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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 D** **ORDER GRANTING PLAINTIFFS' MOTION TO DISMISS ANAKS' COUNTERCLAIMS**

I. INTRODUCTION

THIS MATTER was heard February 10, 2011, in Courtroom 217A. Plaintiffs, Norma S. Ada, *et al.* ("Plaintiffs"), were represented by Timothy H. Bellas, Esq. Douglas F. Cushnie, Esq. appeared on behalf of Defendant Anaks Resort Development, Inc. ("Anaks"). Pursuant to Commonwealth Rules of Civil Procedure 12(b)(6), Plaintiffs move to dismiss Anaks' counterclaims for failure to state a claim upon which relief can be granted.

II. FACTUAL AND PROCEDURAL BACKGROUND

On December 17, 2010, the Court permitted Anaks to file an amended answer that contained two counterclaims against Plaintiffs. *Ada v. Nakamoto*, Civ. No. 08-0029 (NMI Super. Ct. Dec. 17, 2010) (Order Conditionally Granting Defendants' Motion to File Amended Answer and Counterclaim). The Court specifically addressed the issue of whether the counterclaims were adequately pled, concluding that the issue was untimely because the parties' arguments had not been fully developed.

Id. at 4. The first counterclaim alleges interference with contract rights and prospective economic advantage. The second counterclaim is an action for anticipatory breach of contract. Plaintiffs have filed this motion to dismiss the counterclaims pursuant to NMI R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted.

III. MOTION TO DISMISS PURSUANT TO NMI R. Civ. P. 12(b)(6)

A. Legal Standard

A motion to dismiss a complaint pursuant to NMI R. Civ. P 12(b)(6) tests the legal sufficiency of the claims within the complaint. Generally, a complaint must satisfy the notice pleading requirements of NMI R. Civ. P. 8(a) to avoid dismissal under Rule 12(b)(6). *Cepeda v. Hefner*, 3 NMI 121, 126 (1992). Commonwealth Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," so that "fair notice of the nature of the action is provided." *Govendo v. Maianas Pub. Land Corp.*, 2 NMI 482, 506 (1992) (quoting *In re Adoption of Magofna*, 1 NMI 449 (1990)). A complaint fails to satisfy the pleading requirements of Rule 8(a) where it lacks a cognizable legal theory or fails to allege facts constituting a cognizable legal theory. *Bolalin v. Guam Publications, Inc.*, 4 NMI 176 (1994).

In considering a motion to dismiss, a court must treat the complaint's factual allegations as true, "even if doubtful in fact." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). However, a court need not accept as true legal conclusions set forth in a complaint. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* at 1950.

B. Discussion

1. *Anaks Ocean View Hill Saipan Fits the Restatement Definition of a Common Interest Community.*

Anaks' counterclaims are a result of Plaintiffs' designation of the Development as a "common interest community." (FAC ¶ 1; Defs.' Opp. at 3.) Plaintiffs argue that the structure of the

Development is determinative of whether or not it is a common interest community and there need not be a judicial finding on the matter. (Pls.' Reply at 2.) Plaintiffs further contend that because the Development is a common interest community, its corporate shares and property interests must be held in common either by the homeowners or AHA. (FAC ¶¶ 136-38.)

Alternatively, Anaks argues that the Development was never intended to be a common interest community and the sublease agreement Plaintiffs and homeowners entered into specifically rejects "the only common interest regime available in the Commonwealth, a condominium." (Defs.' Opp. at 4.) Anaks further argues that there are only two types of common interest communities and because the Development is neither a condominium nor a cooperative, only a sublease relationship exists between Anaks and the homeowners.

Aside from the Condominium Act, the CNMI has not enacted any statutes concerning common interest communities. Where CNMI law has not addressed an issue of law, the Court applies "the rules of common law, as 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 NMI 46, 55 (1993).

As defined by the Restatement:

> A "common-interest community" is a real-estate development or neighborhood in which individually owned lots or units are burdened by a servitude that imposes an obligation that cannot be avoided by nonuse or withdrawal
>
> (a) to pay for the use of, or contribute to the maintenance of, ***property held or enjoyed in common*** by the individual owners, ***or***
>
> (b) ***to pay dues or assessments to an association*** that provides services or facilities to the common property or to the individually owned property, or that enforces other servitudes burdening the property in the development or neighborhood.

Restatement (Third) of Property (Servitudes) § 6.2(1) (emphasis added). "Most common-interest communities have both commonly held property and mandatory membership associations, but the existence of either is sufficient to constitute the property bound by the servitude requiring payment to a common-interest community." *Id.* at cmt. a. The term "common interest community," does not consider the developer's intentions nor does it require the existence of common property.

Applying the aforementioned principals, the requirement in the Sublease Agreements that

homeowners in the Anaks Development pay mandatory fees for the maintenance and improvement of real estate enjoyed in common throughout the Development is sufficient to bring the Development within the definition of a common interest community.

The Court notes that there are actually four types of common interest communities: (1) condominiums; (2) stock cooperatives; (3) planned communities; and (4) community apartments. Under the Uniform Common Interest Ownership Act[1], which Defendants referenced several times at oral argument, a "'[p]lanned community' means a common interest community that is not a condominium or a cooperative." Unif. Common Interest Ownership Act § 1-103(23) (amended 1994). Therefore, Defendants' argument that the Development is not a common interest community because it is neither a condominium or a stock cooperative is unconvincing.

2. *Interference With Contract Rights and Prospective Economic Advantage*

Anaks claims that Plaintiffs' assertion that the Development is a common interest community constituted intentional interference with prospective economic advantage and contract rights because Plaintiffs are attempting to substitute themselves as lessees of the property. (Countercl. at 7-8.) Under Restatement, the claims of both intentional interference with prospective economic relations and intentional interference with contract are defined as:

> One who ***intentionally and improperly interferes*** with another's prospective contractual relation (except a contract to marry) is subject to liability to the other for the pecuniary harm resulting from loss of the benefits of the relation, whether the interference consists of
>
> (a) inducing or otherwise causing a third person not to enter into or continue the prospective relation or
>
> (b) preventing the other from acquiring or continuing the prospective relation.

Restatement (Second) of Torts § 766B (1977) (emphasis added). And

> [o]ne who ***intentionally and improperly interferes*** with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the

[1]The Uniform Common Interest Ownership Act has not been adopted in the CNMI. Nevertheless, at oral argument, definitions contained therein were used to illustrate the arguments presented.

contract.

Restatement (Second) of Torts § 766 (emphasis added). Thus, for the claims to proceed there must be an allegation of interference and that the interference must have been improper and intentional.

In this case, neither side disputes the existence of a contractual agreement between Anaks and the Homeowners. Nevertheless, Anaks does not allege facts that, if true, would demonstrate an "intentional and improper" interference with either the contracts or prospective economic advantage.

The Counterclaim asserts that if the Court determines that the Development is a common interest community, Anaks will be "divested of its property interest created by the Agreement entered into by each homeowner . . ." and that "Anaks will cease to have any contractual relationship with either the plaintiffs or any other homeowner, or the lessors of the real property." (Defs.' Opp. at 4.) Anaks fails to support this assertion by specifying how Plaintiffs' claim that the Development is a common interest community is improper or how it would interfere with Anaks' contractual agreements with the Homeowners. The contracts and lease agreements between the parties would continue to be valid and binding regardless of the Development's designation as a planned or common interest community. Construing all reasonable inferences in favor of Anaks, the Courts finds that Anaks has failed to plead sufficient facts to sustain its interference with contractual rights and prospective economic advantage claims.

3. *Anticipatory Breach of Contract*

The doctrine of anticipatory breach allows a plaintiff to bring a breach of contract action immediately, instead of having to wait for the promised non-performance to occur. Restatement (Second) of Contracts § 253(1) ("Where an obligor repudiates a duty before he has committed a breach by non-performance and before he has received all of the agreed exchange for it, his repudiation alone gives rise to a claim for damages for total breach"). This doctrine allows the court to treat the promise to breach as a breach itself, thus accelerating the ripeness of the cause of action. *See Franconia Assocs. v. United States*, 536 U.S. 129, 143 (2002) ("[A] repudiation ripens into a breach prior to the time for performance only if the promisee elects to treat it as such.").

Accepting the facts alleged as true and construing all reasonable inferences in Anaks' favor, the Court finds that Anaks has not stated a viable anticipatory breach of contract claim because Anaks

failed to plead facts from which the Court could determine that it is plausible repudiation has occurred. The Counterclaim asserts:

> That by the filing of the complaint and amended complaint plaintiffs are repudiating the Agreement and refusing to perform pursuant to the terms and conditions of the Agreement, said failure to perform including but not limited to stopping payment of the maintenance fee to Anaks, and terminating Anaks lease of the property from its fee simple owners and depriving Anaks of ownership and possession of its leased property.

(Countercl. at 25.) *First*, Plaintiffs filed the complaint to enforce the terms of the Agreement. Specifically, Plaintiffs seek to determine if Anaks is performing under the Agreement as to their use of the monthly maintenance fee. Anaks has not provided any authority or legal theory that would deem such an act as repudiation. *Second*, Plaintiffs are not claiming that they should be relieved of their obligation to pay the monthly maintenance fee. Plaintiffs are challenging how the maintenance fee is calculated and whether or not the funds go toward maintenance as described in the Agreement. Finally, Anaks has failed to allege how its lease from the fee simple owners would be terminated.

In summary, Anaks' Counterclaim fails to establish any plausible claims against Plaintiffs. A common interest community does not require that property be held in common so long as membership in the association is mandatory and there is enjoyment of common areas. The Counterclaim fails to aver how Plaintiffs' claim that the Development is a common interest community is improper and how that would interfere with Anaks' contractual agreements. Furthermore, Anaks fails to plead facts from which the Court could determine that it is plausible a repudiation has occurred.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion to Dismiss Anaks' Counterclaims is hereby **GRANTED**.

SO ORDERED this 29th day of August, 2011.

PERRY B. INOS, Associate Judge