FOR PUBLICATION

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

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA,,	**Civil Action No. 04-0282D**
Plaintiff,	
vs.	**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**
BELTA M. PANGELINAN,	
Defendant.	

THIS MATTER came on for hearing September 29, 2006 at 9:00 a.m. in the Tinian Courthouse pursuant to a motion by National Union Fire Insurance Company of Pittsburgh, PA (hereinafter "Plaintiff"). Counsel Michael White appeared on behalf of Plaintiff. Counsel Lucia L. Blanco Maratita appeared on behalf of Defendant Belta M. Pangelinan (hereinafter "Pangelinan"). Having reviewed and considered the parties memoranda and oral arguments, the Court herein issues its ruling and order.

///

///

///

I. BACKGROUND

The following relevant facts are undisputed by either party:

¶1 On or about September 22, 1995, a 1991 Toyota pickup owned by Pangelinan was involved in an automobile collision with a vehicle belonging to Plaintiff's insured. Pangelinan's sister, aged 15, was operating the vehicle at the time of the collision.

¶2 On June 14, 2001, Pangelinan signed a promissory note to Plaintiff's agent, Guam Insurance Adjustors, Inc., (hereinafter "GIA") admitting liability for the September 22nd automobile collision. In addition to admitting liability for the collision, Pangelinan agreed to pay GIA $8,412.50 plus interest accruing at the rate of twelve percent (12%) per annum. Pangelinan agreed to make full payment of the note by paying "$50.00 each Commonwealth of the Northern Mariana Islands Government pay period beginning June 29, 2001 and continuing until fully paid." *See* Declaration of Thomas Clifford, Exhibit A, Promissory Note.

¶3 Pangelinan began making payments on January 4, 2002. However, Pangelinan fell behind on her payments and has failed to make any payment since July 14, 2003. *See* Declaration of Thomas Clifford; *and* Declaration of Thomas Clifford, Exhibit B; *see also* Plaintiff's Original Complaint, ¶8; *and* Answer at ¶8.

¶4 Plaintiff filed suit against Pangelinan on July 7, 2004 for defaulting on the Promissory Note and for Breach of Contract under the Uniform Commercial Code as adopted in the CNMI. *See* Plaintiff's Original Complaint.

¶5 Pangelinan answered Plaintiff's complaint on August 16, 2004, and asserted two affirmative defenses; i.e. that Plaintiff's claims were barred because of a lack of consideration, and that Plaintiff's claims were barred because the statute of limitations had expired. *See* Answer.

II. DISCUSSION

A court may grant summary judgment when there are no issues as to any material fact and the moving party is entitled to judgment as a matter of law. Com. R. Civ. P. 56(c); *Santos v. Santos*, 4 N.M.I. 206, 209 (1994). The moving party bears the initial burden of demonstrating to the court that there is an absence of any genuine issue concerning any material fact and that as a matter of law, the non-moving party cannot prevail. *Id.* To survive a motion for summary judgment, the non-moving party must then show that there is evidence from which a jury might return a verdict in the non-moving party's favor. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172, 176 (1990). Conclusory allegations are not sufficient to defeat a motion for summary judgment. *Id.* The court must accept all of the non-moving party's evidence as true and will view all inferences drawn from the underlying facts in the light most favorable to the non-moving party. *Id.*

Here, the facts, as presented above, are undisputed by either party, and consequently, aside from any legal obstacle, Pangelinan has clearly defaulted on her written promise to pay Plaintiff (through GIA) the amount of $8,412.50 and interest at a rate of $50.00 per pay period of the CNMI government. Pangelinan fails to meaningfully dispute the facts constituting the default other than an unsupported denial in her answer. Accordingly, judgment must issue in favor of Plaintiffs absent any valid legal defense asserted by Pangelinan. In her answer and opposition papers, Pangelinan has asserted two affirmative defenses to Plaintiff's claims: (1) that Plaintiff's claims are barred because the applicable statute of limitations has expired; and (2) that Plaintiff's claims are barred because the promissory note is unenforceable due for want of adequate consideration. As discussed below, both of Pangelinan's affirmative defenses fail.

///

///

A. The 2-year Statute of Limitations under 7 CMC s. 2503 is Inapplicable Because The Instant Action is Brought on a Promissory Note and is Not an Action in Tort.

Pangelinan first asserts that because this action arose from a default on a promissory note, which, in turn arose from facts possibly supporting a legal action in tort, that the 2-year statute of limitations should apply to bar Plaintiff from recovering on the promissory note signed by Pangelinan. *See* 7 CMC § 2503(d). Pangelinan's argument is unpersuasive because she improperly conflates the facts giving rise to the promissory note, i.e. the vehicle collision, with the facts giving rise to the current suit, i.e. Pangelinan's default on a promissory note.

Plaintiff sued because Pangelinan simply failed to comply with the terms of the promissory note she signed on June 14, 2001, not because it asserts that Pangelinan is legally accountable for the vehicular collision of September 22, 1995. Plaintiff's suit is for default on a note and non-compliance with the terms of a contract, and therefore, the 2-year tort statute of limitations is inapplicable. Accordingly, the 6-year, "catch-all" statute of limitations found in 7 CMC § 2505 applies to Plaintiff's case. Because Plaintiff's cause of action, filed in 2004, accrued no earlier than 2001, Plaintiff's action is not barred by 7 CMC § 2505.

B. The Promissory Note is Enforceable Because it is Supported by Adequate Consideration.

Pangelinan next asserts that the promissory note upon which Plaintiff sues is unenforceable for lack of consideration, because the then-applicable 2-year statute of limitations barred any suit arising from the 1995 collision when Pangelinan signed the promissory note in 2001, and consequently, Plaintiff exchanged nothing of value in return for Pangelinan's promise to pay $8412.50 at $50 per pay period. Pangelinan's argument must fail because notwithstanding the applicability of the 2-year statute of limitations to any liability stemming from the 1995 collision,

sufficient consideration supported the promissory note.

No Commonwealth case law specifically addresses whether a promise to forbear from pursuing a stale claim is adequate consideration to support an enforceable contract, however, as asserted by Plaintiff, the Restatement provides guidance[1]:

> The execution of a written instrument surrendering a . . . defense by one who is under no duty to execute it is consideration if the execution of the written instrument is bargained for even though he is not asserting the . . . defense and believes that no valid claim . . . exists.
>
> Restatement (Second) of Contracts §74 ().

In other words, a party can contractually waive its right to defend against a claim irrespective of whether the other party has a valid claim or the waiving party has a valid affirmative defense. Comment b to section 74 further states:

> The policy favoring compromise of disputed claims is clearest, perhaps, where a claim is surrendered at a time when it is uncertain whether it is valid or not. Even though the invalidity later becomes clear, the bargain is to be judged as it appeared to the parties at the time; if the claim was then doubtful, no inquiry is necessary as to their good faith. Even though the invalidity should have been clear at the time, the settlement of an honest dispute is upheld.
>
> *Id*, Comment (b).

Here, Pangelinan agreed to admit liability and promised to pay $8412.50 plus interest at 12% per annum in exchange for Plaintiff's agreement to accept payment in installments and forbear from pursuing any possible subrogation claim in court. Though Plaintiff's subrogation claim at the time the promissory note was executed would have been almost surely barred by the 2-year statute of limitations, the case as it appeared to the parties at the time was in genuine doubt, because, as

---

[1]See 7 CMC § 3401; see also Castro v. Hotel Nikko Saipan, Inc., 4 N.M.I. 268 (1995), appeal dismissed, 96 F.3d 1259 (9th Cir. 1996).

Plaintiff demonstrates, it could have pursued several claims in good faith, in spite of the 2-year statute of limitations. In essence, Pangelinan bargained for the right to not be sued by the subrogee, and for the right to make payment on the note in $50 per pay period installments. Such is sufficient consideration notwithstanding the invalidity of any tort-claim available at the time.

Further, Pangelinan, in asserting her defense, cites *Isla Financial Services v. Sablan*, 6 N.M.I. 338, 2001 MP 21, in which the Commonwealth Supreme Court found that a promise to pay the existing debt of another is alone insufficient consideration to support an enforceable contract. However, as Plaintiff points out, the facts in the present case are readily distinguishable. In *Isla*, those attempting to enforce the contract had no possible claims against a daughter who gratuitously agreed to pay for her mother's debts. By contrast, Plaintiffs, had several possible legal avenues which they could have pursued against Pangelinan even though the alleged liability was factually incurred by Pangelinan's sister; e.g., negligence through the theory of the family purpose doctrine, negligent entrustment; and principal/agent vicarious liability.

To be sure, Plaintiff cites ample persuasive authority, which supports its argument that forbearance from asserting a claim, no matter how stale, may be adequate consideration to support an enforceable contract. *See Unioin Oil Co. of California v. Terrible Herbst, Inc.*, 331 D.3d 735, 741, *cert. denied* 540 U.S. 1107, 124 S.Ct. 1060, 157 L.Ed. 2d 892 (9th Cir. 2004) ("An implied promise to forbear exercising a right [to bring suit] can be consideration as readily as an explicit promise not to do so."); *see also Oxxford Clothes XX Inc. v. Expeditors International of Washington, Inc.*, 127 F.3d 574 (7th Cir. 1997); *J. Kahn & Co. v. Clark*, 178 F.2d 111 (5th Cir. 1949); *Warner & Swasey Co. v. Lusterholz*, 41 F. Supp. 498 (D.C. Minn., 1941); *Shipley v. Pittsburgh & Lake Erie Railroad Co.*, 83 F.Supp. 722 (D. C. PA. 1949); *and Trumbull Steel Co. v. United States*, 1 F. Supp. 762 (Ct. Cl. 1932).

Because neither of Pangelinan's affirmative defenses are valid, the Court is satisfied that summary judgment may issue in favor of Plaintiff. As demonstrated above, Pangelinan has not disputed the amount of principal left on the promissory note: $8,412.50. Furthermore, Pangelinan has not adequately disputed the amount of interest accrued on the principal at a rate of 12 percent per annum in the amount of $1,686.97 as of December 5, 2005 and interest on the principal sum at the rate of 12% per annum from December 5, 2005 to present. Accordingly judgment in those amounts shall be entered against Pangelinan and for Plaintiff.

III. CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Summary Judgment is GRANTED. Consistent with this judgment, the Court awards Plaintiff the following:

Principal on the promissory note:	$8,412.50
Accrued interest up to December 5, 2005:	$1,686.97
TOTAL:	**$10,099.47**

In addition, prejudgment interest at the rate of 12% per annum is awarded for the period of December 6, 2005 to the date of this Opinion and Order and shall be added to the above stated total.

So ORDERED this 5 day of March 2007.

David A. Wiseman, Associate Judge