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FOR PUBLICATION

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

NORMA S. ADA, et al.,

Plaintiffs,

v.

MASAJI NAKAMOTO, et al.,

Defendants.

CIVIL ACTION NO. 08-0029

**ORDER PARTIALLY GRANTING
HOYU HOUSE CO. LTD.'S
MOTION TO DISMISS;**

**GRANTING LIMITED
JURISDICTIONAL DISCOVERY; and**

**GRANTING PLAINTIFF LEAVE TO
AMEND COMPLAINT**

THIS MATTER was heard on September 3, 2009. Timothy H. Bellas appeared on behalf of plaintiffs Norma S. Ada, Mary Asper, William R. Barrineau, Maria H. Zarzosa, Willi Gutowski, Anita Gutowski, Eric W. Smith, Rhoda Smith, Jack Hardy, and Shan Ping Bacon (“Plaintiffs”). Douglas F. Cushnie appeared on behalf of defendant Hoyu House Co., Ltd. (“Hoyu House”). Pursuant to Commonwealth Rules of Civil Procedure 8(a)(2), 12(b)(2) and 12(b)(6), Hoyu House moves to dismiss the Complaint for failure to state a claim upon which relief can be granted and lack of personal jurisdiction.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs’ claims all relate to their ownership of residential units in the housing complex known as Anaks Ocean View Hill Saipan (the “Development”), which is located in the Puerto Rico area of Saipan. (Complaint ¶ 1.) The Development was constructed around 1989 by Anaks Resort Development, Inc. (“Anaks”), a domestic corporation organized in the Commonwealth of the Northern Mariana Islands (“CNMI”). (*Id.* ¶ 3-4.) Anaks was initially formed by three Japanese corporations,

1 defendants Kawasho Real Estate Corporation (“Kawasho”), Shimizu Corporation (“Shimizu”), and All
2 Nippon Airways, Co., Ltd. (“ANA”). (*Id.*) At the time this lawsuit was filed, however, Plaintiffs allege
3 that Anaks was entirely owned by Saipan Shangrila Resort, Inc. (“Shangrila”). (*See id.* ¶ 59.) Hoyu
4 House is a Japanese corporation that owns 25% of Shangrila. (*Id.* ¶ 33, Ex. A.) Plaintiffs have asserted
5 five causes of action against Hoyu House including breach of contract, assisting in breaches of fiduciary
6 duty, breach of fiduciary duty, injunctive relief, and violation of the Consumer Protection Act.

7 **II. MOTION TO DISMISS PURSUANT TO COM. R. CIV. P. 12(b)(6)**

8 **A. Standard**

9 Under Com. R. Civ. P. 12(b)(6), a complaint or pleading is subject to dismissal where it lacks
10 a cognizable legal theory or fails to allege facts constituting a cognizable legal theory. *See Bolalin v.*
11 *Guam Publications, Inc.*, 4 N.M.I. 176 (1994). In deciding a motion to dismiss under Com. R. Civ. P.
12 12(b)(6), the court must assume the truth of all factual allegations in the challenged pleading and
13 construe them in the light most favorable to the non-moving party. *Cepeda v. Hefner*, 3 N.M.I. 121,
14 127-28 (1992); *Govendo v. Marianas Pub. Land Corp.* 2 N.M.I. 482, 490 (1992). While the court must
15 construe facts in favor of the non-moving party and draw reasonable inferences therefrom, the court
16 need not strain to find inferences favorable to the non-moving party. *In re Adoption of Magofna*, 1
17 N.M.I. 449 (1990). Furthermore, a reviewing court need not accept legal conclusions couched as
18 factual statements as true. *Papasan v. Allain*, 478 U.S. 265, 286 (1986). “[T]o survive a motion to
19 dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim for relief
20 that is plausible on its face.’” *Ada v. Nakamoto*, Civ. No. 08-0029 (N.M.I. Super. Ct. 12/31/2009)
21 (Order Granting Motion to Dismiss By Defendants Kawasho Real Estate Corporation, Shimizu
22 Corporation, and All Nippon Airways, Co., Ltd.) (“12/31/09 Order”); *Ashcroft v. Iqbal*, 129 S. Ct.
23 1937, 1949 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible
24 on its face when the plaintiff pleads factual content that allows the court to draw the reasonable
25 inference that the defendant is liable for the misconduct alleged. *Iqbal*, 129 S. Ct. at 1937 (citing
26 *Twombly*, 550 U.S. at 556). A mere formulaic recitation of the elements of a cause of action will not
27 do. *Twombly*, 550 U.S. at 555 (citing *Papasan*, 478 U.S. at 286).

28

1 **B. Discussion**

2 1. Breach of Contract

3 a. *Plaintiffs’ Breach of Contract Claim Against Anaks*

4 Plaintiffs’ breach of contract claim against Hoyu House is based on a contract between Anaks
5 and the purchasers of residential units at the Development (the “Homeowners”). “When performance
6 of a duty under a contract is due any non-performance is a breach.” *Reyes v. Ebetuer*, 2 N.M.I. 418,
7 429 (1992) (quoting RESTATEMENT (SECOND) OF CONTRACTS § 235(2) (1981)).¹ Anaks holds a fifty-
8 five (55) year lease for the land upon which the Development is built and conveys ownership of
9 residential units through a sublease agreement (the “Sublease”). (Complaint ¶ 49.) The Sublease
10 requires Anaks to provide an accounting of the annual expenses needed to maintain the Development
11 and to adjust the Homeowners’ monthly maintenance fees annually based on the previous year’s
12 expenses. (*Id.* ¶¶ 14, 68.) Plaintiffs allege that Anaks breached the Sublease by failing to perform any
13 accounting to the Homeowners and failing to adjust the maintenance fees even once in eighteen (18)
14 years. (*Id.* ¶¶ 16-17, 69.) As a result, Plaintiffs assert they have been damaged in an amount equal to
15 the difference between what they paid and what they should have paid if Anaks had performed under
16 the Sublease. (*Id.* at 26.)

17 b. *Plaintiffs’ Breach of Contract Claim Against Hoyu House*

18 Because Anaks is the only defendant that is a signatory to the Sublease, Plaintiffs must pierce
19 two corporate veils to attribute liability to Hoyu House. First, Plaintiffs must pierce the corporate veil
20 of Anaks to attribute liability to Shangrila. Plaintiffs must then pierce the corporate veil of Shangrila
21 to attribute liability to Hoyu House. The standard for piercing a corporate veil is discussed in the
22 12/31/09 Order and the Court will apply the same standard here. (12/31/09 Order.)

23 I. *Plaintiffs Have Stated a Plausible Claim that Anaks is the Alter Ego of Shangrila.*

24 Plaintiffs have stated a plausible claim that Anaks is the alter ego of Shangrila. Plaintiffs’ alter
25 ego allegations focus on two of the factors courts use to identify an alter ego – use of an entity for fraud

27 ¹ Where CNMI case law has not addressed an issue of law, the Court applies "the rules of common law, as
28 expressed in the restatements of law . . . [and] as generally understood and applied in the United States" 7 CMC §
3401; *Ito v. Macro Energy, Inc.*, 4 N.M.I. 46, 55 (1993).

1 or as a shield to personal liability, and a high degree of control by the shareholders over the entity.
2 *United Enters., Inc. v. King*, 4 N.M.I. 304, 307 (1995). The following allegations are relevant to those
3 factors. Prior to March 2007, Anaks was owned by Kawasho, Shimizu, and ANA. (Complaint ¶¶ 3,
4 29, 36-38.) In March 2007, Kawasho, Shimizu and ANA transferred all of their interests in Anaks to
5 Nakamoto, Arino, Miura and Uchikawa. (*Id.* ¶¶ 7-10, 58.) In that same month, Nakamoto, Arino,
6 Miura and Uchikawa formed Shangrila and transferred their interests in Anaks to Shangrila. (*Id.* ¶ 59,
7 Ex. A.) Thus, Shangrila now owns Anaks. (*See id.*) Based on the timing of these events, it is
8 reasonable to infer that Nakamoto, Arino, Miura and Uchikawa formed Shangrila for the sole purpose
9 of holding their interests in Anaks.

10 Because Nakamoto, Arino, Miura and Uchikawa named themselves as the officers and directors
11 of Shangrila, they still exercise significant control over Anaks. (*See id.* ¶ 32, Ex. A.) Moreover, after
12 forming Shangrila, Nakamoto, Arino, Miura and Uchikawa authorized the issuance of 100,000 shares
13 of common stock, which they evenly distributed between four shareholders. (*Id.* ¶33, Ex. A.) Those
14 four shareholders are Nakamoto, Hoyu House, Pho Tg. Co., Ltd. (“Pho”) and Forty Love Co. Ltd.
15 (“Forty Love”). (*Id.*) While Arino, Miura and Uchikawa do not own Shangrila directly, they are each
16 the Presidents of Hoyu House, Pho and Forty Love, respectively. (*Id.* ¶ 34, Ex. A.) Plaintiffs also
17 allege on “information and belief” that Arino, Miura and Uchikawa own 100% of Hoyu House, Pho
18 and Forty Love, respectively. (*Id.* ¶ 35.) Although the Court need not accept this allegation as true,
19 it may still be considered for purposes of framing the other well-pleaded allegations of the Complaint.
20 *See Iqbal*, 129 S. Ct. at 1940-41.

21 Viewing the Complaint in its entirety, accepting the well-pleaded allegations as true and
22 drawing all reasonable inferences therefrom, Plaintiffs have alleged enough cross-pollination between
23 Anaks, Shangrila, Nakamoto, Arino, Miura and Uchikawa to make their claim that Anaks is the mere
24 alter ego of Shangrila at least plausible. While there are gaps in Plaintiffs’ alter ego allegations,
25 Plaintiffs are not required to prove their claim at this stage; they are merely required to plead enough
26 facts to indicate their claim is plausible on its face. *Iqbal*, 129 S. Ct. at 1940. Furthermore, in
27 determining whether a claim is plausible on its face, the Court is required to draw upon its experience
28 and common sense. *Id.* The Complaint’s allegations amount to more than a mere recitation of the

1 factors courts use in identifying an alter ego and Plaintiffs' claim does not appear to be frivolous.

2 ii. *Plaintiffs Have Not Stated a Plausible Claim that Shangrila is the Alter Ego of Hoyu*
3 *House.*

4 While Plaintiffs have stated a plausible claim that Anaks is the alter ego of Shangrila, they have
5 not stated a plausible claim that Shangrila is the alter ego of Hoyu House. In fact, Plaintiffs do not
6 argue that Shangrila is the alter ego of Hoyu House. Instead, Plaintiffs contend that Hoyu House is
7 liable for Anaks' breach of contract because it is the alter ego of Arino, who Plaintiffs allege is
8 personally liable for Anaks' breach of contract. (*See* Pls.' Mem. Supp. Opp. to Mot. to Dismiss at 8-9,
9 11.) Paragraph 114 of the Complaint states the following:

10 Anaks as the alter ego of ANA, KRE Shimizu, Shangrila (hereafter
11 Anaks Defendants) and as successors in interests and as the alter ego of
12 the Nakamoto Defendants (after March 2007) and Plaintiffs have entered
13 into the Agreement and by its terms the Anaks Defendants were required
to determine the appropriate amount to charge in monthly maintenance
fees to the Plaintiffs and other owners of the Development, by
accounting for the expenses incurred in the prior years and adjusting the
monthly rates accordingly.

14 (Complaint ¶ 114.) Deciphering this paragraph, Plaintiffs allege that, after March 2007, there was an
15 alter ego relationship between the "Anaks Defendants" and the "Nakamoto Defendants." (*Id.*) Hoyu
16 House is not a member of either group. Elsewhere in the Complaint, however, Plaintiffs allege an alter
17 ego relationship between Hoyu House and Arino, and Arino is one of the "Nakamoto Defendants." (*Id.*
18 ¶¶ 34-35, 42, 114.) Thus, Plaintiffs attempt to hold Arino liable for Anaks' breach of contract, and
19 Hoyu House liable as the alter ego of Arino. This theory of liability is flawed because piercing the
20 corporate veil of Anaks only works to attribute liability to Anaks' shareholders. After March 2007,
21 Plaintiffs allege that the only shareholder of Anaks was Shangrila.² (*See id.* ¶ 59, Ex. A.) If Plaintiffs
22 wish to attribute liability to Hoyu House for Anaks' breach of contract, they must pierce the corporate
23 veils of both Anaks and Shangrila. Because Plaintiffs have not even attempted to do so, their breach
24 of contract cause of action against Hoyu House must be dismissed.

25
26 ² Technically, there may have been a few days during which Arino held shares of Anaks directly because
27 Plaintiffs allege that Kawasho, Shimizu and ANA first transferred their interests in Anaks to Nakamoto, Arino, Miura
28 and Uchikawa. (Complaint ¶¶ 7-10, 58.) The contract damages at issue accrued over years, however, and Plaintiffs do
not allege that the Homeowners paid maintenance fees between the time Nakamoto, Arino, Miura and Uchikawa
acquired the shares and the time they transferred them to Shangrila.

1 2. Breach of Fiduciary Duty

2 a. *Breaches Allegedly Committed by Nakamoto, Arino, Miura and Uchikawa*

3 Plaintiffs’ breach of fiduciary duty cause of action against Hoyu House is based on the actions
4 of Arino, which Plaintiffs attribute to Hoyu House under another alter ego theory. Thus, the claim must
5 first be analyzed as it relates to Arino. The Restatement of Torts states that “[o]ne standing in a
6 fiduciary relation with another is subject to liability to the other for harm resulting from a breach of
7 duty imposed by the relation.” RESTATEMENT (SECOND) OF TORTS § 874 (1979). As a director of
8 Anaks Ocean View Hill Saipan Homeowners’ Association (“AHA”), Arino owed fiduciary duties to
9 the Homeowners. (Complaint ¶ 8.)

10 First, Plaintiffs allege that Nakamoto, Arino, Miura and Uchikawa breached their fiduciary
11 duties by usurping a corporate opportunity when they acquired Anaks. (*Id.* ¶ 91.) In the 12/31/09
12 Order, the Court explained that, if acquiring Anaks was indeed a corporate opportunity, the opportunity
13 belonged to AHA, not Plaintiffs, and Plaintiffs have not satisfied the requirements of a derivative suit.
14 (12/31/09 Order.) Accordingly, the Court dismissed the cause of action against Kawasho, Shimizu and
15 ANA. (*Id.*) Similarly, insofar as Plaintiffs’ claims against Arino are based upon usurping a corporate
16 opportunity, their cause of action must be dismissed. Plaintiffs allege other breaches, however.

17 Plaintiffs also allege that Arino breached his fiduciary duties through gross negligence in
18 managing AHA. (*Id.* ¶ 79.) For example, Plaintiffs allege that Nakamoto, Arino, Miura and Uchikawa
19 failed to file a single annual report with the CNMI Registrar of Corporations while they were AHA’s
20 directors. (*Id.* ¶ 80.) In fact, Plaintiffs allege that AHA has not filed a single annual report in its
21 eighteen (18) year history. (*Id.* ¶ 81.) Plaintiffs also allege that Nakamoto, Arino, Miura and Uchikawa
22 never obtained a business license and never opened a corporate bank account for AHA. (*Id.* ¶¶ 82-83.)
23 There are other breaches alleged in the Complaint based on “information and belief,” but the factually
24 supported allegations are sufficient to support Plaintiffs’ breach of fiduciary duty claim against Arino.

25 Plaintiffs additionally allege that Arino breached his fiduciary duties by interfering with the
26 ability of the newly elected AHA board to function. For example, Plaintiffs allege that Nakamoto,
27 Arino, Miura and Uchikawa caused financial statements to be issued to Plaintiffs and the other owners
28 on or about April 2007. (*Id.* ¶¶ 94-95, Ex. C.) The statements represented that AHA’s treasury

1 contained approximately \$210,000.00. (*Id.* ¶ 96.) Plaintiffs allege that Nakamoto, Arino, Miura and
2 Uchikawa failed to transfer AHA’s funds to the new board after their terms expired. (*Id.* ¶ 97.)
3 Furthermore, Plaintiffs allege that Nakamoto, Arino, Miura and Uchikawa failed to provide the new
4 board with any documents evidencing their activities as directors. (*Id.* ¶ 98.) Further still, Plaintiffs
5 allege that before the former board’s term expired, Nakamoto, Arino, Miura and Uchikawa attempted
6 to debilitate the new board by depleting AHA’s treasury and improperly abolishing the \$10.00 per
7 month fee paid to AHA by the Homeowners. (*Id.* ¶¶ 99-106.) All of these allegations are well-pleaded
8 against Arino.

9 b. *Plaintiffs Have Stated a Plausible Claim that Hoyu House is the Alter Ego of Arino.*

10 Again, Plaintiffs’ claim that Hoyu House is liable for Arino’s breaches of fiduciary duty because
11 it is merely Arino’s alter ego. As with the alleged alter ego relationship between Anaks and Shangrila,
12 Plaintiffs’ alter ego allegations focus on two of the factors courts use to identify an alter ego – use of
13 an entity for fraud or as a shield to personal liability, and a high degree of control by the shareholders
14 over the entity. *King*, 4 N.M.I. at 307. All of the allegations detailed above with regard to the
15 relationship between Anaks and Shangrila are relevant to the alleged alter ego relationship between
16 Hoyu House and Arino. Plaintiffs essentially allege that Hoyu House is Arino’s alter ego because
17 Arino used Hoyu House as shield to personal liability flowing from his acquisition of Anaks. The well-
18 pleaded facts indicate that Kawasho, Shimizu and ANA transferred their interests in Anaks to
19 Nakamoto, Arino, Miura and Uchikawa. (*Id.* ¶¶ 7-10, 58.) Plaintiffs allege that these defendants then
20 formed Shangrila, transferred their interests in Anaks to Shangrila, named themselves the officers and
21 directors of Shangrila, and named themselves or the companies they operate, including Hoyu House,
22 as the sole shareholders of Shangrila. (*Id.* ¶¶ 32-34, 59, Ex. A.)

23 As with Plaintiffs’ other alter ego claims, the allegations purporting to show that Hoyu House
24 is the alter ego of Arino are noticeably thin. Nevertheless, Plaintiffs are only required to plead enough
25 factual support for their claim to indicate their claim is plausible on its face. *Iqbal*, 129 S. Ct. at 1940.
26 Based on the Court’s experience and common sense, taking all the well-pleaded allegations of the
27 Complaint as true and drawing all reasonable inferences therefrom, Plaintiffs have alleged enough
28 cross-pollination between Anaks, Shangrila, Nakamoto, Arino, Miura, Uchikawa and Hoyu House to

1 push Plaintiffs’ alter ego claim across the line between possibility and plausibility so that their claim
2 against Hoyu House should not be dismissed.

3 3. Assisting in Breaches of Fiduciary Duty

4 The Restatement of Torts § 876 states that “[f]or harm resulting to a third person from the
5 tortuous conduct of another, one is subject to liability if he . . . (b) knows that the other’s conduct
6 constitutes a breach of fiduciary duty and gives substantial assistance or encouragement to the other
7 so to conduct himself.” RESTATEMENT (SECOND) OF TORTS § 876 (1979). Here, Plaintiffs allege that
8 Hoyu House assisted Arino in breaching his fiduciary duties to the Homeowners by receiving
9 “fraudulently conveyed” shares of Anaks and Shangrila. (See Pls.’ Mem. Supp. Opp. to Mot. to
10 Dismiss at 2.) Plaintiffs assert that Hoyu House did this to assist Arino in his efforts to “impede the
11 litigation efforts of the Homeowners to recover the Anaks shares.” (See *id.*) Plaintiffs’ claim must be
12 dismissed, however, because the only breach with which Hoyu House allegedly assisted was usurping
13 a corporate opportunity. Plaintiffs have not shown they have standing to bring a claim for usurping a
14 corporate opportunity, and they have not styled their claim as a derivative suit. To the extent Plaintiffs’
15 assisting in breaches of fiduciary duty cause of action is based on the other breaches described above,
16 Plaintiffs have not plead any facts indicating that Hoyu House assisted with those breaches.

17 4. Injunctive Relief

18 Plaintiffs have asserted a claim for injunctive relief against “the Nakamoto Defendants and their
19 Alter Egos” seeking to have these defendants to produce AHA’s corporate records in their possession
20 or control to plaintiff Asper, who is the corporate secretary of AHA. (Complaint ¶¶ 139-140, 150.)
21 Plaintiffs also seek production of all funds that should be in accounts belonging to AHA. (*Id.* ¶¶ 141,
22 151.) The cause of action is primarily directed at Nakamoto, Arino, Miura and Uchikawa who were
23 on AHA’s board of directors up to the May 14, 2007 election of the new board. (*Id.* ¶ 2.) Because
24 Plaintiffs have stated a plausible claim that Hoyu House is the alter ego of Arino, the cause of action
25 applies to Hoyu House and should not be dismissed under Com. R. Civ. P. 12(b)(6).

26 5. Violation of the Consumer Protection Act

27 a. Plaintiffs’ Consumer Protection Act Claim Against Hoyu House Must be Dismissed Because
28 Plaintiffs Have Not Stated a Plausible Claim that Shangrila is the Alter Ego of Hoyu House.

Plaintiffs allege that Hoyu House is liable for Anaks’ alleged violation the Consumer Protection

1 Act (the “Act”), 4 CMC §§ 5101 *et seq.*, under the same alter ego theory attempted in Plaintiffs’ breach
2 of contract cause of action. Again, Plaintiffs attempt to hold Hoyu House liable for the actions of
3 Anaks by piercing the corporate veil of Anaks to reach Arino, then attributing liability to Hoyu House
4 as the alter ego of Arino. As with Plaintiffs’ breach of contract cause of action, Plaintiffs’ theory of
5 Hoyu House’s liability is flawed because piercing the corporate veil of Anaks only works to attribute
6 liability to Anaks’ shareholders. After March 2007, Plaintiffs allege that the only shareholder of Anaks
7 was Shangrila. (*See id.* ¶ 59, Ex. A.) Because Plaintiffs have not attempted to attribute liability to
8 Hoyu House by piercing the corporate veils of both Anaks and Shangrila to reach Hoyu House, their
9 cause of action against Hoyu House for violation of the Act must be dismissed.

10 b. *The Statute of Limitations Has Run for the Alleged Violations of the Act.*

11 Plaintiffs’ claim against Hoyu House for violation of the Act must also be dismissed because
12 the statute of limitations has run. The statute of limitations for any violation of the Act is four years.
13 4 CMC §5110. The Act declares certain unfair methods of competition and unfair or deceptive acts or
14 practices in the conduct of any trade or commerce to be unlawful. 4 CMC § 5105. It includes engaging
15 in any act or practice which is unfair or deceptive to the consumer. 4 CMC § 5105(m). “Trade” and
16 “commerce” are defined as the “sale, advertising, offering for sale, contracting for sale, exchange,
17 distribution for consideration, or solicitation for purchase to the general public of any goods or other
18 property, real, personal, or tangible, or of any service, including any lottery, game of chance, or
19 entertainment” 4 CMC § 5104(b). Thus, to fall under the Act’s protection, the maintenance
20 services must be offered “to the general public.” 4 CMC §§ 5104(b), 5105.

21 Plaintiffs allege that Anaks breached the Act by deceptively overcharging the Homeowners for
22 maintenance services. (*See* Complaint ¶ 153.) The only time Anaks offered maintenance services for
23 sale to the general public, however, was with the sale of residential units because the services were an
24 integral part of the Sublease. According to the Complaint, Anaks was able to “market all One Hundred
25 and Thirty One (131) units of the Development shortly after the construction was completed on or about
26 1989.” (*Id.* ¶ 4.) No subsequent sales are alleged in the Complaint, which was filed on February 7,
27 2008. Thus, the Complaint was filed roughly eighteen (18) years after the last sale alleged. Any cause
28 of action against Hoyu House for violation of the Act has therefore long expired.

To the extent the Homeowners still pay for allegedly overpriced maintenance services, the Act

1 is not triggered every time the Homeowners pay their monthly maintenance fees because the services
2 are no longer offered for sale to the general public. The act giving rise to a violation of the Act is the
3 deceptive marketing and selling to an unsuspecting or less knowledgeable public. See 4 CMC § 5102.
4 Although the Homeowners pay a fee every month, they are not deceived into the same purchase every
5 month. The Homeowners are merely fulfilling their contractual obligations pursuant to the Sublease.

6 **III. MOTION TO DISMISS PURSUANT TO COM. R. CIV. P. 12(b)(2)**

7 **A. Standard and Burden**

8 Any defendant may move to dismiss claims against them for lack of personal jurisdiction under
9 Com. R. Civ. P. 12 (b)(2). On such a motion, the plaintiff bears the burden of establishing personal
10 jurisdiction. *Waibel v. Farber*, 2006 MP 15, ¶ 12. “When a [trial] court rules on a . . . motion to
11 dismiss for lack of personal jurisdiction without holding an evidentiary hearing, as in this case, the
12 plaintiff need make only a prima facie showing of personal jurisdiction to defeat the motion.” *Id.*
13 (quoting *OMI Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d 1086, 1091 (10th Cir. 1998)).
14 Furthermore, when the Court does not hold an evidentiary hearing, all exhibits are viewed in a light
15 most favorable to the plaintiff and all doubts are resolved in plaintiff’s favor. *Bank of Saipan v.*
16 *Superior Ct. (Connell)*, 6 N.M.I. 179, 185 (2001). Although a plaintiff may not rely on the bare
17 allegations of the complaint, uncontroverted factual allegations must be taken as true. *Burger King v.*
18 *Rudzewicz*, 471 U.S. 462, 467-77, 105 S. Ct 2174, 285 L. Ed. 2d 528 (1985). A reviewing court need
19 not accept legal conclusions couched as factual statements as true, however. *Jazini v. Nissan Motor*
20 *Company, Ltd.*, 148 F.3d 181, 185 (2nd Cir. 1998) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

21 **B. Formula and Framework**

22 The Court engages in a two part analysis to determine whether it may exercise personal
23 jurisdiction over non-resident defendants. First, it must identify an applicable rule or statute conferring
24 jurisdiction and, second, it must determine whether exercise of jurisdiction over the defendant comports
25 with the constitutional principles of due process. *Bank of Saipan (Connell)*, 6 N.M.I. at 186; *Bank of*
26 *Saipan v. Superior Ct. (Attorneys’ Liab. Assurance Soc’y, Inc.)*, 6 N.M.I. 242, 251 (2001).

27 1. Statute or Rule

28 The Commonwealth’s long arm statute, 7 CMC § 1102 (a), provides for the exercise of
jurisdiction over non-resident defendants to the extent permitted by the federal Constitution when a

1 cause of action arises from certain enumerated acts. Hoyu House does not specifically challenge the
2 reach of 7 CMC § 1102 but instead argues that the exercise of jurisdiction would violate due process.
3 (Hoyu House’s Mem. Supp. Mot. To Dismiss at 3-4.)

4 2. Due Process

5 The Due Process Clause of the Fourteenth Amendment to the United States Constitution
6 imposes limitations on the power of a court to assert jurisdiction over a non-resident defendant.
7 *Monticello v. Di-All Chem. Co.*, 5 N.M.I. 185, 186 (1998). Due process requirements are satisfied if
8 a non-resident defendant has sufficient “minimum contacts” with the forum such that the exercise of
9 jurisdiction over the defendant does not “offend traditional notions of fair play and substantial justice.”
10 *Id.* (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). The extent and nature of
11 the minimum contacts necessary and the associated due process analysis, however, depends on whether
12 the jurisdiction sought is “general” or “specific.” *Data Disc, Inc. v. Sys. Tech. Assocs.*, 557 F.2d 1280
13 (9th Cir. 1977). The Court will first analyze Hoyu House’s alleged contacts with the CNMI, and then
14 discuss them in the context of both general and specific jurisdiction.

15 **B. Discussion**

16 1. Hoyu House’s Contacts with the CNMI

17 a. *Hoyu House’s Personal Contacts with the CNMI are Minimal.*

18 Hoyu House’s personal contacts with the CNMI are minimal, and thus Plaintiffs’ jurisdictional
19 argument rests largely on alter ego and agency theories. Nevertheless, Hoyu House’s personal contacts
20 with the CNMI include owning shares of Shangrila, a CNMI corporation, and owning a residential unit
21 in the Development. As discussed in the 12/31/09 Order, stock ownership of a local corporation, alone,
22 is not enough to subject a non-resident defendant to the jurisdiction of this Court, although it may still
23 be considered in the totality of the circumstances. (12/31/09 Order.) Hoyu House’s 25% interest in
24 Shangrila is therefore a contact with the CNMI. (Complaint Ex. A.) Plaintiffs also allege that, as of
25 as July 2007, Hoyu House owns unit M-102 in the Development. (Bellas Decl. ¶¶ 2-4, Ex. A.)
26 Ownership of a residential property is therefore another contact with the CNMI.

27 b. *Contacts Pertaining to Plaintiffs’ Allegation that Hoyu House Operates Anaks in the CNMI.*

28 Plaintiffs’ strongest argument that the Court has jurisdiction over Hoyu House is based on their
assertion that Hoyu House operates Anaks in the CNMI. (Pls.’ Mem. Supp. Opp. to Mot. to Dismiss

1 at 8.) Although Anaks and Hoyu House are separate entities, Plaintiffs allege that Hoyu House controls
2 Anaks through its ownership of Anaks' alter ego, Shangrila, and through its agent, Arino. (*Id.*)

3 There are two issues with Plaintiffs' argument concerning Hoyu House's ownership control of
4 Anaks. First, Plaintiffs allege that Hoyu House owns 25% of Shangrila. (Complaint ¶ 33, Ex. A.)
5 Thus, even if Plaintiffs can prove that Anaks and Shangrila are alter egos, Hoyu House would only have
6 25% ownership control of Anaks. Second, although the Complaint states a plausible claim that Anaks
7 is the alter ego of Shangrila, Plaintiffs have not made a prima facie case for such a relationship. To
8 make a prima facie case, Plaintiffs must make a proffer which, if credited by the factfinder, would be
9 sufficient to confer personal jurisdiction. *See Negron-Torres v. Verizon Commc'ns, Inc.*, 478 F.3d 19,
10 23 (1st Cir. 2007). Here, Plaintiffs' jurisdictional argument relies on an alter ego theory. The
11 allegations purporting to show that Anaks is the alter ego of Shangrila are detailed above in the Court's
12 analysis of Hoyu House's Com. R. Civ. P. 12(b)(6) motion. While these allegations indicate it is
13 plausible Anaks is the alter ego of Shangrila, Plaintiffs have not made proffers which, if credited by the
14 Court, would support a prima facie showing of an alter ego relationship. For example, Plaintiffs allege
15 that Shangrila owns 100% of Anaks, yet Plaintiffs have not submitted evidence to support this
16 allegation. Thus, Hoyu House's 25% interest in Shangrila, alone, does not support their claim that
17 Hoyu House controls Anaks.

18 Plaintiffs also assert, however, that Hoyu House operates Anaks in the CNMI through its agent,
19 Arino. Plaintiffs have submitted portions of Shangrila's Articles of Incorporation, and an Affidavit
20 attached thereto, indicating that Arino is the President of Hoyu House. (Complaint Ex. A.) Those
21 documents also show that Arino is a director and the President of Shangrila. (*Id.*) Plaintiffs have
22 additionally submitted a Declaration stating that Arino is acting as the "de facto President" of Anaks
23 even though no board or shareholder meeting has been held electing him to that office since Nakamoto
24 resigned in April 2009.³ (Bellas Decl. ¶ 5.) As proof that Arino is operating Anaks, Plaintiffs assert
25 that Arino has been in the CNMI on several occasions. Specifically, Plaintiffs claim Arino was in the
26

27 ³ Plaintiffs also cite to the Affidavits of defendants Miura and Uchikawa to support their claim that Arino has
28 been in the CNMI taking management actions on behalf of Anaks. (Pls.' Mem. Supp. Opp. to Mot. to Dismiss at 8.)
Those Declarations are hearsay, however, and were only admissible as statements against interest with respect to Miura
and Uchikawa at the June 3, 2009 hearing on Plaintiffs' motion for preliminary injunction. The statements may not be
used to support Plaintiffs' jurisdictional argument against Hoyu House.

1 CNMI during the June 3, 2009 hearing in this case. (*Id.* ¶ 7.) Plaintiffs also claim Arino was at the
2 Development for several days in July 2009. (*Id.* ¶ 8.) Plaintiffs claim Arino attended the Ninth Annual
3 Homeowners’ Meeting in the CNMI on July 11, 2009. (*Id.* ¶ 9.) Plaintiffs further claim Arino was at
4 Anaks’ office in July 2009. (*Id.* ¶ 10.) Finally, Plaintiffs claim Arino was at the Palms Hotel being
5 escorted by an Anaks employee on July 22, 2009. (*Id.* ¶¶ 11-12.) Although Plaintiffs’ allegations
6 indicate that Arino might be operating Anaks in the CNMI, they fall well short of making a prima facie
7 case of such a finding. Plaintiffs’ evidence indicating that Arino is the President of Hoyu House also
8 falls short of making a prima facie case that he is Hoyu House’s agent with authority to operate Anaks.

9 *c. Contacts Pertaining to Plaintiffs’ Allegation that Hoyu House is Arino’s Agent.*

10 Plaintiffs also argue that the Court has jurisdiction over Hoyu House because it is merely the
11 agent of Arino, who has already submitted to the Court’s jurisdiction. (*See* Pls.’ Mem. Supp. Opp. to
12 Mot. to Dismiss at 9.) Essentially, Plaintiffs claim that Arino received shares of Anaks from Kawasho,
13 Shimizu and ANA, then transferred them to Hoyu House to protect himself from liability. Plaintiffs
14 argue it would be inequitable to let Arino protect the shares of Anaks from the Court’s jurisdiction in
15 this way. (*Id.*) As above, Plaintiffs have only shown that Arino is the President of Hoyu House and
16 have not shown what authority Arino exercises pursuant to that office. Furthermore, Plaintiffs have
17 not offered any evidence indicating that the shares of Anaks were initially transferred to Arino, or that
18 he subsequently transferred them to Shangrila. In their Opposition, Plaintiffs also cite cases discussing
19 alter ego relationships in support of their agency argument. (Pls.’ Mem. Supp. Opp. to Mot. to Dismiss
20 at 9-10.) To the extent Plaintiffs are also alleging that Hoyu House is the alter ego of Arino, Plaintiffs
21 have not offered any evidence supporting a prima facie case of such a relationship.

22 *2. General Jurisdiction*

23 The standard for general jurisdiction is “fairly high.” *Bank of Saipan (Attorneys’ Liability)*, 6
24 N.M.I. at 252; *Waibel*, 2006 MP 15 at ¶ 16. This is because general jurisdiction allows a defendant to
25 be hauled into court regardless of whether the circumstances giving rise to the cause of action are
26 related to the defendant’s connections with the forum. *Waibel*, 2006 MP 15 at ¶ 16. Therefore, to
27 assert general jurisdiction over a non-resident defendant requires “continuous and systematic” contacts
28 with the forum such that the exercise of jurisdiction does not offend traditional notions of fair play and
substantial justice. Without additional contacts, Hoyu House’s ownership of shares of a CNMI

1 corporation and a unit in the Development are not evidence of such an ongoing relationship with the
2 CNMI that Hoyu House should expect to be hauled into a CNMI court for any alleged wrong,
3 especially for wrongs unrelated to Hoyu House's contacts with the CNMI.

4 3. Specific Jurisdiction

5 To exercise specific jurisdiction, the Court must determine that the defendants (1) "purposefully
6 availed [themselves] of the privilege of conducting activities" in the Commonwealth; (2) that the
7 "plaintiff[s]' claim arises out of or results from the defendant's forum-related activities;" and (3) that
8 the "exercise of jurisdiction is reasonable." *Bank of Saipan (Connell)*, 6 N.M.I. at 187. Without
9 additional evidence, Plaintiffs' allegations that Hoyu House owns shares of a CNMI Corporation and
10 a unit in the Development are not sufficient to show that Hoyu House has purposely availed itself of
11 the privilege of conducting activities in the Commonwealth.

12 4. Plaintiffs Should be Permitted Limited Jurisdictional Discovery.

13 Plaintiffs argue that if the Court finds they have not met their burden in establishing a prima
14 facie case of personal jurisdiction over Hoyu House, the Court should permit them to conduct limited
15 jurisdictional discovery. (Pls.' Mem. Supp. Opp. to Mot. to Dismiss at 11.) In general, discovery
16 should be freely permitted, and this is no less true when discovery is directed to personal jurisdiction.
17 *Andersen v. Sportmart, Inc.*, 179 F.R.D. 236, 241 (N.D. Ind. 1998) (citing *Edmond v. United States*
18 *Postal Serv. Gen. Counsel*, 949 F.2d 415, 428 (D.C. Cir. 1991)). Courts may grant limited
19 jurisdictional discovery before ruling on a motion to dismiss for lack of personal jurisdiction. *See*
20 *United States v. Swiss American Bank, Ltd.*, 274 F.3d 610, 625 (1st Cir. 2001) (noting that a "timely
21 and properly supported" motion for jurisdictional discovery "merits solicitous attention"). In some
22 cases, courts even risk abusing their discretion for not allowing limited discovery regarding personal
23 jurisdiction. *Andersen*, 179 F.R.D. at 241 (citing *Wyatt v. Kaplan*, 686 F.2d 276 (5th Cir. 1982)
24 ("When a defendant challenges personal jurisdiction, courts generally permit depositions confined to
25 issues raised in the motion to dismiss. In an appropriate case, we will not hesitate to reverse a dismissal
26 for lack of personal jurisdiction, on the ground that the plaintiff was improperly denied discovery.")).
27 Furthermore, jurisdictional discovery into whether a corporate defendant is "doing business" in a forum
28 is more liberally granted than such discovery of an individual or a foreign sovereign. *See*
Massachusetts Sch. of Law at Andover, Inc. v. American Bar Ass'n, 107 F.3d 1026, 1042 (3d Cir.

1 1997). The Court finds this rule aptly applicable in the present situation where almost all of the critical
2 information need to make a prima facie case of personal jurisdiction over Hoyu House is within the
3 exclusive control of Hoyu House.

4 To be entitled to limited jurisdictional discovery, however, a plaintiff “must make a threshold
5 or prima facie showing with some competent evidence demonstrating that personal jurisdiction *might*
6 exist over a defendant” *Andersen*, 179 F.R.D. at 241. Although this standard is quite low,
7 discovery should nevertheless be denied where it is merely based upon “‘bare,’ ‘attenuated,’ or
8 ‘unsupported’ assertions . . . or when a plaintiff’s claim appears to be ‘clearly frivolous.’” (*Id.*) (citing
9 *Ellis v. Fortune Seas*, 175 F.R.D. 308, 312 (S.D. Ind. 1997). Here, Plaintiffs have shown that the Court
10 might be able to establish general jurisdiction over Hoyu House based on their allegation that Hoyu
11 House operates Anaks in the CNMI through the actions of its agent, Arino, and its ownership interest
12 in Shangrila. Plaintiffs have offered undisputed evidence that Arino is at least the President of Hoyu
13 House, indicating some form of an agency relationship. (Complaint Ex. A.) Plaintiffs also submitted
14 evidence that Arino was inside Anaks’ office, being escorted by an Anaks employee, at a Homeowners’
15 meeting, at the Development, and in the courtroom for a hearing in this case. (Bellas Decl. ¶¶ 5-12.)
16 These allegations support a finding that Arino *might* be operating Anaks in light of Plaintiffs’ assertion
17 that Nakamoto has resigned and that no new President of Anaks has been elected. (*Id.* ¶ 5.)
18 Additionally, Shangrila’s Articles show that it only has four shareholders, none having any more
19 control than Hoyu House. (Complaint Ex. A.) Together with Plaintiffs’ evidence that Arino is
20 Shangrila’s President, these facts at least allow for the possibility that Arino has assumed control of
21 Shangrila, and potentially Anaks. (*Id.*) Ultimately, the decision to permit limited jurisdictional
22 discovery is within the Court’s discretion and the Court finds that, in light of the facts presented,
23 common sense warrants such discovery in this case. *See Best Van Lines, Inc. v. Walker*, 490 F.3d 239,
24 255 (2d Cir. 2007.)

25 IV. CONCLUSION

26 For the foregoing reasons, the Court hereby PARTIALLY GRANTS Hoyu House’s Com. R.
27 Civ. P. 12(b)(6) motion dismissing Plaintiffs’ causes of action against Hoyu House for breach of
28 contract, assisting in breaches of fiduciary duty and violation of the Consumer Protection Act. The
Court DENIES Hoyu House’s motion to dismiss Plaintiffs’ causes of action for breaches of fiduciary

