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By order of the Court,
Presiding Judge Roberto C. Naraja

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

IN RE) **CIVIL ACTION NO. 18-0034**
GERALDINE MANABAT SABIO,)
EMELINDA MARCILLA JOVELO,)
MARIVIC SALAZAR LABRADOR,)
MERCEDES REAL ABUBO, JEANET) **ORDER DENYING PETITION FOR**
MA-ANO BUCAYO, JENETA CIRUELOS) **WRIT OF MANDAMUS**
ARCEO, SUSAN HABULAN, and)
EDGARDO B. BASILIO)
Petitioners.)

I. INTRODUCTION

THIS MATTER came before the Court on September 12, 2018 at 9:00 a.m. in the Pedro P. Tenorio Multipurpose Center Room 1 for a hearing on Petitioners' Petition for Writ of Mandamus. Attorney Jane Mack represented Petitioners. The matter was taken under advisement and Petitioners filed a written brief in support of their Petition.

II. BACKGROUND

Petitioners each filed a Small Claim case against Edita Capilitan Cruz, dba WEC Manpower Agency, who was retained at various times in 2016 and 2017 to assist each of them in obtaining federal work visas. The claims allege that Defendant engaged in false advertisement to hire workers and process CW permits, and charged document handling fees and other fees to each of the Petitioners.

Petitioners claim they are each entitled to relief for breach of contract, conversion of their cash to Defendant's personal use, fraud, violation of the Consumer Protection Act's Unfair and

1 Deceptive Acts and Practices provisions, 4 CMC § 5105, and violation of the Alien and Immigrant
2 Consumer Protection Act, 4 § 5184.

3 On December 14, 2017, Associate Judge Bogdan issued an Order entitled "Order
4 Dismissing Claims of Punitive and Liquidated Damages, Fraud, and Conversion." *Geraldine*
5 *Manabat Sabio v. Edita Capilitan Cruz, dba WEC Manpower Agency*, Small Claims No. 17-0320
6 (NMI Super. Ct. December 14, 2017) (Sua Sponte Order Consolidating Small Claims Cases for the
7 Limited Purpose of Issuing a General Order and Order Dismissing Claims of Punitive and
8 Liquidated Damages, Fraud, and Conversion). On January 24, 2018, Petitioners filed this petition
9 for Writ of Mandamus. A Hearing on the Writ was heard on September 12, 2018 and Petitioners
10 filed a brief in support of Petition for Writ of Mandamus on October 3, 2018.

11 III. LEGAL STANDARD

12 The issuance of a writ of mandamus is an extraordinary remedy, “reserved for the most dire
13 of instances when no other relief is available.” *Martens v. Superior Ct.*, 2007 MP 5 ¶ 16. In
14 deciding whether to issue a writ of mandamus, the court considers the five *Tenorio* factors:

- 15 1. The party seeking the writ has no other adequate means, such as a direct appeal,
16 to attain the relief desired;
- 17 2. The petitioner will be damaged or prejudiced in a way not correctable on
18 appeal;
- 19 3. The lower court’s order is clearly erroneous as a matter of law;
- 20 4. The lower court’s order is an oft-repeated error, or manifests a persistent
21 disregard of applicable rules; and
- 22 5. The lower court’s order raises new and important problems, or issues of law of
23 first impression.

24 *Commonwealth v. Namauleg*, 2009 MP 13 ¶ 5 (citing *Tenorio v. Superior Court*, 1 NMI 1, 9–10).

1 **IV. DISCUSSION**

2 There is no bright-line rule governing the application of the *Tenorio* factors. *Malite v.*
3 *Superior Ct.*, 2007 MP 3 ¶ 9. Instead, the court must balance the five factors and “determine the
4 degree to which each is implicated.” *Id.* The court evaluates the factors cumulatively, and “proper
5 disposition will often require a balancing of conflicting indicators.” *Tenorio*, 1 NMI at 10.

6 A. Clearly Erroneous as a Matter of Law

7 The Court first considers the third *Tenorio* factor because a clearly erroneous decision is a
8 prerequisite to writ relief. *In re Buckingham*, 2012 MP 15 ¶ 10. “The trial court’s decision, on a
9 question of law, is accorded more deference within the context of a writ petition than it would be on
10 direct appeal.” *Commonwealth v. Commonwealth Utils. Corp.*, 2014 MP 21 ¶ 11. A court will deny
11 writ relief if the questioned ruling is supported by “a rational and substantial legal argument.” *In re*
12 *Buckingham*, 2012 MP 15 ¶ 10.

13 If a rational and substantial legal argument can be made in support of the questioned ruling,
14 “the case is not appropriate for mandamus ... even though on normal appeal a reviewing court
15 might find reversible error.” *Tenorio* at 8 (citing *American Fidelity Insurance Company v. United*
16 *States District Court for the Northern District of California*, 538 F.2d 1371, 1374 (9th Cir. 1976)
17 (citing in turn *American Airlines, Inc. v. Forman*, 204 F.2d 230, 232 (3rd Cir. 1953))).

18 In *Markoff v. Lizama*, the NMI Supreme Court articulated the “clear error” standard as
19 “[w]e will not reverse findings of fact unless we are ‘left with a firm and definite conviction that
20 clear error has been made.’” 2016 MP 07 ¶ 8 (citing *Commonwealth Ports Auth. v. Tinian Shipping*
21 *Co.*, 2007 MP 22 ¶ 14). The clear error test is whether the court could rationally have found as it
22 did, rather than whether the reviewing court would have ruled differently. *In re Estate of Yong Kyun*
23 *Kim*, 2001 MP 22 ¶ 9.

1 Here, Associate Judge Bogdan based his dismissal of Petitioners' claims for fraud,
2 conversion, punitive damages, and liquidated damages on the manner in which matters in Smalls
3 Claims Court operate. Small claims are permitted to proceed with less formality, paperwork, and
4 expenditure of time. NMI R. CIV. P. 83(a-b). Parties are encouraged to appear without counsel and
5 to be assisted by the clerk of court staff in navigating the small claims process. NMI R.CIV. P.
6 83(b). Small claims trials do not follow the usual rules of evidence and procedure; and the court can
7 assist in the presentation of evidence. NMI R. CIV. P. 83(e-f).

8 These components form Associate Judge Bogdan's view of the scope of the Small Claims
9 Court:

10 All these rules taken together envision cases involving small claims for specific and
11 identifiable amounts of money related to issues that are manageable for persons who
12 lack legal training. Exact monetary amounts are generally supposed to be such that
13 the plaintiff could itemize them with specific dates and amounts. NMI R. CIV. P.
14 83(e)(1). Punitive damages, claims of fraud and conversion et cetera cannot in this
15 Court's opinion be itemized or litigated in this manner.

16 *Geraldine Manabat Sabio v. Edita Capilitan Cruz, dba WEC Manpower Agency*, Small Claims No.
17 17-0320 (NMI Super. Ct. December 14, 2017) (Sua Sponte Order Consolidating Small Claims
18 Cases for the Limited Purpose of Issuing a General Order and Order Dismissing Claims of Punitive
19 and Liquidated Damages, Fraud, and Conversion at 4). Claims for punitive and liquidated damages
20 are complex matters and typically require expert legal knowledge, and some form of discovery into
21 a defendant's behavior, which is in contrast with the goal of Small Claims Court for a plaintiff to
22 come in and quickly resolve their claim.¹ This increases the need for a litigant to obtain counsel
23 instead of remaining *pro se*, as envisioned in the CNMI Rules of Civil Procedure.²

24 ¹ Restatement (Second) of Torts § 908 states:

(1) Punitive damages are damages, other than compensatory or nominal damages, awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future.

1 Associate Judge Bogdan’s interpretation of the scope of Small Claims Court cases can be
2 supported by a rational and substantial legal argument.³ Small Claims Court procedure encourages
3 parties to appear *pro se* and the clerks of court, who are not lawyers nor have a legal education, are
4 expected to assist the parties. NMI R. CIV. P. 83(b). Further, NMI R. CIV. P. 83(c) provides that the
5 plaintiff need only state the nature and amount of the claim on the summons and complaint form.
6 This information is copied onto the docket card by the clerk, and no other written pleading is
7 required by any party, unless the court otherwise orders. At the hearing, the judge may require the
8 plaintiff to present to the court and opposing party a written list of the items or claims, showing
9 their respective dates and amounts. NMI R. CIV. P. 83(e)(1). Upon examination of various
10 components of Rule 83, it is this Court’s view that Small Claims Court is a simple, informal process
11 that is not designed to litigate complex matters such as punitive damages, liquidated damages,
12 fraud, and conversion.

13 All of the information taken together, rationally supports Judge Bogdan’s view that punitive
14 damages, liquidated damages, fraud, and conversion are inappropriate in Small Claims
15 Court. Lastly, as the NMI Supreme Court has made clear, in a Writ of Mandamus petition such as

16 (2) Punitive damages may be awarded for conduct that is outrageous, because of the defendant’s evil
17 motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier
18 of fact can properly consider the character of the defendant’s act, the nature and extent of the
harm to the plaintiff that the defendant caused or intended to cause and the wealth of the
defendant.

19 Such outrageous or reckless acts must be proven by a preponderance of the evidence. *Ishimatu v. Royal Crown Ins.
Corp.*, 2010 MP 8 ¶ 34 (citing *Jasper v. Quitugua*, 1999 MP 4 ¶ 8).

20 NMI R. CIV. P. 9(b) provides that in all averments of fraud or mistake, the circumstances constituting fraud or
mistake shall be stated with particularity.

21 ² “Parties are to be encouraged to handle small claims personally without counsel.” NMI R. CIV. P. 83(b).

22 ³ In the Order dismissing Petitioners’ claims, Judge Bogdan references a number of other U.S. jurisdictions where
punitive damages are not heard in Small Claims Court. *See Klemas v. Flynn*, 66 Ohio St. 249, 252 (1993) (“intended
to provide a forum for persons with relatively small, uncomplicated claims to seek redress without the need for
attorney representation.”); Idaho Code § 1-2301 (2017) (“the small claims department shall not award punitive
damages or damages for pain or suffering in any proceeding.”); Haw. Rev. Stat. § 663-27(c) (1) (2017) (small claims
monetary relief cannot include punitive damages and equitable relief is limited to landlord-tenant claims to repair,
replace, refund, reform, or rescind.); John C. Rhunka & Steven Weller, Small Claims Court: A National Examination,
23 NATIONAL CENTER FOR STATE COURTS, 2 (1978) (equitable or non-monetary relief is usually prohibited in
24 small claims courts.)

1 the one at hand, the inferior court is given more deference in their decision than in a normal appeal.
2 *Commonwealth Utils. Corp.*, 2014 MP 21 ¶ 11.

3 B. Other Available Remedy

4 The NMI Supreme Court held in *Tudela v. Superior Court*, it will generally deny a writ
5 when the petitioner has another adequate remedy at law. 2006 MP 7 ¶¶ 12–13.

6 Rule 83(a) states that a plaintiff may file a case under the small claims procedure for any
7 civil action involving a claim for which the value is \$5,000 or less. Rule 83 does not use the word
8 ‘shall,’ meaning that Petitioners may bring their claims in the Superior Court civil docket. The
9 claims for fraud, conversion, punitive damages, and liquidated damages were dismissed *without*
10 prejudice, thus leaving Petitioners with another adequate remedy at law rather than issuing a Writ of
11 Mandamus.

12 Further, Petitioners have the opportunity to file a Motion to Reconsider Associate Judge
13 Bogdan’s December 4, 2017 Order Dismissing Claims of Punitive and Liquidated Damages, Fraud,
14 and Conversion. Motions for reconsideration are governed by Rule 59 of the Commonwealth Rules
15 of Civil Procedure and are considered an extraordinary measure to be taken at the Court’s
16 discretion. *See Yuba Natural Resources, Inc. v. United States*, 904 F.2d 1577, 1583 (Fed. Cir.
17 1990). Thus, a party seeking reconsideration of an order must support the motion by a showing of
18 extraordinary circumstances, which justify relief. *See Bally Export Corp. v. Balicar, Ltd.*, 804 F.2d
19 398, 400 (7th Cir. 1986). This showing must be based upon 1) a need to correct a clear error or
20 prevent manifest injustice, 2) the availability of new evidence not previously obtainable; or 3) an
21 intervening change of controlling law. *Camacho v. J.C. Tenorio Enter.*, 2 NMI 407, 414 (1992)
22 (citing 18 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE & PROCEDURE:
23 JURISDICTION § 4478 (1981)).

1 While Petitioners must meet an exceedingly difficult burden to obtain relief under Rule 59,
2 a Motion to Reconsider provides Petitioners with another adequate remedy at law.

3 C. Prejudice

4 A petitioner bears the burden to demonstrate that they will be “prejudiced in a way not
5 correctable on appeal.” *In re Babauta*, 2016 MP 06 ¶ 11 (quoting *Tenorio*, 1 NMI at 9).

6 Petitioners argue that because Small Claims matters are heard in a way that does not
7 produce a record sufficient for review on appeal, the decision must first be appealed to the Superior
8 Court for a *de novo* review.⁴ The Court agrees. In *Chen’s Corp. v. Hambros*, the NMI Supreme
9 Court stated:

10 The reason a small claims appeal first proceeds to Superior Court is because the
11 rules of evidence and procedure will be enforced, and thus 1. give the lower court an
12 opportunity to make a ruling based on more formal rules of evidence and
13 procedure, and 2. make any resulting appeal to the Supreme Court more capable of
14 setting forth an adequate record.

15 2007 MP 04 ¶ 5. NMI R. CIV. P. 83(j) provides that any party may appeal an adverse judgment to
16 the Superior Court. The Superior Court judge to whom the case is assigned shall set a status
17 conference and at the conference, the judge may issue appropriate orders for the conduct of the
18 case, in accordance with the Commonwealth Rules of Civil Procedure. *Id.*

19 In a *de novo* proceeding such as this, the court might allow the Petitioners to be heard on all
20 of their claims, but the court does not sit in review of what the Small Claims court did, nor would it
21 review whether it was proper to dismiss the claims initially brought in Small Claims.

22 Petitioners further contend that their potential relief on their small claims will only be
23 available to them through a more burdensome process in the Superior Court; a process in
24 Petitioners’ view that will entail greater delay. In *Tudela*, the NMI Supreme Court held that the fact
that defendant may have to bear additional litigation expenses or experience delay is not the type of

⁴ *Chen’s Corp v. Hambros*, 2007 MP 04 ¶ 5; COM. R. CIV. P. 83(j).

1 harm that will justify writ review, which is consistent with this Court’s ruling in this matter. 2006
2 MP 7 ¶ 24.

3 D. Oft-repeated Error, or Manifests a Persistent Disregard of Applicable Rules/ New and
4 Important Problems, or Issues of Law of First Impression

5 The fourth and fifth factors are whether the “court’s order is an oft-repeated error, or
6 manifests a persistent disregard of applicable rules” and whether the “order raises new and
7 important problems, or issues of law of first impression.” *In re Cushnie*, 2012 MP 3 ¶ 7 (citing
8 *Tenorio*, 1 NMI at 9–10). These “factors are usually opposite sides of the same coin and are rarely
9 if ever present together.” *Xiao Ru Liu v. Commonwealth*, 2006 MP 5 ¶ 20.

10 Petitioners do not refer to any other cases where similar issues to this case have been
11 addressed. A single instance of an alleged error does not establish an oft-repeated error. *Office of*
12 *the Attorney General v. Superior Court*, 1999 MP 14 ¶ 31. Therefore, no evidence has been
13 provided that demonstrates Associate Judge Bogdan has persistently disregarded applicable rules.

14 Petitioners claim that Associate Judge Bogdan’s order will likely guide future Small Claims
15 Court decisions, resulting in future dismissal of fraud, punitive damages, and liquidated damages
16 claims. The fourth *Tenorio* factor asks whether the lower court’s action was an oft-repeated error, or
17 demonstrates persistent disregard for applicable rules. 1 NMI at 10. This Court finds no repeated
18 error. Speculation into future court action is immaterial and factor four requires evidence showing a
19 course of conduct of related judicial error. *Id.*

20 Petitioners argue that whether the Small Claims court may dismiss claims because they
21 include a claim for statutory damages, or arise from torts like fraud or conversion, is a new and
22 important issue. Petitioner further argues this is the first instance where the Small Claims division
23 has refused to hear civil claims for damages that fall within the money limit of the Rule, thus it is a
24 new problem.

1 This Court has not had to issue a decision on Small Claims Court jurisdiction in regards to
2 fraud, conversion, punitive damages, and liquidated damages. While the question of fraud, punitive
3 damages, and liquidated damages in Small Claims Court appears to be a matter of first impression
4 in the Commonwealth, this factor alone is inadequate to grant a writ of mandamus. *See In re*
5 *Babauta*, 2016 MP 06 ¶ 18; *NMI Scholarship Bd. v. Superior Court*, 2007 MP 10 ¶ 8.

6 **V. CONCLUSION**

7 For the foregoing reasons and after balancing the five *Tenorio* factors, Petitioners' Petition
8 for a Writ of Mandamus is **DENIED**. In light of arguments made, it is in this Court's view that the
9 NMI Judiciary should review its Rule 83 of the Rules of Civil Procedure and provide more clarity
10 as to the types of matters envisioned to be litigated in the Small Claims Court.

11
12 **IT IS SO ORDERED** this 24th day of January, 2019.

13
14 /s/
ROBERTO C. NARAJA
15 Presiding Judge