FOR PUBLICATION

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

SU, YUE MIN; WU, YI PAN; HUANG SHI ZHONG; LI, DAN YUN; XIAO, XUE MING; GUO, LI YING, Plaintiffs, vs. **S&D CORPORATION *dba* MONTE CARLO, HARVEST MART, and EVERBRIGHT MART,** Defendants.	**CIVIL ACTION NO. 10-0083** **ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

THIS MATTER came on for hearing on January 20, 2011 at 1:30 p.m. in Courtroom 223A on Plaintiffs' Su, Yue Min; Wu, Yi Pan; Huang, Shi Zhong; Li, Dan Yun; Xiao, Xue Ming; and Guo, Li Ying (hereinafter collectively "Plaintiffs") Motion for Summary Judgment. Plaintiffs were represented by attorney Joe Hill. Counsel Robert Myers appeared on behalf of Defendant S & D Corporation (hereinafter "S &D"). 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 discussed below, Plaintiffs' Motion for Summary Judgment is **GRANTED**.

II. SYNOPSIS

This is an action arising out of an Administrative Hearing held on April 14, 2009 whereby the Hearing Officer issued an Administrative Order finding against S & D and Feng Hua Enterprises, Inc., jointly and severally, in the total amount of $134,096.80 on May 4, 2009. (Verified Complaint To Enforce

Final Labor Order at ¶ 5.) On or about May 19, 2009, S & D filed a Notice of Appeal with the DOL. *Id.* at ¶ 6. On or about June 22, 2009, S & D filed an Amended Notice of Appeal. As of that filing, S & D has failed to take any further action.

On December 3, 2010, Plaintiffs moved for summary judgment arguing that the May 4, 2009 Order has already attained *res judicata* effect. (Pl.s' Mot. at 7.) As such, Plaintiffs claim that the May 4, 2009 Order is now final and enforceable by this Court. (*Id.* at 6.)

On December 13, 2010, S & D filed an Opposition giving three reasons why Plaintiffs' Motion for Summary Judgment should be denied: (1) the May 4, 2009 Administrative Order was void when issued; (2) the record for the hearing of the consolidated cases was patently inadequate to support the decisions of the Administrative Hearing Officer and the Secretary of Labor; and (3) giving *res judicata* effect to the decisions of the Administrative Hearing Officer or the Secretary of Labor contravenes the overriding public policy of the APA or the CEA, or both. (Def.'s Opp'n at 2.)

On December 20, 2011, Plaintiffs filed a Reply arguing that this case is solely before the Court for enforcement of the final agency order. (Pl.s' Reply at 2.) Plaintiffs claim that if S & D disagreed with the either the Administrative Hearing Officer's or the Secretary of Labor's decision, it should have appealed that decision to this Court. However, because this matter came up for an enforcement a final agency order and not as a judicial review, this Court need only examine whether or not S & D complied with the final agency action.

III. LEGAL STANDARD

"Summary judgment may be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." NMI R. Civ. P. 56(c); *Century Insurance Co. v. Hong Kong Entertainment*, 2009 MP 4 ¶ 14; *Santos v. Santos*, 4 NMI 206, 209 (1994). A fact in contention is considered material only if its determination may affect the outcome of the case. *Merci Corp. v. World International Corp.*, 2005 MP 10 ¶ 19 (citing *PAC United Corp. (CNMI) v. Guam Concrete Builders*, 2002

MP 15 ¶ 24)(further citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986)).

"A party moving for summary judgment bears the initial and the ultimate burden of establishing its entitlement to summary judgment. . . . If a movant is a defendant, he or she has the [] duty of showing that the undisputed facts establish every element of an asserted affirmative defense." *Furuoka v. Dai Ichi Hotel*, 2002 MP 5 ¶ 22. "Once the moving party satisfies the initial burden, the non-moving party must respond by establishing that a genuine issue of material fact exists." *Id.* ¶ 24. However, "[i]f the non-moving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law." *Id.*

"In making a summary judgment determination, the trial court is required to consider the evidence and inferences most favorable to the party opposing the motion." *Century*, 2009 MP 4 ¶ 14. Summary judgment may be granted only when the court, after viewing facts and inferences in a light most favorable to the non-moving party, finds as a matter of law that the moving party is entitled to judgment as a matter of law. *Rios v. Marianas Pub. Land Corp.*, 3 NMI 512, 518 (1993); *Cabrera v. Heirs of De Castro*, 1 NMI 172, 176 (1990). A party opposing a properly supported motion for summary judgment "may not rest upon the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (citation omitted). Conclusory allegations are not sufficient to defeat a motion for summary judgment. *Cabrera v. Heirs of De Castro*, 1 NMI 172, 176 (1990).

"If the evidence set forth by the non-moving party is 'merely colorable . . . or [was] not significantly probative . . . summary judgment may be granted.'" *Eurotex, Inc. v. Muna*, 4 NMI 280, 284 (1995) (*citing Anderson*, 477 U.S. at 249-50).

> [T]he issue of material fact required by Rule 56(c) to be present to entitle a party to proceed to trial is not required to be resolved conclusively in favor of the party asserting its existence; rather, all that is required is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial.

Anderson, 477 U.S. at 248-49. A trial court cannot weigh the evidence and make findings on disputed factual issues on a motion for summary judgment. *Rios v. Marianas Pub. Land Corp.*, 3 NMI 512 (1993).

IV. DISCUSSION

On April 14, 2009, Hearing Officer Deanne Siemer presided over an administrative hearing of six consolidated labor cases. On April 15, 2009, this Court issued an Order granting a temporary stay in Civil Action No. 09-0072, pending the Court's ruling on Feng Hua's Motion to Vacate. *In the Matter of Li Qi Rong v. Feng Hua Enter., Inc., et al.*, Civ. No. 09-0072 (NMI Super. Ct. April 15, 2009)(Temporary Stay and Order Setting Hearing). On May 4, 2009, the Hearing Officer issued an Administrative Order finding against Feng Hua and S & D. On May 19, 2009 S & D timely appealed that decision to the Secretary pursuant to 3 CMC § 4948(a)[1]. On May 20, 2009, the DOL issued a Memorandum along with its Opposition to the Motion to Strike in Civil Action 09-0072 instructing the Administrative Hearing Officer to take no further action in the six administrative cases over which Appellant sought a stay.

On June 17, 2009, this Court issued its Order Denying the Motion to Vacate in Civil Action No. 09-0072. *In the Matter of Li Qi Rong v. Feng Hua Enter., Inc., et al.*, Civ. No. 09-0072 (NMI Super. Ct. June 17, 2009)(Order Denying Motion to Vacate Administrative Decision). On June 18, 2009, as a result of the Court's denial of Feng Hua's Motion to Vacate, the DOL dissolved the May 20, 2009 stay concluding that the six labor cases could now proceed before the Administrative Hearing Office. On June 22, 2009, Feng Hua and S & D first learned that the stay had been dissolved and filed an Amended Notice of Appeal on that day.

Based on the irregularities of the appeal and because the Administrative Hearing Officer did not refrain from issuing a decision until the stay was lifted, the Court upheld the May 4, 2009 Order in light of the fact that the Administrative Hearing was held one day prior to the issuance of the temporary stay order.

[1] 3 CMC § 4948(a) provides in relevant part: "[w]ithin fifteen (15) days of issuance, any person or party affected by findings, decisions, or orders . . . may appeal to the Secretary by filing a written notice of appeal . . ."

However, all subsequent actions were tolled until the Court issued the June 17, 2009 Order, thereby dissolving the stay.

The Court calculated the date to which S & D and Feng Hua had to file their appeal as being June 22, 2009. *In the Matter of Su, Yue Min, et al. v. Feng Hua Enter., Inc., et al.*, Civil Action No. 09-0331 (NMI Super. Ct. August 8, 2011)(Order Denying Appellees' Motion to Dismiss and Appellant's Motion to Stay). In that same Order, the Court found that the Secretary confirmed the May 4, 2009 Order in all respects by operation of law on July 22, 2009. *In the Matter of Su, Yue Min, et al. v. Feng Hua Enter., Inc., et al.*, Civil Action No. 09-0331 (NMI Super. Ct. August 8, 2011)(Order Denying Appellees' Motion to Dismiss and Appellant's Motion to Stay). Thus, according to the clear standards espoused in 3 CMC § 4948, S & D had exhausted its administrative remedies on July 22, 2009. S & D had 30 days thereafter to file its Petition for Judicial Review; however, it failed to do so.

A court has no jurisdiction to review administrative decisions unless timely appealed during the administrative process. *Pac. Saipan Technical Contractors v. Rahman*, 2000 MP 14 ¶ 14; *Rivera v. Guerrero*, 4 NMI 79 (1993). Administrative proceedings which are not appealed within the designated time for appeal become final under the principle of administrative res judicata. *Flores v. Commonwealth*, 2004 MP 9 ¶ 11. The Court will not review an agency decision unless an adequate showing has been made that the party has exhausted its administrative remedies.

In this case, S & D failed to file its Petition for Judicial Review within 30 days of the July 22, 2009 confirmation by operation of law. Therefore, the only action before the Court is Plaintiffs' Verified Complaint to Enforce Final Labor Order/Summons, not S & D's appeal of the May 4, 2009 Administrative Order. If S & D sought to challenge that Order it should have filed a Petition for Judicial Review. However, as of date, no appeal was filed by S & D. Because no appeal was filed by July 22, 2009, the May 4, 2009

Administrative Order had become final and preclusive.[2] As such, Plaintiffs are allowed to enforce that Order in this Court.

In *Scott v. Johanns, Secretary of Agriculture*, plaintiff, a personal representative, sued defendant Secretary of Agriculture, challenging the sufficiency of a $10,000 compensatory damage award ordered by an administrative judge. *Scott v. Johanns, Secretary of Agriculture*, 409 F.3d 466 (D.C. Cir. 2005). The appellate court affirmed the district court's ruling finding that a party may not seek de novo review of just the remedial award. In doing so, the appellate court noted:

> "[C]omplainants who prevail in the administrative process but who – for whatever reason –fail to receive their promised remedy, may sue to enforce the final administrative disposition . . . [i]n such enforcement actions, the court reviews neither the discrimination finding nor the remedy imposed, examining instead only whether the employing agency has complied with the administrative process. *See Moore v. Devine*, 780 F.2d 1559, 1563 (11th Cir. 1986)."

Id. at 469. Since this is an enforcement action, the Court reviews neither the finding nor the remedy imposed, examining instead only whether the losing party has complied with the administrative disposition.

Here, the majority of S & D's Opposition discusses the administrative process including the May 4, 2009 Order and the Department of Labor's failure to safeguard audiotapes. However, all of these arguments should have been brought up on judicial review. S & D is essentially asking this Court to disregard that fact and go back and review the record. Because this is not a judicial review case, the Court can neither review the findings nor the remedy imposed, and instead may only examine whether the respondent/employer has complied with the administrative decision. Here, S & D has failed to comply. No

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[2] 3 CMC § 4949(a) provides: "[j]udicial review of a final action of the Secretary is authorized after exhaustion of all administrative remedies and shall be initiated within thirty (30) days of final action."

1 CMC § 9112(b) provides: "[a] person suffering legal wrong because of an agency action, or adversely affected or aggrieved by agency action, is entitled to judicial review of the action within 30 days thereafter in the Commonwealth Superior Court."

genuine issue of material fact exists as to that fact. As such, summary judgment is entered in Plaintiffs' favor.

V. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Summary Judgment is **GRANTED**.

SO ORDERED this 11th day of August, 2011.

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David A. Wiseman, Associate Judge