



By Order of the Court, Judge Joseph N. Camacho

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

1	PRC, LLC,	)	CIVIL ACTION NO. 12-0163
2		)	
3	Plaintiff,	)	ORDER DENYING DEFENDANT'S
4		)	MOTION TO DISMISS BECAUSE
5	vs.	)	PLAINTIFF PRC HAS ALLEGED
6		)	SUFFICIENT FACTS FOR A BREACH
7		)	OF CONTRACT CLAIM FOR WHICH
8	CHANG SHIN RESORT SAIPAN	)	RELIEF CAN BE GRANTED AND MAY
9	CORPORATION d.b.a HOTEL RIVIERA	)	PROCEED AS THE REAL PARTY IN
10	SAIPAN,	)	INTEREST IN CONFORMITY WITH
11		)	NMI R. CIV. P. 17(a)
12	Defendant.	)	
13		)	

I. INTRODUCTION

This matter came before the Court for a motion hearing on March 21, 2017 in Courtroom 220A, on Defendant's Motion to Dismiss. Plaintiff PRC, LLC ("PRC") was represented by Attorneys Brian Flaherty and Robert Tenorio Torres. Defendant Chang Shin Resort Saipan Corporation, d.b.a. Hotel Riviera ("Hotel Riviera") was represented by Attorney Mark Scoggins.

Based on a review of the filings, oral arguments, and applicable law, the Court DENIES the motion to dismiss.

II. PROCEDURAL HISTORY

This matter stems from the lease of a property in Fina Sisu on which lies the Hotel Riviera, Saipan ("Riviera property"). On July 13, 2012, the original civil action was brought by plaintiffs PRC, Sophia P. Tenorio and Pedro P. Tenorio. PRC is the last remaining plaintiff in the case. Plaintiffs brought claims against Hotel Riviera for breach of contract and trespass to land based on Hotel Riviera's failure to pay rent. The contracts at issue were three leases involving four parcels of

1 adjoining property on which Hotel Riviera built and operated a hotel. The Court previously heard  
2 PRC's motion for summary judgment on the issue of breach of contract, which was denied on  
3 March 8, 2013 because PRC could not establish that it was in privity of contract with Hotel Riviera  
4 and able to enforce the terms of the lease. *PRC, LLC v. Hotel Riviera Resort Saipan*, Civ. No. 12-  
5 0163 (NMI Super. Ct. March 8, 2013) (Order Granting in Part and Denying in Part Pls.' Motion for  
6 Summary Judgment at 3-4). The Court then heard motions by both parties for reconsideration of the  
7 Court's order regarding that motion for summary judgment, but did not reverse its holding. *See*  
8 *generally PRC, LLC v. Hotel Riviera Resort Saipan*, Civ. No. 12-0163 (NMI Super. Ct. Nov. 12,  
9 2013) (Order Granting in Part and Denying in Part Def.'s Motion for Reconsideration; Denying Pls.'  
10 Motion for Reconsideration). The Court also heard and ultimately denied PRC's motion for  
11 declaratory relief because it was procedurally deficient. *PRC, LLC v. Hotel Riviera Resort Saipan*,  
12 Civ. No. 12-0163 (NMI Super. Ct. March 8, 2013) (Order Denying Pl. PRC's Motion for a  
13 Declaratory Judgment and Denying Def.'s Motion to Strike at 5-6.)

14 On January 17, 2017, PRC filed its first amended complaint alleging Hotel Riviera breached  
15 the lease agreement it holds for the Riviera property. PRC alleges Hotel Riviera breached the lease  
16 agreement by failing to make timely rent payments, failing to properly maintain the premises, and  
17 failing to maintain clean, unencumbered title of the property by failing to pay taxes. PRC sought  
18 various forms of relief including removal of Hotel Riviera from the property, monetary damages,  
19 and a judgment for recovery of possession of the property.

20 On January 24, 2017, Hotel Riviera filed the instant motion to dismiss. Hotel Riviera argues  
21 PRC's complaint should be dismissed because: (1) PRC fails to state a claim for which relief can be  
22 granted and (2) PRC is not the real party in interest in this matter. Hotel Riviera contends that PRC,  
23 as a limited liability company ("LLC"), is not permitted to hold a real interest in land under Article  
24 XII of the NMI Constitution ("Art. XII"), so the Court cannot grant PRC possession and/or

1 ownership. Additionally, Hotel Riviera argues that pursuant to the same logic the underlying  
2 contract is illegal and, thus, cannot be enforced by the Court. Hotel Riviera also contends that the  
3 real party in interest is Bridge Capital, LLC (“Bridge”) because Bridge funded the purchase of the  
4 property, makes all decisions regarding the property, and is funding the litigation over the property;  
5 PRC’s rights are merely a legal fiction that Bridge is attempting to hide behind.

6 PRC filed an opposition to the motion to dismiss on February 23, 2017. PRC argues that  
7 Hotel Riviera cannot bring a challenge under Art. XII because: (1) Hotel Riviera lacks standing; (2)  
8 the six year statute of limitations has lapsed; and (3) the controversy is one of landlord-tenant and  
9 the constitutional issue is not properly before the Court. PRC also argues the Court may grant relief  
10 by granting the possession to PRC as requested because, even if Hotel Riviera’s Art. XII claims  
11 have merit, PRC has an enforceable right of possession to the property. Finally, PRC contends that  
12 it may legally hold title under the Limited Liability Company Act and does hold the lease for the  
13 property in question, not Bridge, so PRC is the real party in interest in this case.

### 14 **III. FACTUAL BACKGROUND**

15 On December 30, 1988, Jose A. Manalo leased the Riviera property to Chung Doo Young.  
16 Compl. Ex. 5. The lease was set to expire on December 29, 2043. Compl. Ex. 5. Chung Doo Young  
17 then assigned the ground lease to Lee Soung Man on June 11, 1990. Compl. Ex. 6. Lee Soung Man  
18 subsequently assigned the lease to Shin Eui In on December 10, 1990. Compl. Ex. 7. Each of the  
19 foregoing transactions was recorded in the Commonwealth’s land records. According to an  
20 Additional to Description of Property<sup>1</sup> dated September 26, 2006, Hotel Riviera acquired the  
21 ground lease from Shin Eui In at some point after December 10, 1990, but apparently did not record  
22 its interest. Compl. Ex. 8.

23 \_\_\_\_\_  
24 <sup>1</sup> The record is unclear as to exactly what the Additional Description of Property document is. PRC described it as “an instrument adding a description of property to a lease for operation of the Hotel Riviera Saipan between Changshin Resort Saipan Corporation its alias Hotel Riviera Saipan, Inc.” Compl. Ex. 3, p. 2.

1 The fee simple interest in the Riviera property was passed by warranty deed from Manalo to  
2 Betty H. Johnson on January 14, 2008. Compl. Ex. 10. On April 9, 2008, Johnson executed a quit  
3 claim deed transferring her fee simple interest to GLA, LLC. Compl. Ex. 11. GLA, LLC then  
4 executed a warranty deed transferring the property to PRC on April 8, 2009. Compl. Ex. 12.

5 On March 5, 2014, PRC entered into a contract with Jose A. Manalo that assigned Manalo's  
6 lease rights to the Riviera property from Manalo to PRC. Comp. Ex. 9. PRC recorded the  
7 transaction on March 14, 2014. Compl. Ex. 1.

8 As to the terms and fulfillment of the lease, PRC alleges that Hotel Riviera failed to make  
9 payments by the tenth of the month, as required by the lease agreement. Hotel Riviera failed to pay  
10 taxes, which resulted in the Riviera property being encumbered by tax liens though the lease  
11 agreement requires that the property remain unencumbered. Hotel Riviera also permitted the  
12 Riviera property to become damaged, dangerous, overgrown by natural vegetation, and otherwise  
13 unclean and unsanitary, which is impermissible under the terms of the lease agreement.

#### 14 IV. DISCUSSION

15 Hotel Riviera advances two main arguments supporting dismissal: (1) that pursuant to NMI  
16 R. Civ. P. 12(b)(6) dismissal is appropriate for failure to state a claim upon which relief can be  
17 granted; and (2) that pursuant to NMI R. Civ. P. 17(a) dismissal is appropriate on the grounds that  
18 PRC is not the real party in interest. The Court will address each argument in turn.

##### 19 **1. Failure to State a Claim For Which Relief Can Be Granted**

20 First, Hotel Riviera argues that dismissal is proper because PRC has failed to state a claim  
21 for which relief can be granted. Hotel Riviera contends the Court cannot grant the prayed for relief  
22 because PRC cannot legally hold the property in question and, therefore, the Court cannot enforce  
23 the illegal contract or grant PRC an unconstitutional ownership and possession of land.

1 PRC argues that it legally has a right to possession of the property in question, and that any  
2 constitutional challenge is not properly before the Court. PRC further contends that a simple  
3 landlord-tenant dispute is sufficiently plead, properly before the Court, and may be adjudicated.

4 Generally, a complaint must satisfy the notice pleading requirements of NMI R. Civ. P. 8(a)  
5 in order to avoid dismissal under NMI R. Civ. P. 12(b)(6). *Cepeda v. Hefner*, 3 NMI 121, 126  
6 (1992). NMI R. Civ. P. 8(a)(2) requires only “a short and plain statement of the claim showing that  
7 the pleader is entitled to relief,” so that “fair notice of the nature of the action is provided.”  
8 *Govendo v. Marianas Pub. Land Corp.*, 2 NMI 482, 506 (1992) (quoting *In re Adoption of*  
9 *Magofna*, 1 NMI 449, 454 (1990)). A complaint fails to satisfy the pleading requirements of NMI  
10 R. Civ. P. 8(a) where it lacks a cognizable legal theory or fails to allege facts constituting a  
11 cognizable legal theory. *Sablan v. Elameto*, 2013 MP 9 ¶ 4.

12 In considering a motion to dismiss, courts must “review the contents of a complaint by  
13 construing it in the light most favorable to the plaintiff and accepting all well-pleaded facts as true.”  
14 *Zhang Gui Juan v. Commonwealth*, 2001 MP 18 ¶ 11 (citation omitted). However, a complaint  
15 requires “more than a blanket assertion of entitlement to relief.” *Syed v. Mobil Oil Mariana Islands,*  
16 *Inc.*, 2012 MP 20 ¶ 20. Factual accompaniment or a clear assertion of the claims must be evident,  
17 with “direct or indirect ‘allegations [made] on every material point necessary to sustain a  
18 recovery.’” *Id.* at ¶¶ 20-21 (citing *Magofna*, 1 NMI at 454).

19 Put another way, at the motion to dismiss stage, a court determines whether a plaintiff has  
20 met his or her burden to provide sufficient notice to the defendant of the legally cognizable claims  
21 and has alleged a sufficient factual basis for those claims. Resolution of factual disputes and/or the  
22 merits of the case are not yet before a court when it analyzes a motion to dismiss.

23 Hotel Riviera challenges whether PRC has a valid, lawful interest in the leased property  
24 pursuant to Art. XII. However, to properly resolve the Art. XII issue and its underlying components

1 would require the Court to make a determination on issues that go to the merits of the case.<sup>2</sup>  
2 Accordingly, Hotel Riviera's arguments regarding Art. XII are premature and cannot be addressed  
3 by the Court at this stage of the proceedings.

4 At the motion to dismiss stage, the Court must determine whether PRC's complaint has  
5 sufficiently plead a breach of contract claim. To prove a breach of contract claim, PRC must  
6 establish: an enforceable contract between the parties; Hotel Riviera's breach of the terms of the  
7 contract; and damages. *PRC, LLC v. Chang Shin Resort Saipan Corp.*, No. 12-0163 (NMI Super Ct.  
8 Mar. 8, 2013) (Order Granting in Part and Denying in Part Pls.' Motion for Summary Judgment at  
9 4) (citing *Kyong Hee Park v. Dong Hyen Kim*, Civ. No. 02-0652 (NMI Super. Ct. August 11, 2004)  
10 (Order Granting in Part and Denying in Part Pl. Park, Kyong Hee's Motion For Summary Judgment  
11 Against Def. Kim, Dong Hyen at 6).

12 PRC has alleged that the original lease for the Riviera property was between Manalo and  
13 Chung Doo Young; that through a succession of transfers PRC is now the leaseholder of the Riviera  
14 property; that through another succession of transfers Hotel Riviera now leases the Riviera  
15 property. Taken as true and construed in the light most favorable to PRC, these facts show an  
16 enforceable contract between the parties.<sup>3</sup>

17 PRC has also alleged that under the lease agreement Hotel Riviera had the obligation to pay  
18 rent by the tenth of each month, to keep the title of the Riviera property unencumbered, and to keep  
19 the Riviera property in a clean and sanitary state. Further, PRC has alleged: that Hotel Riviera made

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20 <sup>2</sup> For example, to address Hotel Riviera's standing and/or PRC's ability to enforce the contract the Court would need to  
21 first determine the source and type of privity between the parties, which was the issue in the previously denied motion  
22 for summary judgment. *See PRC, LLC v. Hotel Riviera Resort Saipan*, Civ. No. 12-0163 (NMI Super. Ct. March 8,  
2013) (Order Granting in Part and Denying in Part Pls.' Motion for Summary Judgment at 3-4).

23 <sup>3</sup> The Court acknowledges that the validity of PRC's holding and enforceability of the contract is challenged by Hotel  
24 Riviera in light of Art. XII; however, the Court again reiterates that in a motion to dismiss the Court takes the alleged  
facts as true and construes them in the light most favorable to the non-moving party, PRC, and does not determine the  
merits of the case. *See Zhang Gui Juan v. Commonwealth*, 2001 MP 18 ¶ 11 (citation omitted). PRC will still have the  
burden to establish its claims by a preponderance of evidence at trial. *See Isla Financial Services v. Sablan*, 2001 MP  
21 ¶ 21 (citing *Weiner v. Fleischman*, 816 P.2d 892, 896 (Cal. 1991)).

1 untimely payments and/or failed to make payments, permitted tax liens to attach to the property,  
2 and allowed the property to fall into an unclean and unsanitary condition. Taken as true and  
3 construed in the light most favorable to PRC, these facts show Hotel Riviera breached the terms of  
4 the lease agreement.

5 Finally, PRC alleged that it has suffered monetary damages in the form of unpaid rent and  
6 that PRC has suffered damages stemming from the necessary repairs to the Riviera property due to  
7 Hotel Riviera's failure to maintain the Riviera property. Taken as true and construed in the light  
8 most favorable to PRC, these facts show Hotel Riviera's breach of the lease agreement caused  
9 damages to PRC.

10 PRC will bear the burden of proving the enforceability and validity of these claims at trial  
11 by a preponderance of the evidence.<sup>4</sup> However, at this stage of the proceedings, PRC has alleged  
12 sufficient facts to overcome a motion to dismiss under NMI R. Civ. P. 12(b)(6).

## 13 **2. Real Party in Interest**

14 Second, Hotel Riviera argues that the case should be dismissed because Bridge is the real  
15 party in interest in this matter. Hotel Riviera alleges Bridge funded the purchase of the rental  
16 property in question, controlled all decisions regarding the property, and controls the legal decisions  
17 made and the funding of the current action. Therefore, Hotel Riviera claims all evidences and  
18 defenses are against Bridge, not PRC and Bridge must be the named party in this case. PRC argues  
19 that PRC is the real party in interest in this case. PRC argues it is an LLC organized under  
20 Commonwealth law with the legal right to enter contracts, own, hold, and lease interest in property,  
21 sue, be sued, and defend in its own name, and do any other act not inconsistent with law that  
22 furthers its business pursuant to 4 CMC §§ 4813(b)(1), (2), (5), (12). PRC further contends that the  
23 lease contract is in its name and as the holder of the lease, it has the legal right and authority to

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24 <sup>4</sup> *Isla Financial Services*, 2001 MP 21 ¶ 21 (citing *Weiner*, 816 P.2d at 896); *see supra* note 2.

1 enforce the terms of the contract, not Bridge. Therefore, PRC, not Bridge, is the real party in  
2 interest in this case and settlement of the case with PRC will protect Hotel Riviera from future  
3 litigation, which is the purpose of NMI R. Civ. P. 17(a).

4       Regarding real parties in interest, NMI R. Civ. P. 17(a) provides:

5       Every action shall be prosecuted in the name of the real party in interest. An  
6       executor, administrator, guardian, bailee, trustee of an express trust, *a party with*  
7       *whom or in whose name a contract has been made for the benefit of another*, or a  
8       party authorized by statute *may sue in that person's own name without joining the*  
9       *party for whose benefit the action is brought*; and when a statute of the  
10       Commonwealth so provides, an action for the use or benefit of another shall be  
11       brought in the name of the Commonwealth. No action shall be dismissed on the  
12       ground that it is not prosecuted in the name of the real party in interest until a  
13       reasonable time has been allowed after objection for ratification of  
14       commencement of the action by, or joinder or substitution of, the real party in  
15       interest; and such ratification, joinder, or substitution shall have the same effect as  
16       if the action had been commenced in the name of the real party in interest.

17 (emphasis added). This language is analogous to Federal Rules of Civil Procedure Rule 17(a)  
18 (“Rule 17(a)”). As such, interpretation of the Federal Rules is instructive. *Estate of Ogumoro v. Ko*,  
19 2011 MP 11 ¶ 70 n.27. The purpose of Rule 17(a) “is to enable the defendant to avail himself of  
20 evidence and defenses that the defendant has against the real party in interest, and to assure him  
21 finality of the judgment, and that he will be protected against another suit brought by the real party  
22 in interest on the same matter.” *Celanese Corp. of America v. John Clark Industries, Inc.*, 214 F.2d  
23 551, 556 (5th Cir. 1954); *see also Tennyson v. ASCAP*, 477 Fed. Appx. 608, 610 (11th Cir. 2012)  
24 (unpublished); *Pacific Coast Agricultural Export Ass’n v. Sunkist Growers, Inc.*, 526 F.2d 1196,  
1208 (9th Cir. 1975); *Virginia Electric & Power Co. v. Westinghouse Electric Corp.*, 485 F.2d 78,  
84 (4th Cir. 1973).

25       Further, Commonwealth law provides for the formation of LLCs pursuant to the Uniform  
26 Limited Liability Company Act. 4 CMC §§ 4801 et seq. An LLC organized under this law is “a  
27 legal entity distinct from its members.” 4 CMC § 4821. Further, “[u]nless its articles of organization



1 provide otherwise, a limited liability company has the same powers as an individual to do all things  
2 necessary or convenient to carry on its business or affairs.” 4 CMC § 4813(b). This includes the  
3 power to:

- 4 (1) Sue and be sued, and defend in its name;
- 5 (2) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use,  
6 and otherwise deal with real or personal property, or any legal or equitable  
7 interest in property, wherever located;  
8 . . . .
- 9 (5) Make contracts . . . ;  
10 . . . .
- 11 (12) . . . or do any other act, not inconsistent with law, that furthers the business of  
12 the limited liability company.

13 *Id.*

14 PRC is a LLC and has the right to enter into contracts, hold interest in property, and sue  
15 under the laws of the Commonwealth.<sup>5</sup> Further, PRC has alleged that the contract is held in the  
16 name of PRC. Thus, PRC has the legal ability to bring suit and is a real party in interest in this case.  
17 Moreover, even if the contract was made for the benefit of Bridge, NMI R. CIV. P. 17(a) permits a  
18 suit to be brought by “a party with whom or in whose name a contract has been made for the benefit  
19 of another . . . without joining the party for whose benefit the action is brought.”

20 Further, Hotel Riviera has made no showing that failure to include Bridge in the current  
21 litigation would subject Hotel Riviera to the risk of additional litigation, deprive Hotel Riviera of  
22 finality of judgment, or deprive Hotel Riviera any evidence or defenses.<sup>6</sup> Without more, based upon  
23 the information provided, the Court finds that PRC is the real party in interest and may bring the  
24 suit in its own name pursuant to NMI R. CIV. P. 17(a).

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23 <sup>5</sup> See 4 CMC §§ 4813, 4821.

24 <sup>6</sup> See *Celanese Corp. of America v. John Clark Industries*, 214 F.2d 551, 556 (5th Cir. 1954) (finding Federal Rule of Civil Procedure 17 did not require an insurance party be named in the litigation as its inclusion would not deprive the appellant of finality of judgment, any offsets, or any defenses).

