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FOR PUBLICATION

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

GEORGE L. TEREGEYO,)
)
Plaintiff,)
)
vs.)
)
BENIGNO T. FEJERAN, AHN Y.)
GOLD, INC., JOHN DOES I)
THRU IV, ROSA M. FEJERAN,)
and LOURDES M. RANGAMAR,)
)
Defendants.)

CIVIL CASE NO. 96-0909
**ORDER DENYING MOTION
FOR JUDGEMENT
ON THE PLEADINGS**

I. INTRODUCTION

The above matter came on for a hearing on April 25, 2002, at 9:00 a.m. on Defendant Benigno T. Fejeran's [hereinafter Fejeran] Motion for Judgement on the Pleadings. Perry B. Inos, Esq. appeared on behalf of Fejeran, and Michael A. White, Esq. appeared on behalf of Defendants Rosa M. Fejeran [hereinafter Rosa] and Lourdes M. Rangamar [hereinafter Lourdes]. Plaintiff Benigno T. Teregeyo [hereinafter Teregeyo] and his attorney Douglas F. Cushnie, Esq. failed to appear. At the hearing, this motion was taken under advisement. The Court, having reviewed the briefs, exhibits, affidavits, and having heard and considered the arguments of counsel, now renders its written decision.

II. FACTS

The original complaint alleged that on or about 1971, Fejeran constructed an encroaching structure on Lot 367, which Teregeyo owned in fee simple. *See* Compl. and Summons (Aug. 16, 1996). Teregeyo further alleged that, notwithstanding continued requests for Fejeran to remove the structure, it exists as an encroachment from that date to the present. *Id.* Teregeyo prayed for

1 damages, removal of the structure, and attorney fees. *Id.*

2 Fejeran asserted five affirmative defenses: failure to state a claim upon which relief can be
3 granted, laches, estoppel, lack of standing and that the statute of limitations had run on Teregeyo's
4 claim. *See Answer: Cross-cl.* (Oct. 7, 1996), Fejeran simultaneously filed a cross-claim against Ahn
5 Y. Gold, Inc., a sublessee of Fejeran since June 7, 1979. *Id.*¹ Pursuant to Commonwealth Rule of
6 Civil Procedure 55, the court ordered a default judgement against co-defendant Ahn Y. Gold, Inc. for
7 failure to appear. *See Entry of Default* (Dec. 18, 1997).

8 On or about December 7, 1972, Fejeran leased Lot 348 and the south part of Lot 349, situated
9 adjacent to Lot 367, from Clara Taman Nee Camacho [hereinafter Camacho]. *See Motion to Join*
10 *Necessary Party Under Com. R. Civ. P. 19(a)* (April 30, 1998). On June 22, 1982, Camacho
11 transferred all of her interest in Lot 348 and Lot 349² by quitclaim deed, to Rosa and Lourdes, as
12 tenants in common, recognizing the 1972 lease agreement between Camacho and Fejeran. *Id.* The
13 court granted Fejeran's motion to join Rosa and Lourdes as indispensable parties to this action to avoid
14 multiple lawsuits and to prevent the substantial risk to the parties of double, multiple, or otherwise
15 inconsistent obligations. *See [Unpublished] Order* (May 7, 1998); *see also Com. R. Civ. P.*
16 *19(a)(2)(ii).*

17 On March 12, 2002, Fejeran filed this Motion for Judgement on the Pleadings. Fejeran contends
18 pursuant to 7 CMC § 2502(a)(2), that Teregeyo's claim as an "action[] for the recovery of land" is
19 barred by the statute of limitations, or in the alternative, by the equitable doctrine of laches. Teregeyo
20 opposes the motion.

21 III. ISSUE

22 Whether Fejeran is entitled to a judgment as a matter of law based on either 7 CMC §
23

24 ¹ The cross claim states that the structure was built by Ahn Y. Gold, Inc., without the authorization of
25 Fejeran, around June 7, 1979, and not the earlier year specified in the original complaint.

26 ² A survey company, Asia Mapping, Inc., conducted a survey on Lot 347 and Lot 348 along with the
27 adjoining properties in the early 1970s, but did not perform a final survey or produce a final map because Camacho,
28 Lourdes, and Rosa did not agree on the placement of boundary monuments or locations. *See Def.Ex.A.*

1 2502(a)(2), or alternatively by the equitable doctrine of laches.

2 **IV. ANALYSIS**

3 Pursuant to Commonwealth Code of Civil Procedure Rule 12(c), "[a]fter the pleadings are
4 closed but within such time as not to delay the trial, any party may move for judgment on the pleadings."
5 Com. R. Civ. P. 12(c). Judgment on the pleadings is proper when the moving party clearly establishes
6 on the face of the pleadings that no material issue of fact remains to be resolved, and that it is entitled to
7 judgment as a matter of law. *See Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d
8 1542, 1550 (9th Cir.1990); *see also Merchants Home Delivery Serv., Inc. v. Reliance Group*
9 *Houldings, Inc.*, 50 F.3d 1486 (9th Cir.1995). When a Rule 12(c) motion raises a Rule 12(b)(6)
10 defense, the motion should be evaluated under the familiar standard applicable to a Rule 12(b)(6)
11 motion for failure to state a claim upon which relief can be granted. *See Massachusetts Candy &*
12 *Tobacco Distrib., Inc. v. Golden Distrib., LTD.*, 852 F. Supp. 63, 67 (Mass. Dist. Ct.1994). The
13 court may dismiss a complaint under Rule 12(b)(6) only if no relief can be granted based on any set of
14 facts that could be proved consistent with plaintiff's allegations. *See Hishon v. King & Spalding*, 467
15 U.S. 69, 73, 104 S. Ct. 2229, 2232, 81 L. Ed. 2d 59, 65 (1984). In considering the motion, the
16 complaint is construed in the light most favorable to the plaintiff and its allegations are presumed true.
17 *See Bolalin v. Guam Publ'ns Inc.*, 4 N.M.I. 176, 179 (1994); *see also Coyne v. City of*
18 *Somerville*, 972 F.2d 440, 442-43 (1st Cir. 1992) (stating that all well-pleaded factual allegations in
19 the complaint are treated as true and all reasonable inferences drawn therefrom in favor of plaintiff).
20 Dismissal is improper unless the court is absolutely certain that the plaintiff can prove no set of facts in
21 support of his claim which would entitle him to relief. *See Govendo v. Micronesian Garment Mfg.,*
22 *Inc.*, 2 N.M.I. 270, 283 (1991).

23 "An encroachment is a continuing trespass or nuisance." *Estate of Taisacan v. Hattori*, 4 N.M.I.
24 26, 30 (1993) (*citing Kafka v. Bozio*, 218 P. 753, 755 (Cal. 1923)). In *Taisacan*, the court found
25 that no encroachment existed because the claim was based solely on a boundary dispute resulting from
26 an allegedly erroneous survey with no actual physical intrusion. *Id.* In his original

1 complaint, Teregeyo alleged that the encroachment started on or about the year 1971³. Teregeyo
2 further claims that since 1971, he has continuously objected to the structure, encroaching an area of
3 approximately 1,285 square meters on Lot 367, existing without benefit of an easement. *See* Pl.'s Ex. 2.
4 Pursuant to 7 CMC § 2502(a)(2), "[a]ctions for the recovery of land or any interest therein," shall be
5 commenced only within twenty years after the cause of action accrues. In support of his motion,
6 Fejeran contends that undisputed facts show Teregeyo failed to file a timely complaint, and thus, should
7 be barred by the statute of limitations or the equitable doctrine of laches. Fejeran also contends that the
8 encroachment was constructed without his consent eight years later by Ahn Y. Gold, Inc.

9 The actual date of when the alleged encroachment began and the boundary dispute are both
10 unresolved material issues of fact that preclude Fejeran's motion for judgment on the pleadings. Finally,
11 there is no presumption of laches where there is no bar to an action through the limitations of actions
12 provision set out in 7 CMC § 2502(a)(2). *See Rios v. Marianas Pub. Land Corp.*, 3 N.M.I. 512,
13 524 (1993). Therefore, the court has no opportunity to consider this issue at this time.

14 V. CONCLUSION

15 For the reasons stated above, Fejeran's Motion for Judgement on the Pleadings is **DENIED**.

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17 So **ORDERED** this 9th day of May 2002.

18
19 /s/ Juan T. Lizama
20 JUAN T. LIZAMA, Associate Judge

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27 ³ The Court notes that the pleadings themselves, particularly the original answer and cross-claim, cast some
28 doubt as to 1971 being the actual start date of the alleged encroachment