

1 **II. LEGAL STANDARD**

2 A NMI R. Civ. P. 12(b)(6) motion tests the legal sufficiency of the claims asserted in a
3 complaint. *Camacho v. Micronesian Dev. Co.*, 2008 MP 8 ¶ 10. To survive a NMI R. Civ. P.
4 12(b)(6) motion to dismiss, a “complaint must contain either direct allegations on every material
5 point necessary to sustain a recovery on any legal theory, even though it may not be the theory
6 suggested or intended by the pleader, or contain allegations from which an inference fairly may be
7 drawn that evidence on these material points will be introduced at trial.” *In re Adoption of Magofna*,
8 1 NMI 449, 454 (1990) (citations omitted). This standard ensures that a pleading party pleads
9 enough direct and indirect allegations to provide “fair notice of the nature of the action.” *Syed v.*
10 *Mobil Oil Mariana Islands, Inc.*, 2012 MP 20 ¶ 19 (citing *Magofna*, 1 NMI at 454). In deciding a
11 motion to dismiss under NMI R. Civ. P. 12(b)(6), the court must assume as true all factual
12 allegations in the challenged pleading and construe them in a light most favorable to the non-
13 moving party. *Cepeda v. Hefner*, 3 NMI 121, 127–28 (1992); *Govendo v. Marianas Pub. Land*
14 *Corp.*, 2 NMI 482, 490 (1992).

15 **III. DISCUSSION**

16 In this case there are three interlocking issues presented before the Court: (1) is Plaintiff’s
17 suit premature due to the absence of an eviction; (2) are the allegations of fraud sufficiently
18 supported by the facts and law; and (3) are Plaintiff’s claims against Defendant Jun barred by the
19 statute of limitations. In the Court’s mind all three issues are inextricably linked because the
20 eviction issue impacts the disposition of all the issues before the Court. As such, the Court will
21 address the eviction issue first and then the Court will discuss the fraud claims and statute of
22 limitations arguments.

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1 **A. The Interplay between Paramount Title and the Prerequisite of an Eviction.**

2 In the Commonwealth when a claim has not been expressly recognized then 7 CMC § 3401
3 is invoked to determine the scope of Commonwealth law. 7 CMC § 3401 provides:

4 In all proceedings, the rules of the common law, as expressed in the restatements of
5 the law approved by the American Law Institute and, to the extent not so expressed
6 as generally understood and applied in the United States, shall be the rules of
7 decision in the courts of the Commonwealth, in the absence of written law or local
8 customary law to the contrary

9 In the Commonwealth no written law or local custom speaks to the specific issue at hand,
10 i.e. whether the mere existence of paramount title breaches future covenants contained in a lease.
11 As such, the Court looks to RESTATEMENT (SECOND) OF PROPERTY: LANDLORD & TENANT § 4.3,
12 (1977) (titled “Existence of or Eviction by Paramount Title After Entry by Tenant”) (hereinafter
13 “Landlord & Tenant § 4.3”), to interpret whether the mere existence of paramount title amounts to a
14 breach of a lease. Landlord & Tenant § 4.3 states:

15 Except to the extent the parties to a lease validly agree otherwise, after the tenant
16 enters into possession there is no breach of the landlord's obligations because of the
17 existence of a paramount title, but there is a breach of his obligations if there is an
18 eviction by a paramount title, if the eviction deprives the tenant of the use
19 contemplated by the parties.

20 The rationale underlying Landlord & Tenant § 4.3 is that:

21 Once the tenant has entered into possession of the leased property and has begun to
22 enjoy its use, he is assumed to have accepted the state of the landlord's title as
23 adequate to satisfy his expectations as to the possession and use of the property for
24 the term. As long as the tenant remains undisturbed in his contemplated use of the
25 leased property by a paramount title, his expectations have not been frustrated and
26 the landlord is not in default. The tenant, however, can hold the landlord in default
27 under the lease if a third party under a paramount right evicts the tenant from all or a
28 portion of the leased property and thereby deprives the tenant of the use
29 contemplated by the parties.

30 *See Id.* at cmt. a. While it may seem odd at first blush, an eviction is generally required because
31 even if someone besides the lessor[s] has paramount title so long as the lessee[s] gets the benefit of
32 his or her bargain there is no actionable breach. *Id.*

1 Here, Plaintiff argues that the lease at issue, the 1994 Lease, falls within the first clause of
2 Landlord & Tenant § 4.3 in that the parties validly agreed that the existence of paramount title alone
3 would constitute a breach of the lease. Plaintiff contends that no eviction is required for Defendants
4 to have breached their obligations under the 1994 Lease. Defendants counter that the language in
5 the 1994 Lease mirrors the covenants of warranty, quiet enjoyment, and further assurances, which
6 require an eviction to take place before they are activated. Moreover, Defendants contend that not
7 only does the agreement not provide “otherwise,” but that the terms of the agreement actually
8 reinforce the general rule that there is no breach until eviction because the lease outlines all three
9 future covenants and all three require an eviction for an action to accrue.

10 Sections 2 and 3 of the 1994 Lease contain the provisions upon, which both Plaintiff and
11 Defendants’ arguments rely. Sections 2 and 3 of the 1994 Lease provides in relevant parts:

12 Lessor represents, warrants and covenants . . . [t]hat Lessor is the owner of the
13 Premises in fee simple . . . [t]hat Lessor . . . possesses all right to requisite right and
14 authority to enter into this Lease . . . [t]hat Lessor shall execute, cause to be
15 executed, or procure and furnish to Lessee, without expense to Lessee, any further
assurances of title that may be reasonably required . . . Lessor covenants and agrees
that Lessor shall, upon the commencement date of the term of this Lease as
hereinafter set forth, place Lessee in quiet possession of the Premises

16 The language in the 1994 Lease appears to mirror the future covenants of warranty, quiet
17 enjoyment, and further assurances. As such, the Court turns to analyzing the effect of future
18 covenants.

19 It is widely recognized by virtually all courts, including the NMI Supreme Court, that future
20 covenants require an eviction before a party’s right to sue for breach of contract is activated. *See,*
21 *e.g., Manglona v. Commonwealth*, 2005 MP 15 ¶ 30; *Exxon Corp. v. Hreische*, 1994 U.S. App.
22 LEXIS 7588, 6-7 (9th Cir. 1994); *Hitchcock v. Tollison*, 444 S.E.2d 844, 846 (Ga. App. 1994);
23 *Blaum v. May*, 16 So.2d 327, 328-29 (Ala. App. 1943).

1 The rule requiring an eviction for a breach of lease claim to be actionable is so widely
2 recognized that the debate in this area of law is not whether an eviction is required. Instead, the
3 question courts have been grappling with is whether a tenant can bring a claim when the eviction
4 does not result in the tenant having to vacate possession of the property. For example, in *Salisbury*
5 *v. Hickman*, 974 F. Supp. 2d 1282, 1294 (E.D. Cal. 2013), the court debated whether there were
6 really two requirements for a purported breach of a lease to be actionable: (1) eviction and (2) the
7 tenant actually vacates the premises. The *Salisbury* court determined that a tenant was not required
8 to vacate possession to have an actionable claim, but the court still recognized that a breach of lease
9 claim cannot be supported unless the tenant’s use and enjoyment is disturbed. This reading of
10 landlord tenant law comports with the rationale of Landlord & Tenant § 4.3: “[a]s long as the tenant
11 remains undisturbed in his contemplated use of the leased property by a paramount title, his
12 expectations have not been frustrated and the landlord is not in default.” cmt. a. Further, the NMI
13 Supreme Court in *Manglona* stated that for a breach of a lease as a result of a future covenant
14 violation[s] to be actionable there must first be an actual or constructive eviction. *Manglona*, 2005
15 MP at ¶ 30.

16 In this case, Plaintiff merely alleges that Defendants were put on notice of a competing
17 ownership claim to the leased premises. *See The Board of Marianas Public Lands Authority v. The*
18 *Heirs of Rita Rogolifoi*, Civ. No. 05-0197 (NMI Super. Ct. May 12, 2009) (Judgment). Yet, what
19 Plaintiff fails to plead is how its use of the leased premises was interrupted or upset outside of the
20 mere existence of a paramount title holder. Plaintiff’s argument seems to be completely based on
21 the flawed assumption that the paramount title holder should have been the one to have received the
22 lease payments. In reality once the tenant has entered possession whether or not the landlord has
23 paramount title is irrelevant provided that the landlord ensures that the tenant is not disturbed. In the
24 present complaint, there is no allegation that Plaintiff’s use or enjoyment of the land has been

1 interrupted which is the key inquiry before the Court. While the general rule requiring an eviction
2 may seem counter intuitive at first, the case law surrounding this area highlights the common sense
3 reality that with a land lease the tenant's duty is to pay for his possession and use of the land and
4 the landlord's obligation is to ensure that the tenant's possession and use is not disturbed. *See*
5 *generally Petroleum Collections Inc. v. Swords*, 48 Cal. App. 3d 841, 846-47 (1975) ("The
6 foundation for the tenant's obligation to pay rent is his right to use and possess the leased property
7 for the purposes contemplated by the tenancy; rent is the compensation paid by the tenant in
8 consideration for the use, possession and enjoyment of the premises. Consequently, when a tenant's
9 possession of leased property has been interfered with, physically, by the landlord, or someone
10 claiming under him, or by a person with paramount title, the tenant's covenant to pay rent is no
11 longer supported by valid consideration and he is relieved of that obligation."). Moreover, the NMI
12 Supreme Court in *Manglona* supported the view that as long as the tenant gets the benefit of his
13 bargain and the landlord gets his rent a cause of action should not be actionable absent some
14 eviction. *See Manglona*, 2005 MP at ¶ 23-32. While *Manglona* did not specifically deal with the
15 existence of paramount title, the underlying legal analysis is instructive because it adopts the
16 threshold eviction requirement.

17 In this case, Plaintiff's attempt to bring a claim before an eviction has taken place is
18 improper because the lease provisions mirror the three future covenants, all three require an
19 eviction. Plaintiff's claim that the lease provides "otherwise," not requiring an eviction, is mistaken
20 because it relies on the mistaken notion that a landlord is automatically in breach of a lease just
21 because it is later determined that a paramount title holder may exist.¹ Based on the foregoing, the
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24 ¹ Plaintiff also mistakenly contends that the covenant of future assurances was violated because Defendants failed to respond to requests to state whether they had title or not and/or take steps to gain control of fee simple title. Yet, the covenant of future assurances is only breached when there is an eviction, which has not taken place.

1 breach of contract cause of action should be dismissed. Defendants' motion to dismiss as to the
2 breach of contract claim is **GRANTED**.

3 **B. Survivability of the Fraud Claims in Light of the Disposition of the Breach of Contract**
4 **Claim.**

5 In its complaint, Plaintiff contends that the failure of Defendants to notify Plaintiff of the
6 existence of paramount title as well as continuing to accept rent payments under the 1994 lease
7 amounts to a fraudulent scheme of some kind. Plaintiff alleges multiple theories about what exact
8 tort[s] was committed. At this time, the Court finds it unnecessary to wade into each of Plaintiff's
9 theories because all are fatally flawed. It is Plaintiff's belief that the mere existence of paramount
10 title amounts to an eviction and/or breach of the 1994 lease. Plaintiff's central contention
11 underlying all of its fraud arguments is that it is not permissible or equitable for a landlord to
12 continue to accept rent when the landlord becomes aware that he or she does not have paramount
13 title to the leased premises. Plaintiff's reading of the 1994 Lease as well as landlord tenant law is
14 fundamentally mistaken for the reasons previously discussed. As a matter of law, Plaintiff's fraud
15 claims cannot survive Defendants' NMI R. Civ. P. 12(b)(6) motion. Defendants' motion to dismiss
16 is **GRANTED** because the fraud claims all rely on faulty legal assumptions.

17 **C. Defendant Jun's Statute of Limitations Defense Under 8 CMC § 2924(a)(1).**

18 Finally, as a threshold matter, Defendant Jun claimed that the claims against her as the
19 Administrator of the Estate of Enrique K. Seman are barred pursuant to 8 CMC § 2924, which
20 provides:

21 (a) All claims against a decedent's estate which arose before the death of the
22 decedent, including claims of the Commonwealth of the Northern Mariana Islands
23 and any of its subdivisions, whether due or to become due, absolute or contingent,
24 liquidated or unliquidated, founded on contract, tort, or other legal basis, if not
barred earlier by other statute of limitations, are barred against the estate, the
personal representative, and the heirs and devisees of the decedent, unless presented
as follows: (1) Within 60 days after the date of the first publication of notice to

1 creditors if notice is given in compliance with the Commonwealth Trial Court Rules
2 of Probate Procedure; provided, claims barred by the nonclaim statute at the
3 decedent's domicile before the first publication for claims in the Commonwealth of
the Northern Mariana Islands are also barred in the Commonwealth.

4 In support of her statute of limitations argument, Defendant Jun provided the Court with an exhibit,
5 which shows that on August 4, 2014 notice was given to creditors by way of newspaper publication.
6 Defendant Jun argues that since more than 60 days have elapsed since the August 4, 2014
7 newspaper ad Plaintiff's claims should be barred per 8 CMC § 2924(a)(1).

8 In response, Plaintiff contends that while it is certainly true that more than 60 days have
9 elapsed its claims against Defendant Jun should not be barred because the statute of limitations was
10 tolled under 7 CMC § 2509, which provides:

11 If any person who is liable to any action shall fraudulently conceal the cause of
12 action from the knowledge of the person entitled to bring it, the action may be
13 commenced at any time within the time limits within this chapter, and within 2 CMC
§§ 4991 and 4992, after the person who is entitled to bring the same shall discover or
14 shall have had reasonable opportunity to discover that he has such cause of action,
and not afterwards.

15 Here, Plaintiff's claim that the statute of limitations should be tolled fails for the same
16 reasons that the breach of contract claim and fraud claims fail. As a matter of law, the allegations
17 contained in the Complaint do not make out the breach of contract claim and/or the fraud claims
18 because they rely on a faulty reading of the 1994 Lease. Just because a paramount title holder exists
19 does not mean that the landlord does not have a right to continue to receive rent payments under the
20 lease. Moreover, the failure of Defendant Jun to disclose the presence of a paramount title holder is
21 not an act of fraudulent concealment, 7 CMC § 2509 is inapposite to the matter at hand. Absent
22 grounds for tolling, Plaintiff's claims against Defendant Jun are time barred under 8 CMC §
23 2924(a)(1) because the Complaint was brought more than 60 days after notice was give to creditors.

1 Based on the foregoing, Plaintiff's claims against Defendant Jun are also barred by the
2 statute of limitations making dismissal appropriate. Defendant Jun's motion to dismiss is

3 **GRANTED.**

4 **IV. CONCLUSION**

5 Overall, Defendants' motion to dismiss is **GRANTED** in its entirety. At this time,
6 Plaintiff's complaint is premature because there has not yet been an eviction in this case. Under the
7 terms of the 1994 Lease and in light of Landlord & Tenant § 4.3 until an eviction takes place no
8 breach of the 1994 Lease has taken place. Plaintiff's entire complaint relies on a faulty
9 understanding of the rights and duties of a tenant and a landlord. Specifically, Plaintiff reads in a
10 duty for a landlord to tell a tenant when there is a paramount title holder whose existence was
11 learned of after the tenant took possession, no such duty exists. Quite the opposite is true, the law
12 expressly contemplates that with leases there are times when competing claims pop up and that a
13 tenant should be barred from bringing a claim so long as his or her actual possession and/or use of
14 the leased premises is uninterrupted.

15 **IT IS SO ORDERED** this 23rd day of February, 2017.

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ROBERTO C. NARAJA
Presiding Judge