



By the order of the court, Judge David A Wiseman

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**FOR PUBLICATION**



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

**JAMES CAMACHO BOWIE, and** )  
**LINDA MANAHANE BOWIE,** )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
**APEX CONSTRUCTION, INC.,** )  
**NORTHERN MARIANAS HOUSING** )  
**CORPORATION, and** )  
**COMMONWEALTH OF THE** )  
**NORTHERN MARIANA ISLANDS,** )  
 )  
Defendants. )  
\_\_\_\_\_ )

**CIVIL CASE NO. 13-0092**  
**ORDER GRANTING COMMONWEALTH  
OF THE NORTHERN MARIANA  
ISLANDS’S MOTION TO DISMISS;**  
**ORDER DENYING NORTHERN  
MARIANAS HOUSING  
CORPORATION’S MOTION TO  
DISMISS; AND**  
**ORDER DENYING NORTHERN  
MARIANAS HOUSING  
CORPORATION’S MOTION FOR  
SUMMARY JUDGMENT**

**I. INTRODUCTION**

THIS MATTER came before the Court on October 10, 2013, at 1:30 p.m. in Courtroom 223A. At the hearing, the parties presented arguments regarding three motions: Defendant Commonwealth of the Northern Mariana Islands’s (CNMI) motion to dismiss and Defendant Northern Mariana Housing Corporation’s (“NMHC”) motions to dismiss and for summary judgment.

Plaintiffs James Camacho Bowie and Linda Manahane Bowie were represented by attorney Joseph E. Horey. NMHC was represented by attorney Mark A. Scoggins. CNMI was represented by Assistant Attorney General David Lochabay.

The following paragraphs contain the legal background for the instant Order, and the orders of the Court.

1           **a. The Bowies’s First Amended Complaint, filed on August 21, 2013.**

2           On August 21, 2013, the Bowies filed their first amended complaint in this Court with five causes  
3 of action claiming damages, punitive damages, costs of litigation and attorney’s fees, repairing the ramp to  
4 a safe and lawful condition, and for other relief.

5           The Bowies directed their first cause of action for personal injury resulting from negligence against  
6 all defendants; the second cause of action for breach of contract against Apex Construction; the third cause  
7 of action for breach of contract against NMHC; the fourth cause of action under the Consumer Protection  
8 Act against Apex Construction; and the fifth cause of action under the Building Safety Code against all  
9 defendants.

10           **b. CNMI’s Motion to Dismiss, filed on September 4, 2013.**

11           On September 4, 2013, CNMI moved to dismiss Plaintiffs’ first and fifth causes of action under  
12 Rules of Civil Procedure Rule 12(b)(6), for failure to state a claim upon which relief may be granted. CNMI  
13 argues that applicable statutory immunity provisions in the Commonwealth Building Safety Code and the  
14 Government Liability Act bars Plaintiffs’ recovery.

15           **c. NMHC’s Motion to Dismiss, filed on September 3, 2014.**

16           On September 3, 2013, NMHC moved to dismiss Plaintiffs’ first and fifth causes of action under  
17 Rules of Civil Procedure Rule 12(b)(6), for failure to state a claim upon which relief may be granted.  
18 Regarding the first cause of action, NMHC argues that it is immune from negligence liability under the  
19 Government Liability Act of 1983, 7 CMC § 2204(a). Regarding the fifth cause of action, NMHC argues  
20 that Plaintiffs fail to allege sufficient facts to recover under the Building Safety Code of 1990, .2 CMC §  
21 7126(a).

22           **d. NMHC’s Motion for Summary Judgment, filed on September 3, 2014.**

23           On September 3, 2013, “alternatively and as a supplement,” NMHC moved for summary judgment  
24 as to all of Plaintiffs’ causes of action under Rules of Civil Procedure Rule 56. NMHC Mot.1.  
25

1 **e. Summary of the Court's Orders**

2 After considering oral and written arguments, the Court's orders are as follows:

3 For the following reasons, the Court hereby **GRANTS** CNMI's motion to dismiss Plaintiffs' first  
4 and fifth causes of action.

5 For the following reasons, the Court hereby **DENIES** NMHC's motion to dismiss Plaintiffs' first  
6 and fifth causes of action.

7 For the following reasons, the Court hereby **DENIES** NMHC's motion for summary judgment as  
8 to Plaintiffs' first, third, and fifth causes of action.

9 **II. FACTUAL BACKGROUND**

10 Plaintiffs are James and Linda Bowie, husband and wife. Pls' First Am. Compl. ¶ 2. Mr. Bowie is  
11 confined to a motorized wheelchair and requires a ramp for access to this house. Pls' First Am. Compl. ¶  
12 7. In order to perform construction work on their home and improve the wheelchair ramp, the Bowies first  
13 applied for a grant from Defendant NMHC. Pls' First Am. Compl. ¶ 8.

14 Having received grant approval from NMHC, the Bowies hired Defendant Apex Construction, Inc.  
15 ("Apex Construction") to perform the necessary construction work on their home. Pls' First Am. Compl.  
16 ¶ 9. Apex Construction, instead of reducing the slope of the ramp, increased it. Pls' First Am. Compl. ¶ 10.  
17 The resulting ramp failed to comply with Americans with Disabilities Act Accessibility Guidelines. Pls'  
18 First Am. Compl. ¶ 11.

19 As a result, Mr. Bowie suffered injuries when his wheelchair suddenly tipped backwards while using  
20 the defective ramp. Pls' First Am. Compl. ¶ 17.

21 The Bowies complain that Defendants NMHC and CNMI approved the building plans despite  
22 knowing that the wheelchair access ramp was too steep. Pls' First Am. Compl. ¶¶ 15, 16. Defendant NMHC,  
23 in particular, advised the Bowies that the defective wheelchair access ramp could not and would not be  
24 corrected. Pls' First Am. Compl. ¶ 15. NMHC held up additional funding for necessary repairs to the Bowie  
25

1 residence's electrical wiring unless the Bowies approved the defective wheelchair access ramp. Pls' First  
2 Am. Compl. ¶ 15.

### 3 **III. LEGAL STANDARD FOR MOTION TO DISMISS**

4 Commonwealth Rules of Civil Procedure Rule 12(b)(6) allows a defendant to seek dismissal of a  
5 claim, if the plaintiff fails to state a claim upon which relief can be granted. The purpose of a Rule 12(b)(6)  
6 motion is to test the legal sufficiency of the complaint. *Camacho v. Micronesian Dev. Co.*, 2008 MP 8 ¶ 10.  
7 Thus, dismissal of a claim is improper "unless it appears beyond a doubt that the plaintiff can prove no set  
8 of facts in support of his claim which would entitle him to relief." *Id.* (quoting *Govendo v. Micronesian*  
9 *Garment Mfg.*, 2 NMI 270, 283 (1991)). Therefore, "the court must accept the allegations in the complaint  
10 as true and construe them in the light most favorable to the plaintiff." *Id.* (quoting *Govendo*, 2 NMI at 283).  
11 And for these reasons, "factual argument is inappropriate in a Rule 12(b)(6) motion." *Id.*

### 12 **IV. DISCUSSION ON CNMI'S MOTION TO DISMISS**

13 The following paragraphs explain the Court's reasoning for granting CNMI's motion to dismiss  
14 Plaintiffs' first and fifth causes of action, finding that CNMI is immune to suit under 2 CMC § 7122(f).

#### 15 **a. The Court finds that CNMI should be afforded statutory immunity under the** 16 **Commonwealth Building Safety Code because of reasonable inferences from Plaintiffs'** 17 **alleged facts in their First Amended Complaint.**

18 CNMI argues that 2 CMC § 7122(f) grants it statutory immunity from Plaintiffs' claims. 2 CMC §  
19 7122(f) states:

20 (f) *Liability*. This code shall not be construed to relieve from or lessen the responsibility of  
21 any person owning, operating, or controlling any building or structure from any damages to  
22 persons or property caused by defects, nor shall the Building Safety Division or the  
23 Commonwealth government be held as assuming any such liability by reason of the permit  
24 or inspection authorized by this code or any certificate of inspection issued under this code.

25 2 CMC § 7122(f). In addition, CNMI argues that Plaintiffs necessarily obtained a permit from the Building

1 Safety Division prior to altering the wheelchair access ramp. CNMI’s Mem. 4:1-6. The Building Safety  
2 Division’s Building Safety Rules and Regulations mandates that a person obtain the required permit from  
3 the Building Safety Division prior to altering a building. 115 N. Mar. I. Admin. Code §§ 155-10.1-040,  
4 135(a).

5 Furthermore, CNMI argues that Plaintiffs necessarily obtained a certificate of occupancy from the  
6 Building Safety Division before Plaintiffs occupied or used the wheelchair access ramp. CNMI’s Mem. 4:5-  
7 12; 115 N. Mar. I. Admin. Code §§ 155-10.1-301. The certificate of occupancy certifies that the structure  
8 conforms to the provisions of the Building Safety Code and all other regulations. 115 N. Mar. I. Admin.  
9 Code §§ 155-10.1-301.

10 CNMI’s essential argument is this: even if Plaintiffs’ allegations of fact are true and CNMI,  
11 “knowing that the ramp was too steep, despite having the authority to disapprove the ramp and require it to  
12 be corrected, and despite having previously advised Plaintiffs that it would not approve the ramp unless it  
13 were made less steep and more landings were included to break up the slope, nevertheless approved it  
14 without correction” Pls’ First Am. Compl. ¶ 16 – CNMI would still prevail under the statutory immunity  
15 it enjoys under the Building Safety Code for the following reasons.

16 Plaintiffs altered their building when Apex Construction altered their wheelchair ramp. *See* Pls’ First  
17 Am. Compl. ¶ 9, 10. Mr. Bowie used the altered wheelchair ramp. *See* Pls’ First Am. Compl. ¶ 17. These  
18 are sufficient facts that enable CNMI to assert the statutory immunity defense under the Building Safety  
19 Code.

20 Plaintiffs’ rebuttal is unpersuasive. Plaintiffs argue that CNMI makes a “unilateral factual assertion”  
21 when it suggests that CNMI’s only role in the instant matter was limited to issuing permits and certificates  
22 of occupancies. Pls’ Opp’n. 5. Plaintiffs also argue that “no such ‘fact’ is alleged anywhere in the First  
23 Amended Complaint”–and that “the Complaint does not so much as mention either a building permit or a  
24 certificate of occupancy.” Pls’ Opp’n. 5. And while Plaintiffs raise the persuasive authority of *Hagen v. U-*  
25 *Haul Co. of Tennessee*, 613 F.Supp.2d 986, 1003 (W.D. Tenn. 2009) for the proposition that a Rule 12(b)(6)

1 motion cannot be granted where the court must rely on evidence extrinsic to the face of the complaint—the  
2 Court does not rely on extrinsic evidence to make its finding. The Court may take reasonable inferences  
3 drawn from the allegations contained in the complaint. *Bolalin v. Guam Publs., Inc.*, 4 NMI 176, 179 (1994).

4 This Court has done so, and finds that no additional facts would provide Plaintiffs relief. Because  
5 2 CMC § 7122(f) covers “any liability,” the Court holds as a matter of law that, given the allegations in  
6 Plaintiffs’ First Amended Complaint, CNMI is entitled to statutory immunity under 2 CMC § 7122(f).  
7 Accordingly, the Court grants CNMI’s Rule 12(b)(6) motion to dismiss Plaintiffs’ first and fifth causes of  
8 action.

9 **b. The Court does not make a ruling on CNMI’s discretionary function exception under**  
10 **the Government Liability Act.**

11 As the Court granted CNMI’s motion to dismiss both of Plaintiffs’ claims under 2 CMC § 7122(f)  
12 of the Building Safety Code, it does not find it necessary to rule on CNMI’s motion to dismiss Plaintiffs’  
13 claims under the discretionary function exception under 7 CMC § 2204(a).

14 **V. DISCUSSION ON NMHC’S MOTION TO DISMISS**

15 The following paragraphs explain the Court’s reasoning on its order denying NMHC’s motion to  
16 dismiss Plaintiffs’ first and fifth causes of action under both 7 CMC § 2204(a) and 2 CMC § 7126(a).

17 **a. The legal standard for the discretionary function exception under § 2204(a) of the**  
18 **Government Tort Liability Act under *Berkovitz v. United States*.**

19 NMHC argues that the Court should grant its motion to dismiss Plaintiffs’ first claim because  
20 NMHC, as a government agency, is immune to Plaintiffs’ negligence claim under § 2204(a) of the  
21 Government Liability Act of 1983. The relevant portion of the Government Liability Act provides that “[t]he  
22 government is not liable for the following claims: (a) Any claim . . . based upon the exercise or performance  
23 or the failure to perform a discretionary function or duty on the part of a Commonwealth agency or employee  
24 of the government, whether or not the discretion is abused.” 7 CMC § 2204(a). If a government agency’s  
25 alleged improper act was part of a discretionary function, then the government agency is immune from suit.

1 The relevant language of the Commonwealth’s Government Tort Liability Act is similar to a  
2 provision within the Federal Tort Claims Act (“FTCA”), which provides that “[The Federal Tort Claims  
3 Act] shall not apply to – [a]ny claim . . . based upon the exercise or performance or the failure to exercise  
4 or perform a discretionary function or duty on the part of a federal agency or an employee of the  
5 Government, whether or not the discretion involved be abused.” 28 U.S.C. § 2680(a). Therefore, court  
6 rulings regarding the discretionary function exception under the FTCA are helpful in analyzing the merits  
7 of NMHC’s motion to dismiss.

8 The burden of showing that the discretionary function exception should apply is on the government.  
9 *Bear Medicine v. United States*, 241 F.3d 1208, 1213 (9th Cir. 2000). Thus, the government must persuade  
10 the Court that it is entitled to immunity under the two element test as explained in *Berkovitz v United States*  
11 (“*Berkovitz test*”).

12 First, the government must show that the employee’s conduct involved “an element of judgment or  
13 choice” – in other words, the discretionary function exception will not apply “when a [ ] statute, regulation,  
14 or policy specifically describes a course of action for an employee to follow.” *Berkovitz v. United States*, 486  
15 U.S. 531, 536 (1988). If the government shows that the questioned conduct involved an element of judgment  
16 or choice, then the court analyzes the second part of the test.

17 Second, the government must show that the questioned judgment (or choice) was a policy judgment  
18 and decision. *Id.* at 537 (“[t]he exception, properly construed, therefore protects only governmental actions  
19 and decisions based on considerations of public policy . . .”). If the court finds that the government  
20 employee’s conduct involved a policy judgment, then the government employee’s conduct is immune from  
21 liability under § 2204(a)’s discretionary function exception.

22 **b. Analysis of NHMC’s § 2204(a) defense in the context of a motion to dismiss shows**  
23 **that NMHC failed to meet its burden.**

24 The legal standard for analyzing a § 2204(a) defense for a Rule 12(b)(6) motion to dismiss is whether  
25 the allegations in the complaint itself are sufficient to establish discretionary function immunity under §

1 2204(a).<sup>1</sup> Thus, this Court will analyze whether NMHC shows that the allegations raised in Plaintiffs’  
2 pleadings, when taken as fact, entitles NMHC to immunity under the discretionary function exception.

3       Regarding the first step in the *Berkovitz* test, NMHC argues that “[t]he conduct in question as alleged  
4 in the complaint – whether to approve, or require corrections to a ramp – would all be matters of judgment  
5 or choice for the relevant employee.” NMHC’s Mem. ¶ 5. There are two problems with NMHC’s argument.

6       First, NMHC’s argument is a conclusory statement, and the Court finds that more facts could make  
7 it possible for Plaintiffs to show that “whether to approve, or require corrections to a ramp” are specifically  
8 described functions that leave no judgment to the government employee. Plaintiffs argue that point, for  
9 example, when they claim in their opposition papers that “NMHC had no discretion to deviate from these  
10 requirements.” Pls’ Opp’n. 4. Second, factual arguments are inappropriate in a motion to dismiss. The issue  
11 before the Court is not whether a plaintiff is likely to prevail, but it is “whether the claimant is entitled to  
12 offer evidence to support their claims” even if “it may appear on the face of the pleadings that recovery is  
13 very remote and unlikely . . . .” *Scheur v. Rhodes*, 416 U.S. 232, 236 (1973). NMHC’s arguments are factual  
14 arguments and, as such, are inappropriate to raise in a motion to dismiss. Therefore, NMHC fails to show  
15 that the pleading alleges facts that show the first element in the *Berkovitz* test.

16       Regarding the second step in the *Berkovitz* test, the Court finds that NMHC also fails to show that  
17 the Plaintiffs’ pleadings allege that NMHC employees make public policy judgments. Again, NMHC makes  
18 a conclusory statement that “[o]perating a program, in this case the HOME program . . . would obviously  
19 be based on considerations of public policy, however that policy may be defined.” NMHC’s Mem. ¶ 7. There  
20 are a number of issues to NMHC’s argument, but the key problem is that NMHC fails to show that Plaintiffs  
21 will, without a doubt, fail to acquire more evidence to determine whether the questioned judgment was made  
22 in consideration of public policy. Therefore, NMHC fails to show that Plaintiffs’ pleadings allege facts that

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24       <sup>1</sup> In the context of a legislative immunity defense against plaintiff’s 42 U.S.C. § 1983 claim, the  
25 Commonwealth Supreme Court held in *Sablan v. Tenorio*, 4 NMI 351, 355 (1995) that a 12(b)(6)  
motion may be granted “[w]here the complaint itself establishes legislative immunity . . . .”



1 show the second element in the *Berkovitz* test.

2 Accordingly, the Court denies NMHC’s motion to dismiss on the basis of § 2204(a) of the  
3 Government Liability Act without prejudice.

4 **c. The legal standard for evaluating a claim under 2 CMC § 7126(a), on the grounds**  
5 **provided in 2 CMC § 7126(d) of the Building Safety Code.**

6 NMHC argues that Plaintiffs fail to allege facts that sustain their fifth cause of action made under  
7 2 CMC § 7126(a) of the Building Safety Code, which provides in relevant part that it is “ . . . unlawful for  
8 any person, firm or corporation to construct, enlarge, move, equip, use, occupy or maintain, or cause or  
9 permit the same to be done, in violation of this building safety code. If a violation of the building safety code  
10 has occurred, the building safety official shall require the completion of corrective measures that result in  
11 compliance with the building safety code before occupancy of the building is permitted.” 2 CMC § 7126(a).

12 NMHC also argues that Plaintiffs bring their claim on the grounds stated in 2 CMC § 7126(d), which  
13 provides a private cause of action under 2 CMC § 7126(a), and provides in relevant part: “[n]otwithstanding  
14 any other remedies available, any person damaged economically, injured, or otherwise aggrieved as a result  
15 of a violation of the building safety code has a cause of action against the person who committed the  
16 violation. Violation of the building safety code shall constitute a per se public nuisance.” 2 CMC § 7126(d).  
17 Plaintiffs do not oppose NMHC’s legal characterization of their cause of action. Thus, the issue is whether  
18 NMHC shows that Plaintiffs failed to allege that NMHC is a person who committed the subject-violation.  
19 Here, NMHC failed to do so.

20 **d. Plaintiffs’ claim is legally sufficient because it is possible that NMHC is a person who**  
21 **committed the violation in question.**

22 NMHC makes three arguments regarding the Building Safety Code. First, that Plaintiffs failed to  
23 allege that NMHC is the building official. NMHC’s Mem. ¶ 9. Thus, NMHC had no authority or duties  
24 under the Building Safety Code. NMHC’s Mem. ¶ 9. Second, that Plaintiffs alleged that they informed  
25 NMHC of the defective ramp after it was constructed. NMHC’s Mem. ¶ 9. And even if NMHC had a duty

1 under the Building Safety Code, their duty would have been exhausted when Plaintiffs took occupancy of  
2 the residence. *See* NMHC’s Mem. ¶ 9, Pls’ First Am. Compl. 17. Third, that Plaintiffs failed to allege facts  
3 that show NMHC is a person who committed the violation, as described under 2 CMC § 7126(d). NMHC’s  
4 Mem. ¶ 9.

5 While NMHC’s second argument is not appropriate under a Rule 12(b)(6) motion because it is a  
6 factual argument regarding timing, NMHC’s first and third arguments are not. Plaintiffs failed to allege that  
7 NMHC is a building official under the Building Safety Code, and thus, NMHC cannot be held to have a duty  
8 to Plaintiffs as a building official under 2 CMC § 7126(a). The remaining issue, then, is whether NMHC is  
9 a person who committed the violation, as described under 2 CMC § 7126(d).

10 Plaintiffs’ argument using the Commonwealth Superior Court’s partial summary judgment order in  
11 *Northern Mariana Islands Housing Corp. v. SSFM Int’l Inc.*, NMI Super. Ct. Civ. No. 06-0123 (July 28,  
12 2011) is persuasive on this issue. In *SSFM Int’l Inc.*, the court held that SSFM International, Inc., a  
13 contractor working under NMHC was liable to NMHC under 2 CMC § 7126(d). *See id.* at 9:22-10:5, 16:1-  
14 18. There, the court found that SSFM International, Inc. “caused to permit” Building Safety Code violations  
15 because SSFM International, Inc. was the construction manager for the project, and allowed a sub-contractor  
16 to build homes in violation of the Building Safety Code. *Id.*

17 Therefore, Plaintiffs show that it is possible to have a construction under 2 CMC § 7126(d) where  
18 the person who committed the violation is also a legal-entity person who “caused to permit” the violation.  
19 In their pleading, Plaintiffs allege that NMHC has “the authority to disapprove the ramp and require it to be  
20 corrected . . . .” Thus, it is possible that Plaintiffs can show that NMHC caused to permit violations of the  
21 Building Safety Code. Accordingly, NMHC failed to show that there are no set of facts that Plaintiffs can  
22 show to prevail on this claim.

23 For the foregoing reasons, the Court denies NMHC’s motion to dismiss Plaintiffs’ fifth cause of  
24 action: violation of the Building Safety Code, without prejudice.

1                                   **VI. LEGAL STANDARD FOR MOTION FOR SUMMARY JUDGMENT**

2                   The Court may grant a motion for summary judgment “if the pleadings, depositions, answers to  
3 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine  
4 issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” NMI R.  
5 Civ. P. 56(c). In considering the motion, the court views facts and inferences in the light most favorable to  
6 the non-moving party. *Century Ins. Co. v. Hong Kong Ent. Investments*, 2009 MP 4 ¶ 14 (citation omitted).

7                   A moving party has the initial burden to show that he or she is entitled for summary judgment.  
8 *Furuoka v. Dai-Ichi Hotel (Saipan), Inc.*, 2002 MP 5 ¶ 22. If the defendant is the moving party, then he or  
9 she must either show that “the undisputed[] facts establish every element of an asserted affirmative defense”  
10 or that there is “an absence of evidence to support the nonmoving party’s case.” *Id.* at ¶¶ 22, 23 (quoting  
11 *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)).

12                   If the moving party satisfies the initial burden, the nonmoving party must respond by showing that  
13 there is a genuine issue of material facts. *Id.* ¶ 24 (citation omitted). “If the nonmoving party cannot muster  
14 sufficient evidence to make out a claim, a trial would be useless and the moving party is entitled to summary  
15 judgment as a matter of law.” *Id.* (quoting *Celotex*, 477 U.S. at 331).

16                                   **VII. DISCUSSION ON NMHC’s MOTION FOR SUMMARY JUDGMENT**

17                   NMHC brings a motion for summary judgment under the Commonwealth Rules of Civil Procedure  
18 Rule 56 as to “all” of Plaintiffs’ causes of action. The Court understands NMHC’s motion to be directed to  
19 Plaintiffs’ first, third, and fifth causes of action. This Court finds that NMHC failed to satisfy its initial  
20 burden in light of the lack of a developed factual record.

21                   In order to satisfy its initial burden, NMHC asserts that certain facts are “not subject to genuine  
22 dispute . . . .” NMHC Mem. 6, ¶¶ 10-18. NMHC’s unilateral assertion does not persuade this Court that there  
23 is no genuine issue as to any material fact. The Court notes that the parties have yet to conduct formal  
24 discovery in this matter. There have been no interrogatories taken, depositions taken, or requests for  
25 admissions responded to. And while NMHC attaches the Declaration of Jennifer C. Camacho to its motion,

1 the Declaration speaks to the authenticity of the documents attached as Exhibits – not as to whether the facts  
2 are undisputed. Dec. Camacho ¶¶ 1-7.

3 Thus, when NMHC cites to *Scott v. Harris*, 550 U.S. 372, 380 (2007), for the proposition that a court  
4 should not adopt a “story” that is “blatantly contradicted by the record” – at this stage in the litigation, the  
5 Court has no record to point to outside of the pleadings. Put it differently, NMHC has not sufficiently shown  
6 that the material facts are undisputed because it cannot – the record in this case is very limited.

7 Even if NMHC had satisfied its burden and sufficiently proved that some facts are not subject to  
8 genuine dispute, NMHC must still show that its inference from an undisputed fact is the only reasonably-  
9 correct inference. *See Bank of Saipan v. Super. Ct. N. Mar. I.*, 2001 MP 7 ¶ 27.

10 For example, to the breach of contract claim, NMHC failed to show that its inference is the only  
11 reasonably-correct inference. Here, Plaintiffs’ essential argument against summary judgment to its breach  
12 of contract cause of action is that Plaintiffs and NMHC have different interpretations as to certain contract  
13 terms. Pls.’ Opp’n. 5-8. Without adequate discovery, and at this stage in the litigation, these are the factual  
14 determinations that this Court cannot decide on a summary judgment motion.

15 As NMHC has not met its initial burden to present to this Court that there is no genuine dispute as  
16 to any material fact—the Court denies NMHC’s motion for summary judgment in its entirety without  
17 prejudice.

### 18 CONCLUSION

19 Based on the foregoing:

20 The Court hereby **GRANTS** CNMI’s motion to dismiss Plaintiffs’ first and fifth causes of action.

21 The Court hereby **DENIES** NMHC’s motion to dismiss Plaintiffs’ first and fifth causes of action  
22 without prejudice.

23 The Court hereby **DENIES** NMHC’s motion for summary judgment as to Plaintiffs’ first, third, and  
24 fifth causes of action without prejudice.

