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2 **FOR PUBLICATION**

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

6 **JUAN M. CABRERA,**) **CIVIL ACTION NO. 05-0538C**
7 Plaintiff,)
8 vs.) **ORDER GRANTING PLAINTIFF’S**
9 **CONRAD SABLAN and**) **MOTION FOR PARTIAL SUMMARY**
10 **VIRNALIZA SABLAN,**) **JUDGMENT AND DENYING**
11 Defendants.) **DEFENDANT’S CROSS-MOTION FOR**
) **SUMMARY JUDGMENT**

12 **I. Introduction**

13 THIS MATTER came before the Court for a hearing on December 11, 2006, at 1:30 p.m. in
14 courtroom 220A to consider plaintiff Juan M. Cabrera’s Motion for Partial Summary Judgment as well as
15 defendant Conrad Sablan’s Cross-Motion for Summary Judgment. Plaintiff Cabrera appeared through
16 counsel, Douglas F. Cushnie, Esq. Defendant Conrad Sablan appeared personally with counsel Brien
17 Sers Nicholas, Esq. Having considered the arguments of counsel, the materials submitted and the
18 applicable laws, the Court hereby issues its order granting partial summary judgment in favor of the
19 plaintiff and denying defendant’s cross-motion for the reasons that follow.

20 **II. Factual and Procedural Background**

21 Both parties have represented that their dispute is fundamentally based upon questions of law and
22 that the following facts are not materially disputed. On March 27, 2000, plaintiff Juan M. Cabrera
23 (“Cabrera”) and defendants Conrad and Virnaliza Sablan, husband and wife, executed a written
24 agreement under which Cabrera agreed to assume responsibility for a pre-existing loan debt of \$72,656.25

1 that the Sablans owed to Just For Fun, Inc. (“JFF”). Complaint ¶ 3; Answer ¶ 2; “Agreement,” Ex. 1 to
2 Decl. of Juan M. Cabrera, Oct. 23, 2006 (hereinafter “Cabrera Declaration”). JFF is a CNMI corporation
3 and, on the date of the agreement, Cabrera was its sole shareholder and president. Conrad Sablan was one
4 of the original shareholders of JFF. In exchange for Cabrera’s assumption of the debt, the Sablans
5 promised to construct a concrete house for Cabrera upon a specified lot and according to plans and
6 specifications provided by Cabrera.

7 On April 10, 2000, a second written agreement was signed by Cabrera as the “Owner” and by
8 Conrad Sablan, on behalf of Sablan Enterprises, Inc., as the “Contractor.” (“Construction Agreement,”
9 Ex. “A” to Decl. of Conrad M. Sablan, November 8, 2006)(hereinafter “Sablan Declaration”). This
10 agreement provided specifically for the construction of a house for the contract price of \$72,656.25,
11 reciting that the “Owner has paid, in advance, the full Construction Price of the Project.” *Id.* The
12 Agreement between Cabrera and the Sablans and the Construction Agreement between Cabrera and
13 Sablan Enterprises, Inc., both specified that the house would be completed on or before December 10,
14 2000.

15 The house was never constructed. Beginning on March 7, 2002, however, Conrad Sablan began
16 making payments to Cabrera that eventually totaled approximately \$9,000. Cabrera accepted these
17 payments and credited them against the value of the debt that he had agreed to assume under the
18 Agreement. (Sablan Declaration, ¶ 7; Ex. “2” to Cabrera Declaration). By a letter issued by his attorney
19 and dated October 24, 2005, Cabrera demanded payment from the Sablans within fifteen days of the
20 principal amount of \$63,000, plus interest, reflecting the original \$72,656.25 obligation as reduced by the
21 payments he had already received.

22 On December 15, 2005, Cabrera filed his complaint seeking specific enforcement of the Sablan’s
23 agreement to construct the house or, alternatively, for judgment in the principal amount of \$72,656.25
24 under the Agreement and for \$36,500 as liquidated damages under the Construction Agreement, plus

1 interest, costs of suit and attorney fees as provided for under both agreements. Defendant Conrad
2 Sablan filed an answer on January 16, 2006, asserting, *inter alia*, the affirmative defenses of estoppel and
3 accord and satisfaction. A default was entered against defendant Vernaliza Sablan on April 13, 2006. On
4 October 23, 2006, plaintiff filed the present motion for partial summary judgment, requesting a
5 determination of the defendant's legal liability under the agreements. Defendant Conrad Sablan filed his
6 opposition to the motion, attaching his own request that the Court issue summary judgment in his favor on
7 the basis that the written agreements proffered by Cabrera are presently without legal force or effect.

8 The hearing on the matter was originally set for December 6, 2006, before another judge. On that
9 date, it was redirected to this judge for a hearing on December 11, 2006, only two working days later.
10 With the consent of the parties represented by counsel at the latter hearing, the Court entertained
11 argument on the matter and also exercised its discretion to consider defendant's cross-motion for
12 summary judgment. At the conclusion of the hearing, the Court set a status conference hearing and took
13 the matter under advisement with notice that its written decision on the cross-motions for summary
14 judgment may issue in the interim.

15 **III. Analysis**

16 1. Applicable Legal Standard.

17 Summary judgment is appropriate where the materials submitted to the Court demonstrate "that
18 there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of
19 law." Com. R. Civ. P. 56(c); *e.g.*, *In re Estate of Roberto*, 2002 MP 23 ¶14. "In deciding a summary
20 judgment motion, a court will construe the evidence and inferences drawn therefrom in favor of the non-
21 moving party." *Santos v. Santos*, 4 NMI 206, 209 (1995), *citing Rios v. Marianas Pub. Land Corp.*, 3
22 NMI 512, 518 (1993). A "genuine" dispute of fact exists "if the evidence is such that a reasonable jury
23 could return a verdict for the non-moving party." *Eurotex, Inc. v. Muna*, 4 NMI 280, 283-84 (1995)
24 (citations omitted). A non-moving party "may not rest upon mere allegations or denials" of the moving

1 party's pleading, but must "set forth specific facts showing that there is a genuine issue for trial." Com.
2 R. Civ. P. 56(e); also, e.g., *Eurotex v. Muna, supra*, 4 NMI at 283. The fact that both parties have filed
3 motions for summary judgment does not relieve the court of the duty to determine whether or not any
4 genuine issue of material fact exists for trial. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 91, 6 N.M.I. 575, 599.

5 2. Legal Effect of the Written Agreements

6 Defendant Sablan argues that the March 27, 2000 Agreement fails for lack of any legally sufficient
7 consideration on the part of Cabrera, that he was induced to enter the agreement by Cabrera's false
8 promise that the debt to JFF would be paid, and alternatively that the Agreement was rescinded by the
9 parties when Cabrera began accepting cash payments from Sablan on the underlying debt. Sablan
10 concedes that "it is undisputed that in consideration of Plaintiff's promise to assume the alleged debt by
11 Defendant Conrad [Sablan] to JFF, Defendant Sablan was to construct Plaintiff a house." (Def.'s Opp'n &
12 Cross-Mot. for Summ. J., p. 2). Sablan maintains, however, that Cabrera never performed his part of the
13 bargain, i.e., personally assuming the debt to JFF, and that the actions of the parties two years later
14 establish, as a matter of law, that their obligations under the Agreement were extinguished.

15 Plaintiff Cabrera relies upon the express written terms of the Agreement to establish consideration
16 for the bargain and the specified grounds for default, and distinguishes the Construction Agreement as an
17 ancillary contract that does not affect the principal obligations between the parties as set forth in the
18 Agreement of March 27, 2000. Cabrera admits the possibility that there may have been a subsequent
19 modification of the Agreement with respect to the performance required by Sablan, but argues that any
20 such modification cannot alter defendant's "basic obligation" pursuant to the Agreement. (Pl.'s Reply
21 Mem., p. 4.).

22 Adequate consideration for the enforcement of a contract requires that there be a mutual exchange
23 of promises or performance, such that a performance or a return promise is sought by the promisor in
24 exchange for his or her promise and is given by the promisee in exchange for that promise. *Isla Financial*

1 *Services v. Sablan*, 2001 MP 21, ¶ 14, 6 N.M.I. 338, 341 (2001) (*citing*, RESTATEMENT (SECOND) OF
2 CONTRACTS § 71 (1981) (hereafter, “RESTATEMENT”). In this case, although Cabrera was the president
3 and sole shareholder of JFF, he had no pre-existing duty to personally assume responsibility for any debts
4 owed to JFF. The Sablans held an obligation to make payment on their loan debt to JFF. By the
5 Agreement executed between Cabrera and the Sablans, the parties substituted Cabrera as the obligor with
6 respect to JFF and further converted the obligation of the Sablans into one to build a house for Cabrera,
7 thus effecting a novation of the Sablans’ pre-existing agreement with JFF. RESTATEMENT, § 280, cmt. e,
8 (1981).

9 The consideration for a novation of this kind may be supplied by a party’s voluntary creation,
10 modification or destruction of a legal relation. RESTATEMENT § 71(3)(C); § 280, cmt. c. Cabrera’s
11 personal assumption of the debt has legal consequences that are distinct from those surrounding the debt
12 as owed to JFF, even if a later adjudication based upon evidence presented establishes, for some purpose,
13 that the court should disregard the status of Cabrera and JFF as distinct entities. Moreover, the principal
14 consideration flowing to the Sablans was the opportunity to construct a house in lieu of the payment of
15 cash, a prospect which may have financially benefited the Sablans. The Court therefore finds that the
16 written Agreement on its face recites legally sufficient consideration to constitute a valid and enforceable
17 contract between Cabrera and the Sablans.

18 Defendant Sablan argues that Cabrera’s assumption of the debt to JFF as recited in the Agreement
19 constitutes a “bare promise” that was never actually performed, that Cabrera cannot show that any actual
20 payments were made by Cabrera to JFF on the underlying debt, and that this failure of performance either
21 excuses the Sablan’s performance under the Agreement or establishes that the agreement is without effect
22 *ab initio*. As determined above, however, Mr. Cabrera’s assumption of a legal obligation alone is
23 sufficient consideration on his part to support a binding agreement. Section Three of the Agreement
24 provides: “Cabrera *hereby assumes* responsibility for payment of Sablan’s debt of \$72,656.25 to JFF.”

1 (emphasis added) Subsection B of Section Four provides: “Cabrera shall be in default of this Agreement
2 if Sablan is not in default of this Agreement and JFF seeks to collect the \$72,656.25 debt from Sablan.”
3 Cabrera argues that it is undisputed that JFF has not attempted to collect on the original debt and that this
4 forbearance on the part of JFF is the only performance that the Sablans have a right to demand under the
5 Agreement.

6 The Court agrees with Cabrera that, following the assumption of the debt obligation by Cabrera,
7 the Sablans possessed no residual rights to determine the timing or means of satisfaction of the debt as
8 between Cabrera and JFF. Although JFF is not a party to the present action, the Court notes that
9 knowledge of the Agreement may be imputed to JFF through its president and sole shareholder, Cabrera.
10 Additionally, forbearance on the collection of a debt from the original debtor has been held to be
11 sufficient to establish the creditor’s consent to a novation substituting debtors even where the creditor is
12 not a party to the new agreement. RESTATEMENT § 280, cmts. e., f., illus. 5-7, *citing, Jay Cee Fish Co. v.*
13 *Cannarella*, 279 F.Supp. 67, 72 (D.C.S.C. 1968)(“consent of a creditor to a novation may be the legal
14 result of his acts and conduct; even though he has not either expressly or impliedly agreed thereto”). The
15 matter presented, however, concerns the Sablan’s required performance pursuant to the Agreement, and
16 based upon the clear language of the Agreement and the undisputed facts presented to the Court, the Court
17 finds as a matter of law that Cabrera is not in default under the Agreement and that the Sablan’s duty of
18 performance thereunder has not on that basis been excused.

19 3. Subsequent Modification of the Agreement

20 Subsequent to their execution of the Agreement of March 27, 2000, the parties were free to modify
21 or rescind their written agreement by mutual consent. Although Cabrera’s complaint seeks damages in
22 the alternative for the full principal amount of \$72,656.25, Cabrera acknowledges that he has received
23 approximately \$9,000 from the Sablans, the first payment having been made nearly two years after the
24 execution of the Agreement, and Cabrera’s demand letter admits that he has accepted these payments and

1 credited them toward the Sablans obligation. Exhibit “2” to Cabrera Declaration, October 18, 2006.
2 Sablan argues that these undisputed facts establish that the Agreement was terminated by the mutual
3 consent of the parties, while Cabrera maintains that his acceptance of the payments can have no such
4 effect.

5 These undisputed facts do establish that at some time, no later than March 7, 2002, the parties
6 reached an agreement to alter their legal relationship according to terms that were inconsistent with the
7 March 27, 2000 Agreement. The Agreement only bound the Sablans to the obligation to build a house for
8 Cabrera, but Cabrera’s acceptance of payments from the Sablans in lieu of his promised performance
9 conclusively establishes the existence of a new agreement between the parties. The legal effect, if any, of
10 the new agreement depends upon the intentions of the parties as expressed by its terms. If Cabrera
11 accepted Sablan’s promise of a substituted performance in the form of an accord, the Sablan’s original
12 obligation under the Agreement is suspended but not discharged, and the Sablan’s promise to build a
13 house for Cabrera remains enforceable in principle until the accord is satisfied. RESTATEMENT § 281, cmt.
14 b. On the other hand, if the parties intended to substitute a new agreement in place of their original
15 agreement, the Sablan’s obligation under the old agreement is discharged. RESTATEMENT § 279.
16 Although the undisputed facts presented to this Court establish that there was a new agreement between
17 the parties with respect to their legal relation, neither party has supported their motions with undisputed
18 facts that show the nature or terms of this agreement.

19 There is an irreducible element of obligation on the part of Sablan in this matter, however,
20 regardless of the specific form of the parties’ subsequent agreement. This is because any agreement to
21 discharge a party’s pre-existing duty, whether by accord and satisfaction or through a substituted contract,
22 must itself be supported by legally sufficient consideration and because such consideration is lacking
23 when the obligor is already bound to render the same performance. RESTATEMENT §§ 71, 279, cmt. b.,
24 Illus. 3, 281, cmt. d. Under the original Agreement, Cabrera assumed the Sablan’s debt of \$72,656.25 in

1 exchange for the Sablan's promise to build a house of the same value. The undisputed evidence
2 establishes that Cabrera either agreed to accept an accord or to substitute a new agreement, but that in
3 either case the cash value of the Sablan's obligation was unchanged. Defendant Sablan has not proven
4 that his partial payment toward this obligation was the result of the settlement of a dispute, or provided
5 evidence of any other legal consideration that would support a discharge of his full obligation based upon
6 the partial payment. Defendant Sablan therefore remains liable to Cabrera, at a minimum, for the
7 remainder of the principal amount of the debt assumed by Cabrera pursuant to the Agreement. All such
8 other claims and defenses asserted by the parties remain subject to proof.

9 **IV. Conclusion**

10 For the reasons stated above, plaintiff Cabrera's motion for partial summary judgment is
11 GRANTED with respect to plaintiff's alternative claim that pursuant to their written Agreement of March
12 27, 2000, together with the subsequent agreement between the parties respecting that Agreement,
13 defendant Sablan remains obligated to Cabrera for the principal amount of \$72,656.25, less payments
14 already made to the plaintiff on this obligation. No further issue is hereby adjudicated or determined on
15 plaintiff's motion. For the same reasons, defendant Sablan's cross-motion for summary judgment is
16 DENIED.

17 SO ORDERED this 29th day of December, 2006.

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20 /S/ _____
RAMONA V. MANGLONA, Associate Judge
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