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IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM

UNITED STATES OF AMERICA,)	CIVIL CASE NO. 02-00022
)	
Plaintiff,)	OBJECTION TO RECEIVER'S INVOICES
)	AND MOTION TO VACATE;
v.)	MEMORANDUM OF POINTS AND
)	AUTHORITIES; CERTIFICATE OF
GOVERNMENT OF GUAM,)	SERVICE
)	
Defendant.)	
_____)	

COMES NOW Defendant GOVERNMENT OF GUAM (“the Government”), by and through undersigned counsel of record, and hereby respectfully objects to the Receiver's four (4) latest sets of invoices and moves the Court to vacate its corresponding orders approving payments made pursuant thereto. This Objection and Motion is supported by the pleadings and motions on file, the transcripts of proceedings, the record in this case, and the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

The Government and the Receiver are currently engaged in meaningful discussions to try to resolve various issues related to funding sources in support of Consent Decree-related matters that are of great concern to this Court. The recent

discussions are necessary because it has become undisputed that a \$92 million financial shortfall exists in funding the remaining Consent Decree projects. As a direct consequence of this shortfall, it has become even more imperative for the Government to scrutinize all expenditures of public funds and to seek every opportunity to mitigate and reduce the cost of completing this matter, including the cost of future compliance. Because fiscal responsibility begins with transparency and accountability, it is to this end that the Government objects to the Receiver's four (4) latest sets of invoices, dated November 19, 2013 (ECF No. 1292); December 20, 2013 (ECF No. 1316); January 13, 2014 (ECF No. 1332); and February 19, 2014 (ECF No. 1341), respectively, on both procedural and substantive grounds, and respectfully moves this Court to vacate its four corresponding orders for payment on the grounds set forth herein.

As discussed below, the submission of the Receiver's invoices to the Court fails to comply with the Court's *Order re: Appointment of Receiver* (ECF No. 239) that was filed on March 17, 2008 and which requires that due process be afforded to the Government by allowing the Government an opportunity to review the Receiver's invoices prior to the Court's approval of the same. Further, the Receiver's invoices suffer from a number of deficiencies that prevent meaningful review to determine whether the invoices are reasonable. The Government submits that in the interests of justice and in order to sufficiently protect the rights of the people of the Territory of Guam, the procedural and substantive errors relating to the invoices warrant that this Court vacate the invoices and reimburse, or at least credit, the Government for any payments that may have been unreasonably made.

FACTUAL BACKGROUND

On March 17, 2008, this Court issued an Order re: Appointment of Receiver (ECF No. 239), wherein the Court ordered the Receiver to serve to the Government a copy of a "*summary of time expended and expenses incurred during the month immediately preceding, along with a billing statement and request for compensation.*" The Court's Order requires that the Receiver serve a copy of its monthly invoice to the Government at least two weeks before the Court is required to both review the request and direct payment if all compensation and expenses are found by the Court to be "reasonable." *Id.* at 18.

On October 25, 2013, at a hearing expressly restricted to the Government's Motion to Stay and for Further Relief ("First Motion to Stay"), this Court orally granted the Lieutenant Governor's stale request for a "full substitution" of the Cabot Mantanona LLP law firm for the Attorney General's Office ("AGO"), after the Government's repeated requests to disqualify the AGO from representing the Government in the above-captioned matter due to a conflict of interest and despite the absence of a pending motion for full substitution. See Order re: Motion to Stay and for Further Relief (ECF No. 1243); see *also* Order re Hearing for Motion to Stay and for Further Relief (ECF No. 1236) ("All other matters previously scheduled for that date, including the Receiver's Quarterly Report presentation, shall be rescheduled once the court resolves the issues raised in the First Motion to Stay."). In the same Order in which this Court terminated the AGO from representation of the Government in this case, and substituted in Cabot

Mantanona LLP, the Court invited the Government to bring to the Court's attention any evidence of mismanagement of funds by the Receiver. See ECF No. 1243, at 17.

On January 24, 2014, this Court issued an Order Re: Payment of Receiver Invoices for October 2013 and Retainage Fees (ECF No. 1292), wherein the Court ordered payment of \$156,458.69 and a ten percent (10%) retention "[i]n accordance with the court's March 17, 2008 Order." Despite the explicit requirements of this Court's March 17, 2008 Order, the Government never received a copy of these invoices for October 2013, let alone at least two weeks in advance of the Court's decision to determine their "reasonableness" and order payment thereupon.¹

On March 6, 2014, the Court issued an Order Re: Payment of Receiver Invoice for November 2013 and Reimbursement for Payment of Monthly Gross Receipts Tax (ECF No. 1316), wherein the Court ordered payment of \$135,526.76 and a ten percent (10%) retention, again "[i]n accordance with the court's March 17, 2008 Order." Again, in clear violation of the Court's March 17, 2008 Order, the Receiver failed to serve a copy of his invoices to the Government at least two weeks before the Court is supposed to review them for reasonableness and order payment.

The pattern of apparently serving the AGO (which has been terminated from representing the Government) rather than serving the Government through its current counsel, continued for the Receiver's subsequent two invoices and appears to continue

¹ The Government notes that the top of the four (4) sets of invoices at issue in this Objection and Motion contain a heading with the words "cc: Attorney General c/o Assistant Pat Mason." It is unknown whether this actually means that these invoices have been submitted to the AGO. In any event, as noted above, the AGO was terminated from representing the Government in this case effective October 25, 2013, and therefore any subsequent correspondence to the AGO with the Receiver's invoices would not satisfy the procedural due process requirements explicated in this Court's March 17, 2008 Order.

as the practice today. See Order Re: Payment of Receiver Invoice for December 2013 (ECF No. 1332) (ordering payment of \$97,723.37 and ten percent retention in accordance with March 17, 2008 Order); Order Re: Payment of Receiver Invoice for January 2014, Retainage Fees, and Reimbursement for Payment of Monthly Receipt Taxes (ECF No. 1341) (ordering payment of \$143,666.65 and ten percent retention in accordance with March 17, 2008 Order).

In a statement to the media by David Manning, posted on Pacific News Center on April 2, 2014, Mr. Manning stated the following:

"The Governor's Office says it has been denied access to the spending of [the Receiver]. This is simply not true. **All spending by the Receiver on behalf of GSWA are submitted to the Government before the expenditures are made and they are given an opportunity to object.** No objections have been made. All of the payments to the Receiver approved by the Court are published electronically by the District Court each time they are paid, along with the detailed invoice and receipts for expenses. All of the attorneys involved in this case, including Mr. Mantanona and Ms. Miller, and the media have full access to this information.

GBB DISAPPOINTED THE GOVERNOR HAS CHOSEN MUDSLINGING OVER COOPERATION, PNC News Online (April 2, 2014), attached hereto as **Exhibit "A"** (emphasis added).

This media statement made by the Receiver is a misrepresentation because in truth, the Government did not receive the invoices before the expenditures were made and the Government was not given any opportunity to object.

Further, a careful examination of each of the four (4) sets of invoices at issue herein, which were approved by the Court without the Government's review, reveals that these invoices are flawed as a matter of substance. The billing practices of the Receiver, as reflected by these surreptitiously-submitted invoices, preclude meaningful

review and make it impossible to determine the "reasonableness" of the same. To that end, the Government also respectfully objects to each of these four (4) sets of invoices due to their substantive deficiencies, and moves to vacate the corresponding orders that approved them and reimbursing the Government with the same.

LEGAL DISCUSSION

Generally, a receiver is an indifferent trustee or ministerial officer appointed by the court as its fiduciary "to receive and preserve the property or fund in litigation . . . at the direction of the court." BLACK'S LAW DICTIONARY § 1268 (6th ed. 1990) (emphasis added).

In most jurisdictions, any interested party may file objections to a receiver's accounts. See 65 Am. Jur. 2d *Receivers* § 279. Often, these objections are made during a final accounting to assert claims "based on the receiver's misfeasance or malfeasance." *Id.* A court, in reviewing the accounts of its receiver, "should not ratify expenditures not incurred for the benefit of the receivership," and even where a partial accounting of the Receiver has been previously approved by the court, the court has "full power and authority to investigate and determine the correctness of all [of the receiver's] accounts." *Id.* § 281.

1. **The Government Has a Due Process Right to Review the Receiver's Invoices Prior to the Court's Approval.**

Ever since Cabot Mantanona LLP became counsel of record for the Government in the above-captioned matter, the Receiver has repeatedly and consistently failed to provide the Government with a copy of his invoices before expenditures are made,

despite public statements to the contrary. While federal district courts have wide discretion in granting relief in an equitable receivership, the court must still afford the parties due process. See 65 Am. Jur. 2d *Receivers* § 363; see also generally *Liberte Capital Group, LLC v. Capwill*, 421 F.3d 377 (6th Cir. 2005).

Here, the Receiver's invoices reveal on their face that if the invoices were provided at all, they were provided to the AGO, who has not been the Government's counsel since October of 2013. If the AGO received the invoices, they were not forwarded on to Cabot Mantanona LLP, nor to the Department of Administration. In any event, service of the invoices or anything else related to the instant suit is not effective if such service is made upon the AGO because that office no longer represents the Government in this matter and is not authorized to receive the invoices or any related pleadings. See e.g., Fed. R. Civ. P. 5(b)(1) (service of pleadings and other documents is effective when made upon the attorney representing the party).

Because the Receiver did not file and serve the Government or its attorney with a copy of its last four invoices at the same time that it filed and served the same with the Court as is required by the Court's own Order appointing the Receiver, the Government was deprived of its due process right to review and comment on the invoices prior to the Court's approval of them. On these grounds alone, good cause exists to justify that this Court vacate its orders approving these invoices and reimburse the Government for any unreasonable charges.

2. The Receiver's Invoices Are Not "Reasonable"

Generally, while courts have considered numerous factors when establishing a receiver's compensation, a "reasonable" fee is based on all circumstances surrounding the receivership and corresponds with, in part, the degree of responsibility and business ability required in the management of the affairs entrusted to the receiver. See *Sec. & Exch. Comm'n v. W.L. Moody & Co., Bankers (Unincorporated)*, 374 F. Supp. 465, 481-83 (S.D. Tex. 1974), *aff'd sub nom., S.E.C. v. W.L. Moody & Co.*, 519 F.2d 1087 (5th Cir. 1975). Other courts have acknowledged that while there are no "hard-and-fast" rules for calculating the compensation for a receiver, and while in each case the reasonableness of a receiver's expenses must be reviewed with its particular facts in mind, applicable considerations include "the time and labor required, but not necessarily that actually expended, in the proper performance of their duties," as well as "the fair value of such time, labor, and skill" and "the degree of activity, integrity, and dispatch with which the work is conducted." 65 Am. Jur. 2d *Receivers* § 228.

The Receiver's invoices at issue are plagued with a host of inadequacies that deprive the Government, and the people of Guam, from conducting a meaningful review of the Receiver's billed work. The billing practices of the Receiver, as reflected in these invoices, confirm to the Government that the Receiver's invoices cannot and should not be deemed "reasonable."

A. Abstract Billing

These invoices from November 2013 forward are devoid of specificity and leave only abstract billing statements for the Court to review. For example, in the invoices

from November 19, 2013, Vice President Chace Anderson repeats the same non-descript statement, "SWMD operations and administration," almost every day for the majority of the month of October 2013. See ECF No. 1292-1, at 3-4. He repeats this practice consistently over the next sets of invoices. See ECF No. 1316-1, at 3-4; ECF No. 1332-1, at 3; ECF No. 1341-3, at 3. David Manning's billing statements repeat the same vague refrain over and over again, namely: "Reviewing, drafting and responding to email." See ECF No. 1292-1, at 26-29; ECF No. 1316-1, at 24-27; ECF No. 1332-1, at 18-21; ECF No. 1341-3, at 13-15.

In other analogous contexts, the court has denied compensation to a receiver where the receiver "submitted a very general affidavit without setting forth the specific nature of the work performed." See *Independent Properties Co., Inc. v. Mast Property Investors, Inc.*, 148 A.D.2d 849 (N.Y. 3d Dep't 1989). The general statements referenced above are only some of the examples of abstract billing statements that pervade in the four (4) sets of invoices at the heart of this Objection.

B. Block Billing

A quick glance is enough to notice the block-billing practices comprising the Receiver invoices, and in particular, but not limited to, the billing statements of Vice President Christopher Lund. Not only are Mr. Lund's billing statements repetitive and verbatim over the span of several weeks, but they also contain vague, voluminous half-page blocks of text that somehow account for nine (9) or ten (10) hours a day at a time. It goes without saying that, presented with this block billing, the Government is completely unable to decipher the reasonableness of time spent on any one task.

Courts have denied compensation to receivers where invoices were block-billed and "total daily time spent . . . was entered without itemizing the time expended on specific tasks." See 84 Am. Jur. *Trials* § 367 (originally published in 2002).

Additionally, these block-billing practices are disconcerting because, when the Government attempts to dissect and disaggregate some of Mr. Lund's block bills, some entries appear to bill for time spent on Layon operations. For example, the Government notices that Mr. Lund billed for: "continued support for Layon operational activities related to leachate management, and environmental compliance with operational permit," that he "responded to operational issues at Layon and support as needed," and that he "coordinated ongoing evaluation of Layon leachate collection and GWA sewer system to assure proper operation." See, e.g., ECF No. 1292-1, at 5-26. It has already been established on the record in this matter that the operations of Layon are being conducted by an independent third-party contractor. See Government of Guam's Response to GSWA Board Letter, ECF No. 1326 (citing ECF No. 167-1 (May 2013 report)). Because Mr. Lund entered his bills as block bills, the Government cannot assess the nature and extent of Mr. Lund's time spent on matters concerning Layon operations. The Government raises this issue to ensure that excessive time is not being spent by the Receiver on Layon operations and that duplicative billing is not taking place.²

² In the afore-cited case, the court denied compensation to a receiver where the evidence "established that a professional real estate management group did in fact perform the day-to-day management of the premises and was paid for such services." *Independent Properties, Co.*, 148 A.D.2d 849.

C. Template Billing

The Government cannot help but mention that Mr. Manning's bills are highly suspect. The evidence for this is in the total number of billing hours. Every single invoice from January 2013 to date has reflected an exact total of 115.50 hours for Mr. Manning. Defying all probabilities, it is extremely implausible that Mr. Manning worked the exact same number of hours each and every month for fourteen (14) months straight. The Government raises this issue in an attempt to verify whether Mr. Manning has been templating his bills. Additionally, these billing statements provide more support for the Government's position that it is impossible to assess the Receiver's invoices for reasonableness.

CONCLUSION

In light of the foregoing, the Government respectfully requests that this Court grant the following relief:

- i. vacate this Court's previous orders approving the past four (4) sets of invoices submitted to the Court by the Receiver;
- ii. reimburse, or at least credit, the Government for any payments that may have been unreasonably made after the Government has had an opportunity to comment and request a hearing if necessary;
- iii. require the Receiver to comply with the Court's March 17, 2008 Order henceforth, by serving the Government with a copy of its monthly invoice at the same time as the Receiver serves the Court;

iv. require the Receiver to fix its billing practices to conform with its responsibilities in fulfilling its fiduciary obligations as a receiver; and

v. afford the Government an opportunity to file, within fourteen (14) calendar days of receiving each of the Receiver's monthly invoices, an objection or a statement of non-objection before the Court issues an order approving or denying payment.

The Government cannot continue to permit the current practice to go unchallenged, and it will certainly not accept ambiguous representations made by the Receiver regarding its billing practices and the Government's involvement in the process. Finally, the Government reserves any rights it has to challenge any future invoices of the Receiver, at any time between now and immediately before and up to the time at which the Receiver seeks to be permanently discharged.

Respectfully submitted this 9th day of May, 2014.

CABOT MANTANONA LLP
GOVERNMENT OF GUAM, Defendant

By: /s/ Rawlen M.T. Mantanona
RAWLEN M.T. MANTANONA

CERTIFICATE OF SERVICE

I, RAWLEN M.T. MANTANONA, hereby certify that on the 9th day of May, 2014, I will cause to be served via hand delivery, and/or electronically a true and correct copy of the Objection to Receiver's Invoices and Motion to Vacate; Memorandum of Points and Authorities to the following counsels:

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Dated this 9th of May, 2014.

/s/ Rawlen M.T. Mantanona
RAWLEN M.T. MANTANONA

VIDEO: GBB Disappointed the Governor Has "Chosen Mudslinging Over Cooperation"

Last Updated on Wednesday, 02 April 2014 18:13
Written by Kevin Kerrigan
Wednesday, 02 April 2014 06:30



Guam News - Guam News

Guam - GBB's Principal Associate David Manning has issued a statement saying *"it is disappointing that the Office of the Governor has chosen mudslinging over cooperation in addressing the solid waste issues that are so critical to the people of Guam"*.

Manning is responding to a statement released yesterday by Adelup, and another statement filed Monday in District Court by the Administration's attorney Rawlan Mantanona. Both of those statements were critical of GBB for what they said was wasteful spending and failing in their fiduciary duty by mismanaging the bond funds needed to complete the final consent decree projects ordered by the Court.

Manning defended GBB's expenses saying they've *"been reviewed by the District Court and we have been subjected to two full audits by Guam's Public Auditor and there have been no findings of double billing or improper expenses."*

Furthermore, Manning maintains that GBB *"agreed to be reimbursed the lesser of the actual expenses ... for federal contractors"* which he says *"has resulted in savings to the people of Guam of more than \$300,000 since the beginning of our work"*.

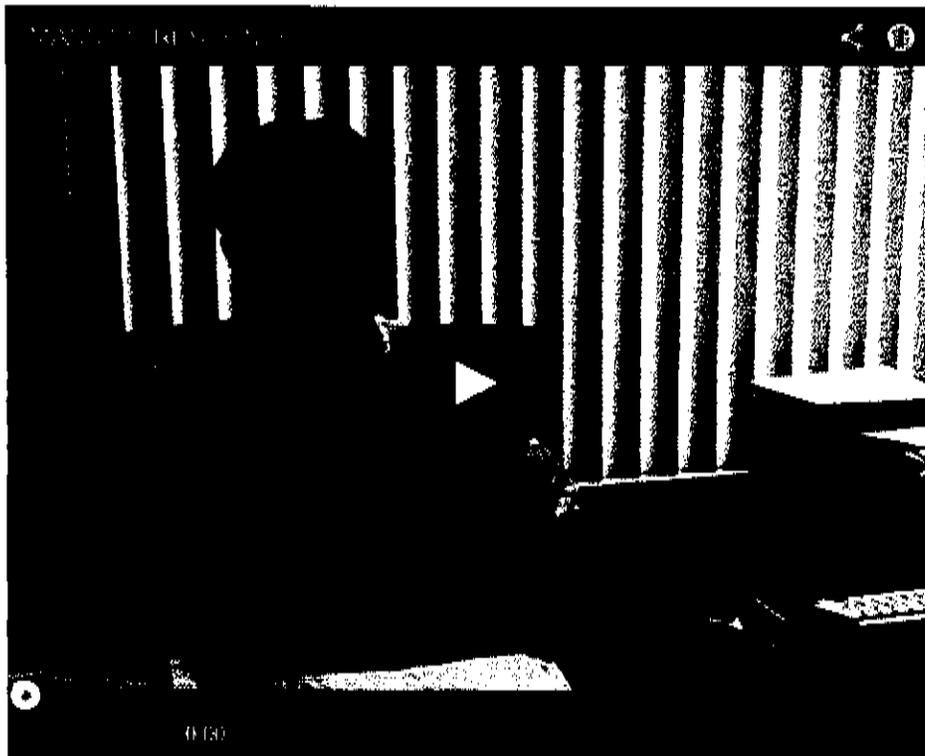
In addition, Manning says Adelup's claim that *the Governor's Office has been denied access to the spending of GBB "is simply not true"*. He says *"all spending by the Receiver on behalf of GSWA are submitted to the Government before the expenditures are made and they are given an opportunity to object."*

"No objections have been made", says Manning.

With regards to attorney Mantanona's statement filed with the District Court, Manning states *"all of the issues raised in Mr. Mantanona's brief ... are a rehash of arguments previously made by the Office of the Governor and shown in numerous other filings with the Court, to be without foundation."*

He concludes: *"If Mr. Mantanona and the Governor's Office want the Receiver to be gone, they should cooperate with us as the Court continuously urges them to do, instead of continuing to sling mud and throw up roadblocks to completing our work."*

EXHIBIT "A"



Dim lights | Embed Embed this video on your site

READ the statement from GBB Principal Associate David Manning below:

Statement of the Receiver

It is disappointing that the Office of the Governor has chosen mudslinging over cooperation in addressing the solid waste issues that are so critical to the people of Guam. It is clear that we struck a nerve when we submitted our analysis of the contract recently negotiated with GRRP that would turn operations of solid waste over to GRRP, causing dramatic increases in the rates paid by all solid waste customers.

All of our expenses have been reviewed by the District Court and we have been subjected to two full audits by Guam's Public Auditor and there have been no findings of double billing or improper expenses. The transparency of our expenses is an indication of the openness with which we have approached our work on Guam.

Federal contractors like GBB working on Guam, under federal regulations receive a per diem for living expenses while on Guam. At the beginning of our work on Guam we decided to do our best to keep living expenses low by submitting detailed receipts of expenditures to the Court and we agreed to be reimbursed the lesser of the actual expenses or the per diem for federal contractors. This has resulted in savings to the people of Guam of more than \$300,000 since the beginning of our work and complete transparency for all of our expenses. Had we simply accepted the per diem, cost to Guam would have been far higher and the transparency of our expenses would have been far less.

The Governor's Office says it has been denied access to the spending of GBB. This is simply not true. All spending by the Receiver on behalf of GSWA are submitted to the Government before the expenditures are made and they are given an opportunity to object. No objections have been made.

All of the payments to the Receiver approved by the Court are published electronically by the District Court each time they are paid, along with the detailed invoice and receipts for expenses. All of the attorneys involved in the case, including Mr. Mantanona and Ms. Miller, and the media have full access to this information.

When we began our work on Guam the Government of Guam was spending \$11,000 each day for renting equipment while government owned equipment and workers sat idle. Trash collections were a complete mess and the Ordot Dump was an environmental and operational disaster. The Receiver cut out this wasteful spending and brought order and dependability to the chaotic conditions found in the solid waste operations of the Government of Guam.

All of the issues raised in Mr. Mantanona's brief filed with the Court this week are a rehash of arguments previously made by the Office of the Governor and shown in numerous other filings with the Court, to be without foundation.

One of the biggest complaints raised by Mr. Mantanona and the Governor's Office is that we have not raised the rates charged solid waste customers. We have not raised the rates because we do not need to raise the rates. If they wish to raise the rates to allow them to spend money on other things, they are free to do so.

If Mr. Mantanona and the Governor's Office want the Receiver to be gone, they should cooperate with us as the Court continuously urges them to do, instead of continuing to sling mud and throw up roadblocks to completing our work.

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