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FILED
DISTRICT COURT OF GUAM

OCT 31 2006

MARY L.M. MORAN
CLERK OF COURT

DISTRICT COURT OF GUAM

TERRITORY OF GUAM

LINA'LA SIN CASINO and
JOSEPH DUENAS,

Petitioners,

vs.

GUAM ELECTION COMMISSION,

Respondent.

Civil Case No. 06-00035

ORDER

This case is before the Court on the Respondent's Notice of Removal and Motion for Order Issuing Writ of Certiorari. The underlying action was first filed in the Superior Court of Guam on October 26, 2006. Thereafter, the Respondent removed this action to federal court on October 30, 2006, contending that this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1441(b).

In removal actions, the Court is guided by two basic principles. First, the respondent seeking removal has the burden of establishing that the federal court has jurisdiction. *Westinghouse Elec. Corp. v. Newman & Holtzinger, P.C.*, 992 F.2d 932, 934 (9th Cir. 1993). Second, removal statutes are to be strictly construed against removal jurisdiction with all doubts resolved in favor of remand. *Gauss v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). These principles reaffirm the fundamental idea that federal courts are courts of limited jurisdiction and possess "only that power authorized by the Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994).

1 A civil action brought in state court may be removed to a federal court if the petitioner
2 originally could have filed the petition in federal court. 28 U.S.C. § 1441. District courts "shall have
3 original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United
4 States." 28 U.S.C. § 1331. An action "arises under" federal law only if "resolution of the federal
5 question [plays] a significant role in the proceedings." *Hunter v. United Van Lines*, 746 F.2d 635,
6 639 (9th Cir. 1984), cert. denied, 474 U.S. 863, reh g denied, 474 U.S. 1014 (1985).

7 When deciding whether a case warrants removal because a federal question is involved, a
8 federal court must initially determine if the well-pleaded complaint raises issues of federal law.
9 *Metropolitan Life Insurance Co. v. Taylor*, 481 U.S. 58, 63 (1987). The well-pleaded complaint
10 rule makes the plaintiff the "master" of his complaint; he has the right to decide upon what law, state
11 or federal, he will rely. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 391 (1987); *Fair v. Kohler Die*
12 *& Specialty Co.*, 228 U.S. 22, 25 (1913).

13 Upon review of the petition, this Court notes that of the counts pled, only two of the five
14 potentially present this Court with federal question jurisdiction.¹ The first cause of action alleges
15 violations of the Petitioners' rights under the First and Fourteenth Amendments of the U.S.
16 Constitution. The fifth cause of action alleges a violation of the Organic Act as codified in 48 U.S.C.
17 § 1422a(a). Upon closer scrutiny, however, this cause of action raises a claim arising under local
18 law. Section 1422a(a) specifically provides "[t]he people of Guam shall have the right of initiative
19 and referendum, to be exercised under **conditions and procedures specified in the laws of Guam.**"
20 (Emphasis added). This language makes clear Congress' intent to defer to Guam law on this issue.
21 It is **this** determination along with the other causes of action² that arise under Guam law, that are
22 central to the Petitioners' claims.

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26 ¹Although the verified petition sets forth seven causes of action, the Court finds that the sixth
27 and seventh causes of action are more properly characterized as remedies.

28 ²The second, third and fourth causes of action also arise under Guam law.

1 The Court finds the gravamen of the Petitioners' claims arise under Guam law and the
2 "resolution of the federal question [does not play] a significant role in the proceedings," Hunter, 746
3 F.2d at 639. Accordingly, the Court hereby **REMANDS** this matter to the Superior Court of Guam and
4 **DENIES** the Motion for Order Issuing Writ of Certiorari.³

5 **SO ORDERED** this 31st day of October, 2006.

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9 **FRANCES M. TYDINGCO-GATEWOOD**
United States District Judge

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25 ³Pursuant to 28 U.S.C. § 1447(c) the district court in its discretion may remand to state court
26 all matters in which state law predominates. Although a motion to remand has not been filed, the
27 Court sua sponte can raise a jurisdictional defect at any time, leading to the dismissal or remand of
28 the action to state court. ("If at any time before final judgment it appears that the district court lacks
subject matter jurisdiction, the case shall be remanded.") See also *Barnett v. Bailey*, 956 F.2d 1036,
1039 (11th Cir.1992).