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IN THE

Supreme Court

OF THE

Commonwealth of the Northern Mariana Islands

FRANCOIS CLAASSENS AND JAMES TOSKAS,
Plaintiffs-Appellants,

v.

ROTA HEALTH CENTER, COMMONWEALTH HEALTH CARE CORPORATION,
Defendants-Appellees.

Supreme Court No. 2018-SCC-0012-CIV

SLIP OPINION

Cite as: 2021 MP 9

Decided August 2, 2021

CHIEF JUSTICE ALEXANDRO C. CASTRO
ASSOCIATE JUSTICE PERRY B. INOS
JUSTICE PRO TEMPORE TIMOTHY H. BELLAS

Superior Court Civil Action No. 17-0226
Associate Judge Joseph N. Camacho, Presiding

INOS, J.:

¶ 1 Plaintiffs-Appellants Dr. Francois Claassens ("Claassens") and Dr. James Toskas ("Toskas")[1] appeal the trial court's dismissal of their complaint for failure to state a claim upon which relief may be granted under NMI Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)").[2] They argue the court (1) abused its discretion in converting the motion to dismiss to a motion for summary judgment; (2) erred in dismissing their breach of contract claims; and (3) erred in dismissing their quantum meruit claims. For the following reasons, we REVERSE the Order and REMAND for further proceedings consistent with this opinion.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 Rota Health Center ("RHC") recruited Toskas in 1997 and Claassens in 2005 as resident doctors for the island of Rota's only health center. Toskas joined Dr. Rod Klaassen ("Klaassen") as the second resident doctor. Claassens replaced Klaassen in 2005. The doctors signed the standard excepted service employment contract which specifies that their employment is exempted from the provisions of the Fair Labor Standards Act ("FLSA") and, thus, there would be no compensation for overtime hours or compensatory time off.

¶ 3 In addition to the regular provisions of their employment contracts, the doctors had a unique working and compensation arrangement with RHC for when a resident doctor had to work on his scheduled day off to cover the shift of another doctor who was on leave. This type of extra work is referred to as locum[3] coverage.

¶ 4 RHC compensated Klaassen two days of leave for every day he provided locum coverage due to another doctor's absence. Toskas and Claassens were persuaded to move to Rota and take their respective positions in exchange for a similar arrangement to Klaassen's. They would either be compensated at one and a half times their hourly rate or two days of leave for every day of locum coverage, regardless of whether the doctor on leave was on or off island.

¶ 5 The doctors alleged that if they did not agree to provide the locum coverage, RHC would have incurred the cost of flying in another doctor to provide medical services. At oral argument, the doctors clarified that the locum coverage hours excluded any overtime hours worked in the course of their regular work schedule. They allege that the locum coverage arrangement was

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1 Collectively referred to as "the doctors."

2 *Francois Claasens and James Toskas v. Rota Health Center, Commonwealth Health Care Corporation*, Civ. No. 17-0226 (NMI Super. Ct. May 24, 2018) (Order Granting Motion to Dismiss as the Fair Labor Standards Act and Defendants' Contract Provisions Exempt Doctors from Compensation for Overtime Work) ("Order").

3 Locum physicians substitute for the primary physician when absent. "'Locums' is short for the Latin phrase 'locum tenens,' the literal meaning of which is 'place-holder,' and which typically refers to a person performing duties temporarily." *Horlick v. Capital Women's Care, LLC*, 896 F. Supp. 2d 378, 384 n.4 (D. Md. 2011).

memorialized in several writings[4] with the acknowledgement of successive RHC resident directors. The doctors claim the writings were attached to their contracts as addenda when routed for review and approval to RHC, the Office of Personnel Management, and Commonwealth Health Care Corporation ("CHCC"), without objection by these entities. The doctors argue they did not have to provide locum coverage under the terms of their contracts, but they did so nonetheless. If they had merely worked overtime, they would not be entitled to any additional compensation under their FLSA-exempt contract.

¶ 6 Throughout the multiple contract renewals, RHC tracked the doctors' earned and used leave hours under this arrangement. RHC allowed Klaassen to use his accumulated leave for approximately six months after leaving CHCC. Likewise, Toskas used around 464 hours of leave under the same arrangement. The complaint alleges Claassens accumulated approximately 4,912 hours of leave or the cash equivalent of $308,000 and Toskas accumulated 5,264 hours or the cash equivalent of $327,187.50.

¶ 7 When it became apparent in 2016 that RHC and CHCC would not honor this arrangement, the doctors sued for breach of contract and quantum meruit. CHCC moved to dismiss the complaint for failure to state a claim under Rule 12(b)(6).[5]

¶ 8 The court granted the motion to dismiss because of the provision in the contract that exempted the doctors from earning overtime compensation. The court discussed its ability to consider evidence relied on in the complaint when deciding motions to dismiss, citing to Rule 12(b)(6) and caselaw. Order at 5. It analyzed the employment contract and other exhibits relied on in the complaint to see if it contained "a plausible claim for breach of contract . . . upon which relief [could] be granted." Order at 11. Based on the doctors' overtime-exempt status, Toskas and Claassens failed to state a plausible claim for breach of contract for which relief could be granted. *Id*. The court found the quantum meruit claim inappropriate because such relief is only available when there is an implied contract or term and is barred by sovereign immunity. It found nothing in the record which supported the existence of an implied term related to additional working hours and that the contract terms were explicit in addressing overtime pay. Order at 13. The court dismissed both the breach of contract and quantum meruit claims *Id.*

¶ 9 Toskas and Claassens appeal the Order.

II. JURISDICTION

¶ 10 We have jurisdiction over final judgments and orders of the

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[4] On March 11, 1998, Toskas wrote to the RHC Director and stated "I accept your offer with the following stipulations . . . if I must work on one of the guaranteed two days off I will be paid 1.5 times any hourly rate or get 2 days leave for every day of extra work, my choice." Compl. 3; Ex. 1. On three occasions after that, the doctors signed MOUs with RHC acknowledging their agreement. Compl. 7–8; Ex. 4–6.

[5] CHCC noted in its motion to dismiss that RHC was subsumed into CHCC upon the latter's creation in 2010 and it should not be a named defendant. The doctors stated they were willing to drop RHC as a named party but no motion was made to the court to amend the caption. Order at 6.

Commonwealth Superior Court. NMI CONST. art. IV, § 3.

III. STANDARDS OF REVIEW

¶ 11 There are three issues on appeal. We review whether the court abused its discretion in converting CHCC's motion to dismiss to a motion for summary judgment under Rule 56. *Rios-Campbell v. United States DOC*, 927 F.3d 21, 24 (1st Cir. 2019) (citing to *Velez v. Awning Windows, Inc*., 375 F. 3d 35, 41 (1st Cir. 2004)); *see Proctor v. District of Columbia*, 74 F. Supp. 3d 436, 447–48 (D.D.C. 2014) (reiterating that the circuit reviews conversion under the abuse of discretion standard). We review de novo the dismissal for breach of contract and quantum meruit. *Syed v. Mobil Oil Marianas, Inc.*, 2012 MP 20 ¶ 9.

IV. DISCUSSION

A. Conversion

¶ 12 The doctors argue the court converted the motion to dismiss to a motion for summary judgment. We conclude it did not.

¶ 13 In a Rule 12(b)(6) motion to dismiss, the court reviews the complaint for sufficient allegations necessary to support a party's legal claims upon which relief can be granted. Parties may support allegations by including evidence attached to the complaint. If a motion to dismiss contains "matters outside the pleadings [] presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." NMI R. CIV. P. 12(d).[6] This is commonly known as "conversion." *In re Rockefeller Ctr. Prop., Inc., Sec. Litig.*, 184 F.3d 280, 287 (3d Cir. 1999). Conversion may be avoided, however, and courts may examine documents outside the pleading when the matters are relied on or referenced in the complaint or they are matters taken under judicial notice.[7] *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007); *see Watterson v. Page*, 987 F.2d 1, 3 (1st Cir. 1993) (acknowledging "narrow exceptions" for documents whose authenticity is undisputed, for official public records, and for documents central or sufficiently referred to in the complaint); *Cortec Indus. Inc. v. Sum Holding L.P.*, 949 F.2d 42, 44 (2d Cir. 1991) (allowing extrinsic evidence when attached, incorporated, or integral to at least one claim in the complaint). In other words, the court is not required to convert, nor does it necessarily treat a motion to dismiss as a motion for summary judgment, if it relies on evidence central to the complaint, regardless of whether it may be

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[6] NMI Rule of Civil Procedure 12(d) is analogous to its federal counterpart:

> If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

FED. R. CIV. P. 12(d). "Interpretations of counterpart federal rules are helpful in interpreting the Commonwealth Rules of Civil Procedure." *Furuoka v. Dai-Ichi Hotel*, 2002 MP 5 ¶ 17 n.7 (quoting *Bank of Saipan v. Superior Court (Carlsmith)*, 2001 MP 7 ¶ 19 n.5).

[7] The court is authorized to take judicial notice sua sponte of a fact that cannot be subject to reasonable dispute. NMI R. EVID. 201(c)(1).

considered outside of the pleadings. *See DeLuca v. Access IT Grp., Inc*., 695 F. Supp. 2d 54, 59 (S.D.N.Y. 2010).

¶ 14 Here, the court considered evidence which the complaint relied on and referred to, and which was central to the doctors' claims. It referenced exhibits attached to the complaint and further cited which exhibits related to the breach of contract claims, such as the employment contracts, addenda, and agreements. *See* Order at 4 n.4, 5, 7. Additionally, the parties did not question the documents' authenticity. Order at 5. Because the court properly examined evidence central to the complaint in reaching its decision, we find it did not convert the motion to dismiss to a motion for summary judgment. Accordingly, the court did not abuse its discretion.[8]

B. Failure to State a Claim

¶ 15 The doctors argue their complaint established claims sufficient to survive a Rule 12(b)(6) motion to dismiss and support legal theories for breach of contract and quantum meruit. We review de novo the court's decision to dismiss the complaint under Rule 12(b)(6). *Syed,* 2012 MP 20 ¶ 9.

¶ 16 When reviewing a Rule 12(b)(6) motion, a court must determine if the non-moving party fails to assert "a claim upon which relief can be granted." NMI R. CIV. P. 12(b)(6). The rule promotes judicial efficiency by weeding out cases that do not warrant discovery because the plaintiff could never win on the factual allegations in the complaint. *Foley v. Wells Fargo Bank,* 772 F.3d 63, 72 (1st Cir. 2014). Nevertheless, the court must construe the complaint in the light most favorable to the plaintiff and take its allegations to be true for purposes of a motion to dismiss. *Govendo v. Micronesian Garment Mfg, Inc.*, 2 NMI 270, 283 (1991). In reviewing the sufficiency of a complaint, the court's inquiry is limited to whether or not the claimant is entitled to present evidence to support its claims. *Gilligan v. Jamco Dev. Corp*., 108 F.3d 246, 249 (9th Cir. 1997). In other words, a complaint does not need to "'make a case'" against a defendant or "'forecast *evidence* sufficient to *prove* an element' of the claim." *Chao v. Rivendell Woods, Inc*., 415 F.3d 342, 349 (4th Cir. 2005) (quoting *Iodice v. United States*, 289 F.3d 270, 281 (4th Cir. 2002)). A complaint only has to "'allege *facts* sufficient to *state* elements' of the claim." *Id*. Therefore, in deciding a motion to dismiss based on failure to state a claim, the court should construe allegations in the complaint in favor of the non-moving party. *Gilligan*, 108 F.3d. at 248.

¶ 17 Surviving a motion to dismiss is largely governed by NMI Rule of Civil Procedure 8 ("Rule 8"). Under Rule 8, a claim for relief must contain "a short and plain statement of the grounds for the court's jurisdiction," "a short and plain statement of the claim showing that the pleader is entitled to relief," and "a demand for relief sought." NMI R. CIV. P. 8. Providing a short and plain statement saves courts time and gives fair notice to other parties on what grounds a claim rests. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In *Syed v. Mobil Oil,* we specified what Rule 8 requires to survive a motion to dismiss and rejected the more stringent plausibility pleading standard set out by the U.S.

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[8] Even if the court treated the motion to dismiss as a converted summary judgment, it did not abuse its discretion because the court only relied on evidence central to the complaint in reaching its decision. The format did not alter the conclusion or the substance.

Supreme Court in *Twombly*, holding that to survive a Rule 12(b)(6) motion to dismiss a complaint must either "contain [] direct allegations on every material point necessary to *sustain a recovery on any legal theory*, even though it may not be the theory suggested . . . by the pleader, or contain[] allegations from which . . . evidence on these material points will be introduced at trial." 2012 MP 20 ¶ 19 (quoting *In re the Adoption of Magofna*, 1 NMI 449, 454 (1990)) (emphasis added). A plaintiff need only "plead[] enough direct and indirect allegations to provide adverse parties 'fair notice of the nature of the action.'" *Id*. Put differently, the nonmoving party cannot simply parrot the elements of a cause of action; all elements must be supported with some alleged facts. After establishing this threshold, "weighing evidence should be left to a point after discovery." *Id.* ¶ 18.

¶ 18 With these principles in mind, we turn to the claims in the complaint.

i. Breach of Contract

¶ 19 The doctors provide a number of arguments in support of their claims: (1) because they have substantially performed, a valid contract may exist; (2) there is nothing illegal underlying the agreed-upon conduct; (3) any claim of illegality was not established on the face of the complaint; and (4) CHCC's silence constituted an acceptance to modification of the contract. While CHCC concedes that the complaint was not "insufficient to *plead a case* of breach of contract against a private corporation," it argues that the "claim for breach of contract fails as a matter of law because [the] claims are made against a government agency." Resp. Br. 8. Because "no government actor had any authority to agree to payments of additional compensation . . . CHCC cannot be called to deliver benefits to Claassens or Toskas . . . no matter the [legal] theory upon which they are claimed." Resp. Br. 11.

¶ 20 CHCC specifically argues it is limited to the powers provided in the Excepted Service Personnel Regulations, which state the doctors are not eligible for any overtime or compensatory time off for hours worked. It analogizes this case to *Guerrero v. Department of Public Lands*, in which the Marianas Public Lands Authority ("MPLA") Board of Directors entered into an at-will employment contract with the Commissioner of Public Lands, promising an annual base salary of $80,000 for four years, with a five percent increase each year, subject to funding. 2011 MP 3 ¶ 2. This Court held that MPLA exceeded its statutory authority under Public Law 12-71. *Id.* ¶ 18. Public Law 12-71 gives broad powers to the Board of Public Lands's operations but provides specifically that the Commissioner serves "at the pleasure of the Board of Directors," which is synonymous with "at-will" employment. P.L. 12-17, § 2(a); *id.* ¶ 10. We held the four-year term in the contract was void *ab initio*, "being utterly in conflict with the 'at-will' nature of the Commissioner's employment." *Id.* ¶ 14. In line with *Guerrero*, CHCC argues it is without power to contract for employment terms that contradict the personnel regulations and any such terms are therefore void *ab initio*.

¶ 21 As a matter of law, courts can determine in a motion to dismiss that a contract is void *ab initio* due to illegality. We find, however, it was inappropriate to do so under the circumstances in this case because the enforceability of the contracts remained an open question and the parties had yet to substantiate their allegations on this issue. The doctors argue their contract terms were not illegal

because providing medical services is not an illegal act and no law prohibits the hiring of locum physicians. The doctors allege there was an established employment practice for hiring Rota physicians—promising locum coverage for on-island physicians, attaching additional written terms to the contracts, and a prior course of dealing during which there was substantial performance by both parties. They further claim RHC induced them to work on Rota based on the prior agreement Klaasens had—an agreement that the government previously honored. CHCC, by contrast, argues that the regulations prohibit supplemental pay of any kind. It argues its arrangement with Klaasens does not obligate it to do the same for Claassens and Toskas.

¶ 22 The allegations in the complaint could be developed and supported with evidence at a later stage in litigation and dismissing the claims by 12(b)(6) motion was premature. If the case had proceeded to discovery, the doctors would have been afforded an opportunity to defend the validity and enforceability of the contracts. The record does not show whether the addenda were objected to while being circulated for approval. One of the signatories to the contract was the governor. Later, when the governor became CHCC's chief executive officer, he informed the doctors that CHCC would honor the accumulated leave through March 9, 2012, but the arrangement would no longer continue. Whether the hours claimed were under the overtime-exempt contracts or locum coverage is a question of fact requiring evidentiary support. The same is true as to whether the addenda were attached to the employment contracts when routed between government entities for approval. If so attached, could the doctors argue that the addenda constituted a contractual modification agreed upon by the parties? At this pleading stage, the court should have construed these factual questions in the light most favorable to the plaintiffs.

¶ 23 At this early stage of the case, the breach of contract claim appears legally sufficient because it contains direct allegations that may be drawn upon at trial. *See Syed*, 2012 MP 20 ¶ 19. "Breach of contract occurs upon the non-performance of a contractual duty of immediate performance." *Del Rosario v. Camacho*, 2001 MP 3 ¶ 95. But where non-performance is "justifiable, then there is no breach." *Id.* Here, the allegations state a claim for breach of contract. The doctors supported their allegations by attaching employment contracts and addenda, purporting to show CHCC's acceptance of the additional terms. Compl. 4; Ex. 3–6. These terms promised additional or separate compensation in exchange for work beyond their regular schedules. The alleged breach is the non-payment for locum coverage.

¶ 24 We are left with the sense that the complaint alleged facts sufficient to state the elements of a contract and a breach thereof. The allegations may need further support to justify a finding that there was a breach, but that is not necessary at the motion to dismiss stage. Thus, the court erred in dismissing the breach of contract claim.

ii. *Quantum Meruit*

¶ 25 The court found the alternative claim for compensation under quantum meruit inappropriate and unavailable where a valid employment contract exists. Order at 12. The doctors argue that if the employment contracts do not cover additional compensation as locum physicians, then there is an implied contract.

¶ 26 The court was correct in stating that the existence of a valid written

contract would preclude the quantum meruit claims. But whether there was some other basis for the existence of an unwritten agreement about locum coverage, a basis for a quantum meruit claim, was never explored below.

¶ 27 Quantum meruit is the recovery for services or materials provided under an implied contract. "To establish quantum meruit, the plaintiff must establish that: (1) the plaintiff rendered services to the defendant; (2) with the defendant's knowledge and consent; and (3) under circumstances that make it reasonable for the plaintiff to expect payment." *In re Wal-Mart Wage & Hour Emp't Practices Litig.*, 490 F. Supp. 2d 1091, 1118 (D. Nev. 2007). While a written contract is not "a prerequisite to recovery in quantum meruit, there must be a reasonable expectation on the part of the claimant to receive compensation for his services and a concurrent intention of the other party to compensate him." *Jay Cashman, Inc. v. Portland Pipe Line Corp.*, 559 F. Supp. 2d 85, 105 (D. Me. 2008).

¶ 28 The existence of a valid employment contract between CHCC and the doctors is undisputed, and the court took judicial notice of this fact. The claim of quantum meruit arises solely from the provisions about locum coverage in the contract addenda. These addenda, signed only by the doctors, were attached to the employment contracts and routed between government agencies without objection every year of renewal. Even if the addenda were not properly incorporated as part of the written employment contracts, as CHCC contends, it would not run afoul of quantum meruit because such a claim is based on the nonexistence of a written contract. It may be that the anti-overtime provision would preclude the doctors from claiming compensation under their written agreement when they worked on a normal duty day for more than eight hours. But they argue an implied contract separate from their written agreement governed the locum coverage.

¶ 29 It is undisputed that locum coverage is not mentioned in the main body of the written employment contracts. Therefore, if there are no express terms about locum coverage and if the addenda are not a part of the original contracts, then there is no express written contract which covers the subject of this claim. The doctors allege, and the court must assume, that locum coverage is not overtime worked as part of a doctor's regular shift, but rather working on a day when the doctor was not required to work at all. Since the government would otherwise have been required to contract and pay other doctors to provide the same locum services at much greater expense, the government unquestionably received the benefit of the extra work and the fact that it previously compensated Klaassen reveals some knowledge and consent to the process. Furthermore, RHC kept a record of the accumulating locum coverage hours and Toskas used 464 hours of that leave, suggesting not only knowledge and consent by the government but partial performance as well. The doctors allege that the prior course of dealing and the circulation of their contract for annual renewal gave them a reasonable expectation of payment. Thus, the complaint asserts sufficient facts to state a claim for quantum meruit.

¶ 30 We note that the language of 7 CMC § 2251(b) authorizes recovery for a claim based on an expressed or *implied* contract with the government (emphasis added). The court's decision dismissing the action limits the language of this statute to enforcing a term of an express written contract. Order at 12. Because of the numerous unresolved factual issues and legal theories that may support a recovery in quantum meruit, the case should be allowed to proceed to discovery.

We find the court erred in granting the motion to dismiss on the quantum meruit claim.

V. CONCLUSION

¶ 31 For the foregoing reasons, we REVERSE the trial court's dismissal under Rule 12(b)(6) and REMAND for further proceedings consistent with this opinion.

SO ORDERED this 2nd day of August, 2021.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
PERRY B. INOS
Associate Justice

/s/
TIMOTHY H. BELLAS
Justice Pro Tempore

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JUDGMENT

Plaintiffs-Appellants Dr. Francois Claassens and Dr. James Toskas appeal the trial court's dismissal of their complaint for failure to state a claim upon which relief may be granted under NMI Rule of Civil Procedure 12(b)(6). They argue the court (1) abused its discretion in converting the motion to dismiss to a motion for summary judgment; (2) erred in dismissing their breach of contract claims; and (3) erred in dismissing their quantum meruit claims. For the following reasons, we REVERSE the Order and REMAND for further proceedings consistent with this opinion.

ENTERED this 2nd day of August, 2021.

/s/
JUDY T. ALDAN
Clerk of the Supreme Court