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CLERK OF COURT

BY: *Jon*

IN THE SUPERIOR COURT OF GUAM

EAGLE LAND HOLDINGS, LLC,

Plaintiff,

vs.

SCIENCE IS FUN AND AWESOME
LEARNING ACADEMY CHARTER
SCHOOL,

Defendant.

Civil Case No. CV0242-24

**DECISION AND ORDER RE:
GOVERNMENTAL IMMUNITY**

This matter came before the Honorable Jonathan R. Quan on July 31, 2024, for an evidentiary hearing on Defendant Science is Fun and Awesome Learning Academy Charter School's ("SIFA") governmental immunity defense. At the hearing, Attorney Michael F. Phillips appeared on behalf of SIFA, and Attorney Jon R. Ramos appeared on behalf of Plaintiff Eagle Land Holdings, LLC. Having duly considered the parties' written and oral arguments, the relevant statutory frameworks, and the witness testimony presented, the Court concludes that SIFA does not enjoy governmental immunity because it is not part of the Government of Guam.

BACKGROUND

Eagle Land Holdings is a legal liability company organized in Guam and the owner of certain real property in Barrigada, Guam. V. Compl. at 1 (Apr. 25, 2024). SIFA is a non-profit corporation organized in Guam, the operator of a public charter school, and the occupant of the aforementioned

1 real property. *Id.* On April 25, 2024, Eagle Land Holdings filed a Verified Complaint for Unlawful
2 Detainer, Ejectment, Trespass, and Damages (“Verified Complaint”) against SIFA. Eagle Land
3 Holdings seeks to eject SIFA from the Barrigada property and to recover \$1,576,133.33 in unpaid
4 rent accruing between April 1, 2023 and February 29, 2024. *Id.* at 5.

5 Eagle Land Holdings alleges that in December 2017, the parties executed a contract titled the
6 “Partnership for Learning Support in Education Through Lease, Utilities, Supplies, and Services
7 Contract,” also known as the “PLEASE Contract.” *Id.* at 2. The parties agreed that Eagle Land
8 Holdings would serve as a vendor for the charter school’s “operational needs,” including providing
9 the land for the school’s campus. V. Compl., Ex. A at 1. The PLEASE Contract commenced on
10 July 1, 2018, and expired on June 30, 2023. *Id.* at 2.

11 After the PLEASE Contract expired, SIFA remained on the property as a holdover tenant.
12 On February 7, 2024, Eagle Land Holdings gave written notice that it was terminating the holdover
13 tenancy and demanding SIFA vacate within thirty (30) days. V. Compl., Ex. C. Eagle Land Holdings
14 also demanded arrears payments of over four million dollars (\$4,000,000.00), including more than
15 one million dollars (\$1,000,000.00) for unpaid holdover rent accruing after June 30, 2023. *Id.*
16 However, SIFA has neither vacated the property nor paid these amounts. V. Compl. at 4.

17 The Court held an Unlawful Detainer hearing on July 2, 2024, but that hearing did not proceed
18 as planned; instead, SIFA raised an oral challenge to this Court’s jurisdiction. SIFA asserted that it
19 is an entity within the Government of Guam and is therefore entitled to claim governmental
20 immunity. *See* Min. Entry at 10:44:33 AM (July 2, 2024). SIFA argued that because Eagle Land
21 Holdings did not file a claim under the Government Claims Act before bringing this lawsuit, SIFA’s
22 governmental immunity has not been waived. The Court ordered SIFA to put this argument in
23 writing. On July 9, 2024, SIFA filed its “Memorandum of Points and Authorities in Support of
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1 Governmental Immunity and the Application of the Government Claims Act” (“SIFA
2 Memorandum”). There, SIFA reasserted its claim of governmental immunity and stated that “if
3 [Eagle Land Holdings] continues to dispute SIFA’s inclusion as part of the Government of Guam,
4 [SIFA] will provide sufficient evidence at the hearing to establish this fact.” *Id.* at 2.

5 At the hearing on July 31, 2024, SIFA elicited testimony from Evangeline M. Cepeda, the
6 Chairwoman of the Guam Academy Charter Schools Council, about the nature and the funding
7 structure of Guam charter schools. After the hearing, the Court took this matter under advisement.
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9 10 DISCUSSION

11 SIFA argues, in short, that this lawsuit should be dismissed because SIFA enjoys
12 governmental immunity from suit, and that its immunity has not been waived here because Eagle
13 Land Holdings did not first file a claim under the Government Claims Act. *See generally* SIFA
14 Memorandum (Jul. 9, 2024). It is well-established that the Government of Guam “enjoys broad
15 sovereign immunity,” *Story-Bernardo v. Gov’t of Guam*, 2023 Guam 27 ¶ 12, and that “in order for
16 a suit to be maintained against the Government of Guam and any of its instrumentalities or agencies,
17 sovereign immunity must be expressly waived by duly enacted legislation,” *Bautista v. San Agustin*,
18 2015 Guam 23 ¶ 18 (emphasis added). The Government Claims Act waives sovereign immunity
19 only if the plaintiff has first complied with the procedures prescribed by the Act. *See Guam Police*
20 *Dep’t v. Superior Court (Lujan)*, 2011 Guam 8 ¶ 8.¹ If SIFA were part of the Government of Guam,
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24 ¹ The Court notes that the Guam Legislature has granted charter schools the power to “sue and be sued in [its]
25 own name.” 17 GCA § 12101(c)(8). A statutory “sue and be sued” clause operates as a waiver of sovereign immunity
26 separate from that provided by the Government Claims Act. *See, e.g., Bautista*, 2015 Guam 23 ¶ 28; *Guam Econ. Dev.*
27 *Auth. v. Island Equipment Co.*, 1998 Guam 7 ¶¶ 8-9. Nonetheless, even when the waiver of immunity is provided by a
sue-and-be-sued clause rather than 5 GCA § 6105(a), Government Claims Act procedures still apply. *See Perez v.*
GHURA, 2000 Guam 33 ¶ 11. As explained below, however, this issue is effectively moot because ultimately SIFA is
not an entity within the coverage of the Government Claims Act.

1 it would therefore be entitled to demand compliance with Government Claims Act procedures. The
2 Court is not convinced that SIFA is a governmental entity.

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4 **1. The Government Claims Act Defines the “Government of Guam”**

5 The Government Claims Act defines the “Government of Guam” as “all agencies,
6 departments, instrumentalities, public corporations, and all other entities of the government, no
7 matter how designated, and whether or not such agencies may sue or be sued in their own name.” 5
8 GCA § 6103(a). While this language is broadly inclusive, it is not unlimited. Under the rule of
9 statutory interpretation known as *expressio unius est exclusio alterius*, “if an option is expressed in
10 a law, all other options not expressed were intentionally excluded.” *Rinehart v. Rinehart*, 2000
11 Guam 14 ¶ 9. This canon “has force only when the items expressed are members of an ‘associated
12 group or series,’ justifying the inference that items not mentioned were excluded by deliberate
13 choice, not inadvertence.” *People v. Lau*, 2007 Guam 4 ¶ 12 n.6 (quoting *Barnhart v. Peabody Coal*
14 *Co.*, 537 U.S. 149, 168 (2003)). The Court draws that inference here and concludes that an entity is
15 within the Government of Guam for purposes of the Government Claims Act *only* if the entity is
16 properly classified as an (1) agency, (2) department, (3) instrumentality, (4) public corporation, or
17 (5) “other entity” of the government.
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22 **2. GACSA is Silent on the Classification of Charter Schools**

23 The Court first looks to the Guam Academy Charter Schools Act of 2009 (“GACSA”), the
24 enabling statute for all Guam charter schools, to determine whether charter schools fall into any of
25 the aforementioned categories. The Court examines GACSA in light of the Ninth Circuit’s decision
26 in *Bordallo v. Reyes*, 763 F.2d 1098 (9th Cir. 1985), which the Guam Supreme Court has cited
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1 approvingly in *Guam Econ. Dev. Auth. v. Island Equip. Co.*, 1998 Guam 7 ¶¶ 6-7. In *Bordallo*, the
2 Ninth Circuit held that the Guam Visitors Bureau (“GVB”) was not an “instrumentality” of the
3 Government of Guam because GVB’s enabling statute did not explicitly designate it as such. *See id.*
4 at 1103. By contrast, the enabling statute for other governmental entities, such as the Guam
5 International Airport Authority, explicitly used the term “instrumentality.” *Bordallo* concluded that
6 “because the Legislature had expressly designated four public corporations as instrumentalities of
7 the government, it did not intend the same characterization to apply to other public corporations, not
8 so designated.” *Id.* The *Bordallo* decision therefore suggests that an entity’s intended governmental
9 status, if any, should be explicit in its enabling statute.
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11 Applying that logic here, if the Guam Legislature had intended for charter schools to be
12 considered “instrumentalities” (or “agencies,” etc.) of the Government of Guam, then GACSA
13 should make that apparent. GACSA, however, is effectively silent on this issue. The words
14 “agency,” “instrumentality,” and “corporation,” do not appear anywhere in the statute. The word
15 “department” only appears in reference to the Guam Department of Education (“GDOE”), which is
16 indisputably a governmental entity. GACSA, however, refers to GDOE primarily to show the
17 distinction, not the similarity, between charter schools and GDOE. *See, e.g.*, 17 GCA § 12107(g)
18 (“An Academy Charter School shall be exempt from [GDOE] policies, rules, regulations, and
19 collective bargaining agreements.”). Nothing in the text of GACSA demonstrates that the Legislature
20 intended for charter schools to be viewed as agencies, departments, instrumentalities, or public
21 corporations of the Government of Guam.
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24 That leaves only the possibility that charter schools fall into the amorphous “other entity of
25 the Government” category. But here too, the *Bordallo* case indicates that a governmental “entity”
26 would be so designated in its enabling statute:
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1 because the Legislature had expressly designated four public corporations as
2 instrumentalities of the government, it did not intend the same characterization to
3 apply to other public corporations, not so designated. Consequently, [GVB] was
4 not a governmental entity since it had not been expressly designated as such.

5 763 F.2d at 1103 (emphasis added); *see also Guam Waterworks Authority v. Badger Meter, Inc.*,
6 2022 WL 892223 * 6 (D. Guam Mar. 28, 2022) (noting “[t]he purposeful omission of language
7 stating that GWA was ‘within’ and a part ‘of’ the government of Guam, alone, seemingly indicates
8 the Legislature’s intent to remove GWA from the government of Guam.”). As above, nothing in
9 GACSA explicitly designates charter schools as being any sort of governmental “entity,” which
10 suggests the Legislature did not intend to confer that status. *Cf. Guam Radio Services, Inc., d/b/a*
11 *KOKU-FM Hit Radio100 v. GEDA*, 2000 Guam 1 ¶ 33 (“Had the Legislature wanted public
12 corporations to be covered by the Sunshine Act it would have expressly included them in the Act,
13 just as the Legislature expressly included them in the Government Claims Act.”).

14 This is neither surprising nor unreasonable, given that SIFA’s relationship with the
15 Government of Guam is not permanent. Under GACSA, each charter school receives its charter
16 only in six-year increments. 17 GCA § 12113(a). Moreover, each charter school is subject to an
17 annual review by the Guam Academy Charter Schools Council to determine whether the school’s
18 charter should be revoked. *See id.* Revocation of a charter—and thus revocation of the school’s
19 governmental imprimatur—can occur for several reasons, including poor student performance,
20 economic non-viability, or a failure to maintain educational accreditation. *See* 17 GCA §
21 12114(a)(1)-(6). The relationship between an individual charter school and the Government of
22 Guam, then, is (at least potentially) temporary and tenuous. *See* Geheb and Owens, *Charter School*
23 *Funding Gap*, 46 *FORDHAM URB. L.J.* 72, 115 (2019) (noting that “several studies have documented
24 that charter schools ‘struggle to amass the fiscal and human capacity’ to comply with federal and
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1 state law.”). Under these circumstances, the Legislature rationally could have decided not to grant
2 any governmental status to charter schools. The Court is therefore disinclined to supply charter
3 schools with a governmental status.
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5 **3. Witness Testimony Did Not Establish SIFA is Part of the Government**

6 SIFA’s briefing asserted that it would provide “sufficient evidence” to establish that SIFA is
7 part of the Government of Guam. SIFA Memorandum at 2. At the hearing, the Court received
8 testimony from Ms. Cepeda of the Guam Academy Charter Schools Council. Ms. Cepeda’s
9 testimony, however, did not convince the Court that SIFA is part of the Government of Guam.
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11 Ms. Cepeda’s testimony primary focused on SIFA’s funding structure. She testified, for
12 example, that SIFA is funded by an annual appropriation from the Guam Legislature in the amount
13 of \$7,500.00 per student, Min. Entry at 10:37:00 AM (Jul. 31, 2024); and that “100%” of the money
14 SIFA receives comes from governmental sources, *id.* at 10:47:10 AM. While this evidence certainly
15 establishes that SIFA is *funded* by the Government of Guam, that fact does not prove that SIFA is an
16 entity *within* the Government of Guam. *See University of the Incarnate Word v. Redus*, 602 S.W.3d
17 398, 407 (Tex. 2020) (“engaging in an act that serves a public purpose says nothing about the nature
18 of the entity itself.”); *Jackson v. New Center Community Mental Health Services*, 404 N.W.2d 688,
19 692 (Mich. Ct. App. 1987) (“[a] private entity’s performance of a governmental function does not
20 confer governmental agency status on that entity.”). The mere fact that SIFA receives government
21 funding does not establish it as a governmental entity—otherwise, many government contractors
22 could make a similar claim of being governmental entities. But it is well-established that government
23 contractors are typically not entitled to do so. *See Del Campo v. Kennedy*, 517 F.3d 1070, 1076-81
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1 (9th Cir. 2008) (refusing to extend sovereign immunity to a private contractor in a suit related to the
2 contractor’s partnership with a state District Attorney’s office).

3 Ms. Cepeda’s testimony also established that once a charter school is established, its actions
4 must go through the “process of government,” including transmitting invoices to the Department of
5 Administration for payment. Min. Entry at 10:49:22 AM (Jul. 31, 2024). Additionally, Ms. Cepeda
6 testified that in her view, individual charter schools and Guam Academy Charter School Council are
7 “one and the same,” *id.* at 11:09:09 AM, although she later testified that the Council does not involve
8 itself in the “day to day” operations of SIFA, *id.* at 11:27:56 AM. Accordingly, Ms. Cepeda testified
9 that she understands SIFA to be a sub-department of the Guam Academy Charter School Council,
10 which is itself a “line department” under the Guam Department of Administration. *See id.* at 11:12:31
11 AM. However, Ms. Cepeda also conceded that no provision of GACSA, or any other Guam law,
12 explicitly supports this view. *Id.* at 11:15:13 AM; *id.* at 11:27:11 AM (noting that the Guam
13 Legislature needs to “clear up” the issue). As above, it is the Court’s position that nothing in GACSA
14 establishes charter schools as part of the Government of Guam. Ms. Cepeda’s opinion testimony on
15 the issue does not alter that position.
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18 In short, while the Court appreciates Ms. Cepeda’s extensive testimony, that testimony
19 merely establishes that SIFA is funded, and subject to oversight, by the Government of Guam. But
20 as noted in the *Jackson* case cited above, this does not suffice to confer a governmental status:
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22 Notwithstanding its performance of a “governmental function” and its reliance on
23 public funding, New Center retains its identity as a nongovernmental entity. Its
24 employees are not county employees. It retains its separate corporate identity and
25 is governed by its own board of directors. Except as it has voluntarily obligated
26 itself by contract, New Center is not required to provide services or to remain in
27 existence. While it may have been created in response to the recognition of mental
28 health needs in Detroit, New Center’s creation was not mandated by law.

1 404 N.W.2d at 692-93. The same is true of SIFA. SIFA was created as a private non-profit
2 corporation and it remains so today. It has its own Board of Trustees who are responsible for SIFA’s
3 day-to-day operations. See Min. Entry at 11:27:56 AM. While SIFA performs a useful public
4 function, it was not created by the Government of Guam and is not required to remain in existence.
5 Accordingly, the Court is not persuaded that SIFA is a governmental entity.
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7 **4. SIFA Was Not a Governmental Entity in December 2017**

8 The Court acknowledges that some other jurisdictions have found that charter schools are
9 considered governmental entities, at least in some contexts. See, e.g., *El Paso Education Initiative,*
10 *Inc. v. Amex Properties, LLC*, 602 SW.3d 521, 529-30 (Tex. 2020) (“We conclude that open-
11 enrollment charter schools act as an arm of the State government. . . .”); *Doe ex rel. Kristen D. v.*
12 *Willits Unified School Dist.*, 2010 WL 890158 * 7 (N.D. Cal. Mar. 8, 2010) (similar); see also
13 *Drummond ex rel. State v. Oklahoma Statewide Virtual Charter School*, --- P.3d ---, 2024 OK 53
14 (Okla. 2024) (holding the establishment of religious public charter school illegal and
15 unconstitutional because charter schools are “state actors”). Even if the analysis above is incorrect
16 and SIFA *today* is a governmental entity, SIFA *was not* a governmental entity at the time it executed
17 the PLEASE Contract and agreed to the lease terms relevant to this lawsuit.
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20 Under GACSA, a proposed charter school cannot open until after it files a petition with the
21 Guam Academy Charter School Council and the petition is approved. See 17 GCA § 12104(b); 17
22 GCA § 12105. Such a petition must include “an identification of a facility for the proposed Academy
23 Charter School, including a description of the site where the school will be located.” 17 GCA §
24 12105(i). Before a proposed school receives its charter, it must already have a campus. Ms. Cepeda
25 testified accordingly. Min. Entry at 10:37:00 AM (Jul. 31, 2024). Thus, at the time the PLEASE
26 Contract was executed—that is, when SIFA agreed to lease the land in question—SIFA was still a
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1 purely private entity. It was not yet the operator of a charter school, but merely a local non-profit
2 corporation hoping it would be granted the power to do so in the future. Because SIFA was a purely
3 private entity at the time it agreed to the PLEASE Contract, it would be fundamentally unfair to
4 allow SIFA to use its purported *present* governmental immunity to evade this lawsuit.

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7 **5. SIFA’s Representation by Attorney Phillips**

8 Finally, the Court notes that if SIFA believes it is within the Government of Guam, it is
9 unclear how SIFA could be represented by Attorney Phillips, a private practitioner. In Guam, the
10 Attorney General is required to “conduct on behalf of the government of Guam all civil actions in
11 which the government is an interested party, provided that those branches, departments or agencies
12 which are authorized to employ their own legal counsel may use them instead of the Attorney
13 General.” 5 GCA § 30109(c). Some government entities, such as the Guam International Airport
14 Authority, have been granted explicit legislative authorization to employ their own legal counsel.
15 See 12 GCA § 1108(c). Nothing in GACSA, however, grants this type of authorization to charter
16 schools, and indeed the Guam Academy Charter School Council is explicitly *required* to use the
17 Attorney General as its own legal counsel. 17 GCA § 12111(f).

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19 If SIFA were part of the Government of Guam, then the government would undoubtedly be
20 an interested party in this action, since it seeks millions of dollars in monetary damages potentially
21 payable through the public treasury. Thus, if SIFA were part of the Government of Guam, the
22 Attorney General—not private counsel—should be arguing on behalf of SIFA. While the Court will
23 not speculate on why the Attorney General has not made an appearance in this case, the Court does
24 find the non-appearance to be a factor suggesting that SIFA is not a governmental entity.
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CONCLUSION

Based on the above analysis, the Court concludes that SIFA is not an agency, department, instrumentality, public corporation, or other entity of the Government of Guam. Accordingly, SIFA is not a governmental entity within the coverage of the Government Claims Act, which means Eagle Land Holdings was not required to file a Government Claims Act claim prior to this lawsuit.

The Court does not lack jurisdiction over this matter, and will proceed to hear the Unlawful Detainer on November 6, 2024 at 3:00 pm.

SO ORDERED this 29th day of October, 2024.


HONORABLE JONATHAN R. QUAN
Magistrate Judge, Superior Court of Guam