



By Order of the Court, Associate Judge **KENNETH L. GOVENDO**

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

| | | |
|---------------------------------------|---|---------------------------------------|
| USA ISLANDS SEAFOOD, INC. and |) | CIVIL ACTION NO.: 12-0242 |
| SAIPAN USA FISHERIES, INC., |) | |
| |) | |
| Plaintiffs |) | |
| |) | |
| v. |) | ORDER DENYING DEFENDANTS’ |
| |) | MOTION TO DISMISS AND |
| KIBBLE & PRENTICE HOLDINGS |) | PLAINTIFFS’ MOTION FOR PARTIAL |
| COMPANY, NATIONAL UNION FIRE |) | SUMMARY JUDGMENT AS TO COUNT |
| INSURANCE COMPANY OF |) | 4 OF THE COMPLAINT |
| PITTSBURGH, PA., AMERICAN HOME |) | |
| ASSURANCE COMPANY, and ALLIED |) | |
| MARINE SURVEYORS, LTD. |) | |
| |) | |
| Defendants. |) | |

I. INTRODUCTION

THIS MATTER came before the Court on Defendants’ Motion to Dismiss and Plaintiffs’ Motion for Partial Summary Judgment on March 19, 2013 in Courtroom 205A. Plaintiffs, USA Island Seafood, Inc and Saipan USA Fisheries (collectively “Plaintiffs”), appeared by and through their attorney of record, Jennifer Dockter. Defendant, Kibble & Prentice Holding Company (“K&P”), appeared by and through its attorney of record, Anita P. Arriola. Defendants, National Union Fire Insurance Company of Pittsburg (“National Union”) and American Home Assurance Company (“AHAC”), appeared by and through their attorney of record, Thomas C. Sterling.

1 **II. BACKGROUND**

2 On October 18, 2012, Plaintiffs filed a Complaint against Defendants alleging nine separate
3 causes of action; amongst them, Count 4 alleges violations of the Consumer Protection Act
4 (“CPA”). On December 17, 2012, K&P filed its Answer. On December 26, 2012, Defendants
5 National Union and AHAC filed a Motion to Dismiss Plaintiffs’ Complaint, to which K&P joined.
6 On January 14, 2013, the Plaintiffs filed a Motion for Partial Summary Judgment. The Court heard
7 both motions on March 19, 2013.

8 On May 1, 2013 the Court issued an Order granting in part and denying in part Defendants’
9 motion to dismiss. That order resolved all issues addressed in the motions except for those related
10 to Count 4 of Plaintiffs’ Complaint. The Court was unable to properly adjudicate this issue without
11 first determining whether the maritime insurance contracts are governed by the Commonwealth
12 Insurance Act of 1983 (“Insurance Act” or “PL 3-107”)¹. As such, the Court ordered the parties to
13 provide supplemental briefing. All parties filed their briefs on June 7, 2013. After reviewing the
14 briefs and relevant law, the Court now enters this Order denying both the Motion to Dismiss and the
15 Motion for Partial Summary Judgment as they relate to Count 4 of the Complaint.

16 **III. DISCUSSION**

17 **A. DEFENDANTS’ MOTION TO DISMISS AS TO COUNT 4 OF THE COMPLAINT IS DENIED**

18 A motion to dismiss made pursuant to Rule 12(b)(6) tests the sufficiency of the Plaintiffs’
19 complaint. *See* NMI R. Civ. P. 12(b)(6). Rule 8(a)(2) requires that a pleading contain “a short and
20 plain statement of the claim showing that the pleader is entitled to relief. . . .” In order to withstand
21 a Rule 12(b)(6) motion, a complaint “must contain either direct allegations on every material point
22 necessary to sustain a recovery on any legal theory . . . or contain allegations from which an

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24 ¹ The Insurance Act has been codified by the Law Review Commission as 7 CMC § 7101 *et seq.* For purposes of this
Order, the Court will refer the Sections as delineated under PL 3-107.

1 inference fairly may be drawn that evidence on these material points will be introduced at trial.” *In*
2 *re Adoption of Magofna*, 1 NMI 449, 454. The Court must accept “factual allegations in the
3 complaint as true and ‘construe the complaint in the light most favorable to the plaintiff.’” *Syed v.*
4 *Mobil Oil Mariana Islands, Inc.*, 2012 MP 20 ¶ 22, quoting *Cepeda v. Hefner*, 3 NMI 121, 127
5 (1992). The Court may not consider unsupported legal conclusions because they do not constitute
6 direct or indirect allegations. *Syed*, 2012 MP 20 ¶ 21. The Court is not required to “strain to find
7 inferences favorable to the plaintiff.” *Cepeda*, 3 NMI at 127.

8 **1. THE CONSUMER PROTECTION ACT CLAIM**

9 Count 4 of the Complaint relies upon a provision of the CPA which makes it unlawful to
10 engage in any conduct which “creates a likelihood of confusion or misunderstanding” while in the
11 course of trade or commerce. 4 CMC § 5105(l). A violation of the CPA requires that (1) an
12 unlawful act or practice took place (2) in the conduct of trade or commerce. *Isla Financial Services*
13 *v. Sablan*, 2001 MP 21 ¶ 23, citing 4 CMC § 5105.

14 In this respect, Plaintiffs allege that Defendants, AHAC and National Union, employed
15 K&P, an uncertified agent, to act on their behalf. Compl. ¶¶ 18-22, 76. According to Plaintiffs,
16 employment of an uncertified agent is prohibited by the Insurance Act. Defendants argue that the
17 contracts in question were for maritime insurance, and maritime insurance is specifically excluded
18 from all provisions of the Insurance Act pursuant to PL 3-107 § 19(d).

19 **2. THE INSURANCE ACT DOES APPLY TO MARITIME INSURANCE**

20 The Court previously deferred ruling on the Motion to Dismiss Count 4 of the Complaint
21 until the parties could provide additional briefing on the applicability of the Insurance Act to
22 maritime insurance. The Court finds that the Insurance Act does apply to maritime insurance and
23 that maritime insurance is exempted only from the provisions contained within Sections 19(a)-(c) of
24 the Act.

1 The first step in statutory interpretation requires the Court to review the language of the
2 statute itself. *Commonwealth v. Taisacan*, 1999 MP 8, 6. “[U]nless the statute provides otherwise,
3 courts should adhere to the general rule that words be given their plain meaning.” *Id.* Ambiguity
4 exists when a statute is capable of more than one meaning. *Id.* Where a statute’s plain language is
5 unclear, the Court must look to the intent of the legislature. *Bank of Haw. v. Sablan*, 1997 MP 9, 14;
6 *Commonwealth Ports Auth. v. Hakubotan Saipan Enters., Inc.*, 2 NMI 212, 221 (1991).

7 PL 3-107 § 19(d) states:

8 Excepted contracts and activities. The provisions of the forgoing sections do not
9 apply to contracts of reinsurance or to contracts of insurance covering risks of
10 transportation and navigation, or to contracts of insurance made through
11 authorized surplus line broker or agents, nor do they apply to an insurer not
12 authorized in the Commonwealth or its representatives, in investigating, adjusting
13 losses or otherwise complying in the Commonwealth with the terms of its
14 insurance contracts made in a state wherein the insurer was authorized and which
15 the property or risk was located or residing at the time of execution of the
16 contract.

13 At first glance, the plain meaning of law seems clear. The term “foregoing sections” would
14 lead the reader to believe that maritime insurance has been excluded in its entirety from the
15 Insurance Act. However, “the legislative intent is to be discerned from a reading of the statute as a
16 whole and not from a reading of isolated words”. *Commonwealth Ports Authority*, 2 NMI at 224,
17 citing *Office of the Attorney General v. Cubol*, 3 CR 64, 73 (D.N.M.I. App. Div. 1897). When
18 reviewing the Act as a whole, it is clear that the Legislature did not intend to fully exclude maritime
19 insurers from the Insurance Act.

20 For instance, PL 3-107 § 19(d) also excludes contracts of insurance made through
21 authorized surplus line brokers and agents. Yet, Section 18 of the Insurance Act specifically
22 regulates insurance contracts created through surplus line brokers and agents. Thus, an
23 interpretation that created a complete exclusion of surplus line insurance contracts made through
24 agents and brokers would “defy common sense” since there is an entire section of the Act

1 immediately preceding Section 19 that codifies this type of insurance contract. *Id.* at 224; *see also*
2 PL 3-107 §§ 18, 19(d). Likewise, an interpretation that would completely exclude maritime
3 insurance from the Insurance Act would defy common sense since the exclusions for these two
4 types of insurance contracts exist within the same subsection of the Act. Rather, it seems much
5 more plausible that the Legislature sought to exclude both surplus line and maritime insurance from
6 the provisions of Section 19 of the Act than to exclude them from the Act in its entirety.

7 The United States District Court for the District of Guam dealt with an analogous issue.
8 Under 22 G.C.A. § 15204, certain types of contracts are exempted from Guam’s insurance laws.
9 The Court had to decide whether the phrase “foregoing sections” applied only to 22 G.C.A. § 15204
10 or to the entirety of the insurance code. *Guam Industrial Services, Inc. v. Guam Shipyard*, 2012
11 U.S. Dist. LEXIS 108649 (2012). In that case, the Court also found that the phrase “foregoing
12 sections” was meant to apply only to the provisions contained within section 15204 and not to the
13 entirety of the insurance code. *Guam Industrial Services, Inc. v. Guam Shipyard*.

14 Given the preceding language contained in Section 18 of the Insurance Act, the Court finds
15 that the exception contained within Section 19(d) was meant to apply only to the provisions
16 contained within Sections 19(a)-(c). Therefore, the Insurance Act does regulate maritime insurance.

17 **3. THE COMPLAINT SUFFICIENTLY STATES A CLAIM FOR VIOLATION OF THE CPA**

18 As stated above, an allegation that a violation of the CPA occurred requires the Plaintiffs to
19 show that an unlawful act or practice occurred in the conduct of trade or commerce. *Isla Financial*
20 *Services*, 2001 MP at 23. Here, the Complaint alleges that the Defendants used an unlicensed
21 general agent to assist in procuring insurance contracts. Compl. 21-22. The use of unlicensed
22 general agents is unlawful. The Complaint further alleges that Defendants were not lawful
23 insurance providers but that they represented themselves and their insurance policies as lawful and
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1 valid. Compl. 76. Accepting these allegations as true, the Plaintiffs have set forth a claim upon
2 which relief may be granted.

3 Accordingly, Defendants’ Motion to Dismiss as it pertains to Count 4 of the Complaint is
4 denied.

5 **B. PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT AS TO COUNT 4 OF THE COMPLAINT IS**
6 **DENIED**

7 Summary judgment may be granted when no genuine issue of material fact exists, and the
8 moving party is entitled to judgment as a matter of law. NMI R. Civ. P. 56(c); *Manglona v.*
9 *Commonwealth*, 2002 MP 7 ¶ 16. A fact is “material” only if its resolution will affect the outcome
10 of the lawsuit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute about a
11 material fact is “genuine” only if “the evidence is such that a reasonable jury could return a verdict
12 for the nonmoving party.” *Id.*; *Eurotex, Inc. v. Muna*, 4 NMI 280, 283-84 (1995).

13 The moving party has the initial burden of demonstrating the absence of a genuine issue of
14 material fact. *Eurotex, Inc.*, 4 NMI at 283. “Once the moving party satisfies the initial burden, the
15 non-moving party must respond by establishing that a genuine issue of material fact exists.” *Id.*;
16 *Furuoka v. Dai-Ichi Hotel*, 2002 MP 5 ¶ 22, 24. While the court shall make this determination by
17 viewing the evidence in a light most favorable to the non-moving party, the non-moving party must
18 provide more than conclusory statements or a few isolated facts. *Waibel v. Farber*, 2006 MP 15 ¶
19 22; *Eurotex, Inc.*, 4 NMI at 284 (summary judgment may be granted if rebuttal evidence is “merely
20 colorable” or “not significantly probative”); *Sibley v. Lutheran Hosp. of Maryland, Inc.*, 871 F.2d
21 479 (4th Cir. 1989). The non-moving party “must set forth specific facts showing that there is a
22 genuine issue for trial.” NMI R. Civ. P. 56(e).

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1 **1. Genuine issues of material fact exist**

2 The moving party must show that no genuine issue of material fact exists in order to prevail
3 on a motion for summary judgment. NMI R. Civ. P. 56(c). Here, though, there appear to be several
4 issues of material fact in dispute.

5 First, it appears that Plaintiffs may have misconstrued the admissions contained within the
6 Answers filed by the Defendants. Next, Defendants' allege that K&P was retained by the Plaintiffs
7 and was therefore not an agent of AHAC and National Union. Questions of liability could arise if
8 K&P was Plaintiffs' agent, as opposed to Defendants' agent. Defendants also dispute Plaintiffs'
9 allegation that they were unlicensed. Rather, Defendants have stated that AHAC and National
10 Union use general agents who are licensed in the Commonwealth. K&P argues that it never
11 required licensure in the Commonwealth because the policies it issued were issued in the State of
12 Washington. It further asserts that it did not act as a general agent in connection with the policies
13 placed in this case. Finally, there are questions surrounding whether K&P actually qualifies as an
14 agent under the Insurance Act.

15 Thus, material facts remain in dispute, and Plaintiffs' motion for summary judgment as it
16 relates to Count 4 of the Complaint is denied.

17 **III CONCLUSION**

18 Defendants' Motion to Dismiss Count 4 of the Complaint is **DENIED**.

19 Plaintiffs' Motion for Summary Judgment as to Count 4 of the Complaint is **DENIED**.

20 **SO ORDERED** this 18th day of December 2013

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/s/
KENNETH L. GOVENDO, Associate Judge