



FOR PUBLICATION



E-FILED
CNMI SUPERIOR COURT
E-filed: Mar 30 2021 03:08PM
Clerk Review: Mar 30 2021 03:08PM
Filing ID: 66466198
Case Number: 19-0073-CV
N/A

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

5	SUNG YOON KIM,)	CIVIL CASE NO. 19-0073
6)	
6	Plaintiff,)	
7	vs.)	ORDER DENYING RULE 12(b)(6)
7)	MOTION TO DISMISS AS THERE IS
8	HONG KYUN KIM,)	SUFFICIENT LEGAL BASIS TO
8)	RECOGNIZE A FOREIGN (REPUBLIC
9	Defendant.)	OF KOREA) CIVIL MONEY JUDGMENT
9)	
10)	

I. INTRODUCTION

THIS MATTER came before the Superior Court for the Commonwealth of the Northern Mariana Islands (the “Court”) on June 4, 2019 at 1:30 p.m., for oral argument on Defendant’s Motion to Dismiss. Plaintiff Sung Yoon Kim was represented by Attorney Samuel I. Mok. Defendant Hong Kyun Kim was represented by Attorney Matthew T. Gregory. The Court ordered Supplemental Briefing regarding the issue of separation of powers. Following the supplemental briefing, a supplemental hearing on Defendant’s Motion to Dismiss was held before the Court on November 10, 2020 at 1:30 p.m. Attorney Samuel I. Mok appeared on behalf of the Plaintiff Sung Yoon Kim. Plaintiff Sung Yoon Kim appeared by videoconference. Attorney Matthew T. Gregory appeared on behalf of the Defendant Hong Kyun Kim.

Based on a review of the arguments, filings, and relevant law, the Court makes the following order.

///

///

By order of the Court, Associate Judge Joseph N. Camacho

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 **II. LEGAL STANDARD**

2 **A. Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim Upon Which Relief Can**
3 **Be Granted**

4 Rule 8(a)(2) of the Northern Mariana Islands Rules of Civil Procedure states that a pleading “shall
5 contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief.” A court
6 may dismiss a plaintiff’s complaint for “failure to state a claim upon which relief can be granted.” NMI
7 R. Civ. P. 12(b)(6). A Rule 12(b)(6) motion tests the legal sufficiency of the claims asserted in a
8 complaint. *Camacho v. Micronesian Dev. Co.*, 2008 MP 8 ¶ 10. To survive a Rule 12(b)(6) motion to
9 dismiss, a “complaint must contain either direct allegations on every material point necessary to sustain a
10 recovery on any legal theory, [...] or contain allegations from which an inference fairly may be drawn
11 that evidence on these material points will be introduced at trial.” *Atalig v. Mobil Oil Mariana Islands,*
Inc., 2013 MP 11 ¶ 23 (quoting *In re Adoption of Magofna*, 1 NMI 449, 454 (1990)) (citations omitted).

12 When deciding a Rule 12(b)(6) motion to dismiss, the Court must assume that all factual
13 allegations in the challenged pleading are true and construe them in the light most favorable to the non-
14 moving party. *Id.* (quoting *Syed v. Mobil Oil Mariana Islands, Inc.*, 2012 MP 20 ¶ 22); *see also Cepeda*
15 *v. Hefner*, 3 NMI 121, 127-128 (1992); *Govendo v. Marianas Pub. Land Corp.*, 2 NMI 482, 490 (1992).
16 It is then for the defendant to “demonstrate that, even after taking the well pleaded facts as true, the
17 plaintiff still fails to state a claim for relief.” *Id.* at 490. Thus, in a motion to dismiss, “[t]he burden is upon
18 the movants to establish beyond doubt that the plaintiff’s action is one upon which the law recognizes no
19 relief.” *Aurelio v. Camacho*, Civ. No. 10-0021 (NMI Super. Ct. Sept. 10, 2010) (Order Denying Def.’s
20 Mot. To Dismiss and Granting Pl.’s Cross Mot. For Summary Judgment at 3).

21 However, plaintiffs cannot base their complaints “solely on unsupported legal conclusions since
22 such conclusions do not constitute direct or indirect allegations.” *Syed v. Mobil Oil Mariana Islands, Inc.*,
23 2012 MP 20 ¶ 21. Additionally, though the Supreme Court of the Commonwealth of the Northern Mariana
24 Islands (the “Commonwealth Supreme Court”) has declined to follow the federal “plausibility” standard

1 outlined in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544
2 (2007), see *Syed v. Mobil Oil Mariana Islands, Inc.*, 2012 MP 20 ¶ 17, if the plaintiff’s complaint “lacks
3 sufficient factual accompaniment, a court must examine whether the allegations reasonably suggest that
4 the claimant will produce substantiating evidence.” *Atalig v. Mobil Oil Mariana Islands, Inc.*, 2013 MP
5 11 ¶ 23 (citation omitted). “A statement of facts that merely creates a suspicion that the pleader might
6 have a right of action’ is insufficient.” *Id.* (quoting *Rios v. City of Del Rio*, 444 F.3d 417, 421 (5th Cir.
7 2006)). This is because “Rule 8(a)(2) does not permit a plaintiff to bring purely speculative claims.” *Id.*
8 Furthermore, the court “has no duty to strain to find inferences favorable to the plaintiff.” *Cepeda*, 3 NMI
9 at 127-28.

10 **B. Recognition and Enforcement of Foreign Judgments in the Commonwealth of the Northern
Mariana Islands**

11 **(i) The United States Constitution**

12 **a. Treaties as Supreme Law of the Land**

13 Article VI of the United States Constitution provides, in relevant part, that “[t]his Constitution, and
14 the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which
15 shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the
16 Judges in every State shall be bound thereby.” U.S. Const. art. VI. Pursuant to Section 104 of the Covenant
17 to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States
18 of America (the “Covenant”), authority over matters relating to foreign affairs is vested with the United
19 States federal government. Covenant to Establish a Commonwealth of the Northern Mariana Islands in
20 Political Union with the United States of America, 48 U.S.C. § 1801, reprinted in CMC at B-101 *et seq.*;
21 see also *In re Petition of Pangelinan*, 2008 MP 12 ¶ 51. Treaties entered into by the United States are
22 applicable within the Commonwealth of the Northern Mariana Islands (the “Commonwealth” or the
23 “CNMI”), provided they do not run afoul of the Commonwealth’s authority for self-governance of internal
24 affairs. *Sablan v. Inos*, 2 CR 388, 396 (NMI Sup. Ct. 1991). Such treaties form part of the written law of

1 the Commonwealth, in the absence of which 7 CMC Section 3401 requires Commonwealth courts to
2 apply common law rules as expressed in the Restatements. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 59
3 n.21¹ (quoting *Borja v. Goodman*, 1 NMI 225, 242 (1990) (Villagomez, J., concurring)).

4 **b. Full Faith and Credit Clause**

5 The Full Faith and Credit Clause of the United States Constitution further provides, in relevant part,
6 that “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial
7 Proceedings of every other State.” U.S. Const. art. IV, § 1. Pursuant to Section 501, subsection (a) of the
8 Covenant, Article IV Section 1 of the U.S. Constitution is applicable to the Commonwealth of the
9 Northern Mariana Islands. 48 U.S.C. § 1801, reprinted in CMC at B-101 *et seq.*

10 **(ii) The Commonwealth’s Uniform Enforcement of Foreign Judgments Act of 1994**

11 The Uniform Enforcement of Foreign Judgments Act of 1994 (the “UEFJA”), codified in 7 CMC
12 Section 4401 *et seq.*, retained most of the language of the revised uniform act on which it was based, a
13 uniform act which has been adopted – with some variations – in several U.S. jurisdictions. PL 9-41 § 1,
14 Commission Comment. The UEFJA, intended to provide a simplified way of implementing full faith and
15 credit and enforcing judgments from another state, was approved by the National Conference of
16 Commissioners on Uniform State Laws and the American Bar Association in 1964. *Id.* The definition of
17 “foreign judgment” for the purposes of the UEFJA includes: “any judgment, decree, or order of a court
18 of the United States or of any other court which is entitled to full faith and credit in the Commonwealth
19 of the Northern Mariana Islands.” 7 CMC § 4402. A copy of a foreign judgment, provided that foreign
20 judgment is authenticated in accordance with an act of Congress or the statutes or court rules of the CNMI,
21 may be filed in the office of the Clerk of the Superior Court. 7 CMC § 4403. It will then be treated in the

22 ¹ In that case, footnote 21 summarizes what fits within the written law of the CNMI law as follows:
23 In the Commonwealth, “‘written law’ includes the NMI Constitution and NMI statutes, case law,
24 court rules, legislative rules and administrative rules, as well as the Covenant and provisions of
the U.S. Constitution, laws and treaties applicable under the Covenant.” *Borja v. Goodman*, 1
NMI 225, 242 (1990) (Villagomez, J., concurring).
Estate of Ogumoro v. Ko, 2011 MP 11 ¶ 59 n.21.

1 same manner as a judgment of the Superior Court: it will be subject to the same procedures, defenses and
2 proceedings and may be enforced or satisfied in the same manner as a judgment of the Superior Court. *Id.*
3 The UEFJA clarifies that it provides an optional procedure for the filing of foreign judgments: a judgment
4 creditor retains the right to bring an action to enforce its judgment instead of proceeding under the UEFJA.
5 7 CMC § 4407.

6 **(iii) The Treaty of Friendship, Commerce and Navigation between the United States and
7 the Republic of Korea**

8 The Treaty of Friendship, Commerce and Navigation between the United States of America and the
9 Republic of Korea (the “Treaty of Friendship”) was signed on November 28, 1956. 8 U.S.T. 2217. The
10 United States entered a number of bilateral treaties with different countries based on this same model
11 following the Second World War. The language of Article V, Section 1 of the Treaty of Friendship with
12 the Republic of Korea states, in pertinent part, that: “[n]ationals and companies of either Party shall be
13 accorded national treatment and most-favored-nation treatment with respect to access to the courts of
14 justice.” *Id.*, art. V, § 1.

15 In relation to treaty interpretation, “[t]he judicial Power of the United States’ is ‘vested in one
16 supreme Court...and...inferior Courts.’ U.S. Const., Art. III, § 1. That ‘Power...extend[s] to...Treaties,’
17 *id.*, § 2, and includes the duty ‘to say what the law is.’” *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 353-
18 54 (2006)(quoting *Marbury v. Madison*, 5 U.S. (1 Cr.) 137, 177, 2 L. Ed. 60 (1803))(internal citation
19 omitted). Federal court interpretations of treaties that are to be given effect as federal law thus carry
20 Constitutional authority. *Id.*

21 Federal courts, when interpreting and applying bilateral treaties of friendship, commerce and
22 navigation between the United States and other countries – including the Treaty of Friendship with the
23 Republic of Korea – have repeatedly found that the language of Article 5, Section 1 elevates the foreign
24 signatory’s money judgments to the status of a sister state money judgment, namely a judgment entitled
to full faith and credit. The Eleventh Circuit explained that in such treaties of friendship, “the United

1 States agreed to treat [the foreign signatory’s] nationals pursuing their rights in our courts in a
2 nondiscriminatory manner.” *Vagenas v. Continental Gin Co.*, 988 F.2d 104, 106 (11th Cir.) (finding that
3 the Treaty of Friendship, Navigation and Trade between Greece and the United States entitled a civil
4 money judgment from Greece to be treated as a sister state judgment). Pursuant to the Treaty of Friendship
5 between the United States and the Republic of Korea, federal courts have held that civil money judgments
6 from South Korea are entitled to be treated with the same full faith and credit that a sister state judgment
7 receives.² *Otos Tech Co v. OGK Am., Inc.* No. CIV. 03-1979 WHW, 2010 WL 5239235, at *2 (D.N.J.
8 Dec. 16, 2010), *aff’d*, 653 F.3d 310, 312 (3d Cir. 2011); *Choi v. Kim*, 50 F.3d 244, 248 (3d Cir. 1995).

9 **(iv) The Principle of Comity and the Restatement (Fourth) of the Foreign Relations Law of**
10 **the United States**

11 The principle of comity “encompasses forms of relations between sovereign States which are
12 based on courtesy, tradition, goodwill, or utility,” and is described as a principle of “prudence and
13 politeness” rather than duty. Jörn Axel Kämmerer, *Comity*, in Max Planck Encyclopedias of International
14 Law (Rüdiger Wolfrum, ed., 2006) ¶ 1; Ralf Michaels, *Recognition and Enforcement of Foreign*
15 *Judgments*, in Max Planck Encyclopedias of International Law (Rüdiger Wolfrum, ed., 2009), ¶ 4. Comity
16 was defined by the United States Supreme Court in 1895 as “neither a matter of absolute obligation on
17 the one hand nor of mere courtesy and good will... it is the recognition which one nation allows within
18 its territory to the legislative, executive, or judicial acts of another.” *Hilton v. Guyot*, 159 U.S. 113, 202-
19 3 (1895) (finding under common law judicial comity a foreign country civil judgment should be enforced
20 by a U.S. court unless some special ground impeaches the judgment).³

21 ² It is important to note that sister state judgments, i.e., judgments entitled to full faith and credit, are not summarily
22 executed. A commentary to the Treaties of Friendship, Commerce and Navigation issued by the U.S. State Department
23 clarifies that “[t]he national treatment rule does not imply a right to the summary execution of a foreign judgment.”
24 Charles H. Sullivan, U.S. Dept. of State, STANDARD DRAFT TREATY OF FRIENDSHIP, COMMERCE AND
NAVIGATION 98, 100 (1981). Instead, there is a process with appropriate safeguards that are followed before any
foreign judgment will be recognized and enforced, as discussed in the Restatement (Fourth) of the Foreign Relations Law
of the United States in subsection (iv).

³ A different approach is required for criminal judgments, as held in *Medellin v. Texas*, 128 S. Ct. 1346 (2008).

1 The principle of comity has not only been applied directly by courts in the United States but is
2 also expressed in the Restatement (Fourth) of Foreign Relations Law of the United States (the
3 “Restatement”): in general, “a final, conclusive, and enforceable judgment of a court of a foreign state
4 granting or denying recovery of a sum of money, or determining a legal controversy, is entitled to
5 recognition by courts in the United States.” Restatement (Fourth) of the Foreign Relations Law of the
6 United States § 481 (Am. Law Inst. 2019); see also *Kim v. Park*, Civ. No. 15-0131 (NMI Super. Ct. Sep.
7 27, 2019) (Order Denying Mot. For Summ. J. Because Recognition of a Foreign Crim. J. Violates the
8 “Penal Law Rule,” as Defined by § 489 of the Restatement (Fourth) of Foreign Relations Law, and Pl.’s
9 Crim. Conviction by a Korean App. Ct. Following Pl.’s Acquittal by a Korean Trial Ct. is not Compatible
10 with Fundamental Principles of Fairness as it Violates the Protection Against Double Jeopardy Pursuant
11 to NMI Const. Art. I, § 4(E) and U.S. Const. Amend. V at 4).⁴

12 However, there are several exceptions to this rule. Mandatory grounds for nonrecognition under
13 Section 483 include, for example, the judgment being “rendered under a judicial system that does not
14 provide impartial tribunals or procedures compatible with fundamental principles of fairness,” or the
15 judgment being rendered by a court that did not have personal jurisdiction or jurisdiction over the subject
16 matter of the dispute.⁵ *Id.*, § 483; see also *Hurst v. Socialist People's Libyan Arab Jamahiriya*, 474 F.
17 Supp. 2d 19, 34 (D.D.C. 2007) (stating that U.S. courts will not recognize foreign judgments decided
18 under a judicial system that offends U.S. public policy). Further discretionary grounds for nonrecognition
19 are provided in Section 484, including, among other grounds, a finding that “the party resisting

20
21 ⁴ *Kim v. Park* is distinguishable from the present case as the judgment that the plaintiff was bringing an action to enforce
was, in fact, a penal judgment rather than a civil one.

22 ⁵ There are three enumerated mandatory grounds in Section 483 for non-recognition:

- 23 (a) the judgment was rendered under a judicial system that does not provide impartial tribunals or
procedures compatible with fundamental principles of fairness;
- (b) the court that rendered the judgment did not have personal or subject matter jurisdiction; or
- (c) the judgment rested on a claim of defamation and the SPEECH Act forbids its recognition or
enforcement.

24 Restatement (Fourth) of the Foreign Relations Law of the United States § 483 (Am. Law Inst. 2019).

1 recognition did not receive adequate notice of the proceeding in the foreign court in sufficient time to
2 enable it to defend,” or “the [specific] judgment or a claim on which the judgment is based is repugnant
3 to the public policy of the State in which recognition is sought or of the United States.⁶ *Id.*, § 484 (a) and
4 (c).

5 With respect to the recognition and enforcement of judgments denominated in foreign currency,
6 the Restatement provides: (1) a U.S. court may issue its own judgment in either foreign currency or U.S.
7 dollars, unless state law requires otherwise; and (2) the exchange rate prevailing on the date of the U.S.
8 judgment granting recognition or enforcement should be used when converting foreign currency to U.S.
9 dollars. *Id.*, § 490.

10 **C. 7 CMC Section 3401 Applicability of Common Law**

11 Section 3401 provides, in pertinent part:

12 [i]n all proceedings, the rules of the common law, as expressed in the
13 restatements of the law approved by the American Law Institute and, to
14 the extent not so expressed as generally understood and applied in the
15 United States, shall be the rules of decision in the courts of the
16 Commonwealth, in the absence of written law or local customary law to
17 the contrary [...].

18 7 CMC § 3401. The Commonwealth Supreme Court has interpreted 7 CMC Section 3401 as providing a
19 “hierarchy of applicable law,” as courts are first to look to written law, including the Commonwealth’s

20 ⁶ There are nine enumerated discretionary grounds in Section 484 for non-recognition:

- 21 (a) the party resisting recognition did not receive adequate notice of the proceeding in the foreign court in
22 sufficient time to enable it to defend;
- 23 (b) the judgment was obtained by fraud that deprived the party resisting recognition of an adequate
24 opportunity to present its case;
- (c) the judgment or the claim on which the judgment is based is repugnant to the public policy of the State
in which recognition is sought or of the United States;
- (d) the judgment conflicts with another final and conclusive judgment;
- (e) the proceeding in the foreign court was contrary to an agreement between the parties to commit
resolution of the dispute in question exclusively to another forum;
- (f) in cases in which the foreign court’s jurisdiction rested only on personal service, the foreign court was a
seriously inconvenient forum for resolution of the dispute;
- (g) the judgment was rendered in circumstances that raise substantial doubt about the integrity of the
rendering court with respect to the judgment;
- (h) the specific proceeding in the foreign court leading to the judgment was not compatible with
fundamental principles of fairness; or
- (i) the courts of the state of origin would not recognize a comparable U.S. judgment.

Restatement (Fourth) of the Foreign Relations Law of the United States § 484 (Am. Law Inst. 2019).

1 Constitution and statutes, case law, court rules, legislative rules and administrative rules, as well as the
2 Covenant and provisions of the U.S. Constitution, laws and treaties applicable under the Covenant, and
3 local customary law. *Estate of Ogumoro v. Han Yoon Ko*, 2011 MP 11 ¶ 59 n. 21. In the absence of any
4 controlling written law or local customary law, courts are to apply the rules of common law as expressed
5 in the restatements of the law approved by the American Law Institute. *In re Buckingham*, 2012 MP 15
6 ¶ 12. When there is no written, customary, or restatement law on point, “the common law...as generally
7 understood and applied in the United States’ governs.” *Id.*

8 The Court has repeatedly declined to accept the argument that Restatement provisions that do not
9 reflect common law are not applicable to the Commonwealth under 7 CMC Section 3401. *Estate of*
10 *Ogumoro v. Ko*, 2011 MP 11 ¶ 62 (citing *Webster v. Reprod. Health Servs.* 492 U.S. 490, 515 (1989))
11 (declining to find that Restatement provisions not reflecting common law were not applicable in
12 Commonwealth courts, because such an interpretation would lead to the unjust and unreasonable
13 disruption of settled law and court precedent). Furthermore, the Commonwealth Supreme Court has held
14 that “the [r]estatements are the operative rules of decision in the Commonwealth, even when the relevant
15 provision does not accord with United States common law.” *Estate of Ogumoro, id.*, at ¶ 64.

16 **D. Standing to Challenge the Constitutionality of 7 CMC Section 3401**

17 In the context of a constitutional law, courts must exercise restraint when questioning whether to
18 declare a law unconstitutional, as this power is “the gravest and most delicate duty that [the court] is called
19 on to perform.” *Commonwealth v. Oden*, 3 NMI 186, 202 (1992) (quoting *United States v. Raines*, 362
20 U.S. 17, 80 S. Ct. 519, 522 (1960); *Marbury v. Madison*, 5 U.S. (1 Cr.) 137, 177-178, 2 L. Ed. 60 (1803)).
21 Courts are bound, first, to never “anticipate a question of constitutional law in advance of the necessity of
22 deciding it, and second, to never “formulate a rule of constitutional law broader than is required by the
23 precise facts to which it is to be applied.” *Id.*

24 Courts have “no jurisdiction to pronounce any statute void, except as it is called upon to adjudge
the legal rights of litigants in actual controversies.” *Raines, id.*, at 522 (quoting *Liverpool, New York &*

1 *Philadelphia S. S. Co. v. Commissioners of Emigration*, 13 U.S. 331 391 5 S. Ct 352, 355, 28 L. Ed. 899
2 (1885)). In order to present an attack on the constitutionality of a law, a party must be actually, personally
3 harmed in the instant facts by the alleged unconstitutionality of the statute. *Commonwealth v. Oden*, 3
4 NMI 186, 202 (1992) (quoting *Raines, id.*).

5 **III. BACKGROUND**

6 **A. Facts Alleged in the Complaint**

7 On March 5, 2005, Defendant Hong Kyun Kim signed a promissory note to Plaintiff Sung Yoon
8 Kim, promising to pay the amount of 130,000,000 (one hundred thirty million) Korean Won (KRW). The
9 aforementioned amount represented the damages and expenses incurred by the Plaintiff with respect to
10 the public seizure and sale of certain real property located in South Korea, resulting from the mishandling
11 of a real estate transaction by the Defendant.

12 Plaintiff Sung Yoon Kim filed a civil lawsuit against the Defendant in South Korea seeking to
13 enforce the promissory note.

14 On August 16, 2013, the Seoul Central District Court issued a Decision (Case No.
15 2012kahap104606 Commitment) directing the Defendant to pay the Plaintiff the full amount of the
16 promissory note, 130,000,000 KRW. In addition, this Decision directed the Defendant to pay both: (i)
17 “delay compensation” for the period starting from May 22, 2013 until payment is completed at the rate of
18 20% of the full amount of the promissory note per year; and (ii) the litigation costs of the Plaintiff.

19 On December 8, 2015, the Seoul High Court issued a Decision (Case No. 2015na10891
20 Commitment) rejecting Defendant’s appeal and ordering the Defendant to bear the legal costs of the
21 appeal.

22 On August 29, 2016, the Seoul District Court issued a Decision (Case No. 2016kahwak1636)
23 directing Defendant to pay the litigations costs of the Plaintiff in the amount of 11,033,990 (eleven million
24 thirty-three thousand nine hundred ninety) KRW.

1 To date, these judgments remain unsatisfied by the Defendant. The total amount owed by the
2 Defendant to the Plaintiff in accordance with these judgments is 141,033,990 KRW.⁷

3 At all relevant times, both the Seoul Central District Court and the Seoul High Court had the
4 power and jurisdiction to issue their respective decisions. The Defendant received notice of the court
5 proceedings and confirmed receipt of the August 16, 2013 Decision, the December 8, 2015 Decision, and
6 the August 29, 2016 Decision. Both the August 16, 2013 and the August 29, 2016 decisions issued by the
7 Seoul Central District Court are now final, conclusive and enforceable judgments in the Republic of
8 Korea.

9 **B. Procedural History**

10 On February 23, 2019, Plaintiff filed in the Superior Court for the Commonwealth of the Northern
11 Mariana Islands (“Commonwealth Superior Court”) a Complaint requesting the recognition and
12 enforcement of a foreign money civil judgment, namely three foreign money civil judgments from the
13 Republic of Korea, issued by the Seoul Central District Court on August 16, 2013 and August 29, 2016
14 and the foreign money civil judgment issued by the Seoul High Court on December 8, 2015.

15 On March 21, 2019, Defendant filed a motion to dismiss, alleging that the Plaintiff fails to allege
16 facts sufficient to establish all the essential elements of its claims. The Defendant argued that the Uniform
17 Enforcement of Foreign Judgments Act of 1994, codified in 7 CMC Section 4401, *et seq.*, does not permit
18 recognition and enforcement of the South Korean civil money judgment and there is no other cognizable
19 legal basis in the CNMI for such recognition.

20 On April 30, 2019, Plaintiff filed an Opposition to Motion to Dismiss.

21 On May 31, 2019, Defendant filed a Memorandum in Reply to Plaintiff’s Opposition to
22 Defendant’s Motion to Dismiss Plaintiff’s Complaint.

23 ⁷ The August 16, 2013 decision of the Seoul Central District Court further orders delay compensation at the rate of 20%
24 of the owed amount of 130,000,000 KRW per year, starting from the date of May 22, 2013, until the payment is completed.
Furthermore, this amount does not appear to include the legal costs of the appeal that the Defendant was ordered to pay
in the Seoul High Court’s decision of December 8, 2015.

1 On June 8, 2020, the Court *supra sponte* ordered supplemental briefs from each party on the issue
2 of whether 7 CMC Section 3401 is an unconstitutional delegation of legislative authority. On August 1,
3 2020, Plaintiff filed a Supplemental Brief. On August 24, 2020, Defendant filed a Supplemental
4 Opposition Brief.

5 IV. DISCUSSION

6 The Defendant argues that there is no cognizable legal theory found in any law applicable to the
7 CNMI that would enable the Court to recognize or enforce the Korean Judgments and that 7 CMC
8 Section 3401 is unconstitutional due to the separation of powers doctrine and the nondelegation doctrine.

9 The Plaintiff contends that there is a cognizable legal theory for the recognition and enforcement
10 of the Korean Judgments under the hierarchy of law set forth in 7 CMC Section 3401, in that:

- 11 a. The Treaty of Friendship between the United States and the Republic of Korea is applicable
12 within the CNMI and, in conjunction with the CNMI's Uniform Enforcement of Foreign
13 Judgments Act of 1994, is grounds for the recognition and enforcement of the Korean
14 Judgments;
- 15 b. The common law principle of comity, as expressed in the Restatement, provides further
16 grounds for recognition and enforcement of the Korean Judgments; and
- 17 c. Given that the Plaintiff's claim is based on the above cognizable legal theories, not only does
18 the Defendant has no concrete and redressable constitutional injury on the facts of this case,
19 but this motion may be determined without addressing the constitutionality of 7 CMC
20 Section 3401.

21 The court will first address the Rule 12(b)(6) Motion to Dismiss by considering whether there is
22 sufficient legal basis for the claim for recognition and enforcement of the Korean Judgments.

23 **A. Rule 12(b)(6) Motion to Dismiss: Legal Basis Exists for Recognition of the Claim and 24 Enforcement of the Korean Judgments**

- (1) Foreign Judgments Entitled to Full Faith and Credit May be Enforced Within the
Commonwealth

1 The Full Faith and Credit Clause of the United States Constitution is directly applicable, such that
2 the Commonwealth, like each state, is required to give the generous treatment of full faith and credit to
3 the judicial proceedings of every other state. This direct application of Article IV, Section 1 of the U.S.
4 Constitution to the Commonwealth is expressly provided for in Section 501, subsection (a) of the
5 Covenant. 48 U.S.C. § 1801. The Full Faith and Credit Clause thus requires Commonwealth courts to
6 give full recognition to the judgment of a sister state. U.S. Const. art. IV, § 1; Full Faith and Credit Act,
7 28 U.S.C. § 1738. However, it should be noted that “[e]nforcement measures do not travel with the sister
8 state judgment as preclusive effects do;” rather, the court recognizing and enforcing the foreign judgment
9 “retains control over enforcement measures.” Restatement (Fourth) of the Foreign Relations Law of the
10 United States § 488, reporter’s note 1 (Am. Law Inst. 2019) (quoting *Baker v. General Motors Corp.*, 522
11 U.S. 222, 235 (1998)). In sum, as a result of the Full Faith and Credit Clause, there is a valid legal theory
12 within the Commonwealth for the recognition and enforcement of judgments from other courts within the
13 United States.

14 The Uniform Enforcement of Foreign Judgments Act of 1994 (the “UEFJA”) further supports the
15 existence of a legal theory to recognize and enforce foreign judgments entitled to full faith and credit
16 within the Commonwealth. The UEFJA defines “foreign judgment” as “any judgment, decree or order of
17 a court of the United States or of any other court which is entitled to full faith and credit in the
18 Commonwealth of the Northern Mariana Islands.” 7 CMC § 4402. The language “court of the United
19 States or of any other court” indicates that the definition is not restricted only to courts of the United
20 States. Moreover, the UEFJA definition references the entitlement to “full faith and credit,” mirroring the
21 language of Article IV, Section 1 of the U.S. Constitution and reinforcing the applicability of the generous
22 treatment required under that provision within the Commonwealth.

23 Furthermore, the UEFJA, as codified in 7 CMC Section 4401 *et seq.*, makes clear that it creates
24 an optional procedure, stating that a judgment creditor retains the right to bring an action to enforce its

1 foreign judgment instead of proceeding under the filing procedure provided for in 7 CMC Section 4403.
2 7 CMC § 4407. Thus, once a foreign judgment fits within the definition of one entitled to full faith and
3 credit under the UEFJA, the judgment creditor has the right to bring an action to enforce that foreign
4 judgment in the Commonwealth. Here, the Plaintiff has exercised this right by bringing this action to
5 enforce its foreign civil money judgment, as permitted under 7 CMC Section 4407 of the UEFJA, rather
6 than proceeding to file the judgment under the UEFJA. The Plaintiff will be able to proceed provided that
7 the judgment in question is entitled to full faith and credit.

8 It is clear that neither the Full Faith and Credit Clause of the U.S. Constitution nor the UEFJA,
9 alone or in combination, form a sufficient legal basis to support a claim for the recognition and
10 enforcement of a foreign judgment from the Republic of Korea.

11 (2) The 1956 Treaty of Friendship Entitles Korean Judgments to Full Faith and Credit Within the
12 Commonwealth

13 At issue is whether the 1956 Treaty of Friendship between the United States and the Republic of
14 Korea has expanded the jurisdictions whose foreign judgments are entitled to receive full faith and credit
15 under the U.S. Constitution and the UEFJA to include the Republic of Korea.

16 The Treaty of Friendship, as a treaty entered into by the United States, is applicable to the
17 Commonwealth as it does not run afoul of the Commonwealth's authority for self-governance of internal
18 affairs. *Sablan v. Inos*, 2 CR 388, 396 (NMI Sup. Ct. 1991). As a foreign commerce treaty, the Treaty of
19 Friendship sets forth rules by which the United States and the Republic of Korea agree to abide with the
20 objective of each country treating the other country's citizens and corporations in the same manner as its
21 own nationals. Such treatment does not impede the Commonwealth's authority to enact, interpret, and
22 execute laws governing the internal affairs of the Commonwealth. *Id.*

23 The Treaty of Friendship between the United States of America and the Republic of Korea
24 provides that "[n]ationals and companies of either Party shall be accorded national treatment and most-
favored-nation treatment with respect to access to the courts of justice...in all degrees of jurisdiction, both

1 in pursuit and in defense of their rights.” 8 U.S.T. 2217, art. V, § 1. The treaty defines the term “national
2 treatment” as “treatment accorded within the territories of a Party upon terms no less favorable than the
3 treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects,
4 as the case may be, of such party.” Art. XXII, § 1.

5 The language of Article V in the Treaty of Friendship and identical language in other bilateral
6 treaties regarding national treatment and most-favored-nation treatment has been interpreted and applied
7 by the federal courts as requiring full faith and credit treatment for judgments from those countries. The
8 Eleventh Circuit, in *Vagenas v. Continental Gin Co.*, 988 F.2d 104 (11th Cir. 1993), concluded that
9 because treaties are the supreme law of the land, a 1951 treaty between the United States and Greece with
10 identical national treatment language required courts within the United States to give Greek judgments
11 the same status as “sister state judgments.” *Id.*, at 106; *Seoul Guarantee Ins. Co. v. Young Jik Shon*, CIVIL
12 ACTION NO. 2:08mc3422-MHT (WO) (M.D. Ala. Dec. 15, 2008). Furthermore, the Eleventh Circuit
13 noted that the Treaty of Friendship would preempt the law of a state in which enforcement was sought if
14 there were a conflict. See *Vagenas, id.* (citing *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S.
15 694, 699, 108 S. Ct. 2104, 2107, 100 L. Ed.2d 722 (1988)).

16 Similarly, in *Choi v. Kim*, the Third Circuit found that the Treaty of Friendship between the United
17 States and the Republic of Korea “elevates a Korean judgment to the status of a sister state judgment.”
18 *Choi v. Kim*, 50 F. 3d 244, 248 (3d Cir. 1995). The Eleventh Circuit later reached the same conclusion
19 with respect to this treaty, finding that “a Korean judgment is elevated to the status of a sister state
20 judgment.” *Daewoo Motor Am. v. GMC*, 459 F.3d 1249, 1259 (11th Cir. 2006), cert. denied, 127 S. Ct.
21 2032 (2007).

22 Federal court interpretations of treaties that are to be given effect as federal law carry
23 Constitutional authority: determining the meaning of federal law “is emphatically the province and duty
24 of the judicial department.” *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 353-54 (2006) (quoting *Marbury*
v. Madison, 5 U.S. (1 Cr.) 137, 177 (1803)). Following the Constitutional authority of the treaty

1 interpretation of the federal courts, and given that the Treaty of Friendship is the supreme law of the land
2 which preempts any conflicting Commonwealth law, the Commonwealth is required to treat a Korean
3 civil money judgment in the same way as it would treat a judgment of a United States state court by
4 affording it full faith and credit. Consequently, given that the Korean Judgments in question are entitled
5 to full faith and credit within the Commonwealth, the Plaintiff has sufficient legal basis to proceed in
6 bringing an action to enforce those Judgments within the Commonwealth.

7 (3) The Principle of Comity Further Supports the Enforcement of Korean Judgments Within the
8 Commonwealth

9 The principle of comity, as a principle of the common law of the United States expressed in the
10 Restatement, is applicable in the Commonwealth under 7 CMC Section 3401. Under 7 CMC
11 Section 3401, in the absence of written law or local customary law to the contrary, Commonwealth courts
12 shall apply the common law of the United States, as expressed in the Restatements and as generally
13 understood and applied in the United States.

14 (a) The Restatement expresses the common law principle of comity

15 Furthermore, the Restatement's inclusion of international law and review of statutes enacted and
16 applied within the United States indicate that the Restatement is an expression of common law. First, the
17 common law of the United States does not exclude international law, and in fact incorporates it. The
18 Defendant claims that the introduction to the Restatement describes itself as being different to other
19 Restatements because it addresses both international law and domestic law relating to foreign relations.⁸
20 However, the Introductory Note to Chapter 8 on the Recognition and Enforcement of Foreign Judgments
21 explains that "Chapter 8 restates U.S. domestic law governing the recognition and enforcement of foreign
22 judgments." Restatement, Introductory Note. Furthermore, as the Supreme Court of the United States
23 famously stated in *The Paquete Habana*, "[i]nternational law is part of our law, and must be ascertained

24 ⁸ The Defendant cited Restatement (Fourth) of Foreign Relations Law, Intro (2018). However, the excerpt quoted by the Defendant is not available in the 2019 version consulted by the Court.

1 and administered by the courts of justice of appropriate jurisdiction, as often as questions of right
2 depending upon it are duly presented for their determination.” *The Paquete Habana*, 175 U.S. 677, 700
3 (1900). Whatever political position is taken on the question of the applicability of international law within
4 the United States, it is incontrovertibly true that courts of the United States are called upon to interpret
5 and apply international law. Renowned international law and foreign policy scholar Louis Henkin
6 explained that international law is like federal common law “in that both have the status of federal law
7 for purposes of supremacy to state law. And [...] in that determinations of customary international law by
8 the Supreme Court are law in the United States and binding on the states.” Louis Henkin, *International*
9 *Law as Law in the United States*, 82 Mich. L. Rev. 1555, 1561 (1984).

10 Courts in the United States have repeatedly applied the principle of comity. In *Hilton v. Guyot* in
11 1895, the Supreme Court of the United States applied comity, holding that civil judgments of foreign
12 nations should be held as conclusive on the merits and “the merits of the case should not, in an action
13 brought in this country upon the judgment, be tried afresh” absent any special ground for impeaching that
14 judgment, such as due process concerns. *Hilton v. Guyot*, 159 U.S. 113, 202-3 (1895). Other courts have
15 followed this precedent. See, for example, *Somportex Ltd. V. Philadelphia Chewing Gum Corp.*, 453 F.2d
16 435, 440-3 (3d Cir. 1971) (finding a UK money judgment enforceable under the principle of comity); *LG*
17 *Display Co., Ltd. V. Obayashi Seikou Co., Ltd.* 919 F.Supp.2d 17, 30-2 (D.D.C. 2013) (finding a Korean
18 patent judgment enforceable under the principle of comity). Even if the Defendant insists on the most
19 limited definition of what constitutes common law of the United States, the judicial opinions issued by
20 the Supreme Court and federal courts of the United States undoubtedly, without question, form part of the
21 common law of the United States.

22 The enactment and implementation of statutes in various states which codify common law are
23 indicative of the status of the common law of the United States. The Defendant contends that the portion
24 of the Restatement which considers the Uniform Foreign-Country Money Judgment Acts of 1962 and
2005, surveying which states have adopted these uniform laws, cannot be indicative of common law as it

1 concerns statute and not judicial opinion. In response, the Plaintiff notes that United States common law
2 is defined as “[t]he body of English law that was adopted as the law of the American colonies and
3 supplemented with local enactments and judgments.” Common Law, Black’s Law Dictionary (11th ed.
4 2019). The former Chief Justice of the Commonwealth Supreme Court has stated that some of what the
5 court applies as common law is actually shaped by legislative action in the United States, and
6 Commonwealth courts are to look to both judicial opinions and enacted laws when doing a survey of
7 common law in accordance with 7 CMC Section 3401. The former Chief Justice explained that where the
8 relevant common law doctrines are no longer applied in the United States due to codification, “we have
9 interpreted 7 CMC Section 3401 to require an examination of the statutes of the fifty states, and the cases
10 construing them, to determine the applicable law in the Commonwealth.” *In re Estate of Imamura*, 1997
11 MP 7 ¶ 25 (C.J. Taylor, dissenting) (finding that “‘the common law of intestate succession’ is an
12 oxymoron as the laws of intestate succession are purely statutory in origin).

13 It is clear that the statutes reviewed by the Restatement in this instance represent the codification
14 of the applicable common law. The Prefatory Note to the Uniform Enforcement Foreign-Country Money
15 Judgment Recognition Act states that the 1962 Act is “codification of the most prevalent common law
16 rules for judicial comity with regard to the recognition and enforcement of money judgments rendered in
17 other countries.” The 2005 Act contained amendments that were “not to depart from the basic rules or
18 approach of the 1962 Act,” but simply to clarify its provisions. *Id.* The adoption of these uniform statutes
19 and any revisions included by the states adopting these statutes is therefore reflective of the codification
20 of the common law of comity within the United States. Thus, in conducting a survey of the state statutes
21 which have codified the common law concerning the recognition and enforcement of foreign country
22 money judgments under the principle of comity, the Restatement is not departing from the approach
23 required under 7 CMC Section 3401.

24 (b) The Restatement provides the operative rules of decision for Commonwealth
courts under 7 CMC Section 3401

1 The rules expressed in the Restatement, whether or not they accord with the common law of the
2 United States, are the rules to be applied by Commonwealth courts under 7 CMC Section 3401. The
3 Commonwealth Supreme Court has clarified that in the absence of contrary written or local customary
4 law, “the Restatements are the operative rules of decision in the Commonwealth, even when the relevant
5 provision does not accord with United States common law.” *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 64.

6 While there are no Commonwealth judicial opinions on point and nothing in the written and local
7 customary law covering the precise issue of actions for the enforcement of civil money judgments from
8 the Republic of Korea, the Restatement and the principle of comity expressed therein can be used to fill
9 this gap. See *Tan v. Mariana’s Variety*, 2007 MP 11 ¶ 31 (applying law from restatements in a defamation
10 case).

11 (c) The principle of comity as expressed in the Restatement provides an additional
12 cognizable legal theory to support the claim for recognition and enforcement of
13 the Korean Judgments

13 The common law principle of comity provides for the recognition and enforcement of foreign
14 country money judgments, as applied in the United States as far back as 1895. *Hilton v. Guyot*, 159 U.S.
15 113 (1895). The Restatement, in Section 481, expresses this principle: “a final, conclusive, and
16 enforceable judgment of a court of a foreign [country] granting or denying recovery of a sum of money,
17 or determining a legal controversy, is entitled to recognition by courts in the United States.” Furthermore,
18 a civil money judgment entitled to recognition under Section 481 is “enforceable in the same manner and
19 to the same extent as a judgment rendered in the State in which enforcement is sought.” Restatement
20 (Fourth) of the Foreign Relations Law of the United States § 486 (Am. Law Inst. 2019).

21 The Restatement indicates that in order to be recognized and enforced under the common law
22 principle of comity, the judgment in question must be final, conclusive, and enforceable. *Id.* § 481.
23 Accepting all well-pleaded facts as true for the purposes of considering the Rule 12(b)(6) Motion to
24 Dismiss, the Court assumes that the Korean Judgments at issue are final, conclusive and enforceable. It
appears that none of the mandatory exclusions enumerated in Section 483 of the Restatement apply in the

1 present case, as: (i) the judgment was not rendered under a judicial system lacking impartial tribunals or
2 procedures; (ii) the court that rendered the judgment did have personal and subject-matter jurisdiction;
3 and (iii) the judgment did not rest on a claim of defamation. In addition, none of the discretionary
4 exclusions enumerated in Section 484 apply: (a) the party resisting recognition did receive adequate notice
5 of the proceedings; (b) the judgment was not obtained by fraud; (c) the judgment is not repugnant to the
6 public policy of the CNMI or the United States; (d) the judgment does not conflict with another final and
7 conclusive judgment; (e) the proceeding was not contrary to an agreement between the parties to resolve
8 the dispute in another forum; (f) the foreign court was not a seriously inconvenient forum; (g) the
9 judgment was not rendered in circumstances raising doubt about the integrity of the rendering court; (i)
10 the specific proceeding is compatible with fundamental principles of fairness; and (j) there is no reason
11 to believe that the courts of the Republic of Korea would not recognize a comparable U.S. judgment.

12 Furthermore, the judgments in question are civil money judgments granting recovery of a sum of
13 money and not tax or penal judgments or judgments which would be excluded from enforcement.
14 Restatement (Fourth) of the Foreign Relations Law of the United States § 489 (Am. Law Inst. 2019).
15 Accepting all well-pleaded facts as true at this stage, the Court finds there is sufficient legal basis to
16 enforce the Korean Judgments in the same manner and to the same extent as a civil money judgment
17 rendered in the Commonwealth.

18 (d) Preventing Forum Shopping as an Abusive Litigation Strategy

19 In addition, the Defendant refers to an important objective underlying the recognition and
20 enforcement of foreign judgments and the Full Faith and Credit Clause of the U.S. Constitution, namely,
21 the prevention of forum shopping as an abusive litigation strategy.⁹ For example, the Defendant defines
22 forum shopping as parties moving from one jurisdiction to another to avoid enforcement of a judgment,

23 ⁹ It should be noted that forum shopping is not necessarily negative and the term is often used to indicate forum choice:
24 Black's Law Dictionary defines forum shopping as "a litigant's attempt to have [an] action tried in a court or jurisdiction
where [the litigant] feels [the litigant] will receive the most favourable judgment." *Forum Shopping*, BLACK'S LAW
DICTIONARY (10th ed. 2014); see also Luiz Eduardo Salles, *Forum Choice and Forum Shopping*, in MAX PLANCK
ENCYCLOPEDIAS OF INTERNATIONAL LAW (Anne Peters, ed., 2020).

1 or to relitigate a matter already decided in another jurisdiction. In this way, it can result in a prolongation
2 and amplification of the underlying dispute, dragging out or avoiding altogether a resolution which has
3 already been decided. The objective of preventing this kind of forum shopping is therefore tied to the
4 broader objective of ensuring the rule of law.

5 The principle of comity, in addition to treaties, statutes and rules regarding the recognition and
6 enforcement of foreign judgments, seeks to prevent the problems created by forum shopping as an abusive
7 litigation strategy. To permit a defendant in the Commonwealth to avoid enforcement of a civil money
8 judgment from the Republic of Korea, when such a judgment appears to have been rendered with finality
9 and due process, and when the jurisprudence of the federal courts and the Treaty of Friendship indicate
10 that civil money judgments from the Republic of Korea are to be afforded full faith and credit, would
11 clearly go against this purpose and undermine the rule of law.

12 In conclusion, the Defendant has not met the burden of showing that recognition and enforcement
13 under the common law principle of comity, as expressed in the Restatement, is not a cognizable legal
14 theory upon which the Plaintiff may bring a claim. Construing the complaint in the light most favorable
15 to the Plaintiff, the non-moving party, and accepting all well-pleaded facts as true, the Court finds that the
16 Plaintiff has a final and conclusive civil money judgment from the Republic of Korea, that the Plaintiff is
17 entitled by law to bring an action for the enforcement of this judgment in the Commonwealth, and that
18 this judgment may be enforced as a judgment entitled to full faith and credit under the U.S. Constitution
19 Article IV, Section 1, the Commonwealth's Uniform Enforcement of Foreign Judgments Act of 1994, the
20 Treaty of Friendship between the United States and the Republic of Korea, and the principle of comity.
21 Accordingly, the Court finds that the above cognizable legal theories support the legal sufficiency of the
22 Plaintiff's claim.

23 Therefore, the Court, for the reasons stated above, denies Defendant Hong Kyun Kim's Rule
24 12(b)(6) Motion to Dismiss Plaintiff Sung Yoon Kim's request for recognition and enforcement of a
foreign money civil judgment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

V. CONCLUSION

THEREFORE, for the reasons stated above, Defendant Hong Kyun Kim’s Rule 12(b)(6) Motion to Dismiss¹⁰ is DENIED.

IT IS SO ORDERED this 30th day of March, 2021.

/s/

JOSEPH N. CAMACHO, Associate Judge

¹⁰ For the sake of completeness, the Court will briefly address the constitutionality of 7 CMC Section 3401 with respect to the applicability of common law and the non-delegation doctrine.

The Defendant argues that 7 CMC Section 3401 is unconstitutional due to the separation of powers doctrine and the nondelegation doctrine. The Plaintiff contends that, given there is a cognizable legal theory for the recognition and enforcement of the Korean Judgments under the hierarchy of law set forth in 7 CMC Section 3401, (a) the Defendant has no concrete and redressable constitutional injury on the facts of this case; and (b) it is not necessary to resort to a constitutional question.

The Commonwealth Supreme Court has previously addressed this question in dicta, stating that it was not swayed by a party’s argument that 7 CMC Section 3401 was unconstitutional because it violated the separation of powers doctrine under NMI Const. art. II, section 1. *Bolalin v. Guam Publications, Inc.* 4 NMI 176, *4 nt. 15, No. 93-005, 1994 WL 1886692 (NMI Sept. 9, 1994).

In the present case, the Defendant’s arguments revolve around the contention that the Restatement does not reflect the common law of the United States. As stated previously, the Restatement’s summary of the recognition and enforcement of foreign country money judgments is based on the principle of comity within United States common law. Furthermore, the Commonwealth Supreme Court has held that the restatements are the operative rules of decision in the Commonwealth even when the relevant provision in the restatements does not accord with the common law of the United States. *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 64.

There is another separation of powers issue at play. For the Court to pursue the parceling out of which Restatement provisions reflect the common law of the United States and which provisions do not would be a usurpation of the role of the Commonwealth Legislature. The plain language of 7 CMC Section 3401 states that where no written or local customary law exists, courts shall apply the rules of common law as expressed in the restatements and, where not expressed in the restatements, the common law as generally understood and applied in the United States. Commonwealth courts have declined to depart from the rules expressed in the Restatements when such rules were clear, explaining that to do so would be to overstep into the area occupied by the Commonwealth Legislature and to “engage in judicial legislation.” See *Flores v. Hazelwood*, Civil No. 00-0332 (N.M.I. Super. Ct. July 5, 2001) (declining to depart from the rules of common law as expressed in the Restatement despite the fact that they did not follow the modern trend and may be considered harsh out of concern that such a departure would cause the Court to step into the legislative arena); see also *Ocampo v. CNMI*, CIVIL ACTIONS NOS. 01-0229A, 01-0228E, 01-0227D, 01-0226C, 01-0225B, 01-0224A, 01-0223E, 01-0222D (NMI Super. Ct. Oct. 4, 2014) (Order denying Plaintiffs’ and Defendant’s Motions for Summ. J.) (the Court declines to assume the role of the Legislature in determining whether the rule expressed in the Restatement should not be applied when there exists a modern trend to the contrary).

In the present case, the Plaintiff ask whether the Defendant has standing to raise the question of constitutionality, arguing that an attack on the law will not be heard unless the party presenting the argument is actually, personally harmed in the instant facts by the alleged unconstitutionality of the statute. *Commonwealth v. Oden*, 3 NMI 186, 202 (1992) (quoting *United States v. Raines*, 362 U.S. 17, 80 S. Ct. 519, 522 (1960)). Here, the Defendant has not been actually, personally harmed in the instant facts by the alleged unconstitutionality of the statute because the Court has, for the purposes of this Rule 12(b)(6) Motion to Dismiss, concluded that there is a cognizable legal theory sufficient to support the Plaintiff’s claim on the basis of the U.S. Constitution, the UEFJA, the Treaty of Friendship, and federal jurisprudence interpreting the Treaty of Friendship. This legal theory is founded not in the Restatements, but in written law and judicial opinion. Therefore, the fact that the principle of comity, as expressed in the Restatement and as applicable in the Commonwealth pursuant to 7 CMC Section 3401, presents an additional alternative cognizable legal theory upon which the Plaintiff’s claim may be based does not amount to actual and personal harm to the Defendant. Consequently, the Defendant does not have standing to raise this issue.