E-FILED
CNMI SUPERIOR COURT
E-filed: May 29 2024 09:05AM
Clerk Review: May 29 2024 09:05AM
Filing ID: 73249929
Case Number: 23-0197-CV
N/A

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

CONSTRUCTION & MATERIAL SUPPLY, INC., **Plaintiff,** **v.** **RAMON "RB" CAMACHO, in his official capacity as Mayor of Saipan and MUNICIPALITY OF SAIPAN,** **Defendants.**	**CIVIL ACTION NO. 23-0197** **ORDER GRANTING DEFENDANTS' RULE 12(b)(1) MOTION TO DISMISS BECAUSE WHILE THE UNCHARTERED MUNICIPALITY OF SAIPAN MAY BE SUED IN "CERTAIN SITUATIONS" SINCE THERE WAS NO CONTRACT THAT COMPLIED WITH PROCUREMENT REGULATIONS TO CREATE A VALID CONTRACT BETWEEN THE PARTIES THIS IS NOT ONE OF THOSE SITUATIONS;** **FURTHERMORE, ORDER GRANTING DEFENDANTS' RULE 12(b)(6) MOTION TO DISMISS AS THE ONLY CONTRACT WAS THE "TEMPORARY OCCUPANCY AGREEMENT" BETWEEN PLAINTIFF AND THE DEPARTMENT OF PUBLIC LANDS WITH DEFENDANTS AS THE INTENDED BENEFICIARY THAT EXEMPTS THE MUNICIPALITY OF SAIPAN FROM PAYING ANY CHARGES FOR QUARRY MATERIAL EXTRACTION**

I. INTRODUCTION

THIS MATTER came before the Court on Defendants Ramon "RB" Camacho, in His Official Capacity as Mayor of Saipan and Municipality Of Saipan's (collectively "Defendants" or "Municipality of Saipan" or "MOS") Rule 12(b)(1) and Rule 12(b)(6) Motion to Dismiss, on January 30, 2024, at 2:30 p.m. in Courtroom 220A. Robert T. Torres appeared on behalf of

Plaintiff Construction & Material Supply, Inc. (“Plaintiff” or “CMS”). Michael N. Evangelista appeared on behalf of the Defendants.

II. RELEVANT FACTS

1. CMS operates as a construction and supply company, offering construction services and providing construction materials to its clientele in the CNMI. CMS also holds a permit to operate a rock quarry in Kannat Tabla, Saipan, CNMI. Complaint ¶ 6.
2. On or about August 14, 1996, CMS received a Quarry Permit Agreement from the Division of Lands of the Department of Lands and Natural Resources, which was later succeeded by the Department of Public Lands ("DPL"). The agreement, valid for ten (10) years, granted CMS permission to operate a rock quarry in a specific area known as Lot No. 035 H 01 in Kannat Tabla. Complaint ¶ 7.
3. After granting several extensions, DPL issued a conditional renewal of the Temporary Occupancy Agreement No. 07-009S to CMS on June 26, 2023. This renewal was given after determining that CMS had met all the terms and conditions of their permit. The conditional renewal was in place until a new Temporary Occupancy Agreement (“TOA”) was finalized. Complaint ¶ 9.
4. On or about July 10, 2023, MOS sought to avail of the public benefit from DPL’s permitted quarries under Article 11 of the TOA to repair and improve secondary roads in Saipan’s villages. Complaint ¶ 12.
5. On or about July 11, 2023, DPL issued a letter approving MOS’s request to avail of the public benefit. DPL limited MOS to obtaining 100 cubic yards of quarry materials annually from each of DPL’s six (6) quarry permittees, free of charge, for its roadway projects and other purpose. DPL’s letter identified CMS’ Kannat Tabla permitted site as one of its quarry permittees that MOS may obtain quarry materials. Further, DPL issued copies of these letters to each of the quarry permittees as notice of DPL’s approval of MOS’s request. Complaint ¶ 13.

6. DPL's letter also advised MOS that MOS may be responsible to the quarry permittees for any costs associated with such project including heavy equipment rental for the extraction, loading, and delivery from the quarry site to the project site. DPL's letter also informed MOS that processed materials were excluded from the public benefit provision and would be charged accordingly by the permittee. Complaint ¶ 14.

7. From February 1, 2023, through September 11, 2023, MOS obtained various quarry materials from CMS' Kannat Tabla quarry permit location, consisting of aggregates-3/8 and base course materials. CMS supplied MOS with 7.50 cubic yards of aggregates-3/8 and 1,430.00 cubic yards of base course materials. Complaint ¶ 15.

8. The aggregates-3/8 are processed, finished material. The base course materials consisted of crushed raw coral that had been processed and screened. MOS received processed base course materials to avoid using unscreened raw materials with large rocks unsuitable for roadway projects. Complaint ¶ 16.

9. CMS prices these quarry materials differently per cubic yard. CMS charges its aggregate-3/8 at $32.50 per cubic yard and base course at $30.50 per cubic yard. Additionally, CMS charges $34.50 per cubic yard for the delivery of its base course materials to project sites. Complaint ¶ 17.

10. According to CMS, CMS applied a 120.00 cubic yards credit to the total base course material obtained by MOS for a total of 1,317.50 cubic yards of quarry materials obtained by MOS from February 1, 2023, through September 11, 2023, 7.50 cubic yards of aggregates-3/8; and 1,310.00 cubic yards of base course materials. Complaint ¶ 18.

11. With the credit of 120 cubic yards applied to the total cubic yards of quarry materials obtained by MOS, CMS states that MOS owes $36,126.25. Complaint ¶ 19.

12. From February 1, 2023, through September 11, 2023, CMS issued and provided MOS with a monthly statement of its invoice for the quarry materials supplied to MOS. The monthly invoices state that the customer agrees to pay the invoice to CMS, with each

overdue invoice charged at 1.5% per month, plus all attorney's and collection fees in case of default. Complaint ¶ 20.

13. MOS has not paid any of the invoices from those months. Complaint ¶ 21.
14. On or about August 8, 2023, CMS issued a written notice of default and demand for payment of the outstanding balance to MOS. Complaint ¶ 22.
15. On or about September 6, 2023, MOS issued its response disclaiming responsibility for the outstanding balance demanded by CMS. Complaint ¶ 23.
16. Despite CMS' numerous notices for payment through its invoices and its demand for payment of the outstanding balance, MOS has refused and continues to refuse to pay the outstanding balance owed to CMS for $36,126.25 including any interest. Complaint ¶ 24.

III. PROCEDURAL HISTORY

1. Plaintiff CMS filed the Complaint on October 18, 2023, arguing that "CMS and Mayor RB, through the Municipality of Saipan, entered into a valid, enforceable contract" for quarry materials. MOS breached that contract when MOS refused to pay for the quarry materials and services performed by delivery of the materials to the project sites. Complaint at ¶¶ 29, 30. CMS claims at least $36,126.25 in damages as of September 11, 2023. CMS claims Unjust Enrichment/Quantum Meruit if the Court finds the contract unenforceable, to seek payment for the services performed and provided to MOS. CMS claims it supplied and delivered quarry materials over the 100 cubic yards of coral or raw materials above the approved limit set by DPL. MOS was aware of the excess. CMS conferred a substantial benefit to MOS and is entitled to compensation. Lastly, CMS seeks a declaratory relief.
2. MOS filed a Rule 12(b)(1) and Rule 12(b)(6) Motion to Dismiss on November 20, 2023, asserting that (1) there is a lack of subject matter jurisdiction because the Municipality of Saipan is not a chartered municipality that can sue or be sued; and (2) failure to state a

claim because there is no valid contract between CMS and MOS, and CMS and DPL cannot breach or repudiate the Temporary Occupancy Agreement.

3. CMS filed an Opposition to MOS's Motion to Dismiss on December 29, 2023, arguing that this Court does have subject matter jurisdiction because MOS can be sued whether or not the Municipality of Saipan is chartered. CMS has sufficiently pled its claims, and CMS also seeks equitable remedies on a quasi-contract theory despite MOS's argument that no valid contract existed.

4. MOS filed a Reply on January 22, 2024. Despite CMS's claims, MOS reasserted its argument that the Municipality of Saipan cannot sue and be sued. Based on the *United States v. Borja (Mayor of Tinian)*, it is clear that "only the Municipalit[y] of Tinian and Aguiguan, and [the Municipality] of Rota, are chartered municipalities" which means those municipalities can sue or be sued. The Municipality of Saipan is not chartered and therefore cannot sue or be sued independently from the Commonwealth Government. There is no contract and CMS is breaching the Temporary Occupancy Agreement by seeking payment from MOS for the quarry materials. DPL sought to restrict the scope of the public benefit provision; therefore, CMS should focus its efforts on addressing this matter with DPL or the Commonwealth Government.

5. CMS filed a Sur-reply on January 29, 2024, continuing to claim that the *Borja* decision does not preclude a lawsuit against the Municipality of Saipan for breach of contract because the Municipality of Saipan has the legal capacity to enter into a contract. MOS is liable for payment of the raw and processed material that exceeded the amount set by DPL. By accepting processed materials and receiving materials in excess, MOS entered into a separate contract with CMS. CMS also argues that it was MOS's responsibility to show compliance with the Procurement Regulations. Finally, CMS states the Court must take the factual allegations in the Complaint as true and interpret the factual allegations in a light most favorable to the non-moving party.

IV. LEGAL STANDARD

Rule 12(b)(1)

A motion to dismiss a complaint pursuant to NMI R. Civ. P 12(b)(1) allows for dismissing a case in instances where the court lacks jurisdiction over the subject matter. See NMI R. Civ. P. 12(b)(1). When considering a motion to dismiss based on a claim of lack of jurisdiction, a court must accept as true the undisputed factual allegations in the complaint and interpret the facts in a manner that is most favorable to the [non-moving party]. *See Atalig v. Commonwealth Election Comm'n*, 2006 MP 1 ¶ 16.

Rule 12(b)(6)

A defendant may move for dismissal where a plaintiff fails to state a claim for which relief may be granted. See NMI R. Civ. P. 12(b)(6). "A Rule 12(b)(6) dismissal is proper only where there is either a 'lack of cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" *Yumul v. Smart Balance, Inc.*, 733 F. Supp. 2d 1134, 1136-37 (2010) (citing *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1988)).

V. DISCUSSION

1. Subject Matter Jurisdiction

a. Analyzing Subject Matter Jurisdiction

MOS asserts that the Court lacks subject matter jurisdiction to adjudicate CMS's claims, and therefore requests dismissal of the case. Subject matter jurisdiction pertains to the court's legal authority to adjudicate cases within a specific type or category. It is a crucial component of the judicial process, as it establishes the boundaries of the court's jurisdiction and guarantees that the appropriate judicial entity resolves legal disputes. The Rhode Island Supreme Court stated, "[a] challenge to subject-matter jurisdiction questions the very power of the court to hear the case." *Dunn's Corners Fire Dist. v. Westerly Ambulance Corps*, 184 A.3d 230, 233 (citing *In re New England Gas Co.*, 842 A.2d 545, 553 (R.I. 2004)). "The 9th Circuit has held that dismissal under 12(b)(1) is proper 'if the complaint, considered in its entirety, on its face fails to allege facts

sufficient to establish subject matter jurisdiction.'" Id. at 9 (citing *In re Dynamic Random Access Memory Antitrust Litig. v. Micron Tech., Inc.*, 546 F.3d 981, 984-85 (9th Cir. 2008)).

b. Capacity to Sue or be Sued[1]

MOS argues that there is no subject matter jurisdiction here because the Municipality of Saipan is not chartered, and therefore cannot sue or be sued. Motion to Dismiss at 7. In *Washington's Army v. the City of Seward*, an association initiated a lawsuit against the City of Seward and the city clerk. *Washington's Army v. City of Seward*, 181 P.3d 1102, 1104. The city clerk had denied their petition to challenge a street vacation for a multi-agency facility. Id. The court determined that the association as an entity did not have standing, but the members as individual taxpayers did have standing. Id. at 1105. "An entity must have corporate status or possess the right to sue in order to have standing." Id. "The ability to sue or be sued has traditionally centered on the ability of a party to be accountable for the process and results of legal proceedings." Id. "Washington's Army, as an entity, lacks standing because it does not have a person or a legal entity that may be held responsible for the process and results of the legal proceeding and thus does not have the ability to sue or be sued." Id. MOS argues that the Mayor of Saipan is an agent of the Municipality of Saipan, which is not a chartered municipality and therefore cannot be held responsible for the legal proceedings. MOS also argues that it cannot be held responsible for the outcomes of the legal proceeding because any monetary damages that

[1] MOS has shown a history of taking responsibility for legal proceedings and their outcomes on two occasions by complying with court judgments. These particular cases involved lawsuits filed against MOS for breach of contract. In *Kwun Kee Co. Inc. v. Office of the Mayor of Saipan et al*, Civil Action No. 09-0293, the Plaintiff in *Kwun Kee Co* alleged that Plaintiff entered into two contracts with Manuel C. Tenorio who was the Chairman of the Liberation Day Committee, a committee created by the Office of the Mayor of Saipan. Plaintiff was contracted to provide labor services during the 2008 Liberation Day Festivities for a total of $44,483. Plaintiff alleged that the Office of the Mayor of Saipan only paid $12,900 with an unpaid balance of $31,583. The parties agreed to a consent judgment of $35,393.81 which the Court granted on January 6, 2010. There was a notice of satisfaction of Judgment on February 22, 2016. In *Digital Motion Video Production v. Saipan Mayor's Office*, Civil Action No. 09-0298, the Plaintiff in *Digital Motion* alleged it entered into a contract with the Saipan Mayor's Office for video coverage in the amount of $9,000.00. The Saipan Mayor's Office only paid $4,700.00 of that amount and so Plaintiff filed a lawsuit on July 16, 2009. There was a stipulated judgment between the parties for $4,983.57 on September 29, 2009. On August 13, 2010, there was a notice of satisfaction of judgment. Both the *Kwun Kee Co* and *Digital Motion* are unpublished cases. In the *Kwun Kee Co* and *Digital Motion* cases, the Defendant (Municipality of Saipan) has previously entered into contracts and has been sued by companies for breach of contract due to unpaid balances. The Plaintiffs were able to obtain a satisfied Judgment.

CMS would receive would come from the Commonwealth Government's treasury, making the Commonwealth Government the appropriate party to be sued. However, according to Title 1 CMC § 5106, the mayor has the power and duty to expend revenue for local public services. See 1 CMC § 5106(f). The mayor also has the power and duty to suggest items to be included in the proposed annual budget. See 1 CMC § 5106(d). Municipal councils have expenditure authority over the municipal budgets.

CMS states in its Opposition that "the Commonwealth Procurement Regulations signifies that the Municipality of Saipan has the legal capacity to enter into a contract for services that benefit the public purpose so long as it has complied with the Procurement Regulations." Plaintiff's Opposition at 8. Under Application of Regulations in the Commonwealth Procurement Regulations, this section states, "[t]hese regulations apply to all agencies, departments, political subdivisions, public corporations, and **agencies of local Government**, all collectively, referred to herein as "'public agencies.'" NMIAC § 70-30.3-020(a) (emphasis in bold). Under Contract Review, Processing, and Oversight it states, "[a]ll contracts must first be prepared by the **official with expenditure authority** who shall certify that he has complied with the Procurement Regulations […] and that **the proposed contract is for a public purpose**[.]" NMIAC § 70-30.3-115(a) (emphasis in bold). Although the Municipality of Saipan is not chartered, it has the legal capacity to engage in contracts for public purposes, provided that certain procurement requirements are met. In *United States v. Borja (Mayor of Tinian),* when analyzing whether Tinian was a chartered Municipality, the Supreme Court stated, "Tinian and Aguiguan has held itself out as a municipal entity by entering into contracts and suing in court[.]" *United States v. Borja (Mayor of Tinian)* 2003 MP 8 ¶ 12. Here, MOS has legal existence to enter into contracts that comply with the Procurement Regulations. The *Borja* case, as CMS admitted, was limited to the islands of Tinian and Aguiguan, and Rota.

Also, in *Fleming v. Office of the Mayor of Saipan et al.*, the Court held that the Office of the Mayor of Saipan could sue and be sued in "certain situations" and that the "agency's ability to sue

or be sued is not dispositive to the applicability of the [Government Liability] act." *Fleming v. Office of the Mayor of Saipan et al.*, Civ. No. 14-0147 (NMI Super. Ct. Dec. 22, 2014) (Order Denying the Commonwealth's Motion to Dismiss and Granting the Mayor's Office Motion to Dismiss Re: Government Liability Act (7 CMC §§ 2201-10) at 9-10). In the present case, MOS's unchartered status and its capacity to sue or be sued is not hindered if the Procurement Regulations are complied with. MOS has the legal capacity to enter into contracts for a public purpose, as outlined in the Procurement Regulations. As stated in *Fleming*, the Municipality of Saipan could sue and be sued in "certain situations."

MOS argues in its Motion to Dismiss that CMS's claim was not first presented to the Attorney General under 1 CMC § 2202(b). Mot. To Dismiss at 9-10. However, the Government Liability Act is not relevant here. Title 1 CMC § 2202(b) states that "[a]n action shall not be instituted upon a claim against the Commonwealth for money damages […] caused by the negligent act or omission of any employee of the Commonwealth while acting within the scope of his/her employment." While CMS is indeed seeking monetary damages, this case is based on a breach of contract claim, and not a negligent act or omission claim.

The Court finds that MOS can sue or be sued for breach of contract claim for a valid contract that adheres to the Procurement Regulations. MOS has the right to enter into a contract for a public purpose in compliance with the Procurement Regulations. In sum, MOS can sue or be sued for breach of contract when MOS enters into contracts for public purpose in compliance with Procurement Regulations.

The discussion below will focus on whether there is a valid contract that complies with the Procurement Regulations between CMS and MOS.

2. Breach of Contract Claim

"To survive a motion to dismiss a plaintiff must provide 'more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do[.]'" *Wesolowski v. Title Source, Inc.*, 608 Fed. Appx. 724, 725 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555

(2007)). CMS argues that CMS and MOS entered into a valid contract. Complaint at ¶28. Per that contract, CMS will provide MOS with 100 cubic yards of quarry materials free of charge annually. Id. CMS will charge any excess materials, materials that are not coral or raw, heavy equipment rental, and loading and delivery costs accordingly with DPL approval. Id. "To prevail on a breach of contract claim, a plaintiff must demonstrate (1) the existence of a valid contract; (2) the breach of an obligation imposed under the contract; and (3) damage to the plaintiff resulting from the breach." *GT Building Systems International PTD, LTD., v. Imperial Pacific*, Civil Case No. 20-0214 (Supr. Ct. Dec. 9, 2021) (Order Denying Defendant's Motions for Extension (And to Vacate Admissions) and Granting Plaintiff's Motion for Summary Judgment at 13-14), (citing Restatement (Second) of Contracts §§ 235, 237, 240). The Court will go through these one by one.

a) Valid Contract

"The elements of a contract are offer, acceptance, and consideration." *Isla Financial Services v. Sablan*, 2001 MP 21 ¶ 13 (citing Restatement (Second) of Contracts § 17 (1981)). "To form a valid contract, there must be 'a bargain in which there is a manifestation of mutual assent to the exchange and a consideration.'" Restatement (Second) of Contracts § 17 (1981). Based on the alleged facts, CMS did not offer services that were accepted by MOS with consideration. The "terms" that CMS argues MOS accepted were from a letter sent by DPL to MOS, not by CMS. There was no negotiation of terms or a mutual agreement between CMS and MOS. CMS did not promise to process coral and deliver quarry materials beyond 100 cubic yards, nor did MOS promise to pay for these services. MOS did not enter into a written contract with CMS for these services.

The letter from DPL in July 2023 was not an enforceable contract between CMS and MOS as it failed to comply with the Procurement Regulations. The DPL letter was not "prepared by the official with expenditure authority who shall certify that he has complied with the Procurement

Regulations". NMIAC § 70-30.3-115(a). No official with expenditure authority certified "that the proposed contract is for a public purpose, and does not constitute a waste or abuse of public funds." Id. The DPL letter was not submitted to the Director, the Secretary of Finance, the Attorney General, or the Governor for approval as stated by the Procurement Regulations. NMIAC § 70-30.3-115(b)(c)(d)(e). The letter from DPL did not meet these requirements for it to be a binding contract between CMS and MOS.

The only valid agreement regarding quarry materials involving the parties is the Temporary Occupancy Permit ("TOA"), a formal agreement between DPL and CMS. Article 2 of the TOA states that the Permittee (CMS) is authorized to use the premises to develop and operate a rock quarry and rock crushing plant. TOA at 2. The permit also allows Permitee to sell the materials they make at the plant. Id. MOS argues that according to Article 11, the public benefit provision in the TOA, MOS can receive quarry materials free of charge. MOS contends that this circumstance makes MOS an intended beneficiary.

The CNMI Supreme Court in *Aplus Co. v. Niizeki Int'l Saipan Co.* used Restatement (Second) of Contracts § 301(1) to define an intended beneficiary in the absence of written or customary laws on third-party beneficiary contracts in the CNMI. *Aplus Co. v. Niizeki Int'l Saipan Co.*, 2006 MP 13. A beneficiary of a promise is considered intended if the parties intended for the beneficiary to receive the benefit of the promised performance. See Restatement (Second) Contracts § 301(1). The *Aplus Co.* Court quoted the three-part test in § 302(1) to find an intended beneficiary:

> (1) The parties have not agreed otherwise, (2) recognition of a right to performance is appropriate to effectuate the intention of the parties; and (3) the circumstances indicate that either the performance of the promise will satisfy an obligation or discharge a duty owed by the promisee to the beneficiary or the promisee intends to give the beneficiary the benefit of the promised performance.

Aplus Co. v. Niizeki Int'l Saipan Co., at ¶14 (citing Restatement (Second) of Contracts § 302(1)). The TOA is an agreement between DPL and CMS as a Permitee. TOA at 1. There is no

indication in the TOA or the correspondence from DPL that DPL and CMS had mutually agreed to prohibit MOS from benefiting from the public benefit provision. The public benefit provision in the TOA clearly states that CNMI govt agencies, with prior consent from DPL, are exempt from "any charges for quarry materials extracted on a site operated by Permitee[.]" TOA at 8. In the definition section in various Public Laws such as Public Law 15-28, 21-35, and 22-08, the Government of the Commonwealth of the Northern Mariana Islands is defined to include the Office of the Mayor of Saipan, Saipan Municipal Council, or the Mayor of Saipan. The Office of Planning and Development has a CNMI Government directory and under CNMI Municipal Councils, Saipan Municipal Council is named. C*NMI Directory-Office of Planning and Development* (May 17, 2024), https://opd.gov.mp/directory.html. Under CNMI Mayors, Mayor of Saipan, Ramon Camacho is named. Id. MOS is one of the CNMI government agencies Article 11 mentions. Article 2 states that the Permitee can sell materials manufactured from the plant. TOA at 2. In Article 11, the public benefit provision specifically exempts CNMI government agencies from having to pay, in contrast to the general public or office facilities mentioned in Article 2. Id. at 8. CNMI government agencies are specifically identified in a separate provision to receive the benefit of being exempt from paying "any charges for quarry material extraction". Id.

The Court finds that CMS has not demonstrated the existence of a valid, bargained-for contract between CMS and MOS to provide processed coral, quarry materials exceeding 100 cubic yards, heavy equipment rental, and delivery and loading services. However, the TOA is an enforceable contract that pertains to the same subject matter of quarry materials, and MOS is the intended beneficiary.

b) Breach of an Obligation

According to the public benefit provision in the TOA, the only "obligation" MOS had was to obtain consent from DPL to receive quarry materials without any charge. TOA at 8. Even though MOS is not a negotiating party to the TOA between DPL and CMS, there is still a

requirement for CNMI government agencies, such as MOS, to obtain written consent from DPL. The public benefit provision does not mention CNMI government agencies paying for quarry materials exceeding 100 cubic yards. Additionally, the public benefit provision does not specify the type of quarry materials, whether raw, coral, or processed, to be provided free of charge. The public benefit provision states that CNMI government agencies, such as MOS are exempt from paying "any charges for quarry material extraction". If there was an intention to distinguish between permitted types of quarry materials, it would have been clearly stated in the TOA. Similarly, if DPL intended to impose limits on the amount of free quarry material that could be received, it would have been outlined in Article 11 of the TOA, which it was not. The public benefit provision also does not specifically address delivery or loading as part of the definition of "free of charge." When reading an agreement if there is no ambiguity then the plain reading is preferred. *Northern Marianas Housing Corporation v. BankPacific, LTD.*, 2021 MP 7 ¶ 14. "To determine intent, we examine only the four corners of the contract and give the terms their plain grammatical meanings, unless there is ambiguity." Id. at ¶ 14 (citing *Commonwealth Ports Auth. v. Tinian Shipping Co., Inc.*, 2007 MP 22 ¶ 17). "[T]he intent of contracting parties is generally presumed to be encompassed by the plain language of contract terms." *Commonwealth Ports Auth. v. Tinian Shipping Co., Inc.*, 2007 MP 22 ¶ 16 (citing *Riley v. Public School Sys.*, 4 NMI 85, 88 (1994)). The plain reading of this provision reads that CNMI government agencies are exempt from paying for any charges associated with quarry material extraction. The public benefit provision does not include any of the exceptions or concessions that the DPL letter lists. MOS states the TOA's public benefit provision does not give DPL authority to limit materials. The public benefit provision in Article 11 dictates that CNMI government agencies are not required to pay any fees for quarry materials extraction. This provision does not specify limitations on the type or quantity of materials, nor does it exclude charges for heavy equipment rental, delivery, and loading from the exemption. Additionally, the public benefit provision does not exclusively

exempt charges for raw materials. The decision by DPL and CMS, the drafters of the TOA, to not place limitations or restrictions in the public benefit provision was intentional.

If DPL intended to differentiate between the types of charges and material then it would have been explicitly stated in the TOA. MOS complied with the public benefit provision. CMS has not shown that MOS agreed to the restrictions outlined in DPL's letter. The agreement governing the relationship between the parties permits MOS to be exempt from paying "any charges for quarry material extraction". Therefore, MOS's refusal to pay the invoices as per Article 11 of the TOA is in line with the TOA that MOS is exempt from paying "any charges for quarry material extraction".

The Court finds that MOS did not breach an obligation under the DPL letter because the DPL letter was not a valid contract in compliance with the Procurement Regulations. Further, MOS was not obligated to pay any charges for quarry materials extraction, as stated in the public benefit provision in Article 11 of the TOA.

c) Damages because of a Breach

The only "obligation" MOS had under the TOA was to receive consent from DPL to receive quarry materials. Since MOS satisfied that requirement, there is no breach. CMS does not have any damages resulting from a non-existent breach by MOS.

CMS did not establish a valid claim for breach of contract because CMS failed to demonstrate a valid contract between CMS and MOS in which MOS promised to pay CMS for services rendered. The only agreement governing the relationship between the parties is the TOA, and the only "obligation" outlined in the TOA was for MOS to obtain written consent from DPL, which MOS did. CMS has not identified any provision in the TOA that MOS breached. See *Est. of Navarro v. Seattle Bank*, 2023 U.S. Dist. LEXIS 204365 at *6 ("'a plaintiff must identify a specific provision of the contract that was allegedly breached.'"). CMS has not proven the

existence of a contract between CMS and MOS for the services provided, nor has CMS shown a breach of any obligation that would result in damages.

3. Quantum Meruit and Unjust Enrichment

a) Quantum Meruit

"Quantum meruit arises in situations where no contract governs the parties' relationship." *PRC LLC, Sophia P. Tenorio v. Chang Shin Resort Corp.*, Civil Case No. 12-0163, (NMI Super. Ct. Mar. 8, 2013) (Order Granting In Part And Denying In Part Plaintiffs' Motion For Summary Judgment at 26). If the parties have an enforceable agreement regarding a particular subject matter, the plaintiff may not pursue or recover on a quantum meruit claim. See *FedEx Corporative Servs. v. Dose of Roses, Inc.*, 2024 U.S. Dist. LEXIS 18996 at *7-8 (citing *Klein v. Chevron U.S.A., Inc.*, 202 Cal. App. 4th 1342, 1388 (2012)). CMS asserts that the letter from DPL specifically authorized the provision of 100 cubic yards of quarry materials free of charge per year. The DPL letter also stated that any processed materials, quantities exceeding the agreed-upon 100 cubic yards, or delivery and loading, would incur additional charges to be paid by MOS.

As a result, CMS provided processing services for the materials, surpassing the 100 cubic yard limit, and delivered the materials, expecting payment from MOS in exchange for these services. It is undisputed that CMS provided services to MOS and that MOS was aware of and received the processed materials, even those exceeding 100 cubic yards. However, CMS cannot seek reimbursement based on quantum meruit for providing the quarry materials in their raw, coral, or processed form. The TOA is a valid contract governing the parties' relationship regarding the extraction of quarry materials. DPL's letter is not a contract between DPL and MOS as it does not comply with the Procurement Regulation for MOS to be bound as a party. Further, DPL's letter does not comport with the plain reading of the public benefit, provision in the TOA.

b) Unjust Enrichment

"To prove a claim for unjust enrichment, a claimant must show: (1) the defendant was enriched; (2) the enrichment came at the plaintiff's expense; and (3) equity and good conscience

militate against permitting the defendant to retain what the plaintiff seeks to recover." *Syed v. Mobil Oil Mariana Islands, Inc.*, 2012 MP 20 ¶41 (citing Restatement (Third) of Restitution and Unjust Enrichment § 1 (2011) ("A person who is unjustly enriched at the expense of another is subject to liability in restitution."). MOS was enriched by all the quarry materials it received. That service did come at CMS's expense as CMS promised to perform those services based on the TOA. However, MOS was not ***unfairly*** enriched, as the public benefit provision exempts CNMI government agencies like MOS from paying. Any benefit by MOS was according to the terms of the TOA.

CMS has not shown any invalidity or illegality in the TOA that would warrant disregarding its provisions. The letter from DPL is not a legally enforceable contract that the Court can uphold over the terms of the TOA. Furthermore, CMS did not provide any services outside of the contractual agreement of TOA. Following equity and good conscience, the TOA is the governing authority in this situation. As a permit holder, CMS is required to adhere to the terms outlined in the TOA. Also, CMS's claim is duplicative of its breach of contract claim. See *Nev. State Educ. Ass'n v. Clark Cty. Educ. Ass'n*, 482 P.3d 665, n.8 ("A party that has a contractual expectation of payment cannot 'duplicate [the] breach of contract claim' with a conversion claim").

The Court finds that there is a legally binding contract in place regarding the extraction of quarry materials, which is the TOA. According to the terms of the TOA, MOS was not required to pay for processed quarry materials, materials exceeding 100 cubic yards, heavy equipment rental, or the delivery and loading of quarry materials. The sole requirement for MOS was to obtain written consent from DPL which MOS received.

VI. CONCLUSION

The Defendants, Ramon "RB" Camacho, in His Official Capacity as Mayor of Saipan and the Municipality Of Saipan, have filed a Motion to Dismiss under Rule 12(b)(1) and Rule 12(b)(6), contending that Plaintiff Construction & Material Supply, Inc. cannot bring this lawsuit against Defendants due to the unchartered Municipality of Saipan's lack of capacity to sue or be sued, and

because the Temporary Occupancy Agreement's public benefit provision exempts Defendants from paying for any charges for quarry extraction.

Despite being an unchartered municipality, the Municipality of Saipan has the legal authority to enter into contracts for public purposes, as outlined in the Procurement Regulations. As stated in *Fleming v. Office of the Mayor of Saipan et al.*, Civ. No. 14-0147 (NMI Super. Ct. Dec. 22, 2014), the Court determined that the unchartered Municipality of Saipan can sue and be sued in "certain situations." One such situation is for a breach of contract claim when that contract complies with the Procurement Regulations.

The Court finds that Plaintiff CMS failed to state a claim for breach of contract because there was no valid contract complying with the Procurement Regulations between the parties for the material and services listed in the Department of Public Land's July 11, 2023 letter. There is no contract between Plaintiff CMS and Defendants. The only valid contract is the Temporary Occupancy Agreement between Plaintiff CMS and DPL, with the Defendants as the intended beneficiary. The TOA allows CNMI government agencies such as MOS to receive quarry materials without incurring any charges, when there is prior written consent from DPL, which the Defendants did receive DPL's consent. The Defendants as an intended beneficiary complied with the terms of the TOA, and because the TOA is a valid contract, the Plaintiff's Quantum Meruit/Unjust Enrichment claims fail. **THEREFORE**, Defendants' Rule 12(b)(6) Motion to Dismiss is **GRANTED**.

Furthermore, there is no valid contract in compliance with Procurement Regulations between Defendants with either DPL or CMS. **THEREFORE**, Defendants' Rule 12(b)(1) Motion to Dismiss is **GRANTED**.

SO ORDERED this 29th day of May, 2024.

/s/
JOSEPH N. CAMACHO, Associate Judge