



**By Order of the Court, Associate Judge JOSEPH N. CAMACHO**

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**FOR PUBLICATION**



**E-FILED**  
**CNMI SUPERIOR COURT**  
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Case Number: 13-0085-CV  
N/A

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

<b>COMMONWEALTH PORTS</b>	)	<b>CIVIL CASE NO. 13-0085</b>
<b>AUTHORITY,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>ORDER GRANTING IN PART AND</b>
<b>v.</b>	)	<b>DENYING IN PART DEFENDANT LEO</b>
	)	<b>A. DALY COMPANY’S MOTION FOR</b>
<b>LEO A. DALY COMPANY and GPPC,</b>	)	<b>JUDGMENT ON THE PLEADINGS</b>
<b>INC.,</b>	)	
	)	
<b>Defendants.</b>	)	

**I. INTRODUCTION**

This matter came before the Court on November 14, 2013 at 1:30 p.m. in Courtroom 220A on Defendant Leo A. Daly’s motion. Defendant Leo. A Daly (“LAD”) was represented by Joseph E. Horey. Defendant GPPC, Inc. (“GPPC”) is not a party to this motion and was not represented at hearing. Plaintiff Commonwealth Ports Authority (“CPA”) was represented by Matthew Gregory.

On April 8, 2013, CPA filed suit against the Defendants alleging that they breached professional and contractual duties in designing and constructing the West Addition to the Saipan International Airport. Defendants were both subcontractors of Boeing Service Company (“Boeing”) for the West Addition project. LAD is an architecture and engineering firm. GPPC is a construction company. CPA brought six claims against LAD: breach of contract, professional malpractice, negligence, violations of the Consumer Protection Act (“the Act”), fraud, and violation of the

1 Building Safety Code. CPA brought three claims against GPPC: breach of contract, violations of  
2 the Consumer Protection Act, and violations of the Building Safety Code.

3 On September 19, 2013, LAD filed a Motion for Judgment on the Pleadings pursuant to  
4 Rule 12(c) of the Commonwealth Rules of Civil Procedure. LAD asks the Court to dismiss the  
5 Consumer Protection Act claim (count 5) and the fraud claim (count 7). LAD argues that CPA, a  
6 governmental entity, does not have standing to sue under the Consumer Protection Act (“the Act”)  
7 and that the fraud claim was not plead with the particularity required by Rule 9(b) of the  
8 Commonwealth Rules of Civil Procedure.

9 Based on a review of the filings, oral argument, and applicable law, the Court grants in part  
10 and denies in part LAD’s Motion for Judgment on the Pleadings.

## 11 **II. CONSUMER PROTECTION ACT CLAIM**

### 12 **A. Legal Standard**

13 A judgment on the pleadings is a final judgment, based on the pleadings, exhibits attached  
14 to the complaint, and matters of public record. *See Hefner v. Napoleon*, Civ. No. 93-0007 (NMI  
15 Super. Ct. Dec. 9, 1993) (Order Denying Motion to Dismiss and Motion for Judgment on the  
16 Pleadings at 11-12); *and Barany-Snyder v. Weiner*, 539 F. 3d 327, 332 (6th Cir. 2008). Generally  
17 the legal test for determining a 12(c) motion is the same as the test for a 12(b)(6) motion to dismiss.  
18 *See Tomlinson v. El Paso Corp.*, 653 F.3d 1281, 1285-86 (10th Cir. 2011). The Court takes as true  
19 the non-movant’s factual allegations, but need not accept the non-movant’s legal conclusions. *See*  
20 *Babauta v. TTPI*, 1 CR 291, 294 (NMI Dist. Ct. Trial Div. 1982). The Court grants a motion for  
21 judgment on the pleadings “only if the movant is clearly entitled to prevail as a matter of law.” *Id.*;  
22 *see also Hefner*, Civ. No. 98-0007 at 12. Under Rule 12(b)(6) and Rule 12(c), a claim that lacks a  
23 cognizable theory may be dismissed. *See Bolalin v. Guam Publications, Inc.*, 4 NMI 176 (1994).

1           **B. Discussion**

2           LAD argues that CPA’s claim under the Act fails as a matter of law for three reasons. First,  
3 LAD argues that 4 CMC § 5106 bars governmental entities from bringing a claim under the Act.  
4 Second, LAD argues that CPA does not have standing because it does not fall within the definition  
5 of “person” under 4 CMC § 5104(g). Finally, LAD argues that the Act does not apply to  
6 commercial contract disputes.

7           CPA counters that 4 CMC § 5106 prevents the CNMI government from being sued, but  
8 does not prohibit governmental entities from bringing a suit under the Act. Second, CPA argues that  
9 it is a corporation and, thus, is included in the definition of “person” under 4 CMC § 5104(g).  
10 Finally, CPA argues that nearly all consumer transactions involve a contract, and that the Act is  
11 designed to provide an additional basis for recovery.

12                           **1. CPA has Standing as a Corporation under the Act**

13           The Court finds that 4 CMC § 5106<sup>1</sup> does not control the issue of whether governmental  
14 entities have standing to bring a claim under the Act. Instead, 4 CMC § 5106(a) exempts  
15 governmental entities from liability under the Act. *See Commonwealth v. AIC Marianas, Inc.*, Civ.  
16 No. 10-0262 (NMI Super. Ct. Jan. 12, 2012) (Order Denying Defendant’s Motion to Dismiss First  
17 Amended Complaint at 9); *and Northern Marianas Housing Corp. v. SSFM Int’l, Inc.*, Civ. No. 06-  
18 0123 (NMI Super. Ct. June 5, 2007) (Order Granting in Part and Denying in Part Defendant  
19 Telesource CNMI, Inc.’s Motion to Dismiss at 16-17).

20           The Court also finds that CPA qualifies as a “person” for the purposes of the Act because it  
21 is a corporation. *See* 2 CMC § 2121 (“There is in the Commonwealth government a public  
22 corporation called the Commonwealth Ports Authority. Its functions are governmental and public

23 \_\_\_\_\_  
24 <sup>1</sup> 4 CMC § 5106 is titled “Exemptions” and states in relevant part: “Nothing in this article shall apply to: (a) Actions or transactions carried out by the Commonwealth government, any branch thereof or any other governmental agency.”

1 and it may sue and be sued in its own name.”). The definition of “person” under the Act includes  
2 corporations. *See* 4 CMC § 5104(g) (“‘Person’ means natural persons, corporations, firms,  
3 partnerships, joint stock companies, and associations or other organizations of persons.”).

4 The Court interprets the Act by considering the plain meaning of the words used in the  
5 statute, in the context of the Act as a whole, so that the resulting application of the law reflects the  
6 intent of the legislature. *Commonwealth Ports Auth. v. Hakubotan Saipan Ent., Inc.*, 2 NMI 212,  
7 222-224 (1991). This task is simple because under the plain language of 4 CMC § 5104(g),  
8 corporations are persons under the Act. The legislature did not qualify the term corporations, and  
9 thus, all types of corporations—public, private, municipal, for-profit, nonprofit—are persons under  
10 the Act.

11 LAD argues that interpreting the term “corporations” in 4 CMC § 5104 to include public  
12 corporations would create inconsistencies within the Act. For example, LAD argues that allowing a  
13 public corporation to bring suit under the Act conflicts with 4 CMC § 5107(a), which allows the  
14 Attorney General to bring civil actions in the name of the Commonwealth. The Court sees no  
15 inconsistency here. Finding that a public corporation may bring suit under 4 CMC § 5112(a)  
16 because that corporation is aggrieved by a violation of the Act does not interfere with the ability of  
17 the Attorney General to bring suit in the public interest under 4 CMC § 5107(a).

18 The Court need not decide whether CPA is a governmental entity or a corporation, as it is  
19 both under 2 CMC § 2121. However, there are several differences between public corporations and  
20 other governmental entities that support the Court’s finding that CPA has standing as a corporation  
21 under the Act. Public corporations have the ability to sue and be sued in their own name. *See* 2  
22 CMC § 2121. Public corporations have more independence from the Governor than other agencies.  
23 Unlike Department Secretaries, who serve at the pleasure of the Governor, members of the CPA  
24 Board of Directors may only be removed for cause. *Compare* Exec. Order 94-3, § 501 *with* 2 CMC

1 § 2123. And, public corporations often have interests distinct from that of the central CNMI  
2 government and from other public corporations. *See, e.g., NMI Ret. Fund v. Commonwealth*, Civ.  
3 No. 06-0367 (NMI Super. Ct. June 29, 2009) (Amended Judgment for Damages and Order  
4 Thereon).

5 Accordingly, as a public corporation, CPA has standing to sue as a person under the Act.

## 6 **2. Consumer Protection Act Claim Available in Contract Disputes**

7 LAD also argues that CPA’s Consumer Protection Act claim fails as a matter of law because  
8 it stems from a contract between the CPA and Boeing, and that the application of Act to a  
9 commercial contract dispute is duplicative. The Court does not agree. The Act provides remedies  
10 that are distinct from the remedies available for breach of contract. *See, e.g., 4 CMC § 5112*  
11 (providing for liquidated damages in cases of willful violation, and the award of attorney’s fees to  
12 prevailing plaintiff). Additionally, as CPA notes, the Act specifically provides that the remedies of  
13 the CPA are “cumulative to each other and to the remedies or penalties available under all other  
14 laws of the Commonwealth.” 4 CMC § 5111.

## 15 **3. Conclusion**

16 Accordingly, LAD’s motion for judgment on the pleadings as to the Consumer Protection  
17 Act claim is denied.

## 18 **II. FRAUD CLAIM**

19 LAD also moves to dismiss CPA’s claim of fraud (count 7), arguing that the claim is  
20 insufficiently pled. Allegations of fraud “shall be stated with particularity.” NMI R. Civ. P. 9(b). To  
21 sufficiently plead fraud, the plaintiff must identify the “who-what-when-where-why” of the alleged  
22 fraud. *Rios v. Saipan Koreana Hotel, Inc.*, Civ. No. 09-0524 (NMI Super. Ct. Jan. 18, 2012) (Order  
23 Granting Defendants’ Motion to Dismiss Second Amended Complaint at 7) (citing *Mills v. Polar*  
24 *Molecular Corp.*, 12 F.3d 1170, 1175 (2d Cir. 1993)). To plead fraud with particularity, the plaintiff

1 must show the following elements: “(1) a material, false misrepresentation by the defendant; (2)  
2 the defendant's knowledge of its falsity; (3) the defendant's intent that the plaintiff act reasonably  
3 upon it; and (4) the plaintiff's justifiable and detrimental reliance upon the misrepresentation.” *Syed*  
4 *v. Mobil Oil Mariana Islands, Inc.* 2012 MP 20 ¶ 44 (citing *Fusco v. Matsumoto*, 2011 MP 17  
5 ¶ 47). The intent elements, however, may be “averred generally.” NMI R. Civ. P. 9(b).

6 The Court finds that CPA failed to sufficiently plead fraud because, although the first  
7 element is addressed generally by paragraphs 20, 21, 74 and 75 of the Complaint, CPA provides no  
8 specific information as to the location, form, or content of the representation. Thus, LAD’s motion  
9 for judgment on the pleadings is granted as to the dismissal of the fraud claim (count 7).

10 In its opposition, and at hearing, CPA requested that, should the Court find fraud was  
11 insufficiently pled, the Court grant CPA leave to amend the Complaint. Pl.’s Opp’n at 15. Leave to  
12 amend should be granted when a claim of fraud is dismissed due to insufficient pleading. *Seman v.*  
13 *Sadhwani’s Inc.*, 3 NMI 303, 311 (1992). Thus, the Court grants CPA’s request for leave to amend  
14 the Complaint to conform to the requirements of Rule 9(b). Any such amendment must be filed  
15 within 30 days of this Order.

#### 16 **IV. CONCLUSION**

17 I. The Court **DENIES** LAD’s motion for judgment on the pleadings as to the Consumer  
18 Protection Act claim (count 5).

19 II. The Court **GRANTS** LAD’s motion for judgment on the pleadings as to the fraud claim  
20 (count 7) and that claim is **DISMISSED**.

21 III. The Court **GRANTS** CPA’s request for leave to amend the Complaint to conform with the  
22 requirements of Rule 9(b) of the Commonwealth Rules of Civil Procedure. Any such  
23 amendment must be filed within 30 days of this Order.

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**IT IS SO ORDERED** this 17<sup>th</sup> day of January, 2014.

\_\_\_\_\_/s/\_\_\_\_\_  
JOSEPH N. CAMACHO,  
Associate Judge