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

NORTHERN MARIANAS HOUSING CORPORATION, et. al.,

Plaintiff,

v.

VICENTE L. MANGLONA and FLORENTINA M. MANGLONA

Defendants.

) **SMALL CLAIMS NO. 96-2043**
) **SMALL CLAIMS NO. 97-1329**
) **SMALL CLAIMS NO. 10-0428**
)
) **ORDER GRANTING DEFENDANTS’**
) **MOTION TO AMEND JUDGMENT AND**
) **FOR RELIEF FROM JUDGMENT AND**
) **ORDER AS THERE WERE NO**
) **GROUND FOR A FINDING OF**
) **CONTEMPT OF COURT TO JUSTIFY**
) **ATTORNEY’S FEES OR COST AND**
) **CREATE AN EXCEPTION TO THE**
) **AMERICAN RULE FOR LITIGATION**
) **EXPENSES**

I. INTRODUCTION

This matter came before the Court on September 5, 2017, at 1:30 p.m. in Courtroom 220A. The Court heard arguments on Defendants’ Motion to Amend Judgment and for Relief From Judgment and Order. Vicente L. Manglona and Florentina M. Manglona (collectively “Defendants”) were represented by court-appointed attorney Joseph E. Horey.¹ Plaintiff Northern Marianas Housing Corp., Inc. (“Plaintiff”) was represented by attorney Michael A. White.

Defendants seek amendment of the judgment, removing additional attorney’s fees and costs awarded after a contempt hearing on May 26, 2017 and any interest accrued upon the additional attorney’s fees and costs. Defendants argue that it was clearly erroneous to award attorney’s fees

¹ Defendants were found indigent and eligible for court-appointed counsel. Attorney Joseph Horey was therefore appointed for the purposes of the contempt proceedings, in accordance with *Bank of Guam v. Ruben*, 2008 MP 22 ¶ 13, as there was a possibility of incarceration.

1 and costs because Plaintiff did not prevail in the contempt proceedings and no circumstances exist
2 to alter the American Rule of litigation expenses, which requires each party to bear their own
3 expenses. Plaintiff argues it is entitled to attorney's fees and costs because it prevailed in the
4 underlying action and Defendants "could have been found in contempt" had the motion not been
5 withdrawn. Pl.'s Opp. at 7. Both parties submitted proposed findings of fact and conclusions of law.

6 Based on the submitted filings, oral arguments by counsels, and the applicable law, the
7 Court grants Defendants' motion and amends the judgment based on the following.

8 II. BACKGROUND

- 9 1. This matter involves three consolidated cases,² the oldest of which is approximately twenty-one
10 (21) years old.
- 11 2. On March 2, 2016, the Defendants were jointly ordered to pay the balances due upon the
12 judgments in these matters at the rate of \$25.00 bi-weekly, commencing on March 4, 2016, and
13 continuing every two weeks thereafter.
- 14 3. The Court's Order, drafted by Plaintiff's attorney, provided, in part:
- 15 Payments may be made by deposit into Plaintiff's attorney's account no.
16 0203-838171, at the Bank of Guam. If payments were made in this manner,
17 Defendant's [sic] name shall be written on the deposit slip, and a copy
18 thereof shall be provided to Plaintiff's attorney by mail, email, or fax.
- 19 4. Defendants made regular bi-weekly payments of \$25.00, commencing in March 2016 and
20 continuing through at least May 25, 2017. *See* Defs.' Declaration.
- 21 5. Plaintiff's attorney has a bank account into which Defendants make deposits. However,
22 Plaintiff's counsel does not know if Defendants have made their payments and cannot credit
23 Defendants for their payments unless Defendants submit the deposits slips to Plaintiff's counsel.

24 ² The three cases are: *Northern Marianas Housing Corp. v. Manglona*, Small Claims No. 96-2043; *Northern Marianas Housing Corp. v. Manglona*, Small Claims No. 97-1329; and, *Triple J. Rental v. Manglona*, Small Claims No. 10-0428.

- 1 6. Defendants provided faxed copies of their payments to Plaintiff's counsel at irregular intervals.
2 *See* Defs.' Declaration.
- 3 7. Due to this irregularity, Plaintiff's counsel received no notice of payments from approximately
4 August 18, 2016 to January 27, 2017.
- 5 8. On January 30, 2017, Plaintiff filed a Motion, asking the Court to hold Defendants in contempt
6 of court for their failure to comply with the Order of March 2, 2016.
- 7 9. The Motion came before the Court on March 23, 2017.
- 8 10. At the March 23, 2017 hearing, Defendants were appointed counsel in compliance with *Bank of*
9 *Guam v. Ruben*, 2008 MP 22.³
- 10 11. On the afternoon of May 25, 2017, the day before the contempt hearing, Defendants faxed
11 copies of deposit slips to Plaintiffs' attorney, indicating that Defendants had made the payments
12 required by the Order of March 2, 2016.
- 13 12. The total balance due was approximately \$7,725.00 at the time of the May 26, 2017 hearing.
- 14 13. In light of the newly provided deposit slips, at the hearing held on May 26, 2017, Plaintiff
15 withdrew its Motion for an Order to Show Cause, and asked the Court to award \$80.00 as
16 "attorney's fees and/or costs incurred in connection with the Motion".
- 17 14. Over Defendants' objection, the Court awarded \$80.00 as attorney's fees and/or costs, and
18 memorialized its oral Order in a written Order dated May 31, 2017.
- 19 15. On June 14, 2017, Defendants timely filed a Motion to Amend Judgment and for Relief from
20 Judgment and Order.
- 21 16. Defendants' Motion renewed their objection to the award of attorney's fees and costs, and asked
22 the Court to reconsider its ruling.
- 23 17. Plaintiff filed its opposition to the motion on July 7, 2017.

24 ³ *See supra* note 1.

1 **III. LEGAL STANDARD**

2 A motion to alter or amend a judgment is warranted when necessary to “correct a clear error
3 or prevent manifest injustice.” *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 23 (citing
4 *Camacho v. J.B. Tenorio Enterprises*, 2 NMI 407, 414 (1992)). Courts will find clear error “if after
5 reviewing all the evidence we are left with a firm and definite conviction that a mistake has been
6 made.” *Commonwealth v. Crisostomo*, 2014 MP 18 ¶ 8 (citation and internal quotation marks
7 omitted).

8 **IV. DISCUSSION**

9 The Court must determine whether it was clearly erroneous to award attorney’s fees and
10 costs for Plaintiff’s motion for a finding of contempt when the motion was withdrawn and
11 Defendants were not found in contempt.

12 The CNMI follows the ‘American Rule’ of litigation expenses. *See Deleon Guerrero v.*
13 *DPS*, 2013 MP 17 ¶ 5. The American Rule provides that each party is responsible for paying its
14 own attorney’s fees and costs except when specific authority is granted by statute, contract, or court
15 rule, allowing the assessment of those expenses against the other party or when allowed in certain
16 equitable circumstances set forth by the judiciary. *Reyes v. Reyes*, 2004 MP 1 ¶ 79; *Alyeska*
17 *Pipeline Serv. Co. v. Wilderness Soc’y*, 421 U.S. 240, 257 (1975). The Court then must determine
18 whether there is an exception to the American Rule under (A) CNMI statute or court rule; (B)
19 contract; or (C) equitable circumstances.

20 **A. Attorney’s fees and costs cannot be awarded pursuant to CNMI statute or court rules**
21 **because Plaintiff did not prevail in the contempt proceeding.**

22 Attorney’s fees and costs are allowed to be awarded to the prevailing party pursuant to NMI
23 R. Civ. P. 54(d) (emphasis added). Further, the Commonwealth Code provides: “[t]he court may
24 allow and tax any additional items of cost or actual disbursement, other than fees of counsel, which

1 it deems just and finds have been necessarily incurred for services which were actually and
2 necessarily performed.” 7 CMC § 3207 (emphasis added). Awards for attorney’s fees and/or costs
3 under this rule are permissive and thus a matter of the court’s discretion. *Ishimatsu v. Royal Crown*
4 *Ins. Corp.*, 2010 MP 8 ¶ 73. From a plain reading of the text, a party must prevail before the Court
5 can award attorney’s fees and costs under CNMI statutes and court rules. “In order to prevail on a
6 contempt petition, the complaining party must demonstrate by clear and convincing evidence that
7 the respondent has violated the express and unequivocal command of a court order.” *Autotech*
8 *Techs. LP v. Integral Research & Dev. Corp.*, 499 F.3d 737, 751 (7th Cir. 2007) (citing *D. Patrick,*
9 *Inc. v. Ford Motor Co.*, 8 F.3d 455, 460 (7th Cir. 1993)).

10 Here, Plaintiff did not show by clear and convincing evidence that Defendants were in
11 contempt. In fact, Plaintiff withdrew its motion that asked the Court to find Defendants in contempt.
12 Therefore, there is no prevailing party and attorney’s fees and/or costs cannot be awarded under the
13 NMI statutes or court rules. See *Las Vegas Metro. Police Dept. v. Buono*, No. 54106 2011 Nev.
14 Unpub. LEXIS 1384 *7-10, 2011 WL 6916428 *3 (Nev. 2011) (finding there was no prevailing
15 party when the order to show cause was vacated, so costs could not be awarded). The NMI statute
16 or court rules therefore do not create an exception to the American Rule.

17 **B. Attorney’s fees and costs cannot be awarded pursuant to the contract because the contract**
18 **merged with the judgment.**

19 Under the doctrine of merger, a contract merges with the judgment and a party cannot
20 collect post-judgment attorney’s fees or costs under the provisions of the contract. *AccuBid*
21 *Excavation, Inc. v. Kennedy Contrs., Inc.*, 188 Md. App. 214, 233 (2009) (holding a contract
22 merges with a judgment and cannot be the basis for an award of post-judgment attorney fees);
23 *Chelios v. Kaye*, 219 Cal. App. 3d 75, 80-81 (1990) (overruled on other grounds); RESTATEMENT
24 (SECOND) OF JUDGMENTS § 18 (Am. Law Inst. 1982).

1 Here, Plaintiff argues that the terms of the contract provide for the award of attorney's fees
2 and costs. However, judgment upon the breach of this contract was already entered in this case. As
3 judgment has been entered, the contract has merged with the judgment and attorney's fees and costs
4 cannot be awarded. Therefore, the contract does not create an exception to the American Rule.

5 **C. Attorney's fees and costs cannot be awarded in judicial equity because Defendants were**
6 **not found to be in contempt or in willful disobedience of court orders.**

7 Courts have inherent authority to award attorney's fees and costs on the basis of equity
8 when a defendant has willfully disobeyed a court's order. *Alyeska Pipeline Serv. Co.*, 421 U.S. at
9 259. While there is a split among American jurisdictions regarding when awards of attorney's fees
10 and costs are appropriate in contempt hearings, all jurisdictions require either a finding of contempt
11 or a finding of willful disobedience of the court's order. *Compare, e.g., Manhattan Indus., Inc. v.*
12 *Sweater Bee by Banff, Ltd.*, 885 F.2d 1, 8 (2nd Cir. 1985) (award of fees permitted only upon a
13 finding of willful contempt), with *Perry v. O'Donnell*, 759 F.2d 702, 705 (9th Cir. 1985) (award of
14 fees permitted upon a finding of contempt without a finding of willfulness), and *Casale v. Kelly*,
15 710 F.Supp.2d 347, 366 (S.D.N.Y. 2010) (award of fees permitted upon finding willful
16 disobedience without necessarily a finding of contempt).

17 Here, Defendants were not found to be in contempt and were not found to have willfully
18 disobeyed the Court's order. Instead, Plaintiff withdrew its motion because Plaintiff received proof
19 of Defendants' compliance with the Court's order. Moreover, though faxed notice of Defendants'
20 payments were irregular, this was not a willful disobedience to a court order because the Court did
21 not specifically order notice to be provided at set intervals. *See NMHC v. Manglona*, Small Claims
22 No. 96-2043 (NMI Super. Ct. May 2, 2016) (Order at 1). An equitable exception to the American
23 Rule does not exist because Defendants were not in contempt or in willful disobedience, which are
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1 necessary prerequisites as equitable considerations before the Court can shift attorney's fees and
2 costs.

3 In sum, there were no grounds to find Defendants in contempt of court, so there is no
4 exception under statute, court rule, contract, judgment, or other equitable circumstances to the
5 American Rule of litigation expenses, which requires each party to pay their own litigation
6 expenses. Therefore it was clearly erroneous to award attorney's fees and costs.

7 **V. CONCLUSION**

8 For the foregoing reasons, Defendants' motion to amend judgment and for relief from
9 judgment and order is hereby **GRANTED**.

10 The judgment shall be amended, removing additional attorney's fees and costs awarded
11 after a contempt hearing on May 26, 2017 and any interest accrued upon the improperly imposed
12 additional attorney's fees and costs. Plaintiff is ordered to prepare an amended judgment reflecting
13 these deductions that includes the updated balance of the principal and accrued post-judgment
14 interest.

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16 **IT IS SO ORDERED** this 17th day of July, 2018.

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19 **JOSEPH N. CAMACHO, Associate Judge**