



FOR PUBLICATION

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

DAVID W. DOUGHERTY,

Plaintiff,

v.

J.C. TENORIO ENTERPRISES, INC.,  
Defendant.

CIVIL ACTION NO. 12-0293

ORDER GRANTING PLAINTIFF'S  
MOTION TO DISMISS

**I. INTRODUCTION**

**THIS MATTER** came before the Court on March 12, 2013 for a hearing on a motion to dismiss. Plaintiff David W. Dougherty (“Dougherty”) appeared through his attorney Rexford C. Kosack. Defendant, J.C. Tenorio Enterprises, Inc. (“Joeten”) appeared through its attorney Michael W. Dotts. The Court, having reviewed the pleadings, applicable law and oral argument **GRANTS** Plaintiff’s motion to dismiss Count I for quiet title.

**II. FACTUAL AND PROCEDURAL BACKGROUND**

On August 15, 1995 Defendant leased real property in Garapan to Nakamoto Development, Inc. (Ex. 1, 1-2.) In 2009 Dougherty obtained an assignment of the lease,<sup>1</sup> which was recorded on November 24, 2009. (Counterclaim 10:41.)

On December 5, 2012, Dougherty filed suit asking the Court to declare that the lease allows him to use the property for any legal purpose. Joeten counterclaimed to quiet title.

<sup>1</sup> The lease was assigned several times before it was assigned to Dougherty. (See Counterclaim 8-9.) The previous assignments are not relevant to the disposition of this motion.

1 The lease agreement is attached to the counterclaim as “Exhibit 1.” The recitals indicate that the  
2 lessee “desires to lease the property for the development of a resort hotel facility.” (Ex 1, 2.) The first  
3 paragraph of the lease provides that the agreement is made “in consideration of the rent provided for  
4 herein and the covenants herein.” (Ex 1, 2:1.) The lessor agrees to lease the property to lessee for a  
5 55-year term beginning in 1995 and ending in 2050. (*Id.* 3:4-4:4.) Lessee agrees to pay a lump sum  
6 rental payment of 2.5 million dollars receipt of which is acknowledged in the lease. (*Id.* 4:5.)

7 Section 11 of the lease, entitled “Construction and Ownership of Improvements,” indicates that  
8 “[i]t is expressly agreed and understood that the Premises are being leased to the Lessee for the purpose  
9 of the development and construction of a resort hotel and condominium project.” (*Id.* 10:11.1.) The  
10 same section indicates that “Lessee may use, sell, demolish, remove, or otherwise dispose of all such  
11 improvements or any portion of any such improvements.” (*Id.* 10:11.2.) Lessee also has the right “at  
12 any time and from time to time during the term of this Lease, to construct, reconstruct, demolish, change  
13 or alter any improvements which it places upon the Premises.” (*Id.* 10:11.3.) Lessee bears the costs of  
14 any such changes. (Ex 1, 10:11.3.) In Section 12 the lessor expressly consents to the development of  
15 condominiums. (*See id.* 13:12.)

### 16 **III. LEGAL STANDARD**

17 Rule 8(a)(2) of the Commonwealth Rules of Civil Procedure requires that a pleading contain “a  
18 short and plain statement of the claim showing that the pleader is entitled to relief. . . .” To state a claim  
19 under Rule 8(a)(2), “a party must offer more than a blanket assertion of entitlement to relief. *Syed v.*  
20 *Mobil Oil Mariana Islands, Inc.*, 2012 MP 20 ¶ 20 (quoting *In re Adoption of Magofna*, 1 NMI 449,  
21 454.) Rather, “to survive a Rule 12(b)(6) motion to dismiss, a ‘complaint must contain either direct  
22 allegations on every material point necessary to sustain a recovery on any legal theory . . . or contain  
23 allegations from which an inference fairly may be drawn that evidence on these material points will be  
24 introduced at trial.’” *Id.* ¶ 19. The Court must accept “factual allegations in the complaint as true and

1 ‘construe the complaint in the light most favorable to the [claimant].’” *Syed*, 2012 MP 20 ¶ 22 (quoting  
2 *Cepeda v. Hefner*, 3 NMI 121, 127-28 (1992)). Unsupported legal conclusions are not accepted as true  
3 because they do not constitute direct or indirect allegations. *Syed*, 2012 MP ¶ 21. Further, the Court is  
4 not required to “strain to find inferences favorable to the plaintiff.” *Id.* ¶ 22 (citing *Cepeda*, 3 NMI at  
5 127.)

#### 6 **IV. DISCUSSION**

7 The Court addresses: (1) the propriety of considering the lease on a 12(b)(6) motion; and (2)  
8 whether Joeten states a claim for quiet title.

##### 9 **A. THE COURT CONSIDERS THE ATTACHED LEASE ON A 12(b)(6) MOTION**

10 Initially, the Court notes that if matters outside the pleadings are considered on a 12(b)(6) motion  
11 the motion shall be treated as one for summary judgment under Rule 56. *See* NMI R. Civ. P. 12(b).  
12 However, pursuant to Rule 10(c) “A copy of any written instrument which is an exhibit to a pleading is a  
13 part thereof for all purposes.” *Id.* Thus, on a 12(b)(6) motion the Court may consider terms in a lease or  
14 contract attached to the complaint, without treating the motion as one for summary judgment. *See, e.g.,*  
15 *Three D Dept., Inc. v. K Mart Corp.*, 670 F. Supp. 1404, 1406 (N.D. Ill. 1987).<sup>2</sup> “Where a [claimant’s]  
16 cause of action arises out of a contract which is attached to the complaint as an exhibit, and such  
17 attachment shows unambiguously on its face that the relief prayed for is not merited, dismissal is both  
18 justified and appropriate.” *Palda v. General Dynamics Corp.*, 47 F.3d 872, 876 (7th Cir. 1995) (citations  
19 omitted).<sup>3</sup>

20 Here, the Court considers the lease which was attached to the counterclaim as “Exhibit 1”  
21 because it is part of the pleadings for the purpose of a 12(b)(6) motion. *See* NMI R. Civ. P. 10(c). The  
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23 <sup>2</sup> In the absence of controlling Commonwealth law the Court looks to other jurisdictions. *Syed*, 2012 MP 20 ¶ 11. Moreover,  
“opinions . . . interpreting laws analogous to Commonwealth laws are persuasive [but not binding]. *Id.*

24 <sup>3</sup> *Id.*

1 lease is not outside the pleadings, therefore the Court need not treat the motion as one for summary  
2 judgment. *See* NMI R. Civ. P. 12(b); *see, e.g., Three D Dept., Inc.*, 670 F. Supp. at 1406 (N.D. Ill.  
3 1987).

#### 4 **B. JOETEN FAILS TO STATE A CLAIM**

5 To survive the motion Joeten must allege facts, which, taken as true, would result in a successful  
6 claim quieting title in its favor for the property at issue. The elements in an action to quiet title will  
7 depend on the substantive basis for the action.<sup>4</sup> Generally, “[i]n order to succeed on a quiet title action,  
8 the petitioning party must assert a *present* interest in the subject property.” *Fusco v. Matsumoto*, 2011  
9 MP 17 ¶ 21 (emphasis in original) (citations omitted)). An action to quiet title lies against present  
10 claimants to the land who have an adverse claim. *See, id.* (citations omitted).

11 Joeten’s claim that Dougherty’s lease is invalid forms the basis of Joeten’s assertion that title  
12 should be quieted in its favor. Joeten is the fee simple owner of the property, and therefore has a  
13 present interest. However, Joeten fails to state a claim because it has not alleged facts demonstrating  
14 that Dougherty’s leasehold is invalid or unenforceable. Joeten argues that Dougherty’s leasehold  
15 interest is invalid because building a resort was part of the consideration for the lease, and Dougherty  
16 failed to build a resort (Counterclaim 14:78-80). Dougherty claims the lease is “void” based on this  
17 “failure of consideration.” (Counterclaim 14:80.) Statements that the lease is void or unenforceable are  
18 legal conclusions not entitled to a presumption of truth. *Syed*, 2012 MP 20 ¶ 21. The allegation that  
19 Dougherty failed to build a resort is meaningless unless the lease imposed a duty to build a resort.

20 To determine whether building a resort was part of the consideration for the lease the Court looks  
21 to the lease itself. The Court interprets unambiguous terms according to their plain meaning without  
22 reference to extrinsic evidence. *Commonwealth Ports Auth. v. Tinian Shipping Co.*, 2007 MP 22 ¶ 16.

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24 <sup>4</sup> For example if a claimant seeks to quiet title based on adverse possession they must plead facts going to the elements of  
adverse possession. *See, e.g., Camacho v. Micronesian Dev. Co.*, 2008 MP 8 ¶ 11.

1 To determine the intent of the parties the Court looks “within the four corners of the agreement to see  
2 what is actually stated, and not at what was allegedly meant.” *Ada v. Calvo*, 2012 MP 11 ¶ 10) (quoting  
3 *Tinian Shipping Co.*, 2007 MP 22 ¶ 17)).

4 Here, the plain language of the lease does not require the leaseholder to build a resort as part of  
5 the consideration or the performance. (Ex 1 at 2:1.) Consideration is limited to rent and the covenants in  
6 the lease. (*Id.*) Building a hotel is mentioned twice in the lease, once in the recitals, and once in a section  
7 about improvements. (*Id.* 10:11.1.) However, the lease does not contain mandatory language such as  
8 “shall, promises, warrants, covenants,” requiring lessee to built a resort. (*Id.*) Instead, lessee is  
9 expressly granted the right to build, alter or demolish any improvements, or choose not to rebuild. (*Id.* at  
10 10:11.2, 11.3, 11.4.1.) The Court finds these terms are unambiguous: the lease does not require the  
11 lessee to build a resort condominium, as part of the consideration. In light of the unambiguous contract  
12 language, dismissal is justified and appropriate. *Palda*, 47 F.3d at 876 (7th Cir. 1995) (citations  
13 omitted). Accordingly, Count I of the counterclaim is dismissed.

14 A breach of contract claim based on the same facts would also fail because the contract does not  
15 impose a duty on Dougherty to build a resort condominium, therefore the failure to built a resort would  
16 not constitute a breach.

17 Leave to amend need not be granted in this case because it would be futile. NMI R. Civ. P.  
18 15(a); *see Choi v. Kim*, Civ. No. 10-0114 (NMI Super. Ct. May 30, 2012) (Order Granting Cross-  
19 Defendant’s Motion to Dismiss at 10) (citations omitted)). The premise of the claim is belied by the  
20 written contract attached to the counterclaim, and the allegation of additional facts would not cure the  
21 defect.

## 22 **V. CONCLUSION**

23 Consistent with the reasons stated herein, the Court **GRANTS** the motion; Count I of Joeten’s  
24 counterclaim is **DISMISSED**.

1 **IT IS SO ORDERED** this 26<sup>th</sup> day of April, 2013.

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/s/  
JOSEPH N. CAMACHO, Associate Judge