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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

CLIFFORD M. CAMACHO,)	CIVIL ACTION NO. 17-0223
)	
Plaintiff,)	ORDER SUSTAINING PLAINTIFF’S
v.)	HEARSAY OBJECTION UNDER NMI
)	RULES OF EVIDENCE RULE 613, NMI
)	RULES OF EVIDENCE RULE 807 AND
LUCILLE M. CAMACHO-HILARIO,)	RULE 803(3), AND OVERRULING
)	PLAINTIFF’S OBJECTION UNDER
Defendant.)	RULE 801(d)(2)(D)
)	
)	

I. INTRODUCTION

THIS MATTER came before the Court on December 5 and 11, 2018 at 9:00 a.m. at the United States District Court for the Northern Mariana Islands for a hearing on Defendant’s Motion to Set Aside Default Judgment. Attorney Daniel Guidotti represented Plaintiff Clifford M. Camacho. Attorney Shelli Neal represented Defendant Lucille M. Camacho-Hilario. The Court heard testimony from Clifford M. Camacho, Lucille M. Camacho-Hilario, Edmund M. Camacho, Christopher M. Camacho, Fermina M. Camacho, and Robert Hilario.

II. BACKGROUND

During the December 5, 2018 evidentiary hearing, Christopher Camacho testified that he personally served Hilario with the Summons and Complaint on December 3, 2017 at the St. John Evangelist Church located at 5741 Locust Ave., Carmichael, California, 95608, at approximately 11:00 a.m. Christopher further testified that he had nothing more to do with this matter after he served

1 Defendant with the Summons and Complaint and delivered a completed proof of service to Plaintiff.
2 Christopher also submitted and filed with the Court his Declaration of Service.

3 During the December 11, 2018 continuation of the December 5 hearing, Defendant called
4 Edmund Camacho as a rebuttal witness. Edmund testified that, sometime during mid-January 2018,
5 Christopher called Edmund on the phone and told Edmund that he [Christopher] lied about serving
6 the Summons and Complaint on Defendant and that he [Christopher] had not served the summons
7 and complaint on Defendant. Plaintiff objected each time that Edmund testified about these
8 statements made by Christopher. This Court granted and allowed Plaintiff's continuing objection to
9 Plaintiff and informed the Parties it will rule later in time. Defendant responded that Edmund's
10 statements were admissible because they were not hearsay.

11 At the end of the evidentiary hearing, the Court ordered the parties to brief the evidentiary
12 issues and took the matter under advisement. Now, the Court rules on Plaintiff's objections.

13 III. LEGAL STANDARD

14 "Hearsay" is a statement that the declarant does not make while testifying at the current trial
15 or hearing; and a party offers in evidence to prove the truth of the matter asserted in the statement.
16 NMI R. EVID. 801.

17 IV. DISCUSSION

18 The Court now determines whether or not Christopher Camacho's mid-January 2018
19 statements to Edmund Camacho are admissible pursuant to NMI Rules of Evidence Rule 613, NMI
20 Rules of Evidence Rule 807, NMI Rules of Evidence Rule 803(3), or NMI Rules of Evidence Rule
21 801(d)(2)(D).

22 A. NMI R. EVID. 613 – Witness's Prior Statement

23 Any party, including the party that called the witness, may attack the witness's credibility.
24 NMI R. EVID. 607. When examining a witness about the witness's prior statement, a party need not

1 show it or disclose its contents to the witness. NMI R. EVID. 613(a). But the party must, on request,
2 show it or disclose its contents to an adverse party's attorney. *Id.* Extrinsic evidence of a witness's
3 prior inconsistent statement is admissible only if the witness is given an opportunity to explain or
4 deny the statement and an adverse party is given an opportunity to examine the witness about it, or if
5 justice so requires. NMI R. EVID. 613(b).

6 Here, Defendant did not examine Christopher Camacho about his prior statement to Edmund
7 Camacho during cross-examination, and thereby did not give Christopher "an opportunity to explain
8 or deny the statement and an adverse party is given an opportunity to examine the witness about it."
9 NMI R. EVID. 613(b); *United States v. Cutler*, 676 F.2d 1245, 1249 (9th Cir. 1982).

10 For the aforementioned reasons, under NMI Rules of Evidence Rule 613, Plaintiff's
11 objections are **SUSTAINED**.

12 **B. NMI R. EVID. 807 – Residual Exception for Hearsay**

13 Under the following circumstances, a hearsay statement is not excluded by the rule against
14 hearsay even if the statement is not specifically covered by a hearsay exception in Rule 803 or 804:
15 (1) the statement has equivalent circumstantial guarantees of trustworthiness; (2) it is offered as
16 evidence of a material fact; (3) it is more probative on the point for which it is offered than any other
17 evidence that the proponent can obtain through reasonable efforts; and (4) admitting it will best serve
18 the purposes of these rules and the interests of justice. NMI R. EVID. 807(a). Such a statement is
19 admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice
20 of the intent to offer the statement and its particulars, including the declarant's name and address, so
21 that the party has a fair opportunity to meet it. NMI R. EVID. 807(b).

22 Here, while Christopher's mid-January 2018 statements to Edmund are offered as evidence
23 of a material fact, the statement does not have equivalent circumstantial guarantees of trustworthiness.
24 As offered, they are statements made on a phone call. Further, by Defendant's own admission, she

1 did not give Plaintiff reasonable notice of the intent to offer the statement and its particulars. Notice
2 that Defendant would present evidence that she was not served is not enough. Defendant was required
3 to give notice to Plaintiff of the intent to offer Christopher’s mid-January 2018 statements to Edmund
4 and the particulars of such statement and did not. NMI R. EVID. 807(b); *United States v. Ruffin*, 575
5 F.2d 346, 358 (2d Cir. 1978) (holding the notice requirement of Rule 807 is to be rigidly enforced,
6 and lacking such notice, no evidence may be admitted under that exception).

7 For the aforementioned reasons, under NMI Rules of Evidence Rule 807, Plaintiff’s objections
8 are **SUSTAINED**.

9 **C. NMI R. EVID. 803(3) - Then-Existing Mental, Emotional, or Physical Condition**

10 Rule 803(3) allows admission of “[a] statement of the declarant’s then-existing state of mind
11 (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling,
12 pain, or bodily health)” NMI R. EVID. 803(3). The rule, however, does not allow admission of
13 statements “of memory or belief to prove the fact remembered or believed.” *Id.*

14 Here, Defendant argues that Christopher’s mid-January 2018 statements to Edmund are
15 evidence of Christopher’s then-existing state of mind regarding the issue of service. Defendant points
16 to Christopher’s testimony that he was tired of dealing with trying to find Defendant and that he
17 wanted to see the Complaint and Summons into her hands; and that he just wanted to get it over with
18 and that is why he signed the Declaration of Service.

19 Defendant, however, misunderstands the Rule 803(3) exception. The statements must meet
20 Rule 803(3)’s foundational requirements of “contemporaneousness, chance of reflection, and
21 relevance.” *United States v. Ponticelli*, 622 F.2d 985, 991 (9th Cir. 1980). In *United States v. Barraza*,
22 the court held that: “[a] key circumstantial guarantee of trustworthiness in respect to Rule 803(3) is
23 that it requires that statement be contemporaneous with the declarant’s ‘then existing’ state of mind,
24 emotion, sensation, or physical condition.” 576 F.3d 798, 805 (8th Cir. 2009) (quoting *United States*

1 v. *Naiden*, 424 F.3d 718, 722 (8th Cir. 2005)). In *Barraza*, the court found that the victim’s statements
2 about intending to travel with the Defendant to a friend made the day before leaving with the
3 Defendant were contemporaneous and within Rule 803(3). *Id.* Here, the Court finds that Christopher’s
4 statements to Edmund occurred approximately a month and a half after the alleged service on
5 Defendant and was not contemporaneous. Instead, this is a “statement of memory,” which is
6 prohibited by Rule 803(3). NMI R. EVID. 803(3). Because Christopher’s statements were not
7 contemporaneous, they do not constitute a declarant’s then existing state of mind.

8 For the aforementioned reasons, under NMI Rules of Evidence Rule 803(3), Plaintiff’s objections
9 are **SUSTAINED**.

10 **D. NMI R. EVID. 801(d)(2)(D) – Opposing Party’s Statement**

11 Lastly, this Court addresses the objection under NMI Rules of Evidence Rule 801(d)(2)(D).
12 NMI Rules of Evidence Rule 801 provides that a statement is not hearsay if offered against the
13 opposing party and the statement was made by the party or the party’s agent or employee on a matter
14 within the scope of that relationship and while it existed. NMI R. EVID. 801(d)(2)(D); *Northern Pac.*
15 *Ry. v. Herman*, 478 F.2d 1167, 1171 (9th Cir. 1973).

16 Here, Edmund Camacho testified that, sometime during mid-January 2018, Christopher called
17 Edmund on the phone and told Edmund that he [Christopher] lied about serving the Summons and
18 Complaint on Hilario and that he [Christopher] had not served the Summons and Complaint on
19 Defendant because he just wanted to get it over with and that is why he signed the Declaration of
20 Service.

21 An agency relationship is described as the fiduciary relation which results from the
22 manifestation of consent by one person to another that the other shall act on his behalf and subject to
23 his control, and consent by the other so to act. RESTATEMENT (SECOND) OF AGENCY § 1 (1958).
24 The one for whom action is to be taken is the principal and the one who is to act is the agent. *Id.*

1 A process server is an agent for Plaintiff, given that the process server is directed the person
2 to be served, the jurisdiction in which to serve, and what to be served and the service of Complaint is
3 for the benefit of the Plaintiff. *Schleit v. Warren*, 693 F. Supp. 416, 420 (E.D. Va. 1988) (discussing
4 and finding agency relationship between process server and attorney for whom process server was
5 serving Complaint). Here, the Court finds that Christopher Camacho was acting as an agent on behalf
6 of Plaintiff when he was serving Defendant. Further, the Court finds for the purposes of service of
7 Complaint and Summons, Christopher was still an agent of Plaintiff when he made the statements to
8 Edmund in mid-January 2018. Finally, the Court finds that Christopher's statements to Edmund
9 related to his duties as an agent of Plaintiff, namely the supposed service on Defendant. Thus, the
10 Court finds this is a statement offered against the opposing party by his agent, Christopher Camacho.

11 For the aforementioned reasons, under NMI Rules of Evidence Rule 801(d)(2)(D), Plaintiff's
12 objections are **OVERRULED**.

13 V. CONCLUSION

14 For the above-mentioned reasons, Christopher Camacho's statements to Edmund Camacho
15 are inadmissible pursuant to NMI Rules of Evidence Rule 613, NMI Rules of Evidence Rule 807 or
16 NMI Rules of Evidence Rule 803(3). However, pursuant to NMI Rules of Evidence Rule
17 801(d)(2)(D), Christopher's statements to Edmund Camacho are admissible, and thus, Plaintiff's
18 objection is **OVERRULED**.

19 **IT IS SO ORDERED** this 1st day of April, 2019.

21 /s/
22 **ROBERTO C. NARAJA**
23 Presiding Judge
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