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2 **FOR PUBLICATION**

3
4 **IN THE SUPERIOR COURT**
5 **OF THE**
6 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

7 **COMMONWEALTH OF THE**)
8 **NORTHERN MARIANA ISLANDS, EX**)
9 **REL. PAMELA BROWN, ATTORNEY**)
10 **GENERAL,**)

11 **Plaintiff,**)

12 **vs.**)

13 **MARIANAS PUBLIC LANDS**)
14 **AUTHORITY, VICTORIA S.**)
15 **NICHOLAS, and ROSARIO DLG**)
16 **KUMAGAI,**)

17 **Defendants.**)
18 _____)

Civil Action No. 05-0332E

ORDER STRIKING PLAINTIFF’S
AMENDED COMPLAINT; GRANTING
IN PART AND DENYING IN PART
DEFENDANTS’ MOTIONS TO DISMISS

19 **THIS MATTER** came on for hearing September 2, 2005, at 1:30 p.m. pursuant to a Motion
20 by Defendants to Dismiss Plaintiff’s Complaint pursuant to Com. R. of Civ. P. 12(b)(6) and 56, and
21 a Motion to Strike Plaintiff’s Amended Complaint. James Livingston and Deborah Covington
22 appeared on behalf of Pamela Brown, who filed suit on behalf of the Commonwealth (“Government”
23 or “Plaintiff”). Ramon Quichocho appeared for Marianas Public Lands Authority (“MPLA”), Brien
24 Sers Nicholas appeared for Rosario DLG Kumagai (“Kumagai”), and Edward Manibusan appeared
25 for Victoria S. Nicholas (“Nicholas”).

26 **I. BACKGROUND**

27 On August 15, 2005, Plaintiff filed a Complaint seeking declaratory and injunctive relief to
28 stop MPLA from issuing payment to Defendants as compensation for wetlands. Defendants

1 responded with a Motion to Dismiss pursuant to Com. R. Civ. P. 12(b)(6), or in the alternative, a
2 motion for summary judgment, arguing that there are no factual disputes in this case.

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4 Defendants initially asked the Court to make a *sua sponte* ruling without first giving the
5 Plaintiff notice and opportunity to be heard. The *sua sponte* request was followed with an *Ex Parte*
6 Motion to Shorten Time for a Hearing of the Motion to Dismiss. The Court granted the Motion to
7 Shorten Time due to Defendant Kumagai's serious illness and the special circumstances of this case
8 and a hearing was schedule for August 31, 2005. Thereafter the hearing was rescheduled for
9 September 2, 2005 due to inclement weather closing the court on August 31, 2005.
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11 Plaintiff did not file a response to Defendants' motion, choosing instead to file an Amended
12 Complaint at 4:33 p.m. on August 30, 2005, on the eve of the scheduled hearing, citing what they
13 claim to be the liberal amendment policy found in Com. R. Civ.P. 15(a). At the rescheduled
14 September 2, 2005 hearing, the Court tentatively granted Defendants' Motion to Strike Plaintiff's
15 Amended Complaint and the parties proceeded with oral arguments on the Motion to Dismiss.
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17 **II. MOTION TO STRIKE**

18 Turning first to the Motion to Strike. Rule 15(a) of the Commonwealth Rules of Civil
19 Procedure, which track the Federal Rules of Civil Procedure, allows a party to amend the party's
20 pleading once, as a matter of course, at any time before a responsive pleading is served. Com. R.
21 Civ. P. 15(a); FED. R. CIV. P. 15(a). The Rules specifically exclude motions from the definition of
22 a pleading. Com. R. Civ. P. 7(a). Defendants filed a Motion to Dismiss and did not file an Answer
23 or any other document that could be deemed a pleading. Consequently, the Government did not lose
24 its ability to file an Amended Complaint. However, the underlying facts or circumstances relied on
25 by the plaintiff must be a proper subject of relief. *See, generally, Foman v. Davis*, 371 U.S. 178, 83
26 S. Ct. 227, 9 L. Ed. 2d 222 (1962). Consequently, while the request to file an amended complaint
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1 shall be freely granted, it shall only be freely granted in the absence of any apparent or declared
2 reasons such as: undue delay, bad faith or dilatory motive. *Id.* 371 U.S. at 182, 83 S. Ct. at 230, 9
3 L. Ed. at 224. To that end, it is “well within the [] court's discretion” to allow or disallow an
4 amended complaint. *Donahue v. City of Boston*, 304 F.3d 110, 121 (1st Cir. 2002); *see also*
5 *O'Connell v. Hyatt Hotels of P.R.*, 357 F.3d 152, 154 (1st Cir.2004)

7 Here, Plaintiff’s amended complaint reiterated the claims stated in the original complaint and
8 added a cause of action citing a nonexistent law. The lack of any legal basis for the additional cause
9 of action combined with filing of the Amended Complaint on the eve of the hearing, leads the Court
10 to question whether the Amended Complaint was an attempt at gamesmanship by the Plaintiff. The
11 Commonwealth Supreme Court has refused to allow manipulation of a matter based on
12 technicalities. *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶15, 6 N.M.I. 165, 168-69.

14 While it may be that the Amended Complaint was not an act of gamesmanship by Plaintiff,
15 the Court is mindful of the need to balance the equities of the parties. Without any basis in law for
16 the additional cause of action added to Plaintiff’s Amended Complaint, there can be no issue of fact;
17 nor does the Amended Complaint provide a proper subject for relief other than those presented in
18 the original Complaint. As such, the equities weigh in favor of Defendants and Plaintiff’s Amended
19 Complaint is stricken.
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22 **III. MOTION TO DISMISS**

23 **BACKGROUND**

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25 Turning next to the Motion to Dismiss. Although Defendants’ Kumagai and Nicholas are
26 jointly named as defendants in this matter, the Court believes the differing facts regarding Kumagai
27 and Nicholas merit separate discussions.

28 **Defendant Kumagai**

1 Kumagai owned Lot E.A. 157-2-1. The lot was, and still is, 100% wetland property. On
2 November 16, 1993, then Governor Lornenzo I. Deleon Guerrero certified that the Commonwealth
3 took Lot E.A. 157-2-1 for the public purpose of protecting wetlands. Under the law, MPLA is
4 supposed to determine the compensation due to landowners, who are then compensated for the
5 taking. MPLA determined that the appropriate compensation was \$159,408.19.
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7 On April 11, 2005, in a separate suit, the Commonwealth of the Northern Mariana Islands
8 Department of Public Health and Environmental Services (“Dept. of Public Health”) filed a
9 Complaint against Kumagai for unpaid medical services since 1998, primarily hemodialysis, totaling
10 more than \$253,095.96. On April 28, 2005, Attorney General Pamela Brown signed a Settlement
11 Agreement, effective on May 2, 2005, dismissing the Complaint against Kumagai (hereafter “CHC
12 Agreement”). The CHC Agreement specifically stated, “[w]hereas, [Kumagai] is about to receive
13 the sum of approximately \$159,408.19 from the Marianas Public Lands Authority (MPLA) as
14 compensation for land taken for public use; [w]hereas, **the parties have conducted an
15 investigation into the facts and the law underlying the claims asserted in the Action and have
16 concluded that a settlement of such claims according to the terms set forth below is in their
17 respective best interests . . .**” (emphasis added). The CHC Agreement provided that Kumagai’s
18 signature on the agreement would thereby “instruct[] and direct[] appropriate officials of MPLA to
19 disburse \$79,704.09 of the land compensation payment due [Kumagai] to [the Dept. of Public
20 Health], in the form of a check payable to the CNMI Treasurer. In return, Plaintiff “agree[d] not to
21 object, obstruct, or in any way hinder the disbursement of the remaining funds.” The CHC
22 Agreement was “approved as to form and legal capacity” by Attorney General Pamela Brown.
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26 Thereafter, on May 5, 2005, MPLA executed a “Land Compensation Settlement Agreement”
27 (hereafter “Compensation Settlement”) between MPLA and Kumagai, authorizing the \$159,408.19
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1 payment. Requisition No. FY 05-11 (“Kumagai Requisition”) was forwarded to the Secretary of
2 the Department of Finance, Fermin Atalig (“Atalig”) that same day. Despite instructions from the
3 Attorney General’s office to withhold further action on the Kumagai Requisition, Atalig concurred
4 with the requisition, releasing it back to MPLA, who then transmitted the Kumagai Requisition to
5 Commonwealth Development Authority (“CDA”). CDA, in turn, forwarded the same to Bank of
6 Guam to prepare a disbursement of the Kumagai funds. Soon thereafter, Attorney General Pamela
7 Brown allegedly instructed CDA to stop processing Kumagai’s compensation and subsequently
8 entered into an alleged written agreement with CDA whereby the processing of Kumagai’s
9 Requisition was effectively halted. The Complaint at bar followed.
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12 **Defendant Nicholas**

13 Nicholas’ claim is similar to Kumagai’s in several aspects. Like Kumagai, Nicholas owned
14 a 100% wetland property, Lot 158-A-R1. Similar to the Kumagai facts, on April 21, 2005, Governor
15 Juan N. Babauta certified the Commonwealth took Lot 158-A-R1 in 1993 for the purpose of
16 protecting wetlands and endangered species in the Commonwealth. On April 28, 2005, MPLA
17 authorized a \$1,166,403.14 payment to Nicholas using Land Compensation Funds for the wetlands
18 taking. The authorization was the result of negotiations between MPLA and Nicholas, which were
19 finalized in a “Land Compensation Settlement Agreement” (hereafter “Nicholas Agreement”).
20 Again similar to Kumagai, on April 29, 2005, MPLA prepared Requisition No. FY 05-10 (“Nicholas
21 Requisition”), referencing the Nicholas Agreement, and forwarded said requisition to the
22 aforementioned Atalig. Despite instructions from the Attorney General’s office to withhold further
23 action on the Nicholas Requisition, Atalig concurred with the requisition, which was in turn
24 forwarded to CDA for further action. The Nicholas matter did not involve any agreement between
25 Nicholas and the Attorney General wherein Pamela Brown sanctioned the MPLA payment to
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1 Defendant.

2 **IV. MOTION TO DISMISS**

3 **DISCUSSION**

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5 A Rule 12(b) motion to dismiss must be denied “unless it appears beyond doubt that the
6 plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Scheuer*
7 *v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 1686, 40 L. Ed. 2d 90, 91 (1974). A court must accept
8 any and all reasonable inferences derived from the facts. *Unger v. Nat’l Residents Matching*
9 *Program*, 928 F.2d 1392 (3rd Cir.1991); *Glenside W. Corp. v. Exxon Co., U.S.A.*, 761 F. Supp.
10 1100, 1107 (D.N.J.1991); *Gutman v. Howard Sav. Bank*, 748 F. Supp. 254, 260 (D.N.J. 1990).
11 Further, the court must view all allegations in a Complaint in the light most favorable to the plaintiff.
12 *Scheuer*, 416 U.S. at 236, 94 S. Ct. at 1686, 40 L. Ed. at 91; *Jordan v. Fox, Rothschild, O’Brien &*
13 *Frankel*, 20 F.3d 1250, 1261 (3d Cir.1994). The question before the Court is not whether plaintiffs
14 will ultimately prevail; rather, it is whether they can prove any set of facts in support of their claims
15 that would entitle them to relief. *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S. Ct. 2229, 2232,
16 81 L. Ed. 2d 59, 65 (1984). The Court, however, has “no duty to strain to find inferences favorable
17 to the non-moving party.” *Govendo v. Marianas Pub. Land Corp.*, 2 N.M.I. 482, 490. Therefore,
18 in deciding a motion to dismiss, a court should look at the face of the complaint and decide whether,
19 taking all of the allegations of fact as true and construing them in a light most favorable to the non-
20 movant, the Plaintiff is able to state a legal claim. *Markowitz v. Northeast Land Co.*, 906 F.2d 100,
21 103 (3rd Cir. 1990).
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26 In the current matter, regarding both Defendants Kumagai and Nicholas, the Government
27 is attempting to prevent payment to the Defendants, despite MPLA’s approval, on the basis of an
28 erroneous interpretation of the land compensation statutes. In the case of Kumagai, the Attorney

1 General signed a Court endorsed settlement agreement (the CHC Agreement) certifying that the
2 underlying facts and law had been investigated. Since the CHC Agreement was predicated on
3 Kumagai's MPLA compensation, the Attorney General's actions in certifying the CHC Agreement
4 after stating that the underlying facts and law had been investigated prevents the Attorney General
5 from now claiming that Kumagai's compensation by MPLA is improper. Any other interpretation
6 would imply that the Government did not enter into the settlement agreement with Kumagai in good
7 faith. As such, Kumagai's Motion to Dismiss is GRANTED.
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10 Turning next to Defendant Nicholas. Unlike Kumagai, the only party certifying that payment
11 to Nicholas was proper was Defendant MPLA. There is no certification by the Attorney General
12 that the underlying facts and law were investigated and deemed proper. In fact, there is nothing
13 from the Attorney General that sanctioned the compensation amount at any time. As such, while
14 Nicholas *may* be able to defeat Plaintiff's Complaint, when viewing the fact in the light most
15 favorable to the non-moving party, Defendant Nicholas does not meet the burden necessary to
16 constitute dismissal of Plaintiff's Complaint. As such, Nicholas' Motion to Dismiss is hereby
17 DENIED.
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19 V. CONCLUSION

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21 For the foregoing reasons, Defendant Kumagai's Motion to Dismiss is GRANTED and CDA
22 is ordered to proceed with disbursement of Requisition No. FY 05-11. Defendant Nicholas' Motion
23 to Dismiss is DENIED. Defendant MPLA's Motion to Dismiss is GRANTED with respect to
24 Kumagai's compensation payment, but DENIED with respect to Nicholas' compensation.
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26 Plaintiff, Nicholas, and MPLA shall contact the Court to schedule a status conference on or
27 before October 27, 2005.
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So ORDERED this 27th day of September 2005.

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David A. Wiseman, Associate Judge