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

MARIANO TAITANO, Plaintiff, v. SOUTH SEAS CORP., et al., Defendants.	Civil Action No. 92-1620 **DECISION AND ORDER ON DEFENDANT MARIANAS PUBLIC LAND TRUST'S MOTION FOR SANCTIONS AGAINST PLAINTIFF AND HIS COUNSEL**

This matter came before the Court for hearing on December 7, 1993, on the motion of Defendant Marianas Public Land Trust ("MPLT") for sanctions against Plaintiff Mariano Taitano and his attorneys pursuant to Rules 11 and 60(b) of the Commonwealth Rules of Civil Procedure 11. Plaintiff opposes the motion.

I. FACTS

A. BACKGROUND

The following facts were gleaned from the large volume of briefs, declarations and exhibits supporting and opposing MPLT's motion for sanctions:

FOR PUBLICATION

Defendant South Seas Corporation ("South Seas") was formed in 1973 under the laws of the Trust Territory. *South Seas Corp. v. Sablan Const. Co.*, 7 T.T.R. 636, 638 (H.C.T.T. App. Div. 1978). In 1973, 8,000 shares of stock were issued; of these, 3,000 were held by persons of Northern Marianas descent ("NMD"). The funds for the corporation came almost exclusively from a Japanese source (the "Matsue Group"), to which 7,800 of the shares were secretly conveyed. *Id.* at 641.

Also in 1974, South Seas leased Lot No. 21653, containing 1.331 hectares and located on Saipan, from Domingo and Lourdes Cruz, for a term of twenty-nine years with two ten-year renewal options. The Cruzes received advance compensation of $42,000.00 and were to share in the expected profits from a hotel to be constructed on the property.

In August 1974, in spite of their clandestine conveyance of stock to the Matsue Group, the record owners of South Seas' stock sold their shares to another group dominated by an attorney from Hawaii (the "Sablan Group"). In 1975, a lawsuit erupted between the two groups, each claiming control over the corporation. The trial court found in favor of the Sablan Group, but the Appellate Division reversed and confirmed the ownership of South Seas in the Matsue Group, in a decision dated December 6, 1978. *Id.* at 652. Both the Sablan Group and the Matsue Group were controlled by non-NMD's as defined by Article XII, section 5 of the Commonwealth Constitution. *Id.*[1/]

During the pendency of the litigation, the hotel stood unused. The owners of the property, Domingo and Lourdes Cruz,

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[1/] See Part III(D)(1), *infra*.

began demanding that the hotel be opened in order to generate revenues. At the same time they explored the possibility of selling their interest in the property, using Joaquin P. Villanueva as an intermediary. Mr. Villanueva negotiated a sale to Vicente S. Sablan, a director of South Seas and a member of the Sablan Group. *See MPLT's Reply Memorandum* (filed Dec. 3, 1993) at 24; *Plaintiff's Supplemental Opposition Memorandum* (filed Nov. 26, 1993) at 54. On June 15, 1978, the Cruzes executed a quitclaim deed to Mr. Villanueva, who in turn executed a quitclaim deed to Mr. Sablan the following day.

The Matsue Group did not learn of this conveyance of the property to a member of the opposing faction until after the Appellate Division had confirmed the Matsue Group's control of South Seas. South Seas then filed a quiet title action against Mr. Sablan, alleging that Mr. Sablan used South Seas funds to purchase the property and that he also usurped a corporate opportunity. *See South Seas v. Sablan*, Civil Action No. 80-12, (C.T.C. Sept. 19, 1980). The Commonwealth Trial Court found in favor of South Seas, but deferred its judgment on the final distribution of the property until the parties could provide for the Court information as to South Seas' status under Article XII. *Id.*, slip op. at 15.

On October 7, 1980, South Seas filed with the Trial Court an affidavit certifying that the corporation was eligible to own land under Article XII. According to the affidavit, NMD's owned 4,080 out of 8,000 total shares and constituted a majority of the Board of Directors. *Affidavit, October 6, 1980*, Exhibit labeled Bates Nos. 0009-0012 to *Deposition of Mariano Taitano*. On October 9,

1980, the Commonwealth Trial Court awarded title to the property to South Seas Corporation. *South Seas Corp v. Sablan,* Civil Action No. 80-12, Judgment (C.T.C. Oct. 9, 1980). In 1984, South Seas sold the property to Terra Firma, Inc. In 1986, Terra Firma leased the land to G.A. Pacific Development Corp., later called Interpacific Resorts Corp. Interpacific developed a large resort on the property and on adjoining parcels.

On July 15, 1992, the Cruzes filed their complaint in *Cruz v. Terra Firma, Inc.*, Civil Action No. 92-825, alleging that the 1978 conveyance from the Cruzes to Mr. Villanueva violated Article XII and was therefore void ab initio. The *Cruz* plaintiffs requested that title to the parcel be quieted in them. The issues in *Cruz* were briefed for summary judgment; however, before a decision was issued, the parties entered into negotiations resulting in a settlement on June 18, 1993.

B. THE PRESENT SUIT

The Complaint ("Original Complaint") in this case was filed on December 17, 1992. Plaintiff filed an Amended Complaint on December 30, 1993. Like the *Cruz* lawsuit, these documents asserted that the 1978 conveyances to Mr. Sablan violated Article XII.[2/] However, Plaintiff here alleged that, because money from South Seas was used as consideration, the conveyance constituted an acquisition:

> by a corporation which ceased to be qualified under CNMI Constitution Article XII section 5, of a permanent or long-term interest in land in the Commonwealth; and consequently the land was immediately, and remains,

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[2/] Both the Original and Amended Complaints were signed by attorney James M. Maher.

> forfeited without right of redemption to the Government of the Commonwealth of the Northern Mariana Islands, in accordance with CNMI Constitution Article XII section 6.

Amended Complaint,, ¶ 1. The Original Complaint alleged that Mr. Taitano had standing to sue as a taxpayer under C.N.M.I. Const. Art. X, § 9, and that Defendants Marianas Public Land Corporation ("MPLC") and MPLT owed him and other taxpayers a fiduciary duty to seek title to the land thus forfeited. *Id.*, ¶¶ 94-108.

Defendants answered, and Defendant MPLT counterclaimed, asserting that the complaint was not grounded in fact or law and was filed for an improper purpose. MPLT also moved for summary judgment. However, before this motion could come before the Court, the parties executed a stipulation on March 9, 1993, staying the action in order "to allow Defendant [MPLC] to assert an interest pursuant to Article XII, section 6" in the litigation. *Stipulation*, Dotts Declaration, Exh. W. The following day the case came before the Court for hearing on a motion for a protective order. Upon being informed of the stipulation, the Court ruled from the bench that it would "dismiss this case without prejudice and allow MPLC to look at the case further and see where we can go." *Transcript of Proceedings*, March 10, 1993, at 11.

Following the Court's dismissal, Defendants were permitted to take discovery for sixty days for the purposes of pursuing sanctions against the "true plaintiff." *See Order on Hearing of Non-Party Deponent Hillblom's Motion to Quash* (May 21, 1993). However, no Rule 11 motion was filed at that time. Defendants took the depositions of Mariano Taitano, Michael Dotts, Bruce Jorgensen, James Hollman and the custodian of records for the Bank

of Guam. On August 26, 1993, the Court terminated all discovery until a proper motion for sanctions was filed. MPLT filed its motion for sanctions on August 27, 1993, but argued that it needed further discovery before the motion could be heard. This Court denied the request for further discovery and ordered the parties to prepare for hearing on November 10, 1993. *See Order Denying Motion for Further Discovery* (Oct. 19, 1993). This date was continued by stipulation of the parties to December 7, 1993.

II. ISSUES

Five issues are presented for decision here:

1. Is Defendant MPLT's motion for sanctions timely?

2. Were Plaintiff's Original and Amended Complaints well-grounded in fact by the standards of Rule 11?

3. Were the Original and Amended Complaints well-grounded in law by Rule 11 standards?

4. Were the Original and Amended Complaints filed for an improper purpose by Rule 11 standards?

5. If the Original and Amended Complaints violated Rule 11, what is the appropriate sanction to be levied against Plaintiff or his counsel?

III. ANALYSIS

A. STANDARDS GOVERNING RULE 11 SANCTIONS

Rule 11 of the Commonwealth Rules of Civil Procedure provides for the imposition of sanctions against the signer of any "pleading, motion, or other paper" if the document in question suffers from any of the following: 1) it is not well-grounded in

fact; 2) it is not well-grounded in either existing law or a good faith argument for a change in existing law; or 3) it is filed for an improper purpose. *Lucky Development Co., Ltd. v. Tokai USA, Inc.*, 3 N.M.I. 79, 90 (N.M.I. 1992) *citing Tenorio v. Superior Court*, 1 N.M.I. 112, 122 (N.M.I. 1990). These three independent prongs of Rule 11 are to be judged by an objective standard of reasonableness under the circumstances in each case. *Id.*

In addition, a party in whose name a paper is filed may be subject to Rule 11 sanctions if the party was aware at the time of the filing that the document was without a legal or factual basis or was filed for an improper purpose. *Cross & Cross Properties v. Everett Allied Co.*, 886 F.2d 497, 505 (2d Cir. 1989). However, no other attorneys beyond the signer are liable for Rule 11 sanctions. *Ayuyu v. Commonwealth Inv. Co.*, Civil Action No. 92-1679, "Decision and Order Quashing Subpoena and Terminating Discovery," slip op. at 5 (N.M.I. Super. Ct. Sept. 3, 1993) *citing Pavelic & LeFlore v. Marvel Entertainment Group*, 110 S.Ct. 456 (1989).

B. TIMELINESS

Plaintiffs assert that Defendant's motion, filed over five months after the underlying action was dismissed, is untimely. What constitutes a reasonable time for filing a Rule 11 motion depends on the circumstances of each case. *In Re Yagman*, 796 F.2d 1165, 1184 (9th Cir. 1986), *cert. den.*, 108 S.Ct. 450 (1987); *Srisuwan v. Onwell Mfg., Ltd.*, Civil Action No. 91-0014, slip op. at 3 (D.N.M.I. Aug. 2, 1993).

Under ordinary circumstances, the Court would readily agree

that a five-month delay in filing a motion for sanctions is too long. However, in this case, the Court initially approved Defendant MPLT's request to take discovery relevant to the propriety of the Complaints before hearing the issue of sanctions. This period of discovery was lengthened in part by the chronic unavailability of certain witnesses associated with Plaintiff. Once the Court cut off discovery, Defendant quickly filed its motion for sanctions, although it delayed some months in bringing the motion for hearing. Nevertheless, Plaintiff knew from the time of the dismissal of this action that the issue of sanctions was pending. Under the unique circumstances of this case, the Court finds that Defendant MPLT's motion is not barred for untimeliness.

C. FACTUAL BASIS FOR THE COMPLAINTS

MPLT argues that the Complaints filed here lack grounding in fact. An attorney must make a reasonable inquiry into the facts underlying a document prior to signing and filing it with a court. *Lucky, supra* 3 N.M.I. at 90; *Unioil, Inc. v. E.F. Hutton & Co., Inc.*, 809 F.2d 548, 557 (9th Cir. 1986). The Court's task is to examine the allegations of both the Original and the Amended Complaint to determine whether they have a factual basis, and if not, whether the attorney's pre-filing inquiry into the facts was reasonable under the circumstances of this case. In order to warrant sanctions, the allegations must be "baseless" and "lacking plausibility." *Jensen Elec. Co. v. Moore, Caldwell, Rowland & Dodd, Inc.*, 873 F.2d 1327, 1330 (9th Cir. 1989); *California Architectural Bldg. Prod., Inc. v. Franciscan Ceramics, Inc.*, 818

F.2d 1466, 1472 (9th Cir. 1987) (although allegations of complaint do not survive summary judgment, they are not so lacking in plausibility as to warrant sanctions).

1. Original Complaint.

Here, the factual allegations in the Original Complaint, filed on December 17, 1992, are not well-grounded. Paragraphs 50 through 59 allege that on October 8, 1980, the date the Commonwealth Trial Court awarded the Cruz property to South Seas, South Seas was not eligible to own land in the Commonwealth, or became ineligible thereafter. These allegations have not been substantiated by Plaintiffs. Indeed, Plaintiff now asserts that South Seas was an NMD corporation in 1980, relying on the October 7, 1980 affidavit as proof of that fact. Moreover, there is no evidence in the record to indicate, or even suggest, that South Seas lost its NMD status between October 1980 and the time it sold the Cruz property to Terra Firma in 1984.

Since the original Complaint's allegations were not grounded in fact, the Court must examine the inquiry that preceded the filing to determine whether Plaintiff's allegations nevertheless were reasonable under the circumstances at the time they were made. Plaintiff's current counsel testified at deposition that, in order to gather the factual underpinnings of the case, he reviewed the pleadings in *Cruz v. Terra Firma* as well as the various decisions issued by the courts in the previous two lawsuits over the property. *Deposition of Michael Dotts*, May 28, 1993, at 82-83. Nowhere in these records is there any evidence to suggest that the Commonwealth Trial Court's October 8, 1980

determination of South Seas' NMD status was erroneous. Nor is there any evidence to suggest that South Seas became ineligible to own land in the Commonwealth between 1980 and 1984. Furthermore, in the voluminous pleadings and exhibits filed in opposition to MPLT's Rule 11 motion, Plaintiff has not even attempted to justify the specific allegations in Paragraphs 50-59 of the Original Complaint. The Court therefore concludes that Plaintiff's attorney Mr. Maher failed to satisfy Rule 11's requirement of reasonable factual inquiry prior to filing the Original Complaint.

2. Amended Complaint.

On the other hand, the Amended Complaint, filed on December 30, 1992, alleges new facts relating to the 1978 conveyances which *do* meet the test for factual sufficiency. Plaintiff's Amended Complaint asserts that South Seas sought and obtained a corporate charter from "the government." *Amended Complaint,* ¶¶ 59-60. This fact is undisputed. Plaintiffs also assert that South Seas' corporate charter enabled it to acquire land legally. *Id.* at ¶ 62. This statement is correct, as far as it goes; South Seas' charter issued in 1973 under the laws of the Trust Territory, prior to the enactment of the Commonwealth Constitution and prior to any restrictions on ownership of land by "non-NMD's." The Amended Complaint further alleges that South Seas acquired a long-term interest in the Cruz property, presumably referring to the 1978 conveyance from the Cruzes through Mr. Villanueva to Mr. Sablan. *Id.* at ¶ 63. While this contention was hotly-disputed by the *Cruz* parties, there is certainly sufficient evidence in the Trial Court's opinion in *South Seas v. Sablan, supra* to support

the view that Mr. Sablan's purchase of the property was, in fact, an "acquisition" by South Seas.

Finally, the Amended Complaint alleges that "South Seas ceased, at some point prior to, on, or after the filing of [*Cruz v. Terra Firma*], by operation of law or otherwise, to be qualified to acquire the permanent or long-term interest in the land." *Id.* at ¶ 65. Again, this allegation is true as far as it goes. On January 9, 1978, the day the Commonwealth Constitution came into force,[3/] South Seas Corporation ceased to be eligible to own land in the Commonwealth, since a majority of its shareholders and directors were non-NMD's. Whether this factual allegation supports a legal cause of action is not of concern for the moment; for this prong of Rule 11, it is sufficient to establish that the allegations of the document are grounded in fact, and the Amended Complaint passes this test.

D. LEGAL BASIS FOR THE COMPLAINTS

Next, the Court must evaluate the legal plausibility of the original and Amended Complaints. Here, Plaintiff's contentions must be supported by a "non-frivolous" legal argument. *Lucky, supra*, 3 N.M.I. at 90. A non-frivolous argument is one that can be made in good faith by a competent attorney. *Golden Eagle Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1541 (9th Cir. 1986), *citing Zaldivar v. City of Los Angeles*, 780 F.2d 823, 833 (9th Cir. 1986). Where a legal argument is not precluded by binding law within the jurisdiction, sanctions are inappropriate. *Bank of Maui v. Estate Analysis, Inc.*, 904 F.2d 470, 472 (9th Cir.

[3/] *See Presidential Proclamation No. 4534.*

1990) (although Bankruptcy Appeals Panel precedent undercut plaintiff's argument, sanctions not imposed because Bankruptcy Panel holdings not binding on District Court). Conversely, where an issue has been squarely -- and adversely -- decided within the jurisdiction, sanctions are mandatory. *Price v. State of Hawaii*, 939 F.2d 702, 709 (9th Cir. 1992) (where plaintiffs' previous civil rights actions were dismissed, new actions on same grounds were sanctionable).

1. Plaintiff's Forfeiture Theory.

Article XII, sections 5 and 6 of the Commonwealth Constitution, as they existed in 1978,[4/] provide:

> Section 5: Corporations. A corporation shall be considered to be a person of Northern Marianas descent so long as it is incorporated in the Commonwealth, has its principal place of business within the Commonwealth, has directors at least fifty-one percent of whom are persons of Northern Marianas descent and has voting shares at least fifty-one percent of which are owned by persons of Northern Marianas descent as defined by section 4.
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> Section 6: Enforcement. Any transaction made in violation of section 1 shall be void ab initio. *Whenever a corporation ceases to be qualified under section 5, a permanent or long-term interest in land in the Commonwealth acquired by the corporation after the effective date of this Constitution shall be forfeited to the government.*

(Emphasis added.) No local court has construed the meaning of the emphasized portion of section 6. Plaintiff argues that sanctions are therefore inappropriate, citing *Bank of Maui, supra*, 904 F.2d at 472. The Court agrees that counsel should be given latitude in advancing new Article XII arguments; the history of Article XII

[4/] Although these provisions were superseded by Amendment 36 of the 1985 Constitutional Convention, they were in force at the times of the conveyances at issue here.

litigation in the CNMI demonstrates that this text is subject to a variety of arguably valid interpretations. However, where an argument contradicts or ignores either an express provision of Article XII itself or a directly-applicable part of the reported legislative history, this Court must consider that argument foreclosed by binding law.

a. Original Complaint. Here, the legal contention for forfeiture set forth in Paragraphs 50-59 of the Original Complaint, *had it been factually plausible*, would have fallen partially within what Plaintiff calls the "classical" interpretation of section 6. If South Seas had been eligible to own land at the time the Trial Court awarded it the Cruz property in 1980, and then had become ineligible through a change in corporate ownership prior to the 1984 conveyance to Terra Firma, a valid claim for forfeiture would have been stated. As the Court found above, this contention is factually frivolous; however, it is not legally so.

b. Amended Complaint. The Amended Complaint presents a different set of legal contentions. Plaintiffs allege, in Paragraph 58 of the Amended Complaint, that:

> [a]t the moment the government provides a corporation with a corporate charter, the corporation is permitted by the Government to acquire a permanent or long-term interest in real property situated within the CNMI and, having acquired a permanent or long-term interest in such real property, the corporation lawfully owns and lawfully possesses the real property *until such time as the Government determines that the corporation ceases to be qualified under CNMI Constitution Article XII section 5*, at which time the real property is immediately forfeited to the Government in accordance with and by operation of CNMI Constitution Article XII section 6.

(Emphasis in original).

On its face, this contention appears frivolous, even nonsensical. Article XII, section 5 sets forth *four* requirements for corporate ownership of land in the CNMI, only *one* of which is incorporation with a principal place of business within the Commonwealth. Paragraph 58 asserts that any foreign entity incorporated in the CNMI is authorized to purchase land, but that the Government has a duty to seek forfeiture under Article XII once the land is purchased. This would be analogous to issuing a building permit even if a site plan does not comply with zoning requirements, then returning to demolish the building for noncompliance. The Government cannot authorize conduct in advance and later punish it once it has occurred.

In defense of this allegation, Plaintiff and his counsel urge that a broad reading of the term "whenever" in Article XII section 6 mandates forfeiture of lands purchased by a corporation which *at some time in the past* was eligible to own land in the Commonwealth, regardless of whether it was eligible at the time of the conveyance. According to Plaintiff, section 6 can be plausibly read as follows:

> In cases in which a corporation ceases to be qualified under section 5, a permanent or long-term interest in land in the Commonwealth acquired by the corporation after the effective date of this Constitution shall be forfeited to the Government.

Plaintiff's Opposition, at 10.

The Court does not agree that Plaintiff's theory is a valid construction of Article XII, for two reasons. First, it would remove any temporal relationship between the corporation's ceasing to be qualified and the acquisition. Second, it would effectively

create two categories of corporations: those which at one time were legally eligible to own land, the acquisitions of which forfeit to the government; and those which were never eligible to own land, the acquisition of which are void ab initio. Nothing in the drafting history of Article XII suggests that the Framers intended either of these effects. *See Analysis, supra* at 178; *Journal, supra*, at 566.

However, the Court cannot say that Plaintiff's theory is explicitly foreclosed by the text of the Constitution or its legislative history. Furthermore, the theory can be made to fit the facts as alleged in the Amended Complaint. Paragraph 60 alleges that the "Government" provided South Seas with a corporate charter enabling it to own land. Since the "government" at the time was the Trust Territory Government, and the restrictions of Article XII were not yet in existence, South Seas was indeed eligible to own land in 1974. South Seas then "ceased" to be eligible under section 6 once the Constitution came into force on January 9, 1978. Finally, South Seas acquired the Cruz property on June 16, 1978. If this Court were evaluating such an argument on summary judgment, it would find in favor of Defendants. However, there is at least some space between a non-meritorious argument and a frivolous one. On the basis of this single theory, then, the Court finds that the Amended Complaint embodies a legal theory sufficiently plausible to defeat Defendant's Rule

11 charge in this virtually uncharted area of law.[5/]

2. Naming Government Defendants.

Defendants MPLC and MPLT argue that Plaintiff lacked a legal basis for naming them as defendants to this suit. The Court disagrees. Article X, section 9 of the Commonwealth Constitution authorizes taxpayers to sue the Government for breaches of fiduciary duty. Also, *Lizama v. Rios*, 2 C.R. 568 (D.N.M.I. 1986) and *Pangelinan v. Commonwealth*, 2 C.R. 1148 (D.N.M.I. App. Div.

[5/] Plaintiff advances several other arguments in defense of his forfeiture theory, not all of which are internally consistent with each other, and none of which are persuasive. First, he points to the holdings in *Aldan-Pierce v. Mafnas*, 2 N.M.I. 122, 151 (1991) and *Ferreira v. Borja*, 2 N.M.I. 514, 532 (1991) that a transaction is valid until it has been found in violation of Article XII. According to Plaintiff, this doctrine is equivalent to the contention that a corporation only ceases to be eligible to own land when a court declares it ineligible. The argument fails. *Aldan-Pierce* says that no *transaction* violates Article XII until a Court declares it so. The proposition Plaintiff urges here is far more extreme: that no "person," corporate or otherwise, is a non-NMD until a court says so.

Next, Plaintiff cites the drafting history of Article XII, claiming the Framers intended that "[c]orporate transactions are never void ab initio; rather, a corporation that fails to meet the section 5 qualifications always forfeits its land to the government." *Plaintiff's Opposition Memorandum* at 14. But if *any* illegal corporate acquisition were to result in forfeiture, the entire phrase "whenever a corporation ceases to be qualified under section 5" would be rendered meaningless.

Third, Plaintiff argues that the resulting trust doctrine of *Aldan-Pierce*, as applied to corporations, could mandate that whenever an otherwise-qualified corporation acquires land with foreign funds, the acquisition forfeits to the government. *Plaintiff's Opposition Memorandum* at 17-18. However, NMD corporations are explicitly *allowed* to use foreign equity financing, through the issuance of non-voting shares, so long as the *voting control* of the corporation remained in NMD hands. *See Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands* (1976) at 178; "Report to the Convention by the Committee on Personal Rights and Natural Resources," 1 *Journal of the Northern Mariana Islands Constitutional Convention* 566 (1976). Moreover, even if the use of "foreign" funds by a qualified corporation were deemed to violate Article XII, nothing in this result would mandate, or even support, the remedy of forfeiture.

1987), cited by Plaintiff, plausibly stand for the proposition that a taxpayer, perceiving that MPLC and MPLT were not acting to protect and secure the public lands of the Commonwealth, had standing to name those agencies as defendants. Moreover, the rule that all parties with an interest in land must be named as defendants in a quiet title action arguably compels the naming of MPLC and MPLT as parties to suit. *See Aquino v. All Those Persons Having any Claim or Interest in Lot No. 069 D 05*, 3 C.R. 415, 419 (C.T.C. 1988). Plaintiff's standing allegations are not frivolous. The fact that MPLC signed a stipulation agreeing to investigate whether to pursue Plaintiff's claim against South Seas in the name of the CNMI government is further evidence that Plaintiff's naming of MPLC was not frivolous.

E. "PURPOSE" OF THE COMPLAINTS

Com. R. Civ. P. 11. mandates sanctions if a document is filed "for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Even a document well-grounded in fact and law can violate this rule if there is evidence of the signer's bad faith. *Lucky, supra*, 3 N.M.I. at 90.[6/] Thus, even if the Amended Complaint stated a non-frivolous claim, the Court must inquire whether it was filed for an improper purpose. As for what constitutes an improper purpose under Rule 11:

> The factors mentioned in the rule are not exclusive. If a complaint is not filed to vindicate rights in court, its purpose must be improper. However, if a complaint

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[6/] *Compare Jensen, supra*, 873 F.2d at 1329 (complaint can never be sanctioned under the "improper purpose" prong of Rule 11 if grounded in both fact and law).

> is filed to vindicate rights in court, and also for some other purpose, a court should not sanction counsel for an intention that the court does not approve, so long as the added purpose is not undertaken in bad faith and is not so excessive as to eliminate a proper purpose.

In Re Kunstler, 914 F.2d 505, 518 (4th Cir. 1990).

Here, Defendant MPLT alleges that this action was filed at the behest of Larry Lee Hillblom, to enable him to obtain free title to a parcel of land at issue in *Olopai v. Hillblom*, Civil Action No. 92-984, and *Ayuyu v. Realty Trust*, 92-1678. *See Supplement to MPLT's Motion* (filed Nov. 16, 1993) at 22-23. According to MPLT, the present suit is merely "camouflage and fringe benefit" to that principal objective. *Id.* at 25. MPLT allegedly attempted to establish this proposition during post-dismissal discovery, but was prevented from doing so, first by the "stonewalling" tactics of Plaintiff and other witnesses, and later by the Order of this Court terminating discovery.

However, Defendant was able to take extensive depositions of Plaintiff Mariano Taitano, his attorney Michael Dotts and other witnesses deemed relevant to the issue. None of this discovery revealed any evidence that a scheme by Mr. Hillblom somehow negated the good faith intentions of Mr. Taitano to vindicate his rights in court. Moreover, even if Mr. Hillblom did finance this litigation with the aim of obtaining a forfeiture of the *Olopai v. Hillblom* property and then regaining the property through passage of special legislation, this plan would depend on the existence of a valid forfeiture theory and a successful lawsuit. Mr. Hillblom could not have hoped to obtain such a forfeiture through a frivolous lawsuit, because such a suit would by definition have little chance of success. Thus, if Mr. Mitchell's conspiracy

theory were true, it would be evidence that Mr. Hillblom and others had a good faith belief that their forfeiture theory stated a valid claim.

Defendants do not allege that this suit was filed merely to harass another party, and there is no showing that the suit was intended solely to delay ongoing litigation.[7] Thus, there is no showing of any improper purpose outweighing Plaintiff's desire to "vindicate rights in court." *Kunstler, supra*, 914 F.2d at 518.

F. APPROPRIATE SANCTION

Once a paper has been established to be in violation of Rule 11,

> [T]he court [. . .] shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the [document].

In assessing the appropriate amount of monetary sanctions, a court should take into account whether the party moving for sanctions has taken steps to mitigate its expenses caused by the improper pleading. *Thomas v. Capitol Security Services, Inc.* 836 F.2d 866, 878-9 (5th Cir. 1988).

> If a baseless claim could have been readily disposed of by summary procedures, there is little justification for a claim for attorney's fees and expenses engendered in lengthy and elaborate proceedings in opposition. The rule's purpose would be frustrated if it encouraged the offended party to play the very same game at which it was aimed.

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[7] Defendant MPLC argued at the hearing that this suit was filed in order to disrupt the settlement negotiations in *Cruz v. Terra Firma*. However, according to the facts before the Court, settlement negotiations in Cruz did not get fully underway until after the hearing on the parties' summary judgment motions, in February, 1993. This suit was filed in December, 1992.

Id. at 879, n.19 (citations omitted). Courts have declined to award monetary compensation altogether where the moving party's own conduct was obstructionist, dilatory or otherwise improper. *Woodcrest Nursing Home v. Local 144*, 788 F.2d 894, 899 (2d Cir. 1986).

Here, the Court has determined that Plaintiff's Original Complaint was frivolous under the terms of Com. R. Civ. P. 11, but that one of the claims implicit in the Amended Complaint was non-frivolous. Therefore, only the expenses "incurred because of" the Original Complaint -- i.e., those for services rendered from December 17, 1992 until December 30, 1992 -- can be considered as the measure of sanctions here.

Defendant requests additional expenses incurred in preparing and filing this motion. The Court rejects this request. MPLT's own conduct in pursuing sanctions here fits the textbook definition of "satellite litigation," which is expressly disfavored under Rule 11. *See Ayuyu v. Commonwealth Inv. Co, Inc.*, Civil Action No. 92-1679, slip op. at 3 (N.M.I. Super. Ct. Sept. 3, 1993) and authorities cited therein. While it appears that Plaintiff's attorney and other witnesses failed to cooperate fully with Defendant's discovery efforts, it also appears that MPLT's own discovery tactics were intimidating and wasteful. *See, e.g., Declaration of James Hollman*, filed as Exhibit 2 to *Non-Party Deponent Bruce Jorgensen's Motion to Stay Proceedings*, filed July 27, 1993 (listing examples of vulgar and abusive questioning by Mr. Mitchell in various depositions).[8/]

[8/] In an effort to evaluate for itself the usefulness and propriety of the discovery taken by MPLT, the Court attempted to (continued...)

Moreover, MPLT's charge that Plaintiff pursued untenable legal theories must be judged in light of MPLT's own pursuit of Rule 11 sanctions against Mr. Hillblom and other alleged authors of the lawsuit "jointly and severally," even after this Court had ruled that Rule 11 sanctions would apply to signer and client alone. *See Order Denying Motion For Further Discovery*, filed October 19, 1993, slip op. at 2, *citing Ayuyu, supra*, slip op. at 5. At the time of the December 7, 1993 hearing on this motion, this Court's ruling that only signers of pleadings faced Rule 11 liability was the law of the case. Yet Mr. Mitchell stated in oral argument on December 7, 1993 that the issue of non-signer's liability "had not been settled." He made no effort to distinguish or discuss either the Court's prior ruling here or the Court's *Ayuyu* opinion, which treats this issue in depth.[9/]

In sum, given the conduct of the parties in the various phases of this litigation, the Court finds that the only appropriate sanction is an award equal to those legal fees reasonably incurred by Defendant MPLT between December 17, 1992 and December 30, 1992. As the parties seem to agree that Plaintiff Mariano Taitano was not aware of the wrongfulness of the

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[8/](...continued)
review the transcript of the deposition of James Hollman, taken on various dates from June 15 to July 20, 1993, and comprising some 950 pages. In the first 100 pages, none of the questioning was relevant to the issues here, but dealt primarily with matters such as whether Mr. Hollman is a rugby player, whether his partner Mr. Jorgensen is admitted to practice law in the CNMI, and whether Randall Fennell ever agreed to be Mr. Hollman's lawyer. The Court had neither the time nor the stomach to read further.

[9/] Also for the reasons set forth in *Ayuyu, supra*, the Court denies Defendant's motion for sanctions for "fraud on the court." *Id.*, slip op. at 6-8; *see also Adduono v. World Hockey Ass'n*, 824 F.2d 617, 620 (8th Cir. 1987).

Original Complaint when it was filed, this sanction shall be payable exclusively by Mr. Maher, the attorney who signed the offending document. *See Cross & Cross, supra,* 886 F.2d at 505.

III. CONCLUSION

For the foregoing reasons, the Court ORDERS Defendant MPLT to submit, within fourteen days of this order, an accounting for fees incurred between December 17, 1992 and December 30, 1992. Plaintiff may file, fourteen days later, any objections to the amounts listed in Defendant MPLT's submission. The Court will thereupon determine the appropriate amount of the sanction to be awarded to Defendant MPLT, payable by Attorney James Maher.

So ORDERED this 7 day of March, 1994.

Miguel S. Demapan

MIGUEL S. DEMAPAN, Associate Judge