

Justice Demapan

CLERK OF COURT
SUPERIOR COURT

1998 OCT 20 PM 4:28

BY: *[Signature]*
DEPUTY CLERK OF COURT

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

BANK OF GUAM, a Guam Banking Corp.,
Plaintiff,

v.

LORENZO I. DELEON GUERRERO
and MATILDE V. DELEON GUERRERO,

Defendants,
Counterclaimants/
Third-Party Plaintiffs,

v.

BANKGUAM PROPERTIES, INC., a
CNMI corporation,

Third-Party Defendant.

Civil Action No. 97-346

**ORDER DENYING
PLAINTIFF'S REQUEST
FOR CHANGE OF PLACE
OF TRIAL**

L PROCEDURAL BACKGROUND

This matter came before the Court on September 23, 1998, in Courtroom C on Plaintiff's request for change of place of trial. Joaquin C. Arriola, Esq. appeared on behalf of Plaintiff. John D. Osborn, Esq. appeared on behalf of Defendants Lorenzo I. Guerrero and Matilde V. Deleon Guerrero. The Court, after having reviewed the memoranda, declarations, and exhibits, and after hearing and considering the arguments of counsel, orally denied Plaintiff's request for change of place of trial. The Court now renders a written decision based on its oral ruling.

FOR PUBLICATION

*ARRIOLA
OSBORN*

II. FACTS

On September 1, 1998, Plaintiff Bank of Guam (hereinafter referred to as "Plaintiff") filed a request for change of place of trial from Saipan to a different locale on the grounds that a fair and impartial trial cannot be held on Saipan due to the pre-trial publicity involved in this case and the status of Defendant Lorenzo I. Guerrero as a local celebrity.

III. ISSUES

- 1. Whether Plaintiff has made a showing of prejudice to justify a change of venue?

IV. ANALYSIS

A. Change of Venue

Plaintiff contends that Defendant Lorenzo I. Guerrero's popularity on Saipan and the amount of pretrial publicity involved in this case will prevent Plaintiff from having a fair and impartial trial on Saipan. As such, the venue for trial must be changed to another locality.

The test for determining whether pretrial publicity mandates a change of venue is whether it is reasonably likely that prospective jurors would base their decision in the case upon pretrial information rather than the evidence presented at trial and would be unable to remove from their minds any preconceived impressions they might have formed. State v. Knight, 459 S.E.2d 481,495 (N.C. 1995). The party moving for a change of venue has the burden of proving the existence of a reasonable likelihood that he cannot receive a fair trial in a particular locality on account of prejudice from such pretrial publicity. Id. The existence of prejudice justifying a change of venue is a question of fact within the discretion of the trial court- Nowels v. People, 442 P.2d 410 (Colo.App. 1968).

Plaintiff relies initially on Rule 4(c) of the Commonwealth Rules of Practice to support his contention that pretrial prejudice mandates that venue in this matter be changed. This rule provides as follows:

Special Sessions. Any judge of the court may, in the interest of justice or to further the efficient performance of the business of the court, conduct proceedings in a case pending before him at a special session anywhere in the Northern Mariana Islands, on the request of a party or otherwise.

Corn. R. Prac. 4(c)-

1 1 Newspaper Articles

2 Plaintiff contends that the enormous amount of pretrial publicity in this cast: mandates a change
3 of venue and submits three local newspaper articles in support of this proposition.^{2f}

4 The Court has reviewed the articles submitted and finds that the amount of pretrial publicity
5 generated by the articles, if any, is neither prejudicial nor enormous. The articles submitted merely
6 consist of straightforward, unemotional factual accounts of events. Moreover, two of the articles were
7 published well over one year ago. The questionable amount of publicity created by these articles
8 provides no reason for concluding that the population of Saipan is so aroused against Plaintiff and so
9 unlikely to be able to objectively decide this case based on the evidence presented at trial that
10 Plaintiffs due process rights would be violated by refusing to grant a change of venue prior to
11 attempting selection of a jury.

12 2. Public Opinion Poll

13 In addition to the newspaper articles, Plaintiff submitted the results of a public opinion poll
14 in an attempt to demonstrate that actual prejudice exists among prospective jurors to such an extent
15 that an impartial jury cannot be selected on Saipan.^{3f} The study was prepared and conducted on behalf
16 of Plaintiff by a Ron McNinch, PhD., a professor of public administration at the University of
17 Guam.^{4f}

18 Based on a review of the poll results and on the testimony of Dr. McNinch, the Court find!
19 hat the poll results fail to support Plaintiffs contention of overwhelming juror prejudice or that
20

21 ^{2f}“Bank sues Guerrero”, Marianas Variety, April 4, 1997, attached as Exhibit B to Request for Change
22 of Place of Trial; “Guerrero sues Bank”, Marianas Variety, May 15, 1997, attached as Exhibit C to
23 Request for Change of Place of Trial; “Bank requests change of venue for trial”, Saipan Tribune,
September 7, 1998, attached as Exhibit I to Reply to Defendants’ Opposition Memorandum for Change
of Place of Trial.

24 ^{3f}See Public Opinion Poll for Saipan: Trial Fairness In Cases Involving Local Elites and Citzier
25 Opinions on Non-local Businesses, attached as Exhibit D to Request for Change of Place of Trial.

26 ^{4f} The Court overruled Defendants’ hearsay objection to admission of the survey into evidence afte
27 listening to the testimony of Dr. McNinch as to how the poll was designed to assess the relevant public
opinion and the techniques used therein.

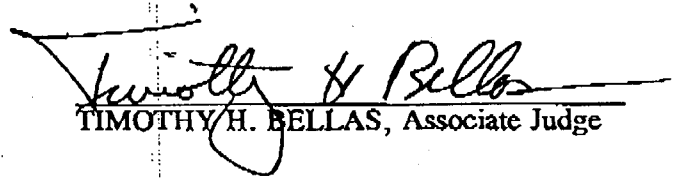
1 potential jurors cannot be impartial on Saipan. For example, 112 of 210 potential jurors (53%) felt
 2 that an off-island company would be treated fairly by a jury in a trial against a local famous person.
 3 Moreover, 105 of 210 potential jurors (50%) did not feel that there was prejudice against off-island
 4 businesses on Saipan. Finally, 112 of 210 (53 %) potential jurors indicated that they would not be
 5 afraid to rule against a famous or powerful person in a court of law.³

6 Based on the foregoing, the Court finds that the evidence thus far presented by Plaintiff falls
 7 short of establishing that there exists on Saipan so great a prejudice against it that it cannot obtain a
 8 fair and impartial trial in this case. As such, the request for change of place of trial is denied.
 9 However, should this matter proceed to trial, the Court will utilize voir dire to gauge the community
 10 prejudice inspired by any pretrial publicity and make an independent determination of whether a fair
 11 trial can be obtained on Saipan based upon all the evidence available at that time.⁴

12 **V. CONCLUSION**

13 For all the reasons stated above, Plaintiff's request for change of place of trial is
 14 DENIED. However, if during voir dire the Court finds that an impartial jury cannot be selected on
 15 Saipan, it may reconsider Plaintiffs motion.

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 17 So ORDERED this 20 day of October, 1998.

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 21 **TIMOTHY H. BELLAS, Associate Judge**

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 23
 24 ³On cross-examination, Dr. McNinch testified that most, if not all, of the poll questions contained
 25 phrases which weren't defined for the potential jurors. Such phrases included "off-island company",
 "famous or rich people", and "famous or powerful person?". Instead, the potential jurors were left to
 interpret the words or phrases based upon on their own general understanding.

26 ⁴As other courts have noted, a public opinion poll is no substitute for voir dire examination. See
 27 United States v. Mandel, 431 F.Supp. 90 (U.S.D.C. D.Md. 1977); United States v. Partin, 320
 28 F.Supp. 275 (E.D.La. 1970).