



By the order of the court, Judge David A Wiseman

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FOR PUBLICATION

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

STANLEY T. MCGINNIS TORRES,)
REPRESENTATIVE OF PRECINCT III)
(I) SAIPAN,)
)
Plaintiff,)
)
vs.)
)
CARMEN FERNANDEZ, et al.)
)
Defendants.)
)
_____)

Civil Action No. 07-0339

ORDER:
DENYING DEFENDANTS' MOTION
FOR RECONSIDERATION

THIS MATTER came for hearing on August 14, 2008 at 1:30 p.m. pursuant to Defendants' motion for reconsideration. Legislative Counsel Antoinette Villagomez appeared on behalf of Representative Torres. Counsel Matthew Smith appeared on behalf of the defendants. Having examined the pleadings, the parties' arguments, and applicable law, the Court now renders its decision and ruling.

I. DISCUSSION

Motions for reconsideration are governed by Rule 59 and are considered an extraordinary measure to be taken at the Court's discretion. *See Yuba Natural Resources, Inc. v. United States*, 904 F.2d 1577, 1583 (Fed. Cir. 1990). The Commonwealth Supreme Court articulated a limited number of

1 grounds to warrant a court to revisit an already decided matter. Consequently, only an “intervening
2 change of controlling law, the availability of new evidence, or the need to correct a *clear error* or
3 prevent manifest injustice” are sufficient grounds for reconsideration. *Camacho v. J.C. Tenorio*
4 *Enterprises, Inc.*, 2 N.M.I. 408, 414 (1992).

5 Defendants grounds their Motion For Reconsideration on their claim that the Court’s grant of
6 summary judgment was in clear error and needs to be corrected to prevent manifest injustice.
7 Specifically, Defendants claim that the Court’s grant of summary judgment was in error because 1) the
8 summary judgment motion made by plaintiffs was “not properly before the court”, 2) because there are
9 still material facts in dispute, and 3) because the Court made erroneous findings of fact and conclusions
10 of law. The Court will address each of these issues in the order raised by Defendants.

11 First, Defendants’ claim that the Court erred by issuing summary judgment before Defendants
12 answered the initial complaint, especially in light of the Court’s earlier reluctance to consider the motion
13 for summary judgment prior to Defendants’ filing of their answer. However, as Defendants rightly
14 concede, the Court is not restrained from issuing summary judgment notwithstanding the lack of an
15 answer if “it appears to a certainty that no answer which the adverse party might properly serve could
16 present a genuine issue of fact.” *Stuart Inv. Co. v. Westinghouse Electric Corp.*, 11 F.R.D. 277, 280 (D.
17 Neb. 1951). Consequently, the mere absence of a responsive pleading to a complaint does not bar a
18 Court from issuing summary judgment; that is, as long as there are no genuine issues as to any material
19 fact that could be raised by an answer.

20 Here, the Court concluded that the above-captioned dispute was simply a legal dispute over two
21 issues: 1) whether NMC was required under the OGA to supply the information requested by
22 Representative Torres, and 2) which party would be required to pay the costs associated with producing
23 said information without releasing other information not subject to disclosure. The Court required no
24 further facts to rule. More importantly, the Court determined that no further facts could be introduced
25 that would alter the Court’s legal determination. And, as will be discussed in further detail below, the

1 facts that Defendants seek to introduce or discover are immaterial to the resolution of this OGA request.
2 The Court then ruled that in light of the OGA's expansive language, NMC is required to produce the
3 information requested by Representative Torres, and produce a privilege log documenting the
4 information withheld and stating the grounds on which the information was withheld. Finally, the Court
5 declined to rule conclusively as to who would be responsible for the ultimate cost of producing the
6 redacted information to Torres, however, the Court expressed skepticism that double-copying¹ the
7 requested documents would be the most economical solution to allow Representative Torres to inspect
8 the documents. Therefore, the Court ordered the parties to meet and confer in good faith to determine a
9 procedure to allow Torres to inspect the documents requested, while allowing NMC to protect certain
10 information not subject to disclosure under the OGA.

11 As is evident from the plain language of the OGA, a dispute arising over a request for
12 information made pursuant to the OGA, merits expedited proceedings which hardly invites a rigid
13 application of the Commonwealth Rules of Civil Procedure.² Accordingly, the Court issued summary
14 judgment requiring disclosure of the requested records consistent with the OGA's requirements, but

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16 ¹As stated in the Court's July 9, 2008 order, the cost of double copying would result in a total
17 charge of \$4,472.00.

18 ²§ 9916. Violations: Mandamus or Injunction

19 (a) Any person may commence an act either by mandamus or injunction
20 for the purpose of stopping violations or preventing threatened violations of
21 this chapter by members of a governing body.

22 (b) *Accelerated Hearing: Immediate Compliance*

23 (1) Whenever an action is filed to enforce the provisions of this
24 section, the court shall set an immediate hearing, giving the case priority over
25 other pending cases.

(2) Whenever a court orders an agency to open its records for
inspection in accordance with this section, the agency shall comply with such
order within 48 hours, unless otherwise provided by the court issuing such
order, or unless the appellate court issues a stay order within such 48 hour
period.

1 allowing NMC to withhold certain information which is not subject to disclosure as long as such
2 redactions are documented in a log providing the privilege or legal ground for withholding such
3 information.

4 Defendants next challenged the Court's issuance of summary judgment on the claim that it was
5 premature in light of the "numerous issues of material fact in dispute." It appears here, that Defendants
6 misapprehend which facts are material and which facts are immaterial for the purposes of litigating an
7 OGA request. Simply put, the only type of fact relevant to a Court applying the OGA is what type of
8 information is sought by the requesting party, and from whom the information is sought. *See* 1 CMC §§
9 9902(c)-(f), 9903, 9917, and 9918. Once a Court has ascertained the type of information sought, and
10 from which entity it is sought, the Court then can make an appropriate determination as to whether the
11 information sought is subject to disclosure under the OGA. Here, the Court has ascertained the
12 information sought by Representative Torres through his complaint and filings,³ and that Representative
13 Torres seeks the information from NMC, a public body subject to the OGA. Thus, no further facts are
14 required for the Court to preliminarily determine that NMC must produce the requested information for
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- 16 ³1. For the period of January 1, 2006 through December 31, 2006, any and all amounts of
17 public funds expended to NMC administrative (non-faculty/teaching) employees,
18 excluding maintenance and support staff;
- 19 2. A copy of NMC President Carmen Fernandez's contract with any and all attachments
20 listing job description, and any benefits, including any Board policy that authorized an
21 \$800.00 monthly housing payment to be issued to President Fernandez.
- 22 3. Copies of any and all payments made to President Fernandez from her start date to the
23 date to the date of the request, including payroll, relocation payments, vehicle
24 usage/reimbursement payments and housing payments.
- 25 4. Copies of any and all documents pertaining to the new renovation and/or new
construction of a "special Presidential benjo/potty facility" in or about the President's
office.
5. Any and all billing statements and any and all non-attorney/client correspondence
between NMC and the drafter and/or contributor of the 7/31/07 letter to Chairman
Lizama.

See Exhibits Q and X attached to Plaintiff's Complaint filed September 5, 2007.

1 inspection by Representative Torres. Notwithstanding such ruling, NMC may still redact those portions
2 of the information requested which are not subject to disclosure under the OGA so long as it logs its
3 redactions and reports the grounds upon which the information is redacted. *See* 1 CMC § 9918(d).
4 Should Torres then object to those portions withheld, the Court will then determine whether the portion
5 or portions withheld are particularly subject to disclosure in light of the privilege or legal exemption
6 claimed by NMC.

7 Though the procedure outlined above is the appropriate course of action for litigating an OGA
8 request, Defendants argue that it can and will refute “most, if not all, of the factual allegations Rep.
9 Torres has raised.” Though the Court does not doubt that Defendants can file an answer which denies
10 certain allegations made by Representative Torres against Defendants, the question is whether such
11 denials will refute the material allegations made by Torres. It is the Court’s opinion and ruling that they
12 will not. Defendants have not challenged that Representative Torres requested information from NMC
13 on several occasions. Further, Defendants have not challenged the nature of the information requested
14 as presented by Torres.

15 Instead Defendants insist that the Court deny Representative Torres’s request because they claim
16 that Torres has initiated his requests upon his motivation to harass NMC. Whether true or not,
17 Defendants’ allegation is immaterial for the purposes of determining whether the documents requested
18 by Representative Torres are subject to disclosure under the OGA. Simply put, the OGA contains no
19 language which exempts a government office from producing information if the party seeking the
20 information is motivated by malice or otherwise.⁴ Accordingly, the Court will not consider the claims or
21 evidence of malice by Representative Torres as material. And, because it appears that the parties

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23 ⁴Although the language of the OGA does not prevent disclosure based on a showing that the
24 requesting party is compelled by a malicious motive, actions in common tort law which recover
25 damages for malicious prosecution or abuse of process are not foreclosed from an aggrieved party.

1 divergent account of motivation offers the only genuine factual dispute, the Court finds that there are no
2 material facts in dispute, and the matter was ripe for summary judgment at the time judgment was
3 rendered.

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5 **IV. CONCLUSION**

6 Consistent with the foregoing opinion, the Court DENIES Defendants' motion for
7 reconsideration. Pursuant to the Court's first order, Defendants and Plaintiff are further ordered to
8 comply with this Court's July 9, 2008-order to meet and confer in good faith to establish a feasible and
9 reasonable manner of disclosing the public records requested by Plaintiff in a way that will not violate
10 CNMI or Federal law, or impugn any individual or entity's protected privacy interests.

11 **IT IS FURTHER ORDERED** that the remaining parties to this litigation shall appear on
12 **September 25, 2008 at 1:30 p.m. in Courtroom 223A** for a **Status Conference** to report on the results
13 of their meeting and conference.

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15 **So ORDERED** this 12th day of September 2008.

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17 /s/
David A. Wiseman, Associate Judge