

taking any action upon notification of pending judicial proceedings." The Public Auditor further cautioned the parties that they were "ON NOTICE" of the Superior Court matter, and the Public Auditor would not take "any further action due to the aforementioned judicial involvement." See June Order.

DFS then moved to lift the stay. Lotte filed an Objection and Opposition pursuant to 2 GAR Div. 4, §§ 12109(d) and 12104(c)(9) which requested that the Public Auditor enforce the stay on December 3, 2013 ("December Objection"). In addition, Lotte argued that the Office of Public Accountability ("OPA") lacks jurisdiction over this appeal under 5 GCA §5425 and 2 GAR §§ 9101 and 9109 because the protest was filed long after DFS knew or should have known of the facts underlying the protest and DFS' letters did not comply with procedural requirements.

In denying the motion to lift the stay, the Public Auditor found that Guam's courts are unified, with a broad jurisdictional sweep. See "Order Denying DFS' Request to Lift Stay," December 26, 2013 ("December Order"), citing 48 USCA §1424-1 and 7 GCA §3107(a). The Public Auditor affirmed that 2 GAR §12103(b) requires that if a procurement appeal "has been commenced in court the Public Auditor shall not act on the Appeal except to notify the parties and decline the matter due to Judicial involvement." See December Order.

Guam R. Civ. P. 58(a)(1) provides that a civil proceeding is not over until a judgment has been entered. See A.B. Won Pat Guam Int'l Airport Auth. v. Moylan, 2004 Guam 1, p. 6-7, 2004 WL 110618 (Jan. 24, 2004)(GRCP 58 requires entry of a judgment in a civil case; "writ of mandate, like any other civil action, must be terminated by a judgment").

Accordingly, the multiple requests and papers DFS filed with the Public Auditor on September 15, 2014 before the Superior Court issued its judgment are premature. Lotte does not believe that it can respond to the substance of DFS's filings until judgment is entered, and "judicial involvement" is therefore terminated. At that time, Lotte intends: (1) to move to disqualify the OPA; (2) if OPA retains this matter, to renew its December Objection to the OPA asserting jurisdiction over this case pursuant to 2 GAR and 5 GCA and move to dismiss based on jurisdictional grounds; and (3) to take further appropriate steps as required by law.

Respectfully submitted this 17th day of September, 2014.

**CABOT MANTANONA LLP
Attorneys for Interested Party
Lotte Duty Free Guam, LLC,**

By:


DEBORAH E. FISHER

DEF:me

**CABOT
MANTANONA LLP**
929 S. Marine Corps Dr., Ste. 200
Tamuning, Guam 96913
Telephone: (671) 646-2001
Facsimile: (671) 646-0777
E-mail: mail@cmlaw.us

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IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

IN THE APPEAL OF)
)
DFS Guam L.P., Appellant of the)
Decision of the A.B. Won Pat)
International Airport Authority, Guam)
_____)

Docket No. OPA-PA-13-006

CERTIFICATE OF SERVICE

I, **Deborah E. Fisher**, declare as follows:

1. I am an Associate of the law firm of Cabot Mantanona LLP, legal counsel for Lotte Duty Free Guam, LLC.
2. That I am a citizen of the United States of America, over the age of eighteen (18) years, have personal knowledge of the facts stated herein, and if called to testify I could and would competently testify thereto.
3. That on the 17th day of September, 2014, I caused a copy of **Lotte Duty Free Guam, LLC's JOINDER IN A.B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM'S NOTICE OF ONGOING JUDICIAL INVOLVEMENT WITH MEMORANDUM**, filed with the Office of Public Accountability to be served upon the below-listed parties via hand delivery:

William J. Blair, Esq.
Blair Sterling Johnson & Martinez, PC
1008 DNA Building
238 Archbishop F.C. Flores Street
Hagatna, Guam 96910
Attorneys for DFS Guam L.P.

G. Patrick Civile, Esq.
Civille & Tang, PLLC
Suite 200, 330 Hernan Cortez Ave.
Hagatna, Guam 96910
Attorneys for DFS Guam L.P.

Maurice M. Suh, Esq.
Gibson, Dunn & Crutcher LLP
c/o Blair Sterling Johnson & Martinez, PC
1008 DNA Building
238 Archbishop F.C. Flores Street
Hagatna, Guam 96910
Attorneys for DFS Guam L.P.

Calvo Fisher & Jacob LLP
259 Martyr Street, Suite 100
Hagatna, Guam 96910

Office of the Attorney General
7th Floor, ITC Building
Tamuning, Guam 96913

I declare under penalty of perjury under the laws of Guam and the United States of America that the aforementioned is true and accurate to the best of my knowledge and belief.

Executed this 17th day of September, 2017, in Tamuning, Guam.


DEBORAH E. FISHER

DEF:me