



By the order of the court, Judge David A Wiseman

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FOR PUBLICATION



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

KSA CORPORATION,) **CIVIL CASE NO. 14-0011**
)
Plaintiff,) **ORDER DENYING DEFENDANT’S**
) **MOTION TO DISMISS**
v.)
)
EUN TEACK JUNG,)
)
Defendant.)

I. INTRODUCTION

THIS MATTER came before the Court on September 4, 2014, at 1:30 p.m. in Courtroom 223A. Attorney Samuel I. Mok appeared for Plaintiff, KSA Corporation. Attorney Robert H. Myers appeared for Defendant, Eun Teack Jung.¹

Based on review of the filings, oral arguments, and applicable law, the Court hereby **DENIES** Defendant’s motion to dismiss.

II. BACKGROUND

Plaintiff, a corporation, alleged in its verified complaint that it is a corporate business entity with a wide array of commercial interests, including the prospective construction and operation of tourist-destination facilities such as large scale hotels, vacation resorts, and casino-gaming complexes. Plaintiff alleged that one shareholder owns 100% of the company stock: Mr. Il Hwan Kim. Plaintiff alleged that, as of June 20, 2007, Mr. Kim was the sole authorized signer on all of its corporate bank accounts.

Plaintiff alleged that, on or about February 2013, it discovered through an internal audit that checks were made out to a former shareholder, Defendant Eun Teack Jung. Plaintiff alleged that Defendant, who

¹ In this matter, the Court granted two stipulated motions extending the time to file opposition and reply briefs, and continued the matter for hearing until September 4, 2014.

1 was not authorized to execute company checks, wrote thirteen checks out to himself from the period of
2 August 1, 2007 to December 26, 2007 in the combined amount of \$53,800. Plaintiff also alleged that
3 Defendant concealed his acts by withholding and/or destroying bank statements, and then represented to
4 corporate officers that said bank statements were lost or not received. Plaintiff also alleged that Defendant
5 represented to Mr. Kim that the company finances were in order, and that expenditures of corporate monies
6 were for legitimate business purposes even through the subject checks were made out to himself and not to
7 a genuine vendor or account payable.

8 On January 6, 2014, Plaintiff filed the instant complaint. In its complaint, Plaintiff raised three tort
9 causes of action against Defendant. First, for conversion. Second, for breach of a fiduciary duty. Third, for
10 waste of corporate assets. Service was completed on January 29, 2014. On February 14, 2014, the Court
11 ordered a case management conference. On March 20, 2014, Defendant filed the instant motion to dismiss
12 all three of Plaintiff's causes of action under Rule 12 (b)(6) of the Commonwealth Rules of Civil Procedure
13 ("Rule 12(b)(6)") arguing that Plaintiff's tort claims were time-barred under 7 CMC § 2503(d).

14 III. LEGAL STANDARD

15 In order to prevail on a Rule 12(b)(6) motion, the movant has the burden to show that a pleading is
16 not sufficient under Rule 8(a) of the Commonwealth Rules of Civil Procedure. A pleading may sufficiently
17 comply with Rule 8(a) in two ways. *Atalig v. Mobil Oil Mariana Islands, Inc.*, 2013 MP 11 ¶ 23. A pleading
18 may contain direct allegations of fact as to every material point. *Id.* Or a pleading may contain allegations
19 from which a fact-finder could reasonably infer that the necessary evidence will be introduced at trial. *Id.*
20 A pleading may not contain allegations of fact that are purely speculative. *Id.* But in construing the
21 allegations contained in the pleading, the Court assumes them to be true. *Id.* (citing *Syed v. Mobil Oil*
22 *Mariana Islands, Inc.*, 2012 MP 20 ¶ 22). However, the Court will not strain to find an inference favorable
23 to the non-moving party. *Id.*

24 IV. DISCUSSION

25 The Court finds that the applicable statute of limitations for all three of Plaintiff's tort claims is two

1 years. But the Court also finds that Plaintiff’s claims are not barred by 7 CMC § 2503(d)’s two-year statute
2 of limitations at this stage in the litigation. The Court will discuss each finding in turn.

3 **A. Plaintiff’s Tort Claims are Subject to the Two-Year Statute of Limitations**

4 Defendant argues that the applicable time-bar for all torts actions is two years under 7 CMC §
5 2503(d), which states that actions for injury caused by the wrongful or negligent act of another shall be
6 commenced only within two years. Defendant relies on the Commonwealth Supreme Court case of *Juan v.*
7 *Commonwealth of the Northern Mariana Islands* to support his assertion that the scope of 7 CMC § 2503(d)
8 is broad. 2001 MP 18 ¶ 29 (“Rather, we reiterate the statutory mandate of 7 CMC § 2503, that all tort claims,
9 including those premised on Article I, § 3(c), must be commenced within the two-year limitations.”). In
10 response, Plaintiff argues that this Court should not rely on *Juan* to dismiss its tort claims because the
11 Supreme Court’s rationale in *Juan* was dicta – and not binding on this Court.

12 The Court is not persuaded by Plaintiff’s argument. Contrary to Plaintiff’s assertion and citations to
13 persuasive authorities, in *Juan*, the Commonwealth Supreme Court’s discussion of how to interpret 7 CMC
14 § 2503(d) was not dicta. Rather, the Court relied on its broad reading of the “expansive language” of 7 CMC
15 § 2503(d) to ultimately hold that all tort claims arising under Article I, Section 3(c) of the Commonwealth
16 Constitution must be filed within the two-year statutory limitations period.² *Juan*, 2001 MP 18 ¶ 28.
17 Accordingly, Plaintiff’s argument that the Court should adopt a narrower interpretation of 7 CMC § 2503(d)
18 is not consistent with the prevailing scope of interpretation as held in *Juan*.³ Therefore, the Court finds that

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20 ² Article I, Section 3(c) of the Commonwealth Constitution provides that “[a] person adversely affected by an illegal
search or seizure has a cause of action against the government within limits provided by law.”

21 ³ To the extent that the Ninth Circuit Court of Appeals finds that *Juan*’s discussion on 7 CMC § 2503(d) as
22 “technically” dicta in *Northern American Airlines, Inc. v. Camacho*, 296 F.3d 787, 790 n.5 (9th Cir. 2002), the Court notes
23 that decisions of the Ninth Circuit are not binding on this Court. Moreover, as stated in paragraph 28 of the *Juan* decision, the
24 expansive interpretation of 7 CMC § 2503(d) was an essential logical component to the Commonwealth Supreme Court’s
25 holding in *Juan*. In determining what is dicta and what is not, the Court adopts the rationale as stated in Restatements of the
Law Second, Judgments section 27 comment h which states, “If issues are determined but the judgment is not dependent upon
the determinations, relitigation of those issues in a subsequent action between the parties is not precluded. Such
determinations have the characteristics of dicta, and may not ordinarily be the subject of an appeal by the party against whom
they were made. In these circumstances, the interest in providing an opportunity for a considered determination, which if

1 all three of the present tort claims are subject to the two-year statute of limitations under 7 CMC § 2503(d).⁴

2 **B. Plaintiff's Tort Claims Have Extended Statutory Deadlines Under 7 CMC § 2509**

3 Plaintiff's tort claims are not time-barred as a matter of law under 7 CMC § 2503(d) because 7 CMC
4 § 2509 extends the statutory deadline if there is a showing that the defendant fraudulently concealed a cause
5 of action. Under 7 CMC § 2509, the time limit for filing a complaint starts accruing when the plaintiff
6 discovers the fraudulent act or had reasonable opportunity to discover the cause of action. Here, Plaintiff has
7 alleged sufficient facts to show that its filing deadline should be extended under 7 CMC § 2509.

8 Plaintiff alleged in his verified complaint that Defendant concealed his misdeeds by withholding
9 and/or destroying bank statements, and then representing to Plaintiff's corporate officers that said statements
10 were lost or not received. Plaintiff also alleged that Defendant concealed his misdeeds by representing to
11 Plaintiff's corporate officers that the expenditure of corporate monies were for legitimate business purposes
12 despite the fact that the checks had been made out to him personally. Plaintiff also alleged that it did not
13 discover Defendant's misdeeds until an internal audit was conducted in or around February of 2013 after
14 some missing bank statements and corresponding checks were obtained from the Bank of Saipan.
15 Accordingly, Plaintiff has alleged facts sufficient to show that 7 CMC § 2509's tolling provisions should
16 apply to the instant matter at this stage in the litigation.

17 Plaintiff filed this complaint on January 6, 2014 – well within the two-year statutory deadline
18 Plaintiff argues to have accrued from February of 2013. Defendant does not address this point in his written

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20 adverse may be the subject of an appeal, outweighs the interest in avoiding the burden of relitigation.” Cf. *Fusco v.*
21 *Matsumoto*, 2011 MP 17 ¶ 39 (finding technical dicta where ultimate holding was decided on a different element than the
22 topic of the subject-discussion); cf. *In re Estate of Roberto*, 2010 MP 7 ¶ 21 n.9 (“The case does not explicitly rely on the
statute of limitations in ordering certain assets be awarded to Fejeran, and therefore it may be possible to interpret the statute
of limitations language as dicta.”).

23 ⁴ Plaintiff also urges the Court to adopt the pre-1989 Appellate Division of the District Court of the Northern
24 Mariana Islands (“appellate division”)’s interpretation of 7 CMC § 2503(d), which limited said statute’s reach to personal
25 injury and wrongful death claims. See *Magofna v. Estate of Castro*, 1 C.R. 685, 690 (App. Ct. 1983). Because the Court finds
that *Juan* is instructive on the current interpretation of 7 CMC § 2503(d), the Court also finds that the appellate division’s
relevant holding in *Magofna* is no longer binding on this Court.

1 brief, which the Court interprets as a concession to its merits. Therefore, in the context of determining the
2 sufficiency of the instant pleading, the Court finds that Plaintiff's claims are not time-barred under 7 CMC
3 § 2503(d) as extended by 7 CMC § 2509.

4 **CONCLUSION**

5 Based on the foregoing, the Court **DENIES** Defendant Eun Teack Jung's Motion to Dismiss the
6 Complaint. The Court **ORDERS** Defendant to file an answer pursuant to the Rules of Civil Procedure.

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8 **SO ORDERED** this 8th day of April, 2015.

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10 /s/
11 David A. Wiseman, Associate Judge
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