagatna, Guam 96932
VIA FACSIMILE: 671-648-3290

INTRODUCTION

This appeal of a contract dispute was filed with the Office of Public Accountability (hereinafter OPA) on April 23, 2009 by appellant Guam Pacific Enterprises Inc. (hereinafter GPE). OPA has jurisdiction to hear this matter pursuant to 5GCA 5427 and 5706. GPA is represented by its Legal Counsel Attorney D Graham Botha. GPE is represented by its President

1 Mr. Sedfrey M Linsangan who is preceding pro se. The Hearing Officer in this case is Charles D
2 Stake.

3 **BACKGROUND**

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5 The GPE appeal involves the proper application of the Liquidated Damages Clause in a
6 series of Purchase Order contracts for GPE to provide electrical supplies.

7 On September 8 2009 GPE filed a “motion for reimbursement” requesting that, “GPE be
8 reimbursed for all the Liquidated Damages ...imposed by GPA ... due to infringement of my
9 right to secure a delivery extension and GPA’s non-compliance... (with 5GCACchapter 5 and 2
10 GAR DIV4 Chapter 6).”

11 In a motion hearing held on September 18, 2009 appellant requested that a decision in
12 favor of GPE on its “motion for reimbursement”. Appellee stated that it opposed the motion and
13 that there was a dispute as to pertinent facts.

14 At the time of the motion hearing the parties had not submitted a stipulation as to any of
15 the facts in this case. Both parties indicated there was a dispute as to material facts in the appeal
16 including the factual circumstances under which the liquidated damages were assessed.

17 18 **ANALYSIS**

19 The motion presented by appellant is directed at the whether the Liquidated Damages
20 Clause was properly applied under the applicable law. Appellant’s motion, if granted, would be
21 dispositive of this appeal. Therefore, GPE’s motion goes to the substance of this case. Although
22 not formally styled by pro se appellant as a motion for summary judgment it is in practical effect
23 such a motion. Consequently appellant’s motion must be evaluated by the standard applicable to
24 summary judgment.

25 The general rule is summary judgment does not apply when there are genuine issues of
26 material fact. Such issues must be resolved at trial. Rule 56, Guam Rules of Civil Procedure;
27 Rule 56, Federal Rules of Civil Procedure.

28 Boards of Contract Appeal generally make findings of fact in deciding contract disputes.
However, they are also willing to issue summary judgment when the parties are in agreement as

1 to material factual issues. In Hazeltine Corporation the Armed Services Board of Contract
2 Appeals found appellant's motion, "in effect calls for a summary judgment by the Board". The
3 Board denied the motion when appellant "... failed to demonstrate the facts and circumstances
4 surrounding execution of the contract ...are not material to the proper interpretation those
5 documents." *Appeal of Hazeltine Corporation* 1974 WL 1642, ASBCA No. 18860. In Burroughs
6 Corp., 1979 WL 2239, GSBCA5019, the General Services Board of Contract Appeals indicated
7 its willingness to entertain motions for summary judgment, "when the facts are clear from the
8 record and not in dispute." *Appeal of Burroughs Corporation* 1979 WL GSBCA5019: 79-
9 2BCA14, 083.

10 During the motion hearing in the instant case the parties themselves conceded there is a
11 dispute as to the factual conditions under which the Liquidated Damages Clause was applied. As
12 a result parties were unable to reach a stipulation. These are material issues which must be
13 determined during the October 8, 2009 hearing of this appeal. Consequently the legal standard
14 required for summary judgment has not been met and appellant's motion must be denied.

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16 **CONCLUSION AND ORDER**

17 For the reasons stated above we must DENY GPE's Motion for Summary Judgment. It is
18 hereby ordered that appellant GPE's Motion for Summary Judgment is **DENIED**.

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20 **SO ORDERED** this 18th day of **September, 2009** by:

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25 **CHARLES D STAKE, ESQ.**
26 **Hearing Officer**
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