



FOR PUBLICATION



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CNMI SUPERIOR COURT  
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IN THE SUPERIOR COURT  
FOR THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

3  
4 YUN BAI,

)

CIVIL ACTION NO. 17-0100

)

ORDER DENYING PLAINTIFF'S

5  
6 Plaintiff,

)

EX PARTE MOTION FOR A

v.

)

PREJUDGMENT WRIT OF

ATTACHMENT BECAUSE SPECIAL

CAUSE HAS NOT BEEN SHOWN AS

7  
8 NIKOLAY ZYABRIN,

)

REQUIRED BY 7 CMC § 4201

)

9  
10 Defendant.

)

)

11 I. INTRODUCTION

12 THIS MATTER came before the Court on June 7, 2017 at 9:00 a.m. in Courtroom 220A for  
13 a motion hearing. Attorneys Mark B. Hanson and Benjamin K. Petersburg represented Plaintiff Yun  
14 Bai ("Plaintiff"). Attorney Peter B. Prestley represented Defendant Nikolay Zyabrin ("Defendant").  
15 The Court heard arguments on Plaintiff's ex parte motion for a writ of attachment pursuant to 7  
16 CMC § 4201. After reviewing the arguments of the parties and the relevant law the Court **DENIES**  
17 Plaintiff's motion because Plaintiff failed to show special cause.

18 II. BACKGROUND

19 The events underlying the present dispute between the parties began in January 2017 when  
20 Plaintiff and Defendant allegedly entered an exclusive agency agreement for the sale of Defendant's  
21 residence located on Navy Hill, Saipan, which is described as "EA 219-1-1 containing an area of  
22 1,671 square meters." The agreement was allegedly entered on January 11, 2017 and provided that  
23 Defendant's asking price for the property would be \$850,000. Under the agreement, Plaintiff's  
24 commission would consist of the difference between the asking price and the ultimate sale price,

By order of the Court, Associate Judge Joseph N. Camacho

1 provided however that Plaintiff would be only entitled to a commission if the sale price was in  
2 excess of \$850,000. Plaintiff's obligations under the agreement included maintaining and cleaning  
3 the property during the full duration of the agreement. Further, the alleged agreement was to run  
4 from January 9, 2017 through June 8, 2017.

5 On February 20, 2017, Defendant allegedly sent Plaintiff a letter purporting to terminate the  
6 exclusive agency agreement on the grounds that Plaintiff materially breached the agreement.  
7 Specifically, Defendant claimed that Plaintiff utterly failed to fulfill her obligations to clean,  
8 maintain, and paint the property as provided for by the agreement. Subsequent to the alleged  
9 termination, Plaintiff filed her complaint on April 18, 2017 alleging that Defendant breached his  
10 obligations by failing to pay Plaintiff a commission as provided by their agreement. On May 25,  
11 2017, Plaintiff filed the present ex parte motion for a writ of attachment claiming that a writ of  
12 attachment was necessary because a sale of the property was likely to be imminently completed  
13 with the proceeds likely to be transferred out of the jurisdiction. Plaintiff further argues that if  
14 Defendant is allowed to transfer the money out of the jurisdiction her ability to recover a potential  
15 future judgment would be completely foreclosed because Defendant has no other known assets  
16 within the Commonwealth of the Northern Mariana Islands ("CNMI"). At this point, the issue  
17 before the Court is whether a writ of attachment should issue in this case.

### 18 III. DISCUSSION

19 The ability of a CNMI court to issue writs of attachment is codified in 7 CMC § 4201,  
20 which provides:

21 (a) *Writs of attachment may be issued only by the court for special cause shown*  
22 *supported by statement under oath.* Such writs when so issued shall authorize and  
23 require the Director of Public Safety, any police officer, or other person named in it,  
24 to attach and safely keep so much of the personal property of the person against  
whom the writ is issued as will be sufficient to satisfy the demand set forth in the  
action, including interest and costs. The Director of Public Safety, police officer, or  
other person named in the writ shall not attach any personal property which is

1 exempt from attachment, nor any kinds or types of personal property which the court  
2 may specify in the writ.

3 (b) Debts payable to the defendant may be similarly attached by special order issued  
4 by the court, which shall exempt from the attachment so much of any salary or  
wages as the court deems necessary for the support of the person against whom the  
order is issued or his or her dependents.

5 (emphasis added).

6 While a CNMI court has statutory authority to issue writs of attachment under 7 CMC §  
7 4201, a court's power rests within the confines of due process. *See Sibulo v. Abad*, Civ. No. 00-  
8 0394 (NMI Super. Ct. Aug. 27, 2002) (Order Denying Defendant's Motion to Dissolve  
9 Prejudgment Writ of Attachment at 3-4) (citing *Connecticut v. Doehr*, 501 U.S. 1, 11 (1991)). To  
10 avoid running afoul of due process protections a court applying 7 CMC § 4201 must carefully  
11 weigh the specific facts and circumstances of the case at bar. *See generally Id.* at 3-10. Moreover,  
12 determining whether exigent circumstances are present is the core of a court's "special cause"  
13 inquiry. *Id.*

14 Here, Plaintiff argues that she has met her burden to show the Court that a special cause  
15 exists. Plaintiff emphasizes that Defendant is a Russian national who will likely flee the jurisdiction  
16 with the liquid proceeds of the sale of the property. Plaintiff represents that to her knowledge  
17 Defendant has no other assets in the CNMI<sup>1</sup> and as such the Court should issue a writ of attachment  
18 in amount of \$300,000<sup>2</sup> so as to ensure that sufficient funds remain within Plaintiff's reach should  
19 she eventually be awarded a judgment against Defendant.

20 Defendant responds that the Court would be setting a dangerous precedent if it granted  
21 Plaintiff's prejudgment writ application because there has been no judgment in this case and  
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23 <sup>1</sup> During the hearing, Plaintiff's attorney, Benjamin K. Petersburg, admitted that no title search and/or comprehensive  
investigation was undertaken to determine whether indeed Defendant has no other property within the jurisdiction.

24 <sup>2</sup> Plaintiff calculated that she is owed \$200,000 and that her attorney's fees could be as high as \$100,000, which is how  
she arrived at the \$300,000 figure in her ex parte motion for a prejudgment writ of attachment.

1 procedurally this case is at the pre-answer stage. Defendant argues that the burden that would be  
2 placed on him would be great and unjustified. Further, Defendant's counsel, Peter B. Prestley,  
3 represented to the Court that the alleged buyer's attorney, Stephen J. Nutting, has assured him that  
4 the buyer is withholding \$300,000 at the completion of the land sale due to the present litigation.  
5 Essentially, Defendant argues that sufficient funds will remain in the CNMI and that a writ of  
6 attachment is not necessary.

7 At this time, the issuance of a writ of attachment pursuant to 7 CMC § 4201 is premature  
8 because Defendant's representation that funds from the buyer of the property will remain in the  
9 CNMI in attorney Stephen J. Nutting's client trust account undermines Plaintiff's argument that the  
10 exigent circumstances amount to special cause. Sufficient funds are being held by a third party,  
11 which lessens the risk that the liquid funds will be transferred out of the jurisdiction.

12 **IV. CONCLUSION**

13 In sum, Plaintiff failed to show that the circumstances justify a special cause finding.  
14 Therefore, Plaintiff's ex parte motion for a prejudgment writ of attachment is **DENIED**.

15 **IT IS SO ORDERED** this 15th day of June, 2017.

16  
17 /s/  
**JOSEPH N. CAMACHO**  
18 Associate Judge  
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