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For Publication

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

KIYOMI FUJITA MAFNAS,)
)
Plaintiff,)
)
v.)
)
YUJI MATONO, KAN PACIFIC SAIPAN.)
LTD., dba MARIANAS RESORT, AIOI)
INSURANCE CO., LTD., fka THE DAI-)
TOKYO FIRE & MARINE INSURANCE)
CO., LTD., TAKAGI & ASSOCIATES,)
INC., KYOEI MUTUAL FIRE & MARINE)
INSURANCE, CO., AND DOES 1)
THROUGH 5 INCLUSIVE.)
)
Defendants.)
)
_____)

CIVIL ACTION NO. 03-0341

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT**

THIS MATTER came on for hearing on September 24, 2003, on a motion for summary judgment. The motion was brought by defendants Kan Pacific Saipan, Ltd., dba Marianas Resort, Aioi Insurance Company Ltd., fka the Dai-Tokyo Fire & Marine Insurance Company, Ltd. and Takagi & Associates, Inc., (collectively referred to as "Moving Defendants"). Moving Defendants were represented by Randall Todd Thompson and plaintiff, Ms. Kiyomi Fujita Mafnas, was represented by Brien Sers Nicholas.

At the time the initial motion was made and argued, the defendants were Kan Pacific Saipan, Ltd., the owner of the Marianas Resort, Aioi Insurance Company Ltd., Kan Pacific's liability insurer, and Takagi & Associates, Inc., Aioi's agent, and Yuji Matono, the individual who allegedly caused the accident. While that motion was under advisement, Plaintiff filed a "First Amended Complaint," adding a new defendant: Kyohei Mutual Fire & Marine Insurance Co., allegedly Mr.

1 Matano’s liability insurer. This amendment essentially mooted the motion to dismiss, as the
2 complaint at which it was aimed ceased to exist. However, the Moving Defendants subsequently
3 made a motion for summary judgment, noting that the claims against them were not modified by the
4 First Amended Complaint. The Plaintiff appears to agree that the amendment did not change her
5 claims against the Moving Defendants. Having analyzed both the original and the amended
6 complaint, the Court agrees that the allegations against the Moving Defendants have not changed
7 and therefore will dispense with any further briefing or argument. Having carefully considered the
8 pleadings and the arguments of counsel, the Court is prepared to rule.

9 This is a motion for summary judgement pursuant to Commonwealth Rule of Civil Procedure
10 56. Summary judgment should be granted only “if the pleadings, depositions, answers to
11 interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine
12 issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”
13 Com. R. Civ. P. 56(c). The Moving Defendants bear “the initial and the ultimate burden of
14 establishing its entitlement to summary judgment.” *Santos v. Santos*, 4 N.M.I. 206, 210. (1994)
15 (internal quotations omitted). Once the moving party meets its initial burden, the non-moving party
16 must introduce facts, in the form of affidavits or other evidence, to show that a genuine issue of
17 material fact does exist. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172, 176 (1990). In making its
18 determination, the Court must “review the evidence and inferences in a light most favorable to the
19 non-moving party.” *Id.* The Court will begin with an outlay of the facts of the case.

20 FACTUAL BACKGROUND

21 This case involves a tragic accident at the swimming pool of the Marianas Resort in Saipan
22 on November 11, 2001. The Plaintiff’s husband, Joaquin C. Mafnas, was using the pool when
23 another guest using an attached waterslide struck and seriously injured Mr. Mafnas, leaving him a
24 quadriplegic. Ultimately, these injuries proved fatal and Mr. Mafnas passed away on February 2,
25 2003. The decedent and his wife each executed a Settlement Agreement and Release, “Agreement,”
26 on January 28, 2002. The Agreement called for total cash payments of \$4,442,443, including an
27 initial payment of \$1.5 million. The rest was to be paid in monthly installments of \$9,808.15. Of
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1 this amount, \$3,000 was to be deposited in Plaintiff's own account, and \$1,000 to each of decedent's
2 two sons, was to be deposited in separate trust accounts.

3 This Agreement was negotiated primarily between settling defendants, the decedent, and the
4 decedent's brother and attorney-in-fact Ramon C. Mafnas. The Agreement was memorialized by
5 a written agreement signed by the Plaintiff, the decedent¹ and Ramon Mafnas, in addition to the
6 Moving Defendants. The Agreement was then presented to the Superior Court for approval, *Aioi*
7 *Insurance Co. Ltd., v. Mafnas*, Civ. No. 02-0088, and the court issued a consent decree on March
8 27, 2002. Under the terms of the consent decree, upon the death of Joaquin Mafnas, payments were
9 to be made to the person or entity designated by him and, if no such person or entity were
10 designated, then to his estate. Payments are currently being made to the estate, which is in probate.

11 On July 9, 2003, Plaintiff filed the original complaint in this case. On November 12, 2003,
12 Plaintiff filed her First Amended Complaint. Against the Moving Defendants, Plaintiff alleged that
13 their negligence and unfair claims settlement practices caused her pain and suffering and pecuniary
14 loss. She now seeks general damages in the amount of four million dollars and punitive damages
15 in the amount of five million dollars.

16 LEGAL CONSIDERATIONS

17 The Moving Defendants advance several legal grounds for granting summary judgment.
18 First, they argue that Plaintiff's claims are barred by statute. Second, they argue that any statutorily
19 valid claims were released via the consent decree. Third, they argue that Plaintiff has offered no
20 valid justification for reopening the judgment or avoiding her release of claims. The Court will
21 consider these points in the order listed.

22 **I. Plaintiff's Claims Are Not Barred By Statute.**

23 Moving Defendants argue that this is, in essence, a suit for damages from wrongful death.
24 In the Commonwealth, as in most jurisdictions, a surviving spouse has no right to an independent
25 action for wrongful death of a spouse. Instead, the right to bring such a claim is statutory and
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27 ¹ Because the decedent was physically unable to sign, the decedent's thumbprint was affixed to the agreement
28 by Ramon Mafnas.

1 derives from the rights the deceased would have had, had he survived. *See* 7 CMC § 2101, *Ito v.*
2 *Macro Energy, Inc.*, 4 N.M.I. 46, 63 (1993). In addition, our Supreme Court has held that no right
3 to an award for post-mortem loss of consortium exists. *Id.* Moving Defendants argue that each of
4 Plaintiff's claims fall into one of three categories: either they are direct claims for wrongful death
5 by a surviving spouse, which are improper, or they are post-mortem claims for loss of consortium,
6 which are improper, or they are derivative claims for wrongful death, loss of consortium, etc., which
7 were settled by the consent decree.

8 Naturally, the Plaintiff disagrees with Moving Defendants' characterization of her claims.
9 Instead, she claims that she is seeking compensation only for her personal pre-mortem loss of
10 consortium, her personal pre-mortem pain and suffering, and her personal pecuniary losses. The
11 Court finds Plaintiff's characterization of her claims convincing and so holds that Plaintiff has
12 asserted legally valid claims only for her own injuries, not those suffered by her late husband.
13 However, the Court must still consider whether Plaintiff had released these claims by signing the
14 Settlement Agreement and Release.

15 **II. Plaintiff's Claims Were Within the Scope of the Release.**

16 On January 28, 2002, Plaintiff signed a Settlement Agreement and Release. Section 1.1 of
17 that Agreement provided that "Claimant hereby releases [Moving Defendants and others] from any
18 and all past, present and future claims . . . [that] may in any way grow out of the occurrence." Under
19 Section 1.3, the term "Claimant" includes Kiyomi Mafnas. In this case, Plaintiff claims clearly arise
20 from the "occurrence," her husband's accident, and she is clearly one of the "Claimants" whose
21 claims are released in the Agreement. In signing the Agreement, the Plaintiff appears to have
22 waived her rights to bring the instant claims. For the case to continue, Plaintiff must show some
23 reason why the Agreement should be invalidated.

24 **III. The Consent Decree Musts Be Treated As a Judgment and Governed By
25 Commonwealth Rule of Civil Procedure 60(b).**

26 Having apparently released her claims, Plaintiff must now show some reason why the release
27 is invalid as applied to her. How this is to be done depends in part on whether the Settlement
28 Agreement and Release is treated as a judgment, because it was memorialized in a consent decree,

1 or as a simple contract. The difference is important because Moving Defendants have argued that
2 this case should be treated as a collateral attack on a judgment, specifically a consent judgment.
3 Moving Defendants concede that a collateral attack is allowed, but argue that it should still be
4 governed by Commonwealth Rule of Civil Procedure 60(b), which concerns relief from orders or
5 judgments. If Rule 60(b) were applied to the instant case, it would limit the time within which the
6 judgment could be attacked. On the other hand, if the consent judgment is treated as a mere
7 contract, the Rule 60(b) time limits would not apply and all defenses to contract formation and
8 enforcement would be available.

9 There is indeed a good deal of case law suggesting that consent decrees should be treated as
10 contracts. “A consent decree, while prospective in its effect, is the product of a negotiated
11 agreement similar [to] a contract. A consent decree *is not* a judicial determination of the rights of
12 the parties and does not represent the judgment of the court, but merely records a preexisting
13 agreement of parties.” *City of Barnum v. Sabri*, 657 N.W. 2d 201, 205-06 (Minn. Ct. App. 2003)
14 (internal citations omitted); *accord Advance Iron Works, Inc. v. ECD Lincolshire Theater, L.L.C.*,
15 791 N.E. 2d 631, 635 (Ill. App. Ct. 2003). Consent decrees are interpreted according to the
16 principles of contract interpretation - specifically by determining the intent of the parties.
17 *Richardson v. Richardson*, 859 So. 2d 81, 84-85 (La. Ct. App. 2003). This differs markedly from
18 the interpretation of a typical judgment, in which the intent of the parties is irrelevant and only the
19 intent of the issuing court matters.

20 Moving Defendants essentially concede that the above case law applies. However, they
21 argue first that the consent decree in the instant case is different because of the substantial
22 involvement of the signing judge in the proceedings. In addition, they argue that a consent
23 judgment, whether interpreted as a contract or not, is still subject to the restrictions of
24 Commonwealth Rule of Civil Procedure 60(b). As to the first point, the Court cannot agree. The
25 case law is clear that consent decrees are treated as contracts, at least for the purpose of solving
26 disputes over the interpretation of the terms, and greater than usual judicial involvement does not
27 change this fact. Such a bright-line rule is valuable, because it saves a later court the difficult
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1 exercise of determining how much involvement is enough to change the usual treatment of a consent
2 decree.

3 However, as to the second point, the Court does agree. Consent decrees are still judgments
4 and still must be governed by Rule 60(b). If it were otherwise, the judicial imprimatur provided by
5 a consent decree would be meaningless and there would no incentive for parties to seek such
6 decrees. For similar reasons, Rule 60(b) must be applied even where, as here, the judgment is being
7 attacked via an independent action and not via a motion for relief from a judgment. The restrictions
8 of Rule 60(b) would be meaningless if an easy “independent action” loophole were allowed and
9 there is ample case law demonstrating that such actions should still be governed by Rule 60(b). *See*
10 *e.g., Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981) (independent action challenging judgment
11 dismissed as untimely under Federal Rule 60(b)). Therefore, the Plaintiff’s instant action, which
12 is a collateral challenge to a judgment, is governed by Rule 60(b).

13 **IV. Most of Plaintiffs Grounds To Overturn Judgment Are Time-Barred.**

14 Plaintiff advances several grounds for overturning the judgment, including that Moving
15 Defendants were aware that she understood little English, shut her out of the negotiations, did not
16 tell her to seek counsel, and could not guarantee that she understood the nature of the release she
17 signed. In sum, Plaintiff claims that Moving Defendants acted collusively and in bad faith in
18 negotiating the Settlement Agreement and Release. All of these grounds for relief from a final
19 judgment fall under Rule 60(b)(3), which covers “fraud, . . . misrepresentation, or other misconduct
20 of an adverse party.” Such claims must be brought within one year of the judgment being entered.
21 Com. R. Civ. P. 60(b). In this case, the consent decree was entered March 27, 2002 and the initial
22 complaint was not brought until July 9, 2003. Because this is well over a year, all the grounds for
23 relief cited, save one to be discussed below, were not brought in time and therefore cannot be used
24 to grant relief from the judgment.

25 **V. There Was No Fraud On the Court.**

26 As noted above, a motion or independent action seeking relief from final judgment on the
27 grounds of fraud must be brought within one year of entry of the judgment. Com. R. Civ. P. 60(b).
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1 However, an exception is granted in the rule where the fraud alleged is fraud on the court. *Id.* There
2 is no specific time limit for challenging a judgment on the basis of fraud upon the court. However,
3 to establish such a fraud, the person alleging fraud must first establish a material false
4 representation. In this case, the alleged false representations are actually things not disclosed.
5 Specifically, Plaintiff alleges that Moving Defendants did not disclose: (1) that the Settlement
6 Agreement and Release was not “a product of negotiation between plaintiff and defendants,” (2)
7 that the Plaintiff “does not speak or read English,” (3) that Moving Defendants did not translate the
8 Settlement Agreement and Release documents into Japanese, Plaintiff’s native language, (4) that the
9 Moving Defendants did not advise Plaintiff to seek counsel, (5) that Plaintiff did not have counsel
10 and was not represented by her husband’s attorney-in-fact, and (6) that Moving Defendants “could
11 not guarantee that Plaintiff read and understood the contents of the” settlement documents. Taken
12 together, the Plaintiff claims, these omissions create a false impression amounting to fraud.

13 Unfortunately for Plaintiff, these allegations are simply insufficient to support a case for
14 fraud on the Court because they are all things for which she herself was responsible. If she was not
15 involved in the negotiations, she should have involved herself. If she felt her position was not being
16 represented, she should have gotten representation. If she did not understand what she was signing,
17 she should not have signed. Ultimately, it is the Plaintiff herself, and not the Moving Defendants
18 who are charged with protecting the Plaintiff’s interest. If she failed to do so, then she has no one
19 but herself to blame.

20 **VI. Plaintiff’s Acceptance of Benefits Has Ratified the Contract.**

21 In addition to the claims above, the Plaintiff has alleged a number of grounds for invalidating
22 the Agreement that was ratified by the consent decree. These include standard defenses against
23 contract formation - that Plaintiff did not understand what the contract said, that she was acting
24 under duress, that the terms were ambiguous and that the contract was unconscionable. Whatever
25 may be said about the validity of these claims, the Plaintiff accepted benefits under the contract, in
26 the amount of \$3,000 a month given to her directly. She complained only when these benefits
27 ceased and began to be paid into the estate instead. Where a party accepts the benefits of a
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1 settlement agreement or a consent judgment, that party can be estopped from challenging the validity
2 of the settlement agreement or consent judgment. *Amick v. Amick*, 341 S.E.2d 613, 615 (N.C. Ct.
3 App. 1986); *accord Lowry v. Lowry*, 393 S.E.2d 141, 145 (N.C. Ct. App. 1990). The Court holds
4 that Plaintiff ratified the Settlement Agreement and Release, by accepting benefits under it and she
5 is now estopped from challenging it.

6 CONCLUSION

7 For the reasons stated above, the motion for summary judgment is GRANTED and all claims
8 against defendants Kan Pacific Saipan, Ltd., dba Marianas Resort, Aioi Insurance Co., Ltd. fka the
9 Dai-Tokyo Fire & Marine Insurance Co., Ltd. and Takagi & Associates, Inc. are DISMISSED
10 WITH PREJUDICE.

11 SIGNED this 17th day of March 2004.

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14 /s/
15 JUAN T. LIZAMA, Associate Judge
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