



By the order of the court, Judge David A Wiseman

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

FOR PUBLICATION



E-FILED  
CNMI SUPERIOR COURT  
E-filed: May 28 2013 01:09PM  
Clerk Review: N/A  
Filing ID: 52481057  
Case Number: 12-0194-CV  
N/A

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 CNMI'S MOTION TO SUBSTITUTE

I. INTRODUCTION

THIS MATTER came before the Court on March 6, 2013, at 1:30 p.m. in Courtroom 223A. At the hearing, the parties presented arguments regarding the Commonwealth of the Northern Mariana Island ("CNMI")'s motion to substitute the CNMI for Defendant Benigno R. Fitial. Plaintiffs Janet U. Maratita, et. al. ("Plaintiffs") were represented by attorney Ramon K. Quichocho, Esq. Defendant Fitial and the CNMI were represented by Assistant Attorney General David Lochaby. Defendants moved to substitute the CNMI Government for Benigno R. Fitial for Count Three pursuant to the Government Liability Act. 7 CMC § 2201 *et seq.*

Based on the papers submitted and oral arguments of counsel, the Court hereby **DENIES** the CNMI's motion for substitution.

1 **II. BACKGROUND**

2 On January 12, 2013, Plaintiff filed a five-count complaint, charging Defendants with illegal expenditure of  
3 public funds, breach of fiduciary duty, breach of trust, seeking declaratory relief and an injunction. While not all  
4 Defendants are charged in each count, Defendant Fitial is charged in all five counts.

5 On February 8, 2013, the CNMI filed the pending motion to substitute the CNMI government for Defendant  
6 Fitial in Count Three which alleges breach of fiduciary duty. The CNMI attached to its motion a “Certification of  
7 Scope of Employment” signed by Attorney General Joey P. San Nicholas which certifies that Defendant Fitial was  
8 acting within the scope of his employment as the governor of the CNMI at the time of the alleged incidents giving  
9 rise to the claims of the Plaintiffs in this action.

10 **III. LEGAL STANDARD**

11 Public Law 15-22, entitled “Commonwealth Employees’ Liability Reform and Tort Compensation Act of  
12 2006” (CELTRCA) was passed by the CNMI Legislature for the purpose of preventing Commonwealth employees  
13 from being sued in their individual capacities for actions performed as Commonwealth employees. See 1 CMC §  
14 2201, commission cmt 2; *Ayuyu v. Mendiola*, Civ. No. 12-0051 (NMI Super. Ct. Nov. 29, 2012) (Order Granting  
15 Defendants’ Motion for Partial Substitution of Parties at 3). Thus, “Commonwealth employees sued in their  
16 individual capacities for acts committed within the scope of employment are dismissed from the lawsuit and the  
17 CNMI government is substituted as the proper defendant.” *Id.*; see *Osborn v. Haley*, 549 U.S. 225, 229 (2007).  
18 CMC § 2208 provides that a suit against the Commonwealth is the exclusive remedy for those claiming injury by  
19 reason of acts of Commonwealth employees acting within the scope of their employment. The exclusive remedy rule  
20 does not apply to claims brought for violations of the United States and CNMI Constitution(s). See 7 CMC § 2208  
21 (b)(2).

22 **IV. DISCUSSION**

23 Plaintiffs claim a plaintiff may be able to recover against the individual employee tortfeasor for actions  
24 brought for a violation of the CNMI Constitution, pursuant to 7 CMC § 2208(b)(2)(A). Plaintiffs assert CELRTCA’s  
25 exclusive remedy rule does not apply because Count Three arises out of a violation of the CNMI Constitution under

