



By the order of the court, Judge David A Wiseman

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FOR PUBLICATION



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

MARY ANN FRINK,)	CIVIL CASE NO. 11-0217
)	
Plaintiff,)	
)	
vs.)	
)	ORDER DENYING DEFENDANTS’
CNMI, CNMI DEPARTMENT OF)	MOTION FOR JUDGMENT ON THE
PUBLIC LANDS and CNMI)	PLEADINGS
DEPARTMENT OF PUBLIC WORKS)	
)	
Defendants.)	
)	
)	

I. INTRODUCTION

THIS MATTER came for hearing on January 5, 2012, at 1:30 p.m. in Courtroom 223A. At the hearing, the parties presented arguments regarding the Commonwealth of Northern Mariana Islands (“CNMI”), CNMI Department of Public Lands, and CNMI Department of Public Works (“Defendants”) motion for judgment on the pleadings. Defendants were represented by Assistant Attorney General Michael A. Stanker. Plaintiff was represented by Robert T. Torres, Attorney at Law.

Defendants have moved for judgment on the pleadings pursuant to Commonwealth Rule of Civil Procedure 12(c). After considering oral and written arguments, the Court finds Plaintiff has pled sufficient facts to support her claims. For the reasons discussed below, the Court **DENIES** Defendants’ motion for judgment on the pleadings.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 On August 31, 2011, Plaintiff filed a complaint against Defendants, seeking relief based on the
3 following claims: (1) taking of property for a public purpose without just compensation in violation of
4 Plaintiff's constitutional rights; (2) breach of contract; (3) promissory estoppel; and (4) unjust enrichment.
5 Plaintiff's claims are based on her allegation that Defendants effectuated two takings of her property in 1976
6 and 1995. Plaintiff claims Defendants promised, commencing well before 2000 and on numerous occasions
7 thereafter, to compensate her for the takings, and failed to do so.

8 On September 23, 2011, Defendants filed an answer, largely denying Plaintiff's allegations, and
9 raising several affirmative defenses. On November 14, 2011, Defendants moved for judgment on the
10 pleadings pursuant to Commonwealth Rule of Civil Procedure 12(c), alleging the following: (1) Plaintiff
11 cannot assert a takings claim under the Fifth and Fourteenth Amendments of the U.S. Constitution, but must
12 bring the claim under 42 U.S.C. § 1983; (2) Plaintiff's claims are barred by the statute of limitations; and
13 (3) no contract exists between Plaintiff and Defendants.

14 On November 28, 2011, Plaintiff filed an opposition to Defendants' motion for judgment on the
15 pleadings, alleging (1) her claim under the U.S. and CNMI Constitutions is proper and it is unnecessary to
16 bring her claim under 42 U.S.C. § 1983; and (2) her claims are not barred by the statute of limitations
17 because the injury occurred in 2010 when the parties agreed on a compensation amount; a 20-year statute
18 of limitations applies pursuant to 7 CMC § 2502(a)(2); and equitable tolling applies.

19 On December 6, 2011, Defendants filed a reply to Plaintiff's opposition, arguing (1) Plaintiff has not
20 cited any authority to support her position that she may bring a direct cause of action under the U.S. and
21 CNMI Constitutions and further, Plaintiff is required to bring such a claim pursuant to 42 U.S.C. § 1983;
22 and (2) the statute of limitations bars Plaintiff's claims because the cause of action accrues at the time of the
23 taking, inverse condemnation claims are governed by the six-year statute of limitations imposed by 7 CMC
24 § 2505, and equitable tolling is inapplicable.
25

1 **III. LEGAL STANDARD**

2 Com. R. Civ. P. 12(c) states as follows:

3 After the pleadings are closed but within such time as not to delay the trial, any party may
4 move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters
5 outside the pleadings are presented to and not excluded by the court, the motion shall be
6 treated as one for summary judgment and disposed of as provided in Rule 56, and all parties
7 shall be given reasonable opportunity to present all material made pertinent to such a motion
8 by Rule 56.

9 Com. R. Civ. P. 12(c).

10 “The standard to be applied on a Com. R. Civ. P. 12(c) motion based on all the pleadings is identical to that
11 used on a Com. R. Civ. P. 12(b)(6) motion based solely on the complaint. *Cepeda v. Hefner*, Civ. Nos. 88-
12 0682 & 88-0705 (NMI Super. Ct. Nov. 7, 1990) (Decision and Order at 6-7); *see generally* Charles A.
13 Wright et al., 5C Federal Practice and Procedure § 1368 (3d ed. 1998). A Rule 12(b)(6) motion tests the
14 legal sufficiency of the claims asserted in a complaint. *Camacho v. Micronesian Dev. Co.*, 2008 MP 8 ¶ 10.
15 Under NMI R. Civ. P. 12(b)(6), a complaint or pleading is subject to dismissal where it lacks a cognizable
16 legal theory or fails to allege facts constituting a cognizable legal theory. *See Bolain v. Guam Publications,*
17 *Inc.*, 4 NMI 176 (1994). To be sufficient, a claim must contain “either direct allegations on every material
18 point necessary to sustain a recovery on any legal theory . . . or contain allegations from which an inference
19 fairly may be drawn.” *In re Adoption of Magofna*, 1 NMI 449, 454 (1990).

20 In deciding a motion to dismiss under Rule 12(b)(6), the court must assume as true all factual
21 allegations in the challenged pleading and construe them in a light most favorable to the non-moving party.
22 *Cepeda v. Hefner*, 3 NMI 121, 127-28 (1992); *Govendo v. Marianas Pub. Land Corp.*, 2 NMI 482, 490
23 (1992). A court, however, “has no duty to strain to find inferences favorable to the non-moving party.”
24 *Cepeda*, 3 NMI at 127 (citing *In re Magofna*, 1 NMI at 454). Dismissal is improper unless the claimant can
25 prove no set of facts in support of his claim which entitle him to relief. *Camacho*, 2008 MP ¶ 10 (quoting

1 *Govendo*, 2 NMI at 283).

2 **IV. DISCUSSION**

3 On November 28, 2011, Defendants filed this motion for judgement on the pleadings arguing that
4 Plaintiff's claims fail as a matter of law and therefore should be dismissed. The Court will examine each
5 argument made by Defendants to determine if Plaintiff has properly pled each cause of action.

6 **A. PLAINTIFF IS NOT REQUIRED TO BRING HER CLAIM UNDER 42 U.S.C. § 1983**

7 Defendants assert that a person complaining of a violation of a constitutional right is required to
8 bring such a claim under 42 U.S.C. § 1983¹, including takings claims. Defendants argue that because
9 Plaintiff's claim fails to reference 42 U.S.C. § 1983, her claim fails as a matter of law. Defendants further
10 argue that even if Plaintiff brings her action pursuant to section 1983, her claim will also fail because
11 Defendants are not persons who may be sued under section 1983. Defendants support this argument with
12 a Federal Appendix case which held taking claims must be brought under section 1983, but that the state
13 in that case could not be sued under the statute because it did not fall under the class of persons defined by
14 the statute.

15 Plaintiff argues she may bring her claim directly under the U.S. and CNMI Constitutions because
16 the Takings Clause of the Fifth Amendment is self-executing and statutory recognition is unnecessary.
17 Defendants argue that the authority Plaintiff asserts as support for her position is actually unresponsive of
18 her position. Defendants reassert that modern U.S. jurisprudence requires inverse condemnation claims to
19 be brought under section 1983. Defendants cite a case where the Commonwealth Supreme Court barred an
20 individual from bringing a suit for violation of a constitutional right because the individual failed to bring
21 his claim under section 1983. *Sablan v. Tenorio*, 4 NMI 351, 361 (1996). Defendants note that in that case,

22 _____
23 ¹Section 1983 provides, in relevant part:

24 Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory
25 or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person
within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the
Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper
proceeding for redress.

1 the Commonwealth Supreme Court supported its holding with the Ninth Circuit case of *Azul Pacifico, Inc.*
2 *v. City of Los Angeles*, which held that a plaintiff can only bring just compensation claims under the Fifth
3 and Fourteenth Amendments pursuant to section 1983.

4 “Federal law requires that ‘a litigant complaining of a violation of a constitutional right . . . utilize
5 42 U.S.C. § 1983.’” *Sablan*, at 361 (quoting *Azul-Pacific, Inc. v. City of Los Angeles*, 973 F.2d 704, 705 (9th
6 Cir. 1992) (holding plaintiff had no cause of action directly under the Takings Clause of the U.S.
7 Constitution, but was required to file a claim under 42 U.S.C. § 1983); *Commonwealth v. Lot No. 353 New*
8 *G*, 2012 MP 6 ¶9 (alleging a violation of federal constitutional rights claiming a certain statute violated the
9 Takings Clause). The U.S. Supreme Court, however, has established that the just compensation clause of
10 the Fifth Amendment is self-executing: “the right to recover just compensation . . . [i]s guaranteed by the
11 Constitution” and “[s]tatutory recognition is not necessary.” *First English Evangelical Lutheran Church*
12 *v. County of Los Angeles*, 482 U.S. 304, 315 (1987) (quoting *Jacobs v. United States*, 290 U.S. 13, 16
13 (1933)); *Norita v. CNMI*, Civ. No. 98-1310 (NMI Super. Ct. June 18, 2002) (Order Denying
14 Commonwealth’s Cross-Motion for Summary Judgment) (finding a judicial remedy for a takings claim was
15 grounded in the Constitution itself). The Commonwealth regularly hears takings claims brought against
16 Commonwealth government agencies that are not brought pursuant to section 1983. *See generally Camacho*
17 *v. CNMI Dep’t of Public Works*, Civ. No. 04-0238 (NMI Super. Ct. Feb. 21, 2006) (Order Granting
18 Plaintiff’s Motion for Summary Judgment); *Norita v. CNMI*, Civ. No. 98-1310 (NMI Super. Ct. June 18,
19 2002) (Order Denying Commonwealth’s Cross-Motion for Summary Judgment); *Taisacan v. Marianas*
20 *Public Land Corp.*, Civ. No. 97-0807 (NMI Super. Ct. Nov. 10, 1999) (Decision and Order) (finding for the
21 plaintiff in her takings claim but denying her due process claim under 42 U.S.C. § 1983); *Pua v. Marianas*
22 *Public Land Corporation*, Civ. No. 92-1027 (NMI Super. Ct. Aug. 8, 1996) (Order Granting Defendant’s
23 Motion to Dismiss).

24 Plaintiff is not bringing her claim pursuant to federal law, nor is she claiming a violation of a federal
25 constitutional right; Plaintiff, rather, is bringing her claim against a Commonwealth government agency.

1 Because Plaintiff is not bringing a federal claim nor alleging violation of a federal constitutional right, she
2 is not required to bring her claim under section 1983. Commonwealth case law illustrates that individuals
3 bringing takings claims against Commonwealth government agencies may do so either directly under U.S.
4 and NMI Constitutions or other applicable statutes. This Court therefore finds Plaintiff has alleged sufficient
5 facts to support her claim of inverse condemnation and has done so according to a cognizable legal theory,
6 assuming as true all factual allegations in her pleading and construing them in a light most favorable to the
7 non-moving party.

8 **B. PLAINTIFF HAS PLED SUFFICIENT FACTS TO SUSTAIN HER CLAIM THAT THE**
9 **STATUTE OF LIMITATIONS HAS NOT YET EXPIRED**

10 Defendants argue Plaintiff's claims are barred by the statute of limitations. Defendants claim the
11 applicable statute of limitations is that provided by 7 CMC § 2505², which sets out a six-year statute of
12 limitations for claims for monetary compensation related to land. Defendants argue the twenty-year statute
13 of limitations provided by 7 CMC § 2502(a)(2)³ is inapplicable to a takings claim. Defendants further argue
14 Plaintiff's claims are between 16 and 35 years old, respectively, and should be dismissed with prejudice.

15 Plaintiff argues the injury occurred in 2010, when the parties agreed on an amount of compensation,
16 and not in 1976 and 1995. Plaintiff asserts the 20-year statute of limitations set out by 7 CMC § 2502(a)(2)
17 is applicable and further argues equitable tolling should apply.

18 Defendants argue Plaintiff's claims are barred because her cause of action accrued at the time of the
19 takings, which occurred in 1976 and 1995. Defendants claim Plaintiff fails to cite any on-point authority
20 that establishes that a cause of action accrues at the time of injury in a takings claim and that the U.S.

21 ²

All actions other than those covered in 7 CMC §§ 2502, 2503, and 2504 shall be commenced within six years
after the cause of action accrues or, in the case of actions brought by or on behalf of the former Saipan Credit
Union or its depositors, shareholders, investors, or guarantors on account of their interest therein, within 10
years after the cause of action accrues.

7 CMC § 2505.

24
25 ³"The following actions shall be commenced only within 20 years after the cause of action accrues: . . . (2) Actions for the
recovery of land or any interest therein." 7 CMC § 2502(a)(2).

1 Supreme Court has held that the statute of limitations begins to run when the government enters the property.
2 Defendants further claim that 7 CMC § 2505 and 6 TTC 305 have been held to set out the applicable
3 limitations period for actions that seek monetary compensation for government takings of land. Defendants
4 claim equitable tolling is inapplicable in this case because thus far there exists no Commonwealth precedent
5 regarding equitable tolling in cases such as the present case. Defendants cite Ninth Circuit authority which
6 Defendants claim holds that equitable tolling is only available to a party who is unaware of his or her cause
7 of action. Defendants claim equitable tolling is only applicable in extraordinary circumstances, and not in
8 cases of excusable neglect, as is the case with Plaintiff. Defendants further claim that even if equitable
9 tolling does apply, it only tolled the limitation period until 2000, when the government contacted Plaintiff
10 to begin the land acquisition process.

11 The Takings Clause of the Fifth Amendment to the U.S. Constitution states “nor shall private
12 property be taken for public use without just compensation.” U.S. Const. Amend. V. The Fifth Amendment
13 applies to the Commonwealth through the Covenant to Establish a Commonwealth of the Northern Mariana
14 Islands in Political Union with the United States of America. Covenant to Establish a Commonwealth of
15 the Northern Mariana Islands in Political Union with the United States of America. The NMI Constitution
16 also contains its own Takings clause which states that “[p]rivate property may not be taken without just
17 compensation. NMI Const. Art. XIII, § 2. A physical, permanent occupation of private property authorized
18 by the government constitutes a taking and requires just compensation. *Taisacan*, Civ. No. 97-0807 at 3.

19 The Commonwealth has acknowledged principles of equitable tolling, but only in narrow situations
20 where a civil plaintiff previously filed a claim in federal court and while that claim was pending, the statute
21 of limitations expired, preventing the claim from being filed in the Commonwealth Superior Court. *Pac.*
22 *Financial Corp. v. Sablan*, 2011 MP 19 n. 16. The Commonwealth Supreme Court, however, has held that
23 equitable tolling principles apply to the statutory redemption period in the Commonwealth and that while
24 no definitive test has emerged to govern its applicability, the following provides the general principles courts
25 have considered when exercising their inherent judicial authority:

1 Even where redemption is governed by statute, the time for redemption may be equitably
2 tolled under certain circumstances. “Numerous courts acknowledge inherent judicial
3 authority to toll statutory redemption periods upon a finding of fraud, oppression, or other
4 equitable circumstances” and “equitable tolling is appropriate when consistent with both the
5 purpose of the statute providing the cause of action and the purpose of the statute of
6 limitations.” In reaching a determination of whether equitable tolling should apply, courts
7 have considered prejudice to the opposing party, the existence of bad faith, fraud, or mistake,
8 and other circumstances as equity requires. (Citations omitted).

9 *Id.* at 21-22.

10 Equitable circumstances abound in this case. In 2000, the government confirmed to Plaintiff in a
11 letter that her property had been taken for public purposes and proceeding on this information, Plaintiff
12 signed a Memorandum of Understanding for Right-of-Way Acquisition and an Acknowledgment and
13 Authorization, prepared by Defendants. Based on these events, Plaintiff agreed to grant an immediate right
14 of entry and an irrevocable easement, to be converted into fee simple title upon conclusion of the land
15 compensation process. In 2003, the Marianas Public Land Authority indicated in its file on Plaintiff’s land
16 that title to one of the taken tracts was clear. In 2004, Marianas Public Land Authority attorney Mark S.
17 Smith recommended a land compensation offer be made to Plaintiff. In 2005, an amended Certification for
18 Acquisition on Plaintiff’s property was signed by then Governor Juan Babauta, acknowledging that there
19 were actually two separate takings of Plaintiff’s property in 1976 and in 1995. Also in 2005, the Right-of-
20 Way Branch of the Department of Public Works completed its Private Land Acquisition Summary
21 Worksheet on Plaintiff’s property. Plaintiff claims she exerted considerable efforts in an attempt to follow
22 up on the land compensation by traveling from her Arizona home to Saipan. Her attorney notified Marianas
23 Public Land Authority of Plaintiff’s efforts in a letter dated May 27, 2005. In May 2010, Plaintiff met with
24 then Governor Babauta regarding the land compensation and memorialized her request to be compensated
25 during this meeting in a letter dated May 21, 2010. In September 2010, Plaintiff claims that pursuant to her

1 request, the Department of Public Lands calculated that the total land compensation due to Plaintiff was due
2 approximately \$75,498.80. In January 2011, Plaintiff brought suit against the CNMI in the U.S. District
3 Court of the Northern Mariana Islands to obtain compensation to end the dispute. On March 21, 2011, the
4 District Court granted the government's motion to dismiss Plaintiff's complaint, holding that Plaintiff's
5 claim was not ripe, as she had not yet followed procedure for obtaining just compensation, by bringing an
6 inverse condemnation claim. Plaintiff thereafter filed the instant complaint on September 19, 2011.

7 Plaintiff has alleged facts indicating an arguably continuous course of conduct in attempting to
8 follow up on her request for land compensation. Even if the unverified claims of Plaintiff are found to be
9 untrue, and it is found that Plaintiff was inactive during the five years between 2005 and 2010, or that the
10 six-month gap between her claim in District Court was filed and the instant claim was filed was inexcusable
11 neglect, equitable tolling would have resulted in a standstill of not more than five years. Therefore, even
12 if the six-year statute of limitations does apply, as Defendants argue, Plaintiff's claims have not yet expired.

13 Plaintiff brings her claim pursuant to the Takings Clause, and equitable tolling comports with the
14 purpose of the Clause in ensuring the government does not take private property for public purpose without
15 just compensation. Plaintiff has pled facts indicating that she did not sleep on her rights in failing to assert
16 ownership, which comports with the purpose of the statute of limitations. Application of equitable tolling
17 would not prejudice Defendants as the government was made aware of Plaintiff's efforts to acquire
18 compensation, and Plaintiff voiced on more than one occasion the possibility that she might take legal
19 action. This Court finds the circumstances of this case cry out for equitable tolling and that Plaintiff has pled
20 sufficient facts to support her claim that equitable tolling should apply⁴.

21 **C. BREACH OF CONTRACT**

22 Plaintiff claims the Memorandum of Understanding for Right-of-Way Acquisition and the

23
24 ⁴Defendants argue the statute of limitations also bars Plaintiff's claims of promissory estoppel and unjust enrichment.
25 Because this Court has found Plaintiff has pled sufficient facts to withstand Defendants' statute of limitations defense, it finds Plaintiff's claims of promissory estoppel and unjust enrichment are not barred.

1 Acknowledgment and Authorization, proposed by Defendants and accepted by Plaintiff, the offer
2 recommended in November 2004, and the remaining documents on file collectively comprise a contract to
3 compensate Plaintiff for her property. Plaintiff argues the government made an offer which has been
4 documented in a writing stating the value to be paid, and the documents contain her signature and the
5 signatures of Commonwealth officials. Plaintiff claims the Department of Public Works and the Marianas
6 Public Land Authority breached the agreement by failing to compensate her.

7 Defendants claim the land compensation and acquisition process is minutely detailed in the Northern
8 Marianas Administrative Code, which details that all private property acquired by the Commonwealth must
9 be made pursuant to 2 CMC § 4712, 2 CMC § 4141, et seq. Defendants claim the process requires several
10 steps which include obtaining a certification by the governor of the public use or purpose for which the
11 CNMI is acquiring the land, issuance of a preliminary acquisition notice, surveying, appraisal, a written offer
12 to owner, a land compensation settlement agreement and a warranty deed conveying the property to the
13 CNMI government. Defendants argue that not all of these steps occurred in Plaintiff's case, including the
14 lack of a land compensation agreement or warranty deed. Defendants argue that although the
15 Commonwealth started the process, the process was not completed, therefore Plaintiff does not possess any
16 contract rights and her claim for breach of contract should be dismissed.

17 The essential elements of a contract are offer, acceptance, and consideration. Restatement (Second)
18 of Contracts § 17 (1981); *Isla Fin. Srvs. v. Sablan*, 2001 MP ¶ 13. NMIAC § 145-40-101(a) outlines the
19 acquisition process for private property acquired by the Commonwealth and sets forth steps for the
20 processing of such claims.

21 Plaintiff has pled facts indicating that the essential elements of a contract exist and that a contract
22 was formed between Plaintiff and Defendants. Plaintiff further claims the contract was breached.
23 Defendants' argument that Plaintiff has no contract rights because the acquisition process was not fully
24 completed is relevant to whether the land was properly acquired, but not relevant as to whether an
25 enforceable contract was formed. For example, one of the requirements for the acquisition process to be

1 completed is for the agreed compensation to be paid to the owner. NMIAC § 145-40-101(a)(9)(ii). The
2 failure of the government to pay the agreed compensation is not indicative of lack of an enforceable contract.
3 Defendants' argument that Plaintiff's claim must fail because the acquisition process was not completed is
4 therefore without merit. This Court finds Plaintiff has pled sufficient facts to support her claim of breach
5 of contract.

6 **V. CONCLUSION**

7 Assuming as true all factual allegations in the challenged pleading and construing them in the light
8 most favorable to Plaintiff, this Court finds Plaintiff has pled sufficient facts under cognizable legal theories.
9 Based on the foregoing, Defendants' Motion for Judgment on the Pleadings is **DENIED**. A status
10 conference is hereby scheduled on this matter for October 25, 2012, at 1:30 p.m. in Courtroom 223A.

11 **SO ORDERED this 12th day of October, 2012.**

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15 **David A. Wiseman, Associate Judge**