

1 PUBLICATION

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

9

10 COMMONWEALTH DEVELOPMENT)
AUTHORITY,)

CIVIL ACTION NO. 97-0341

11 Plaintiff,)

12 v.)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
ON PLAINTIFF'S COMPLAINT and
DEFENDANTS' COUNTERCLAIM**

13 MANUEL A. TENORIO, MARTINA C.)
TENORIO, ROSALIA T. SABLAN,)
14 JOAQUIN A. TENORIO, JOSE A.)
TENORIO, and PEDRO A. TENORIO,)

15 Defendants.)

16)

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I. INTRODUCTION

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THIS MATTER came before the Court on May 21, 2001, in courtroom 205A at 9:00 a.m. on Plaintiff's Motion for Summary Judgment. F. Matthew Smith, Esq. appeared on behalf of Plaintiff Commonwealth Development Authority ("CDA"). Perry B. Inos, Esq. appeared on behalf of Manuel A. Tenorio, Martina C. Tenorio, Rosalia T. Sablan, Joaquin A. Tenorio, Jose A. Tenorio, and Pedro A. Tenorio. Having reviewed the documents on file and having heard the arguments of counsels, the Court now renders its decision.

25

II. BACKGROUND

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On June 7, 1983, the Economic Development Loan Fund Board ("EDLF"), now CDA, extended a loan to Defendants Manuel A. Tenorio ("Manuel") and Martina C. Tenorio ("Martina"), husband and wife (collectively "Defendants"), in the amount of \$240,000. See Pls.' Ex. A. As security for the loan,

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1 Defendants executed a promissory note promising to repay the loan plus 5% interest in monthly installments
2 beginning December 7, 1984, until the loan is paid in full on November 7, 2004. *Id.* The promissory note
3 was secured by a loan agreement (*see* Pls.' Ex. B), a first leasehold mortgage (*see* Pls.' Ex. C), an
4 agreement to mortgage property (*see* Pls.' Ex. D) and a receivables and inventory security agreement (*see*
5 Pls.' Ex. E), which were all dated June 7, 1983. On February 8, 1985, Defendants Manuel and
6 Martina were extended a second loan by EDLF in the amount of \$31,556. *See* Pls.' Ex. F. As security
7 for the loan, Defendants executed a promissory note promising to repay the loan plus 5% interest in monthly
8 installments beginning August 8, 1985, until the loan is paid in full on July 8, 2000. *Id.* The promissory
9 note was secured by a loan agreement (*see* Pls.' Ex. G), a second leasehold mortgage (*see* Pls.' Ex. H),
10 an agreement to mortgage property (*see* Pls.' Ex. I), a receivables and inventory security agreement (*see*
11 Pls.' Ex. J), and a chattel mortgage security agreement (*see* Pls.' Ex. K), which were all dated February
12 8, 1985.

13 On February 8, 1985, the Parties executed a consolidation of loans, mortgages and security
14 agreements. The consolidation combined the first two direct loans and the accrued interest for a new
15 principal amount of \$284,354.76. *See* Pls.' Ex. L. The mortgages of the first two loans were also
16 consolidated and Defendants Manuel and Martina agreed to repay the new principal amount in monthly
17 installments commencing August 8, 1985, until the loan is paid in full, on July 8, 2000. *Id.*

18 On June 24, 1985, EDLF extended a third loan to Defendants Manuel and Martina in the amount
19 of \$50,000. *See* Pls.' Ex. M. As security for the loan, Defendants executed a promissory note promising
20 to repay the loan plus 5% interest in monthly installments beginning December 24, 1985, until the loan is
21 paid in full on May 24, 2000. *Id.* The promissory note was secured by a loan agreement (*see* Pls.' Ex.
22 N), a third leasehold mortgage (*see* Pls.' Ex. O), an agreement to mortgage property (*see* Pls.' Ex. P), a
23 fee simple mortgage (first mortgage) (*see* Pls.' Ex. Q), a receivables and inventory security agreement (*see*
24 Pls.' Ex. R), and a chattel mortgage security agreement (*see* Pls.' Ex. S), which were all dated June 24,
25 1985.

26 On June 24, 1985, the Parties executed a modification of consolidated mortgages. *See* Pls.' Ex.
27 T. The consolidation combined the consolidated loans and the third loan and the accrued interest for a
28 new principal amount of \$339,636.57. *Id.* The mortgages and liens were also consolidated and

1 Defendants agreed to repay the new principal amount in monthly installments beginning February 24, 1986,
2 until the loan is paid in full on May 24, 2000. *Id.*

3 By June 1993, Defendants Manuel and Martina were seven months in arrears on their loan
4 payments. *See* Declaration of Joaquin Q. Dela Cruz, Exhibit CC at ¶ 3 (November 5, 1997)
5 (“Declaration, Exhibit CC”). To assist the borrowers, CDA revised the loan agreement. *Id.* On July 16,
6 1993, the Parties executed a Revision Agreement, which combined the existing principal amount and
7 accrued interest to make a new principal amount of \$254,970.88. *See* Pls.’ Ex. U. Defendants agreed
8 to repay the new principal in monthly installments beginning January 24, 1994, until the loan is paid in full
9 on May 24, 2000. *Id.* Pursuant to the Revision Agreement, Defendants agreed to make a monthly
10 payment of \$1,500 from August through December of 1993. Beginning January 24, 1994, the payment
11 was to increase to \$2,771.43 per month until the loan was paid in full. *Id.*

12 Defendants Manuel and Martina failed to make the full monthly payment of \$2,771.43 as agreed
13 to in the Revision Agreement. *See* Pls.’ Ex. CC). The last payment made by Defendants was in May of
14 1994. *Id.* As of November 26, 1997, Defendants Manuel and Martina owed a balance of \$251,020.80
15 in principal, \$40,047.30 in interest, and \$2,759.49 for late charges for a total of \$293,827.59. *Id.*

16 On April 2, 1997, CDA filed a complaint against Defendants for foreclosure and specific
17 performance (“Complaint”). CDA sought (1) a judgment against Defendants for the principal, interest and
18 late charges due under the loans; and (2) a foreclosure order for the mortgaged real property pursuant to
19 2 CMC § 4537.

20 On June 10, 1997, Defendants filed their answer to the Complaint and a counterclaim (“Answer”).
21 In their counterclaim, Defendants allege three causes of action: (1) breach of fiduciary duty pursuant to 4
22 CMC §§ 10102, 10102(b)(1), 10102(b)(2), 10203(a)(21), 10406(a), and 10406(b); (2) promissory
23 representations/detrimental reliance/estoppel; and (3) breach of contract pursuant to 4 CMC §§ 10102,
24 10102(b)(1), 10102(b)(2), 10203(a)(21), 10406(a), 10406(b).

25 On June 30, 1997, CDA filed its answer to Defendants’ counterclaim. CDA contends that it neither
26 breached any fiduciary duty owed to Defendants nor did it breach any contractual obligation it had with
27 Defendants. CDA further claims that the loans in question were given by and administered by EDLF,
28 which operated under a different set of statutory guidelines and regulations. The statutory guidelines cited

1 by Defendants were first effective on May 31, 1985, as statutory provisions of the Commonwealth
2 Development Authority Act of 1984, 4 CMC §§ 10101-10601, (“Act”), after the loans were made and
3 the supporting documents were executed.

4 On November 5, 1997, CDA filed a Motion for Summary Judgment on its Complaint and a hearing
5 was scheduled for December 17, 1997. On December 9, 1997, Defendants Manuel and Martina filed
6 their response. On December 12, 1997, CDA filed its reply memorandum.

7 On December 17, 1997, the Court granted Defendants’ request to continue the matter to January
8 7, 1998 so as to allow the Parties to settle the matter. This matter was continued numerous times since
9 December 17, 1997 until the motion was taken off calendar by CDA. On April 11, 2001, CDA filed a
10 notice of hearing on its Motion for Summary Judgment, which was scheduled for May 7, 2001. At the
11 May 7, 2001 hearing, the Court continued the matter to May 21, 2001 at 9:00 a.m.

12 III. ISSUES

13 1. Whether CDA is entitled to summary judgment on its Complaint for foreclosure and specific
14 performance where there is no dispute that Defendants Manuel and Martina defaulted on three promissory
15 notes which were secured by a loan agreement.

16 2. Whether the Commonwealth Development Authority Act of 1984, 4 CMC §§ 10101-10601, should be
17 applied retroactively.

18 3. Whether a fiduciary relationship exists between CDA, as lender, and Defendants Manuel
19 and Marina, as borrowers.

20 4. Whether Defendants detrimentally relied on a CDA promise that it would perform its and
21 obligations stated in 4 CMC §§ 10102, 10102(b)(1), 10102(b)(2), 10203(a)(21), and
22 10406.

23 5. Whether a contract existed between CDA and Defendants so as to compel CDA to
24 comply with 4 CMC §§ 10102, 10102(b)(1), 10102(b)(2), 10203(a)(21), and 10406.

25 IV. ANALYSIS

26 A. Standard for Motion for Summary Judgment

27 The standard for summary judgment is set forth in Rule 56 of the Commonwealth Rules of Civil
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1 Procedure. Rule 56(a) provides: [a] party seeking to recover upon a claim . . . may . . . move with or
2 without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.”

3 Com. R. Civ. P. 56(a).

4 Rule 56(c) continues:

5 The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to
6 interrogatories, and admissions on file, together with the affidavits, if any, show that there
is no genuine issue as to any material fact and that the moving party is entitled to judgment
as a matter of law.

7 Com. R. Civ. P. 56(c). Once a movant for summary judgment has shown that no genuine issue of material
8 fact exists, the burden shifts to the opponent to show that such an issue does exist. *Riley v. Pub. Sch. Sys.*,
9 4 N.M.I. 85, 89 (1994). In considering a motion for summary judgment, the trial court must review the
10 evidence and inferences in light most favorable to the non-moving party. *Estate of Mendiola v. Mendiola*,
11 2 N.M.I. 233, 240 (1991).

12 B. Plaintiff's Motion for Summary Judgment on Complaint for Foreclosure and Specific
13 Performance

14 In this case, CDA contends that there are no genuine issues of material fact as to CDA's Complaint
15 against Defendants. Defendants Manuel and Martina admit that they were extended a loan by EDLF in
16 the amount of \$240,000 on June 7, 1983. *See* Defendant's Response to Plaintiff's First Set of Request
17 for Admissions at ¶ 1 (August 22, 1997) ("Defs.' Admis."); Answer at ¶ 12, which corresponds to
18 Complaint at ¶ 12; Complaint, Exhibit A. Defendants Manuel and Martina further admit that they executed
19 an Agreement to Mortgage property on June 7, 1983. *See* Defs.' Admis. at ¶ 4; Answer at ¶ 18, which
20 corresponds to *Complaint* at ¶ 18; Complaint, Exhibit D. Defendants Manuel and Martina admit that
21 they were extended a second loan by EDLF in the amount of \$31,556 on February 8, 1985. *See* Answer
22 at ¶ 20, which corresponds to Complaint at ¶ 20; Complaint, Exhibit F. Defendants Manuel and Martina
23 further admit that they executed an Agreement to Mortgage property on February 8, 1985. *See* Answer
24 at ¶ 26, which corresponds to Complaint at ¶ 26; Complaint, Exhibit I.

25 Defendants Manuel and Martina admit that they were extended a third loan by EDLF in the amount
26 of \$50,000 on June 24, 1985. *See* Answer at ¶ 30, which corresponds to Complaint at ¶ 30; Complaint,
27 Exhibit M.. Defendants further admit that they executed an Agreement to Mortgage property on June 24,
28 1985. *See* Answer at ¶ 36, which corresponds to Complaint at ¶ 36; Complaint, Exhibit P.

1 Although Defendants deny not making the monthly payments they agreed to make pursuant to the
2 promissory notes and loan agreement, Defendants Manuel and Martina were seven (7) months in arrears
3 by June 1993. See Declaration, Exhibit CC at ¶ 3. Moreover, CDA's records indicates that the last
4 payment made by Defendants Manuel and Martina was made in May of 1994. See Declaration, Exhibit
5 CC. Defendants have failed to produce evidence to the contrary.

6 C. Plaintiff's Motion for Summary Judgment on Defendant's Counterclaim

7 In their counterclaim, Defendants allege three causes of action: (1) breach of fiduciary duty; (2)
8 promissory representations/detrimental reliance/estoppel; and (3) breach of contract. Specifically,
9 Defendants contend that CDA breached its duty by: (a) not taking over the maintenance and operation of
10 the slaughterhouse and not having it USDA certified; (b) not causing a third party to operate and maintain
11 the slaughterhouse and not having it USDA certified; (c) not allowing Defendant Manuel to operate the
12 slaughterhouse and not having it certified by USDA; (d) omitting to act and allowing the slaughterhouse to
13 be closed down; (e) failing to take the immediate and necessary steps to reopen and re-certify the
14 slaughterhouse; and (f) failing to render competent advice and financial assistance to the Department of
15 Natural Resources in the maintenance and operation of the slaughterhouse so that the slaughterhouse could
16 be certified by USDA and to maintain its certification.

17 CDA, on the other hand, contends that it neither breached any fiduciary duty owed to Defendants
18 nor did it breach any contractual obligation it had with Defendants. CDA further claims that the loans in
19 question were given by and administered by EDLF, which operated under a different set of statutory
20 guidelines and regulations. CDA's position is that the statutory guidelines cited by Defendants were first
21 effective on May 31, 1985, as statutory provisions of the Commonwealth Development Authority Act of
22 1984, 4 CMC §§ 10101-10601 ("Act"), after the loans were made and the supporting documents were
23 executed. Therefore, the statutory provisions are inapplicable in this case.

24 1. Effect of the Commonwealth Development Authority Act of 1984

25 In determining whether CDA is entitled to summary judgment on Defendant's counterclaim, the
26 Court must first determine whether the Act applies to the loans at issue. In the case at bar, Defendants
27 Manuel and Martina, in their counterclaim, cite statutory provisions of the Act. CDA contends that such
28 statutory provisions do not apply in this case because the loans extended to Defendants Manuel and

1 Martina were pursuant to a prior statute.

2 A general rule of statutory construction favors prospective application of statutes. *See Matthies*
3 *v. Positive Safety Mfg. Co.*, 628 N.W.2d 842, 850 (Wis. 2001); *Travis v. Preston*, 643 N.W.2d 235,
4 240 (Mich. Ct. App. 2002); *Acad. of Charter Sch. v. Adams County Sch. Dist.*, 32 P.3d 456, 466
5 (Colo. 2001); *Hatley v. City of Union Gap*, 24 P.3d 444, 447 (Wash. Ct. App. 2001); *Frank W. Lynch*
6 *& Co. v. Flex Tech., Inc.*, 624 N.W.2d 180, 182 (Mich. 2001). Despite this preference for prospective
7 application a statute may be applied retroactively in three situations.

8 First, retroactivity is appropriate when the Legislature has expressly or impliedly manifested its
9 intention that a statute be applied retroactively. *See Fasching v. Kallinger*, 546 A.2d 1094, 1096 (N.J.
10 Super. Ct. App. Div. 1988). “This expression of legislative intent may be either expressed, that is, stated
11 in the language of the statute or in the pertinent legislative history, or implied, that is retroactive application
12 may be necessary to make the statute workable or to give the most sensible interpretation.” *Id.*

13 Second, a court may apply a statute retroactively if the statute is ameliorative or curative. “The
14 ameliorative exception applies only in criminal law The ‘curative’ exception comes into play when
15 a statute amends a previous law which is unclear or which does not effectuate the actual intent of the
16 Legislature in adopting the original act.” *Id.* (citations omitted).

17 The third situation indicating retroactive application, focuses on the expectations of the parties. “In
18 the absence of a clear expression of legislative intent that the statute is to be applied prospectively, such
19 considerations as the expectations of the parties may warrant retroactive application of a statute.” *Id.*
20 (citations omitted).

21 But even if one of these circumstances exists, a statute will not be given
22 retroactive application if to do so would result in manifest injustice to
23 a party. The essence of this inquiry is whether the affected party relied
24 to his or her prejudice, on the law that is now to be changed as a result of
25 the retroactive application of the statute, and whether the consequences of
26 this reliance are so deleterious and irrevocable that it would be unfair to apply
27 the statute retroactively.

25 *Id.* at 1096.

26 Applying these principles to the present case, the Court concludes that the Legislature intended that
27 the Act apply to loans entered into before the effect date of the statute, May 31, 1985. The express
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1 language of the Act states that “[i]mmediately upon May 31, 1985, no obligations, pledges, encumbrances,
2 loans, expenditures or disbursements of any assets of the EDLF shall be made except pursuant to the
3 [Act].” 4 CMC § 10308(c). As such, the Court finds that the loans extended by EDLF to Defendants
4 Manuel and Martina are subject to the provisions of the Commonwealth Development Authority Act of
5 1984.

6 2. Fiduciary Relationship between CDA and Defendants Manuel and Martina

7 The second inquiry is whether the statutory provisions cited by Defendants in their counterclaim
8 give rise to a cause of action against CDA. In the first cause of action, Defendants assert that CDA
9 breached its fiduciary duty to them pursuant to 4 CMC §§ 10102, 10102(b)(1), 10102(b)(2),
10 10203(a)(21), 10406(a), and 10406(b). Specifically, Defendants Manuel and Martina claim that pursuant
11 to statutory provisions listed above, CDA has a statutory and/or fiduciary duty to provide all necessary
12 assistance to them in the piggery operation, including but not limited to providing technical assistance,
13 providing additional financial assistance, marketing advice, rescheduling of any obligation, revising
14 governmental constraints, and all that is necessary for the return of its funds in the financing of the piggery
15 operation. *See* Counterclaim at ¶ 34. CDA, on the other hand, denies that the statutory provisions in
16 question create a fiduciary relationship between CDA, as lender, and Defendants Manuel and Martina, as
17 borrowers.

18 Generally, there are two types of fiduciary relationships: (1) those specifically
19 created by contract or a formal legal relationship such as principal and agent,
20 attorney and client, trust and trustee, guardian and ward and (2) those implied
in law due to the factual situation surrounding the transactions and relationships
of the parties to each other and to the questioned transaction.

21 *Production Credit Ass’n of Lancaster v. Croft*, 423 N.W.2d 544, 546 (Wis. Ct. App. 1988) (*citing*
22 *Denison State Bank v. Madeira*, 640 P.2d 1235, 1241 (Kan. 1982)).

23 In this case, the Court finds that the legal relationship between CDA and Defendants Manuel and
24 Martina is as lender and borrower. *See* Complaint, Exhibit B, G, and N. The Court further finds no
25 evidence that the Parties contractually formed a fiduciary relationship between CDA, as lender, and
26 Defendants Manuel and Martina, as borrowers. A review of the promissory notes and loan agreements
27 executed by the Parties does not expressly state that a fiduciary relationship existed between the Parties;
28 nor do the Parties assert that a contractual fiduciary relationship existed. Furthermore, generally, the

1 relationship between lender and borrower is generally not a fiduciary one, but is one governed by freedom
2 of contract. See *Needham v. Provident Bank*, 675 N.E.2d 514, 521 (Ohio Ct. App. 1996); *Capital*
3 *Bank v. MVB, Inc.*, 644 So. 2d 515, 517 (Fla. Dist. Ct. App. 1994); *Farm Credit Serv. of Michigan's*
4 *Heartland, P.C.A. v. Weldon*, 591 N.W.2d 438, 447 (Mich. Ct. App. 1998); *Merch. & Planters Bank*
5 *of Raymond v. Williamson*, 691 So. 2d 398, 404 (Miss. 1997); *United Jersey Bank v. Kensey*, 704
6 A.2d 38, 45 (N.J. Super. Ct. App. Div. 1997).

7 However, a fiduciary relationship may be implied in law between lender and borrower, “when a
8 borrower demonstrates that a lender acted as financial advisor to a subservient borrower and the borrower
9 relied on the lender’s advice.” *Production Credit Ass’n of Lancaster*, 423 N.W. 2d at 547 (citing Bahls,
10 *Termination of Credit for the Farm or Ranch: Theories of Lender Liability*, 48 MONT. L. REV. 213,
11 231-32 (1987). “Factors a court considers when determining whether borrowers are subservient generally
12 include the borrower’s age, mental capacity, health, education, and degree of business experience.” *Id.*
13 “The courts also focus on the degree to which the subservient party entrusted his or her affairs to the lender
14 and reposed confidence in the lender.” *Id.* Here, the Court concludes that the language of 4 CMC
15 §§ 10102, 10102(b)(1), and 10102(b)(2) do not create a fiduciary relationship between borrower and
16 lender nor do the statutory provisions give rise to a cause of action for breach of fiduciary duty. The first
17 statutory provision that Defendants cite, 4 CMC § 10102, provides that “[t]he purpose of the [CDA] is
18 to stimulate economic development of the Northern Mariana Islands.” 4 CMC § 10102. The next
19 provision Defendants cite, 4 CMC § 10102(b)(1), provides that the purpose of the Development
20 Corporation Division of CDA shall be: “[t]o identify, formulate, initiate, stimulate and facilitate business and
21 commercial enterprises, with special emphasis on agricultural and marine resources, manufacturing and
22 processing activities, import substitution, export development, and responsible use of indigenous raw
23 materials.” 4 CMC § 10102(b)(1).

24 Subsection 10102(b)(2) further provides that the purpose of the Development Corporation Division
25 of CDA shall be: “[t]o identify, formulate, initiate, stimulate and facilitate business and commercial
26 enterprises where a service necessary and vital to economic development is required, or where profit
27 incentives are not sufficient to attract [a] private sector investor.” 4 CMC § 10102(b)(2).

28 A basic principle of statutory construction is that “language must be given its plain meaning. When

1 language is clear, [the court] will not construe it contrary to its plain meaning.” *King v. Bd. of Elections*,
2 2 N.M.I. 398, 403 (1991). It appears that the plain meaning of the said statutory provisions describe the
3 “purpose” of the Development Corporation Division of the CDA. The Court finds no language creating
4 a fiduciary duty on the part of CDA to carry out the purposes set out in 4 CMC § 10102(a) and (b). Even
5 if these statutory provisions create a statutory duty on the part of CDA, the Court concludes CDA has
6 fulfilled its statutory duty pursuant to 4 CMC § 10102(b)(1) to “stimulate . . . business and commercial
7 enterprises, with special emphasis on agricultural . . . resources,” which arguably includes a piggery
8 business. The Court further concludes that CDA fulfilled its duty pursuant to 4 CMC § 10102(b)(2) to
9 “stimulate and facilitate business and commercial enterprises where . . . profit incentives are not sufficient
10 to attract [a] private sector investor” by extending three loans to Defendants Manuel and Martina to start
11 a piggery business.

12 The Court further concludes 4 CMC § 10203(a)(21) does not create a fiduciary duty owed to
13 Defendants Manuel and Martina by CDA. Pursuant to 4 CMC § 10203(a)(21), which provides that
14 subject to any limitation set forth in the Act, the authority shall have those powers reasonably necessary and
15 incidental to the fulfillment of its purposes, including but not limited to the powers “[t]o provide technical
16 assistance, supervision, or management counseling, and other services in connection with the financing of
17 any project or undertaking.” 4 CMC § 10203(a)(21). Based on its plain meaning, this provision grants
18 CDA certain enumerated powers necessary to accomplish its purposes, subject to limitations set forth in
19 the Act. The Court finds no language creating a fiduciary duty to carry out these powers. The Court
20 further finds no language creating a mandatory statutory duty to carry out these powers. However, even
21 if there was a statutory duty to provide such assistance, the Court finds no evidence that Defendants
22 Manuel and Martina either requested such “technical assistance, supervision, or management counseling”
23 in connection with their piggery business or were denied such assistance by CDA.

24 Defendants Manuel and Martina further assert that 4 CMC § 10406(a) and (b) create a fiduciary
25 duty on the part of CDA for the benefit of Defendants. Subsection 10406(a) provides that: “[t]he authority
26 may at its discretion provide project guidance to any undertaking financed entirely or in part by the authority
27 through periodic visits by authority staff and through regular flow of reports from the borrower or other
28 persons receiving such assistance.” 4 CMC § 10406(a). Based on its plain meaning, the Court concludes

1 that pursuant to 4 CMC § 10406(a), CDA may provide “project guidance” at its discretion. “The word
2 ‘discretion’ means what is just and proper under the circumstances, and is not a word for arbitrary will or
3 inconsiderate action.” *Moore v. City of Corpus Christi*, 542 S.W.2d 720, 724 (Tex. Civ. App. 1976).
4 Discretionary acts are those in which officials must exercise “judgment or discretion.” *Johnson v. Minn.*,
5 553 N.W.2d 40, 46 (Minn.1996). Applying these principles, it appears that CDA may at its “discretion”
6 provide project guidance to its borrowers pursuant to 4 CMC § 10406(a). Moreover, the Court finds no
7 language creating a fiduciary duty nor any language creating a mandatory statutory duty on the part of
8 CDA. As such, the Court further finds that Defendants Manuel and Martina failed to meet their burden
9 of establishing that CDA breached its duty to Defendants.

10 The last statutory provision that Defendants Manuel and Martina cite for the proposition that CDA
11 breached its fiduciary or statutory duty is 4 CMC § 10406(b). The statute in question provides that:

12 When it appears that a project or undertaking financed by the authority may be less than
13 viable, the authority shall attempt to help overcome such difficulties, if it determines that
14 such help is likely to be effective. Such help may include rescheduling of any obligation,
15 additional financial assistance, strengthening of management, revision of government
16 constraints on the success of such project or undertaking, removal of technical deficiencies
17 in any process, and marketing advice or assistance. The authority when necessary and
18 appropriate to preserve the authority’s investment shall take physical control of the project
19 or undertaking, in such manner [as] it deems adequate.

20 4 CMC § 10406(b). Based on the plain meaning of said statute, the Court concludes that the phrase “if
21 it determines that such help is likely to be effective” of the first sentence of the statute suggests that CDA’s
22 statutory duty, if any, is discretionary in nature. As such, when a project or undertaking may be less than
23 viable, the Court finds that CDA’s statutory duty to “attempt to help overcome such difficulties” requires
24 a determination by CDA that “such help is likely to be effective.” 4 CMC § 10406(b).

25 Similarly, the last sentence of 4 CMC § 10406(b) further creates a discretionary duty on CDA.
26 It reads “[t]he authority when necessary and appropriate to preserve the authority’s investment shall take
27 physical control of the project or undertaking, in such manner [as] it deems adequate.” 4 CMC §
28 10406(b). The Court finds that the phrases “when necessary and appropriate” and “in such a manner [as]
it deems adequate” suggest the discretionary nature of the last sentence of 4 CMC § 10406(b). The Court
further find that 4 CMC § 10406(b) neither creates a statutory nor fiduciary duty on the part of CDA to
act for the benefit of Defendants Manuel and Martina.

1 Even assuming that CDA’s duties pursuant to 4 CMC § 10406(b) are not discretionary, the Court
2 concludes that CDA satisfied its duty to Defendants Manuel and Martina pursuant to 4 CMC § 10406(b).
3 When Defendants Manuel and Martina experienced difficulties with the piggery, CDA assisted Defendants
4 Manuel and Martina by extending additional loans in February and June of 1985 for a total of three loans.
5 See Complaint, Exhibit A, F, and M. Further, CDA consolidated the existing loans to assist Defendants
6 in making timely installments on the loans. See Complaint, Exhibit L and T. Moreover, in 1993, CDA
7 assisted Defendants by rescheduling the installments on the loans, by extending a Revision Agreement,
8 which combined the principal balance with accrued interest to make a new principal balance and monthly
9 installment. See Complaint, Exhibit U.

10 Pursuant to the statutes enumerated above, Defendants Manuel and Martina contend that CDA
11 breached its fiduciary or statutory duty by: (a) not taking over the maintenance and operation of the
12 slaughterhouse and not having it USDA certified; (b) not causing a third party to operate and maintain the
13 slaughterhouse and not having it USDA certified; (c) not allowing Defendant Manuel to operate the
14 slaughterhouse and not having it certified by USDA; (d) omitting to act and allowing the slaughterhouse to
15 be closed down; (e) failing to take the immediate and necessary steps to reopen and re-certify the
16 slaughterhouse; and (f) failing to render competent advice and financial assistance to the Department of
17 Natural Resources in the maintenance and operation of the slaughterhouse so that the slaughterhouse could
18 be certified by USDA and to maintain its certification. See Counterclaim at ¶ 48.

19 In essence, it appears that Defendants Manuel and Martina’s claim against CDA is that CDA’s
20 duty as a lender includes loaning money; extending project guidance; taking every measure to ensure that
21 the borrower’s business venture is successful; and if not, take over the business venture and make it
22 successful so that borrower can maintain his obligation to pay back the loan. Based on the plain meaning
23 of 4 CMC §§ 10102, 10102(b)(1), 10102(b)(2), 10203(a)(21), 10406(a), and 10406(b), the Court finds
24 that these statutes do not create a fiduciary duty on the part of CDA. The extent of the
25 relationship between lender and borrower is delimited by the promissory note. See *Martinez v. Assocs.*
26 *Fin. Serv. Co. of Colo., Inc.*, 891 P.2d 785, 788 (Wyo. 1995). Such a contractual relationship between
27 lender and borrower traditionally imposes duties upon the lender “no higher than the morals of the market
28 place.” *Id.* Courts have generally refused to hold a lender liable to its customer, reasoning that a borrower

1 cannot abandon all caution and responsibility for his own protection and unilaterally impose a fiduciary
2 relationship on another without a conscious assumption of such duties by the one sought to be held liable
3 as a fiduciary. *See Production Credit Ass'n of Lancaster*, 423 N.W.2d at 547-48. Several courts have
4 noted that it “would be anomalous to require the lender to act as a fiduciary for interests on the opposite
5 side of the negotiating table” because the lender and borrower positions are essentially adversarial. *See*
6 *Kenswy*, 704 A.2d at 44; *Paradise Hotel Corp. v. Bank of Nova Scotia*, 842 F.2d 47, 52 (1988);
7 *Weinberger v. Kendrick*, 698 F.2d 61, 79 (2d Cir. 1982). Therefore, a general presumption is that the
8 “relationship between lenders and borrowers is conducted at arms-length, and the parties are each acting
9 in their own interest.” *Kensy*, 704 A.2d at 44.

10 Based on these principles, the Court further finds the absence of a fiduciary relationship between
11 CDA and Defendants Manuel and Martina. The Court finds no evidence that a confidential or special trust
12 relationship existed between the Parties. *See Salem v. Cent. Trust Co., N.A.*, 657 N.E.2d 827, 830
13 (Ohio Ct. App. 1995) (in which the court defined a fiduciary relationship as “one in which special
14 confidence and trust is reposed in the integrity and fidelity of another and there is a resulting position of
15 superiority or influence, acquired by virtue of this special trust”). The Court finds no evidence that CDA
16 advised or influenced Defendants to their detriment or that CDA took advantage of Defendants throughout
17 the life of the loan. *See Production Credit Ass'n of Lancaster*, 423 N.W.2d at 547 (“Manifest in the
18 existence of a fiduciary relationship is that there exists an inequality, dependence, weakness of age, of
19 mental strength, business intelligence, knowledge of facts involved, or other conditions giving to one an
20 advantage over the other.”). Here, Defendant Manuel majored in animal husbandry and graduated from
21 the University of Hawaii with a bachelor of science degree in agriculture. *See Defendants' Admissions at*
22 ¶¶ 15, 16 (August 22, 1997). After college, the U.S. Trust Territory Government in Majuro employed
23 Defendant Manuel as an agriculture extension supervisor for four years. *Id.* at ¶¶ 18, 19. The Court finds
24 that Defendant Manuel possessed the educational background and experience in the field of agriculture and
25 animal husbandry necessary to establish and operate a piggery business venture. As such, the Court further
26 finds no evidence that inequality, dependance, weakness of business intelligence or any other condition
27 giving CDA an advantage over Defendants. Defendant Manuel was in a better position to operate the
28 piggery business, as CDA is in the business of lending money not operating business ventures.

1 3. Promissory Representations/Detrimental Reliance/Estoppel

2 In the second cause of action, Defendants claim that CDA promised that it would perform its duties
3 and obligations stated in 4 CMC §§10102, 10102(b)(1), 10102(b)(2), 10203(a)(21), and 10406. *See*
4 Counterclaim at ¶ 41. Moreover, Defendants claim that based on CDA’s promises to perform its duties
5 and obligations pursuant to the enumerated statutory provisions, Defendants borrowed a total of \$321,556
6 from CDA and mortgaged certain properties and executed promissory notes to secure the loan. *See*
7 Counterclaim at ¶ 42.

8 “The elements of promissory estoppel are: (1) a clear and definite agreement; (2) proof that the
9 party urging the doctrine acted to its detriment in reasonable reliance on the agreement; and (3) a finding
10 that the equities support enforcement of the agreement.” *Hulse v. First Interstate Bank of Commerce-*
11 *Gillette*, 994 P.2d 957, 959 (Wyo. 2000). In the case at bar, the Court finds that Defendants failed to
12 prove the elements of promissory estoppel. The Court finds no evidence of a clear and definite agreement
13 between the Parties that CDA would perform its alleged statutory duties pursuant to enumerated statutory
14 provisions. The Court further finds no evidence that Defendants acted to its detriment in reliance on any
15 agreement between the Parties. The Court finds that there is no agreement to enforce. As stated earlier,
16 the Parties’ relationship is as lender and borrower. The Parties’ relationship is governed by the promissory
17 note and loan agreement.

18 The essential elements to state a detrimental reliance theory of recovery are: “(1) a representation
19 by conduct or word; (2) justifiable reliance thereon; and (3) a change of position to one's detriment because
20 of the reliance.” *Martin v. Schluntz*, 589 So. 2d 1208, 1211 (La. Ct. App. 1991). Similarly, the
21 Court finds that Defendants failed to prove the elements of detrimental reliance. The Court finds no
22 evidence that CDA represented, by conduct or word, that it would comply with any alleged statutory duty
23 claimed by Defendants. The Court further finds no evidence that Defendants changed their position on the
24 loans to their detriment, based on their reliance on any CDA promise to perform.

25 4. Breach of Contract

26 In the third cause of action of the counterclaim, Defendants contend that CDA expressly and
27 impliedly agreed with Defendants that it would comply with CDA’s duties and obligations pursuant to 4
28 CMC §§ 10102, 10102(b)(1), 10102(b)(2), 10203(a)(21), and 10406. *See* Counterclaim at ¶ 47.

1 Specifically, Defendants assert that CDA materially breached its obligations to Defendants by: (a) not
2 taking over the maintenance and operation of the slaughterhouse and not having it USDA certified; (b) not
3 causing a third party to operate and maintain the slaughterhouse and not having it USDA certified; (c) not
4 allowing Defendant Manuel to operate the slaughterhouse and not having it certified by USDA; (d) omitting
5 to act and allowing the slaughterhouse to be closed down; (e) failing to take the immediate and necessary
6 steps to reopen and re-certify the slaughterhouse; and (f) failing to render competent advice and financial
7 assistance to the Department of Natural Resources in the maintenance and operation of the slaughterhouse
8 so that the slaughterhouse could be certified by USDA and to maintain its certification. *See* Counterclaim
9 at ¶ 48.

10 In response, CDA contends that Defendants' third cause of action fails to state a claim upon which
11 relief can be granted. Specifically, CDA contends that, although the third cause of action is based upon
12 a breach of contract, there are no allegations of a breach of any provision of the various loan documents
13 executed by the Parties. Instead, CDA claims that the third cause of action repeats the first cause of action
14 by addressing various statutory violations.

15 The essential elements in a suit for breach of contract are: (1) that a valid contract exists; (2) that
16 the plaintiff performed or tendered performance; (3) that the defendant breached the contract; and (4) that
17 the plaintiff was damaged as a result of the breach. *See Southwell v. Univ. of Incarnate Word*, 974
18 S.W.2d 351, 354-55 (Tex. App. 1998). In this case, the Court finds no evidence that the Parties entered
19 into a contract where CDA agreed to comply with CDA's alleged duties and obligations pursuant to 4
20 CMC §§ 10102, 10102(b)(1), 10102(b)(2), 10203(a)(21) and 10406. As such, the Court finds that
21 Defendants Manuel and Martina failed to establish that a contract existed let alone that CDA breached the
22 contract.

23 **V. CONCLUSION**

24 For the foregoing reasons, the Court hereby GRANTS Plaintiff CDA's motion for summary
25 judgment. NOW THEREFORE, IT IS ORDERED that Plaintiff have a judgment against Defendants as
26 follows:

- 27 1. For judgment against Defendants Manuel A. Tenorio and Defendant Martina C. Tenorio, jointly
28 and severally, for the principal sum of \$251,020.80, plus accrued interest of \$31,406.83, plus late charges

1 of \$2,440.22, plus any additional amount of accrued interest and late charges that accumulate between
2 March 11, 1997 and the date of judgment, with interest on the total amount, from the date of judgment,
3 at nine percent (9%) per annum, and for attorney fees and costs of suit;

4 2. That the mortgaged real property, as particularly described in paragraph thirty-seven (37) of
5 the Complaint, be ordered sold at a public auction, in the manner prescribed by 2 CMC § 4537;

6 3. That the mortgaged leasehold interest, as particularly described in paragraphs seventeen (17),
7 twenty-five (25), and thirty-five (35) of the Complaint, be ordered sold at a public auction, in the manner
8 prescribed by 2 CMC § 4537;

9 4. That pursuant to the executed agreements to mortgage property, the real property described
10 in paragraphs seventeen (17), twenty-five (25), and thirty-five (35) of the Complaint, be ordered divided
11 and partitioned and the divided interest of Defendants Manuel A. Tenorio and Martina C. Tenorio be
12 ordered sold at a public auction, in the manner prescribed by 2 CMC § 4537;

13 5. That the mortgaged chattels and other collateral be ordered immediately seized and sold,
14 pursuant to law, by Plaintiff;

15 6. That any party to this action be allowed to become a purchaser at such sales;

16 7. That the proceeds of the sales be applied as follows, and in the following order: (1) to the costs
17 of sales; (2) to the costs of the suit, including attorney fees; and (3) to the amount due as detailed in the first
18 paragraph of the conclusion; and,

19 8. That Plaintiff be allowed to execute against Defendants Manuel A. Tenorio and Martina C.
20 Tenorio for any deficiency which may remain after applying all the proceeds of the sales.

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SO ORDERED this 24th day of January 2003.

/s/
VIRGINIA S. SABLAN-ONERHEIM, Associate Judge