



By the order of the court, Judge David A Wiseman

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FOR PUBLICATION



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

**JANET U. MARATITA, RAY ANTHONY
N. YUMUL, for themselves and on behalf
of the taxpayers of the CNMI and the
ratepayers of CUC, and the NORTHERN
MARIANAS COMMONWEALTH
SENATE,**

Plaintiffs,

vs.

**BENIGNO R. FITIAL, EDWARD T.
BUCKINGHAM, COMMONWEALTH
UTILITIES CORPORATION, and
SAIPAN DEVELOPMENT, LLC.,**

Defendants.

CIVIL CASE NO. 12-0194

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS**

I. INTRODUCTION

THIS MATTER came before the Court on October 25, 2012, at 1:30 p.m. in Courtroom 223A. At the hearing, the parties presented arguments regarding Defendant Saipan Development, LLC (“SDLLC”)’s Motion to Dismiss. Plaintiffs Janet U. Maratita, et. al. (“Plaintiffs”) were represented by attorney Ramon K. Quichocho, Esq. Defendant was represented by William M. Fitzgerald, Esq.

Defendant moves to dismiss this action on the grounds that Counts 4 and 5 of the First Amended Complaint requesting declaratory and injunctive relief fail to state a cause of action upon which relief can be granted pursuant to NMI Rule of Civil Procedure 12(b)(6) and both counts involve a political question

1 not justiciable by the court pursuant to NMI Rule of Civil Procedure 12(b)(1)¹. Plaintiffs oppose the motion
2 on the grounds that the pleading is adequate and the claims are justiciable because the NMI Constitution
3 specifically grants taxpayers this right of action.

4 **II. LEGAL STANDARDS**

5 NMI Rule of Civil Procedure 12(b)(1) permits dismissal of a case where a court lacks jurisdiction
6 over the subject matter. *Atalig v. Commonwealth Election Comm’n*, 2006 MP 1 ¶ 16. The court must
7 “...accept as true all the complaint’s undisputed factual allegations and construe the facts in the light most
8 favorable to plaintiff.” *Id.*

9 A Rule 12(b)(6) motion tests the legal sufficiency of the claims asserted in a complaint. *Camacho*
10 *v. Micronesian Dev. Co.*, 2008 MP 8 ¶ 10. To survive a Rule 12(b)(6) motion to dismiss, a “complaint must
11 contain either direct allegations on every material point necessary to sustain a recovery on any legal theory,
12 even though it may not be the theory suggested or intended by the pleader, or contain allegations from which
13 an inference fairly may be drawn that evidence on these material points will be introduced at trial.” *Syed*
14 *v. Mobil Oil Mariana Island Inc.*, 2012 MP 20 ¶ 19 (quoting *In re Adoption of Magofna*, 1 NMI 449, 454
15 (1990)).

16 In deciding a motion to dismiss under Rule 12(b)(6), the court must assume as true all factual
17 allegations in the challenged pleading and construe them in a light most favorable to the non-moving party.
18 *Cepeda v. Hefner*, 3 NMI 121, 127-28 (1992); *Govendo v. Marianas Pub. Land Corp.*, 2 NMI 482, 490
19 (1992). A court, however, “has no duty to strain to find inferences favorable to the non-moving party.”
20 *Cepeda*, 3 NMI at 127 (citing *In re Magofna*, 1 NMI at 454).

21 **III. DISCUSSION**

22 Defendant argues Plaintiffs’ claims for declaratory and injunctive relief raise a nonjusticiable
23 political question, and therefore this Court allegedly lacks subject matter jurisdiction in this matter.

24 _____
25 ¹Defendant also joined in a Motion to Dismiss filed by other Defendants Fitial and Buckingham as to Counts 1-3 in the First Amended Complaint. The Court has already ruled on this motion and therefore will not address again Counts 1-3.

1 Defendant also argues Plaintiffs' claims for declaratory and injunctive relief are deficient under the
2 *Twombly/Iqbal* pleading standard.

3 **A. Political Question**

4 Defendant claims the U.S. Supreme Court outlined the test to determine whether an issue concerns
5 a political matter in *Baker v. Carr*, 369 U.S. 186, 217 (1962). Although the *Baker* test contains six factors,
6 Defendant claims any one factor may be sufficient for the court to determine the doctrine should apply, and
7 that multiple factors weigh more heavily in its application. Defendant argues the consummation of the
8 Power Purchase Agreement falls within at least the first three *Baker* factors because (1) the relegation of
9 procurement matters to the Executive Branch of the Commonwealth government is a textually demonstrable
10 commitment of the issue thereto; (2) judicially discoverable and manageable standards for assessing the
11 dispute outside the context of judicial review of procurement decisions are lacking; and (3) this Court
12 allegedly cannot render a decision without also making an initial policy determination that should be left to
13 the Commonwealth's Chief Executive.

14 Plaintiffs argue this case is justiciable because the NMI Constitution specifically grants taxpayers
15 the right to maintain an action to enjoin the misspending of public funds, and 7 CMC § 2421 grants
16 interested parties the right to seek a declaration of their rights and other legal relations in a case of actual
17 controversy within its jurisdiction. Plaintiffs argue the Court may interfere in this case because the Power
18 Purchase Agreement and related agreements are for a nonpublic purpose and facts allegedly show fraud and
19 malfeasance. Plaintiffs also argue Defendant fails to explain how this issue falls within the first three *Baker*
20 factors and also failed to assert or apply factors four through six.

21 "The political question doctrine 'comes into play when the controversy brought before the court (1)
22 involves a decision made by a branch of the government coequal to the judiciary, and (2) concerns a political
23 matter.'" *Rayphand v. Tenorio*, 2003 MP 12 ¶ 41 (quoting *Sablan v. Tenorio*, 4 NMI 351, 363 (1996)). The
24 political question doctrine establishes a policy of judicial abstention wherein violation of the separation of
25 powers doctrine by interfering with a coequal branch of government is prevented by the judiciary declining

1 to adjudicate a case. *See Sablan*, 4 NMI at 363. We have adopted the test outlined in *Baker* to determine
2 whether a controversy concerns a political matter:

3 [W]hether there is a textually demonstrable commitment of the issue to a coordinate branch
4 of government; whether judicially discoverable and manageable standards for assessing the
5 dispute are lacking; whether a court could render a decision without also making an initial
6 policy determination that clearly should be left to another branch; whether it would be
7 possible for a court independently to resolve the case without undercutting the respect due
8 to coordinate branches of government; whether there is an unusual need to adhere to a
9 political question already made; or whether an embarrassing situation might be created by
10 various governmental departments ruling on one question.

11 *Rayphand*, 2003 MP at ¶ 42 (quoting *Sablan*, 4 NMI at 363).

12 Such assessments are made on a case-by-case basis. *See Sablan*, 4 NMI at 363.

13 At the outset, we note that this case is presumed to be justiciable because the NMI Constitution
14 specifically grants taxpayers the right to maintain an action to enjoin the misspending of public funds. *See*
15 *Rayphand*, 2003 MP at ¶ 44; NMI Const. art. X, § 9. Defendant asserts several grounds for purported
16 nonjusticiability under the first three *Baker* factors, claiming these grounds fall at least within the first three
17 factors.

18 **1. Textually Demonstrable Commitment of the Issue to a Coordinate Branch of**
19 **Government**

20 Defendant argues Article III, Section 15 of the NMI Constitution establishes that procurement
21 functions of the Commonwealth government, its agencies, and instrumentalities, reside with the Executive
22 Branch. Defendant therefore argues that this is a textually demonstrable commitment of the issue to a
23 coordinate branch of government. Defendant further argues there is no precedent for the interference of the
24 judiciary in procurement decisions made by the Executive Branch of the government through methods such
25 as this taxpayer action. Defendant claims that in at least one case the court found purchases like the Power

1 Purchase Agreement to be nonjusticiable political questions, citing to the trial court’s decision in *Rayphand*,
2 where Defendant claims the court found the governor’s payment to a corporation was a nonjusticiable
3 political question not subject to review in a taxpayer action.

4 Plaintiffs argue it is irrelevant that procurement functions lie with the Executive Branch if the Power
5 Purchase Agreement and related agreements have no public purpose. Plaintiffs also argue the *Rayphand* trial
6 court decision is dissimilar because that decision ultimately found (1) the use of public funds was an illegal
7 expenditure of public funds for non-public purpose since there was no appropriation for it; (2) the enactment
8 of PL 9-23, which came after the illegal expenditure, appropriated the payment at issue, which changed it
9 to a public purpose; and (3) the CNMI Supreme Court affirmed the trial court’s decision based on that
10 appropriation via PL 9-23. Plaintiffs argue there is no such public law that to cure the alleged illegal
11 expenditure for the Power Purchase Agreement circumstances that would effectively make these agreements
12 into agreements made for a public purpose.

13 Article X, Section 1 of the NMI Constitution provides that an appropriation of money may not be
14 made for anything other than a public purpose. *See* NMI Const. art. X, § 1. Article III, Section 1 of the NMI
15 Constitution provides that “[t]he executive power of the Commonwealth shall be vested in a Governor who
16 shall be responsible for the faithful execution of the laws.” NMI Const. art. III, § 1. Article X, Section 9
17 of the NMI Constitution specifically grants taxpayers the right to maintain an action enjoining the
18 misspending of public funds. *See* NMI Const. art. X, § 9.

19 The declaratory and injunctive relief requested in this case rest on allegations of illegal expenditure
20 of public funds and breaches of trust and fiduciary duty. Article X, Section 9 of the NMI Constitution
21 textually demonstrates commitment of the issue of alleged misspending of public funds at least to that of
22 a taxpayer action. CNMI case law, further, has established that such alleged misspending of public funds
23 by a public official is not a nonjusticiable political question, which is the CNMI Supreme Court decision
24 on the trial court decision to which Defendant cites. *See Rayphand*, 2003 MP at ¶ 44 (“Far from presenting
25 a nonjusticiable political question, in most cases, a public official who is allegedly misspending public funds

1 should expect to justify his actions in court pursuant to the Commonwealth’s Constitution.”). Because of
2 the nature of the allegations, our case law makes it clear that the declaratory and injunctive relief requested
3 in this case is not a nonjusticiable political question.

4 **2. Judicially Discoverable and Manageable Standards for Assessing the Dispute are**
5 **Lacking and Initial Policy Determination that Clearly Should be Left to Another Branch**

6 Defendant claims judicially discoverable and manageable standards for assessing the dispute outside
7 the context of judicial review of procurement decisions (for which Plaintiffs allegedly lack standing) are
8 lacking. Defendant also claims this Court cannot render a decision without also making an initial policy
9 determination that should allegedly clearly be left to the Commonwealth’s Executive. Defendant argues
10 Plaintiffs would not have standing as a competitor for the provision of the long term power supply needs
11 of the Commonwealth to challenge the sole-source grant of the Power Purchase Agreement in this case.
12 Defendant asserts that although Commonwealth courts do generally play a role in the procurement system
13 through judicial review within the framework of the Administrative Procedures Act, pursuant to procurement
14 regulations, and other agencies, such proceedings have been conducted within a strict administrative review
15 framework. Defendant claims there is no precedent for the alleged interference of the judiciary into
16 procurement decisions made by the Executive Branch through methods such as a taxpayer action.

17 Plaintiffs argue this issue depends on whether the facts show a public purpose. Plaintiffs assert there
18 is precedent that allows the court to decide a taxpayer’s suit which may interfere in the government
19 Defendants’ procurement decision, the Power Purchase Agreement circumstances, when no appropriation
20 is made to cure the illegal expenditure of public funds for a non-public purpose. Plaintiffs claim the Ninth
21 Circuit case and the Missouri Supreme Court case to which Defendant cites are distinguishable from the
22 present case, as in those cases, the courts refused to interfere with a government’s procurement decisions
23 because the facts showed a public purpose, no fraud or malfeasance, or both.

24 It has already been established above that this is not a case where the judiciary is being asked to
25 interfere with a procurement decision, but rather a case where the declaratory and injunctive relief sought

1 is requested as a right of a taxpayer to enjoin misspending of public monies. This is a case where, again,
2 illegal expenditures are being alleged, which takes this case out of the framework Defendant attempts to set
3 forth. *Rayphand* establishes this is exactly the type of issue where an official should be called into court to
4 justify his actions pursuant to the NMI Constitution. The standards by which this type of dispute is to be
5 adjudicated are already set forth in the laws of the Commonwealth and, further, no initial policy
6 determinations need to be made in resolving it. This Court is qualified to hear this issue as adjudication of
7 it requires only that the Court contrast the disputed actions within the framework provided by existing law,
8 and determine whether such actions were permitted by these laws. *See Rayphand* 2003 MP at ¶ 46 (finding
9 the court was qualified to adjudicate an issue that required only that the court juxtapose the then-governor's
10 actions with existing law and to determine whether his actions were permitted by those laws). The second
11 and third *Baker* factors, therefore, do not support Defendant's contention that this issue is nonjusticiable².

12 Based on the foregoing, this Court finds it has jurisdiction over the subject matter and **DENIES**
13 Defendant's motion to dismiss based on this ground.

14 **B. 12(b)(6) Motion**

15 Defendant argues Plaintiffs' claims for declaratory and injunctive relief are deficient under the
16 *Twombly/Iqbal* pleading standard³. Defendant claims, per the *Rayphand* case, declaratory relief is available
17 in a taxpayer action under Article X, Section 9 of the NMI Constitution only as necessary to obtain an
18 injunction. Defendant argues Plaintiffs fail to cite even to this legal basis for injunctive relief and also fails
19 to articulate a factual basis upon which they are entitled to such relief. Defendant further argues Article X,
20 Section 9 of the NMI Constitution does not authorize an independent claim for declaratory relief and because
21 Plaintiffs allegedly lack standing otherwise, Plaintiffs' claim for declaratory relief in Count 4 of their First
22

23 ²Because this particular case is presumed justiciable and because Defendants fail to assert the applicability of the remaining
24 *Baker* factors, the Court declines to address them.

25 ³The CNMI Supreme Court recently rejected the *Twombly/Iqbal* "plausibility" standard in *Syed v. Mobil Oil Mariana Island, Inc.*, 2012 MP 20.

1 Amended Complaint must be dismissed. Defendant claims that because no factual and legal basis for
2 standing is pled in Count 5 and because no reading of the allegations demonstrate plausibility on its face,
3 this Count must be dismissed.

4 Plaintiffs agree with Defendant's statement that *Rayphand* held declaratory relief is available in a
5 taxpayer action only as necessary to obtain an injunction, pursuant to Article X, Section 9 of the NMI
6 Constitution. Plaintiffs, however, argue Defendant's assertion, although correct, is misleading. Plaintiffs
7 claim the Supreme Court in *Rayphand* also held that Art. X, Section 9 authorizes both declaratory and
8 injunctive relief and also stated that the Commonwealth Superior Court is authorized to grant declaratory
9 judgments pursuant to 7 CMC § 2421. Plaintiffs further argue the First Amended Complaint alleges a real
10 and actual controversy and re-alleges and incorporates all the other allegations into Counts 4 and 5.

11 Art. X, Section 9 authorizes both declaratory and injunctive relief. *See Mafnas v. CNMI*, 2 NMI 284,
12 263 (1991) ("We hold that Art. X, § 9 authorizes both declaratory and injunctive relief."); *Rayphand*, 2003
13 MP at ¶ 24. Further, under NMI Rule of Civil Procedure 12(b)(6), a complaint or pleading is subject to
14 dismissal where it lacks a cognizable legal theory or fails to allege facts constituting a cognizable legal
15 theory. *See Bolain v. Guam Publications, Inc.*, 4 NMI 176 (1994).

16 Although Plaintiffs and Defendant are both correct in their restatement of the holding in *Rayphand*
17 that declaratory relief is only available in a taxpayer action under Art. X, Section 9 of the NMI Constitution
18 only as necessary to obtain an injunction, *Rayphand* also cited to the holding in *Mafnas* which held Art. X,
19 § 9 authorizes both declaratory and injunctive relief, both of which are requested by Plaintiffs. Further,
20 although Plaintiffs' allegations in Count 5 for injunctive relief did not explicitly cite Art. X, Section 9 as a
21 legal basis for injunctive relief, the allegations did include facts which, assuming their truth and construed
22 in a light most favorable to the non-moving party, constitute a cognizable legal theory for injunctive relief.
23 Because Plaintiffs have standing under Art. X, § 9, and because this Court finds Plaintiffs' claim for
24 injunctive relief is sufficiently pled, the Defendant's motion to dismiss brought pursuant to NMI Rule of
25 Civil Procedure 12(b)(6) is hereby **DENIED**.

