

**For Publication**

**IN THE SUPREME COURT  
OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

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**JOAQUIN M. MANGLONA**  
*Plaintiff/Appellant,*

V.

**GOVERNMENT OF THE COMMONWEALTH OF THE NORTHERN  
MARIANA ISLANDS**  
*Defendant/Appellee,*

v.

**ROBERT C. NARAJA, RAYNALDO M. CING, MARIA D. CABRERA, DAVID M.  
APATANG and EDWARD B. PALACIOS**  
*Third Party Defendants/Appellees*

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**APPEAL NO. 2000-11  
CIVIL ACTION NO. 97-0486**

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**OPINION**

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**Cite as: *Manglona v. CNMI Gov't*, 2002 MP 7**

Argued and submitted January 16, 2001  
Decided April 9, 2002

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BEFORE: MIGUEL S. DEMAPAN, Chief Justice, ALEXANDRO C. CASTRO, Associate Justice, TIMOTHY H. BELLAS, Justice *Pro Tempore*

DEMAPAN, Chief Justice:

¶1 Appellant Joaquin Manglona appeals the dismissal on summary judgment of his breach of contract and equitable estoppel claims against the CNMI Government. Manglona also appeals the Superior Court's denial of his motion to amend his complaint, and of his Rule 59 motion for reconsideration.

¶2 We have jurisdiction pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and 1 CMC §3102(a). We reverse and remand.

### **PROCEDURAL HISTORY**

¶3 This action was brought by Joaquin Manglona ("Manglona") against the CNMI Government on May 6, 1997. Appellant's Excerpts of Record [hereinafter E.R.] at 19.

¶4 The Government filed its answer and a counterclaim on October 20, 1997, E.R. at 17, and then on October 30, 1997, the Government filed a third-party complaint naming Eloy Inos, Raymond Cing, Robert Naraja, and David Apatang as Third Party Defendants, E.R. at 16. The third-party complaints were answered in turn by the third parties.

¶5 Many motions involving all parties ensued (only those relevant to this appeal are specified here).

¶6 Manglona moved to file a first amended complaint on May 27, 1999. The Government opposed this motion on June 16, 1999. On June 16, 1999, Third-Party Defendant Apatang filed an opposition that was joined by Third-Party Defendant Naraja.

The court entered an order denying Manglona's motion to file an amended complaint on August 20, 1999. E.R. at 11.

¶7 The Government moved for summary judgment on September 24, 1999. Manglona responded on October 8, 1999. On November 2, 1999, the court entered its order granting summary judgment, E.R. at 10, and on February 11, 2000, the court entered an order dismissing the Government's counter-claim, E.R. at 9. The court entered an order denying Manglona's motion to reconsider its prior rulings on February 24, 2000.

¶8 Plaintiff filed his notice of appeal on March 13, 2000. E.R. at 3.

### **FACTUAL HISTORY**

¶9 On December 17, 1992, Joaquin Manglona and the Immigration and Naturalization Office ("INO") and the CNMI Office of the Attorney General ("AG") entered into a 10-year lease agreement for office space. E.R. at 19. The lease agreement was amended in writing on October 28, 1994, to provide for a greater amount of office space to be leased to INO and AG. E.R. at 19. The lease agreement was signed by various CNMI government officials, but there was no signature space for the Governor, and the Governor did not sign the lease agreement. E.R. at 19.

¶10 On January 22, 1997, Manglona was sent a letter by the Secretary of the Department of Finance notifying him that INO had vacated the leased office space, and that the lease was being terminated. E.R. at 19. In the letter, Manglona was informed that the office space had been vacated in October, and that rent payments would not be made after one last rental payment for the months of December, 1996, and January, 1997.

The payment enclosed with the January 22, 1997 letter was the last remittal of a lease payment made by the Government to Manglona for the leased office space.

### **ISSUES PRESENTED AND STANDARD OF REVIEW**

¶11 Plaintiff raises three issues on appeal.

I. Whether the Superior Court erred in granting the Government's motion for partial summary judgment.

A. Whether CNMI Procurement Regulations apply to the subject real property lease between Manglona and the CNMI Government.

B. Whether Manglona's breach of contract claim should have been dismissed on summary judgment.

C. Whether Manglona's equitable estoppel claim should have been dismissed on summary judgment.

II. Whether the court erred in denying Manglona's motion pursuant to Rule 59 of the Commonwealth Rules of Civil Procedure.

III. Whether the court erred in denying Manglona's motion to file an amended complaint.

¶12 Issue 1 arises from the Superior Court's granting of summary judgment, and is reviewed *de novo*. *Wabol v. Camacho*, 4 N.M.I. 388, 389 (1996).

¶13 Issue 2 involves reopening a case post-judgment, and is reviewed for abuse of discretion. *Olopai v. Fitial*, 3 N.M.I. 101, 108 (1992).

¶14 Issue 3 involves amendments to pleadings, and is reviewed for abuse of discretion. *In re Adoption of Magofna*, 1 N.M.I. 449, 453 (1990).

## ANALYSIS

### *I. Summary Judgment Should Not Have Been Granted on the Breach of Contract and Equitable Estoppel Claims.*

¶15 On an appeal from a grant of summary judgment, the standard of review is limited to determining whether there is a genuine issue of material fact, and if there is none, then whether the law was correctly applied. *Manglona v. Camacho*, 1 CR 820, 823 (Dist. Ct. App. Div. 1983); *Marianas General Corporation v. CNMI Gov't*, 1 CR 408, 412 (Dist. Ct. App. Div. 1983).

¶16 We conduct a *de novo* review of the trial court's grant of summary judgment. Summary judgment is affirmed if there is no genuine issue of material fact and the trial court correctly applied the substantive law. *Taman v. Marianas Pub. Land Corp.*, 4 N.M.I. 287, 289 (1995).

#### *A. The CNMI Procurement Regulations Apply to the Lease Between Manglona and the CNMI Government*

¶17 The definitions section of the Procurement Regulations is somewhat ambiguous, and much has been made about how this ambiguity might affect a contract for the lease of real property. The ambiguity stems from the omission of the word 'goods' from the definition of 'contract' in Section 1-201(5) of the Procurement Regulations.<sup>1</sup>

¶18 Manglona urges the court to rule that because the word 'goods' is not mentioned in the definition of 'contract,' those things defined by the Regulations as 'goods' are not

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<sup>1</sup> This omission means that while "goods" is defined by Section 1-201(9) to include "all property, including but not limited to...leases of real and personal property," a contract is not defined to include an agreement for the procurement of "goods". Section 1-201(5) defines "contract" as "all types of agreements, regardless of what they may be called for the procurement of supplies, services or construction." "Supplies," which is used in the definition of "contract," is undefined.

covered by the Procurement Regulations. Appellant's Opening Brief at 7-10. We reject this interpretation of the Procurement Regulations.

¶19 Section 1-101(1) of the Procurement Regulations mandates that “[t]hese regulations shall be construed and applied to promote their underlying purposes and policies.” Section 1-101(2) lists the Purposes and Policies of the Regulations, that all are as applicable to real property lease agreements as to any other sort of contract for supplies, services, construction, or goods.<sup>2</sup> In fact, there is no hint in the text of the Regulations that real property leases were meant to be excluded from the otherwise all-encompassing Procurement Regulations, other than the omission of the word ‘goods’ from the definition of ‘contract.’

¶20 The clearly stated purposes of the Procurement Regulations make clear that real property leases are covered under the Procurement Regulations. We do not think it appropriate to read the Regulations in a way which would deny their clearly stated

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<sup>2</sup> In CNMI Procurement Regulations, §1-101(2), the stated purposes and policies of the Procurement Regulations are:

- (a) to simplify, clarify, and modernize the procurement policies and practices of the Commonwealth and its agencies;
- (b) to make as consistent as possible the procurement policies and practices among the various branches, activities and agencies of the Commonwealth;
- (c) to provide for increased public confidence in the procedures followed in public procurement;
- (d) to insure the fair and equitable treatment of persons who deal with the procurement system of the Commonwealth;
- (e) to procure increased economy in Commonwealth procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds;
- (f) to foster effective broad-based competition within the free enterprise system; and
- (g) to provide safeguards for the maintenance of a procurement system of quality and integrity.

purposes. *Crown Pacific v. Occupational Safety & Health Review Comm'n*, 197 F.3d 1036, 1040 (9th Cir. 1999).

*B. The Breach of Contract Claim Should Not Have Been Dismissed on Summary Judgment.*

*1. The Governor Is Not Required to Sign Contracts Under the Procurement Regulations*

¶21 The Superior Court interpreted the Procurement Regulations as requiring the Governor to sign all contracts falling under the Regulations. Following this logic, the Superior Court held that “Mr. Manglona does not have a valid and binding contract with the CNMI Government because the Lease Agreement and amendments thereto did not have the Governor’s approval as required.” E.R. at 20.

¶22 Section 2-104 of the Procurement Regulations outlines the procedure by which a Government contract is to be approved. The procedures outlined in the section are quite specific as to how, and by whom, any contract must be approved in order to comply with the Regulations. For example, Section 2-104(1) explains that “[a]ll contracts must first be prepared by Officials with the expenditure authority who shall certify that he has complied with Procurement Regulations and that the proposed contract is for a public purpose, and does not constitute a waste or abuse of Public funds.” Later clauses of the section specify who must approve the contract, and whether their signature or certification is required.

¶23 By contrast, though it is mandated in the Procurement Regulations *that* the Governor approve the contract; *how* the approval is to be manifested (i.e., with a signature, by handing it to the Chief, or in some other fashion) is not specified.

All the Procurement Regulations say of the Governor's approval, is that after the Attorney General's review and certification, pursuant to Section 2-104(5), "[t]he contract shall then be approved by the Governor." This clause is followed by Section 2-104(6), which mandates that "[a]fter the Governor's approval, the Chief shall forward the contract to the contractor for his approval and signature."

¶24 "It is well established that, when one interpretation of a statute or regulation obviously could have been conveyed more clearly with different phrasing, the fact that the authors eschewed that phrasing suggests, *ceteris paribus*, that they in fact intended a different interpretation." *United States v. Ibarra-Galindo*, 206 F.3d 1337, 1339 (9th Cir. 2000). Here, we do not think it is appropriate to read into the Regulations the additional affirmative requirement that the Governor include his signature on all contracts, when the Regulations' drafters clearly knew what language to use, had they wished to include that requirement.

2. *Whether the Governor Approved the Lease Is a Contested Issue of Material Fact, and Summary Judgment Is Therefore Inappropriate.*

¶25 The burden rests on the party seeking summary judgment, in this case the Government, to show that no genuine issue of material fact exists. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172, 176 (1990). In deciding whether a genuine issue of material fact exists which precludes the granting of summary judgment, the court will examine "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any.", Com. R. Civ. P. 56(c).



¶26 Because the Governor is not required to sign a contract under the Procurement Regulations<sup>3</sup>, the Government must provide evidence, beyond the absence of the Governor's signature on the lease itself, to show that the agreement was not approved by the Governor. But the Government presents no evidence at all on this point beyond the absent signature on the lease. By contrast and in direct opposition to the Government's claim that the Governor did not approve the lease, Manglona provides an affidavit signed by Lorenzo I. Deleon Guerrero, the CNMI Governor from 1990-1994, which declares that he "approved the relocation of the INS office from the Nauru Building to the new leased area from Mr. Manglona."<sup>4</sup> E.R. at 5.

¶27 The Superior Court's finding that there was not "even a scintilla of evidence by way of affidavit or otherwise which would even suggest that the Governor approved the Lease Agreement or the amendment thereto" is premature. E.R. at 20. The absence of the Governor's signature on the lease agreement is not conclusive on the issue of whether the lease agreement was approved by the Governor as required by the Procurement Regulations.

¶28 Examining the evidence in the light most favorable to the nonmoving party, *Taman v. Marianas Pub. Land Corp.*, 4 N.M.I. 287, 289 (1995), we find that summary judgment is inappropriate here, because the question of whether the Governor approved the lease or not is a genuine issue of material fact which is in dispute.

C. *The Equitable Estoppel Claim Should Not Have Been Dismissed.*

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<sup>3</sup> In order to obviate cases such as this one in the future, it would be the better practice for contracts with the CNMI Government to include a signature line for the Governor, so that the Governor's approval of any contract will be made explicit.

<sup>4</sup> Governor Guerrero's affidavit was not made part of the record until February 22, 2000, at the time of Manglona's motion to alter or amend the judgment of the Superior Court.

¶29 The Superior Court dismissed Manglona’s equitable estoppel claim on the ground that under CNMI law, “equitable estoppel cannot be invoked where it would ‘interfere with the underlying government policies or unduly undermine the correct enforcement of a particular law or regulation.’” E.R. at 20. In this case, the Superior Court found that under the CNMI Procurement Regulations, “there exists a clear regulatory mandate that the Governor approve all procurement contracts.” E.R. at 20.

¶30 While we agree that approval by the Governor is mandated, since we find that a signature is not the only way that such approval may be manifested under the Procurement Regulations for the reasons stated above, the equitable estoppel claim should not have been dismissed on summary judgment.

*II. and III. Manglona’s Rule 59 Motion and Motion to File an Amended Complaint Should Be Reconsidered in Light of the Foregoing Analysis*

¶31 All other issues relating to this appeal are remanded to the Superior Court for reconsideration in light of the foregoing analysis.

**CONCLUSION**

¶32 For the foregoing reasons, we hereby REVERSE and remand the case for further proceedings consistent with this opinion.

**SO ORDERED** this 9th day of April, 2002.

/s/ \_\_\_\_\_  
MIGUEL S. DEMAPAN, Chief Justice

/s/ \_\_\_\_\_

ALEXANDRO C. CASTRO, Associate Justice

/s/

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TIMOTHY H. BELLAS, Justice *Pro Tempore*