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PAG Board Meeting Materials January 19

Marge Duenas <mduenas@portguam.com> Fri, Jan 20, 2017 at 4:16 PM
To: senator@senatorbjcruz.com

Hafa Adai Speaker Cruz,

In accordance with Section 8113.1, Chapter 8, 5 GCA, the Port Authority of Guam hereby submits an electronic copy of its Board of Directors January 19, 2017 board meeting materials.

Regards – Marge

GL# 34-17-093
Speaker Benjamin J.F. Cruz

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Eddie Baza Calvo
Governor of Guam
Ray Tenorio
Lieutenant Governor

SPECIAL MEETING OF THE BOARD OF DIRECTORS
Jose D. Leon Guerrero Commercial Port
Thursday, January 19, 2017
11:45am

A G E N D A

I. CALL TO ORDER

II. NEW BUSINESS

1. Civil Case No. CV 1170-12 Guam YTK Corporation

III. ADJOURNMENT

FILED
SUPERIOR COURT
OF GUAM
2016 DEC 29 AM 9:57
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BY:

IN THE SUPERIOR COURT OF GUAM

GUAM YTK CORPORATION, **Plaintiff,** **vs.** **PORT AUTHORITY OF GUAM,** **Defendant.**	**CIVIL CASE NO. CV 1170-12** **DECISION AND ORDER (Plaintiff's Motion to Confirm Arbitration Award; Defendant's Motion to Vacate Arbitration Award)**

INTRODUCTION

This matter came before the Honorable Anita A. Sukola on September 29, 2016 on the Guam YTK Corporation's ("Plaintiff") Motion to Confirm Arbitration Award, as well as the Port Authority of Guam's ("Defendant") Motion to Vacate Arbitration Award. Attorney Genevieve P. Rapadas appeared on behalf of Plaintiff and Attorney Michael F. Phillips appeared on behalf of Defendant. The Attorney General of Guam had also submitted a Brief *Amicus Curiae* in Support of Defendant's Motion to Vacate Arbitration Award. Upon review of the evidence, written and oral arguments, and legal authorities presented by the parties, the Court hereby issues this Decision and Order.

ORIGINAL

Doc. No. 34GL-17-0083.*

BACKGROUND

On December 14, 2001, Plaintiff and Defendant entered into a lease agreement. Compl. at 1 (Oct. 16, 2012). The Development Agreement and Lease ("DAL") contained an arbitration provision, and after a dispute arose between the parties, Plaintiff filed its Complaint to Compel Arbitration, as well as its Motion to Compel Arbitration, with the Superior Court of Guam on October 16, 2012. This Court initially found that because the DAL, as a whole, violated Guam law, the arbitration agreement was unenforceable. Decision & Order at 5 (March 12, 2013). Plaintiff appealed this Court's ruling, and on April 17, 2014, the Supreme Court of Guam reversed this Court's decision and remanded the matter for this Court to compel arbitration. Guam YTK Corp. v. Port Auth. of Guam, 2014 Guam 7 ¶ 62. Pursuant to the Supreme Court's Opinion, this Court ordered that the parties proceed to arbitration. Order at 1 (July 10, 2014).

The matter proceeded to arbitration as ordered, and on April 4, 2016, the Arbitration Panel, composed to Attorneys Mitchell F. Thompson, Cesar C. Cabot, and Cynthia V. Ecube, unanimously issued its Arbitration Award. Pl.'s Mot. Confirm Arbitration Award at 1 (May 19, 2016). An Amended Arbitration Award, reflecting corrections made to several clerical errors contained in the initial Award, was issued on May 17, 2016, *nunc pro tunc* to April 4, 2016. Id.

On May 19, 2016, Plaintiff filed its Motion to Confirm Arbitration Award. Defendant filed its Opposition on June 20, 2016, and the Plaintiff filed its Reply to Opposition on July 5, 2016. Defendant also filed its Motion to Vacate Arbitration Award on July 5, 2016, and Plaintiff filed its Opposition on August 2, 2016. On July 7, 2016, the Attorney General filed her Motion to Intervene or Appear as *Amicus Curiae*. The Court issued a Decision and Order on July 28, 2016, denying the Attorney General's Motion to Intervene, but granting the Motion to Appear as *Amicus Curiae*. The Attorney General submitted its Brief *Amicus Curiae* in Support of

Defendant's Motion to Vacate the Arbitration Award on August 5, 2016. The Court heard oral arguments on both Motion to Confirm and Motion to Vacate on September 29, 2016 and subsequently took both matters under advisement.

DISCUSSION

This Court's ruling on Plaintiff's Motion to Confirm Arbitration Award will depend primarily on the outcome of Defendant's Motion to Vacate Arbitration Award; therefore, the Court will first address Defendant's Motion to Vacate. The Court will also briefly address the Attorney General's Brief *Amicus Curiae*. Lastly, the Court will discuss Plaintiff's Motion to Confirm.

I. Defendant's Motion to Vacate Arbitration Award

Defendant moves this Court to vacate the arbitration award issued by the Arbitration Panel on April 4, 2016. Def.'s Mot. Vacate at 1 (July 5, 2016). Defendant cites the following grounds for vacating the award:

(1) Plaintiff's demand for arbitration was untimely;
(2) the Arbitration Panel manifestly disregarded the law;
(3) the Arbitration Panel failed to draw its essence from the contract; and
(4) the Arbitration Panel exceeded its powers.

See id. at 1-9.

Defendant concludes his Motion to Vacate by briefly citing several other grounds for vacating the Arbitration Award, such as sovereign immunity and constitutional due process. Id. at 9-10.

In light of the strong public policy in favor of arbitration, a moving party bears a high burden in establishing whether vacation of an arbitration award is warranted. Asia Pacific Hotel Guam, Inc. v. Dongbu Ins. Co., 2015 Guam 3 ¶ 15. Pursuant to the Guam International Arbitration statute, a trial court may order an arbitration award vacated in any of the following circumstances:

> (1) [W]here the award was procured by corruption, fraud, or undue means;
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence that is pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
> (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter was not made.

7 GCA § 42A701(b)(1)-(4) (2015).

Furthermore, the Supreme Court of Guam has held that "manifest disregard of the law" also constitutes a valid basis for vacating an arbitration award, reasoning that such manifest disregard "rises to the level of 'misbehavior by which the rights of a party have been prejudiced' . . . ." Government of Guam and Edna T. Paulino v. Pacificare Health Ins. Co., 2004 Guam 17 ¶ 48. The Court has further stressed the longstanding policy in favor of arbitration, noting that "courts may not review the merits of the controversy, the validity of the arbitrator's reasoning, or the correctness of the arbitration award." Guam YTK Corp., 2014 Guam 7 ¶ 58 (citation omitted). Accordingly, the Court will utilize these standards for determining whether vacation of the Arbitration Award is warranted.

The Court will address each argument in Defendant's Motion to Vacate separately.

a. Plaintiff failed to timely assert right to demand arbitration

Defendant argues that the Plaintiff's demand for arbitration was untimely, noting that as per the terms of the DAL, Plaintiff was required to demand arbitration "in writing within thirty days after the controversy arose." Def.'s Mot. Vacate at 2-3. Defendant notes that "[a]ll areas of dispute and conflict . . . first arose during or before the year 2004, at least five (5) years before the purported demand by [Plaintiff] for arbitration in 2009." Id. at 3-4. Therefore, it is

Defendant's position that the Arbitration Panel should have dismissed Plaintiff's claim as a matter of law. Id. at 4.

In its Opposition, Plaintiff notes that Defendant has failed to specify which statutory—or non-statutory—ground applies. Pl.'s Opp'n at 3 (Aug. 2, 2016). Plaintiff also argues that the Defendant's objection, itself, is untimely, indicating that Defendant affirmatively consented to and willingly participated in arbitration. Id. at 5. Furthermore, Plaintiff notes that the parties were in settlement negotiations until 2009, after which Plaintiff made its first demand for arbitration. Id. at 6. After attempts at negotiating fell through a second time, and after Defendant began asserting that the DAL was invalid, Plaintiff made a second demand for arbitration in 2012. Id. Plaintiff submits that because the second arbitration demand was in response to Defendant's claim that the DAL was void, the demand was timely. Id. at 7.

The grounds for vacating an arbitration award are extremely narrow. See Asia Pacific Hotel Guam, Inc., 2015 Guam 3 ¶ 15. This Court agrees that, with respect to Defendant's timeliness argument, the Defendant has failed to specify which grounds for vacating an arbitration award, if any, apply. Because the burden of establishing the specific grounds for vacating an arbitration award lies with the moving party, the Court will not speculate as to which statutory or non-statutory ground is applicable.

The Court will also not determine whether the parties properly followed the arbitration procedure. Section 17.1 of the DAL provides the following:

> All disputes and controversies of every kind and nature between the parties to this Lease arising out of or in connection with this Lease, including but not limited to disputes concerning the existence, construction, validity, interpretation or meaning, performance, nonperformance, enforcement, operation, breach, continuance, or termination of the Lease, shall be submitted to final, binding arbitration.

Rapadas Decl. Ex. 4 at 27 (May 19, 2016).

Pursuant to the arbitration agreement, the Arbitration Panel was tasked with interpreting the DAL and determining its validity. Therefore, the interpretation of Section 17.2 of the DAL, which set forth the procedure for arbitration, as well as the determination of whether Plaintiff's demand was timely, constitutes a significant aspect of the controversy at hand. This Court is not permitted to review the merits of the controversy. See Guam YTK Corp., 2014 Guam 7 ¶ 58. Accordingly, the Court cannot make a finding that the arbitration demand was untimely.

b. The Arbitration Panel manifestly disregarded the law

Defendant argues that the Arbitration Panel "manifestly disregarded both the law specifically prohibiting the [Port Authority of Guam] Board's actions and the consequences of the parties entering into an illegal contract or agreeing to terms of which the law does not authorize." Def.'s Mot. Vacate at 4-5. It is Defendant's position that the Port Authority of Guam Board of Directors was precluded, under 12 GCA § 10105(i), from leasing Government of Guam property for a period of more than five (5) years. Id. at 4. Defendant further alleges that, upon ruling in favor of the Plaintiff, the Arbitration Panel failed to explain the reasoning behind its decision or cite any relevant law to support its findings. Id. at 8.

In its Opposition, Plaintiff argues that the statutory history of 12 GCA § 10105(i) is "ambiguous" and that the Court has yet to interpret the statute's application. Pl.'s Opp'n at 10. Plaintiff further argues that, up until the 2012 arbitration demand, Defendant—as well as its legal and management representatives—maintained that the lease was valid, even throughout the course of settlement negotiations. Id. Therefore, Plaintiff claims that Defendant's failure to assert an "invalidity" defense until 2015 constitutes a waiver of such a defense. Id. Plaintiff also stresses that, during the arbitration hearing, Defendant failed to support its position with applicable case law and failed to call any witnesses with personal knowledge of the lease

agreement. Id. at 12. It is therefore Plaintiff's position that the Arbitration Panel rendered its decision based on the evidence provided, and that this Court is not permitted to review the reasonableness of the decision. Id. Lastly, Plaintiff notes that the Arbitration Panel was not required to provide a detailed analysis of its decision. Id. at 13.

As previously noted, a manifest disregard of the law is a valid basis for vacating an arbitration award. The Supreme Court of Guam has established that:

> To succeed on a manifest disregard of law claim, a party seeking vacation must show that "the error [was] obvious and capable of being readily and instantly perceived by the average person qualified to serve as an arbitrator," that the law disregarded was "well defined, explicit, and clearly applicable," and that the arbitrator chose to ignore this well-defined law.

Asia Pacific Hotel Guam, Inc., 2015 Guam 3 ¶ 23 (quoting Pacificare Health Ins. Inc., 2004 Guam 17 ¶ 46.).

Furthermore, judicial review under the abovementioned standard is "extremely limited." Id. In order to determine whether the applicable law is "well-defined" under this standard, the Court must first look to the language of the statute. Title 12, Chapter 10 of the Guam Code Annotated sets forth the powers of the Port Authority of Guam. With respect to the Port Authority of Guam's power to enter into commercial leases, the specific applicable statute is as follows:

> Notwithstanding any other provision of law, [the Board may] make, negotiate and enter into a commercial lease, or issue a permit or license for the use of its real property and other related facilities for a term not to exceed five years.

12 GCA § 10105(i).

"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." Guam Greyhound, Inc. v. Brizill, 2008 Guam 13 ¶ 29. The Court finds that the abovementioned statute, as written, is subject to various interpretations. Furthermore, as noted by the Plaintiff,

the Supreme Court of Guam has not interpreted the meaning of the statute, and the Guam Legislature has not provided further clarity as to the policy behind the statute. Therefore, the Court does not find Section 10105(i) to be "well-defined, explicit, and applicable" under the manifest disregard of the law standard. Accordingly, the Court cannot find that the Arbitration Panel, in interpreting Section 10105(i) and finding the DAL valid, manifestly disregarded the law. The Court, at this time, is not in a position to provide its own interpretation of Section 10105(i) and, as required under Guam law, must defer to the judgment of the Arbitration Panel.

c. The Arbitration Panel failed to draw its essence from the contract

The Defendant claims that the Arbitration Panel "fail[ed] to draw its essence from the contract." Def.'s Mot. Vacate at 8. Specifically, Defendant argues that "the Panel failed to follow the terms of the Lease but instead imposed additional terms while ignoring others, completely failing to draw its conclusions from the essence of the Lease." Id. at 9. To support his claim that the Panel failed to draw its essence from the contract, Defendant cites the reasons provided in his previous arguments. Id.

In response, Plaintiff argues that, pursuant to recent Guam case law, violating the "essence of the contract" is not a clearly established ground for vacating an arbitration award. Pl.'s Opp'n at 14. Plaintiff further argues that the Arbitration Panel's decision was nevertheless "grounded in the essence of the contract" in that it was based on a reasonable interpretation of the DAL, as well as on the weight of the evidence provided. Id. at 16. Plaintiff also reiterates that Defendant "presented almost no relevant evidence during the arbitration to rebut any of [Plaintiff's] evidence." Id.

The Supreme Court of Guam has not specifically held that violating the essence of the contract constitutes a valid ground for vacating an arbitration award. Asia Pacific Hotel Guam,

Inc., 2015 Guam 3 ¶ 40. The Court has acknowledged, however, that "as long as the arbitrator is even *arguably* construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed a serious error does not suffice to overturn his decision." Id. (quoting United Paperworks Intern. Union, AFL-CIO v. Misco, Inc., 484 U.S. 29, 38 (1987) (emphasis added)). The Supreme Court has further noted that "[a]n award may be overturned *only* if the arbitrator must have based his award on his own personal notions of right and wrong, for only then does the award fail to 'draw its essence' [from the contract]." Id. (emphasis added).

Upon reviewing the Amended Arbitration Award, the Court finds that the Arbitration Panel applied the terms of the lease agreement to the facts of the case based on the evidence provided. Defendant has failed to present any clear evidence that the Arbitration Panel issued their award arbitrarily without any consideration for the facts presented to it. Furthermore, although the Arbitration Panel did not provide a lengthy analysis as to how it rendered its decision, the Court notes that the parties stipulated to having the Panel submit a "reasoned award." See Rapadas Decl. Ex. 6; Trickett Decl. Ex. 3 (July 5, 2016). Federal courts have determined that "a reasoned award is something short of findings and conclusions but more than a simple result." Cat Charter, LLC v. Schurtenberger, 646 F.3d 836, 844 (11th Cir. 2011). The Court finds that detailed findings of fact and conclusions of law were not required and that the Arbitration Panel adequately issued its Award based on the law and facts provided to it. Accordingly, the Court cannot find that the Panel failed to draw its essence from the contract.

d. The Arbitration Panel exceeded its powers and manifestly disregarded the law

Defendant argues that the Arbitration Panel exceeded its powers, noting that the Panel "does not have authority to enforce an illegal contract and . . . does not have the power to award

damages pursuant to an invalid Lease." Def.'s Mot. Vacate at 9. Defendant incorporates the arguments set forth in its Opposition to Plaintiff's Motion to Confirm Arbitration Award, claiming that the Panel "failed to explain how an obviously illegal lease was anything other than unenforceable." Def.'s Opp'n Mot. Confirm at 6 (June 2016).

In response, the Plaintiff argues that although an arbitration award may be vacated if the arbitrators "exceeded their powers," such a determination can only be based on "the parties' submissions or the arbitration agreement to reach a certain issue, not whether the arbitrators correctly decided that issue." Pl.'s Opp'n at 16-17. Plaintiff further notes that the Arbitration Panel had "express authority" to determine the validity of the DAL based on the arbitration agreement. Id.

The Court may vacate an arbitration award if it finds that the arbitrators "exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 7 GCA § 42A701(b)(4). The Supreme Court of Guam has yet to set forth the standard for determining whether an arbitrator exceeds its powers. Accordingly, the Court looks to other jurisdictions as persuasive authority.

A party seeking to vacate an arbitration award on the grounds that the arbitrators exceeded their powers "bears a heavy burden." Oxford Health Plans LLC v. Sutter, 133 S. Ct. 2064, 2068 (2013). The United States Supreme Court had held that an arbitrator exceeds its authority when it goes beyond its duty to interpret and enforce a contract and, instead, imposes its own public policy view. Stolt-Nielsen S.A. v. AnimalFeeds Intern. Corp., 559 U.S. 662, 672 (2010). The California Supreme Court has further held that "[a]rbitrators may exceed their powers by issuing an award that violates a party's unwaivable statutory rights or that

contravenes an *explicit* legislative expression of public policy." Richey v. AutoNation, Inc., 341 P.3d 438, 442 (Cal. 2015) (emphasis added).

Here, Defendant asserts that the DAL is an illegal contract under 12 GCA § 10105(i), and that the Arbitration Panel exceeded its powers by enforcing the contract. The determination of whether the DAL was valid and enforceable was well within the powers granted to the Arbitration Panel through the arbitration agreement. Rapadas Decl. Ex. 4. Furthermore, there is no evidence before this Court to suggest that the Arbitration Panel imposed any public policy views in rendering its decision. The Panel considered the evidence presented and interpreted the validity of the DAL in light of its interpretation of the applicable statutory provisions. Whether or not that decision was erroneous is not for this Court to decide. See Guam YTK Corp., 2014 Guam 7 ¶ 58. Also, as previously noted, the language set forth in 12 GCA § 10105(i) is ambiguous, and neither the Supreme Court of Guam nor the Guam Legislature has provided clarification on how the statute should be interpreted. For these reasons, the Court cannot find that the Arbitration Panel exceeded its authority as to warrant vacation of the arbitration award.

e. Additional grounds exist to set aside award

Defendant concludes its Motion to Vacate Arbitration Award by noting the following:

> Additional issues to raise include sovereign immunity, and constitutional due process such as an analogy to case law limiting punitive damage awards. Other grounds include the Public Trust Doctrine, and that the award violates numerous Guam statutes, which include the limitation of damages (i.e. expectation damages) that can be awarded in contract actions within the government claims act, and the provision in the government claims act that generally limits the claim a government claimant can seek in the amount claimed within the government claim.

Def.'s Mot. Vacate at 9.

With respect to the abovementioned argument, Defendant does not even attempt to determine which statutory or non-statutory grounds apply. Furthermore, the Supreme Court of

Guam has made it abundantly clear that "sovereign immunity is not implicated or threatened" and that Government Claims Act does not apply. Guam YTK Corp., 2014 Guam 7 ¶¶ 41, 61. For these reasons, the Court does not find any additional grounds for vacating the arbitration award.

f. ***Brief* Amicus Curiae *of the Attorney General of Guam in Support of Defendant's Motion to Vacate Arbitration Award***

On July 28, 2016, the Court granted the Attorney General of Guam's Motion to file an *amicus* brief in this matter. In her Brief *Amicus Curiae*, the Attorney General of Guam argues in favor of Defendant's Motion to Vacate Arbitration Award and notes the following issues in detail:

> (1) Whether the Arbitration Panel exceeded its powers by making a damage award in violation of Guam's Sovereign Immunity and public policy;
> (2) Whether the Panel exceeded its powers by finding the forty-five (45) year lease was valid even though 12 GCA 10105 only authorizes the Defendant to enter into commercial leases for a term not to exceed five (5) years;
> (3) Whether the Arbitration Panel exceeded its powers by enforcing a lease that was ultra vires and unenforceable;
> (4) Whether the Arbitration Panel's failure to off-set the $12.7 million award by the amount of back rent Plaintiff owed Defendant requires the award to be vacated;
> (5) Whether the Arbitration Panel's failure to justify awarding an amount higher than that claimed in the original Government Claim requires the award to be vacated; and
> (6) Whether the award should be set aside because one of the arbitrators was partial toward Plaintiff.

Attorney General's Brief *Amicus Curiae* at 4 (Aug. 5, 2016).

The term "*amicus curiae*" is Latin for "friend of the court." Black's Law Dictionary (10th ed. 2014). The purpose of an *amicus* brief is to allow a non-party the opportunity to assist the Court by providing information and elaborating issues *presently* before the Court. Universal City Studios, Inc. v. Corley, 273 F.3d 429, 445 (9th Cir. 2001). "Courts generally do not consider new issues raised in *amicus* briefs." People v. Hannon, 5 Cal. App. 5th 94, 105 (2016).

As noted by the Plaintiff, the Attorney General has raised a number of specific issues that were never raised by either party. These new issues include the following:

> (1) Whether the Panel exceeded its powers by making a damage award in violation of sovereign immunity and public policy;
> (2) Whether the Panel's failure to offset the award by the amount of back rent owed to Defendant requires the award to be vacated;
> (3) Whether the Panel's failure to justify awarding a higher amount than that claimed in the original Government Claim requires the award to be vacated; and
> (4) Whether the award should be set aside because one of the arbitrators was partial.

Because the aforementioned issues were never brought to this Court's attention by the parties via their respective pleadings, the Court cannot consider the arguments presented in determining whether to grant Defendant's Motion to Vacate.

The Attorney General also raises the issue of whether the Arbitration Panel exceeded its powers by finding the lease valid and by enforcing the lease. As this Court had previously stated, an arbitrator exceeds its authority when it goes beyond its duty to interpret and enforce a contract and, instead, imposes its own public policy view. Stolt-Nielsen S.A., 559 U.S. at 672. Judicial review on this particular issue is extremely limited, and this Court finds that no evidence has been presented—either by Defendant or by the Attorney General of Guam—that would support a finding that the Arbitration Panel rendered its decision as a means of imposing a public policy view.

Based on the foregoing reasons, the Court hereby **DENIES** Defendant's Motion to Vacate Arbitration Award.

II. Plaintiff's Motion to Confirm Arbitration Award

The Plaintiff moves this Court to confirm the Amended Arbitration Award. Pl.'s Mot. Confirm at 1 (May 19, 2016). Plaintiff notes that "the arbitrator's decision, following a lengthy evidentiary hearing and pre- and post-hearing briefing, was unanimous, and was properly grounded in the applicable provisions of the DAL . . . ." Id. at 7. Defendant opposes Plaintiff's Motion, arguing that the Arbitration Award should be vacated on the grounds that the Arbitration Panel failed to provide a reasoned award, exceeded its powers and manifestly disregarded the law, and failed to draw its essence from the contract. Def.'s Opp'n at 9.

The Supreme Court of Guam has held that "[b]ecause the Arbitration Agreement references the procedures under section 42107 of the Civil Arbitration Law for purposes of confirming an arbitration award, the parties would have to adhere to section 42107 *when attempting to confirm* in court any arbitration award entered in this case." Guam YTK Corp., 2014 Guam 7 ¶ 50 (emphasis added). The Supreme Court of Guam further noted that "[s]ection 42107 of the Civil Arbitration Law is "identical to section 42A702(b) of the [Guam International Arbitration Chapter] . . . ." Id. at fn. 9.

Section 42107 of the repealed Civil Arbitration Law provides, in relevant part:

> If the parties in their agreement have agreed that the judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made, any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected . . . . If no court is specified in the agreement of the parties, then such application may be made to the Superior Court of Guam. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding.

7 GCA § 42107 (1993), *repealed* by P.L. 27-081:2.

The Court notes that, by unanimous vote, the Arbitration Panel issued its Amended Arbitration Award on May 17, 2016, *nunc pro tunc* to April 4, 2016. Rapadas Decl. Ex. 3. The Court further notes that, as per the reasons set forth in Part I of this Decision and Order, the Defendant's Motion to Vacate the Arbitration Award is denied. See supra Part I. Lastly, the Court notes that, as per Section 17.5 of the DAL, the parties agreed that "[a]ny decision or award rendered by a majority of the arbitrators appointed under this Lease shall be final and binding on all parties to the proceeding, and judgment on such award may be entered and confirmed by either party in the Superior Court of Guam . . . ." Rapadas Decl. Ex. 4.

The Court finds that all requirements under 7 GCA § 42107 are met and, notwithstanding any arguments in opposition, the Amended Arbitration Award is hereby confirmed.

Accordingly, the Court **GRANTS** Plaintiff's Motion to Confirm Arbitration Award.

CONCLUSION

By a preponderance of the evidence and based on the foregoing reasons, the Court **DENIES** the Defendant's Motion to Vacate Arbitration Award and **GRANTS** the Plaintiff's Motion to Confirm Arbitration Award.

SO ORDERED this 29 day of DECEMBER, 2016.

HONORABLE ANITA A. SUKOLA
Judge, Superior Court of Guam

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I acknowledge that a copy of the original hereto was placed in the court box of:
CALVO FISHER JACOB
PHILLIPS + BORDALLO
Date: 12-29-16 Time: 10:22AM
A Sgambelluri
Deputy Clerk, Superior Court of Guam

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I acknowledge that a copy of the original hereto was placed in the court box of:
OFFICE of the
Attorney General
Date: 12-29-16 Time: 10:22AM
A Sgambelluri
Deputy Clerk, Superior Court of Guam