

FOR PUBLICATION

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**IN THE SUPERIOR COURT (FEB 27 PM 4: 22
OF THE**

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

BY: _____

MARIANO S. SABLAN,

CIVIL ACTION NO. 04-0166

Plaintiff,

v.

**BENJAMIN T. MANGLONA and
VICENTE M. ATALIG,**

**ORDER GRANTING DEFENDANTS'
MOTION FOR JUDGMENT ON THE
PLEADINGS ON THE ISSUE OF
WRONGFUL TERMINATION**

Defendants.

THIS MATTER was last before the Court on February 21, 2006 on defendants' joint motion for summary judgment and plaintiffs cross motion for summary judgment. Appearing on the briefs and/or oral arguments were: Joseph E. Horey for Plaintiff Mariano S. Sablan and Assistant Attorney General Jeanne H. Rayphand for Defendants Benjamin T. Manglona and Vicente M. Atalig (collectively, "Defendants"). Having carefully considered the pleadings and the arguments of counsel, the Court is prepared to rule.

I. FACTS AND PROCEDURAL BACKGROUND

The defendants in this matter are Benjamin T. Manglona, the Mayor of Rota, and Vicente M. Atalig, the Resident Head of the Department of Lands and Natural Resources for Rota. Both are sued here in their individual capacities, although the complaint alleges that defendants were acting "under color of law" and the Commonwealth Attorney General has taken responsibility for their defense. Mariano Sablan, the Plaintiff in this matter, was made the Deputy Director of Land

1. Registration and Survey on Rota on May 24, 1998. His employment was then renewed annually
2. until 2003, when it was terminated.

3. Plaintiff challenged his termination with the Civil Service Commission ("the Commission"),
4. arguing that he was a Civil Service employee. The Commission agreed and on March 3, 2004, it
5. ordered Plaintiff reinstated and awarded him back pay and benefits from May 24, 2003 on. The
6. Commission required compliance with its order within 15 days. Plaintiff was reinstated on or about
7. March 18, 2004 but did not receive his back pay and benefits until April 28, 2004.
8.

9. Plaintiff's original suit alleged four causes of action against Defendants: wrongful
10. termination, breach of contract, and deprivation of property (right to job and right to timely
11. compensation) without due process of law. Plaintiff's wrongful termination was dismissed without
12. prejudice due to his failure to allege that any public policy violation was implicated in his
13. termination. *See* Order Granting In Part and Denying In Part Motion For Summary Judgment
14. (November 2, 2005) at 3. Plaintiff's contract claim was dismissed without prejudice because
15. Plaintiff did not appear to have evidence of the existence of a contract between himself and the
16. Defendants. Plaintiff's claims relating to deprivation of property survived Defendants' motion for
17. summary judgment.
18.

19. Plaintiff submitted a First Amended Complaint to address some of the deficiencies of the
20. original complaint. In response, Defendants moved for judgment on the pleadings with respect to
21. the wrongful termination claim. Defendants allege that (1) they are not the proper parties for the
22. action, and (2) the tort of wrongful termination against public policy does not apply to the facts at
23. hand.
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1. **II. STANDARD FOR GRANTING JUDGMENT ON THE PLEADINGS**

2. Defendants' motion for judgment as a matter of law states that Plaintiff fails to state a claim
3. against the defendants upon which relief can be granted. See Defendant's Motion at 2, 4. When a
4. Rule 12(c) motion raises a Rule 12(b)(6) defense, the motion should be evaluated under the familiar
5. standard applicable to a Rule 12(b)(6) motion for failure to state a claim upon which relief can be
6. granted. Office of the Attorney General v. Luo, No. 98-1107 (N.M.I. Super. Ct. Feb. 22, 1999). The
7. complaint must be construed in the light most favorable to the nonmoving party, and all allegations
8. in the complaint must be accepted as true. Cepeda v. Hefner, 3 N.M.I. 121, 126 (1992). The
9. ultimate question that must be addressed is whether the allegations of the complaint constitute a
10. "statement" of a claim under Com. R. Civ. P. 8(a)(2). *Ada v. JJ. Enters., Inc.*, No. 93-0644,
11. (N.M.I. Super. Ct. Aug. 11, 1993) (Order to Parties to Submit Supplemental Memorandum of Law
12. at 6). To that end, the CNMI Supreme Court has established the following test: "A complaint must
13. contain either direct allegations on every material point necessary to sustain a recovery on any legal
14. theory . . . or contain allegations from which an inference fairly may be drawn that evidence on
15. these material points will be introduced at trial." *In re Adoption of Magofna*, 1 N.M.I. 449, 454
16. (1990).

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19. **III. ANALYSIS**

20. **A. From the Complaint alone, it does not appear that Plaintiff can satisfy the elements for**
21. **an action on a wrongful tort in violation of public policy.**

22. Defendants state that the only situations in which the tort applies are when an employee is
23. fired (1) for refusing to commit an illegal act, (2) performing a public duty or obligation, (3)
24. exercising a legal right or privilege, or (4) in retaliation for reporting employer misconduct. Motion
25. at 4, citing *Smith v. Bates Technical College*, 991 P.2d 1135, 1150 (Wash. 2000).
26.

1. The Court does not believe the tort to be as limited as Defendants suggest. On the contrary,
2. courts have employed a four-step test for determining if the tort applies. Under this test, the plaintiff
3. must prove that (1) there is a clear public policy (clarity element); (2) discouraging the conduct in
4. which he or she engaged would jeopardize the public policy (jeopardy element); (3) the public-
5. policy-linked conduct caused the dismissal (causation element); and (4) there is no overriding
6. justification for the dismissal (absence of justification element). *Hubbard v. Spokane County*, 50
7. P.3d 602, 606 (Wash. 2002); see also *Greeley v. Miami Valley Maintenance Contractors, Inc.*, 551
8. N.E.2d 981 (Ohio 1990) (in which the Ohio Supreme Court first recognized the common law tort of
9. wrongful discharge in violation of public policy).

11. Although Plaintiffs supplemental briefing has identified the public policy on which his
12. argument relies, Plaintiff has not shown causation or an absence of justification. Based on these
13. pleadings, it does not appear that Plaintiff will be able to maintain the action.

14. **B. The Defendants are not the proper object of a suit for wrongful termination in**
15. **violation of public policy.**

16. Defendants state that since Plaintiffs employer was the Commonwealth, a cause of action
17. cannot lie against Defendants, who were his supervisors. Motion at 2. Plaintiff argues that because
18. Defendants had the power to terminate Plaintiffs employment (and did so), they can be held liable.
19. Opposition at 2. In support of this argument, Plaintiff notes that the Civil Service Commission
20. concluded that Defendants were "appointing authorities" with the power to terminate Plaintiffs
21. position. *Sablan v. Department of Lands and Natural Resources, et al.*, N.M.I. Civ. Serv. Comm.
22. No. 03-009, Decision and Order at 5, 7.

24. The Court first considers whether there was an employer-employee relationship between
25. Defendants and Plaintiff. Title 1 Section 8152 defines "government employee" as "any person
26. employed by a branch, agency, department, commission, board, authority or public corporation of

1. the Commonwealth of the Northern Mariana Islands, whether in the civil service system or
2. otherwise." Plaintiff falls into this category, meaning that he is an employee of the Commonwealth.
3. See Complaint at ¶ 6 (Plaintiff is "a civil service employee as defined by the law of the CNMI.")
4. and ¶ 1 (Plaintiff is "Deputy Director for Land Registration and Survey for Rota").

5. The Court next determines whether Plaintiff, as an employee of the Commonwealth, can
6. also be considered an employee of Defendants. Black's Law Dictionary (8th Ed., 2004) defines
7. "employer" as "A person who controls and directs a worker under an express or implied contract of
8. hire and who pays the worker's salary or wages." The fact that Defendants had the power to
9. terminate Plaintiff's position is significant. However, Defendants were not responsible for paying
10. Plaintiff's wages. The Commonwealth was responsible. Thus, it is the Commonwealth alone who
11. was the employer of Plaintiff.

12. Finally, the Court considers whether a party who is not the official employer may
13. nevertheless be a target of a wrongful termination claim. In *Bragg v. East Bay Regional Park Dist.*,
14. No. C-02-3585, 2003 WL 23119278 (N.D. Cal. Dec. 29, 2003) at *7, the court held that supervisors
15. sued in Plaintiff's wrongful termination claim could not be liable for wrongful termination, as they
16. did not employ plaintiff. See also *Travillion v. Heartland Pork Enterprises, Inc.*, 669 N.W.2d 262
17. (Iowa App. 2003) (same).

18. Courts that have allowed suits against a supervisor have done so only where statutes
19. explicitly provided for suits against supervisors. See *Palmer v. Regents of University of*
20. *California*, 107 Cal.App.4th 899, 909 (Cal. App. 2003) ("unlike claims under FEHA or for the
21. common law tort of wrongful termination in violation of public policy . . . an injured party may sue
22. his or her supervisor under section 8547.10, rather than only the employer"). In *Palmer*, the court
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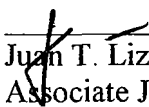
1. noted that the public policy upon which plaintiffs wrongful termination suit is based must not
2. prohibit a direct action against a supervisor (as does the Fair Employment Housing Act).

3. Under the existing case law, there is no basis for bringing the tort of wrongful termination
4. against a supervisor rather than the employer. Because Defendants were allegedly the supervisors of
5. Plaintiff, they are not the proper subjects for a tort action based on wrongful termination.

6. **IV. CONCLUSION**

7. Plaintiffs complaint does not contain allegations from which an inference fairly may be
8. drawn that evidence on the public policy at issue will be introduced at trial. Nor does the complaint
9. set forth a claim against the proper party—the Commonwealth. Thus, pursuant to Com. R. Civ. P.
10. 12(c), Defendant's motion for judgment on the pleadings on the issue of wrongful termination is
11. GRANTED.¹

12. SO ORDERED this 27 day of February 2006.

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17. Juan T. Lizama
18. Associate Judge, Superior Court

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26. ¹ The Court does not reach the issue of whether the tort of wrongful termination extends to all employees in the Commonwealth.