E-FILED
CNMI SUPERIOR COURT
E-filed: Jun 27 2011 9:53AM
Clerk Review: N/A
Filing ID: 38347468
Case Number: 11-0068-CV
N/A

FOR PUBLICATION

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

KEVIN CAMACHO GUERRERO, Plaintiff, vs. **CENTURY INSURANCE CO., LTD. PACIFICA INSURANCE UNDERWRITERS INC. and PHILIPINE EAGLE CORPORATION,** Defendants.	**CIVIL CASE NO. 11-0068** **ORDER GRANTING IN PART DEFENDANTS' MOTION TO DISMISS**

I. INTRODUCTION

THIS MATTER came for hearing on June 23, 2011 at 1:30 p.m. in Courtroom 223A for Defendants' Century Insurance Co., Ltd., ("CIC") and Pacifica Insurance Underwriters Inc., ("Pacifica") Motion to Dismiss. Defendants CIC and Pacifica (hereinafter "Defendants") were represented by attorney, Colin M. Thompson. Plaintiff Kevin C. Guerrero (hereinafter "Plaintiff") was represented by attorney, Victorino DLG. Torres.

In the instant Motion, Defendants move to dismiss this lawsuit pursuant to NMI R. Civ. P. 12(b)(6) arguing that Plaintiff fails to assert any cause of action against them. Alternatively, Plaintiff counters by arguing: (1) that Defendants have not met the standard for dismissal; and (2) that Plaintiff has set forth specific factual allegations in the Complaint to support each cause of action.

After hearing oral arguments and reading over both parties' briefs, the Court finds that Plaintiff has pled sufficient facts to support a claim for conversion, as well as, violations under the Consumer Protection

Act. However, Plaintiff has not pled sufficient facts to support a claim for intentional infliction of emotional distress, negligent infliction of emotional distress, and fraud. For the reasons discussed below, the Court **GRANTS IN PART** Defendants' Motion to Dismiss.

II. BACKGROUND

On March 7, 2011, Plaintiff filed a Complaint against Defendants alleging: (1) conversion; (2) consumer protection violations; (3) intentional infliction of emotional distress; (4) negligent infliction of emotional distress; and (5) fraud.

All causes of action stem from a car accident that occurred on or about January 4, 2011. (Compl. ¶ 9.) Plaintiff was driving to visit a friend when a vehicle driven by Estela E. Reyes suddenly drove into his lane, causing a direct collision to his vehicle. (Id.) Plaintiff presented his claim to Reyes's insurer for repair and on January 12, 2011, Plaintiff and Defendants agreed to have the vehicle repaired at Philipine Eagle Corporation's ("PE"). (Compl. ¶ 13.) Plaintiff remained without a vehicle for one week, until a loaner car was given to him while PE repaired the damaged vehicle. (Compl. ¶¶ 15,16,17.)

On or about February 8, 2011, when the repair was complete, Plaintiff went to PE to pick up his vehicle and was presented with a "Release of Claims" form (hereinafter "Release") which would release all claims against numerous individuals, entities, corporations, and businesses. (Compl. ¶¶ 22, 23.) Plaintiff refused to sign the Release and as a result, PE refused to release the vehicle to Plaintiff. (Compl. ¶ 25.) PE contacted Defendants, who told PE not to release the vehicle. (Compl. ¶¶ 26, 29.) As of the filing date of this Complaint, Plaintiff's vehicle remains in the possession, custody, and control of Defendants and PE. (Compl. ¶ 39.)

III. LEGAL STANDARD

NMI R. Civ. P. 12(b)(6) calls for dismissal if a party fails to state a claim upon which relief can be granted. Since NMI 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).

Under NMI R. Civ. P. 12(b)(6), a complaint or pleading is subject to dismissal where it lacks a cognizable legal theory or fails to allege facts constituting a cognizable legal theory. *See Bolain v. Guam Publications, Inc.*, 4 NMI 176 (1994). In deciding a motion to dismiss under NMI R. Civ. P. 12(b)(6), the court must assume the truth of all factual allegations in the challenged pleading and construe them in the light most favorable to the non-moving party. *Cepeda v. Hefner*, 3 NMI 121, 127-28 (1992); *Govendo v. Marianas Pub. Land Corp*. 2 NMI 482, 490 (1992). While the court must construe facts in favor of the non-moving party and draw reasonable inferences therefrom, the court need not strain to find inferences favorable to the non-moving party. *In re Adoption of Magofna*, 1 NMI 449 (1990).

The burden is upon the movants to establish beyond doubt that the plaintiff's action is one upon which the law recognizes no relief. 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 NMI 121, 127-28 (1992); *In re Adoption of Magofna*, 1 NMI 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. *Cepeda*, 3 NMI 121 at 127-28.

Furthermore, a reviewing court need not accept legal conclusions couched as factual statements as true. *Papason v. Allain*, 478 U.S. 265, 286 (1986). "[T]o survive a motion to dismiss, a complaint must contain sufficient factual matter, if accepted as true, 'to state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 570 (2007)). A claim is plausible on its face when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Iqbal*, 129 S. Ct. at 1937 (citing *Twombly*, 550 U.S. at 555).

IV. DISCUSSION

On April 25, 2011 Defendants filed a Motion to Dismiss. Defendants argue that Plaintiff's allegations attempting to inculpate CIC and Pacifica are conclusory and should therefore be dismissed. (Def.s' Mot. at 1,3.) Therefore, the Court will examine each individual cause of action to determine if Plaintiff has pled sufficient facts to support each cause of action.

A. Plaintiff Has Pled Sufficient Facts to Support a Claim for Conversion.

The first cause of action alleges conversion. In *Rosario v. Camacho*, the CNMI Supreme Court recognized conversion as the intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it. *Rosario v. Camacho*, 2001 MP 3 ¶ 105. The Court cited to the RESTATEMENT (SECOND) OF TORTS § 222A(1) which provides:

> Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.

Id. (citing RESTATEMENT (SECOND) OF TORTS § 222A(1) (1965)). A conversion may be committed by intentionally dispossessing of, destroying, using, receiving, disposing of, misdelivering, or refusing to

surrender a chattel. RESTATEMENT (SECOND) OF TORTS § 223 (1965). Conversion applies only to things that are capable of being lost or stolen. RESTATEMENT (SECOND) OF TORTS § 242, cmt. d (1965); *see Hartford Fin. Corp. v. Burns*, 158 Cal. Rptr. 169 (Cal. App. 1979) (defining "conversion" as "any act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein").

In their Motion, Defendants argue that it is "not plausible that CIC and Pacifica exercised dominion and control over the vehicle and therefore the claim must be dismissed." (Def.s' Mot. at 6.) Defendants further claim that the Court should examine the RESTATEMENT (SECOND) OF TORTS § 237 entitled "Conversion by Demand and Refusal," including Comment (b) of said section which discusses a properly qualified refusal to surrender chattel.[1] (Id.) The Court disagrees.

The Complaint clearly states that "Defendant Philippine . . . contacted Defendants Pacifica and Century and requested for an instruction on what to do; Defendants Pacifica and Century instructed Defendant Philippine not to release the vehicle."(Compl. ¶ 26.) Paragraph 28 states, "Defendant Philippine notified Kevin that it will not release the vehicle because Defendant Pacifica instructed them not to release the vehicle." (Compl. ¶ 28.)

Those allegations clearly state that Defendants were either intentionally dispossessing of or refusing to surrender Plaintiff's vehicle by instructing PE not to release the vehicle. Moreover, those actions seriously interfered with Plaintiff's right of control over his vehicle namely that he was not able to take possession of it. As such, the Court finds that Plaintiff has pled sufficient facts to support this claim.

B. Plaintiff Has Pled Sufficient Facts to Support a Claim Under the Consumer Protection Act.

[1] The Court questions whether the "immediacy" requirement in failing to turn over the chattel would even apply to this situation since Plaintiff's vehicle has not been turned over for months.

The second cause of action alleges violations under the Consumer Protection Act. The Commonwealth CPA states that "[a]ny person aggrieved as a result of a violation of this article may bring an action . . . ." 4 CMC § 5112. 4 CMC § 5112 allows any aggrieved individual, and not just those in privity of contract or in a commercial relationship with the defendant, to have standing under the statute. *Ishimatsu v. Royal Crown Insurance Corp.*, 2010 MP 8 ¶ 28. In *Isla Financial Services*, 2001 MP 21 ¶ 23, the Supreme Court specified that a violation of the CPA, 4 CMC §5105,[2] "consists of (1) an unlawful act or practice, (2) in the conduct of trade or commerce." *Id.* ¶ 22.

In *Isla Financial Services*, a financial services company procured a promissory note from a decedent's daughter that obligated her to make payments on her deceased mother's loan. *Id.* ¶ 23. The Supreme Court found that "Isla created 'a likelihood of confusion or misunderstanding' or was 'unfair or deceptive to the consumer' when it influenced Ms. Sablan to sign a promissory note and thereby assume her mother's debt." *Id.* (citing 4 CMC § 5106(1)(m)).

Here, Plaintiff argues that Pacifica and CIC are in the business of providing insurance coverage and "their attempt to have Kevin's vehicle repaired was part of their business practice in minimizing their insured's liability." (Compl. ¶¶ 50,51.) Plaintiff further claims "Defendant Pacifica never disclosed its intention to retain full custody and control of Kevin's vehicle, even upon completion, if Kevin refuses to sign a full release of claim." (Id. ¶ 59.) Moreover, Plaintiff alleges that it is "Defendants business practice

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[2] 4 CMC § 5105 states in pertinent part:

> The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful:
> …
> (m) Engaging in any act or practice which is unfair or deceptive to the consumer;
> …

to require Kevin, or others similarly situated to sign a full release of their claims, [however, if such Release is not signed, Defendants would hold] the vehicle in their control in an effort to force, threaten, or use as leverage in obtaining a Release of claims . . .” (Id. 61,64.)

Defendants contend that Plaintiff has failed to state a claim for violations of the CPA against either CIC or Pacifica arguing that the allegations in the instant complaint are a far cry from those in *Ishimatsu* because here, there are no allegations concerning the bad faith denial of a claim. (Def.s’ Mot. at 8.) Defendant also claims that Pacifica and CIC are in the insurance business and not in the car repair business. (Def.s’ Reply at 6.) In addition, the complaint alleges that the “service” performed was the repair of a truck and the harm complained of was the conditional refusal to return the truck to its owner. (Def.s’ Reply at 6.)

Plaintiff counters by arguing that: (1) Defendants never informed him that he would be required to give his unconditional release of all his property claims if he agreed to have his vehicle repaired; (2) he would have no dominion, control, or use of his vehicle if he was unsatisfied with the work performed and refused to sign a general release form; and (3) Defendants never disclosed this condition to him at the time they took his vehicle for repair. (Pl’s Opp. at 6-7.)

In his Complaint, Plaintiff sets forth 25 paragraphs of alleged facts showing how PE, Pacifica, and CIC may have violated the CPA. Based on the dismissal standard, the Court finds Plaintiff’s Complaint sufficiently alleges violations of the CPA. In addition, even if Plaintiff did not assert a bad faith denial of a claim, as was the case in *Ishimatsu*, 4 CMC § 5123(b) states that “the exercise of one shall not preclude the exercise of others, and these remedies, penalties, and actions shall be in addition to any other remedy,

penalty or action afforded by law or regulation, including the common law." Accordingly, the Court finds that Plaintiff has pled sufficient facts to support this claim.

C. Plaintiff Has Not Pled Sufficient Facts to Support a Claim for Intentional Infliction of Emotional Distress.

The third cause of action alleges intentional infliction of emotional distress. In the Commonwealth the common law is drawn from the Restatements. 7 CMC § 3401; *Castro v. Hotel Nikko Saipan*, 4 NMI 268, 272, n. 5 (1995) ("In the absence of contrary statutory or customary law this Court applies the common law as expressed in the Restatements."), *appeal dismissed*, 96 F.3d 1259 (9th Cir. 1996). The action asserted by Plaintiff is defined in the RESTATEMENT(SECOND) OF TORTS, §46 (1965) as "Outrageous Conduct Causing Severe Emotional Distress," and is, in relevant part, as follows:

> One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it for such bodily harm.

In *Charfauros v. Board of Elections*, the CNMI Supreme Court analyzed in great detail how to address a cause of action for intentional infliction of emotional distress. *Charfauros v. Board of Elections*, 1998 MP 16 at 25-27. The CNMI Supreme Court stated that a cause of action for the intentional infliction of emotional distress requires proof of four elements: (1) that the conduct complained of was outrageous; (2) that the conduct was intentional or reckless; (3) it must cause emotional distress; and (4) the distress must be severe. *See, Arriola v. Insurance Company of North America*, 2 C.R. 113, 121 (Com.Tr.Ct. 1985), *citing Chuy v. Philadelphia Eagles Football Club*, 595 F.2d 1265 at 1273 (10th Cir. 1979).

Comment h. to RESTATEMENT §46 sets forth an important duty of courts to guard the gateway to the cause of action for intentional infliction of emotional distress. The reasons for this appear from the history

of this cause of action and the justifiable reluctance of courts of law to become embroiled in petty disputes that nonetheless cause someone to feel emotionally disturbed and distressed.[3] Accordingly, comment h. requires the court to judge the sufficiency of the conduct alleged to have caused the emotional distress before allowing the case to proceed to a full trial:

> It is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery . . .

RESTATEMENT, *supra*, §46, comment h.

It is well established that before a claim for the intentional infliction of emotional distress raises a question of fact requiring resolution by trial, the Plaintiff must set forth facts establishing the outrageousness of the conduct as a matter of law :

> If courts do not in clear cases exercise their review of such claims in the first instance, the standards of outrageousness will be expanded into an unreviewable jury question, diluting the importance of the cause of action and the available relief.

Keiter v. Penn Mutual Ins. Co., 900 F.Supp. 1339, 1348 (D.Haw. 1995).

In light of this gatekeeping function, Comment c. to RESTATEMENT §46 reminds courts, however, that "[t]he law is still in a stage of development, and the ultimate limits of this tort are not yet determined." *Id.* The cause of action is thus "fully open to the possibility of further development of the law, and the recognition of other situations in which liability might be imposed." *Id.*

Comment h. to RESTATEMENT §46, *supra*, goes on to further delineate the gatekeeping function:

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[3] Comment b. to RESTATEMENT §46 sets forth some of these considerations:

> Because of the fear of fictitious or trivial claims, distrust of the proof offered, and the difficulty of setting up any satisfactory boundaries to liability, the law has been slow to afford independent protection to the interest in freedom from emotional distress standing alone.

> Where reasonable men may differ, it is for the jury, subject to the control of the court, to determine whether, in the particular case, the conduct has been sufficiently extreme and outrageous to result in liability.

Comment d. to RESTATEMENT §46, discusses the type of conduct associated with intentional inflicton of emotional distress to wit:

> Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"

Here, Defendants argue that there are no allegations from which this Court could conclude that the injury to Plaintiff was either "OUTRAGEOUS" or amounted to severe emotional distress. (Def.s' Mot. at 10.) Based on the definition set forth above, Plaintiff would have to allege: (1) that the conduct complained of was outrageous; (2) that the conduct was intentional or reckless; (3) that the alleged conduct caused emotional distress; and (4) the distress must be severe.

A review of the Complaint shows that Plaintiff has pled sufficient facts alleging that Defendants' conduct was intentional, caused emotional distress, and severe enough for Plaintiff to seek medical treatment. However, the Court does not find that Plaintiff has pled sufficient facts to show that Defendants' conduct was "OUTRAGEOUS." *See Below*

> 76. In fact, Defendants actions and intentional plan was calculated and was so extreme and outrageous that they attempted to extort Kevin into signing the release of claims. (Compl. ¶ 76.)
>
> 77. In their effort, they informed him that his "vehicle will rot" if he doesn't sing the release form. (Compl. ¶ 77.)
>
> 78. Such action is intolerable and goes beyond all decency of society. (Compl. ¶ 78.)

> 81. As a direct and proximate result of Defendants Pacifica and Century, **Plaintiff has suffered** economic and non-economic damages, and **mental and emotional distress which he was diagnosed and is medically diagnosable and significant and required him to seek medical treatment**. (Compl. ¶ 81.) (emphasis added.)

As outlined in the Restatements, it is for the Court to determine, in the first instance, whether the Defendants' conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. Here, the Court cannot say that Defendants' refusal to return Plaintiff's vehicle if he did not sign the Release coupled with the statement that Plaintiff's car would rot is sufficient to establish outrageous conduct. Plaintiff's allegations as to this cause of action are too conclusory. As a result, the Court finds that Plaintiff has not pled sufficient facts to support this claim

D. Plaintiff Has Not Pled Sufficient Facts to Support a Claim for Negligent Infliction of Emotional Distress.

The fourth cause of action alleges negligent infliction of emotional distress. The RESTATEMENT(SECOND) OF TORTS recognizes a cause of action arising from unintended emotional distress. *Lee Bok Yurl v. Yoon Young Byung, Hann in Hee, Vincente I. Teregeyo*, Civ. No. 99-0085 (NMI Super. Ct. March 3, 2000)(Order at 7,8). Section 313 of the RESTATEMENT(SECOND) OF TORTS states:

> (1) If the actor unintentionally causes emotional distress to another, he is subject to liability to the other for resulting illness or bodily harm if the actor: (a) should have realized that his conduct involved an unreasonable risk of causing the distress, otherwise than by knowledge of the harm or peril of a third person, and (b) from facts known to him should have realized that the distress, if it were caused, might result in illness or bodily harm.
>
> (2) The rule stated in Subsection (1) has no application to illness or bodily harm of another which is caused by emotional distress arising solely from harm or peril to a third person, unless the negligence of the actor has otherwise created an unreasonable risk of bodily harm to the other.

RESTATEMENT(SECOND) OF TORTS, § 313 (1965). The above language does not allow a claim for negligent infliction of emotional distress, it only allows for recovery of damages resulting from unintended emotional distress in situations where the actor's negligent conduct results in bodily harm or the risk of bodily harm. *See* RESTATEMENT(SECOND) OF TORTS § 313, cmt. a (1965) ("[T]here is no liability where the actor's negligent conduct inflicts only emotional distress, without resulting bodily harm . . . [s]uch emotional distress is important only in so far as its existence involves a risk of bodily harm, and as affecting the damages recoverable if bodily harm is sustained.")

Our Courts have consistently held that the Commonwealth does not recognize a cause of action in tort for negligent infliction of emotional distress if there is no allegation of physical injury. *Arriola v. Insurance Co. of North America,* Civ No. 84-50 (NMI Super. Ct. 1985)(Order Granting Judgment on the Pleadings).

Here, Plaintiff alleges in paragraph 86 of the Complaint that "as a direct and proximate result of Defendants['] negligent infliction of emotional distress, Plaintiff has suffered pain and suffering, serious emotional and mental distress, diminished quality of life, and economic and non-economic damages." (Compl. ¶ 86.) In his Opposition, Plaintiff claims that in paragraph 45 of the Complaint he alleged that he suffered physical injury. (Pl's Opp. at 10.) During the hearing, when the Court inquired into the type of physical injury Plaintiff suffered, Plaintiff's counsel simply stated that he suffered some type of physical injury, but was not specific.

Although Plaintiff is entitled to put forth evidence showing that he suffered some type of physical injury, the Court does not find this cause of action is plausible. Plaintiff did not allege the type of injury he sustained, but simply relied on the fact that he pled physical injury in the Complaint. A claim is plausible

on its face when the Plaintiff pleads factual content that allows the court to draw the reasonable inference that the Defendant is liable for the misconduct alleged. Here, no such inference can be drawn. Accordingly, the Court finds that Plaintiff has not pled sufficient facts to support this claim

E. Plaintiff Has Not Pled Sufficient Facts to Support a Claim for Fraud.

The last cause of action alleges fraud. When a claim alleges fraud, the Complaint must satisfy NMI R. Civ. P. 9(b). Rule 9(b) provides in part:

> (b) FRAUD, MISTAKE, CONDITION OF THE MIND. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

Rule 9(b) "requires the identification of the circumstances constituting fraud so that the defendant can prepare an adequate answer from the allegations." *Odom v. Microsoft Corp.*, 486 F.3d 541, 553 (9th Cir. 2007). Rule 9(b) requires that the pleader state the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentation." (internal citations omitted) *Id.* This is the who, what, where, when and how of the misconduct charged. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003)(quoting *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997).

In *Rosario v. Camacho*, the CNMI Supreme Court addressed the issue of fraud stating that "[o]ne who fraudulently makes a misrepresentation of fact, opinion, intention, or law for the purpose of inducing another to act or refrain from acting in reliance thereupon is liable for loss caused by justifiable reliance on the misrepresentation." *Id.* at ¶ 79 (citing *Ada v. K. Sadhwani's, Inc.*, 3 NMI.303, 312 (1992)) (citing RESTATEMENT (SECOND) OF TORTS § 525 (1977)). To establish a fraudulent misrepresentation, Plaintiff has the burden of proving: (1) a representation; (2) its falsity; (3) its materiality; (4) Defendants' knowledge of or recklessness as to its falsity; (5) Defendants' intent that Plaintiff act on it in the manner reasonably

contemplated; (6) Plaintiff's ignorance of its falsity; (7) their reliance on its truth; (8) their right to rely on it; and (9) their resulting damage. *Id.* (citing *Lawrence v. Underwood*, 726 P.2d 1189, 1191 (Or. Ct. App. 1986)).

Plaintiff's burden is to prove the above by clear and convincing evidence. *Id*. Failure to perform a promise alone does not constitute a fraudulent misrepresentation; there must be evidence that, *at the time defendant made the promise*, he made it with the intent not to perform, or with reckless disregard as to whether he could perform. *Id.* at ¶ 80 (citing *Underwood*, 726 P.2d at 1191). Fraudulent intent or reckless disregard cannot be inferred from the mere fact of nonperformance. Additional circumstances of a substantial character must be shown before an inference may be drawn. *Id*.

Here, Defendants argue that the Complaint does not address the required allegations setting forth the who, what, when and whom concerning the alleged fraudulent statements. (Def.s' Mot. at 12.) In other words, Defendants claim Plaintiff has failed to meet the pleading standard required for fraud. The Court agrees.

A claim for fraud must be pled with particularity. Here, Plaintiff fails to spell out the who, what, when and whom of the alleged fraudulent statement. Instead Plaintiff claims that an alleged fraudulent statement was made to him, by Pacifica or CIC, on or about January 12, 2011, that his vehicle would be released once it had been repaired. Additionally, Plaintiff contends that this statement was made to him knowing that it was not true which he relied upon to his detriment.

Based on the heightened standard for proving fraud, the Court does not find that Plaintiff has met the threshold requirements for proving fraud with particularity as set forth in NMI R. Civ. P. 9(b). Plaintiff has not specifically alleged who made the statements to him, when exactly the statements were made, nor

has Plaintiff shown that Defendants knew the statements to be false when they were allegedly made. Accordingly, the Court finds that Plaintiff has not pled sufficient facts to support this claim.

V. CONCLUSION

Based on the foregoing, Defendants' Motion to Dismiss is **GRANTED IN PART** as to the third, fourth, and fifth causes of action.

SO ORDERED this 27th day of June, 2011.

/ s /
David A. Wiseman, Associate Judge