



E-FILED
CNMI SUPERIOR COURT
 E-filed: Nov 07 2012 03:59PM
 Clerk Review: N/A
 Filing ID: 47591473
 Case Number: 09-0523-CV
 N/A



FOR PUBLICATION

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

NIRANJAN MALLICK,

Plaintiff,

v.

**SAIPAN HWA RANG CORPORATION
 dba HONEYMOON MOTEL, and CHA
 YUNG SOON,**

Defendants.

CIVIL CASE NO. 09-0523

**ORDER GRANTING IN PART
 PLAINTIFF'S MOTION FOR
 SUMMARY JUDGMENT**

I. INTRODUCTION

THIS MATTER came before the Court on June 7, 2011 on a motion for summary judgment. Plaintiff was represented by Joe Hill, and Defendants were represented by Colin M. Thompson. Upon thorough review of the record and relevant law, the Court now renders this written decision.

II. FACTUAL AND PROCEDURAL BACKGROUND

In November of 2001 Niranjan Mallick ("Plaintiff") filed a claim with the Department of Labor ("DOL") based on alleged violations of the Non-Resident Worker's Act. (Compl. Ex. A.) On February 23, 2007 a hearing was held before the DOL.¹ Notice for the 2007 hearing was evidently given by publication (Compl. Ex. B.) Defendant failed to appear and the DOL found for the Plaintiff. The DOL Administrative Order ("AO") provided that the complainant is authorized to seek a transfer employer

¹ Between November 2001 and February 23, 2007 the record indicates that this case was scheduled for mediation in the Division of Labor, Department of Labor and Immigration on November 28, 2001 (Thompson Decl. Ex. A) and then rescheduled for December 10, 2001 (Thompson Decl. Ex. B). On May 29, 2003, Defendants' attorney of record, Danilo Aguilar was personally served with the complaint, notice of appearance for investigation and demand for production of documents. (Thompson Decl. Ex. C.) It is unclear from the record why the hearing was set nearly four years later.

By Order of the Court, Judge Joseph N. Camacho

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 and is awarded damages of \$7660.84 for unpaid wages and overtime,² and \$55.00 for illegal
2 deductions.³ The AO required Defendants to pay within twenty-one days and informed Defendant of the
3 right to appeal within fifteen days—Defendants apparently⁴ did neither.

4 On December 21, 2009 Plaintiff filed a Summons and Complaint against Defendants Saipan
5 HWA Rang Corporation dba Honeymoon Motel (“SHRC”) and Cha Yung Soon (collectively
6 “Defendants”) in this Court claiming Defendants have not paid on the judgment in accordance with the
7 AO and seeking to enforce the judgment. Plaintiff also seeks pre-judgment and post-judgment interest,
8 attorney’s fees and costs. The Complaint in this case is accompanied by the labor complaint which was
9 filed with the DOL (Compl. Ex. A) and the AO (Compl. Ex. B). On February 3, 2010 Defendant filed
10 an answer, asserting among other defenses that Plaintiff lacks subject matter jurisdiction and lacks
11 standing to bring forth an enforcement action under the Non-Resident Worker’s Act.

12 On December 24, 2010 Plaintiff filed his Motion for Summary Judgment (“Motion”), arguing
13 that the AO should be given res judicata effect and therefore there are no genuine issues of material fact
14 and Plaintiff is entitled to judgment as a matter of law. The Motion is supported by Plaintiff Niranjan
15 Mallic’s Declaration in Support of Motion for Summary Judgment (“Mallic Decl.”).

16 On May 17, 2011 Defendant filed an opposition to the Motion (“Opposition”). The Opposition
17 is supported by the Declaration of Colin M. Thompson in Support of Opposition to Motion for Summary
18 Judgment (“Thompson Decl.”) indicating that there were three notices given in the labor case which
19 Plaintiff had in his records. Attached to the declaration are the three referenced notices: (1) a Notice of
20 Hearing in Labor Case No. 01-175 dated November 14, 2001, noticing a November 28, 2001 mediation

22 ² Pursuant to 4 CMC §§ 4436(c) and 9222 respectively.

23 ³ Pursuant to 4 CMC 4434(c).

24 ⁴ Plaintiff claims Defendants have not paid on the judgment and there is no evidence to the contrary. Defendant admits that no appeal was taken. (Answer 2;8).

1 hearing date (Thompson Decl. Ex. A); (2) a Notice of Hearing (Rescheduled) in the same case dated
2 December 3, 2001, noticing a December 10, 2001 mediation hearing (Thompson Decl. Ex., B); and
3 Proof of Service of a copy of the Notice of Appearance for Investigation dated May 28, 2003; Demand
4 for Production of Document dated May 28, 2003; and a copy of the written complaint dated November
5 1, 2001 (Thompson Decl. Ex. C), which was delivered to the Law offices of Attorney Danilo Aguilar on
6 May 29, 2003.

7 The Opposition is further supported by the Declaration of Chang, Yoon Suk (“Chang”) in
8 Support of Defendant’s Opposition for Plaintiff’s Motion for Summary Judgment (“Chang Decl.”).
9 Chang, the predecessor in interest of Cha Yung Soon, (“Cha”) one of the original named defendants in
10 the case, declares the following: he is the president and Treasurer for the SHRC; in the year 2006 and
11 before, his mother Cha was the President and Majority shareholder of SHRC; SHRC hired Danilo
12 Aguilar to represent it in the labor case; Cha was not in Saipan during the 2007 hearing; Cha died in
13 Korea in July 14, 2007; Chang believes that neither SHRC nor Cha received actual notice of the 2007
14 hearing. Chang also asserts that his review of SHRC documents indicates that payments were made to
15 the Plaintiff for wages during the time for which he claimed to the DOL that he was not paid. The
16 declaration is supported by (1) the annual reports for SHRC for the years 2006 and 2010 (Chang Decl.
17 Ex. A); a copy of medical treatment in Korea for 2006 and 2007, written in Korean without an English
18 translation (Chang Decl. Ex. B); (3) an Order and Final Judgment of Distribution in the Superior Court
19 indicating that Chang inherited his mother’s shares in SHRC (Chang Decl. Ex. C); and (4) copies of
20 checks and cash receipts/ledger entries indicating payment for wages to Plaintiff from March 2, 2001 to
21 August 2001 (Chang Decl. Ex. D).

22 On May 27, 2011 Plaintiff filed his reply urging the Court to enforce the DOL judgment.
23 Plaintiff argues that (1) Defendant’s arguments are irrelevant; (2) notice should have been raised on
24 appeal to the DOL; therefore, Defendants failed to exhaust their administrative remedies; and (3) in any

1 case Defendant’s newly raised defenses regarding the sufficiency of the notice and payment of wages
2 which formed the basis of the DOL claim are both waived because they were not raised in the answer.

3 **III. LEGAL STANDARD**

4 The Court must determine whether Plaintiff is entitled to summary judgment. A movant is
5 entitled to summary judgment where “the pleadings, depositions, answers to interrogatories, and
6 admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any
7 material fact. . . .” NMI R. Civ. P. 56(c). The moving party bears both the initial and the ultimate
8 burden of establishing its entitlement to summary judgment. *Furuoka v. Dai-Ichi Hotel (Saipan), Inc.*,
9 2002 MP 5 ¶ 24. If a moving party is the plaintiff he or she must prove that the undisputed facts
10 establish every element of the presented claim. *Id.*

11 Should the moving party satisfy its initial burden, the nonmoving party must then respond by
12 establishing that a genuine issue of material fact exists in order to withstand the motion. *Id.* In
13 shouldering its burden the opposing party may not simply rely upon the pleadings but must tender
14 evidence of specific facts in the form of affidavits, and/or admissible evidence. NMI R. Civ. P. 56(e);
15 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, n. 11 (1986). A disputed fact is
16 considered material “if its determination may affect the outcome of the case.” *Triple J Saipan, Inc. v.*
17 *Agulto*, 2002 MP 11 ¶ 8 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986)). In
18 considering the motion, the Court views facts and inferences in the light most favorable to the non-
19 moving party. *Aplus Co. v. Niizeki Int’l Saipan Co.*, 2006 MP 13 ¶ 10. Where no genuine issue as to
20 any material fact exists, the movant is entitled to judgment as a matter of law. NMI R. Civ. P. 56(c).
21 With these principles in mind the Court turns to the issues in the case.

22 **IV. DISCUSSION**

23 Plaintiff styled his claim as an *enforcement action*, thus, the Court initially addresses its
24 authority to enforce an administrative order from the DOL.

1 **A. THE COURT HAS AUTHORITY TO ENFORCE THE DOL JUDGMENT**

2 The Superior Court has original jurisdiction over all civil actions in law and equity. 1 CMC §
3 3202. The Court may enforce money judgments through a writ of execution or an order in aid of
4 judgment. 7 CMC §§ 4101, 4203, 4205. This Court’s enforcement authority extends to judgments from
5 the courts of the United States and other foreign judgments. *See* 7 CMC §§ 4402, 4403. This general
6 authority supports the Court’s power to enforce administrative orders absent authority to the contrary.⁵

7 The DOL regulations are codified under Title 80 of the Northern Marianas Islands
8 Administrative Code (“NMIAC”). Title 80 does not explicitly provide for an enforcement action in the
9 Superior Court although NMIAC § 80-20.1-438, entitled “Orders and Relief” contemplates enforcement
10 of DOL judgments by the Superior Court. Specifically, NMIAC § 80-20.1-438(n), provides:

11 Referral to the Commonwealth Superior Court.

12 If an order including an award of money damages is not paid pursuant
13 to the terms of the order, the Administrative Hearing Office shall
14 provide the prevailing party with instructions for filing with the
Commonwealth Superior Court in order to enforce the administrative
order.

15 The DOL regulations are silent as to any agency-level enforcement procedure for claimants who
16 succeed in obtaining a judgment at the DOL, but for whatever reason fail to receive the award. The
17 Administrative Procedure Act (“APA”), codified at 1 CMC §§ 9101-9115, does not provide a procedural
18 mechanism to enforce a money judgment at the agency level. Given that there does not appear to be *any*
19 method of enforcement at the agency level, this Court’s authority to enforce the DOL’s judgment cannot
20

21
22
23 ⁵ Plaintiff marshals 3 CMC § 4950 in support of his argument for enforcement. This section, which became effective January
24 1, 2008, allows an employee to bring a direct action in the Superior Court for the payment of unpaid wages against his/her
employer. 3 CMC § 4950. However, the section does not strictly apply here, where the Plaintiff is not bringing an original
action but seeking enforcement of the DOL’s judgment.

1 be inconsistent with the APA or DOL regulations.⁶ Consequently this Court has the authority to enforce
2 the AO.

3 **B. PLAINTIFF MEETS HIS INITIAL BURDEN AS TO LIABILITY**

4 Plaintiff asks the Court to give res judicata effect to the DOL’s Administrative Order, and grant
5 summary judgment on that basis.

6 Res judicata “[s]tands for the proposition that once a valid judgment has been entered, the parties
7 may not relitigate those claims actually decided or which should have been brought.” *Bauer v. Larry L.*
8 *Hillblom Found., Inc. (In re Estate of Hillblom)*, 2011 MP 5, ¶ 20 (citation and quotation marks
9 omitted). Res judicata generally applies to administrative orders, with some exceptions. *In re Estate of*
10 *De Castro*, 2009 MP 3, ¶ 24 (citation and quotation marks omitted).

11 Res judicata or “claim preclusion”⁷ is an affirmative defense, and unlike collateral estoppel,⁸ is
12 not generally used offensively. NMI R. Civ. P. 8(c) (describing res judicata as an affirmative defense);
13 *Ultramar America, Ltd. v. Dwelle*, 900 F.2d 1412, 1416 n. 6 (9th Cir. 1990) (noting that while collateral
14 estoppel is sometimes used offensively, res judicata is typically an affirmative defense). Plaintiffs
15 ordinarily do not attempt to invoke res judicata offensively because under principles of res judicata,
16 which incorporate the common law doctrine of merger,⁹ invocation of the doctrine would have the

17
18 ⁶ By comparison under Title VII, “complainants who prevail in the administrative process but who--for whatever reason--fail
19 to receive their promised remedy, may sue to enforce the final administrative disposition.” *Scott v. Johanns*, 409 F.3d 466,
469 (D.C. Cir. 2005).

20 ⁷ Res judicata refers to two related preclusive doctrines, claim preclusion, sometimes called *res judicata* and issue preclusion
21 sometimes called *collateral estoppel*. *Del Rosario v. Camacho*, 2001 MP 3 ¶ 62; *Santos v. Santos*, 3 NMI 39, 48 (1992)
(using the term *res judicata* as a synonym for claim preclusion); *Migra v. Warren City School District Bd. of Educ.*, 465 U.S.
22 75, 77 n.1 (1984) (noting that res judicata is a broad term that encompasses both claim preclusion and issue preclusion also
referred to by the terms res judicata and collateral estoppel respectively).

23 ⁸ Collateral estoppel may be used offensively against a defendant who previously litigated the issue against a different
24 plaintiff. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 329 (1979).

⁹ Res judicata incorporated the common law doctrines of merger and bar. *In re Estate of Camacho*, 4 NMI 22, 25 (1993)
(explaining res judicata with reference to the Restatement sections for the doctrine of merger and bar); *St. Paul Mercury Ins.*
Co. v. Williamson, 224 F.3d 425, 436 (5th Cir. 2000) (“Res judicata incorporates the doctrines of merger and bar . . .” The

1 practical effect of precluding the plaintiff’s own claim. *Santos v. Santos*, 3 NMI 39, 48 (1992) (“[Under
2 res judicata the] judgment puts an end to the cause of action, which cannot again be brought into
3 litigation between the parties upon any ground whatever.”). Moreover, in such a situation the plaintiff
4 already prevailed on the claim.¹⁰ The common law doctrine of merger provides:

5 When a valid and final personal judgment is rendered in favor of the
6 plaintiff:

7 (1) The plaintiff cannot thereafter maintain an action on the
8 original claim or any part thereof, although he may be able to maintain
9 an action upon the judgment; and

10 (2) In an action upon the judgment, the defendant cannot avail himself
11 of defenses he might have interposed, or did interpose, in the first
12 action.

13 Restatement (Second) Judgments, § 18 (1982). Accordingly, under the principles of the doctrine of
14 merger, the original claim has been extinguished and this claim is properly considered an enforcement
15 action upon the DOL judgment.

16 To prevail on an action for enforcement, Plaintiff must show that there is a judgment which has
17 not been paid. Agency decisions enjoy a presumption of regularity. *Estate of Vicente S. Muna v.*
18 *Commonwealth*, 2000 MP 2 ¶ 13 (noting that “administrative adjudications enjoy a presumption of
19 regularity.”). Here, the DOL entered judgment in Plaintiff’s favor based on the evidence and record
20 before it and that determination is entitled to a presumption of regularity. It is undisputed that the
21 Defendants have not paid on the judgment, although based on the AO they were required to do so within

22 doctrine of merger precludes a plaintiff from maintaining an action on the original claim after a final judgment. Restatement
23 (Second) of Judgments, § 18 (1982). Once judgment is entered, the original claim ceases to exist and remaining rights merge
24 into the judgment. *Id*; see also e.g., *California Empl. Dev. Dep’t v. Taxel (In re Del Mission)*, 98 F.3d 1147, 1150 (9th Cir.
1996).

¹⁰ Unlike issue preclusion, claim preclusion requires an identity of parties or privity—there would be no reason for the same plaintiff to bring the same claim again, unless in an attempt to get a more favorable result the second time around. That is exactly why the doctrine is defensive and intended to bar that possibility. See *Estate of Hillblom*, 2011 MP 5 at ¶ 20 (discussing the doctrine of res judicata); *Blonder-Tongue Lab. v. Univ. of Ill. Found.*, 402 U.S. 313, 323-24 (1971) (“Res judicata applies whenever there is ‘(1) an identity of claims, (2) a final judgment on the merits, and (3) identity or privity between parties.’”); see also Restatement (Second) Judgments § 19 (embodying the common law doctrine of bar).

1 twenty-one days. Consequently, Plaintiff is entitled to summary disposition as to liability unless
2 Defendant can show a genuine issue of fact material to the claim.

3 **C. DEFENDANTS FAIL TO MEET THEIR BURDEN TO RAISE A GENUINE ISSUE OF**
4 **MATERIAL FACT**

5 In order to withstand the Motion Defendant must show genuine issues of material fact suitable
6 for trial. Defendant argues that the Court should not give res judicata effect to the DOL Order because it
7 would contravene an overriding public policy or result in manifest injustice, to wit; Defendant was
8 denied due process based on deficient notice, and thereby denied a meaningful opportunity to present
9 evidence to the DOL at the 2007 hearing.¹¹ Defendant also argues that the amount was never owed to
10 Plaintiff for labor services in the first place. In order to address the defenses raised by Defendant the
11 Court must have subject matter jurisdiction to review the DOL's decision.

12 "Parties aggrieved by agency action are required to exhaust their administrative remedies and to
13 appeal from a final agency action" *Bd. of Trs. of the N. Mariana Islands Ret. Fund v. Ada*, 2012 MP 10,
14 ¶ 10 (citing *Cody v. N. Mariana Islands Ret. Fund*, 2011 MP 16 ¶ 9.). Administrative exhaustion is a
15 prerequisite to jurisdiction. *Cody v. Ret. Fund*, 2011 MP 16 at ¶ 10 ("Both exhaustion and final agency
16 action are jurisdictional prerequisites to judicial review.") (citations omitted). Generally, final agency
17 action is reviewable under the APA. See 1 CMC §§ 9112(b), (d). However, the APA applies except to
18 the extent precluded by statute. 1 CMC § 9112(a). Pursuant to 3 CMC § 4445(a),¹² where no appeal is

19
20
21 ¹¹ The Defendant refers to the "exceptions" to administrative res judicata. The Commonwealth Supreme Court has declined
22 to give res judicata effect in a few well-defined situations, where "(1) the administrative decision was void when issued; (2)
the record supporting the agency's decision is patently inadequate; (3) according the decision res judicata effect would
contravene an overriding public policy; or (4) according the decision res judicata effect would result in manifest injustice." *In*
re Estate of De Castro, 2009 MP 3, ¶ 24 (citation and quotation marks omitted).

23 ¹² 3 CMC § 4445(a) was the operative rule at the time. In 2008 Public Law 15-108 enacted 3 CMC § 4948(a) which replaces
24 3 CMC § 4445(a) and also provides that if no appeal is taken within fifteen days DOL orders become unreviewable both
administratively and judicially.

1 taken within fifteen days of issuance of a DOL decision, that decision becomes unreviewable
2 administratively and judicially. *Id.*

3 In this case, the judgment became final and unreviewable fifteen days after the AO was issued on
4 February 23, 2007 and no appeal was taken. *Id.* Defendants failed to exhaust their administrative
5 remedies, precluding judicial review. *Cody v. Ret. Fund*, 2011 MP 16 at ¶ 10. Review is expressly
6 precluded by 3 CMC § 4445(a). Thus, the Court lacks jurisdiction to review the underlying claim.
7 Defendant marshaled facts relevant to what occurred at the administrative level. Given that the AO is
8 unreviewable judicially the issues raised, while concerning,¹³ are immaterial because they do not affect
9 the outcome of the case. *Triple J Saipan*, 2002 MP 11 at ¶ 8.

10 Accordingly, because Plaintiff has met his burden on his enforcement claim and the Court lacks
11 jurisdiction to review issues raised by Defendants, Plaintiff is entitled to partial judgment as to liability,
12 consistent with the AO. NMI R. Civ. P. 56(c). Accordingly, the Motion is **GRANTED** with respect to
13 Defendant's liability on the AO. Further, because post-judgment interest is statutory, and no facts
14 genuine issues of fact exist as to liability, Plaintiff is also awarded post-judgment interest pursuant to 7
15 CMC § 4101 from the date of this order.

16 **D. REMAINING ISSUES NOT SUITABLE FOR SUMMARY DISPOSITION**

17 Lastly the Court addresses any issues beyond liability. Generally, in an action for enforcement,
18 once there is a valid unpaid judgment, the only issues remaining relate to the debtor's ability to pay. *See*

21 ¹³ Notice of the 2007 hearing date by publication in this case, years after the complaint was initially filed is concerning.
22 Defendant erroneously cites 3 CMC § 4945 which allows the DOL to effect service by publication at the agency's discretion.
23 This provision did not come into effect until January of 2008, after the hearing in this case. Former 3 CMC § 4444 would
24 apply which requires "adequate notice" to parties. *See* 3 CMC § 4444 (repealed 2007). The Court also notes that based on
the holding in *Ogumoro* which calls service by publication a "last resort," 3 CMC § 4945(a) is amendable to constitutional
challenge. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 23. Disturbing as the facts may be, the Court is powerless to address the
adequacy of the notice.

1 7 CMC § 4205 (providing for a hearing on the question of the debtor's ability to pay once a party applies
2 for an order in aid of judgment).

3 In this case, however, Plaintiff also seeks pre-judgment and post-judgment interest at the
4 maximum allowable rate until the entry of judgment in the instant matter, and an award of attorney's
5 fees and costs. The Court neither has the benefit of legal briefing nor evidence on these matters—
6 consequently they are not suitable for summary disposition. To the extent that Plaintiff intended to seek
7 summary judgment as to pre-judgment and post-judgment interest until entry of judgment in the instant
8 case, and attorney's fees and costs the Motion is **DENIED**.

9 **V. CONCLUSION**

10 For the aforementioned reasons the Motion is **GRANTED** with respect to liability in accordance
11 with the AO and post-judgment interest, pursuant to 7 CMC § 4101 from the date of this order. The
12 Motion is **DENIED** with respect to pre-judgment and post-judgment interest prior to the entry of
13 judgment in this case, attorney's fees and costs

14 **VI. ORDER**

- 15 1. Defendants are ordered to pay \$7,715.84 in damages pursuant to the Administrative Order issued
16 by the Department of Labor on February 23, 2007 for unpaid wages, overtime and illegal
17 deductions.
- 18 2. Defendants are liable for post-judgment interest pursuant to 7 CMC § 4101 at the rate of nine
19 percent a year from the date of entry of this order.
- 20 3. This matter is set for a hearing on the merits related to Defendants' ability to pay and any other
21 unresolved issues related to interest, attorney's fees and costs on November 20, 2012 at
22 1:30 p.m. All parties are ordered to appear.

1 **IT IS SO ORDERED** this 7th day of November, 2012.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

_____/s/_____

Joseph N. Camacho, Associate Judge