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SUPERIOR COURT
OF GUAM

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IN THE SUPERIOR COURT OF GUAM

HEE K. CHO and MIN S. CHO, Plaintiffs, vs. ALUPANG BEACH CLUB, INC. and STEVEN KASPERBAUER, Defendants.	CIVIL CASE NO. CV1059-17 **DECISION AND ORDER** ***(Motion for Preliminary Injunction)***

INTRODUCTION

This matter came before the Honorable Arthur R. Barcinas on May 14, 2026, upon the Plaintiff's Motion for Preliminary Injunction against Defendants. Plaintiffs, Hee K. Cho and Min S. Cho ("the Chos" or "Plaintiffs") were represented at the hearing by Attorney Daniel Berman. Defendant Steven Kasperbauer and Defendant Alupang Beach Club, Inc ("ABC" or "Defendants") were represented by Attorney Todd Thompson. Having reviewed the briefings and arguments made by both parties, the Court issues the following decision and order.

BACKGROUND

This matter involves a lengthy dispute between ABC and the Chos regarding the Chos' pursuance of a Replacement Horizontal Property Regime ("HPR") that currently exists and applies to the Alupang Beach Tower. The Chos own a majority of the units at Alupang Beach Tower ("ABT") while ABC holds a lease on the ABT property.

The tower is a mixed-use property, in which the Chos operate the units designated for hotel use, while the ABT operate units for condominium use.

The Chos have long sought a Replacement HPR from the Guam Land Use Commission ("GLUC") for the ABT which would increase the number of hotel units for the tower. Meanwhile, ABC has opposed these efforts. In 2004, ABC and ABT executed a Settlement Agreement and Mutual Release ("SAMR"), in which ABC received a payment in exchange for an agreement not to oppose approval of the HPR for the ABT property.

In 2016, however, the Chos once again sought to alter the hotel to residential unit ratio of the tower and filed an amended HPR ("Amended HPR") with the GLUC. ABC then, however, objected to the Amended HPR with GLUC.

The Chos filed suit against ABC for breach of the Settlement Agreement and requested for injunctive relief. This Court, as well as the Supreme Court, affirmed that ABC had waived its right to petition and that the difference between the Replacement and Amended HPR were not "material," as ABC claimed.

Upon this Court's grant of the Defendants' motion for Summary Judgment, however, the Court reversed and remanded this matter. *See generally Cho v. Alupang Beach Club, Inc.,* 2025 Guam 3. The Supreme Court ruled that the trial court did not resolve the actual contract dispute and directed that the merits question be addressed: whether the proposed amendment is materially similar to the Replacement HPR, whether provisions of the SAMR limit Defendants' conduct, and whether Plaintiffs are entitled for any alleged breach. *Id.* at ¶¶ 34, 44-46.

Upon remand, the Plaintiffs renew their request for the Court to grant a preliminary injunction to restrain, prohibit, and prevent Defendants from asserting any claims against the Plaintiffs that:

> (A) oppose approval of the replacement HPR and from the solicitation of any other person to oppose approval of the replacement HPR; (B) oppose any modifications of zoning variances or other regulatory permits or action as Plaintiffs may deem requisite or appropriate to the operation of ABT as present existing to conform such operations to applicable law; (C) oppose this type of business operation of the Plaintiffs; (D) oppose any arrangements between the ABT Owners Association and the Plaintiffs to permit, document or deal with the Plaintiffs' occupancy and use of the main lobby area, and common elements or portions of the ABT project that do not directly impact ABC's use of property designated as CU 2 or Adjacent Property; (E) oppose any provision of the SAMR as invalid or unenforceable under any provision of the law.
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> Pla. Motion for Prelim. Injunc. at p. 3 (Mar. 23, 2026).

As part of their motion for preliminary injunction, the Plaintiffs state that they will suffer irreparable injury and they are likely to succeed on the merits of their claim because of the continued damage to their business operation, good will, and reputation.

In their opposition, Defendants attest that injunctive relief is inappropriate. They argue the Chos have been unable to demonstrate that the threatened harm is neither great or imminent. Further, ABC suggest that the Plaintiffs' threatened harm is "speculative" and that the Chos have not demonstrated that the injury Plaintiffs may suffer is irreparable or inequitable.

In reply, the Plaintiffs reiterate that they have always sought a preliminary injunction. They also argue that, due to the difficulty in quantifying the loss of goodwill and the financial strain that prolonged litigation has borne upon the Plaintiffs, injunctive relief is necessary for them.

Specifically, the Plaintiffs have cited the growing harms caused by changing market and economic conditions. They suggest that this has made it difficult to quantify the harm caused by the continued breach of the SAMR, therefore justifying the need for injunctive relief.

Following oral arguments by the parties on May 14, 2026, this Court took the matter under advisement.

DISCUSSION

I. STANDARD

This motion presents a narrow question. It does not ask whether Defendants breached the SAMR. It does not ask whether Plaintiffs may ultimately obtain permanent injunctive relief. And it does not ask whether Plaintiffs have pled viable claims. The question is whether Plaintiffs have demonstrated a present entitlement to a preliminary injunction.

The granting of a preliminary injunction requires a showing of (1) irreparable injury, and (2) the likelihood of succeeding on the merits. *Mack v. Davis*, 2013 Guam 13 ¶ 12. Irreparable injury typically focuses on categories of injury that "do not easily lend themselves to monetary compensation. *Id. citing Sule v. Guam Bd. Of Exam'rs for Dentistry,* 2011 Guam 5 ¶ 12. Preliminary injunction serves to maintain the status quo before litigation. *See Benavente v. Taitano*, 2006 Guam 20, ¶ 16. A movant must establish both irreparable injury and likelihood of success on the elements in order to succeed. *See Sule,* 2011 Guam 5, ¶12.

If the currently existing status quo itself is causing one of the parties irreparable injury, it is necessary to alter the situation so as to prevent the injury … by allowing the parties to take proposed action that the court finds will minimize the irreparable injury." *Tumon Partners, LLC v. Shin,* 2008 Guam 15, ¶ 22.

II. PRELIMINARY INJUNCTION

In their motion, the Plaintiffs have asserted continuing harm to their business operations, reputation, goodwill, and their efforts concerning the amended HPR. These allegations of injury are not to be minimized, and, in the appropriate case, injuries of that sort may be indeed difficult to quantify, supporting a finding for equitable relief.

The difficulty here, however, lies in connecting those allegations to a demonstrated need for immediate judicial intervention.

The conduct principally challenged by Plaintiffs consists of objections submitted to the Guam Land Use Commission in 2016. Plaintiffs filed this case in 2017. The present motion was not filed until 2026. The Plaintiffs have noted that this matter has spent years in appellate proceedings, and the time that they may have anticipated spending in litigation over this matter has greatly exceeded the time that this case has been with the courts.

The issue before the Court, however, is not whether litigation has been lengthy. Rather, the Court is concerned whether the present record demonstrates specific and irreparable injury likely to occur before final adjudication. Based on the record before it now, the Court finds that it does not.

The Plaintiffs' declarations speak generally of ongoing injury, suspended regulatory action, impaired business opportunities, and loss of goodwill. What is not identified, however, is an imminent GLUC decision, a pending deadline, a scheduled governmental action, or some other concrete event requiring emergency relief before the merits can be reached.

That evidentiary gap is significant. A preliminary injunction demands more than proof of a dispute and more than proof of a potential breach. It requires proof that waiting for a merits determination will likely cause an injury that cannot adequately be addressed afterward. The current record does not make that showing.

The Plaintiffs certainly possess substantial contract arguments. The SAMR contains broad language concerning objections to regulatory actions, business operations, and future modifications to the project. Significant consideration was exchanged as part of the settlement between Plaintiff and Defendant. Plaintiffs have claims that are worthy of adjudication.

That precisely is why, however, the merits determination should be addressed more cautiously. The Plaintiff has not demonstrated that they risk suffering an imminent and irreparable injury before that evaluation can be properly made.

A demonstration of a viable claim is not the same thing as demonstrated likelihood of success.

The Supreme Court's remand makes clear that key contractual questions remain unresolved. Whether the proposed amendment is materially similar to the Replacement HPR, whether particular provisions apply, and how those provisions should be construed are all matters still awaiting decision. *See Cho,* 2005 Guam 3 ¶ 44.

Those questions are not peripheral. They are the merits.

Because the Court has not yet completed the analysis directed by the Supreme Court, and because the parties continue to advance competing and facially plausible interpretations of the SAMR, the Court cannot conclude that Plaintiffs have established the requisite likelihood of success necessary for extraordinary interim relief.

That is not to say that either party is more likely to prevail at this juncture. The Court reemphasizes that this analysis is a mere recognition that the merits of this case remain unsettled, and therefore, the Plaintiffs are unable to meet this element necessary to receive a preliminary injunction.

Lastly, the Court would point out that grants of preliminary injunctions are done primarily to preserve the status quo. Plaintiffs have characterized their requested injunction as merely requiring Defendants to honor promises already made. Defendants characterize it as imposing restrictions whose contractual basis remains disputed.

This disagreement clearly illustrates why preliminary relief is inappropriate here. To grant the injunction, the Court would need to decide the very contractual issues that the Supreme Court instructed it to resolve on remand. A preliminary injunction should preserve the status quo. It should not function as an advance merits determination.

CONCLUSION

In light of the above reasoning, the Court finds that the Plaintiffs have failed to demonstrate that they will suffer irreparable harm without the Court's imposition of a preliminary injunction. The Court has not, however, determined whether the Defendants breached the SAMR, whether the Plaintiffs may prevail at trial, or whether permanent injunctive relief may ultimately be warranted after a full adjudication on the merits.

Therefore, the Court hereby **DENIES** the Plaintiffs' motion for a Preliminary Injunction.

SO ORDERED OCT 19 2026.

HONORABLE ARTHUR R. BARCINAS
Judge, Superior Court of Guam