



FOR PUBLICATION



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

STAR MARIANAS AIR, INC.,	)	CIVIL CASE NO. 20-0386
	)	
Plaintiff,	)	
vs.	)	ORDER DENYING DEFENDANT
	)	COMMONWEALTH PORTS
COMMONWEALTH PORTS	)	AUTHORITY’S RULE 12(B)(6) MOTION
AUTHORITY,	)	TO DISMISS FOR FAILURE TO STATE
	)	A CLAIM BECAUSE THE PLAINTIFF
Defendant.	)	STAR MARIANAS AIR, INC.– THE NON-
	)	MOVING PARTY – IS ONLY REQUIRED
	)	TO PLEA ENOUGH DIRECT AND
	)	INDIRECT ALLEGED FACTS TO
	)	PROVIDE FAIR NOTICE OF THE
	)	NATURE OF THE CLAIM
	)	
	)	

I. INTRODUCTION

THIS MATTER came before the Court on April 15, 2021 at 2:30 p.m. on the Commonwealth Ports Authority’s (“Defendant” or “CPA”) Motion to Dismiss filed on January 25, 2021. Star Marianas Air, Inc. (“Plaintiff” or “Star”) was represented by Mark A. Scoggins. CPA was represented by Joseph Hallahan.

On December 14, 2020, Star filed its complaint (“the Complaint”) that alleged nine (9) violations of the Airline Use Agreement and Lease of Premises. On January 25, 2021, CPA filed its Defendant’s Motion to Dismiss Complaint (“Motion to Dismiss”). On February 4, 2021, Star filed its Opposition to Motion to Dismiss. (“Opposition”). On February 12, 2021, CPA filed its Reply to Plaintiff’s Opposition to Motion to Dismiss. (“Reply”).

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

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1 Based on a careful review of the filings and applicable law, and the arguments of counsel,  
2 the Court issues the following Order.

3  
4 **II. BACKGROUND**

5 In addressing a Rule 12(b)(6) motion, the alleged facts are presumed true for the limited  
6 purposes of this Order.

7 In April 2009, Star and CPA entered into a contract titled an Airline Use Agreement and Lease  
8 of Premises (the “AUA”) through which Star acquired certain premises, facilities, rights, and  
9 privileges in airport properties owned and operated by the CPA.

10 Star claims that CPA committed the following nine (9) breaches of the AUA:

- 11 1. First Claim. Section 7.05: CPA has failed, and continues to fail on an annual basis, to  
12 adjust the fees and charges as required by Section 7.05 in breach of the AUA. Compl. ¶  
13 13.
- 14 2. Second Claim. Section 7.06: CPA has failed, and continues to fail on an annual basis, to  
15 properly calculate the fees and charges as required by Sections 7.06 in breach of the AUA.  
16 Compl. ¶ 15.
- 17 3. Third Claim. Section 7.07: CPA has failed, and continues to fail on an annual basis, to  
18 properly calculate the fees and charges as required by Section 7.07 in breach of the AUA.  
19 Compl. ¶ 15.
- 20 4. Fourth Claim. Section 7.08: CPA has failed, and continues to fail on an annual basis, to  
21 provide an annual proposed budget as required by Section 7.08 in breach of the AUA.  
22 Compl. ¶ 17.
- 23 5. Fifth Claim. Section 7.08: CPA has failed, and continues to fail on an annual basis, to  
24 consider comments required by Section 7.08 in breach of the AUA. Compl. ¶ 17.

- 1 6. Sixth Claim. Section 7.08: CPA has failed, and continues to fail on an annual basis, to  
2 give notice of annual fee and charge rates as required by Section 7.08 in breach of the  
3 AUA. Compl. ¶ 17.
- 4 7. Seventh Claim. Section 7.08: Section 7.08 also provides that in the event CPA does not  
5 timely give annual notice of the rates for fees and charges, adjustments for overpayment  
6 and underpayment shall be made after the calculations are properly made and notice  
7 properly given. CPA has failed on annual basis to properly comply with this requirement  
8 of Section 7.08, as well. Compl. ¶ 18.
- 9 8. Eighth Claim. Article 10: CPA has failed to repair Star’s Preferential Use Premises on  
10 Saipan that were damaged during Typhoon Yutu in breach of the AUA. As a result of  
11 CPA’s failures and breach, Star has been forced to conduct operations on Saipan out of  
12 shipping containers and with no running water or restroom facilities. Compl. ¶ 24.
- 13 9. Ninth Claim. Article 10: CPA has failed to reduce the fees and charges as a result of the  
14 damaged facilities in breach of the AUA. Compl. ¶ 26.

15 Star claims that it has endured substantial damages as a result of CPA’s multiple breaches of  
16 the AUA, including excessive costs, loss of profits, and hindered operations.

17 **III. LEGAL STANDARD**

18 **A. Rule 12(b)(6)**

19 Pursuant to Rule 12(b)(6) of the Northern Mariana Islands Rules of Civil Procedure, a  
20 claimant may file a motion to dismiss a cause of action for “failure to state a claim upon which relief  
21 can be granted.” NMI R. Civ. P. 12(b)(6).

22 “In a Rule 12(b)(6) motion to dismiss, the court reviews the complaint for sufficient  
23 allegations necessary to support a party’s legal claims upon which relief can be granted.” *Claassens*  
24

1 v. *Rota Health Ctr.*, 2021 MP 9 ¶ 13. To survive a Rule 12(b)(6) motion to dismiss, “a complaint  
2 must either contain direct allegations on every material point necessary to sustain a recovery on any  
3 legal theory, even though it may not be the theory suggested by the pleader, or contain allegations  
4 from which evidence on these material points will be introduced at trial.” *Id.* at ¶ 17 (internal citations  
5 and punctuation omitted); *see also* NMI R. CIV. P. 8 (a pleading “shall contain . . . a short and plain  
6 statement of the claim showing that the pleader is entitled to relief”). A claimant need only “plead  
7 enough direct and indirect allegations to provide adverse parties fair notice of the nature of the  
8 action.” *Claassens*, 2021 MP 9 ¶ 17 (internal citation omitted).

9 “[A]ll elements must be supported with some alleged facts.” *Id.* “Nevertheless, the court must  
10 construe the complaint in the light most favorable to the plaintiff and take its allegations to be true  
11 for purposes of a motion to dismiss.” *Id.* at ¶ 16.

12 The purpose of a Rule 12(b)(6) is to weed out groundless claims that could *never* win even  
13 when assuming the factual allegations in the complaint are true. *See id.* As such, when reviewing a  
14 Rule 12(b)(6) motion to dismiss, the Court’s inquiry is limited to whether the claimant is entitled to  
15 continue to pursue their claim. *See id.* Claimants are not required to “make a case against a defendant  
16 or forecast evidence sufficient to prove an element of the claim” in their complaint to survive a Rule  
17 12(b)(6) motion. *Id.* (internal citations omitted).

## 18 **B. Conversion**

19 As a general rule, if a party presents matters outside the pleadings in Rule 12(b)(6) motion to  
20 dismiss and such matters are not excluded by the Court, then the Rule 12(b)(6) motion must be  
21 converted to a motion for summary judgment under Rule 56 of the Northern Mariana Islands Rules  
22 of Civil Procedure. NMI R. CIV. P. 12(d). However, conversion may be avoided when documents  
23 outside the pleadings are submitted and accepted by the Court if the documents are relied on or  
24

1 referenced in the complaint and their authenticity is undisputed. *See Claassens v. Rota Health Ctr.*,  
2 2021 MP 9 ¶ 13.

#### 3 IV. DISCUSSION

4 CPA advances three (3) arguments in support of its Rule 12(b)(6) Motion to Dismiss. These  
5 arguments are: (1) Star’s first through seventh claims should be dismissed because Star has not pled  
6 facts sufficient to show that these claims were brought within the applicable statute of limitations; (2)  
7 Star’s first, fourth, fifth, sixth, and eighth claims should be dismissed because Star failed to directly  
8 or indirectly provide allegations in the Complaint that Star’s damages were a result of CPA’s breaches  
9 of the AUA; and (3) Star’s first, fourth, fifth, sixth, and eighth claims should be dismissed because  
10 Star’s claims of excess costs and lost profits are speculative and unsupported by facts.

11 For the purpose of CPA’s Rule 12(b)(6) Motion to Dismiss, CPA does not challenged Star’s  
12 second, third, and ninth claims.<sup>1</sup> Therefore, these three claims will proceed with litigation.

##### 13 A. Statute of Limitations

14 CPA argues that Star did not assert sufficient facts to establish that Star’s first through seventh  
15 claims were made within the statute of limitations because Star did not indicate the date on which  
16 those claims first occurred.

17 Both parties acknowledge that the applicable statute of limitations is six (6) years. 6 CMC §  
18 2505.

19 According to the Complaint, and assuming such allegations are true, Star and CPA entered  
20 into the AUA in April 2009. Therefore, it is theoretically possible that CPA violated the AUA outside  
21 the six (6) year statute of limitations period. However, the Complaint notes that CPA “has failed, and  
22 continues to fail on an annual basis” to perform under multiple sections of the contract. Compl. ¶¶

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24 <sup>1</sup> In CPA’s Motion to Dismiss, CPA argued that Star’s second and third claims were barred by *res judicata* to the extent  
that Star alleges that CPA is incorrectly calculating rates and charges. However, CPA withdrew its *res judicata* arguments  
in its Reply. Therefore, the Court need not analyze these arguments.

1 13, 15, 17, and 18. This assertion of ongoing breaches is sufficient to claim that violations have  
2 occurred within the applicable statute of limitations period. Therefore, Star may proceed with the first  
3 through seventh claims to the extent Star seeks to recover damages from the breaches that occurred  
4 within the six (6) years prior to the date of Star filing its Complaint. To the extent Star wishes to  
5 proceed with claims that accrued outside of this six (6) year period, such claims are dismissed.

## 6 **B. Direct Allegations**

7 In its motion to dismiss, CPA argued that claims 1, 4-6, 8 should be dismissed.<sup>2</sup>

- 8 1. **First Claim.** Section 7.05: CPA has failed, and continues to fail on an annual  
9 basis, to adjust the fees and charges as required by Section 7.05 in breach of the  
10 AUA; **Fourth Claim.** Section 7.08: CPA has failed, and continues to fail on an  
11 annual basis, to provide an annual proposed budget as required by Section 7.08 in  
12 breach of the AUA; **Fifth Claim.** Section 7.08: CPA has failed, and continues to  
fail on an annual basis, to consider comments required by Section 7.08 in breach  
of the AUA; **and Sixth Claim.** Section 7.08: CPA has failed, and continues to fail  
on an annual basis, to give notice of annual fee and charge rates as required by  
Section 7.08 in breach of the AUA.

13 With respect to the first, fourth, fifth and sixth claims, CPA argues that they should be  
14 dismissed because Star allegedly failed to articulate a clear theory of causation between CPA’s  
15 actions and Star’s loss of profits in the Complaint. CPA alleges that the breaches of the AUA only  
16 impacts the approximate rate which allegedly has no bearing on the actual rate charged. However,  
17 Star was not required to “make a case against a [CPA] or forecast evidence sufficient to prove an  
18 element of the claim” in the Complaint to survive CPA’s motion to dismiss. *Claassens*, 2021 MP ¶  
19 16. Instead, Star merely needed to “plead enough direct and indirect allegations to provide adverse  
20 parties fair notice of the nature of the action.” *Id.* at ¶ 17. Here, Star pled that it entered into a contract  
21 with CPA – the AUA, that CPA breached specific sections of the contract, and that Star has suffered  
22 substantial damages as a result of these breaches. This is sufficient to provide CPA with “fair notice

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24 <sup>2</sup> The Court notes that the submission of the AUA does not convert CPA’s Motion to Dismiss into a motion for summary judgment. This is because Star relies on and refers to the AUA in the Complaint and neither party appears to dispute the authenticity of the submitted document. *See Claassens v. Rota Health Ctr.*, 2021 MP 9 ¶ 13.

1 of the nature of the action.” *Id.* The issue of to what extent Star was damaged is a matter for a later  
2 stage in the litigation. The purpose of a Rule 12(b)(6) motion to dismiss is to weed out groundless  
3 claims that could *never* win even when assuming the factual allegations in the complaint are true. *See*  
4 *Claassens*, 2021 MP ¶ 16.

5           2. **Eighth Claim.** Article 10: CPA has failed to repair Star’s Preferential Use  
6 Premises on Saipan that were damaged during Typhoon Yutu in breach of the  
7 AUA. As a result of CPA’s failures and breach, Star has been forced to conduct  
8 operations on Saipan out of shipping containers and with no running water or  
9 restroom facilities.

10           In regards to the eighth claim, CPA argues that this claim should be dismissed because  
11 Preferential Use Premises do not guarantee public restroom facilities or running water and it is unclear  
12 how the lack of a public restroom facility and running water in an area that is not guaranteed to have  
13 a public restroom facility or running water caused Star’s lost profits. CPA’s arguments against it  
14 misconstrue what is on the face of the Complaint. Star’s eighth claim states that “[CPA] has failed to  
15 repair the [Preferential Use Premises] in breach of the AUA [and,] as a result of [CPA’s] failures and  
16 breach, Star has been forced to conduct operations on Saipan out of shipping containers and with no  
17 running water or restroom facilities.” Compl. ¶ 24. Furthermore, Star also went on to say that CPA’s  
18 breach resulted in substantial damages. Compl. ¶ 27. Whether Preferential Use Premises includes the  
19 right to running water and restroom facilities is not material at this stage of the proceedings. For the  
20 purposes of a Rule 12(b)(6) analysis, the focus is whether Star claimed that Preferential Use Premises  
21 were damaged, not timely repaired in breach of the AUA, and that this breach resulted in a loss of  
22 profits. The issue of to what extent Star was damaged is a matter for a later stage in the litigation.  
23 The purpose of a Rule 12(b)(6) motion to dismiss is to weed out groundless claims that could *never*  
24 win even when assuming the factual allegations in the complaint are true. *See Claassens*, 2021 MP ¶  
16.

1           **C. Damages**

2           In addition to the above, CPA argues that Star has failed to directly or indirectly provide  
3 allegations on every material point of its breach of contract claim – namely, the material point that  
4 Star has been damaged. CPA alleges that a material point of a breach of contract claim is that the  
5 harm caused by the breach must not be speculative, meaning the damages must be measurable with  
6 a reasonable degree of certainty. Specially, CPA argues that even if Star can show that its costs  
7 increased, a determination of whether those increased costs were a result of CPA’s breaches or  
8 whether those costs were a result of any other numerous factors, such as a downturn in the economy  
9 due to Typhoon Yutu or COVID-19, will be entirely speculative.

10           In support of its arguments, CPA relies on *Atalig v. Mobil Oil Mariana Islands, Inc.*, 2013  
11 MP 11; *Century Ins. Co. v. Guerrero Bros.*, 2010 MP 13; *Tano Group, Inc. v. Dep’t of Pub. Works*,  
12 2009 MP 18; and *Falcon v. McCue*, 2005 MP 7. However, the later three cases are not relevant here.  
13 *Century Ins. Co.* and *Tano Group, Inc.* both concern what is required for a final damages award,  
14 which is a much higher standard than what is required to survive a Rule 12(b)(6) motion. *Falcon*  
15 meanwhile concerns the requirements of standing, which is also a different inquiry than the one  
16 presently before the Court. Thus, the Court will now turn its attention to CPA’s arguments concerning  
17 *Atalig*.

18           Here, CPA relies heavily on the Supreme Court of the Commonwealth of the Northern  
19 Mariana Islands’ (“Supreme Court”) finding in *Atalig* that “a statement of facts that merely creates a  
20 suspicion that the pleader might have a right of action is insufficient.” *Atalig v. Mobil Oil Mariana*  
21 *Islands, Inc.*, 2013 MP 11 ¶ 23 (citation omitted). However, in *Claassens v. Rota Health Ctr.*, 2021  
22 MP 9, the Supreme Court articulated the current standard for courts to follow when adjudicating a  
23 Rule 12(b)(6) motion. The Supreme Court made it clear that claimants do not need to “forecast  
24 evidence sufficient to prove an element of the claim” in their complaint to survive a Rule 12(b)(6)



1 motion. *Claassens*, 2021 MP 9 ¶ 16 (citation omitted). Thus, the Court finds Star’s allegations in the  
2 Complaint that certain breaches of the AUA occurred and these breaches led to a loss of profits  
3 sufficient for the purposes of surviving a Rule 12(b)(6) motion.<sup>3</sup>

4 **V. CONCLUSION**

5 AS NOTED ABOVE, Defendant Commonwealth Ports Authority does not challenge Plaintiff  
6 Star Marianas Air, Inc.’s second, third, and ninth claims in this Motion to Dismiss. Therefore, these  
7 three claims will proceed with litigation.

8 AS TO Plaintiff Star Marianas Air, Inc.’s first, fourth, fifth, sixth, seventh and eighth claims,  
9 the Court finds that Plaintiff Star Marianas Air, Inc. has alleged enough facts to sufficiently provide  
10 Defendant Commonwealth Ports Authority with fair notice of the nature of the claims.

11 **THEREFORE**, for the reasons stated above, the Commonwealth Ports Authority’s Rule  
12 12(b)(6) Motion to Dismiss for Failure to State a Claim is DENIED.

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14 **IT IS SO ORDERED** this 25<sup>th</sup> day of February, 2022.

15 /s/  
16 **JOSEPH N. CAMACHO**, Associate Judge

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23 <sup>3</sup> See *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002) (“This simplified notice pleading standard relies on liberal  
24 discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious  
claims.”); *United States v. Maricopa County*, 915 F. Supp. 2d 1073, 1082 (D. Ariz. December 11, 2012) (“The scope of  
the relief must match the scope of the harm proven. This will be determined after discovery.” (internal citation omitted)).