

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

ANDY K. LEE, and  
KWUN KEE CO., INC., SAIPAN

Plaintiffs,

v.

TAC INTERNATIONAL  
CONSTRUCTORS, INC., ANTONIO T.  
LIM, J.G. SABLAN ROCK QUARRY,  
CENTURY INSURANCE COMPANY,  
INC., and MANUEL F. CHARGALAUF,

Defendants.

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ET AL.

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Civil Action No. 96-349

**ORDER GRANTING DEFENDANT  
ANTONIO T. LIM'S MOTION  
FOR SUMMARY JUDGMENT**

**I. PROCEDURAL BACKGROUND**

This matter came before the Court on December 30, 1998, at 9:00 a.m. in Courtroom A on Defendant Antonio Lim's motion for summary judgment. Charles R. Rotbart, Esq. appeared on behalf of Plaintiffs. Vincente T. Salas, Esq., appeared on behalf of Defendant Antonio T. Lim. Michael W. Dotts, Esq. appeared on behalf of Defendant TAC International Constructors, Inc. Steven P. Pixley, Esq. appeared on behalf of Defendant Century Insurance Company, Inc. The Court, having reviewed the memoranda, declarations, and exhibits, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its written decision.

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**II. FACTS**

In July 1994, Plaintiffs Andy K. Lee and Kwun Kee Co., Inc. (hereinafter referred to as "Lee" and "KKCI", respectively) entered into a construction contract agreement with Defendant TAC

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International Constructors, Inc. and TAC's president/general manager Defendant Antonio T. Lim (hereinafter referred to as "TAC" and "Lim", respectively) to build a three-story commercial and residential building in Garapan designated the VIP Building. The building was to be constructed primarily of concrete.

In December 1994, TAC procured a performance bond from Defendant Century Insurance Company, Inc. (hereinafter referred to as "Century"). The bond was for \$380,000 and insured and guaranteed that TAC would perform all the terms and conditions of the agreement.

In November 1995, Defendants TAC and Lim represented to Plaintiffs that the building had been completed according to the plans and presented Plaintiffs with a Certificate of Acceptance. Shortly thereafter, Plaintiffs undertook to rent out the residential and commercial spaces in the building. Plaintiff KCCI also took up residence on the first floor. With the first rain, Plaintiffs noticed that the roof leaked and that concrete on the roof showed substantial cracking.

In March 1996, Plaintiffs hired Geotesting to take concrete core samples from the roof, third floor, and ground floor. The core samples showed an average strength of 1900 pounds per square inch (psi). Rather than agreeing with the Geotesting results, Defendants TAC and Lim retained their own experts who took additional core samples from the building. The samples were again analyzed by Geotesting who determined that the average strength of the second set of core samples was 1913 psi.

In July 1996, Plaintiffs filed suit alleging several causes of action including breach of contract, breach of express and implied warranties, and building code violations.

In January 1997, the Court granted summary judgment for Defendant Lim as to the contract-based causes of action. Moreover, the Court held that TAC was not the alter ego of Defendant Lim. Subsequently, on Plaintiffs' motion for reconsideration in March 1997, the Court ordered that **[p. 3]** Defendant Lim would be held to answer the allegations in Plaintiffs' second amended complaint relating to the tort-based causes of action.

On December 30, 1998, Defendant Antonio T. Lim moved the Court for summary judgment as against Plaintiffs on the causes of action for intentional misrepresentation, negligent misrepresentation, and violation of the CNMI Building Code.

### III. ISSUES

1. Whether Defendant Lim, as an officer of TAC, can be held individually liable for Plaintiffs' tort-based causes of action?
2. Whether Defendant Lim is entitled to summary judgment against Plaintiffs on the fifth cause of action for intentional misrepresentation?
3. Whether Defendant Lim is entitled to summary judgment against Plaintiffs on the sixth cause of action for negligent misrepresentation?
4. Whether Defendant Lim is entitled to summary judgment against Plaintiffs on the ninth cause of action for violation of the CNMI Building Code?

### IV. ANALYSIS

#### A. Summary Judgment Standard

The standard for summary judgment is set forth in Rule 56 of the Commonwealth Rules of Civil Procedure. Rule 56(a) provides:

A party seeking to recover upon a claim . . . may . . . move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

Com. R. Civ. P. 56(a). Rule 56(c) continues:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Com. R. Civ. P. 56(c). Partial summary judgments are authorized by Rule 56(d). Once a movant for summary judgment has shown that no genuine issue of material fact exists, the burden shifts to the opponent to show that such an issue does exist. Riley v. Public School Sys., 4 N.M.I. 85, 89 (1994). [p. 4]

#### B. Corporate officer liability

In opposition to the instant motion, Plaintiffs contend that Defendant Lim, as a corporate officer, can be held individually liable for the tortious acts of TAC if it is proven that he personally participated in the wrongful conduct.

Corporate directors are not personally liable for torts committed by the corporation or by one of its officers merely by virtue of the office they hold. Bischofshausen, Vasbinder and Luckie v. D.W. Jaquays Mining, 700 P.2d 902, 908 (Ariz.App. 1985). However, officers and directors of a corporation can incur personal liability for the torts of a corporation if they personally participate in or know of the wrongful conduct. See State of Washington v. WWJ Corp, 941 P.2d 717, 721 (Wash.App. 1997); Schwartz v. Pillsbury, Inc., 969 F.2d 840, 843 (9<sup>th</sup> Cir. 1992); Frances T. v. Village Green Homeowners Association, 723 P.2d 573, 580 (Cal. 1986).

Therefore, based on the cases cited above, if Plaintiffs can show that Defendant Lim personally participated in TAC's allegedly tortious acts, he can be held liable in his personal capacity.

C. Intentional and negligent misrepresentation

Defendant Lim contends he is entitled to summary judgment as to the causes of action for intentional and negligent misrepresentation because there is no evidence that Defendant Lim *personally* participated in any alleged tortious conduct.

To support a finding of personal participation, Plaintiffs point to the concrete compression results submitted to TAC by Geotesting in August 1995 which indicate that the concrete in the coring samples had compressive strengths of less than 3,000 psi.<sup>1</sup> However, Plaintiffs offer no evidence by way of declaration or otherwise that Defendant Lim knew the results of the coring tests or concealed the same prior to representing the condition of the VIP Building. On the contrary, Defendant Lim offers un rebutted evidence that he not only lacked personal involvement in the direction or supervision [p. 5] of the construction, but that he did not find out about the compression test results until after they were made part of Plaintiff's Second Amended Complaint.<sup>2</sup>

Based on the foregoing, the Court finds that there is no triable issue of fact that Defendant Lim personally participated in or knew of any wrongful conduct committed by TAC. As such, Defendant Lim is entitled to summary judgment as to the causes of action for intentional and

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<sup>1</sup>See Second Amended Complaint, Exhibit G.

<sup>2</sup>See Declaration of Antonio T. Lim, dated December 28, 1998.

negligent misrepresentation.

D. Violation of the CNMI Building Safety Code

In support of his motion for summary judgment, Defendant Lim contends that he cannot be held personally liable for violating § 7126(a) of the CNMI Building Safety Code as he did not act in his individual capacity in constructing the VIP Building.

2 CMC § 7126(a) provides, in pertinent part, that:

It shall be unlawful for any person, firm or corporation. . . to construct . . . any building or structure, or cause to permit the same to be done, in violation of any provisions of this building safety code . . .

2 CMC § 7126(a).

In the case at bar, the Court finds nothing within the language of the statute which creates joint and several liability between a corporation and its officer or director absent a finding that such officer or director personally and through his own actions violated the statute. Therefore, based on the unrefuted facts before the Court, Defendant Lim cannot be held jointly liable under the statute since he did not perform any act that would violate the building code. As such, Defendant Lim is entitled to summary judgment as to this cause of action.

**V. CONCLUSION**

For all the reasons stated above, Defendant Antonio T. Lim's motion for summary judgment as to the causes of action in Plaintiffs' Second Amended Complaint for intentional misrepresentation, negligent misrepresentation, and for violation of the CNMI Building Code is **GRANTED**.

So ORDERED this 17 day of February, 1999.

/s/ Timothy H. Bellas  
TIMOTHY H. BELLAS, Associate Judge