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3 **FOR PUBLICATION**

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5 **IN THE SUPERIOR COURT**
6 **OF THE**
7 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8 Joaquin M. Manglona,

9 Plaintiff,

10 v.

11 Government of the Commonwealth of the
12 Northern Mariana Islands,

13 Defendant.

Civil Action No. 97-0486

**SUPPLEMENTAL FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

14 **I.**

15 **INTRODUCTION**

16 **THIS ORDER** serves to finalize the damages issue from the hearing that came before this
17 Court for a bench trial to determine whether the Commonwealth is liable for rents and other damages
18 due for occupancy of Plaintiff's commercial office space. The trial was held on July 23-24, 2003.
19 Douglas F. Cushnie appeared on behalf of the Plaintiff, Joaquin Manglona. Acting Attorney
20 General, Clyde Lemons, Jr., and Assistant Attorney General, Joseph L.G. Taijeron, Jr. appeared on
21 behalf of the Defendant, the Commonwealth of the Northern Mariana Islands (hereafter
22 "Commonwealth"). The Court, having reviewed the arguments of counsel, having examined the
23 evidence, having reviewed the complete record, and being fully informed of the facts and premises
24 of the current action, now renders its decision.

25 **II.**

26 **FACTS**

27 This Court entered its *Findings of Facts and Conclusions of Law* relating to the above
28 captioned matter, on November 5, 2003. Therein the Court found that the Commonwealth breached
its ten year lease agreement with the Plaintiff, Joaquin Manglona. The Court ordered the parties to

1 appear for a hearing on the determination of damages resulting from the breach. The parties
2 appeared before this Court on November 10, 2003.

3 **III.**
4 **DISCUSSION**

5 There are four issues relevant to the discussion of damages: (1) rental value due under the
6 lease, (2) Plaintiff's duty to mitigate damages, (3) damages for construction and modification of the
7 facility to accommodate the intended use, and (4) consequential damages alleged as part of the
8 action. On May 6, 1997, plaintiff filed the present action seeking, inter alia, the remaining rent
9 allegedly due under the lease agreement in the amount of \$1,829,002.50.

10 In December 1992, the CNMI government leased from plaintiff office space for the
11 Department of Labor and Immigration ("DLI") in Saipan. The building is located near the Saipan
12 International Airport. The lease was for a period of ten years. On January 22, 1997, the Secretary
13 of Finance, Antonio R. Cabrera, wrote to plaintiff notifying him that DLI had vacated the building
14 and was terminating the lease. Under the lease, the DLI would be liable to the Plaintiff for the
15 period from January 22, 1997, to the termination of the lease in December of 2002.

16 The Court briefly treated the issue of mitigation of damages in the original Findings of Fact
17 and Conclusions of law. Upon further review, the issue of mitigation of damages stands as follows.
18 No Commonwealth case exists treating the issue of mitigation of damages in landlord tenant
19 disputes. Where no Commonwealth law exists courts must turn to the applicable Restatement rules
20 to find proper guidance on issues. 7 CMC § 3401. The Restatement 2d of Property, Landlord and
21 Tenant deals precisely with the question in a landlord's rights and remedies. Here as expressed,
22 without a mitigation clause included in the lease agreement, the government cannot pursue the issue
23 of mitigation of damages successfully. The RESTATEMENT 2D OF PROPERTY: LANDLORD & TENANT,
24 § 12.1 states:

25 (3) Except to the extent the parties to the lease validly agree otherwise, if the tenant
26 abandons the leased property, **the landlord is under no duty to attempt to relet the
27 leased property for the balance of the term of the lease to mitigate the tenant's
28 liability under the lease**, including his liability for rent, but the landlord may:

(a) accept the tenant's offer of surrender of the leased property, which offer is
inherent in the abandonment, and thereby terminate the lease, leaving the tenant

1 liable only for rent accrued before the acceptance and damage caused by the
2 abandonment; or

3 (b) notify the tenant that he will undertake to relet the leased property for the
4 tenant's account, thereby relieving the tenant of future liabilities under the lease,
5 including liability for future rent, to the extent the same are performed as a result of
6 a reletting on terms that are reasonable. (Emphasis added).

7 RESTATEMENT 2D OF PROPERTY: LANDLORD & TENANT, § 12.1 (2003).

8 No clause of the lease agreement states that the Plaintiff would proceed to mitigate his damages
9 upon abandonment of the property by the tenant. While mitigation of damages is certainly the rule
10 of law in some jurisdictions throughout the United States, the principle as recognized in the
11 Restatement of Property 2d, does not allow the defense in the Commonwealth. As none of the
12 exceptions apply to the instant case, the Commonwealth is held responsible for the full amount of
13 rents due under the lease for the period of abandonment.

14 The Plaintiff also seeks damages relating to the construction required to modify the building
15 so that DLI might occupy it. Construction modifications were never represented as amounts due
16 outside the lease. In fact, the construction modification seems to be a condition precedent prior to
17 the DLI inhabitancy of the premises. It appears to the Court that the construction modification was
18 intended to induce the DLI to lease the building, the costs for which would be returned over the
19 period of the lease through rental payments. As a basis of the bargain essentially, no damages will
20 be awarded for the modifications made to the facility.

21 Finally, the Plaintiff seeks consequential damages, but has failed to establish by a
22 preponderance of the evidence, that any consequential damages have been incurred as a result of the
23 breach of the lease. The total measure of damages will be rents due under the lease for the period
24 that DLI abandoned the property.

25 The total amount of damages awarded is as follows. There are essentially three periods of
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1 time in the lease agreement delineating increasing rental payments for each period. The total time
2 period covered from when the government abandoned the lease is February 1997 to the expiration
3 of the lease in December 2002. During the first period, January 1997 to December 1998, the lease
4 schedules the amount due as based on a monthly sum of \$13,230.00. Over a 23 month period that
5 totals \$304,290.00. The next two year period covers January 1999 to December 2000 at a monthly
6 rate of \$14553.00 per month. Over the 24 month period that amount totals \$349,272.00. The final
7 period covers January 2001 to December 2002, the expiration of the ten year lease. Over that 24
8 month period the amount due per month was \$15,970.50, totaling \$383,292.00. The overall total
9 damages that will be awarded the Plaintiff is therefore the sum of each of the three periods of where
10 the government abandoned the premises, or \$1,036,854.00.

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13 No prejudgment interest will be awarded in this case. “An award of prejudgment interest
14 lies within the sound discretion of the trial court; it is a question of fairness, requiring a balancing
15 of equities.” *Deleon Guerrero v. Nansay Micronesia, Inc.*, Civ. No. 94-0388, at 8 (N.M.I. Super.
16 Ct. March 4, 1996). The Court feels in light of the circumstances surrounding this case, and
17 considering principles of equity and fairness, that prejudgment interest is not appropriate.
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20 **IV.**

21 **ORDER**

22 The total amount of damages awarded to the Plaintiff, based on the government’s breach of
23 lease for the period of abandonment is \$1,036,854.00.

24 **SO ORDERED** this 30th day of December, 2003.

25
26 /s/ _____
27 David A. Wiseman
28 Associate Judge