

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF GUAM**

UNITED STATES OF AMERICA,

Civil Case No. 09-00026

Plaintiff,

vs.

**OPINION AND ORDER RE:
MOTION TO DISMISS**

1) **LOT NO. 9-1**, Tract No. 19312,
ORDOT-CHALAN PAGO, GUAM,
ESTATE NO. 8819, SUBURBAN, Map No.
08R07M99 (LM#313FY2000) recorded on
10/10/2000 under Instrument No. 628086,
AREA: 467 SQ. METERS, LAST C.T. #
97711;

2) **LOT NO. 9-2**, Tract No. 19312,
ORDOT-CHALAN PAGO, GUAM,
ESTATE NO. 8819, SUBURBAN, Map No.
08R07M99 (LM#313FY2000) recorded on
10/10/2000 under Instrument No. 628086,
AREA: 467 SQ. METERS, LAST C.T. #
97711;

3) **LOT NO. 9-3**, Tract No. 19312,
ORDOT-CHALAN PAGO, GUAM,
ESTATE NO. 8819, SUBURBAN, Map No.
08R07M99 (LM#313FY2000) recorded on
10/10/2000 under Instrument No. 628086,
AREA: 467 SQ. METERS, LAST C.T. #
97711;

- 1 4) **LOT NO. 9-R3**, Tract No. 19312,
2 ORDOT-CHALAN PAGO, GUAM,
3 ESTATE NO. 8819, SUBURBAN, Map No.
4 08R07M99 (LM#313FY2000) recorded on
5 10/10/2000 under Instrument No. 628086,
6 AREA: 534 SQ. METERS, LAST C.T. #
7 97711
- 8 5) **LOT NO. 9-R9**, Tract No. 19312,
9 ORDOT-CHALAN PAGO, GUAM,
10 ESTATE NO. 8819, SUBURBAN, Map No.
11 09R10M98 (LM#463FY1998) recorded on
12 07/20/1999 under Instrument No. 607092,
13 AREA: 2,111 SQ. METERS, LAST C.T. #
14 97711;
- 15 6) **LOT NO. 3**, Tract No. 19312,
16 ORDOT-CHALAN PAGO, GUAM,
17 ESTATE NO. 8819, SUBURBAN, Map No.
18 06R10M98 (LM#356FY1998) recorded on
19 07/02/1999 under Instrument No. 606315,
20 AREA: 474 SQ. METERS, LAST C.T. #
21 97711;
- 22 7) **LOT NO. 4**, Tract No. 19312,
23 ORDOT-CHALAN PAGO, GUAM,
24 ESTATE NO. 8819, SUBURBAN, Map No.
25 06R10M98 (LM#356FY1998) recorded on
26 07/02/1999 under Instrument No. 606315,
27 AREA: 474 SQ. METERS, LAST C.T. #
28 97711;
- 8) **LOT NO. 5**, Tract No. 19312,
ORDOT-CHALAN PAGO, GUAM,
ESTATE NO. 8819, SUBURBAN, Map No.
06R10M98 (LM#356FY1998) recorded on
07/02/1999 under Instrument No. 606315,
AREA: 475 SQ. METERS, LAST C.T. #
97711;
- 9) **LOT NO. 2284-5-1-R6**,
MANGILAO, GUAM, Map No. 6R29M2001
(LM#345FY2001) recorded on 10/23/2001
under Instrument No. 646143, AREA: 505
SQ. METERS, LAST C.T. # 93374;
- 10) **LOT NO. 2284-5-1-5**, MANGILAO,
GUAM, ESTATE NO. 67697, SUBURBAN,
Map No. 6R29M2001 (LM#345FY2001)
recorded on 10/23/2001 under Instrument No.
646143, AREA: 467 SQ. METERS, LAST
C.T. # 93374;

1 11) **LOT NO. 2284-5-1-6**, MANGILAO,
2 GUAM, Map No. 6R29M2001
(LM#345FY2001) recorded on 10/23/2001
3 under Instrument No. 646143, AREA: 465
SQ. METERS, LAST C.T. # 93374

4 12) **LOT NO. 2285-NEW-A-R3**, GUAM,
5 SUBURBAN, as said lot is marked and
designated on Drawing No. 1190-94, as L.J.
6 Check No. 194 FY 95 as described in that
RE-Subdivision Survey Map, dated August 9,
7 1995, at the Department of Land
Management, Government of Guam, under
8 document number 532469, AREA: 471 SQ.
METERS, LAST C.T. # 89442; and

9 13) **LOT NO. 1111-NEW-1**,
10 MANGILAO, GUAM, Estate No. 73625,
SUBURBAN, as said lot is marked and
11 designated on DRAWING NO. 03R10M95,
as L.M. CHECK NO. 481-FY-96, dated July
12 12, 1996 and recorded February 10, 1997, at
the Department of Land Management,
13 Government of Guam, under document
number 559056, AREA: 4,942 SQ.
14 METERS, LAST C.T. # 108361,

15 Defendants.

16
17
18 Before the court is the “Motion to Dismiss” (“the Motion”) filed by Claimants HUA
19 SHENG INTERNATIONAL GROUP CORPORATION, LTD. and STEVEN WANG. *See*
20 Docket No. 61; *see also* Docket Nos. 62-73 (related documents).

21 **A. The Motion**

22 The Government agrees with the points made in the Motion. *See, e.g.*, Docket No. 69 at
23 6:24-26. Since it is effectively unopposed, then, the Motion is **GRANTED**.

24 **B. Leave to Amend**

25 The Government seeks leave to amend its complaint. *See* Docket No. 69 at 8:5-6.
26 Naturally, Claimants oppose this request. *See, e.g.*, Docket No. 71.

1 Courts are free to grant a party leave to amend whenever “justice so requires.” FED. R.
2 CIV. P. 15(a)(2). In deciding whether justice requires granting leave to amend, factors to be
3 considered include “the presence or absence of undue delay, bad faith, dilatory motive, repeated
4 failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and
5 futility of the proposed amendment.” *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531,
6 538 (9th Cir. 1989) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)) (“the *Foman* factors”).
7 Requests for leave should be granted with “extreme liberality.” *Moss v. United States Secret*
8 *Service*, 572 F.3d 962, 972 (9th Cir. 2009). “Dismissal without leave to amend is improper
9 unless it is clear, upon *de novo* review, that the complaint could not be saved by any
10 amendment.” *Id.*

11 The Government argues that justice requires leave to amend here,

12 . . . because of the complexity of this case and the nature of the
13 evidence. Investigators have been working with Chinese-speaking
14 aliens who could only identify the properties they worked on by
15 physically waking investigators to the locations. It has proved
extremely difficult to sort out these properties and trace their
ownership.

16 Docket No. 69 at 8:21-9:1; *see also id.* at 6:26-7:18 (describing other evidentiary difficulties of
17 the case). Claimants, on the other hand, argue that the *Foman* factors tip in their favor, and point
18 out that the Government did not comply with LR 15.1 of the Local Rules, which provides that
19 “[a]ny party filing or moving to file an amended pleading shall reproduce the entire pleading as
20 amended” *See generally* Docket No. 71.

21 The court rejects Claimants’ arguments. The *Foman* factors do not tip in Claimants’
22 favor. There is no evidence of undue delay, bad faith, or dilatory motive on the Government’s
23 part. Rather, the Government’s point about “the complexity of this case and the nature of the
24 evidence” adequately explains the timing of the request to amend. The complaint has not yet
25 been amended, so there is no repeated failure to cure deficiencies by previous amendments.
26 There is no undue prejudice to the opposing party, as this case is still in its infancy and the
27 Government is only asking for three more days in which to file its amended complaint. *See*

1 Docket No. 69 at 8:6 (asking for deadline of July 9, 2010 in document filed July 6, 2010).
2 Finally, there is no indication that the proposed amendment would be futile. To be sure, this is
3 partly because, as Claimants point out, the Government did not comply with LR 15.1 of the
4 Local Rules, which requires any party seeking leave to file an amended complaint to attach the
5 proposed amended complaint to their filing. Without that proposed amended complaint, the
6 court cannot tell whether the proposed amendments would be futile or not. Still, there is no
7 indication that the proposed amendment would be futile, beyond Claimants’ clearly self-serving
8 assertion that “the real property defendants are not connected to any unlawful activity.” Docket
9 No. 71 at 6:21. And while the Government should have complied with LR 15.1—and is
10 cautioned to do so in the future—the court does not find that its failure to do so in this instance
11 can overcome the command that requests for leave to amend be granted with “extreme
12 liberality,” particularly in light of the evidentiary complexity of this case. *Moss*, 572 F.3d at 972.

13 In conclusion, then, the Motion is **GRANTED**. Leave to amend is **GRANTED**. The
14 Government shall file its amended complaint by 3 p.m. on Monday, July 26, 2010.¹

15 **SO ORDERED.**



26
27
28

/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Jul 23, 2010

¹ The court had drafted this order before it had the benefit of reading the Government’s “Motion to File Sur-Reply to Claimants’ Response.” See Docket No. 74. Obviously, that motion is moot in light of this order.