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

GUADALUPE P. MANGLONA, Plaintiff, vs. MARGARITA R. TENORIO, Defendant.	Civil Action No. 93-1061 ORDER DENYING DEFENDANT'S MOTION TO DISMISS

I. PROCEDURAL BACKGROUND

This matter came before the Court on May 19, 1999, at 9:00 a.m. in Courtroom D on Defendant's motion to dismiss. David A. Wiseman, Esq. appeared on behalf of the Plaintiff, Guadalupe P. Manglona. Jeanne H. Rayphand, Esq. appeared on behalf of the Defendant, Margarita R. Tenorio. The Court, having heard the arguments of counsel and being fully informed of the premises, now renders its decision.

II. FACTS

On September, 28, 1993, Plaintiff filed a complaint alleging that she loaned a sum of $250,000 to Defendant and that such sum should be returned to Plaintiff. However, during the course of the bench trial Plaintiff presented evidence and elicited testimony suggesting that the funds were not a

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loan, but rather partial payment for Plaintiffs purchase of Defendant's property, or an attempt to obtain an option to purchase the property from Defendant. As such, the Court only entered a Partial Judgment in which the Court held that the money transfer was not a loan but retained jurisdiction over the matter and granted Plaintiff leave to amend the complaint to conform with the evidence adduced at trial. Mannlona v. Tenorio, Civil Action No. 93-1061 (N.M.I. Super. Ct. Jul. 3 1, 1995) (Partial Judgment and Order for Status Conference at 12).

On October, 23, 1995, pursuant to the Court's order, Plaintiff filed a First Amended Complaint for Money Had and Received (unjust emichment)and Money Paid. Defendant responded by filing a Motion to Dismiss Plaintiffs First Amended Complaint and a Motion for Reconsideration of the Court's order allowing Plaintiff to amend the complaint.

On October 24, 1996, the Court denied Defendant's Motion to Dismiss and Motion for Reconsideration. Defendant appealed such denial to the Commonwealth Supreme Court. On March 13, 1998, the Commonwealth Supreme Court dismissed Defendant's appeal as untimely.

On July 23, 1997, Defendant filed a Cross-Motion for Summary Judgment. On November 18, 1998, the Court denied Defendant's motion holding that genuine issues of material fact existed which must be resolved at trial.

On March 18, 1999, Defendant filed a Motion to Dismiss the First Amended Complaint and for Entry of Final Judgment,

III. ISSUE

1. Whether the Court shall grant Defendant's Motion to Dismiss the First Amended Complaint on the grounds that Plaintiffs reliance on a loan theory at the first trial was a judicial admission and that principles of estoppel require that the amended complaint be dismissed and that final judgment should be entered in favor of Defendant.

V. ANALYSIS

Defendant argues that Plaintiff should be estopped from asserting an unjust enrichment theory in Plaintiffs First Amended Complaint on the grounds that Plaintiff originally proceeded on a loan theory which was adjudged to be without merit after the initial bench trial. See. Manglona v. Tenorio, Civil Action No. 93-1061 (N.M.I. Super. Ct. Jul. 3 1, 1995) (Partial Judgment and Order for Status Conference, at 12). Defendant contends that Plaintiffs sole reliance on the loan theory was a judicial admission and that principles of estoppel require that the amended complaint be dismissed and that final judgment should be entered in favor of Defendant.

Defendant relies upon the Supreme Court of Montana's definition of a judicial admission as set forth in Rasumussen v. Heebs Food Center:

> A judicial admission is an express waiver made in court by a party or his attorney conceding the truth of alleged fact. It has a conclusive effect upon the party who makes the admission and no further evidence can be introduced to prove, disprove, or contradict the admitted fact.

Rasmussen v. Heebs Food Center, 893 P.2d 337, 340 (1995). The Rasmussen Court held that the defendant was "bound by its counsel's statements during trial that it was not relying on the defense of fraud, and that [the defendant] could not, after an adverse finding by the trial court, move for a new trial so as to allege the affirmative defense of fraud." Id.

In the present matter, however, Plaintiff never stated that she was not asserting an unjust enrichment theory and although Plaintiff began the trial by focusing on a loan theory, Plaintiffs trial brief admitted the possibility of additional theories, specifically that the transaction in question was an attempted option contract which became impossible to execute. See, Manglona v. Tenorio, Civil Action No. 93-1061 (N.M.I. Super. Ct. Jul. 3 1, 1995) (Partial Judgment and Order for Status Conference, at 4).

Also, "[f]or a judicial admission to be binding, it must be an unequivocal statement of fact." Kohne v. Yost, 818 P.2d 360, 362 (Mont. 1991). Here, Plaintiffs contention that the alleged transaction was a loan was not an unequivocal statement of fact but rather a statement regarding Plaintiffs legal theory of recovery.

Furthermore, the Supreme Court of Montana has held that "[f]or a judicial admission to be binding upon a party, the admission must be one of fact rather than a conclusion of law or the expression of an opinion." DeMars v. Carlstrom, 948 P.2d 246, 249 (Mont. 1997). See also, Childs v. Franco, 563 F.Supp 290,292 (E.D. Pa. 1983). Stated alternatively, "[t]he scope ofjudicial admissions is limited to matters of fact which would otherwise require evidentiary proof and does not include statements by counsel of their legal theory of the case." Baxter v. Gannawav, 822 P.2d 1128, 1133 (N.M. App. 1991); See also, Tunender v. Minnaert, 563 N.W.2d 849, 853 (S.D. 1997). Kohne v. Yost, sum-a at 362; Gunter v. Hamilton Bank, 411 S.E.2d 115, 117 (Ga. Ct. App. 1991); Blinder, Robinson & Co.. Inc. v. Bruton, 552 A.2d 466, 474 (Del. 1989). As stated previously, Plaintiffs contention that the alleged transaction was a loan was not an unequivocal statement of fact but rather a statement regarding Plaintiffs legal theory of recovery.

"Where there is ambiguity or doubt, it is presumed that counsel did not intend to make a judicial admission during argument." Baxter v. Gannawav, supra at 1133. As such, the Court finds that Plaintiffs reliance on a loan theory was not an unequivocal statement of fact but rather a statement of her legal theory of recovery which did not constitute a judicial admission. Therefore, Plaintiff should not be estopped from asserting an alternate theory of recovery that conforms to the evidence adduced at trial.

Even if the Court were to find that a judicial admission was made by Plaintiff, such a judicial admission in pleadings or in testimony, though sufficient to support a finding, is by no means conclusive as it is only one factor to be considered together with the other evidence. See, Southern Union Exploration Co.. Inc. v. Wynn Exploration Co.. Inc., 624 P.2d 536, 540 (N.M. Ct. App. 1981) cert. denied, 455 U.S. 920, 102 S.Ct. 1276, 71 L.Ed.2d 461. See also, Ralston v. Spoor, 593 P.2d 1285, 1289 (Or. Ct. App. 1979). In addition, "[t]he trial court may relieve a party from the consequences of a judicial admission." Baldwin v. Vantage Corn., 676 P.2d 413, 415 (Utah 1984), citing 9 Wigmore on Evidence § 2590 (198 1).

V. CONCLUSION

For the foregoing reasons, the Court finds that Plaintiffs reliance on a loan theory was not an unequivocal statement of fact but rather a statement of her legal theory of recovery and therefore did not constitute a judicial admission. As such, Plaintiff should not be estopped from asserting an alternate theory of recovery that conforms to the evidence adduced at trial. Therefore, Defendant's Motion to Dismiss Plaintiffs First Amended Complaint is **DENIED.**

So ORDERED this 28 day of May, 1999.

JUAN T. LIZAMA, Associate Judge