

#### FOR PUBLICATION



## E-FILED CNMI SUPERIOR COURT E-filed: May 21 2020 12:39PM Clerk Review: May 21 2020 12:39PM Filing ID: 65649417 Case Number: 17-0067-CV Joseph Norita Camacho

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

SECUNDINA UNTALAN PANGELINAN ) and SELINA MARIE PANGELINAN, )	CIVIL ACTION NO. 17-0067
Plaintiffs,	ORDER AND JUDGMENT AGAINST
<b>v.</b> )	DEFENDANT JOHN SABLAN PANGELINAN FOR ABUSE OF
JOHN SABLAN PANGELINAN,	PROCESS AND TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS
<b>Defendant.</b>	

#### I. INTRODUCTION

THIS MATTER came before the Court on December 2, 2019 for a Bench Trial that concluded on December 12, 2019 at the temporary courthouse located at the Marianas Business Plaza. Plaintiff Secundina Untalan Pangelinan ("Secundina") appeared daily with her counsel, Janet H. King. Plaintiff Selina Marie Pangelinan ("Selina") was not present daily but did testify during the trial via Skype from California (also collectively "Plaintiffs"). Defendant John Sablan Pangelinan ("John"), was also present daily and appeared *pro se*.<sup>2</sup>

The Court heard sworn testimonies from three witnesses: (1) Secundina Untalan Pangelinan, (2) Selina Marie Pangelinan, and (3) John Sablan Pangelinan.

<sup>&</sup>lt;sup>1</sup> On March 16, 2018, the House of Justice, Guma Hustisia, Iimwal Aweewe closed to the general public as a result of a serious mold problem caused by the air conditioning system not working. As a result of the closure, the Commonwealth of the Northern Mariana Islands Judiciary had to rely on satellite courtrooms. As of the time of this order, the House of Justice building remains closed.

<sup>&</sup>lt;sup>2</sup> John Sablan Pangelinan has been declared a vexatious litigant in United States District Court for the Northern Mariana Islands. Ex. 12.

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The Court also received the following exhibits: (1) the Ground Lease between the Estate of Norberto E. Pangelinan through its Administratrix Secundina Untalan Pangelinan and Peak Development; (2) IMO Estate of Norberto Eduardo Pangelinan, No. 15-0169-CV (NMI Sup. Ct. Sept. 20, 2016) (Order of Hon. Joseph Camacho Den. Mot., Claim and Pet. of John S. Pangelinan, and Granting Estate's Mot. to Dismiss Demands of John S. Pangelinan); (3) IMO Estate of Norberto Eduardo Pangelinan, No. 15-0169-CV (NMI Sup. Ct. Dec. 19, 2016) (Decree of Final Distribution); (4) Bank of Guam Statement of Account (Date: February 28, 2019); (5) Bank of Guam Statement of Account (Date: June 30, 2017); (6) Agreement to Purchase Leasehold Estate between Norberto E. Pangelinan and Peak Development; (7) the Settlement Proposal Letter: In re Estate of Norberto E. Pangelinan Civil Action No. 15-0169, Superior Court from John Pangelinan (Date: June 17, 2016); (8) IMO Estate of Norberto Eduardo Pangelinan, No. 15-0169-CV (NMI Sup. Ct. Sept. 20, 2016) (Order of Hon. Joseph Camacho Denying Motion, Claim and Petition of John S. Pangelinan, and Granting Estate's Motion to Dismiss Demands of John S. Pangelinan); (9) Order from the United States District Court for the Northern Mariana Islands Finding and Declaring John Sablan Pangelinan to be a Vexatious Litigant; (10) Affidavit signed by Juan SN. Pangelinan; (11) the Confirmation Deed between Plaintiffs and Pedro Kileleman; and (12) a copy of John Sablan Pangelinan's birth certificate.

Based on the sworn testimonies of the witnesses and exhibits admitted during the bench trial, the Court makes the following Order concerning the Abuse of Process and Tortious Interference with the Plaintiffs' Contractual Relationship with Peak Development in the case captioned *Estate of Pangelinan*, Civ. No. 15-0169 (NMI Super. Court) (the "Probate Action").

by Grant Deeds dated August 17, 1989, conveyed the above referenced lots to his son, *Norberto Eduardo Pangelinan*, said deeds being properly recorded with the Commonwealth Recorder on August 22, 1989;

A. That I have no interest or claim to any of the above referenced lots and

4. That I have no interest or claim to any of the above referenced lots and recognize that Norberto Eduardo Pangelinan is the true and lawful owner.

Exhibit 13 (emphasis added).

- 12. John was privy to and had personal knowledge of Juan San Nicolas Pangelinan's signing of the affidavit.
- 13. On July 23, 2015, twenty-six years after Juan San Nicolas Pangelinan's affidavit was signed, Norberto signed the agreement to lease the Tanapag Properties to Peak Development (CNMI) LLC ("Peak Development").
- 14. The proposed lease expressed a desire by Peak Development "to acquire a 55-year leasehold in [the Tanapag Properties]" for \$3.2 million.
- 15. On August 14, 2015, three weeks after Norberto signed the lease, Norberto died.
- 16. On August 15, 2015, one day after Norberto's death, Lingli Cai, Peak Development's operating manager, signed the agreement to lease ("the Proposed Contract"). This signing did not validate the Proposed Contract because Norberto's death terminated the contractual relations between himself and Peak Development. Restatement (Second) of Contracts § 48 ("An offeree's power of acceptance is terminated when the offeree or offeror dies or is deprived of legal capacity to enter into the proposed contract.").<sup>3</sup>
- 17. On September 23, 2015, one month after Norberto's death, Plaintiffs and Peak Development entered into a Confirmation Deed. The Confirmation Deed stated that

<sup>&</sup>lt;sup>3</sup> "In all proceedings, the rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed as generally understood and applied in the United States, shall be the rules of decision in the courts of the Commonwealth, in the absence of written law or local customary law to the contrary [....]." 7 CMC § 3401.

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the Tanapag Properties "shall be sold to [Peak Development] by [Plaintiffs in fee simple] on the same terms and for the same consideration as Norberto agreed to sell the property to [Peak Development.]" Ex. A.1-A.6.<sup>4</sup> The Confirmation Deed also stated that "[Plaintiffs] shall open a probate for Norberto and seek probate court approval for the sale, and probate court approval for the distribution of the sales proceeds to themselves." *Id.* 

- 18. After the signing of the Confirmation Deed, Peak Development developed the Tanapag Properties.<sup>5</sup>
- 19. On October 14, 2015, two months after Norberto's death, Secundina initiated the Probate Action to finalize the pending land transactions. See Estate of Pangelinan, Civ. No. 15-0169 (NMI Super. Court).
- 20. After the initiation of the Probate Action, John, one of Norberto's many cousins, challenged Norberto's title to the Tanapag Properties on the basis that Norberto was allegedly not a Person of Northern Marianas Descent.
- 21. John initiated his Probate Action challenge despite knowing about his father's, Juan San Nicolas Pangelinan's, affidavit.
- 22. In a letter dated June 17, 2016, John wrote to Secundina and Selina to convince them to agree to John's terms ("John's Letter"). John's Letter stated:

#### Dear Attorney King:

The motion I filed is scheduled to be heard sometime in the first half of August, 2016. It is styled, "Motion of John S. Pangelinan Relating

<sup>&</sup>lt;sup>4</sup> The Confirmation Deed was officially between Plaintiffs and Pedro Kileleman, who acted on behalf of Peak Development, because, though Norberto sought to lease the Tanapag Properties to Peak Development, Plaintiffs sought to sell the Tanapag Properties in fee simple. Therefore, the Confirmation Deed needed to be between Peak Development's agent because Peak Development is not a person of Northern Marianas Descent. See NMI

CONST. art. XII, § 5. <sup>5</sup> Peak Development's improvement and development of the Tanapag Properties was specified by the

Confirmation Deed. Exhibit A.1-A.6 ("[Plaintiffs] grant [Peak Development] immediate and unrestricted access to and possession of the [Tanapag Properties] so that [Peak Development] can begin development of the [Tanapag Properties] immediately.").

to Determining Decedent's immediate issue on Whether or Not She Is a Northern Marianas Descent." The "Issue" here is Selina U. Pangelinan (Selina), the Decedent's daughter and only child. Opposition to the motion by Selina personally must be filed, I believe, no later than four weeks from now. She must be represented by an attorney other than you—you are the attorney for the administratrix who both get paid out of the Estate for services rendered, and thus you would be in a conflict to represent her.

But this would be added financial burden on Selina who, if she fails to file an opposition on time, might just inadvertently waive her procedural rights and thereby guaranteeing me an outright grant of the relief my motion seeks. As you know, I have also filed the "Petition of John S. Pangelinan for Partial Final Distribution," which might just require her too to file an opposition and assistance of an attorney. Furthermore, *it might get worse* because I am prepared to go all the way until all avenues are exhausted if the judge should decide against me. *You are very much aware that judicial matters have a mind of its own and the wheels of justice turn oh-so very slowly and costly*.

However, because of the irrefutable set of facts supporting my motion, and the circumstances surrounding my petition, I do not see how I will not prevail. And, when the judge finds in my favor, it will be a Pandora's Box opened against the Decedent's family who made warranties in the land-sale contract the Decedent made before he passed away, and because of potential, other "next closest heirs" of the Decedent who might enter the picture compounding their warranties situation.

So for all the above reasons and to alleviate the family's burden, I propose we all enter into an agreement pursuant to 8 CMC § 2408, with Selina accepting that her father (Decedent) was a person not of Northern Marianas descent (non-NMD) and neither is she, and agree to distribute the lands of the Estate in either one of two ways allowed by the Constitution: (1) Selina's mother (Secundina U. Pangelinan) takes a life estate with *me taking* the remainder or reversion, whichever it might be—the Constitution, although she is a non-NMD, allows her to inherit freehold interests (a life estate under the Probate Code relating to Ancestors' lands) if issue is non-NMD; or (2) Selina takes the remaining 28 years of the 55 years the Decedent took pursuant to 8 CMC § 2411 and *I take* the reversionary interest beginning August 17, 2044 (exactly 55 years from the date the Decedent got his deeds from his father, Candido S Pangelinan). [6]

For your information, every week I check the log book at the Commonwealth Recorder's Office regarding land sales and I notice that Best Sunshine International Limited (BSI) has been acquiring substantial

<sup>&</sup>lt;sup>6</sup> John claimed that he and he alone should receive sole ownership of the Tanapag Properties, notwithstanding the fact that Norberto has other cousins who would be entitled to a share of the Tanapag Properties if the title of Norberto's properties were to hypothetically revert to Norberto's ancestors. 8 CMC § 2912 ("Intestacy for Those Not of Northern Marianas Descent"). John's desire to exclude Norberto's wife Secundina and daughter Selina as well as any other Pangelinan family member in his goal to be the sole beneficiary of the money from the Tanapag properties conflicts with and is contrary to John's knowledge that his own father Juan San Nicolas Pangelinan acknowledge in a sworn affidavit that Candido rightfully inherited the Tanapag Properties is further evidence of John's meritless claim filed in the Probate Action.

number of sizeable properties. The Decedent's family must know that, from a business perspective, if BSI acquires enough land for its needs it might just reneged on its land-sale contract with the Decedent and demand for the return of the substantial deposit already paid to him from his family who provided too[sic] written warranties to BSI. Thus, time is of the essence to avoiding any reneging by BSI which the Decedent's family must seriously take into account.

Please convey this letter to Administratrix Pangelinan and Selina her daughter for their consideration. I will appreciate it if I do get a response in two weeks time.

(emphasis added).

- 23. Had Plaintiffs acquiesced to the demands in John's Letter, they would have been forced to breach the Confirmation Deed because Plaintiffs would be unable to sell the Tanapag Properties in fee simple.
- 24. John's Letter was not an idle threat. John is very familiar with court proceedings and is knowledgeable about how to clog-up the Court's docket. John has been declared a vexatious litigant in United States District Court for the Northern Mariana Islands. Ex. 12.
- 25. One way John made good on his threats in John's Letter was that, throughout the proceedings, he intentionally made himself unavailable to be personally served by Plaintiffs. In the Probate Action, John would file motions and other filings and serve the counsel for the Estate, Attorney Janet King, but refused to sign up to the Court's e-filing system or be served by email. Therefore, Attorney King's office staff was forced to personally serve a response or opposition to John's motions and other filings. However, John would dodge service in a blatant attempt to run out the clock or cause a deadline to expire. John's tactics of dodging service and/or refusing to sign up for the Court's e-filing or service by email continued into CV 17-0067. As a result of John's tactics, the Court in CV-17-0067 was forced to issue an Order on June 8, 2017

mandating that Defendant John Sablan Pangelinan shall be served via the pro se box at the Clerk of Court.<sup>7</sup>

- 26. John also stalled the settlement talks by requesting almost the full amount of the Confirmation Deed between Plaintiffs and Peak Development to satisfy his claim. John made this request despite the fact that the Confirmation Deed was between Plaintiffs and Peak Development. Therefore, even if all of the land reverted to John, John would not be entitled to any of the money in the Confirmation Deed.
- 27. Despite John's assertions that the facts support his claims, the Superior Court for the Commonwealth of the Northern Mariana Islands ("Superior Court") found in *IMO Estate of Norberto Eduardo Pangelinan*, No. 15-0169-CV (NMI Sup. Ct. Sept. 20, 2016) (Order of Hon. Joseph Camacho Denying Motion, Claim and Petition of John S. Pangelinan, and Granting Estate's Motion to Dismiss Demands of John S. Pangelinan), that Norberto and his daughter Selina are People of Northern Marianas Decent and that John had no claim to the properties of Norberto's Estate.
- 28. On December 19, 2016, the Superior Court issued its Order Determining Heirs and Approving the Lease and Sell of Real Property, in which it approved of the lease and sell of the Tanapag Properties between Estate of Norberto and Peak Development for the total price of \$3.2 million ("the Final Contract"). *See IMO Estate of Norberto Eduardo Pangelinan*, No. 15-0169-CV (NMI Sup. Ct. Dec. 19, 2016) (Order Determining Heirs and Approving the Lease and Sale [sic] of Real Property).
- 29. On December 19, 2016, the Superior Court also issued its Decree of Final Distribution in which the Court noted that Plaintiffs are the only heirs to Norberto's Estate. *IMO*

 $<sup>^7</sup>$  See also In re Estate of Pangelinan, 2019 MP 12  $\P$  6; In re Estate of Pangelinan, 2018 MP 6  $\P$  6.

- Estate of Norberto Eduardo Pangelinan, No. 15-0169-CV (NMI Sup. Ct. Dec. 19, 2016) (Decree of Final Distribution).
- 30. On December 19, 2016, the Superior Court also denied two of John's Motions for Reconsiderations. *IMO Estate of Norberto Eduardo Pangelinan*, No. 15-0169-CV (NMI Sup. Ct. Dec. 19, 2016) (Order of the Hon. Joseph Camacho Denying John S. Pangelinan's Motion for Reconsideration).
- 31. John filed a total of almost five hundred (500) pages of frivolous motions, declarations, objections, petitions, and claims throughout the Probate Action.<sup>8</sup> *See generally Estate of Pangelinan*, Civ. No. 15-0169 (NMI Sup. Ct).
- 32. On January 17, 2017, John appealed the Superior Court's following rulings in the Probate Action ("John's Appeal"):
  - a. *IMO Estate of Norberto Eduardo Pangelinan*, No. 15-0169-CV (NMI Sup.
     Ct. Sept. 20, 2016) (Order of Hon. Joseph Camacho Denying Motion, Claim and Petition of John S. Pangelinan, and Granting Estate's Motion to Dismiss Demands of John S. Pangelinan).
  - b. The Court's September 23, 2016, Order Setting Motions Hearing; Parties Are
     To Contact Court Staff and Request for Hearing Dates; Documents Filed Must
     Be Single-Page.
  - c. The Court's October 28, 2016, Order Setting Motions Hearing.
  - d. The Court's November 9, 2016, Order Setting Motion Hearing.

<sup>&</sup>lt;sup>8</sup> Per his modus operandi to cause a delay, Defendant John Sablan Pangelinan also filed hundreds of pages of motions, declarations, objections, petitions, and counterclaims in this case, CV 17-0067. *See also* Ex.12. John Sablan Pangelinan has been declared a vexatious litigant in United States District Court for the Northern Mariana Islands.

- e. The Court's November 15, 2016, Notice of Hearing On Petition for Final Distribution
- f. The Court's November 15, 2016, Notice of Hearing on Motion to Determine Heirs and Approve the Lease and Sale [sic] of Real Property.
- g. The Court's November 22, 2016, Order Denying John's [Proposed] Order Granting Motion to Hear Notice and Amended Petition of John S. Pangelinan For Partial Final Distribution on Shortened Time.
- h. The Court's November 25, 2016, Order Setting Motion Hearing.
- The Court's December 06, 2016, Order Setting Motions Hearings; Parties Are to Contact Court Staff and Request for Hearing Dates.
- j. The Court's December 14, 2016, Order Setting Motions Hearing; Parties Are to Contact Court Staff and Request for Hearing Dates.
- k. *IMO Estate of Norberto Eduardo Pangelinan*, No. 15-0169-CV (NMI Sup. Ct. Dec. 19, 2016) (Order of the Hon. Joseph Camacho Denying John S. Pangelinan's Motion for Reconsideration).
- IMO Estate of Norberto Eduardo Pangelinan, No. 15-0169-CV (NMI Sup. Ct. Dec. 19, 2016) (Order Determining Heirs and Approving the Lease and Sale [sic] of Real Property).
- m. *IMO Estate of Norberto Eduardo Pangelinan*, No. 15-0169-CV (NMI Sup.Ct. Dec. 19, 2016) (Decree of Final Distribution).
- 33. John's Appeal is currently pending as *In re the Estate of Norberto Eduardo Pangelinan*, (consolidated w/2017-SCC-0011-CIV) (Superior Court Civil Action No. 15-0169).
- 34. Because of John's Appeal, the Final Contract between Plaintiffs and Peak Development has not been performed.

- 35. On March 8, 2017, Plaintiffs filed this Civil Action, No. 17-0067, in the Superior Court.
- 36. The Court finds that Secundina's testimony during the December 2019 Bench Trial was credible.
  - a. Secundina testified that she is 80 years old and Norberto was her husband.
  - Secundina testified that the money from the Tanapag Properties would greatly benefit her daughter Selina and young granddaughter currently residing in California.
  - c. Secundina testified that John's interference in the Probate Action prevented an expeditious conclusion of the contract with Peak Development and that the interference caused her emotional distress. The Court observed that Secundina was visibly distressed at the trial.<sup>9</sup>
- 37. The Court finds that Selina's testimony during the December 2019 bench trial was credible.
  - a. Selina testified that the stress caused by John's actions in the Probate Action, which she equated to harassment and abuse, have taken a toll on her and her mother's health. Particularly, Selina testified that the stress caused her mother to lose weight and experience sleep deprivation. Selina openly cried in Court when describing the hardship that she and her mother have gone through due to John's actions.

<sup>&</sup>lt;sup>9</sup> Generally, an uncontested probate action can be initiated and concluded in about 90 days. The Probate Action *IMO Estate of Norberto Eduardo Pangelinan*, No. 15-0169-CV, commenced in 2015 and, because of John's interference, took over two years to reach the final distribution. John then appealed the Court's rulings in 2017. *See In re the Estate of Norberto Eduardo Pangelinan*, (consolidated w/2017-SCC-0011-CIV). As of the time of this Order, because of John's appeal pending before the Supreme Court of the Commonwealth of the Northern Mariana Islands, Plaintiffs have not been able to fully conclude Norberto's Estate and distribute the money.

- b. Selina testified that the money would help her and especially her teenage daughter who has some health issues.
- c. Selina testified that John interfered with the Confirmation Deed.
- 38. The Court finds that John's testimony during the December 2019 bench trial was not credible because his answers to the questions asked of him were evasive, circular in reasoning, and a re-hash of the Probate Action claims that Norberto and Selina are not people of Northern Marianas Descent, which the Court denied in *IMO Estate of Norberto Eduardo Pangelinan*, No. 15-0169-CV (NMI Sup. Ct. Sept. 20, 2016) (Order of Hon. Joseph Camacho Denying Motion, Claim and Petition of John S. Pangelinan, and Granting Estate's Motion to Dismiss Demands of John S. Pangelinan) and *IMO Estate of Norberto Eduardo Pangelinan*, No. 15-0169-CV (NMI Sup. Ct. Dec. 19, 2016) (Decree of Final Distribution).
  - a. John testified that his grandfather Jose Wilson Pangelinan was born in Guam in 1874 and came to Saipan around 1905. He resided on Saipan until his death in 1952. John testified that because Jose Wilson Pangelinan did not live to see the Northern Mariana Islands become a formal Trust Territory of the Pacific Islands in 1966 and allegedly became of citizen of the United States through the passage of the Guam Organic Act of 1950, Jose Wilson Pangelinan could not be a Person of Northern Mariana Descent.<sup>10</sup>

<sup>&</sup>lt;sup>10</sup> "A person of Northern Marianas descent is a person who is a citizen or national of the United States and who has at least some degree of Northern Marianas Chamorro or Northern Marianas Carolinian blood or a combination thereof. [...] For purposes of determining Northern Marianas descent, a person shall be considered to be a full-blooded Northern Marianas Chamorro or Northern Marianas Carolinian if that person was born or domiciled in the Northern Mariana Islands by 1950 and was a citizen of the Trust Territory of the Pacific Islands before the termination of the Trusteeship with respect to the Commonwealth." NMI CONST. art. XII, § 4. The Court had already determined that Jose Wilson Pangelinan was a Person of Northern Marianas Descent in the Probate Action.

- b. Additionally, John also testified that Candido Pangelinan, one of the sons of Jose Wilson Pangelinan, was not a person of Northern Marianas Descent as he inherited his alleged United States citizenship through his father.<sup>11</sup>
- c. Because Candido Pangilinan is, allegedly, not a Person of Northern Island Descent, John testified that Candido's son, Norberto, and Candido's granddaughter, Plaintiff Selina, are also not People of Northern Marianas Descent and cannot own the Tanapag Properties in fee simple.
- d. John also testified that because Plaintiff Selina cannot hold the Tanapag Properties in fee simple, she should not be able to sell the Tanapag Properties in fee simple to Peak Development.<sup>12</sup>
- e. Instead, John testified that all of the Tanapag Properties should revert to him and him alone, and not to any of John's other blood relatives, because only he (John) initiated his challenge in the Probate Action.
- f. Because John stated that all of the Tanapag Properties should go to him, he also stated that he is entitled to the money from the Final Contract. John testified that he (John) was willing to keep the majority of the \$3.2 million dollars in escrow and to give Secundina and Selina a small amount, perhaps about \$100,000, if Secundina and Selina agree to settle the matter.
- g. John testified that Secundina and Selina should accept his offer before Peak
   Development tires of waiting and reneges on the whole land lease agreement.

<sup>&</sup>lt;sup>11</sup> Jose Wilson Pangelinan is also the father of Juan San Nicolas Pangelinan. Juan San Nicolas Pangelinan is the father of Defendant John Sablan Pangelinan.

<sup>&</sup>lt;sup>12</sup> This argument contradicts John's other argument that he could not have tortuously interfered with Plaintiffs' contracts because the Tanapag Properties were allegedly already sold by the time the interference occurred. As the Court stated above, the Tanapag Properties were not already sold at the time the interference occurred because Norberto's death voided the Proposed Contract.

# h. John testified that he knew about the notarized affidavit written by his father, Juan San Nicolas Pangelinan, that stated that Norberto, one of his cousins, inherited the Tanapag Properties from Norberto's father, Candido Pangelinan, and "is the true and lawful owner" of the Tanapag Properties.

39. During the Probate Action, Attorney Janet Han King, as counsel for the Estate of Norberto, had to review and respond to almost five-hundred pages of claims, motions, declarations and other filings by John. As of December 2016, the Estate of Norberto paid over \$10,000 to Attorney Janet Han King. *See IMO Estate of Norberto Eduardo Pangelinan*, No. 15-0169-CV (NMI Sup. Ct. Dec. 19, 2016).

#### III. <u>CONCLUSIONS OF LAW</u>

#### A. Abuse of Process

Pursuant to the *Restatement (Second) of Torts*, Section 682, "[o]ne who uses a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed, is subject to liability to the other for harm caused by the abuse of process." Restatement (Second) of Torts § 682. The tort of "abuse of process" is only one of several mechanisms the law provides to ensure proper and efficient use of the judicial system. Other such mechanisms include: the Restatement (Second) of Torts, Section 674 (Wrongful Use of Civil Proceedings); Rule 11 of the Commonwealth Rules of Civil Procedure (Representations to the Court; Sanctions); and 7 CMC § 2454 (Vexatious Litigation). Here,

<sup>13</sup> See Mitchell v. Estate of Hillblom, 1997 MP 30; Waibel v. Farber, 2006 MP 15; see also In re Larsen, 532 Pa. 326, 452 (1992) (stating that abuse of process "differs from malicious prosecution in that the gist of the tort is

not commencing an action or causing process to issue without justification, but misusing, or misapplying process

justified in itself for an end other than that which it was designed to accomplish." (citation omitted)).

<sup>&</sup>lt;sup>14</sup> NMI R. CIV. P. 11(b) ("By presenting to the court [...] [a] written motion [...] an attorney or unrepresented party is certifying [...]: (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) the claims, defenses, and other legal contentions are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law; (3) the factual contentions have evidentiary support or, if specifically

Plaintiffs filed a claim for abuse of process. Therefore, the Court will confine its analysis to that issue.

As stated above, a defendant is liable for abuse of process when he or she (1) uses a legal process against another, (2) primarily to accomplish a purpose for which it is not designed. Restatement (Second) of Torts § 682. "An improper use of the legal process occurs when a particular procedural tool is used in an attempt to accomplish a result which that tool, when properly used, could not provide." *Pinon Sun Condo. Ass'n, Inc. v. Atain Specialty Ins. Co.*, 2019 U.S. Dist. LEXIS 4038, at \*22 (D. Colo. Jan. 9, 2019). Such improper use of the legal system "usually takes the form of coercion to obtain a *collateral advantage*, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or a club." Prosser, *Torts* (4th ed.), § 121, p. 857) (emphasis added).

For abuse of process to occur there must be use of the process for an immediate purpose other than that for which it was designed and intended. The usual case of abuse of process is one of some form of extortion, using the process to put pressure upon the other to compel him to pay a different debt or to take some other action or refrain from it.

Restatement (Second) of Torts § 682 cmt. b. "For example, a party engages in abuse of process when he files liens against his adversary, not because the filer claims an interest in the property, but to compel the adversary to concede a child custody proceeding." *Pinon Sun Condo. Ass'n, Inc.*, 2019 U.S. Dist. LEXIS 4038, at \*17 (citation omitted).

Several courts have found that parties that use the legal process to harass opposing parties and cause their opponents to expend excessive legal fees accomplish a purpose for which the legal process was not designed. *See Young v. Allstate Ins. Co.*, 119 Haw. 403, 414

so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.").

(2008) (finding the employment of "scorched earth litigation tactics" to punish opposing parties is patently illegitimate); Shiner v. Moriarty, 706 A.2d 1228, 1236 (Pa. Super. Ct. 1998) ("Pursuing litigation primarily to harass and cause injury to the adverse party [...] constitutes a sufficient perversion of the process employed here to support a common law claim of abuse of process." (citations omitted)); Nienstedt v. Wetzel, 133 Ariz. 348, 354 (1982) (stating that the purpose of "expos[ing] the injured party to excessive attorney's fees and legal expenses" may support an abuse of process claim). However, because of the "primary" requirement, it is not enough for a plaintiff to have an *incidental* ulterior purpose to harm the defendant. Restatement (Second) of Torts § 682 cmt. b. ("The significance of [the word "primarily"] is that there is no action for abuse of process when the process is used for the purpose for which it is intended, but there is an incidental motive of spite or an ulterior purpose of benefit to the defendant."). 15 Therefore, the claimant must show that the alleged abuser of process acted **primarily** to harass the opposing party and cause the expenditure of excessive fees. *Gen.* Refractories Co. v. Fireman's Fund Ins. Co., 337 F.3d 297, 308 (3d Cir. 2003) (finding that "abuse of process in the civil discovery context may lie when (1) the party who employs the process of a court specifically and *primarily* intends to increase the burden and expense of litigation to the other side; and (2) the use of that process cannot otherwise be said to be for the legitimate or reasonably justifiable purposes of advancing [the party's] interests in the ongoing litigation" (quoting Givens v. Mullikin ex rel. Estate of McElwaney, 75 S.W.3d 383, 402 (Tenn. 2002) (emphasis in original)); see also Young, 119 Haw. at 414.; Pundzak, Inc. v. Cook, 500 N.W.2d 424, 430 (Iowa 1993).

Here, John filed his claim in the Probate Action to challenge Norberto's title to the Tanapag Properties. At first glance, this seems to be a legitimate use of the legal process

<sup>&</sup>lt;sup>15</sup> It is not enough the person bringing the lawsuit has a spite motive if "the process is used immediately only for the purpose for which it was designed and intended." Restatement (Second) of Torts § 682.

because a person in the Commonwealth has the right to use the legal process to prove their ownership of a particular piece of land. However, after examining the admitted exhibits and taking into account the testimonies at trial, the Court finds that John interfered in the Probate Action primarily to harass Plaintiffs and cause them to expend excessive legal fees. The Court finds that, though John may have been acting with the intention to obtain the Tanapag Properties when he first wrote John's Letter, John's intentions changed after Plaintiffs denied the demands in the John's Letter. John became spiteful and used the judicial proceeding as a means to get back at Plaintiffs. John revealed his purpose to use the judicial process to harass and financially harm plaintiffs by his actions.

One such example was John's act of dodging service of process by Plaintiffs in the Probate Action, even though John initiated the challenge in the Probate Action. As stated above, John would file motions and other filings and serve the counsel for the Estate, Attorney Janet King, but refused to sign up to the Court's e-filing system or be served by email. However, John would dodge service in a blatant attempt to run out the clock or cause a deadline to expire whenever Attorney Janet King attempted to serve him with a responsive pleading or motion. If John intended on using the judicial process to obtain the title to land that he truly believed was rightfully his, John would have no reason to avoid process because he would want the proceedings to conclude in a timely manner. John's act of intentionally avoiding being served by the opposing parties, in his own land claim, served no purpose—other than the illegitimate purpose of harassing Plaintiffs and causing them emotional distress. <sup>16</sup>

<sup>&</sup>lt;sup>16</sup> John's tactics of dodging service and/or refusing to sign up for the Court's e-filing or service by email continued into CV 17-0067. As a result of John's behavior, the Court in CV- 17-0067 was forced to issue an Order on June 8, 2017 mandating that Defendant John Sablan Pangelinan shall be served via the pro se box at the Clerk of Court. *See also In re Estate of Pangelinan*, 2019 MP 12 ¶ 6; *In re Estate of Pangelinan*, 2018 MP 6 ¶ 6.

John also showed his primary desire to cause Plaintiffs to expend legal fees by filing almost five hundred (500) pages of frivolous filings, all of which the Court denied. The filings often contained rehashed arguments of claims that the Court had already denied in a previous motion. Had John wanted an expedited resolution of the Probate Action, John would not have wasted so much time making repetitive arguments.<sup>17</sup>

Additionally, John prolonged the settlement talks by requesting almost the full amount of the Confirmation Deed between Plaintiffs and Peak Development to satisfy his claim—an amount that had no relation to the value of the Tanapag Properties at the time of John's Letter. The Confirmation Deed was between Plaintiffs and Peak Development. Even if the Court found that the Tanapag Properties should revert to John, Peak Development would not be obligated to do business with John. Because John put forth baseless settlement demands, Plaintiffs reasonably rejected John's offers and the case dragged on. This shows that John had no desire to use the judicial process to seek legitimate ends, but instead desired to financially burden Plaintiffs by prolonging the litigation. This use of litigation, as a club to force Plaintiffs to pay monetary fees that are collateral to the land ownership issue being litigated, is the type of practice that the tort of abuse of process was designed to prevent. *See e.g.*, *Young v. Allstate Ins. Co.*, 119 Haw. 403, 414 (2008).

The Court also finds that John's argument that he did not abuse the process is undercut by his other argument that the Tanapag Properties were sold prior to John's Letter. If John genuinely believed that the Tanapag Properties were already sold to Peak Development prior to the initiation of the Probate Action John would have no grounds to seek the Tanapag

<sup>&</sup>lt;sup>17</sup> Per his modus operandi to cause a delay, Defendant John Sablan Pangelinan also filed hundreds of pages of motions, declarations, objections, petitions, and counterclaims in this case, CV 17-0067. *See also* Ex.12. John Sablan Pangelinan has been declared a vexatious litigant in United States District Court for the Northern Mariana Islands.

Properties in the Probate Action. Instead, John would be forced to bring a civil action against Peak Development. This shows that John brought his suit in the Probate Action primarily to harass Plaintiffs and to cause them to pay additional legal expenses and face financial hardship.<sup>18</sup>

Finally, the Court also finds that John knew that his claim in the Probate Action was meritless. As stated above, John's own father, Juan San Nicolas Pangelinan, stated in a notarized affidavit that Norberto inherited the Tanapag Properties from Norberto's father and "is the true and lawful owner" of the Tanapag Properties. John testified at the bench trial that he knew about his father's affidavit. Additionally, assuming arguendo that the Court were to agree with John's argument that Norberto and his daughter Selina are not persons of Northern Marianas Descent, 19 the title of the Tanapag Properties would not, as John argues, revert to John alone. Instead, the title would revert to all of Norberto's blood relatives. If John truly believed that Norberto and Selina were not persons of Northern Marianas Descent and initiated his challenge in the Probate Action to protect a valid property interest, John would have accepted that his other cousins were entitled to inherit an equal portion of the Tanapag Properties. Therefore, all of the above taken together proves by a preponderance of the evidence that John knew that he had no legitimate claim to the Tanapag Properties. This is relevant to the Court's conclusion concerning the abuse to process issue because it is

<sup>&</sup>lt;sup>18</sup> John foreshadowed his primary desire to harass Plaintiffs and cause them financial hardships in John's Letter. In John's Letter, John stated that "time is of the essence" because Plaintiffs "must know that, from a business perspective, if [Peak Development] acquires enough land for its needs it might just renege on its land-sale contract with the Decedent [Norberto] and demand for the return of the substantial deposit already paid to him from his family who provided too [sic] written warranties to [Peak Development]." John also stated in his letter that "it might get worse" if Plaintiffs continue denying John's claim and that "[Plaintiffs] are very much aware that judicial matters have a mind of its own and the wheels of justice turn oh-so slowly and costly[.]" These are clear threats to use litigation as a club.

<sup>&</sup>lt;sup>19</sup> As stated above, the Superior Court in the Probate Action rejected John's claims. The Court ruled in the Probate Action that Norberto and Selina were People of Northern Marianas Descent.

additional evidence that John used the judicial process primarily to accomplish a purpose for which it is not designed.

For the above reasons, the Court finds that Plaintiffs Secundina Untalan Pangelinan and Selina Marie Pangelinan have proven by a preponderance of the evidence that Defendant John Sablan Pangelinan abused the judicial process.<sup>20</sup>

#### **B.** Tortious Interference with Contractual Relations

The Restatement (Second) of Torts articulates several methods in which a defendant can tortuously interfere with the contractual relations of another. Here, the Court will focus on two of them—Restatement (Second) of Torts §§ 766 and 766A.

#### **Tortious Interference with Contractual Relations under 766**

Pursuant to Restatement (Second) of Torts Section 766:

One who *intentionally* and *improperly* interferes with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise causing the third person *not to perform the contract*, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract.

Restatement (Second) of Torts § 766 (emphasis added); *see also Del Rosario v. Camacho*, 2001 MP 3 ¶ 104 ("One who intentionally and improperly interferes with the performance of a contract between two parties, by inducing or otherwise causing a contracting party not to perform the contract, is liable for resulting loss to the other contracting party."); *Lucky Dev. Co., Ltd. v. Tokai U.S.A., Inc.*, 3 NMI 79, 93-94 (1992).

The phrase "not to perform the contract" means that for a party to succeed in a Section 766 claim, the claimant must show that the contract was breached. A showing that the performance was merely delayed or costlier is insufficient. *See Windsor Secur.*, *Inc. v. Hartford Life Ins. Co.*, 986 F.2d 655, 660 (3d Cir. 1993) (stating that Section 766 addresses

<sup>&</sup>lt;sup>20</sup> The Court is cognizant that the filing of an unsuccessful land claim challenge in a probate action does not in and of itself necessarily mean that the land claim challenge is an abuse of process.

disruptions where "the defendant causes the promisor to *breach* its contract with the plaintiff" (emphasis added)).

Here, as stated above, there were two contracts between Plaintiffs and Peak Development. The first contract was the Confirmation Deed and the second was the Final Contract the Court approved in the Court's December 19, 2016, Order titled, "Order Determining Heirs and Approving the Lease and Sale [sic] of Real Property." *IMO Estate of Norberto Eduardo Pangelinan*, No. 15-0169-CV (NMI Sup. Ct. Dec. 19, 2016) (Order Determining Heirs and Approving the Lease and Sale [sic] of Real Property) ("The lease of the [Tanapag Properties] including all improvements thereon for the total price of \$3.2 million to Peak Development (CNMI), LLC for a term of 55-years, and the transfer of title in fee simple absolute for the price of \$10 to Pedro Kileleman are hereby approved."). However, Plaintiffs failed to show that there was a breach in either of the two contracts between Plaintiffs and Peak Development and that John's interference caused Peak Development to effectuate the breach. Therefore, Plaintiffs cannot rely on Section 766 for their tortious interference of a contract claim.

Therefore, the Court will next analyze the tortious interference with contractual relations claim using Section 766A.

#### **Tortious Interference with Contractual Relations under Section 766A**

Section 766A states:

One who *intentionally* and *improperly* interferes with the performance of a contract (except a contract to marry) between another and a third person, by preventing the other from performing the contract *or causing his performance to be more expensive or burdensome*, is subject to liability to the other for the pecuniary loss resulting to him.

Restatement (Second) of Torts § 766A (emphasis added)). The primary difference between Section 766 and Section 766A is that Section 766 focuses on the interferer's actions towards a third party that causes said third party to breach their contract with the plaintiff, but Section

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<sup>&</sup>lt;sup>21</sup> See Windsor Secur., Inc. v. Hartford Life Ins. Co., 986 F.2d 655, 660 (3d Cir. 1993) ("Section 766 addresses disruptions caused by an act directed not at the plaintiff, but at a third person: the defendant causes the promisor to breach its contract with the plaintiff. Section 766A addresses disruptions caused by an act directed at the plaintiff: the defendant prevents or impedes the plaintiff's own performance."); Wilspec Techs., Inc. v. Dunan Holding Grp. Co., 2009 OK 12, ¶ 10 ("The core distinction between the torts described in section 766 and section 766A is to whom the defendant's conduct is targeted. Section 766 focuses on conduct directed at a third party which induces the third party to breach his contract with the plaintiff. Section 766A on the other hand, is concerned with conduct targeted at the plaintiff which hinders plaintiff's own performance or renders plaintiff's performance more burdensome or costly.").

and such interference was (2) intentional and (3) improper. Restatement (Second) of Torts § 766A.

For the reasons stated below, the Court finds that Plaintiffs have proven their burden by a preponderance of the evidence under Section 766A that John tortuously interfered with Plaintiffs' contract with Peak Development.

1. Interference with a Contract That Makes Performance of the Final Contract More Burdensome or Costlier

The Court finds that John interfered in the contractual relations between Plaintiffs and Peak Development in a manner that caused Plaintiffs' performance of their contracts with Peak Development to be more expensive and burdensome. *See Wilspec Techs.*, *Inc.*, 2009 OK 12 ¶ 10 ("Additionally unlike section 766, section 766A does not require a breach or nonperformance for liability to attach.").

As stated above, on September 23, 2015, Plaintiffs and Peak Development entered into a Confirmation Deed in which Plaintiffs promised to sell the Tanapag Properties in fee simple to Peak Development "on the same terms and for the same consideration as Norberto agreed to sell the property to [Peak Development.]" Ex. A.1-A.6. The Confirmation Deed also stated that "[Plaintiffs] shall open a probate for Norberto and seek probate court approval for the sale [sic], and probate court approval for the distribution of the sales proceeds to themselves." However, the Probate Action, which was filed in 2015, took two (2) years to conclude at the trial court level. John filed John's Appeal in 2017 and three (3) years later it is still pending before the Supreme Court of the Commonwealth of the Northern Mariana Islands ("Supreme Court"). The numerous filings and court appearances, both at the trial court and Supreme Court levels, have taken a financial toll on Plaintiffs. Therefore, by interfering in the Probate Action, John has made Plaintiffs' performance of the Confirmation

Deed costlier because Plaintiffs were forced to expend legal fees defending against John's assertions.<sup>22</sup>

Furthermore, Plaintiffs cannot proceed with their performance of the Final Contract—
to turn over the Tanapag Properties to Peak Development—as long as John's Appeal is
pending and Plaintiffs must expend additional legal expenses that they would not have
otherwise been obligated to pay to litigate John's Appeal.

Therefore, the Court finds that John interfered with the Confirmation Deed and the Final Contract between Plaintiffs and Peak Development and that John's interference made Plaintiffs' performance of the Confirmation Deed and the Final Contract to be more expensive and burdensome.

#### 2. "Intentional" Interference

The interference with another's performance of their contract is intentional if "the actor *desires* to bring it about or if he *knows* that the interference is certain or substantially certain to occur as a result of his action." Restatement (Second) of Torts § 766A cmt. e; *see also* Restatement (Second) of Torts § 8A ("The word 'intent' is used throughout the Restatement of this Subject to denote that the actor *desires* to cause consequences of his act, or that he *believes* that the consequences are substantially certain to result from it." (emphasis added)).<sup>23</sup>

Here, the Court finds that John's interference was "intentional."

<sup>&</sup>lt;sup>22</sup> On December 19, 2019, the Estate paid over \$10,000 to Attorney Janet Han King as she had to review and respond to almost five-hundred pages of John's claims, motions, etc. *See IMO Estate of Norberto Eduardo Pangelinan*, No. 15-0169-CV (NMI Sup. Ct. Dec. 19, 2016).

<sup>&</sup>lt;sup>23</sup> See also Restatement (Second) of Torts § 766 cmt. j ("The rule stated in this Section is applicable if the actor acts for the *primary purpose* of interfering with the performance of the contract, and also if he desires to interfere, even though he acts for some other purpose in addition. [...] It applies also to intentional interference [...] in which the actor does not act for the purpose of interfering with the contract or desire it but *knows* that the interference is certain or substantially certain to occur as a result of his action.").

John's desire to bring about an interference in the Confirmation Deed is evidence by John's filing of his claim in the Probate Action and John's continued desire to bring about an interference in the Final Contract is evidence by John filing John's Appeal. Restatement (Second) of Torts § 767 cmt. c (stating that people may interfere with the contractual relations of another by initiating litigation).

Additionally, John's desire to interfere in the contracts between Plaintiffs and Peak Development is seen in the prophetic statements in John's Letter, specifically the statements that: (1) "the wheels of justice turn oh-so very slowly and costly;" (2) Plaintiffs should give into John's settlement demands because "time is of the essence" because Plaintiffs "must know that, from a business perspective, if [Peak Development] acquires enough land for its needs it might just reneged on its land-sale contract with [Norberto] and demand for the return of the substantial deposit already paid to him from his family who provided too[sic] written warranties to [Peak Development];" (3) "it might get worse" if Plaintiffs continue denying John's claim.<sup>24</sup>

Finally, the Court finds that John knew that his interference in the Probate Action would certainly interfere with Plaintiffs' performance of the Confirmation Deed and that John's Appeal would certainly delay Plaintiffs' performance of the Final Contract. John's knowledge that his actions were certain to cause a delay in Plaintiffs' performance of the Confirmation Deed and the Final Contract is sufficient by itself to prove intent in a Section 776A claim. Restatement (Second) of Torts § 766A cmt. e (stating that an interference is intentional if the actor "knows that the interference is certain or substantially certain to occur as a result of his action").

<sup>&</sup>lt;sup>24</sup> John' Letter is evidence of John's desire to interfere with Plaintiffs' performance of the Final Contract because even though John wrote John's Letter well before the Final Contract between Plaintiffs and Peak Development was approved by the Court, the statements in John's Letter shows that John's Appeal was part of a plan to delay the turning over of the Tanapag Properties by Plaintiffs to Peak Development for as long as possible.

#### 3. "Improper" Interference

In determining whether an actor acted "improperly" in intentionally interfering with a contract of another, Commonwealth Courts look to the seven (7) factors provided by Restatement (Second) of Torts § 767. These factors are:

- (a) the nature of the actor's conduct,
- (b) the actor's motive,
- (c) the interests of the other with which the actor's conduct interferes,
- (d) the interests sought to be advanced by the actor,
- (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other,
- (f) the proximity or remoteness of the actor's conduct to the interference and
- (g) the relations between the parties.

Restatement (Second) of Torts § 767. The Court examines the seven (7) factors below.

#### (a) The nature of the actor's conduct

The nature of the means of the interferer's conduct "is a chief factor in determining whether the conduct is improper or not, despite its harm to the other person." Restatement (Second) of Torts § 767 cmt. c. Wrongfully initiating a lawsuit shows an improper nature of the interferer's conduct because:

[l]itigation and the threat of litigation are powerful weapons. When wrongfully instituted, litigation entails harmful consequences to the public interest in judicial administration as well as to the actor's adversaries.

Id.

The initiation of litigation is wrongful if, "the actor has *no belief* in the merit of the litigation *or if*, though having some belief in its merit, he nevertheless institutes or threatens to institute the litigation in bad faith, intending *only to harass* the third parties and not to bring his claim to definitive adjudication." Restatement (Second) of Torts § 767 cmt. c (emphasis added); *see also Nat'l Ass'n of Prof'l Baseball Leagues, Inc. v. Very Minor Leagues, Inc.*, 223 F.3d 1143, 1151 (10th Cir. 2000); *Daily v. Rawlings Co.*, LLC, 2016 U.S. Dist. LEXIS 5254, at \*40 (N.D. Ala. Jan. 15, 2016) (finding that the "nature of the defendant's conduct" weighed

in favor of the defendant because "no facts [were] pled showing that the defendants threatened 'to institute the litigation in bad faith,' or that they intended 'only to harass the third parties and not to bring the claim to definitive adjudication'").

Here, the Court finds that the "nature" factor weighs in Plaintiffs' favor. As stated above, the Court finds that John knew his claims in the Probate Action were meritless even before John filed his claim. Therefore, John's interference in the Probate Action was wrongful. Restatement (Second) of Torts § 767 cmt. c.

#### (b) The actor's motive

The "actor's motive" factor focuses on "whether the actor was motivated, in whole or in part, by a desire to interfere with the other's contractual relations." Restatement (Second) of Torts § 767 cmt. d. If the desire to interfere in the contractual relations was the "sole motive," then the interference "is almost certain to be held improper." *Id.* However, "[t]he desire to interfere with the other's contractual relations need not [...] be the sole motive." *Id.* If the desire to interfere "is the *primary* motive it may carry *substantial* weight in the balancing process and even if it is only a *casual* motive it *may still* be significant in some circumstances." *Id.* (emphasis added). For example, "[a] motive to injure another or to vent one's ill will on him serves no socially useful purpose." *Id.* 

Here, the "motive" factor, weighs strongly in Plaintiffs' favor. As stated above, the Court finds that John's desire to interfere was his *primary* motive in interfering with the contractual relations between Plaintiffs and Peak Development. Therefore, this factor *substantially* weighs in favor of Plaintiffs. Restatement (Second) of Torts § 767 cmt. d.

#### (c) The interests of the other with which the actor's conduct interferes

The "interests of the other with which the actor's conduct interferes" factor focuses on the strength of the relations between the contracting parties and the nature of the relevant contract. For example, an interference with an existing contract may be given more weight

than an interference with a prospective contact. Restatement (Second) of Torts § 767 cmt. e (stating that "the actor's conduct in interfering with the other's prospective contractual relations with a third party *may* be held to be not improper, although his interference would be improper if it involved persuading the third party to commit a breach of an existing contract with the other" (emphasis added)). Additionally, "the fact that a contract violates public policy, as, for example, a contract in unreasonable restraint of trade, or that its performance will enable the party complaining of the interference to maintain a condition that shocks the public conscience [...], may justify an inducement of breach that, in the absence of this fact, would be improper." *Id*.

Here, this factor weighs in Plaintiffs' favor because John's interference delayed the performance of valid contracts between Plaintiffs (Confirmation Deed) and Norberto's Estate (Final Contract) with Peak Development. The first contract was the Confirmation Deed and the second contract was the Final Contract, which was recognized by the Court in its Order Determining Heirs and Approving the Lease and Sale [sic] of Real Property. *IMO Estate of Norberto Eduardo Pangelinan*, No. 15-0169-CV (NMI Sup. Ct. Dec. 19, 2016) (Order Determining Heirs and Approving the Lease and Sale [sic] of Real Property).

#### (d) The interests sought to be advanced by the actor

The "interests sought to be advanced by the actor" factor focuses on the interest that the interferer's conduct is intended to promote. "[T]he interest in gratifying one's feeling of ill will toward another carries no weight." Restatement (Second) of Torts § 767 cmt. f; *see also* Restatement (Second) of Torts § 766 cmt. r ("Satisfying one's spite or ill will is not an adequate basis to justify an interference and keep it from being improper."). <sup>25</sup> Although the

<sup>&</sup>lt;sup>25</sup> Restatement (Second) of Torts § 766A cmt. f, states that § 766's Comments r and s concerning ill will and malice are relevant to Section 766A claims. Restatement (Second) of Torts § 766A cmt. f ("Malice and ill will. On this, see § 766, Comments r and s.")

Court need not find that the interferer had ill will or a spite motive against the person harmed for the Court to find that the interference was improper, "[t]he presence or absence of ill will toward the person harmed may clarify the purposes of the actor's conduct and may be, accordingly, an *important* factor in determining whether the interference was improper." Restatement (Second) of Torts § 766 cmt. r (emphasis added).

However, an interest that does carry weight is the assertion of a bona fide claim. Restatement (Second) of Torts § 767 cmt. f ("Some interests of the actor that do carry weight are depicted in §§ 770-773"). "One who, by asserting in *good faith* a legally protected interest of his own [...] does not interfere improperly with the other's relation if the actor believes that his interest may otherwise be impaired or destroyed by the performance of the contract or transaction." Restatement (Second) of Torts § 773 (emphasis added). This exception "is of narrow scope and protects the actor *only* when (1) he has a legally protected interest, and (2) in good faith asserts or threatens to protect it, and (3) the threat is to protect it by appropriate means." Restatement (Second) of Torts § 773 cmt 1 (emphasis added) ("If any of these elements is lacking, the rule stated in this Section, does not apply [....]"). For example:

A enters into a contract to buy Blackacre from B. C *honestly* believes that he has a right of way over Blackacre. With knowledge of the contract, C in good faith informs A of his interest and threatens to enforce it by legal proceedings if, as and when the owner of Blackacre should deny his claim. A thereupon refuses to perform his contract with B. C's interference is not improper under the rule stated in this Section.

Restatement (Second) of Torts § 773 illus. 1 (emphasis added).

Here, the "interests sought to be advanced by the actor" factor, weighs in Plaintiffs' favor. As stated above in Section A, John knew that he did not have a merited legal interest in the Tanapag Properties.<sup>26</sup> Therefore, John's claim fails the first element.

<sup>&</sup>lt;sup>26</sup> As stated above, John's own father, Juan San Nicolas Pangelinan, stated in a notarized affidavit that Norberto inherited the Tanapag Properties from Norberto's father and "is the true and lawful owner" of the Tanapag Properties. John testified at the bench trial that he knew about his father's affidavit.

Additionally, because John, as stated in Part A, acted out of spite against Plaintiffs and sought to use his claim to harass Plaintiffs and force them to pay excessive legal expenses, John cannot allege to have asserted his claim in good faith. Therefore, John also fails the second element.

(e) The social interests in protecting the freedom of action of the actor and the contractual interests of the other

The "social interests" factor "permits the Court to consider the social utility of the interests sought to be advanced by each of the litigants." *Hursey Porter & Assocs. v. Bounds*, C.A. No. 93C-01-091, 1994 Del. Super. LEXIS 583, at \*47-48 (Super. Ct. Dec. 2, 1994); *see also* Restatement (Second) of Torts § 767 cmt. g (1979). An act motivated by vindictiveness is not an action deemed worthy of protection. *See Sangha v. Navig8 Ship Mgmt. PTE Ltd.*, No. 18-00131-KD-B, 2020 U.S. Dist. LEXIS 23926, at \*24 (S.D. Ala. Feb. 11, 2020).

Here, John's act of interfering in the Probate Action did not advance any interest of social value. In fact, John knowingly filed a meritless claim and testified that he wants all the benefits to himself because he was the only one that filed a claim in the probate case, thus excluding all of Norberto's many cousins and other blood relatives.

(f) The proximity or remoteness of the actor's conduct to the interference The "proximity or remoteness of the actor's conduct to the interference" factor focuses on whether the interference in the contractual relationship was an immediate or remote consequence of the interferer's conduct. *See* Restatement (Second) of Torts § 767 cmt. h. "If the interference is immediate, the conduct is more likely to be considered improper." *Hursey Porter & Assocs.*, C.A. No. 93C-01-091, 1994 Del. Super. LEXIS 583, at \*49.

Here, the interference in the Confirmation Deed was an immediate consequence of John injecting himself into the Probate Action and the interference in the Final Contract was an immediate consequence of John's filing of John's Appeal because Plaintiffs are unable to perform their part of the Final Contract while John's meritless claim in the Probate Action remains unresolved with finality. Therefore, this factor weighs against John.

#### (g) The relations between the parties

With regards to this factor, "[t]he relation between the parties is often an important factor in determining whether an interference is proper or improper." Restatement (Second) of Torts § 767 cmt. i. For example, a person may be justified in interfering with a contract if the person is a competitor. Restatement (Second) of Torts § 768. Additionally, interfering with a contract on the advice of a business advisor may also justify the interference. Restatement (Second) of Torts § 772.

Here, based on the testimonies and exhibits, there was nothing in John's relationship with Plaintiffs that justified his interference.

#### (h) Summary of the seven (7) factors

After weighing the seven (7) Section 767 factors, the Court finds that John's interference in the Confirmation Deed and the Final Contract was "improper."

#### 4. Tortious Interference Conclusion

Because John "intentionally" and "improperly" interfered with the performance of the contracts between Plaintiffs and Norberto's Estate with their dealings with Peak Development, which caused Plaintiffs' performance of the contracts to be more expensive and burdensome, John is subject to liability to Plaintiffs for the pecuniary loss that Plaintiffs' experienced as a result of John's interference. Restatement (Second) of Torts § 766A.

#### IV. **CONCLUSION**

For the reasons stated above, the Court finds that Plaintiffs have proven by a preponderance of the evidence that (1) John Sablan Pangelinan committed the tort of Abuse of Process in the case captioned Estate of Pangelinan, Civ. No. 15-0169 (NMI Super. Court) and (2) John Sablan Pangelinan committed the tort of Intentional Interference with Another's Performance of [Their] Own Contract as defined by Restatement (Second) of Torts § 766A by tortuously interfering in the contractual relations between Plaintiffs and Peak Development.<sup>27</sup>

**IT IS SO ORDERED** this  $21^{st}$  day of May, 2020.

JOSEPH N. CAMACHO, Associate Judge

<sup>&</sup>lt;sup>27</sup> The Court will issue a separate order setting a deadline for Plaintiffs to file their request for damages and/or other remedies.