



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

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

**FOR PUBLICATION**



**E-FILED**  
**CNMI SUPERIOR COURT**  
E-filed: Sep 03 2014 02:06PM  
Clerk Review: N/A  
Filing ID: 55970950  
Case Number: 13-0075-CV  
N/A

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

<b>DR. ALAN STUART MARKOFF, DDS,</b>	)	<b>CIVIL CASE NO. 13-0075</b>
<b>dba TOOTHWORKS,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>ORDER DENYING DEFENDANT’S</b>
<b>v.</b>	)	<b>MOTION FOR JUDGMENT ON THE</b>
	)	<b>PLEADINGS</b>
<b>JUAN TUDELA LIZAMA,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

**I. INTRODUCTION**

This matter came before the Court on August 27, 2014 at 9:00 a.m. in Courtroom 220A on Defendant’s motion. Defendant Juan Tudela Lizama was present and represented himself. Plaintiff Dr. Alan Stuart Markoff, DDS, dba Toothworks was represented by Michael A. White.

This matter involves a breach of contract claim. Plaintiff alleges that Defendant Lizama failed to pay for dental services rendered to Defendant Lizama’s brother. On August 5, 2014, Defendant Lizama filed the instant motion for judgment on the pleadings, citing discovery material and arguing that Plaintiff’s claim fails as a matter of law because the dental services were provided to Defendant’s brother, so there was no consideration. On August 11, 2014, Plaintiff filed an opposition noting that the proper procedure in a situation such as this is a motion for summary judgment, as Defendant’s motion relies on discovery material and not just the pleadings. Plaintiff

1 also cites the well-established legal principle that consideration can consist of a performance given  
2 to a third party. On August 21, 2014, Defendant Lizama filed a reply arguing that if his motion is  
3 converted into a motion for summary judgment there is a genuine issue of material fact as to  
4 whether he ever promised to pay for his brother's dental services.

5 Based on a review the filings, oral argument and applicable law, the Court finds that it is  
6 proper to treat Defendant Lizama's motion as a motion for summary judgment, and denies the  
7 motion because all parties agree that there is a genuine issue of material fact, and it is an elementary  
8 principle of contract law that consideration can consist of a performance to a third party.

## 9 **II. LEGAL STANDARD**

10 Under Rule 12(c) of the Commonwealth Rules of Civil Procedure, "[i]f, on a motion for  
11 judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the  
12 court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule  
13 56."

14 Summary judgment is appropriate when the moving party is entitled to judgment as a matter  
15 of law even when all of facts and reasonable inferences from those facts are viewed in the light  
16 most favorable to the non-moving party. NMI R. Civ. Pro. 56(c); *Santos v. Santos*, 4 NMI 206, 209  
17 (1994). The moving party has the initial burden of showing that it is entitled to summary  
18 judgment. *Furuoka v. Dai-Ichi Hotel (Saipan), Inc.*, 2002 MP 5 ¶ 22. This can be accomplished in  
19 two different ways: (1) showing that undisputed facts establish every element of a claim or  
20 affirmative defense; or (2) pointing out that there is a complete lack of evidence to support the  
21 nonmoving party's claim. *Id.* ¶¶ 22, 24. If the moving party does not meet this initial burden the  
22 inquiry ends here, and the motion for summary judgment is denied. *See In re Estate of Roberto*,  
23 2002 MP 23 ¶¶ 20, 29.

1 **III. DISCUSSION**

2 In this matter, Defendant Lizama attached and referred to Plaintiff’s answers to  
3 interrogatories to demonstrate that Plaintiff alleges that Defendant Lizama promised to pay money  
4 in exchange for dental services provided to his brother. Because Defendant Lizama goes outside the  
5 pleadings, the Court treats Defendant’s motion as one for summary judgment.

6 Defendant Lizama argues that because there are no facts alleged by Plaintiff that  
7 demonstrate a personal benefit to Defendant Lizama, there is no consideration, and the Court should  
8 issue judgment in his favor. Defendant Lizama also argues that there is a genuine issue of material  
9 fact as to whether he ever promised to pay for his brother’s dental services.

10 The elements of a contract are offer, acceptance, and consideration. *Isla Fin. Servs. v.*  
11 *Sablan*, 2001 MP 21 ¶ 13 (citing Restatement (Second) of Contracts § 17 (1981)). Consideration is  
12 the exchange of a bargained-for performance or promise. Restatement (Second) of Contracts § 71  
13 (1981). “It matters not from whom the consideration moves or to whom it goes. If it is bargained for  
14 and given in exchange for the promise, the promise is not gratuitous. *Id.* at § 71 cmt. e. As an  
15 example, if A promises to pay B in exchange for B performing a service for C, B’s performance is  
16 consideration for A’s promise. *See id.* at § 71 cmt. e, illus. 14. A personal benefit to a party who  
17 makes a promise is simply not required for valid consideration. Thus, Defendant Lizama’s  
18 argument that he prevails as a matter of law because the dental services were rendered to his brother  
19 and not to him, is incorrect.

20 Defendant Lizama cites *Isla Financial Services v. Sablan*, 2001 MP 21, to support his  
21 position. In that case, a mother received a loan from Isla Financial Services. *Id.* ¶ 6. After the  
22 mother died, Isla Financial Services contacted her daughter, and the daughter executed a promissory  
23 note for the debt owed by her mother. *Id.* ¶¶ 7-8. The NMI Supreme Court found that there was no  
24 consideration given for the daughter’s promise, so the promissory note was unenforceable. *Id.*

1 ¶¶ 15, 17. In *Isla*, the critical fact was that the daughter’s promise to pay an already-existing debt  
2 was the only one given; there was no promise or performance exchanged for it. *Id.* The fact that the  
3 daughter received no personal benefit was not the dispositive issue.

4 The alleged facts of the instant case are distinct from *Isla*. Here, Plaintiff alleges that  
5 Defendant requested that Plaintiff provide dental services to Defendant’s brother, and that Defendant  
6 promised payment in exchange for those dental services. Pl.’s Answer to Interrogs. at 2. Thus, there  
7 is no lack of alleged consideration in this case.

8 During the oral arguments, Defendant Lizama also argued that as a Chamorro, he had been  
9 “finagled” by the Plaintiff, alleging that the Plaintiff took advantage of cultural norms to force a  
10 conversation with Defendant about his brother’s dental care. In this jurisdiction, customary law is  
11 recognized in many situations. *See, e.g.* 7 CMC §§ 2902-2911 (describing the Chamorro and  
12 Carolinian customary laws governing intestate succession). However, Defendant’s argument did not  
13 cite or explain any relevant customary law applicable in a breach of contract case. Instead,  
14 Defendant asked the Court to ignore basic legal principles, implicitly appealed to the shared  
15 Chamorro culture of this judge and Defendant Lizama, and characterized the Plaintiff as a person  
16 who deals dishonestly with Chamorro people. Such groundless race-based arguments hold no  
17 weight before this Court and are offensive to the Court, the Plaintiff, the Plaintiff’s attorney, and the  
18 laws—including customary laws—of this jurisdiction.

19 As the moving party, Defendant bears the burden of demonstrating that he is entitled to  
20 summary judgment, even assuming all facts alleged by Plaintiff are true. *Furuoka*, 2002 MP 5  
21 ¶ 22. Defendant fails to meet this burden. Moreover, Defendant Lizama agrees that there is a  
22 genuine issue of material fact as to whether he ever made a promise to pay Plaintiff.

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

**IV. CONCLUSION**

Accordingly, Defendant Lizama’s motion for judgment on the pleadings is **DENIED** and the matter shall proceed to trial.

**IT IS SO ORDERED** this 3<sup>rd</sup> day of September, 2014.

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