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

CHINA COLOR PRINTING, WIN GUIDE COLOR PRINTING CO., LTD., YOUNIS ART STUDIO, INC. dba MARIANAS VARIETY and BENIGNO FEJERAN dba SOLID BUILDERS, **Plaintiffs,** **vs.** **PACIFIC INFORMATION BANK and FELICIDAD OGUMORO,** **Defendants.**	**CIVIL ACTION NO. 99-0747 A** **CIVIL ACTION NO. 00-0141 A** **CIVIL ACTION NO. 02-0295 D** **CIVIL ACTION NO. 02-0586 A** **ORDER DENYING DEFENDANT'S MOTION TO ALTER OR AMEND THE COURT'S JANUARY 3, 2012 ORDER**

I. INTRODUCTION

THIS MATTER came before the Court on January 24, 2012 on a Motion to Alter or Amend the Court's January 3, 2012 Order ("Defendant's Motion"). Pacific Information Bank ("Bank") and Felicidad Ogumoro ("Ogumoro") (collectively, "Defendants") were represented by Timothy H. Bellas, Esq. Plaintiffs were represented by Joshua Berger, Esq.

Based on the papers submitted of counsels, the Court DENIES Defendant's Motion.

II. BACKGROUND

This matter involves four separate collection actions by several Plaintiffs against two Defendants, Pacific Information Bank and Ogumoro. The actions were consolidated and the

parties obtained judgments against Defendants.[1] The parties then entered into a settlement agreement to satisfy the judgments.

During the course of the repayment process, the parties entered into a stipulation dated November 13, 2008 ("Stipulation"), wherein Ogumoro agreed that "if the combined judgments are not paid in full by October 31, 2009" or "if any of the scheduled payments are more than ten (10) calendar days late," Defendants shall deed Tract 22595-1 over to Plaintiffs' designee. Tract 22595-1 contains an area of approximately 6,366 square meters and a 2,700 square-foot, two-story building ("Building"). In 1989, Ogumoro moved into the Building and has lived on the first floor continuously ever since, along with various family members. Since 1985, the second story has been used primarily for commercial purposes.

Upon Ogumoro's failure to comply with the payment schedule, Plaintiffs moved to enforce the Stipulation. On November 20, 2009, Defendants filed a motion to vacate the Stipulation on the basis that Ogumoro would not have entered into the Stipulation had she known that Tract 22595-1 may be protected from creditors under 7 CMC section 4210(c). On December 23, 2009, the Court heard Defendants' motion to vacate the Stipulation, and issued its order on September 27, 2010. The Court held in its order that (1) the "Stipulation entered into is not a mortgage" and (2) "a hearing is appropriate to determine if the property in question or any part thereof is exempt under 7 CMC § 4210." (Order at 4, 5.)

On December 10, 2010, a hearing took place at which Ogumoro offered testimony describing the history, background, and uses for the Building situated on Tract 22595-1. Based on this testimony and the papers submitted of counsel, the Court issued a ruling on January 3, 2012 ("Order"), pursuant to 7 CMC section 4210, that exempted the first floor of the Building used by Ogumoro as her only residence, but did not exempt the second floor used primarily for commercial purposes. On January 24, 2012, Defendants filed a motion to reconsider the Order

[1] The following stipulated judgments have been entered: on December 3, 2002 for CV 02-0586 in the amount of $45, 068.78, on May 11, 2000 for CV 00-0141 in the amount of $9,003.60, and on December 11, 2002 for CV 02-0295 in the amount of $36, 237.76.

under NMI R. Civ. P. 59(e), arguing that the entire Building should be exempt and, thus, protected from Defendants' creditors.

III. LEGAL STANDARD

Motions for reconsideration are governed by Commonwealth Rule of Civil Procedure 59(e) and are considered an extraordinary measure to be taken at the court's discretion. *See Yuba Natural Res., Inc. v. United States*, 904 F.2d 1577, 1583 (Fed. Cir. 1990) (interpreting the counterpart Federal rule). The Commonwealth Supreme Court articulated a limited number of grounds that warrant a court to revisit an already decided matter. Consequently, only an "intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice" are sufficient grounds for reconsideration. *Camacho v. J.C. Tenorio Enter., Inc*., 2 NMI 407, 414 (1992).

Similar to a Rule 59(e) motion for reconsideration is a Rule 60 motion for "Relief From Judgment or Order." "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding" for several enumerated reasons. NMI R. Civ. P. 60(b). "Whether a motion is construed as a Rule 59(e) or Rule 60(b) motion depends upon the time in which the motion is filed." *Allender v. Raytheon Aircraft Co.*, 439 F.3d 1236, 1242 (10th Cir. 2006). A motion for reconsideration filed within ten days of the entry of judgment will fall under Rule 59(e);[2] whereas, a motion filed after that time will fall under Rule 60(b).[3] *Id.* (citation omitted); *Texas A&M Research Found. v. Magna Transp., Inc*., 338 F.3d 394, 400 (5th Cir. 2003).

IV. DISCUSSION

Defendants filed a Rule 59(e) motion for reconsideration of the Order twenty one days after the Order was entered, well in excess of the ten-day time allotment for a Rule 59(e) motion. NMI R. Civ. P. 59(e). Rather than denying Defendants' Motion outright for this

[2] "A motion to alter or amend the judgment shall be served not later than ***10 days*** after Entry of the judgment." NMI R. Civ. P. 59(e) (emphasis added).

[3] "The motion shall be made within a ***reasonable time*** . . . not more than one year after the judgment, order, or proceeding was entered or taken." NMI R. Civ. P. 60(b) (emphasis added).

procedural defect, as requested by Plaintiffs, the Court will analyze the motion under Rule 60(b). *See Allender*, 439 F.3d at 1242. For a comparison, in *Manglona v. CNMI Civ. Serv. Comm'n & Dep't of Fin.*, 3 NMI 243, 246-47 (1992), the CNMI Supreme Court excused appellee's error of filing its initial pleading as a "petition" instead of a "complaint" because the appellee could "simply amend its pleading to change the word 'petition' to 'complaint.'" Therefore, dismissing the "petition" "would be a waste of time, exalting form over substance. The pleading filed [was] in fact a complaint, notwithstanding that it was labeled a 'petition.'" *Id*. Here, Defendants' Motion should have been filed under Rule 60(b), and the Court will treat it as such in the interest of judicial economy and in the interest of resolving this issue on its substantive merits.

A. RULE 60(B) ANALYSIS

Commonwealth Rule of Civil Procedure 60(b) sets forth six grounds on which a court, in its discretion, can rescind or amend a final judgment order. It provides, in pertinent part:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for anew trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

NMI R. Civ. P. 60(b). Rule 60(b) was adapted from the Federal Rules of Civil Procedure, *Sullivan v. Tarope*, 2006 MP 11 ¶ 30, and was designed to strike a balance between serving the ends of justice and preserving the finality of judgments. *Nemaizer v. Baker*, 793 F.2d 58, 61 (2d Cir. 1986). In general, courts require that the evidence in support of the motion to vacate a final order be "highly convincing," that a party show good cause for the failure to act sooner, and that no undue hardship be imposed on other parties. *Kotlicky v. United States Fidelity & Guaranty Co.*, 817 F.2d 6, 9 (2d Cir. 1987) (citations omitted); *Crystal Waters Shipping Ltd. v. Sinotrans Ltd. Project Transp. Branch*, 633 F. Supp. 2d 37, 41 (S.D. N.Y. 2009). Where the

parties have submitted to an agreed-upon disposition, the burden to obtain Rule 60(b) relief is even heavier. *Nemaizer*, 793 F.2d at 63.

Defendants argue that "reconsideration is warranted to correct a ***clear error***, namely, the statutory construction of 7 CMC § 4210(c)." (Def's. Mot. at 2) (emphasis added). The basis for Defendants' Motion "to correct a clear error" implicates only Rule 60(b)'s catch-all provision that may relieve a party "from the operation of the judgment" for "any other reason justifying relief."[4] NMI R. Civ. P. 60(b)(6); *cf. Camacho*, 2 NMI at 414.

B. STATUTORY CONSTRUCTION OF 7 CMC § 4210(C)

Defendants' primary objection with the Court's Order is its denomination of 7 CMC section 4210(c) ("CNMI Statute") as a "homestead" exemption because the statute does not contain the words "residence" or "dwelling." (Def's. Mot. at 3.) Defendants highlight several examples of jurisdictions that have statutes expressly designated as "homestead" exemptions for the express purpose of protecting "residences" from creditors. (*Id*. at 4.)

The Court certainly recognizes "[t]hat the Court's primary basis for statutory interpretation is the plain language of the statute." *Oden v. N. Marianas College*, 2003 MP 13 ¶ 10. Additionally, however, "[i]n interpreting a statute, we are charged with the duty to consider the provisions of the whole law, its object, and its policy." *Erienet, Inc. v. Velocity Net*, 156 F.3d 513, 516 (3d Cir. 1998) (citing cases).[5] The CNMI Statute permits the Court to order a sale or transfer of land in satisfaction of a debt so long as "after the sale or transfer, the debtor will have sufficient land remaining to support himself or herself and those persons directly dependent on the debtor." 7 CMC § 4210(c). It is clear from the plain language of the statute that the legislature intended to, at least, protect the family home and livelihood, despite a debtor's financial trouble. The fact that the CNMI Statute does not contain certain labels

[4] Defendants' argument that the Court committed a clear error is not grounds for finding the Court's Order void under Rule 60(b)(4) because Defendant's argument is based on a misapplication of the law rather than want of jurisdiction. *Reyes v. Reyes*, 2001 MP 13 ¶¶ 26-27.

[5] *Accord N. Marianas College v. Civil Serv. Comm'n*, 2006 MP 4¶ 16 ("[T]his Court reads statutes in context in an effort to give a consistent meaning to all sections.") (citing *Estate of Faisao v. Tenorio*, 4 NMI 260, 265 (1995)).

such as "homestead" or "residence" does not alter the statute's obvious purpose and legislative intent, which this Court is charged with preserving.[6]

Interestingly, it appears that, prior to the Order, Defendants similarly interpreted the CNMI Statute as a homestead exemption, despite its present arguments to the contrary. For over two years during these proceedings, Plaintiffs and this Court have continuously referred to the CNMI Statute as a "homestead" exemption without eliciting any objection or clarification from Defendants.[7] Moreover, Defendants themselves, have referred to the CNMI Statute as a homestead exemption with a focus on protecting the family residence.[8] In fact, over two years ago, Defendants referred to the CNMI Statute as "provid[ing] that the ***residence*** of a CNMI resident is exempt from writs of execution" and "the court [must] make specific findings that real property[,] to be taken in satisfaction of a debt, is ***not necessary for the defendant to live in***." (Mot. to Vacate Stipulation at 5, 9) (emphasis added). However, as soon as the Order was entered to the dissatisfaction of Defendants, essentially affirming that the second floor of the Building is "not necessary for the defendant to live in," Defendants now suddenly argue that non-residences may also be exempt under the CNMI Statute, which comes dangerously close to judicial estoppel.[9]

Defendants currently argue that "the correct analysis mandated by the CNMI Statute is not whether the property is necessary as the debtor's only residence but that the land is

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[6] "[T]o give lasting meaning to [the] statute, we must look beyond the labels to the legislative intent." *Krystkowiak v. W.O. Brisben Cos*., 90 P.3d 859, 869 (Co. Ct. App. 2004); *see also In re Nicole* B., 976 A.2d 1039, 1058 (Md. Ct. App. 2009) (citing cases).

[7] On December 11, 2009, Plaintiffs filed a response to Defendants' motion to vacate the Stipulation, stating, "7 CMC § 4210(c) covers 'Homestead Exemptions.'" (Resp. to Mot. to Vacate Stipulation at 11.) Defendants made no objection to this characterization of 7 CMC section 4210(c).

[8] On March 24, 2011, Defendants argued:

> If a value limitation were contained in the CNMI statute, it would be based on the fair market value of the property at the time that the ***homestead exemption*** is to be claimed. It is not unreasonable to assume that the value of a ***residence*** during what was known as the real estate 'boom years' of the CNMI is now worth substantially less.

(Comment of Defs. Proposed Ruling by Pls. at 3) (emphasis added).

[9] "Under the doctrine of judicial estoppel, courts may disregard a party's argument when it contradicts an argument that party has previously made." *KIT Corp. v. Tomokane*, 2003 MP 17 ¶ 20.

necessary for the *support* of the debtor and her family." (Def's. Mot. at 4-5.) Defendants cite to *Black's Law Dictionary*, defining "support" as "sustenance and maintenance," which includes "food, clothing and other conveniences, and *shelter*...." (Def's. Mot. at 5.) Notwithstanding this correct recitation of the definition for "support," Defendants' overall argument that the Building's second floor should be exempt because it can provide financial support, or "sustenance or maintenance," is without merit.[10]

In interpreting a statute, "we must construe the statute 'so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void, or insignificant.'" *Erienet, Inc.*, 156 F.3d at 516 (citations omitted). The other two provisions in 7 CMC section 4210 provide exemptions for several items of "support," including eating appliances, clothing, furniture, and various tools of the trade to enable the debtor to carry on his or her usual occupation.[11] Interjecting Defendants' proposed broad definition of "support" into the CNMI Statute would make these two other statutory provisions superfluous or insignificant because of the extensive overlap in exempt items.[12] The legislature intentionally divided 7 CMC section 4210 into three separate and distinct categories of exemptions, which the Court refuses to blend all into one subsection. The CNMI Statute, entitled "*Land and Interests in Land*," is limited to

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[10] Even accepting Defendants' overly broad interpretation of the CNMI Statute, Defendants have never explained how the second floor of the Building is necessary for Ogumoro's support, despite ample opportunity to do so over the last two years.

[11] The following described property is exempt from attachment and execution:

> (a) *Personal and Household Goods*. All necessary household furniture, cooking and eating utensils, and all necessary wearing apparel, bedding, and provisions for household use sufficient for four months.
>
> (b) *Necessities for Trade or Occupation*. All tools, implements, utensils, two work animals, and equipment necessary to enable the person against whom the attachment or execution is issued to carry on his or her usual occupation.

7 CMC §§ 4210(a), (b).

[12] Defendants' example of a "debtor that finds it necessary to farm or lease a portion of his/her property in order to **support** his/her family and provide them with food, clothing as well as shelter," (Def's. Mot. at 5), clearly illustrates how 7 CMC §§ 4210(a), (b) would become inoperative if such hypothetical property were exempt under the CNMI Statute. *Food* is protected under 7 CMC § 4210(b) by its exemption of necessities for the debtor's usual occupation that can derive an income for food. *Clothing*, among many other necessities, is exempt under 7 CMC § 4210(a). That leaves only *shelter*, which most logically falls within the CNMI Statute's exemption.

the support of shelter, or the protection of the residence used by the debtor and debtor's dependents.

C. APPORTIONMENT

The Order divided the Building into one exempt portion (the first floor used as Ogumoro's only residence) and one non-exempt portion (the second floor used primarily for commercial purposes). First, Defendants object to the Court's conclusion that the second floor is used primarily for commercial purposes. This argument has already been thoroughly analyzed and resolved in the Order after an evidentiary hearing was conducted on the matter.[13] Therefore, it is inappropriate to recommence this issue here. *See United States v. Western Elec*. Co., 690 F. Supp. 22, 25 (D.C. 1988) ("A Rule 59(e) motion cannot be used as a vehicle to relitigate matters already argued and disposed of.") (citing *Windsor v. A Federal Executive Agency*, 614 F. Supp. 1255, 1264 (M.D. Tenn. 1983), *aff'd*, 767 F.2d 923 (6th Cir. 1985)).

Second, Defendants take exception to the Court's reference of *Turner v. Turner*, 18 So. 210, 211 (Ala. 1895), because "the Alabama statute has no language which allows for the exemption to be used for support, unlike the language found in the CNMI statute." (Def's. Mot. at 6.) As discussed above, the CNMI Statute, like the Alabama statute and all homestead statutes, are, at a minimum, intended to protect the family home. *See, e.g.*, *In re Hamilton*, 2011 Bankr. LEXIS 1037 at *32-33 (Bankr. D. N.M. 2011) ("The purpose of the homestead exemption is to protect a debtor's home or preserve funds to provide shelter for a debtor and the debtor's dependents."). The Alabama statute does differ, however, from 7 CMC section 4210(b) in that the Alabama statute does not contemplate support derived from profits or income, *Turner*, 18 So. at 211; whereas, 7 CMC section 4210(b) does contemplate such support by exempting the debtor's tools of the trade to carry on his or her profession. The fact

[13] Ogumoro testified at the December 10, 2010 hearing that she and her family members lived *only* on the first floor of the Building and used the second floor for business purposes for over twenty years, beginning in 1985. She further testified, that at the time of the hearing, the second floor was "vacant" and used primarily for "storage," except for the incidental use by her nephew as a place to sleep. Based on this testimony, the Court concluded in its January 3, 2012 Order that the Building's first floor was Ogumoro's only residence and the second floor was not necessary for shelter or *any* type of support.

that 7 CMC section 4210(b) provides for income-based support dispels any doubt that the CNMI Statute does not.

In arguing that division of the Building (a single parcel) is improper, Defendants point out that the *Turner* case involved *two separate* parcels of real property that were divided into exempt and non-exempt properties under the Alabama homestead statute. (Def's. Mot. at 7.) Defendants, however, neglect to point out the numerous cases in which single parcels have also been apportioned under homestead exemption statutes.[14]

Apportionment is particularly appropriate under the CNMI Statute because the only requirement for property to be exempt is that the property must be *used* for support. "If the applicable homestead exemption law is limited by use . . ., courts tend to be more restrictive in allowing the homestead exemption where there is a mixed residential and commercial use." *In re Hamilton*, 2011 Bankr. LEXIS 1037 at *18 (D. N.M.). Conversely, homestead exemptions with more limitations, such as value and acreage restrictions, are applied more liberally. *See In re MacLeod*, 295 B.R. 1, 5 (Bankr. D. Me. 2003) ("Since Nevada's statute focuses on size rather than use, the debtor was allowed to claim an entire four-unit apartment building exempt even though his residential use was limited to one unit."). Therefore, Defendants' note that the CNMI Statute imposes "none of the [] limitations" contained in other homestead statutes, such as acreage requirements, is in fact support for apportionment.[15] (Def's. Mot. at 6-7.)

Apportionment can be carried out in one of two ways: (1) a physical division of the property if practicable, or (2) a forced sale of the entire property and an apportionment of the

[14] *In re Mirulla*, 163 B.R. 910, 911 (Bankr. D. N.H. 1994) (exempting only five rooms in a single hotel building based on the finding that "a homestead may be part of a structure and not the entire structure or only one of multiple structures on a single lot."); *In re Robinson*, 75 B.R. 985, 988 (Bankr. W.D. Mo. 1987) ("Some Courts have indeed severed a portion of a structure where same was physically practical, thereby creating a homestead and non-homestead interest in one building."); *In re Wierschem*, 152 B.R. 345, 348 (Bankr. M.D. Fla. 1993) (exempting only one unit in a single, multi-family building); *In re Hager*, 74 B.R. 198, 201 (Bankr. N.D. N.Y. 1987) (refusing to exempt the 13.08% portion of a single building that had a primary business purpose); *In re Rodriguez*, 55 B.R. 519, 520 (Bankr. S.D. Fla. 1985) (refusing to exempt the portion of the debtor's residential building that was rented to a third party).

[15] Accepting Defendants' conclusion that the CNMI Statute can be used for both residential purposes *and* "for commercial purposes in order to allow a debtor the ability to support their family," (Def's. Mot. at 9), would essentially exempt *all* real property, rendering the caveat in the CNMI Statute superfluous and insignificant.

proceeds. *See In re Englander*, 95 F.3d 1028, 1032 (11th Cir. 1996). Contrary to Defendants' assertion, *In re Englander* did not hold that physical partition of a single parcel of real property is impermissible per se; rather, partition is only impermissible when the property is indivisible. *Id*. In that case, the property was indivisible due to certain Florida zoning laws, so the property was instead subject to a forced sale and an apportionment of the proceeds. *Id*.

Here, there appears to be no issue of zoning laws with respect to partitioning the Building. Also, it seems that partition would be a practicable option in light of the physical separation of the first and second floors. *See In re Rodriguez*, 55B.R. 519, 520 (Bankr. S.D. Fla. 1985) (holding that physical partition was feasible because "[a]n internal wall separates the two portions of the building . . . [and] each portion has a separate entrance"). However, as noted in the Order, the method of apportioning the Building will be resolved after the parties have the opportunity to discuss the available options among themselves and present arguments to the Court if necessary. Certainly, selling the property and apportioning the proceeds is always an available, feasible option.[16] *See, e.g., In re Wierschem*, 152 B.R. 345, 349 (Bankr. M.D. Fla. 1993) ("Because the property is indivisible, the court will permit the trustee to sell the entire real property and divide the proceeds."). Although most of the aforementioned cases are bankruptcy cases, the goal is the same: determine the most equitable approach for a debtor to satisfy his or her debts. Here, apportionment of the Building is the most equitable approach to help satisfy Defendants' judgment debts without depriving Ogumoro of her home and livelihood.

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[16] Defendants argue that severance of the Building would deplete its value, making a division of the property impracticable. (Def's. Mot. at 8.) A similar de minimis argument was made and rejected in *O'Brien v. Heggen*, 705 F.2d 1001, 1003-04 (8th Cir. 1983). There, the debtor argued that a sale of the property in dispute would render the non-exempt portion of the property virtually worthless, entitling the debtor to the entire proceeds less a nominal sum. *Id*. at 1003. The court rejected this argument, finding that "neither legal nor equitable principles favor enlarging the homestead exemption." *Id*. at 1004 (quoting *Title Ins. Co. v. Agora Leases, Inc*., 320 N.W.2d 884, 885 (Minn. 1982)).

V. CONCLUSION

For the reasons set forth above, the Court hereby **DENIES** Defendants' Motion.

IT IS SO ORDERED this 23rd day of February, 2012.

/s/
ROBERT C. NARAJA, Presiding Judge