FOR PUBLICATION

IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ZHANG GUI JUAN,
Plaintiff/Appellant,

v.

THE GOVERNMENT OF THE COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS, *et al.*,
Defendants/Appellees.

OPINION

Cite as: *Zhang v. Commonwealth*, 2001 MP 18

Appeal No. 99-032
Argued and submitted December 12, 2000

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BEFORE: MIGUEL S. DEMAPAN, Chief Justice, ALEXANDRO C. CASTRO, Associate Justice, and JOHN A. MANGLONA, Associate Justice.

MANGLONA, Associate Justice:

¶1 Zhang Gui Juan appeals from the trial court's dismissal of her complaint, containing tort claims against the Commonwealth and Immigration Officer Tricia Aguon and a constitutionally-based claim against the Commonwealth, on statute of limitations grounds. The appeal being timely, we have jurisdiction pursuant to N.M.I. Const. art. IV, § 3 (amended 1997). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 On November 20, 1996, Isidro Cabrera, a captain of the Division of Immigration Services ("DIS"), raped Zhang Gui Juan ("Zhang") twice and forced her to perform oral copulation, while Zhang was held in the custody of DIS. *See* Excerpt of Record ("ER") at 239 (Summons/Complaint). She alleges that the incident occurred because Tricia Aguon ("Aguon"), a female DIS Officer who was assigned to guard and protect her in accordance with DIS policy, negligently abandoned her post and duties by leaving her alone with Cabrera. *See* ER at 239.

¶3 Zhang remained in DIS custody during the criminal trial of Cabrera and assisted the Attorney General's Office in prosecuting the former DIS captain. Cabrera was subsequently convicted of two felony counts of rape, two felony counts of forced oral copulation upon the person, and one count of misdemeanor misconduct in public office. He was sentenced to six years imprisonment. *See* ER at 256.

¶4 On January 23, 1997, DOLI released Zhang from detention. She instituted a civil action on March 12, 1998, in the United States District Court for the Northern Mariana Islands ("District Court"), which

included a cause of action, under Article I, § 3(c) of the N.M.I. Constitution,[1] against the Commonwealth, and common law negligence claims against both Aguon and the Commonwealth, as Aguon's employer.

¶5 On November 15, 1998, the District Court, declining jurisdiction over all the claims asserted against the Commonwealth and Aguon, granted the Commonwealth's Motion to Dismiss pursuant to 28 U.S.C. § 1367(c),[2] which permits the district court to decline jurisdiction over certain claims founded on state law.[3] The District Court explained that, because the Article I, § 3(c) claim contained a "novel and

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[1] N.M.I. Const. art. I, § 3(c) reads that "a person adversely affected by an illegal search or seizure has a cause of action against the government within limits provided by law."

[2] 28 U.S.C. § 1367 reads in pertinent part:

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.
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> . . . .
>
> (c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if–
> (1) the claim raises a novel or complex issue of State law,
> (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
> (3) the district court has dismissed all claims over which it has original jurisdiction, or
> (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.
>
> (d) The period of limitations for any claim asserted under subsection (a) and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless state law provides for a longer tolling period.

[3] Fed. R. Civ. P. 12(b)(6) reads as follows:

> (b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may be at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted.

complex" local issue best reserved for interpretation by the Commonwealth courts, and because the negligence claims were "purely local in nature," they should be heard by the Commonwealth courts. See ER 100-102.

¶6 On March 16, 1999, Zhang filed a complaint in the Superior Court containing the claims dismissed by the District Court. The court dismissed the entire complaint, pursuant to Com. R. Civ. P. 12(b)(6),[4] on the ground that the claims were time-barred because Zhang did not file her suit before the expiration of the limitations period on January 22, 1999. *See Zhang v. Commonwealth*, Civil No. 99-0163 (N.M.I. Super. Ct. Sep. 30, 1999) (Order Granting Defendant's Motion to Dismiss) ("Order"). On November 9, 1999, the trial court denied Zhang's Motion for Reconsideration.

¶7 The summary of dates, relevant to the examination of the Commonwealth's statute of limitations defense, is as follows:

(1) January 23, 1997 (the date Zhang was released from DIS detention).

(2) March 12, 1998 (the filing date of Zhang's suit in District Court).

(3) November 15, 1998 (the date of the District Court's order dismissing Zhang's tort and Article I, § 3(c) claims).

(4) January 22, 1999 (the expiration date of the limitations period established by the trial court)

(5) March 16, 1999 (the filing date of Zhang's suit in the trial court).

QUESTIONS PRESENTED AND STANDARDS OF REVIEW

¶8 We consider the following questions:

¶9 I. Whether Zhang's claims are saved by 28 U.S.C. § 1367(d), a federal tolling statute, and in the alternative, the equitable tolling doctrine. These are questions of law subject to *de*

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[4] Com. R. Civ. P. 12(b)(6) is identical to its federal rules counterpart, *see* Fed. R. Civ. P. 12(b)(6).

novo review. *See In re S.S.*, 3 N.M.I. 177, 179 (1992) (statutory construction) and *Jenkins v. Daniels*, 751 P.2d 19, 21 (Alaska 1988) (dismissal of claim on limitations grounds); *In re Estate of De Leon Guerrero*, Appeal No. 98-010, (N.M.I. Sup. Ct. Feb. 10, 2000) (Opinion at 2) (application of a legal doctrine).

¶10 II. Whether the two-year statute of limitations in 7 CMC § 2503 applies to a claim filed under Article I, § 3(c) of the N.M.I. Constitution. A trial court's interpretation of a constitutional or a statutory provision is reviewed *de novo. See In re S.S., supra* and *Triple J Saipan, Inc. v. Rasiang*, Appeal No. 97-032 (N.M.I. Sup. Ct. Mar. 17, 1999) (Opinion at 2).

ANALYSIS

I. Com. R. Civ. P. 12(b)(6) Standard.

¶11 In examining a trial court's dismissal under Com. R. Civ. P. 12(b)(6), we review the contents of a complaint by construing it in the light most favorable to the plaintiff and accepting all well-pleaded facts as true. *Sablan v. Tenorio*, 4 N.M.I. 351, 355 (1996). The failure to file a complaint within the statute of limitations period is sufficient to support a Rule 12(b)(6) dismissal. *Hutton v. Realty Executives, Inc.*,14 P.3d 977, 979 (Alaska 2000). The statute of limitations defense must be apparent from the face of the complaint, but a court may take judicial notice of matters of public record.[5] *See Truitt v. Metropolitan Mortg.* Co., 609 So.2d 142, 143 (Fla. Ct. App. 1992) and *Lee v. City of Los Angeles* (9th Cir. 2001); *Thomas v. Nakatani*, 120 F.Supp.2d 1244, 1247 (D. Hawaii 2000) (citing 2A J. MOORE, W. TAGGART & J. WICKER, MOORE'S FEDERAL PRACTICE, ¶¶ 12.07 at 12-68 to 12-69 (2d ed.1991 & supp. 1191-92)).

[5] The trial court apparently took judicial notice of Zhang's release from the Detention Center on January 23, 1997. *See* Order at 4.

II. Neither 28 U.S.C. § 1367(d) Nor the Common Law Equitable Tolling Doctrine Saves Zhang's Negligence Claims from the Bar of the Statute of Limitations.

A. 28 U.S.C. § 1367(d)

¶12 We are asked to consider for the first time the application of 28 U.S.C. §1367(d) ("§ 1367(d)" or "subdivision (d)").[6] By its terms, 28 U.S.C. § 1367(d)[7] tolls the limitations period for pendent state claims, while pending in federal court and for 30 days after dismissal, unless a state law provides for a longer tolling period. While the Commonwealth provides for the tolling of the limitations period under specific circumstances,[8] unlike other jurisdictions, *see, e.g.*, N.Y.C.P.L.R. § 205(d) (McKinney 1990) (allowing plaintiffs six months to refile complaints), no Commonwealth statute provides a longer grace period for refiling claims dismissed by the District Court.

¶13 Zhang concedes that her common law negligence claims are subject to the two-year statute of limitations under 7 CMC § 2503,[9] and that these claims accrued[10] on January 23, 1997, the date of her

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[6] Neither party disputes the applicability of the statute to the Commonwealth. Indeed by operation of § 403(b) of THE COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES, 48 U.S.C. § 1601, note, reprinted in Commonwealth Code at B-101 *et seq*. ("Covenant"), extending to the Commonwealth those provisions of Title 28 of the United States Code which apply to Guam, the jurisdictional reach of § 1367(d) stretches to all territories, including the Commonwealth. *See* 28 U.S.C. § 1367(e); *see also* § 502(a)(2) of the Covenant (providing that federal laws and subsequent amendments "which are applicable to Guam and which are of general application to the several states" will apply to the Northern Mariana Islands).

[7] *See supra* note 2, for text of 28 U.S.C. § 1367(d).

[8] For fraudulent concealment claims, the action must be filed after reasonable opportunity to discover the existence of a cause of action. *See* 7 CMC § 2509. Absence from the Commonwealth may toll the limitations period and allow a person to file after returning to the Commonwealth. *See* 7 CMC § 2508. A person with certain disabilities, i.e., insanity, minority age, and imprisonment, may file within the statutory limits after the disability is removed. *See* 7 CMC § 2506.

[9] 7 CMC § 2503 reads in pertinent part:

> The following actions shall be commenced only within two years after the cause of action accrues:
>
> . . . .
>
> (b) Actions against the Director of Public Safety, a police officer or other person duly authorized to serve process, for any act or omission in

release from the DOLI detention center, *see* 7 CMC § 2506.[11] She contends that § 1367(d) plainly affords her the right to tack the entire time her claims were pending in federal court, plus 30 days, onto the last day of the two-year limitations period, resulting in a revised and longer limitations period expiring on September 26, 1999. Since she refiled her negligence claims on March 16, 1999, Zhang asserts that she instituted her suit well within the limitations period.

¶14 Zhang urges us to adopt an interpretation of § 1367(d) that other state jurisdictions, addressing similar arguments, have ruled untenable. Propounding a nearly identical argument to Zhang's, the plaintiff in *Kolani v. Gluska*, 75 Cal. Rptr. 2d 257, 261 (Cal. Ct. App. 1998), argued that subdivision (d) should be interpreted to exclude, from the limitations computation, the entire interval that his federal claims were pending, or in other words, that subdivision (d) allows the "tacking" of the entire interval onto the original date of the limitations period.[12] *Id*. at 261. In rejecting such a construction of § 1367(d), a division of the California Court of Appeals explained that a reading of the statute otherwise would not only defeat the policy of statutes of limitations favoring the prompt prosecution of legal claims, but would also abrogate the accepted rule that, unless provided by statute, a party may not deduct, from the period of the applicable statute of limitations, "the time consumed by the pendency of an action in which he sought to have the

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connection with the performance of official duties.

. . . .

(d) Actions for injury to or for the death of one caused by the wrongful act or neglect of another

[10] In the context of statute of limitations, the term "accrue" refers to "when a suit may be maintained from thereon." *Dillon v. Board of Pension Comm'rs of City of Los Angeles*, 116 P.2d 37, 39 (1941).

[11] 7 CMC § 2506 provides that "[i]f the person entitled to a cause of action . . . is imprisoned when the cause of action first accrues, the action may be commenced within the time limits in this chapter after the disability is removed."

[12] In *Kolani*, the limitations period had expired while the claims were pending in federal court. *See* 75 Cal. Rptr. at 260.

matter adjudicated, but which was dismissed without prejudice to him." *Id*. at 261-62. Since neither §1367(d), nor any California statute, authorized the tacking of the entire time during which the claims were pending in federal court, the court held that the plaintiff had only 30 days after dismissal to commence action in state court.

¶15 Similarly, in *Huang v. Ziko*, 511 S.E.2d 305, 307-08 (N.C. Ct. App. 1999), the plaintiff, putting a slightly different twist on the tacking argument, contended that the time to refile under § 1367(d) should be extended for the portion of the time his complaint was pending in federal court. Relying on identical policy grounds used by the court in *Kolani*, the North Carolina Court of Appeals likewise rejected the plaintiff's interpretation by construing § 1367(d) as providing the plaintiff only 30 days to commence her state action since North Carolina did not have a longer grace period. *Huang* at 308 (citing 51 Am.Jr.2d Limitation of Actions § 311 (1970)).

¶16 Beyond *Kolani* and *Huang*, our survey of other case law and interpretative materials on subdivision (d) confirms their construction of how § 1367(d) was designed to operate. In each of the cases we examined, § 1367(d) was construed to give a party no more than 30 days after dismissal to reassert the dismissed claim in state court, unless state law provided a longer period.[13] Similarly, the secondary

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[13] *See, e.g., Kendrick v. City of Eureka*, 98 Cal.Rptr.2d 153, 156 (Cal Ct. App. 2000) (claims untimely where party failed to refile them in state court before the 30-day grace period specified by § 1367(d) expired); *Roden v. Wright*, 611 So.2d 333 (Ala. 1992) (refiling conformed with § 1367(d) where party reasserted claims within 17 days after dismissal); *Estate of Fennell v. Stephenson*, 528 S.E.2d 911, 914 (N.C. Ct. App. 2000) (where plaintiff filed within 30 days subsequent to federal court of appeals decision affirming district court's dismissal, refiling was timely for purposes of § 1367(d)). Although these cases do not directly examine the issue of "tacking," the discussions on how § 1367(d) operates are consistent with the holding of *Kolani* and *Huang*. Zhang misidentifies *Fernandez v. Kozar*, 814 P.2d 68 (Nev. 1991) and *Torres v. City of Santa Ana*, 108 F.3d 224 (9th Cir. 1997), as authoritative cases since they involve the application of inapposite state tolling statutes, which do not govern, as § 1367(d) does, the tolling of the limitations period where state claims are dismissed without prejudice by a federal court and subsequently refiled in state court. She also cites to *Bajorat v. Columbia-Breckenridge Dev. Corp.*, 944 F. Supp. 1371, 1383 (N.D. Ill. 1996) and *Allo v. Horne*, 636 So.2d 1049 (La. Ct. App. 1994), which offer virtually no analysis on the interpretation of § 1367(d). Instead, we are persuaded by *Kolani* and *Huang*, which discusses nearly the same issue as here, and their reasoning that it makes no sense to interpret § 1367(d) to contain a built-in tacking feature, in the absence of express language extending the limitations period, and in contravention of the overarching policy favoring prompt prosecution of legal claims.

materials give no hint of any "built-in" tacking provision as being a part of subdivision (d). One commentator explains the background of subdivision (d) and how Congress intended it to work:

> Subdivision (d) of § 1367 recognizes the serious statute of limitations problem a claimant may have after supplemental jurisdiction has been declined in a federal action. It may now be too late under the state statute of limitations to bring a state action on the claim. Subdivision (d) answers this dilemma by assuring that the claim shall have at least a 30-day period for the state action after the claim is dismissed by the federal court.

DAVID D. SIEGEL, CHANGES IN FEDERAL JURISDICTION AND PRACTICE UNDER THE NEW JUDICIAL IMPROVEMENTS ACT, 133 F.R.D. 61, 68 (1991).[14] Clearly, Congress's main concern centered on the specific problem arising from the dismissal of state claims by a federal court where the limitations period expired during the pendency of the claims in federal court. Because of inconsistencies in how state law addressed these situations, Congress responded with the 30-day grace period, so that a complainant would be guaranteed at least that amount of time to renew the claims in state court.[15]

¶17 Accordingly, given the prevailing interpretation of § 1367(d), we rule that, as applied in the Commonwealth, § 1367(d) gives a party no more than a 30-day window of opportunity, after dismissal from the District Court, to commence action in the Superior Court. In other words, § 1367(d) operates only to toll the limitations statute during the specified period, and to allow a party to refile within 30 days after dismissal from federal court. Under Commonwealth law, Zhang actually had more than the 30-day grace period afforded by § 1367(d) to refile, since the two-year limitations period governing her negligence claims expired on January 22, 1999. *See* Order at 16. By commencing her Commonwealth action on

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[14] *See also* Denis F. McLaughlin, *The Federal Supplemental Jurisdiction Statute–A Constitutional and Statutory Analysis*, 24 ARIZ. ST. L.J. 849, 982-85 (1992); Patrick Murphy, *A Federal Practitioner's Guide to Supplemental Jurisdiction Under 28 U.S.C. S 1367*, 78 MARQ. L. REV. 973, 1032-33 (1995); H.R. REP. NO. 734, 101st Cong., 2d Sess. 30 (1990), reprinted in 1990 U.S.C.C.A.N. 6802, 6876.

[15] *See* MCLAUGHLIN, 24 Ariz. St. L.J. at 983.

March 16, 1999, she missed the deadline and lost the opportunity to have her claims adjudicated.[16]

B. Equitable Tolling Doctrine

¶18 Turning now to Zhang's equitable tolling argument,[17] although we have not recognized this judicially-created doctrine, the state of California, along with other jurisdictions, has employed equitable tolling to save an otherwise untimely claim subsequently renewed in a state court. *See Addison v. State of California*, 145 Cal.Rptr. 224, 228, 578 P.2d 941, 944-45 (Cal. 1978) and *Collier v. City of Pasadena*, 191 Cal. Rptr. 681, 684 (1981). Originating from a United States Supreme Court decision, *Telegraphers v. Railway Express Agency* 321 U.S. 342, 64 S. Ct. 582, 88 L.Ed. 788 (1944),[18] the doctrine relieves a party from the bar of a limitations statute when, possessing several legal remedies, a party reasonably, and in good faith, pursues one designed to lessen the extent of his injuries or damage. *Kolani*, 75 Cal.Rptr.2d at 261. As explained in *Addison*, a party should not be expected to commence simultaneously two separate actions, premised on the same facts, in both state and federal courts, since duplicate proceedings are "inefficient, awkward and laborious." 578 P.2d at 944. The rationale is that a plaintiff should be allowed to proceed, so long as the first proceeding is filed within the statute of limitations and the defendant, having received timely notification, suffers no unfair prejudice. *Collier* at 684.

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[16] Without any analysis, Zhang contends that the 30-day period should have commenced after the District Court issued its judgment on April 12, 1999. We note that the court in *Kolani* measured the 30-day period from the moment the federal district court dismissed the claims. *See* 75 Cal.Rptr.2d at 259. In cases where a district court's dismissal is appealed, and affirmed by the federal court of appeals, the 30-day refiling deadline is calculated from the date of the appellate court's ruling. *See Kendrick*, 98 Cal.Rptr.2d at 156-57, and *Estate of Fennell*, 528 S.E.2d at 914. Since Zhang did not appeal the District Court's dismissal to the Ninth Circuit, the time for refiling, under § 1367(d), commenced the moment that the district court entered its dismissal on November 14, 1998.

[17] Alternatively, the court below also relied on the doctrine of laches to support its conclusion that Zhang's claims were untimely. *See* Decision at 7 (citing *Rios v. Marianas Pub. Land Corp.*, 3 N.M.I. 512, 524 (1993)). Having determined that the delay was unreasonable, the court ruled that Zhang failed to effectively rebut the presumption of laches which arises where, as here, the limitations period has run. *Id*. Zhang did not appeal that portion of the trial court's ruling.

[18] The Supreme Court tolled the statute of limitations during the pendency of a lengthy administrative proceeding over a wage claim. *See* 321 U.S. at 349, 64 S. Ct. at 586.

¶19 The equitable tolling inquiry, however, is not open-ended and its application depends on an assessment of three essential elements: (1) the defendant must receive timely notice of the claims; (2) the defendant must suffer no prejudice from the delay; and (3) the plaintiff must act reasonably and in good faith. *Id*. *See also Ervin v. County of Los Angeles*, 848 F.2d 1018, 1019 (9th Cir. 1988). Since a defendant would have received proper notice of the initial federal suit, the first two elements are generally undisputed, leaving the determinative inquiry to bear on the third element.[19] *Kolani*, 75 Cal.Rptr.2d at 261.

¶20 Unsurprisingly, courts are less forgiving in receiving late filings where a claimant fails to exercise due diligence in order to preserve his or her legal rights. *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 96,111 S. Ct. 453, 458, 112 L.Ed.2d 435 (1990), *reh'g denied* 498 U.S. 1075, 111 S. Ct. 805 (1991). As such, a late filing, attributed to a counsel's misreading of a statute's allowable refiling period, is regarded "at best as a garden variety claim of excusable neglect" undeserving of equitable tolling. *Id*. Furthermore, absent extraordinary circumstances explaining the delay, an excessive interval between the dismissal and the filing date may alone be sufficient to prove unreasonable conduct. *Kolani*, 75 Cal. Rptr. 2d at 262.

¶21 In *Kolani*, the plaintiff refiled his claims in state court 78 days after they were dismissed by a federal court. The court surveyed California case law and discovered that equitable tolling was applied to cases involving short intervals between dismissal and refiling, with the longest time being no more than 30 days. *Kolani* at 262. Taking those facts into consideration and that the state claims were repeated verbatim from the federal complaint requiring no substantial time for refiling,[20] the court concluded that the 78-day delay

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[19] Since prejudice to the defendant is not at issue here, we need not address Zhang's question on who bears the burden to prove prejudice.

[20] *Kolani* assessed the equitable tolling doctrine in light of the 30-day grace period in 28 U.S.C. § 1367(d), because, as indicated, the limitations period there expired during the pendency of claims in federal court. Here, as noted, Zhang

in refiling in state court was excessive, and thus declined to apply equitable tolling. *Id*.

¶22 Here, Zhang informs us that the delay resulted from the absence of any Commonwealth case law interpreting the operation of subdivision (d), and from a good faith reliance that § 1367(d) gave her an extended limitations period ending on September 26, 1999. As *Irwin* illustrates, that explanation, considered a garden variety claim of excusable neglect, falls woefully short of justifying the application of equitable tolling. Moreover, during oral argument, we learned from both counsel that, except for the caption, the claims filed in Superior Court, were identical to those portions of the federal complaint which were dismissed.[21] We agree with *Kolani* that a "cut and paste" version of the claims dismissed by a federal court clearly demonstrates that no substantial time was needed to refile. It was, therefore, unreasonable for Zhang to refile in the Superior Court more than two months after the expiration of the limitations period. Absent some extraordinary circumstance justifying the delay, we agree with the trial court that the equitable tolling doctrine should not be applied to save Zhang's claims.

III. Zhang's Claim For Relief Under Article I, § 3(c) of the N.M.I. Constitution Is Untimely.

¶23 Zhang advances a two-part argument that her Article I, § 3(c) claim is timely. First, she asserts that the trial court procedurally erred in dismissing her constitutional claim on statute of limitation grounds, without initially determining if Article I, § 3(c) directly provides a private right of action. Second, she contends that her Article I, § 3(c) cause of action is not subject to any statutory limits, including the two-

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actually had more than the 30-day grace period to refile, because the limitations period, under 7 CMC § 2503, expired about two months after the District Court dismissed her claims. Consideration of § 1367(d)'s day grace period, in tandem with the equitable tolling doctrine, would be appropriate in a factual situation identical to *Kolani*, where the statute of limitations expires during the pendency of the action in federal court.

[21] Indeed, the Complaint/Summons contains no factual assertion about the reasonableness of the refiling, which if included, could have arguably saved Zhang's negligence claims from a Rule 12(b)(6) dismissal. *See* ER at 237-45.

year statute of limitations provided by 7 CMC § 2503;[22] and, even if we were to conclude otherwise, she urges that our ruling be applied prospectively to preserve her due process rights.

¶24 While we would have preferred an analysis by the lower court on the existence of an Article I, § 3(c) claim, remanding this issue would serve no particular purpose. The trial court would inevitably reach the same conclusion that the claim is time-barred, if it recognizes such a cause of action. Furthermore, a Rule 12(b)(6) motion may be granted solely on the ground that a claim was filed after the expiration of the limitations period.[23] The court complied with the rule, by opting to justify its dismissal exclusively on the untimely filing of the Article I, § 3(c) claim. We conclude, therefore, that the trial court properly made a procedural detour to directly examine the Commonwealth's statute of limitations defense.

¶25 We now consider Zhang's second argument and whether the trial court correctly determined that 7 CMC § 2503 limits the period of time in which an Article I, § 3(c) claim may be instituted.

¶26 Generally applicable to tort actions, 7 CMC § 2503, restricts the filing of those actions to a two-year period. Of particular relevance to the instant case is subsection (d), which serves as a catch-all provision, covering all possible "[a]ctions for injury to or for the death of one caused by the wrongful act or neglect of another. . . ." 7 CMC § 2503(d).

¶27 Article I, § 3(c), provides that "[a] person adversely affected by an illegal search or seizure has a cause of action against the government within limits provided by law." Assuming, without deciding, that Article I, § 3(c) directly provides a private right of action, persons subjected to an illegal or wrongful search

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[22] *See supra* note 9, for excerpts of 7 CMC § 2503.

[23] *See supra* ¶ 11; *Hutton*, 14 P.3d at 979.

or seizure, have a right to institute a civil action against the government for damages.[24] Such an action may be described as a "constitutional tort claim," as the term is used by other jurisdictions,[25] because of the tort-based remedy it provides to victims of illegal searches or seizures.[26] *Cf*. RESTATEMENT (SECOND) OF TORTS § 874A (1977).

¶28 Viewing an Article I, § 3(c) tort claim against the expansive language of 7 CMC § 2503(d), we conclude that such suits against the government, arising from a wrongful search or seizure by a government officer, fall within its ambit. Thus, all claims under Article I, § 3(c) must be filed within the two-year limitations period.

¶29 In so holding, we announce no new principle of law that must be applied prospectively, as Zhang asserts must be done if the trial court's decision is upheld. Nor do we depart from any prior Commonwealth court ruling that an Article I, § 3(c) claim has no applicable limitations period, upon which Zhang could have used as authority. As such, unlike the cases she cites, where subsequent decisions shortened the filing periods,[27] our decision today does not change "the rules of the game" in mid-stream. Rather, we reiterate the statutory mandate of 7 CMC § 2503, that all tort claims, including those premised

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[24] *See* ANALYSIS OF THE CONSTITUTION OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS at 9-10 (Dec. 6, 1976).

[25] *See Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971) (seminal case recognizing a private right of action for violation of Fourth Amendment to the Constitution); *Binette v. Sabo*, 710 A.2d 688, 769 (Conn. 1998) (acknowledging private cause of action for money damages from violation of search and seizure and arrest sections of state constitution); *Brown v. State*, 674 N.E.2d 1129, 1137-38 (N.Y. 1996) (holding that cause of action to recover damages may be asserted against state for violation of equal protection and search and seizure clauses of state constitution).

[26] *See* ANALYSIS OF THE CONSTITUTION OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS at 9-10 (Dec. 6, 1976).

[27] Zhang relies on *Usher v. City of Los Angeles*, 828 F.2d 556, 559 (9th Cir. 1987) (new ruling to shorten statute of limitations would be given prospective effect) and *George v. Camacho*, 119 F.3d 1393, 1402 (9th Cir. 1997) (new rulings changing time for filing cannot be retroactively applied).

on Article I, § 3(c), must be commenced within the two-year limitations. Therefore, we will accord our ruling retrospective effect and apply it to the case at hand.

¶30 Zhang's Article I, § 3(c) claim must meet the same fate as her negligence claims against Aguon and the Commonwealth. They were refiled after the expiration of the limitations period and consequently, our courts lack authority to adjudicate the claims.

CONCLUSION

¶31 For the foregoing reasons, the trial court's order dismissing the complaint is **AFFIRMED**.

SO ORDERED THIS 19TH DAY OF NOVEMBER 2001.

/s/
MIGUEL S. DEMAPAN, Chief Justice

/s/
ALEXANDRO C. CASTRO, Associate Justice

/s/
JOHN A. MANGLONA, Associate Justice