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FOR PUBLICATION

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

RAMON M. SAN NICOLAS, VICENTE C. ALDAN, TARSICIO OLOPAI, and JUAN M. DELEON GUERRERO., **Plaintiff,** **vs.** **BENIGNO R. FITIAL, in his official capacity as GOVERNOR of the COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, the DEPARTMENT OF PUBLIC LANDS, and JOHN S. DEL ROSARIO, in his official capacity as SECRETARY OF THE DEPARTMENT OF PUBLIC LANDS,** **Defendants.**	**Civil Action No. 08-0423E** **ORDER GRANTING DEFENDANTS' MOTION TO DISMISS FOR LACK OF STANDING AND DENYING PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT**

THIS MATTER came on for hearing March 26, 2009, at 1:30 p.m. in Courtroom 232A on Benigno R. Fitial, et. al. (hereinafter "DPL" or "Defendants") Motion to Dismiss and on Plaintiffs Ramon San Nicolas, et. al. (hereinafter "Plaintiffs") Motion for Default Judgment. Counsel Edward Manibusan appeared on behalf of Plaintiffs. Counsel Brad Huesman appeared on behalf of Defendants. Having considered the oral and written submissions of the parties and the applicable law, this Court is prepared to issue its ruling.

For the reasons stated below, Plaintiffs' Motion for Default Judgment is hereby DENIED. Further, Defendants' Motion to Dismiss is hereby GRANTED.

I. SYNOPSIS

On November 11, 2008, Plaintiffs filed a Complaint for Injunctive and Declaratory Relief which challenges the legality of a lease entered into by the Commonwealth, by and through DPL, on a large parcel of public land for commercial development. Plaintiffs argue that the rental rate of the lease is unreasonably low, was not commercially reasonable, was contrary to public interest and was in violation of Article XI of the CNMI Constitution. Plaintiffs contend that Defendants' actions constitute a breach of their fiduciary duties to the people of the Commonwealth. Plaintiffs complaint alleges the following causes of action: (1) Defendants breached their fiduciary duties by failing to consider and solicit proposals; (2) Defendants breached their fiduciary duties by renting the public land below market rental value; (3) Defendants violated Article XI of the CNMI Constitution by leasing public land for more than 40 years; and (4) Request for attorneys fees and costs pursuant to Article X, Section 9 of the CNMI Constitution.

First, Defendants argue that Article X, Section 9 of the Constitution does not grant the Plaintiffs standing to sue and this is an improper taxpayer's lawsuit which seeks to second guess the judgment of government officials. Additionally, Defendants contend that the First Cause of Action should be dismissed, or in the alternative, Defendants are entitled to Summary Judgment because Plaintiffs misrepresented the facts. As to the Second Cause of Action, Defendants argue that Plaintiffs fail to state a claim upon which relief may be granted because: (1) Plaintiffs have mischaracterized the lease and misstated the facts; (2) the Second Claim does not allege a breach of any duty which is required to support a taxpayer lawsuit but rather, a disagreement on policy; (3) the Second Claim is a political question and cannot be addressed by this court; and (4) Plaintiffs' lawsuit will deprive a party of the lease, Kumho, of due process.

As to Plaintiffs' Third Claim, Defendants argue it fails as a matter of law. In respect to Plaintiffs' Fourth Claim, Defendants argue it is not a valid cause of action. Finally, Plaintiffs claim that as government officers, Defendants are entitled to qualified immunity and therefore, the First, Second, and Third Claims must be dismissed.

In reply, Plaintiffs argue that the Motion to Dismiss must be denied because they have successfully pled a prima facie claim for breach of fiduciary duties against a public official charged with administering a trust. Further, Plaintiffs maintain that Article X, Section 9 and CNMI Case Law grants Commonwealth taxpayers standing to sue government officials for breaches of fiduciary duties even where there is no expenditure of public funds. Plaintiffs also argue that all the well-pled facts support their claim. Lastly, Plaintiffs argue that the Political Question doctrine does not bar resolution of this case and that Defendants are not entitled to qualified immunity.

First, qualified immunity is not applicable and does not bar this action although not for the reasons espoused by either counsel. Second, neither the plain language of the Constitution nor any case law specifically grant taxpayers standing to sue where there is no expenditure of public funds. Therefore, this is an improper exercise of a lawsuit by a taxpayer and therefore, the suit must be dismissed.

II. STATEMENT OF FACTS

The leased property at issue comprises approximately 1,615,053 square meters in Kagman leased by SC Properties, Inc., (hereinafter "SC") on October 13, 1989. SC then assigned the original lease to Saipan Lau Lau Development, Inc., (hereinafter "Lau Lau") on August 5, 1993. The original lease was then assigned to United Micronesia Development Association, Inc., (hereinafter "UMDA") on February 15, 2005, and then to UMDA Lao Lao, LLC on February 17, 2005. Lastly, on March 14, 2007, UMDA Lao Lao, LLC assigned the original lease to Kumho Holidngs (H.K.), Co., Limited (hereinafter "Kumho"). According to DPL, the ownership of Lau Lau has changed through share acquisitions by

subsequent entities so that a corporate "person" has owned the original lease since 1993, but the shareholders of Lau Lau have been different.

After the lease was assigned to Kumho, DPL and Kumho began discussions on a proposed multi-million dollar investment in Lao Lao Bay Golf Course Resort in return for a new lease. At a minimum, the agreement required a fifty million dollar investment to substantially upgrade the Lao Lao Bay Golf Course Resort.

DPL advertised notice of its intention to enter into a new lease with Kumho on eight separate occasions and in three languages. *See* Defendants' Exhibit A. The parties do not disagree that notices were published. However, Plaintiff's claim that the notices did not comply with the law because they merely gave notice of the lease rather than actually solicit other offers. Thereafter, DPL and Kumho entered into a lease that reflected their agreement. DPL and Kumho had an appraisal completed to determine the value of the lease. The lease was submitted to the legislature and was unanimously approved. On December 6, 2007, DPL and Kumho terminated the prior lease and entered into the legislature approved lease.

III. DISCUSSION

A. Defendants Timely Filed a Responsive Pleading

The court may render judgment against a party if that party fails to file a responsive pleading or otherwise defend the suit within 20 days after the complaint is filed. *See* Com. R. Civ. P. 55; Com. R. Civ. P.12(A)(1)(a). The parties agree that after two extensions, Defendants' response deadline was January 19, 2009. January 19th was a government holiday. Therefore, according to Commonwealth Rule of Civil Procedure 6(a), the response deadline became January 20, 2009. Defendants filed the present motion to dismiss on January 20, 2009. Therefore, Defendants timely responded and default judgment is not proper.

B. Law Governing Motion to Dismiss

Defendants' Motion to Dismiss is grounded in Com. R. Civ. 12(b)(1) and 12(b)(6), which allows for the dismissal of claims for which the recognized law provides no relief. A motion to dismiss is therefore solely aimed at attacking the pleadings.

Since Com. R. Civ. P. 8 requires only a "short and plain statement of the claim showing that the pleader is entitled to relief," there is "a powerful presumption against rejecting pleadings for failure to state a claim." *Auster Oil & Gas, Inc. v. Stream*, 764 F.2d 381, 386 (5th Cir. 1985). Consequently, a motion to dismiss for failure to state a claim upon which relief can be granted will succeed only if from the complaint it appears beyond doubt that plaintiffs can prove *no* set of facts in support of their claim that would entitle them to relief. *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999) (emphasis added).

The burden is upon the movants to establish beyond doubt that the Plaintiff's action is one upon which the law recognizes no relief. All allegations of material fact are taken as true and construed in the light most favorable to the non-moving party. The Court in examining the pleadings will assume all *well-plead* facts are true and draw reasonable inferences to determine whether they support a legitimate cause of action. *Cepeda v. Hefner*, 3 N.M.I. 121, 127-28 (1992); *In re Adoption of Magofna*, 1 N.M.I. 449, 454 (1990)*; Enesco Corp. v. Price/Costco, Inc.*, 146 F.3d 1083, 1085 (9th Cir. 1998). In reviewing the sufficiency of the complaint, the "issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Scheuer v. Rhodes*, 416 U.S. 232 (1974). "[I]t may appear on the face of the pleadings that recovery is very remote and unlikely but that is not the test." *Id*. Rather, the inquiry of the court should be whether the allegations constitute a short and plain statement of the claim showing that the pleader is entitled to relief. *Cedpeda*, 3 N.M.I. at 127-28.

Two issues must be addressed. First, are Defendants entitled to qualified immunity and therefore, immune from having to defend against this lawsuit? Second, does Article X, Section 9 of the CNMI Constitution grant Plaintiffs standing to bring this action? Each will be addressed in turn.

C. Qualified Immunity

Defendants argue that the lawsuit against them must be dismissed because they are government officials who are entitled to immunity. Plaintiffs counter that qualified immunity is an affirmative defense which only applies to government officials in suits for money damages and they are only asking for injunctive and declaratory relief. Plaintiffs rely on the Ninth Circuit which holds that qualified immunity is an affirmative defense to damages liability but does not bar actions for declaratory or injunctive relief. *E.g.*, *Hydric v. Hunter*, 500 F.3d 978, 988 (9th Cir. 2007). The Ninth Circuit, among others, has reasoned that the concerns over the burdens of litigation to government officials is greatly diminished where only equitable relief is sought.

Defendants' counter argument is unpersuasive. Defendants argue that the Ninth Circuit's rule should not be applied here because the rule was applied in civil rights cases and further, Defendants could be held liable for money damages at a later time. Authority on the issue of whether or not immunity applies in lawsuits where only equitable relief is sought is split and the CNMI Supreme Court has never directly faced the issue.

However, Defendants assertion of qualified immunity is misplaced and neither party has properly addressed the issue. Qualified immunity is only available to government officials when they are sued in their *personal capacity*. Qualified immunity, however, is not an available defense when officials are sued in their official capacity. *E.g.*, *Rayphand v. Tenorio*, 2003 MP 12, ¶ 89. Here, both the Governor and the Secretary are being sued in their official capacities and neither party has argued otherwise. Therefore, the affirmative defense does not apply.

D. Section 9 Does Not Grant Standing to Sue When There is No Expenditure of Public Funds

Plaintiffs are taxpayers who have brought this lawsuit pursuant to the standing granted to them by Article X, Section 9 of the CNMI Constitution (hereinafter "Section 9"). N.M.I. Const. Art. X, § 9.

Defendants argue that although taxpayers may bring suit in a limited number of ways against

their government, often by authority granted by statute, this lawsuit is improper. Defendants contend that the CNMI Constitution grants taxpayers standing to sue only where there is an expenditure of public funds. Defendants maintain that taxpayer lawsuits should not be used to second guess the decisions of officials and that jurisdictions agree that citizens cannot sue merely because a public official may have abused his or her discretion.

Plaintiffs maintain that the Constitution grants taxpayers standing to sue even where there is no expenditure of public funds. Further, according to Plaintiffs, this issue has been decided by the CNMI Supreme Court and the holdings are binding on this Court. However, Plaintiffs are mistaken because the Supreme Court has never actually determined this issue and has never granted standing to a taxpayer where there has been no expenditure of public funds. Further, the plain language of Section 9 does not grant Plaintiffs authority to sue unless there has been an expenditure of funds. The court is cognitive that there is authority to support the proposition that Plaintiffs are beneficiaries of land held in trust by the government and as beneficiaries, are owed fiduciary duties but this does not create standing for plaintiffs to sue as taxpayers pursuant to the Constitution. Plaintiffs have alleged standing as taxpayers under Section 9. However, there is no authority which permits this Court to entertain a lawsuit where there is no expenditure of public funds.

Although Plaintiffs argue that the "Constitution and CNMI case law plainly provide for such an action," there is in fact, no binding precedent which permits this action. As such, this Court must adhere to the plain language of the Constitution which does not provide for such an action. There is no question that an expenditure of public funds which breaches government officials' fiduciary duties provides a basis for a lawsuit. Here, however, there is no expenditure of public funds as contemplated by Section 9. The CNMI Supreme Court has permitted breaches of fiduciary duties as the basis for suits, but in all instances when the Court discusses Section 9, the plaintiffs have alleged an expenditure of funds. Three cases are discussed by the parties and those cases, including the authority on which they relied, will be discussed here: *Rayphand v. Tenorio*, 2003 MP 12; *Mafnas v. Commonwealth*, 2 N.M.I. 248, (1991);

and *Torres v. Tenorio*, Civ. Action No. 95-390 (N.M.I. Super. Ct. Nov. 6, 1995) (Memorandum Decision and Order Denying Motions to Dismiss and for Summary Judgment).[1] Further, the plain language of Section 9 will be analyzed.

1. Article X, Section 9

A basic principle of construction is that language must be given its plain meaning. *Commonwealth Ports Auth. v. Hakubotan Saipan Enters, Inc.*, 2 N.M.I. 18 (1991). Legislative intent is to be discerned from a reading of the statute as a whole and not from a reading of isolated words. *Id*. When interpreting a statute, the objective is to ascertain and give effect to the intent of the legislature. *Id*.

Section 9 states: "A taxpayer may bring an action against the government or one of its instrumentalities in order to enjoin the expenditure of public funds for other than public purposes or for a breach of fiduciary duty."

According to Plaintiffs, Section 9 should be read so that "...or for a breach of fiduciary duty" is independent from the rest of the sentence. According to Plaintiffs' interpretation, everything following the last "or" provides an additional or distinct basis for standing. However, this is not a logical construction of the sentence. Rather, the first portion of the sentence which reads "in order to enjoin the expenditure of public funds" should be applied to the remainder of the sentence. This is the better interpretation because the word "for" appears twice in this sentence, so that the sentence could be properly read as follows: A taxpayer may bring an action against the government or one of its instrumentalities in order to enjoin the expenditure of public funds: (1) *for* other than public purposes or

[1]Plaintiffs also very briefly discuss *Torres v. MPLC*, 3 N.M.I. 484 (1993). However, Section 9 is not mentioned at all in this opinion and any conclusions drawn from this opinion regarding the standing which Section 9 grants would be inappropriate.

(2) *for* a breach of fiduciary duty.

Further, the legislatures expressly stated the purpose of the taxpayers suit within Section 9 by using the phrase "in order to". Thus, it is only reasonable that the phrase "in order to" also must apply to the entire sentence. In other words, Section 9 cannot be interpreted to mean that a taxpayer may bring suit *in order to:* (1) enjoin public funds for other than public purposes or (2) for breach of fiduciary duty. Interpreting Section 9 in this manner leads to the following nonsensical, sentence: A taxpayer may bring an action against the government or one of its instrumentalities in order to for a breach of fiduciary duty. This, obviously, is an absurd result. The phrases "in order to" and "enjoin the expenditure of public funds" must be read together and in connection with "for a breach of fiduciary duty." This is the only reading of Section 9 that makes sense. It is illogical to assume that the entire first part of the sentence is inapplicable to everything after the last "or".

Section 9 has been discussed by the Supreme Court although this narrow issue of interpretation has never been determined. The parties diverge greatly as to the holdings of the Supreme Court and each will be discussed in turn. Further, although not binding on this Court, the Superior Court's findings in *Torres v Tenorio* will also be discussed.

2. Rayphand v. Tenorio & Mafans v. Commonwealth

Defendants argue that *Rayphand* and Section 9 stand for the proposition that taxpayers may bring suit against the government and its instrumentalities when the government fails to adhere to the law but suits by taxpayers are not the appropriate arena to voice their political disagreements with government decisions; rather, this should be accomplished in the voting booths. Plaintiffs argue that *Rayphand* confirms the right of taxpayers to bring an action against the government for a breach of fiduciary duties and the alleged breach of duty need not be connected to a public expenditure.

Plaintiffs rely on the following sentence in *Rayphand*: "Article X, Section 9 of the Commonwealth Constitution not only authorizes an action against the government or one of its

instrumentalities in order to enjoin the expenditure of public funds for other than public purposes, it also authorizes a taxpayer to maintain an action against the government or one of its instrumentalities for a breach of fiduciary duty." *Rayphand,* 2003 MP 12 at ¶ 33. Although this excerpt from the opinion seems to support Plaintiffs' position, a complete reading of *Rayphand* reveals otherwise. Multiple times before and after the above-quoted sentence which Plaintiffs rely, the Court confirms that the lawsuit being contemplated involves an expenditure of public funds. This brief excerpt does not indicate that a lawsuit is proper when there is no expenditure of funds, rather, the Court was merely reiterating that taxpayers may sue not only for spending funds in violation of a public purpose but also for spending funds in breach of a fiduciary duty.

The *Rayphand* opinion discusses the holding in *Mafnas v. Commonwealth* and reiterates that "in the NMI, the right of taxpayers to challenge allegedly illegal expenditures of public funds is expressly granted by our Constitution. Discussing Article X, Section 9, we stated our constitutional provision explicitly recognizes the right of Commonwealth taxpayers to call their government to account in matters pertaining to expenditures of public funds." *Rayphand,* 2003 MP at ¶ 23 *(quoting Mafnas v. Commonwealth,* 2 N.M.I. 248, 261 (1991)) (internal quotations removed). Further, the Court stated that "a court must first find that public funds are being (or will be) expended for other than a public purpose or in breach of a fiduciary duty." *Id*. at ¶ 24. The Court's underlying assumption in their analysis is that there has been an expenditure of public funds.

Moreover, the Court stated that "prior to the ratification of Article X, section 9, in 1985, the (then) appellate court for the Commonwealth stated that it would be ludicrous if the Court can enjoin the illegal payment of public funds but can do nothing about the recovery of monies already paid out." *Id*. at ¶ 31 (internal quotations removed). This statement provides insight into the intention and reason behind permitting the taxpayer lawsuit and indicates that the amendment seeks to regulate government spending. The opinion goes on to say that "based on the law of the Commonwealth at the time of its drafting, the express mention of injunctive relief in Article X, Section 9 necessarily implies the inclusion

of the ability of the court to direct the repayment of illegally spent funds." *Id*. All of these statements lead up to the one sentence which Plaintiff relies on. Then, the court goes on to explain that in finding that a taxpayer can sue for expenditure of funds in breach of a fiduciary duty, "the Governor of the Commonwealth, as trustee of the Treasury owes a fiduciary duty to the people of the Commonwealth to lawfully expend and disburse public funds" and "a public authority is the trustee of public funds and a taxpayer has standing to sue for a trustee's misapplication of those funds." *Id*. at ¶ 36. Clearly, the Court is discussing a breach of fiduciary duties in concert with an expenditure of public funds. The entire opinion is riddled with the Courts underlying assumption and finding that first and foremost, there must be an expenditure of public funds.

The issue in *Rayphand* was whether or not Section 9 grants taxpayers "standing to sue to recover misspent tax funds in an action to enjoin the expenditure of public funds for other than public purposes or for a breach of fiduciary duty." *Id*. at ¶ 26. The government defendants in *Rayphand* were arguing that taxpayers may only bring suit under Section 9 for injunctive relief. The Court was determining whether an action for damages stemming from past expenditures was possible or if the only relief that was possible under Section 9 was injunctive relief to enjoin future acts. This furthers the conclusion that *Rayphand* does not stand for the proposition that Section 9 grants standing when there is no expenditure of funds. In fact, it may be logically concluded that the Court was, at all times during the opinion, assuming an expenditure of funds as a prerequisite to the suit. Certainly, the Court never determined that suit was appropriate under Section 9 when no public funds were at issue. Rather, the Court merely found that when funds were spent in breach of a fiduciary duty (not just when funds were spent for other than public purposes) Article X, Section 9 granted the taxpayer standing.

While *Rayphand* does not specifically exclude this lawsuit, their discussion of Section 9 coupled with the plain language of Section 9 leads to the conclusion that there must be an expenditure of public funds.

3. Torres v. Tenorio

The Superior Court has faced this issue before in *Torres v. Tenorio*. *Torres v. Tenorio,* Civ. Action No. 95-390 (N.M.I. Super. Ct. Nov. 6, 1995) (Memorandum Decision and Order Denying Motions to Dismiss and for Summary Judgment). Although not binding on this Court, other Superior Court findings are persuasive, and therefore, the *Torres* opinion should be analyzed.

The complete discussion in the *Torres* opinion on this issue is as follows:

> Defendants claim that plaintiffs lack standing because they have not suffered pecuniary injury or damages distinct from the general public. However, Article X, § 9 of the Constitution eliminates the need for proving unique damage, stating that a 'taxpayer may bring an action against the government or one of its instrumentalities for a breach of fiduciary duty.' *Mafnas v. Commonwealth,* 2 N.M.I. 248 (1991).
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> In addition, Article X, § 9 simply codified the treatment already granted Commonwealth litigants. *Lizama v. Rios,* 2 C.R. 568 (Dis. Ct. Tr. Ct. 1986); *Romishar* [sic] *v. Marians Public Land Corporation,* 1 C.R. 841, 851 (N.M.I. Tr. Ct. 1983); *Manglona v. Camacho,* 1 C.R. 820 (Dist. Ct. App.Div. 1983).

First, the while the full text of Section 9 was provided in a footnote in the opinion, the quoted portion which appeared in the body of the opinion is not an accurate statement of the rule and eliminated the portion of Section 9 which states "in order to enjoin expenditure of public funds." Second, only one of the cases relied on to support this interpretation of Section 9 actually stands for the proposition that a taxpayer may bring suit pursuant to Section 9 even when there is no expenditure of public funds and that is the case of *Lizama v. Rios,* 2 C.R. 568 (Dis. Ct. Tr. Ct. 1986) which is non-binding authority. Each of the authorities relied on by the *Torres* opinion will be discussed in turn.

First, *Mafnas v. Commonwealth,* 2 N.M.I. 248 (1991), relied on by *Torres,* does not stand for the proposition that a taxpayer may bring suit pursuant to Section 9 when there is no expenditure of public funds. In *Mafnas* (also relied on in *Rayphand* and discussed supra), the plaintiff challenged a judge's right to hold the office of Presiding Judge because he has not been appointed and confirmed to that office and as part of the prayer for judgment, sought an order directing the judge to return to the

Commonwealth Treasurer sums he had received as salary in excess of an associate judge's salary and an injunction prohibiting the Commonwealth from paying him a salary in excess the associate judges salary. *Id*. Obviously, in *Mafnas*, there was an expenditure of public funds at issue which a taxpayer was claiming was spent in violation of the Constitution. Nowhere in the opinion did the court elude to the conclusion that a lawsuit was proper even when no public funds had been spent. The ultimate issue was what types of relief were proper in a suit brought pursuant to Section 9.

While *Mafnas* did not directly face the issue of whether Section 9 conferred standing to sue when there is no expenditure of public funds, the Court's short discussion of the history of taxpayer suits states that "[e]ven before the adoption of Art. X, § 9 in 1985, an NMI court expressly recognized the right of Commonwealth taxpayers to bring such actions. Our constitutional provision explicitly recognizes the right of Commonwealth taxpayers to call their government to account *in matters pertaining to expenditures of public funds*." *Mafnas,* 2 N.M.I. at ¶ *10 (citing Manglona v. Camacho*, 1 CR 820 (D.N.M.I. App. Div. 1983)) (emphasis added). So although our issue was not decided, the court in *Mafnas* reiterated the rights of taxpayers to sue when tax dollars are at issue.

The ultimate finding in *Mafnas* was that Section 9 authorizes both declaratory and injunctive relief. *Mafnas,* 2 N.M.I. at ¶ 12. The court stated "[a]lthough Art. X, § 9 appears to authorize only injunctive relief, *a court must first find that public funds are being (or will be) expended for other than a public purpose or in breach of a fiduciary duty*. It must issue a declaratory judgment to that effect." *Id*. The way in which the *Mafnas* opinion restated the powers that Section 9 grants taxpayers to sue strongly supports the conclusion that an expenditure of public funds must be alleged. Thus, *Mafnas* does not support the conclusion reached in the *Torres* opinion and it was relied on improperly.

The *Torres* opinion also relied on *Romisher v. MPLC* for the proposition that Commonwealth case law clearly permitted a taxpayer suit even when no funds had been spent. 1 CR 841 (N.M.I. Tr. Ct. 1983). However, in *Romisher*, the plaintiff was attempting to enjoin an illegal disbursement and thus, the case does not stand for the proposition that Section 9 permits a suit even when there is no

expenditure of funds. The *Romisher* opinion states: "[t]he Marianas Public Land Trust is established in the Constitution in Article XI, Section 6 and completes the Constitutional plan to safeguard *the proceeds* from public lands for the beneficiaries including the plaintiff." *Id.* at 847-48 (emphasis added). *Romisher* does not grant taxpayers authority to intervene into and question the terms of each lease DPL enters into even where there is no expenditure of public funds.

The only case relied on by *Torres* which actually supports the conclusion that an expenditure of public funds is not a prerequisite to a suit against government officials is *Lizama v. Rios,* 2 C.R. 568 (Dis. Ct. Tr. Ct. 1986). In *Lizama v Rios,* the District Court held that the plaintiff was a beneficiary of a public trust under Article XI, § 4 and had standing to sue based on his status as a beneficiary. The court held that the "beneficiaries of a public trust have the right to sue the trustee to redress alleged wrongs committed in breach of the trust. This furthers the purpose of the trust which is to manage the public lands in the best interests of the beneficiaries." 2 C.R. 568, 575. The reasoning in *Lizama* is sound. However, the District Court's ruling is not binding precedent and this Court may not expand the scope of Section 9 without proper authority. Here, Plaintiffs' pleadings assert that they have standing to sue pursuant to Section 9 but the plain language of Section 9, nor the Supreme Court's interpretation of Section 9, provides Plaintiffs with standing where there has been no expenditure of public funds.

Manglona v. Camacho, 1 C.R. 820 (Dist. Ct. App.Div. 1983), the final case relied on by *Torres* and cited by *Mafnas,* specifically held that the illegal payment of public funds is an enjoinable act. Again, the court did not find that a taxpayer had standing to sue even when no funds had been spent. Thus, only one case cited by *Torres* actually supports the conclusion that standing granted by Section 9 does not require an expenditure of public funds and that case is not binding on this Court.[2]

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[2]*Torres,* too, is not binding on this Court. However, that decision was and should be afforded due respect and consideration. The findings and conclusions of other Superior Courts will not be dismissed simply because they are not binding precedent as Defendants suggest. In this particular instance, however, it is the conclusion of

This finding is also supported by other jurisdictions. All the above mentioned cases acknowledge that when there are fewer taxpayers, each taxpayer has a greater pecuniary interest in the spending of public funds. The common thread in all of the opinions is that an expenditure of public funds is at issue. For example, in *Reynolds v. Wade,* the Ninth Circuit acknowledged that settled law forbids Federal taxpayers to sue to enjoin government spending in the absence of a showing of special injury. 249 F.2d 73 (9th Cir. 1957). However, this rationale becomes less persuasive in jurisdictions with much smaller populations because the smaller the population, the greater the pecuniary interest of individual taxpayers in the treasury. *Id*. All jurisdictions have acknowledged this rationale which affirms the necessity of an expenditure of public funds.

Therefore, Article X, Section 9 does not grant standing to Plaintiffs and Defendant's Motion to Dismiss is hereby GRANTED.

II. CONCLUSION

This Court is bound to adhere to the plain language of the Constitution and the plain language of Section 9 does not grant standing to Plaintiffs absent an expenditure of public funds. Further, there is no clear, binding authority which has expanded the scope of Section 9 and has granted standing to a taxpayer plaintiff when no taxpayer dollars are at issue.

Therefore, for the foregoing reasons, Defendants' Motion to Dismiss for lack of standing is hereby GRANTED.

Further, Plaintiffs' Motion for Default Judgment is hereby DENIED.

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this Court that *Torres* was wrongly decided and incorrectly based on authority which does not support the rule espoused.

SO ORDERED this 29th day of May, 2009.

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David A. Wiseman, Associate Judge