



By order of the Court, DENIED. Presiding Judge Robert C. Naraja

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

COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,

Plaintiff,

vs.

AIC MARIANAS, INC., SAIPAN ICE AND
WATER CO., INC., SEVERN TRENT
WATER PURIFICATION, INC., SEVERN
TRENT SERVICES, INC., AND
UNIVERSAL AQUA TECHNOLOGIES,
INC.

Defendants.

CIVIL ACTION NO. 10-0262A

ORDER DENYING DEFENDANTS'
MOTION TO RECONSIDER

I. INTRODUCTION

THIS MATTER came before the Court on March 14, 2012 at 9:00 a.m. in Courtroom 202A on Defendants' Motion to Reconsider. Sean E. Frink and Brady Green appeared on behalf of Severn Trent Water Purification, Inc., Severn Trent Services, Inc., and Universal Aqua Technologies, Inc. (collectively, "Defendants" or "Severn Trent"). Matthew T. Gregory appeared on behalf of the Commonwealth of the Northern Mariana Islands ("Plaintiff" or "the Commonwealth").

Based on the papers submitted and arguments of counsel, the Court DENIES Defendants' Motion to Reconsider.

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1 **II. BACKGROUND**

2 In 2002, Plaintiff hired AIC Marianas, Inc. (“AICM”) to construct a kidney dialysis
3 facility¹ in the Commonwealth Health Center (“CHC”). (Compl. ¶¶ 7-8.) AICM was
4 contractually obligated to provide a reverse osmosis water purification system (“RO system”)
5 which complied with all appropriate hospital and association for advancement of medical
6 instrumentation (hereinafter “AAMI”) standards, and which met Federal Drug Administration
7 (“FDA”) 510(K) certification standards.² (*Id.* ¶ 9.) AICM then subcontracted with Saipan Ice
8 and Water Co., Inc. (“Saipan Ice”) to install a certified 510(k) and AAMI compliant RO
9 system. (*Id.* ¶ 10.)

10 Saipan Ice, in fulfilling its contractual duties, entered into a purchase agreement with
11 Severn Trent to supply an RO system that complied with the AAMI and 510(k) standards. (*Id.*
12 ¶ 11.) In 2006, Severn Trent furnished Saipan Ice with an RO system that purportedly met all
13 the requisite specifications. (*Id.* ¶¶ 13-14.). Subsequently, federal authorities inspected the
14 RO system and found that it did not meet 510(k) certification requirements. (*Id.* ¶ 18.) As a
15 result, the RO system had to be demobilized and a replacement system utilized. (*Id.* ¶ 20.)

16 On January 6, 2011, Plaintiff filed its First Amended Complaint (“FAC”), alleging
17 multiple counts grounded in contract and tort law, including a claim under the Consumer
18 Protection Act (“CPA”). Severn Trent moved to dismiss the CPA claim for lack of standing.
19 The Court denied Severn Trent’s motion in its January 12, 2012 Order (“Order”). On January
20 23, 2012, Severn Trent moved the Court to reconsider its Order pursuant to NMI R. Civ. P.
21 59(e).

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25 ¹ Hemodialysis is a medical treatment used for patients with kidney disease and involves pumping large quantities
26 of water into a patient’s bloodstream. In order to guard against contamination, an extensive water purification
system, which meets certain hospital and federal standards, is necessary for hemodialysis.

27 ² Certain device manufacturers must notify the FDA of their intent to market a medical device at least 90 days in
28 advance in order to allow the FDA to inspect it and determine whether it is equivalent to a device already placed
into one of the three classification categories, or if it is a “new” device, whether it meets proper safety standards.
21 U.S.C. § 360.

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III. LEGAL STANDARD

Motions for reconsideration are governed by Commonwealth Rule of Civil Procedure 59(e)³ 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).

IV. DISCUSSION

Defendants, in their motion to reconsider pursuant to Rule 59(e), ask the Court to revisit its previous ruling wherein it denied Defendants’ motion to dismiss, finding that the Commonwealth had standing to bring an action under the CPA. Defendants contend that the controlling statutory language of the CPA does not confer standing upon the Commonwealth, resulting in clear error.

A. STATUTORY CONSTRUCTION OF THE CPA

Under the principles of statutory construction, the court must first look to “the plain language of the statute.” *Oden v. N. Marianas College*, 2003 MP 13 ¶ 10 (citations omitted). However, if a provision is ambiguous, a court’s objective “is to ascertain and give effect to the intent of the legislature,” *Aguon v. Marianas Pub. Land Corp.*, 2001 MP 4 ¶ 30 (per curiam), and “language must be read in the context of the entire” provision. *Town House, Inc. v. Saburo*, 2003 MP 2 ¶ 11.

The CPA, as expressed in 4 CMC sections 5101 et seq., was created to protect consumers “from abuses in commerce which deprive them of the full value and benefit of their purchases of goods and services or which deceive them regarding the availability and nature of goods or services for sale.” 4 CMC § 5102(a)(1). “Any person aggrieved as a result of a

³ During oral argument, counsel for Plaintiff noted that motions to reconsider may no longer be valid in the CNMI. However, Rule 59(e) has not been repealed, nor *Camacho v. J.C. Tenorio Enter., Inc.*, 2 NMI 407 (1992) overruled. Accordingly, Defendants presented a proper motion to reconsider based on valid legal principles.

1 violation of this article may bring an action in the Commonwealth Superior Court for such
2 legal or equitable relief as the court may order.” 4 CMC § 5112(a). A “person” is defined
3 within the meaning of the CPA as “natural persons, corporations, firms, partnerships, joint
4 stock companies, and associations or other organizations of persons.” 4 CMC § 5104(g).

5 Defendants contend that since the CPA does not expressly include the Commonwealth
6 in the definition of “person,” the Commonwealth may not bring an action under its provisions.
7 However, the vague, catch-all provision of “other organizations of persons” leaves the issue
8 unclear as to whether the Commonwealth is implicitly included. Therefore, the Court must
9 analyze the provisions of the CPA as a whole to ascertain the legislative intent and give
10 credence to it. *Aguon*, 2001 MP 4 ¶ 30; *see also People v. Centr-O-Mart*, 214 P.2d 378, 379
11 (Cal. 1950) (“Where a statute is not expressly made applicable to government, it is for the
12 courts to determine whether the Legislature intended it to apply to government.”).

13 There are two possible interpretations of “other organizations of persons” under 4 CMC
14 section 5104(g); it represents either: (1) organizations similar to that of natural persons,
15 corporations, firms, partnerships and joint stock companies (as contended by Defendants) or
16 (2) other classes of consumers. Accepting Defendant’s interpretation, the Commonwealth
17 could not be construed as a “person” because the Commonwealth is indeed manifestly
18 dissimilar from the Statute’s preceding examples of “persons.” The Commonwealth may be
19 identified as a government entity, municipality, or sovereign, which clearly does not compare
20 to corporations, firms, partnerships, or joint stock companies.

21 However, Defendants fail to offer any legislative history, policy considerations or other
22 support for the alleged legislative intent to preclude the Commonwealth, the CNMI’s most
23 prominent consumer, from seeking a remedy under the CPA. Defendants merely cite cases in
24 other jurisdictions, particularly in California, that have concluded government entities do not
25 fall within the definition of “persons” in similarly-worded statutes. However, the California
26 Supreme Court has held that governments may be implicitly included in a statutory definition
27 of “person,” despite the absence of any express inclusion, under certain circumstances. *Wells*
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1 v. *One2One Learning Foundation*, 141 P.3d 225, 237 (Cal. 2006). Specifically, the Court
2 found:

3 [G]overnment agencies are excluded from the operation of
4 general statutory provisions only if their inclusion would
5 result in an infringement upon sovereign governmental
6 powers. . . . Pursuant to this principle, governmental
7 agencies have been held subject to legislation which, by its
8 terms, applies simply to any ‘person.’

9 *Id.* (citing cases and internal quotations omitted).

10 Under this rule, the California Supreme Court held that a statute, which precluded a
11 “person, firm or corporation” from gaining prescriptive title to real property, applied to
12 governmental agencies. *Los Angeles v. San Fernando*, 537 P.2d 1250, 1307 (Cal. 1975). Also,
13 a municipal water district was held subject to a statute that provided “any person, firm,
14 partnership, association, corporation, organization, or business trust” may be required to move
15 its pipeline. *State of California v. Marin Mun. W. Dist.*, 111 P.2d 651, 654-55 (Cal. 1941).
16 “Public entities have been held to be ‘persons’ in other contexts as well.” *Notrica v. State*
17 *Comp. Ins. Fund*, 70 Cal. App. 4th 911, 941 (Cal. Ct. App. 1999) (citing cases).

18 Defendants’ reference to several cases reaching opposite conclusions as the
19 aforementioned cases highlights the ambiguity in the interpretation of “persons” within
20 different statutory schemes. Fortunately, the CNMI legislature provided the courts guidance in
21 construing “any ambiguity in any provision of this article . . . in favor of the consumer.” 4
22 CMC § 5123(a). Construing the definition of “person” in favor of the consumer requires
23 conferring standing upon the Commonwealth to seek redress as an aggrieved consumer. Such
24 an interpretation does not contravene any legislative intent as gathered by the language,
25 structure and history of the CPA. *Cf. Wells*, 141 P.3d at 238. On the contrary, permitting the
26 Commonwealth to bring an action under the CPA in these circumstances would *strengthen* the
27 legislative intent to “[p]rohibit practices by merchants which deceive, mislead, or confuse the
28 consumer,” 4 CMC § 5102(b)(1), and “[p]rovide a mechanism for resolving disputes between
merchants and consumers.” 4 CMC § 5102(b)(4).

1 In light of the obvious purpose of the CPA to protect consumers, the Court interprets
2 the examples of “persons” and the provision of “other organizations of persons” as
3 representing classes of consumers, which may include the Commonwealth in certain
4 circumstances such as these. To Deny the Commonwealth the opportunity to seek redress as
5 an aggrieved consumer would improperly undermine other provisions in the CPA that call for
6 the protection of consumers. *See In re Estate of Rofag*, 2 NMI 18, 29 (1991) (“One statutory
7 provision should not be construed to make another provision inconsistent or meaningless.”).

8 The CNMI Supreme Court similarly interpreted seemingly vague or contradictory
9 statutory language in such a way as to support the statute’s purpose in *N. Marianas College v.*
10 *Civil Serv. Comm’n*, 2006 MP 4. There, the Court held that the Northern Marianas College
11 (“NMC”) had standing as “a person” to seek judicial review of an agency’s administrative
12 decision even though the express language of 1 CMC sections 9112(b)⁴ and 9101(j)⁵ precluded
13 agencies, such as the NMC, from seeking judicial review. *N. Marianas College*, 2006 MP 4 ¶
14 16. The Court construed the NMC as “a person” based on “the principles of statutory
15 construction and [] policy considerations.” *Id.* ¶ 19. Specifically, 1 CMC section 9101(i)
16 expressly included agencies as “an aggrieved party” under the statutory scheme. *N. Marianas*
17 *College*, 2006 MP 4 ¶ 17. Also, granting the NMC standing under the circumstances furthered
18 the statutory purpose of 1 CMC sections 9101 et seq. *See id.* ¶ 19 (citing *Commonwealth v.*
19 *Chong*, 2005 MP 6 ¶ 17).

20 Similarly, here, the principles of statutory construction and policy considerations favor
21 granting the Commonwealth standing to sue as a “person” under the CPA. The
22 Commonwealth, as an alleged defrauded consumer, is an aggrieved party within the statutory
23 scheme of the CPA. Also, conferring standing upon the Commonwealth furthers the purpose
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26 ⁴ Subsection (b) of 1 CMC § 9112 provides: “A person suffering legal wrong because of agency action, or
27 adversely affected or aggrieved by agency action, is entitled to judicial review of the action within 30 days
28 thereafter in the Commonwealth Superior Court.”

⁵ The term “person” referenced in 1 CMC § 9112(b) is defined as “an individual, partnership, corporation,
association, clan, lineage, governmental subdivision, or public or private organization of any character *other than*
an agency.” 1 CMC § 9101(j) (emphasis added).

1 of the CPA in combating fraud in the marketplace. Therefore, the Court finds that the
2 legislature intended to include the Commonwealth, the CNMI's largest consumer, within the
3 class of persons empowered to bring an action under the CPA.

4 **B. POLICY CONSIDERATIONS**

5 "In interpreting a statute, [the court is] charged with the duty to consider the provisions
6 of the whole law, its object, and its policy." *Erienet, Inc. v. Velocity Net*, 156 F.3d 513, 516
7 (3d Cir. 1998) (citations omitted); *see also Weil Ceramics and Glass, Inc. v. Dash*, 878 F.2d
8 659, 671 (3d Cir. 1989) ("A statute's meaning should be evaluated in context of 'language and
9 design of the statute as a whole.'"). As discussed above, the object and design of the CPA is to
10 protect consumers from fraud and deception in commercial transactions, and to promote an
11 orderly market environment.⁶ The Commonwealth engaged in a commercial transaction as a
12 consumer and was allegedly deceived by Defendants, resulting in a large amount of damages.
13 The Commonwealth's cause of action against Defendants aligns perfectly within the object,
14 policy and design of the CPA. *See Cook County v. United States ex rel. Chandler*, 538 U.S.
15 119, 128 (2003) ("Municipalities may not be susceptible to every statutory penalty, but that is
16 no reason to exempt them from remedies that sensibly apply.") (citing cases); *Cf. J. Angell &*
17 *S. Ames, A Treatise on the Law of Private Corporations* Aggregate § 4 (3d ed. 1846) ("The
18 construction is, that when 'persons' are mentioned in a statute, corporations are included if
19 they fall within the general reason and design of the statute.").

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22 ⁶ The purposes of the CPA include:

- 23 (1) Prohibit practices by merchants which deceive, mislead, or confuse the
24 consumer.
- 25 (2) Clarify the relationship between consumers and merchants and their
26 respective rights and obligations.
- 27 (3) Require or restrict commercial practices in order to further an orderly market
28 environment.
- (4) Provide a mechanism for resolving disputes between merchants and
consumers.
- (5) Provide civil and criminal remedies and penalties for violations of this
article.

4 CMC § 5102(b).

1 During oral argument, Defendants surmised that the legislature purposely omitted the
2 Commonwealth from the protection under the CPA because a sovereign does not need the
3 same protection as other consumers and a sovereign does not participate in the market like
4 other consumers. Such reasons may be persuasive in other jurisdictions that have denied
5 standing to government entities under similarly-worded statutes. However, as noted by
6 Plaintiff at oral argument, the CNMI is unique in that the Commonwealth is the most
7 prominent consumer in this jurisdiction. Denying the Commonwealth's ability to bring suit
8 against defrauding merchants could have an exceptionally grave, negative impact on the
9 CNMI's market stability. Furthermore, the Commonwealth may be just as susceptible to fraud
10 and misrepresentation as the average consumer in many cases, particularly here where the
11 transaction involved a highly technical piece of equipment. *Cf. Cook County*, 538 U.S. at 129
12 (holding that local governments are subject to the False Claims Act, which provides for civil
13 penalties against "any person" who engages in fraud because "local governments are . . . no
14 less able than individuals or private corporations to . . . exploit the exercise of the federal
15 spending power.").

16 The CPA's open-ended, catch-all provision in the definition of "person" leaves the
17 issue open to interpretation as to whether the Commonwealth is included. In reviewing all the
18 provisions of the CPA and its purposes, the Court finds that the most consistent interpretation
19 of "person" in 4 CMC section 5104(g) is that the legislature intended to include the
20 Commonwealth within its application. Precluding the Commonwealth from the protection of
21 the CPA would undermine the statutory objective to strengthen the fight against consumer
22 fraud. *See Commonwealth Ports Auth. v. Hakubotan Saipan Enters., Inc.*, 2 NMI 212, 224
23 (1991) ("A court should avoid interpretations of a statutory provision which would defy
24 common sense or lead to absurd results."); *Cf. Cook County*, 538 U.S. at 133-34 ("It is simply
25 not plausible that Congress intended to repeal municipal liability *sub silentio* by the very Act it
26 passed to strengthen the Government's hand in fighting false claims.") (citation omitted).
27 Furthermore, Defendants can point to no legislative history or binding precedent contrary to
28 the Order in proving that it represents "clear error" to warrant reconsideration.

