

**MARUYAMA & ASSOCIATES,
LTD.**

vs.

**MARIANA ISLANDS HOUSING
AUTHORITY and Sumitomo
Corporation**

**Civil Action No. 82-0066
District Court NMI**

Decided October 26, 1983

**1. Civil Procedure - Summary
Judgment**

Where court considers affidavits and other extra-pleading material in reviewing motion to dismiss, under Federal Rule of Civil Procedure 12(b), the motion converts to one for summary judgment. Fed.R.Civ. P. 12(b).

**2. Civil Procedure - Summary
Judgment**

Summary judgment is appropriate only if no material factual issues exist and the movant is entitled to judgment as a matter of law; the Court must construe the pleadings, other record evidence and its attendant inferences most favorably to the party opposing the motion. Fed.R.Civ. P. 56.

**3. Civil Procedure - Summary
Judgment**

The showing of a "genuine issue for trial" is predicated upon the existence of a legal theory which remains viable under the asserted version of the facts, and which would entitle the party opposing the motion - assuming his version to be true - to a judgment as a matter of law. Fed.R.Civ. P. 56.

4. Contracts - Conditions

A condition in a contract creates no right or duty in itself, but is merely a limiting

factor and if it is breached or does not occur, the promisee acquires no right to enforce the promise.

5. Contracts - Conditions

Where contractor and public housing authority agree to a sixty day exclusive negotiating period to begin upon the completion of model homes, the completion of the homes is a condition precedent; where homes were never built, the condition did not occur and there was not created an express contract for an exclusive negotiating period.

**6. Contracts - Quasi-Contracts -
Elements**

In order for plaintiff to recover under a theory of quasi-contract, it must show that defendant was unjustly enriched at plaintiff's expense and that the circumstances are such that defendant should be required to make restitution.

**7. Contracts - Quasi-Contracts -
Elements**

Motion for summary judgment is granted defendant public housing authority on claim in quasi-contract where plaintiff contractor presented no evidence, either through affidavits or documents, which tended to show that defendant housing authority used any data submitted by plaintiff in the planning of a turn-key housing project or that defendant intentionally solicited plaintiff's bid for defendant's subsequent use.

**8. Civil Procedure - Summary
Judgment - Particular Actions**

Whether public housing authority fairly considered all proposals submitted to it in response to its solicitation of bids raises disputed factual issue of substantial import precluding the grant of summary judgment.

**9. Interference With Contract -
Elements**

Where there is no enforceable contract, third party cannot be liable for interference with contract; however, third party may be liable for interference with prospective contractual relation. Rest. Torts 2d, §776B.

FILED
Clerk
District Court

OCT 26 1983

For The Northern Mariana Islands
By *[Signature]*
(BAGLEY, P.T.)

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4 IN THE DISTRICT COURT
5 FOR THE
6 NORTHERN MARIANA ISLANDS
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8 MARYAMA & ASSOCIATES, LTD.,) CIVIL ACTION NO. 82-0066
9 Plaintiff,)
10 vs.) DECISION
11 MARIANA ISLANDS HOUSING)
12 AUTHORITY and SUMITOMO)
13 CORPORATION,)
14 Defendants.)

15 Plaintiff filed a Complaint on November 22, 1982 against
16 Mariana Islands Housing Authority (MIHA) for breach of contract
17 (Count I) and for violation of rights of Due Process and Equal
18 Protection (Count II) and against Sumitomo Corporation (Sumitomo)
19 for interference with contract (Count III); Plaintiff seeks
20 injunctive and monetary relief.

21 On February 18, 1983, Sumitomo filed its Motion to
22 Dismiss or, in the alternative, for Summary Judgment.

23 On February 23, 1983, MIHA filed its Motion for Summary
24 Judgment, in which it also joined Sumitomo in its motions.

25 Plaintiff filed its Memorandum in Opposition to the
26 motions of the Defendants on June 17, 1983.

1 Having heard the arguments and considered the memoranda
2 of the parties, and for the reasons stated herein, the Court grants
3 partial Summary Judgment for MIHA only as to Count I of Plaintiff's
4 Complaint; the remaining motions are denied.

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6 I. FACTUAL BACKGROUND

7 MIHA was established by the Congress of Micronesia^{1/} for
8 the purpose of providing safe, sanitary and decent housing for the
9 people of the Mariana Islands.^{2/} It was given general corporate
10 powers, including the authority to enter into and execute
11 contracts.^{3/} MIHA exists today as an agency of the Commonwealth of
12 the Northern Mariana Islands (CNMI).

13 Plaintiff alleges in Count I that, in early 1982, it
14 began negotiations with MIHA for the construction of a 300-house
15 "turn-key" project to be located in the area on and around Kobler
16 Field, also known as "Koblerville", Saipan. Plaintiff contends
17 that MIHA entered into an agreement, 'memorialized' in a letter
18 from MIHA Executive Director to Plaintiff on May 11, 1981.^{4/} whereby
19 Plaintiff would design and construct six model homes for MIHA.

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22 ^{1/} 46 Trust Territory Code (TTC) § 6.

23 ^{2/} 46 TTC § 1.

24 ^{3/} 46 TTC § 6(5).

25 ^{4/} Plaintiff's Complaint, paragraph 5.
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1 In addition, Plaintiff alleges that MIHA was to refrain from
2 negotiating with other interested parties for a period of sixty
3 days beginning on May 11, 1982.^{5/}

4 The agreement of May 11, 1982 was allegedly breached
5 when MIHA entered into negotiation with Sumitomo, the result of
6 which was the award of the contract to Sumitomo to construct the
7 300-home project. Plaintiff seeks relief on a claim against MIHA
8 for breach of contract.

9 MIHA disputes Plaintiff's reading of the May 11, 1982
10 letter. The sixty-day period was to begin "after the completion
11 of the homes." MIHA argues that even if this letter can be
12 considered to form the basis of a valid contract, the sixty-day
13 clause never become effective since the six model homes were never
14 constructed. MIHA, therefore, seeks summary judgment on Count I.

15 .In addition, Plaintiff alleges that, after learning of
16 MIHA's refusal to "go forward with its agreement concerning the
17 construction of said six model homes," it was informed by MIHA
18 that Plaintiff was still the sole party with whom MIHA would nego-
19 tiate a contract for the construction of the entire project.

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21 ^{5/}The relevant portions of the May 11th letter read:

- 22 "9. Within sixty days after the completion of the homes, the
23 consortium [Plaintiff] will submit to MIHA a proposal
24 to construct 300 homes under a turn-key type arrangement.
25 10. MIHA promises that during the sixty-day period it will not
26 enter into negotiations with any other party for the
construction of the 300 homes."

1 In reliance on these representations, Plaintiff "performed further
2 architectural and engineering studies [and] incurred legal fees
3 and other related expenses." The contract, however, was eventually
4 awarded to Sumitomo and Plaintiff now seeks monetary damages.

5 MIHA submits that it at no time told Plaintiff that it
6 alone was being considered. Any expense incurred by Plaintiff
7 was undertaken during preliminary negotiations, subjecting MIHA
8 to no legal liability.

9 In Count II, Plaintiff alleges that, on or about May 11,
10 1982, MIHA solicited bids for the construction of the 300-house
11 turn-key project; the solicitation was accompanied by a "Scope of
12 Work" with which bidders were required to comply and in accordance
13 with which the contract would be awarded; that the solicitation was
14 "a sham" as MIHA had previously determined that Sumitomo would be
15 awarded the contract, and that it did decide to award the contract
16 to Sumitomo the day before the MIHA board meeting at which the bids
17 were to be reviewed.

18 Based on the foregoing, Plaintiff alleges that its rights
19 to Due Process and Equal Protection as guaranteed by the Constitu-
20 tions of the United States and of the NMI were violated.

21 MIHA responds that it is not required by law to solicit
22 bids for public contracts nor to award contracts to the lowest
23 bidder. MIHA concedes that it did advertise for bids;^{6/} however,
24 MIHA contends that its decision on the award was within its

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26 ^{6/}MIHA's Motion for Summary Judgment, p.7.

1 absolute discretion. In addition, it asserts that, in fact, it did
2 consider all proposals fairly. Lastly, MIHA argues that even had
3 it acted maliciously, such actions would not give rise to a cause
4 of action by Plaintiff.

5 In Count III, Plaintiff seeks injunctive and monetary
6 relief against Sumitomo for interference with contract. Plaintiff
7 avers that Sumitomo was aware of Plaintiff's contractual relation-
8 ship with MIHA and "through a planned program utilizing wrongful
9 and unethical means, undertook to convince MIHA to terminate its
10 relationship with Plaintiff." These actions enabled the turn-key
11 project to be awarded to Sumitomo. Sumitomo denies that Plaintiff
12 had any contractual relationship with MIHA.

13 Sumitomo argues that Plaintiff has failed to demonstrate
14 that MIHA breached a contract, the first element required in
15 Plaintiff's case. Sumitomo contends that no contract existed
16 because (1) MIHA's Executive Director had no legal authority to
17 enter into a valid contract or, (2) the contract is void and un-
18 enforceable because it violates public policy. Alternatively,
19 Sumitomo asserts that, assuming a valid contract is found to exist,
20 the contract was not breached as the sixty-day clause never became
21 operative because of the failure of a condition precedent (the
22 completion of the model homes) or (2) the prohibition in the letter
23 of May 11, 1982 prohibits MIHA from entering into negotiations
24 whereas negotiations between Sumitomo and MIHA were ongoing since
25 December of 1981. For these reasons, Sumitomo seeks summary
26 judgment on Count III.

1 II. STANDARD OF REVIEW

2 [1] The Court has considered affidavits and other extra-
3 pleading material submitted by the parties. Under Rule 12(b),
4 the 12(b)(6) motion converts to one for summary judgment. The
5 Court accordingly treats Defendants' motions as motions for
6 summary judgment.

7 [2,3] Summary judgment is appropriate only if no material
8 factual issues exist and the movant is entitled to judgment as a
9 matter of law. United States v. First National Bank of Circle,
10 652 F.2d 882, 887 (9th Cir. 1981). The Court must construe the
11 pleadings, other record evidence and its attendant inferences
12 most favorably to plaintiff. Harlow v. Fitzgerald, ___ U.S. ___,
13 ___, n.26, 102 S.Ct. 2727, 2737, n.26, 73 L.Ed.2d 396, 409, n.26
14 (1982). A genuine factual issue may exist only if a viable legal
15 theory would entitle plaintiff to judgment if it proves its
16 asserted version of the facts. Ron Tonkin Gran Turismo v. Fiat
17 Distributors, 637 F.2d 1376, 1381 (9th Cir. 1981), cert.denied
18 454 U.S. 831, 102 S.Ct. 128, 70 L.Ed.2d 109 (1981).

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III. ANALYSIS

A. Count I - Breach of Contract

[4,5] Plaintiff relies on the sixty-day exclusive negotiation clause to support its claim for breach of an express contract. The language of the clause is clear;^{7/} the sixty-day clause does not become operative until "after the completion of the homes." The completion of the homes is a condition precedent. A condition creates no right or duty in itself, but is merely a limiting factor and if it is breached or does not occur, the promisee acquires no right to enforce the promise. United States v. Schaeffer, 319 F.2d 907 (9th Cir. 1963), cert.denied, 376 U.S. 943, 84 S.Ct. 798, 11 L.Ed.2d 767. Plaintiff concedes that the homes were not built; therefore, no enforceable express contract exists between Plaintiff and MIHA.^{8/}

Plaintiff includes an additional claim in Count I:

- "10. Thereafter, MIHA informed Plaintiff on numerous occasions that the consortium of which Plaintiff was a member were the sole parties with whom a contract would be negotiated...
- 12. ... MIHA... wilfully continued to mislead Plaintiff so that Plaintiff would, at its expense, provide for legal, architectural and engineering services that would be of benefit to MIHA."

^{7/} See, n.5, supra.

^{8/} Because the Court disposes of this issue in this manner, it is not necessary to address the other issues raised by the parties regarding the validity of the contractual agreement.

1 Plaintiff is essentially asserting a claim in quasi-contract
2 although it has not labelled it as such. The Federal Rules have
3 abandoned adherence to the strict requirements of "code pleading"
4 and have adopted "notice pleading." The Supreme Court explained
5 in Conley v. Gibson:

6 [A]ll the Rules require is "a short
7 and plain statement of the claim
8 [footnote omitted]that will give
9 the defendant fair notice of what
10 plaintiff's claim is and the grounds
11 upon which it rests.

12 355 U.S. 41, 47-48, 78 S.Ct. 99, 103, 2 L.Ed.2d 80, 85 (1957).

13 The Ninth Circuit elaborated in Jacobson v. Tahoe Regional Planning
14 Agency, 566 F.2d 1353 (9th Cir. 1977); aff'd in part, rev'd in part,
15 440 U.S. 391, 99 S.Ct. 1171, 11 L.Ed.2d 767 (1978),

16 Thus a complaint should not be dis-
17 missed for insufficiency unless it
18 appears to a certainty that plaintiff
19 is entitled to no relief under any
20 state of facts which could be proved
21 in support of the claim.

22 566 F.2d at 1359, n.9.

23 [6] In order for Plaintiff to recover under a theory of
24 quasi-contract, it must show that MIHA was unjustly enriched at
25 the Plaintiff's expense and that the circumstances are such that
26 MIHA should be required to make restitution. Bloomgarden v. Cover,
27 479 F.2d 201 (D.C.Cir. 1973). The D.C. Circuit continues:

28 Thus, to make out his case, it is not
enough for the plaintiff to prove
merely that he has conferred an advan-
tage upon the defendant, but he must
demonstrate that retention of the

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benefit without compensating the one who conferred it is unjustified. Id. at 211.

[7] Has Plaintiff made a sufficient showing of its claim in quasi-contract or has it demonstrated its capability of doing so at trial? The Court does not believe that it has. Plaintiff presented no evidence, either through affidavits or documents, which tends to show that MIHA used any data submitted by Plaintiff in the planning of the turn-key project; much less has Plaintiff showed that MIHA intentionally solicited Plaintiff's bid for subsequent use by MIHA. In addition, Plaintiff appears to retreat from this argument in its memorandum. See Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment, p.4.

The Court finds no breach of an express contractual agreement, nor is there any evidence to support a claim based on a theory of quasi-contract; accordingly, MIHA's motion for summary judgment as to Count I is granted.

B. Count II - Due Process and Equal Protection

[8] Plaintiff seeks injunctive and monetary relief for the alleged deprivation of its due process rights^{9/} through MIHA's failure to follow its stated bid procedures and in awarding the contract which deviated substantially from MIHA's "Scope of Work." Besides asserting as a defense that it is not required to solicit bids or to award a contract based on its "Scope of Work," MIHA

^{9/}We do not assess here the merits of Plaintiff's request for injunctive relief or any potential defenses which may be made thereto.

1 contends that it considered all proposals fairly. The fact that
2 MIHA solicited bids raises a disputed factual issue of substantial
3 import, namely, that of fair consideration to all proposals
4 submitted to MIHA, thus preventing the grant of summary judgment
5 on this issue.

6 C. Count III - Interference with Contract

7 In Count III, Plaintiff alleges that Sumitomo caused
8 MIHA to breach its contract with Plaintiff. Sumitomo denies the
9 existence of an enforceable contract between Plaintiff and MIHA
10 and argues, therefore, that there can be no breach. Sumitomo cites
11 Restatement of Torts, 2d, § 766 in support of its position.^{10/}

12 [9] Sumitomo's argument is well taken, as far as it goes.
13 As we find that there existed no express contract between Plaintiff
14 and MIHA, we agree that Sumitomo cannot be held liable for interference
15 with an existing contract. However, Plaintiff alleges in
16 paragraph 28 of its complaint, that "Sumitomo further, through a
17 planned program utilizing wrongful and unethical means, undertook
18 to convince MIHA to terminate its relationship with Plaintiff..."
19 Plaintiff does not strictly limit itself to an existing express

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21 ^{10/}The rules of common law, as expressed in the restatements of
22 law approved by the American Law Institute apply in the CNMI.
23 1 TTC § 103. Restatement of Torts, 2d, § 766 reads:

24 One who intentionally and improperly interferes
25 with the performance of a contract (except a
26 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.

1 contract, but refers to the interference with a relation.

2 Restatement of Torts, 2d, § 766B is the operative
3 section. It reads:

4 § 766B. Intentional Interference with
5 Prospective Contractual Relation

6 One who intentionally and improperly
7 interferes with another's prospective con-
8 tractual relation (except a contract to
9 marry) is subject to liability to the other
10 for the pecuniary harm resulting from loss
11 of the benefits of the relation, whether
12 the interference consists of:

13 (a) inducing or otherwise causing a
14 third person not to enter into or continue
15 the prospective relation or

16 (b) preventing the other from acquiring
17 or continuing the prospective relation.

18 Plaintiff has presented evidence to support its allega-
19 tions that Sumitomo may have caused MIHA not to enter or continue
20 the prospective relation with Plaintiff. In other words, although
21 Sumitomo did not cause MIHA to breach an existing contract, it
22 may have persuaded MIHA not to enter into the contractual relation-
23 ship; if Plaintiff can so prove, Sumitomo may have committed an
24 actionable wrong. If Sumitomo prevails in its denial of any
25 knowledge of a prospective contractual relationship or an inten-
26 tional interference thereof, then there would be no actionable
27 wrong.

28 The state of the record on this motion indicates the
29 existence of disputed facts. Both parties should be given a
30 chance to prove their respective allegations at trial, accordingly.
31 Sumitomo's motion for summary judgment is also denied.

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IV. CONCLUSION

For the foregoing reasons, MIHA's motion for summary judgment as to Count I is granted. MIHA's motion as to Count II and Sumitomo's motion as to Count III are denied.

DATED this 16 day of October, 1983.



ALFRED LAURETA
District Judge