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FOR PUBLICATION

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

SAIPAN ENTERTAINMENT, LLC,)	CIVIL CASE NO. 16-0004
)	
Plaintiff,)	
)	
v.)	ORDER GRANTING DEFENDANT KAN
KAN PACIFIC SAIPAN, LTD., and)	PACIFIC'S MOTION TO DISMISS
MARIANNE C. TEREGEYO, in her)	
official capacity as Acting Secretary of the)	
Department of Public Lands of the)	
Commonwealth of the Northern Mariana)	
Islands, IMPERIAL PACIFIC)	
INTERNATIONAL (CNMI), LLC dba Best)	
Sunshine International, and Does 1-10,)	
)	
Defendants.)	

I. INTRODUCTION

This matter came before the Court on March 14, 2016 at 10:30 a.m. in Courtroom 217A on Defendant's Motion to Dismiss First Amended Complaint. Plaintiff Saipan Entertainment, LLC ("SEL") was represented by Attorney Daniel T. Guidotti. Defendant Kan Pacific Saipan, Ltd. ("Kan Pacific") was represented by Attorney Joseph J. Iacopino. Defendant Marianne C. Teregeyo, in her official capacity as the Acting Secretary of the Department of Public Lands of the Commonwealth of the Northern Mariana Islands ("Secretary Teregeyo")¹ was represented by Assistant Attorney General Christopher C. Timmons. Defendant Imperial Pacific International (CNMI), LLC dba Best Sunshine International ("IPI") was represented by Attorney Ellsbeth Viola Alepuyo.

¹ Since the date of Saipan Entertainment's First Amended Complaint, Acting Secretary Marianne C. Teregeyo was confirmed as Secretary of the Department of Public Lands and shall be referred to as such.

By Order of the Court, Judge TERESA KIM-TENORIO

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1 On January 1, 2016, SEL filed their Verified Complaint against Kan Pacific for breach of
2 contract and unjust enrichment. On February 8, 2016, Kan Pacific filed a Motion to Dismiss.
3 Before the Court could hear arguments as to Kan Pacific's February 8th Motion to Dismiss, SEL
4 filed a First Amended Complaint, thereby making Kan Pacific's February 8th Motion to Dismiss
5 moot.

6 On February 24, 2016, SEL filed their First Amended Complaint ("FAC"). SEL's FAC sets
7 forth six (6) causes of action. SEL set forth: (1) a breach of contract claim against Kan Pacific; (2)
8 a breach of contract claim, as an alternative to the first cause of action, against Kan Pacific; (3) an
9 unjust enrichment claim against Kan Pacific; (4) a fraudulent nondisclosure claim against Kan
10 Pacific; (5) Declaratory Relief against Secretary Teregeyo; and, (6) an intentional interference
11 with contract claim against IPI.

12 Subsequently, Kan Pacific renewed their motion to dismiss. On March 4, 2016, Kan Pacific
13 filed their Motion to Dismiss First Amended Complaint Pursuant to CRCP Rule 12(b)(6) ("Kan
14 Pacific's Motion"). Therein, Kan Pacific argued that the complaint should be dismissed for failing
15 to plead the essential elements of a breach of contract claim. Specifically, Kan Pacific argues that
16 SEL failed to plead the elements of breach and damages.

17 On March 7, 2016, SEL filed their Opposition to Defendant Kan Pacific's Motion to
18 Dismiss pursuant to NMI R. CIV. P. 12(b)(6) ("SEL's Opposition"). Therein, SEL argued that the
19 Restatements support a cause of action for anticipatory breach. Additionally, SEL argues that the
20 FAC establishes sufficient facts to show that Kan Pacific's actions amount to an anticipatory
21 breach of the sublease.

22 On March 9, 2016, Kan Pacific filed their Reply to Plaintiff's Opposition to Motion to
23 Dismiss First Amended Complaint ("Kan Pacific's Reply"). Therein, Kan Pacific argued that a
24 claim for anticipatory repudiation is not proper unless a party unequivocally renounces his duties
25 under a contract prior to the time fixed for performance under the contract. Kan Pacific argues that

1 SEL failed to allege facts demonstrating that a breach will unequivocally occur. For the reasons
2 stated above, Kan Pacific asks this Court to dismiss SEL’s FAC.

3 III. LEGAL STANDARD

4 A motion to dismiss a complaint pursuant to NMI R. Civ. P. 12(b)(6) tests the legal
5 sufficiency of the claims within the complaint. In order to prevail on a Rule 12(b)(6) motion, the
6 movant has the burden show that a pleading is not sufficient under Rule 8(a) of the Commonwealth
7 Rules of Civil Procedure. Rule 8(a) requires that a pleading which sets forth a claim for relief must
8 contain a (1) jurisdictional statement, (2) a short and plain statement of the claim showing that the
9 pleader is entitled to relief, and (3) a prayer of relief. Com. R. Civ. Pro. 8(a). For purposes of this
10 instant motion, the Court is concerned with the plaintiff’s statement of the claim.

11 A proper pleading “must offer more than a blanket assertion of entitlement to relief.” *Atalig*
12 *v. Mobil Oil Mariana Islands, Inc.*, 2013 MP 11 ¶ 23 (citing *Syed v. Mobil Oil*, 2012 MP 20 ¶ 20).
13 A “complaint must contain either direct allegations on every material point,” or contain allegations
14 from which “an inference fairly may be drawn that evidence” regarding these necessary points will
15 be introduced at trial. *Id.* (citing *In re Adoption of Magofna*, 1 NMI 449, 454 (1990)). When a claim
16 lacks “sufficient factual accompaniment,” a court must examine whether the allegations reasonably
17 suggest that the claimant will produce substantiating evidence. *Id.* (citing *Syed*, 2012 MP ¶ 20). In
18 considering a motion to dismiss, the court assumes the veracity of the factual allegations and
19 construes them in the light most favorable to the non-moving party. *Id.* However, the court “has no
20 duty to strain to find inferences favorable to the non-moving party.” *Id.* (citing *Cepeda v. Hefner*, 3
21 NMI 121, 127 (1992)).

22 IV. DISCUSSION

23 The parties’ filings and arguments raised several issues. The Court will discuss said issues
24 below.

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1 **A. Kan Pacific’s Motion Applies the Incorrect Standard for a Motion to Dismiss.**

2 Kan Pacific’s Motion applied the federal pleading set forth in *Twombly* and *Iqbal*. Kan
3 Pacific’s motion states:

4 “The ‘[f]actual allegations must be enough to raise a right to
5 relief above the speculative level’ *Twombly*, 550 U.S. at
6 555-556 (A complaint must provide ‘more than labels and
7 conclusions, and a formulaic recitation of the elements of a cause
8 of action will not do’). ‘To survive a motion to dismiss,’ these
9 allegations must make the complaint’s ‘claim to relief . . . plausible
10 on its face.’ [Citation.] (Emphasis added.)

11 Def’s. Mot at 4.

12 The Commonwealth Supreme Court has ruled that the pleading standard set forth in
13 *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) is
14 a deviation from the Court’s controlling precedent. *Syed v. Mobil Oil Mariana Islands, Inc.*, 2012
15 MP 20 ¶ 11. *See also* 7 CMC 3401. The Supreme Court rejected the federal pleading standard,
16 stating, “[w]e are not convinced that the ‘plausibility’ standard is the proper standard for the
17 Commonwealth at this time.” *Syed*, 2012 MP ¶ 17.

18 While Kan Pacific’s error is substantial, the Court cannot ignore the merits of their
19 argument. Additionally, “to facilitate a decision based on a technicality, rather than on the merits of
20 the case . . . are to be avoided when possible” to best serve the interests of administration of justice
21 and judicial economy. *See Office of Attorney General v. Ortiz*, CV No. 01-0534 (NMI Super. Ct.
22 Jan. 30, 2002) (Order Denying Motion to Quash and Denying Motion to Dismiss Order to Show
23 Cause at 4) (internal citations omitted). Moving forward, the Court notes Kan Pacific’s error but
24 will analyze Kan Pacific’s arguments under the Commonwealth notice pleading standard.

25 **B. Kan Pacific Failed to Meet Their Burden in Moving to Dismiss the Entire Complaint**

 Kan Pacific argued that the Court should dismiss the FAC in its entirety. However, Kan
Pacific’s written motion only set forth arguments to dismiss a breach of contract cause of action.
Additionally, Kan Pacific did not provide any legal authority as to how and why the Court should

1 dismiss the other causes of actions as to all the defendants in this matter. The Court is not persuaded
2 that Kan Pacific met their burden in moving to dismiss the entire FAC and thus, the Court declines
3 to do so. Moving forward, the Court will construe Kan Pacific's Motion as a motion to dismiss
4 SEL's claims for a breach of contract.

5 **C. SEL Failed to Plead Facts to Establish Their Claim for Breach of Contract**

6 Kan Pacific argues, primarily, that SEL failed to plead all the essential elements for a breach
7 of contract claim. Specifically, Kan Pacific's Motion argues that the FAC does not allege facts to
8 establish breach and damages. SEL's Opposition argues the FAC alleges facts to establish that Kan
9 Pacific's actions amounted to an anticipatory breach. However, Kan Pacific's Reply claims that
10 SEL's argument must fail because the FAC does not plead facts to establish an unequivocal breach.
11 The Court agrees with Kan Pacific's argument.

12 **1. SEL Failed to State a Claim for Breach of Contract.**

13 To state a claim for breach of contract, SEL must plead that: (1) there was an enforceable
14 agreement; (2) the defendant breached that agreement by failing to perform; and (3) defendant's
15 non-performance caused the plaintiff to suffer damages. *See PRC, LLC v. Chang Shin Resort*
16 *Saipan Corp.*, CV No. 12-0163 (NMI Super Ct. Mar. 8, 2013) (Order Granting in Part and Denying
17 in Part Plaintiff's Motion for Summary Judgment at 4). In moving to dismiss, Kan Pacific argues
18 that SEL failed to plead the essential elements of breach and damages.

19 Taking the alleged facts as true, a breach of the sublease occurs, in part, when: (1) Kan
20 Pacific fails to give SEL sixty (60) days notice of an sale or assignment; (2) Kan Pacific fails to
21 provide SEL a statement of the material terms of the transaction; or (3) Kan Pacific fails to cause
22 the prospective transferee to assume every contractual provision of the sublease with SEL.

23 Here, SEL's FAC pleads conflicting allegations that fall short of the notice pleading
24 standard. SEL's FAC focuses heavily on local news articles that reported on signed negotiations
25 between Kan Pacific and IPI involving the disputed property. SEL alleges that Kan Pacific has

1 entered into one or more contracts with IPI to which Kan Pacific has promised to assign the
2 disputed property to IPI without requiring IPI to assume the contractual provisions of the sublease.
3 However, in contrast to above, SEL suggests that such transfer has not occurred by alleging: (1)
4 DPL is not in possession of any signed or recorded copies of the document purporting to describe a
5 transfer of the disputed property from Kan Pacific to IPI; (2) Secretary Teregeyo has not consented
6 to a transfer of interest between Kan Pacific and IPI; and (3) Kan Pacific and IPI are continuing to
7 seek Secretary Teregeyo's consent to the transaction. Since a transfer of property has not occurred,
8 it is illogical to find that a breach has occurred. As such, the Court finds that SEL's FAC fails to
9 plead the element of breach.

10 With regards to damages, SEL alleges that Kan Pacific's actions have and will continue to
11 cause irreparable injury to SEL. However, SEL's allegations fall short of alleging how SEL was or
12 is currently damaged. Instead, SEL alleges future damages in the event that Kan Pacific does not
13 transfer SEL's right to option terms to IPI. Said damages have not occurred and are not certain to
14 occur. Additionally, during oral arguments, SEL conceded that SEL is currently in operation. As
15 such, the Court finds that SEL's FAC fails to plead the element of damages.

16 Since SEL's FAC fails to plead the elements of breach and damages, the Court finds that
17 SEL fails to meet the notice pleading standard for a breach of contract cause of action.

18 **2. SEL Failed to State a Claim for Anticipatory Repudiation.**

19 SEL's Opposition argues that the FAC establishes sufficient facts to show that Kan Pacific's
20 actions amount to an anticipatory breach of the sublease. A cause of action for anticipatory
21 repudiation is recognized by the Commonwealth Supreme Court and the Restatements. *See Waibel*
22 *v. Farber*, 2006 MP 15 ¶ 30; *See also* RESTATEMENT SECOND OF CONTRACTS § 250-257 (1981).
23 According to the Restatement, a repudiation is either "a statement by the obligor to the obligee
24 indicating that the obligor will commit a breach that would of itself give the obligee a claim for
25 damages for total breach" or "a voluntary affirmative act which renders the obligor unable or

1 apparently unable to perform without such a breach.” RESTATEMENT SECOND OF CONTRACTS
2 §250(a) (1981). Kan Pacific’s Reply to SEL’s Opposition raises persuasive authority that adds,
3 “[t]ypically, anticipatory repudiation arises when a party unequivocally renounces his duties under
4 a contract prior to the time fixed for his performance.” *Rhodes v. Amarillo Hospital. Dist.*, 654 F.2d
5 1148, 1151 (5th Cir. Tex. 1981) (internal quotations omitted). Further, the Restatement illustrates,
6 in a contract between Party A and Party B, a repudiating statement or act should come from Party A
7 and be directed at Party B, or vice versa. RESTATEMENT SECOND OF CONTRACTS §250 cmt. 4
8 (1981).

9 Here, SEL alleges that Kan Pacific has unequivocally acted to repudiate their obligations by
10 entering into an agreement with IPI that does not require IPI to assume the contractual provisions of
11 the sublease. However, SEL’s allegation is problematic. First, as discussed above, SEL pleads
12 conflicting allegations that such an agreement exists. Additionally, assuming a transaction between
13 Kan Pacific and IPI was to occur, an unequivocal breach of the sublease does not necessarily follow
14 as Kan Pacific may still honor their obligations, if any, under the sublease. Second, SEL’s
15 allegation that Kan Pacific has unequivocally acted to repudiate their obligations is conclusory.
16 Specifically, SEL fails to plead how Kan Pacific’s statements and/or actions amounted to a
17 repudiation. Thus, SEL failed to establish sufficient facts to show that Kan Pacific’s actions amount
18 to an anticipatory breach of the sublease.

19 Since SEL’s FAC fails to plead facts to establish a claim for breach of contract, or breach of
20 contract based on anticipatory repudiation, the Court dismisses SEL’s claims for breach of contract
21 against Kan Pacific without prejudice.

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V. CONCLUSION

For the foregoing reasons, Kan Pacific's motion to dismiss as to SEL's breach of contract claim is hereby **GRANTED**. Additionally, the Court grants all defendants in this matter an additional two (2) weeks from the date of this order to file their answer.

SO ORDERED this 22nd day of March, 2016.

/s/
TERESA K. KIM-TENORIO
Associate Judge