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IN THE

Supreme Court

OF THE

Commonwealth of the Northern Mariana Islands

JAMES CAMACHO BOWIE AND LINDA MANAHANE BOWIE,

Plaintiffs-Appellants,

v.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,

Defendant-Appellee.

Supreme Court No. 2019-SCC-0009-CIV

Cite as: 2021 MP 2

Decided January 20, 2021

CHIEF JUSTICE ALEXANDRO C. CASTRO
ASSOCIATE JUSTICE PERRY B. INOS
JUSTICE PRO TEMPORE JOSEPH N. CAMACHO

Superior Court Civil Action No. 13-0092
Presiding Judge Roberto C. Naraja, Presiding

CASTRO, C.J.:

¶ 1 Plaintiff-appellant James C. Bowie ("Mr. Bowie") was injured when his wheelchair fell due to a defective ramp built in front of his home. The ramp was approved by Department of Public Works ("DPW") inspectors knowing it was too steep and did not fall within safety guidelines. The Bowies sued Apex Construction ("Apex"), the construction contractor, Northern Marianas Housing Corporation ("NMHC"), which provided a grant for the ramp, and the Commonwealth of the Northern Mariana Islands ("Commonwealth"). The trial court awarded the Bowies damages against Apex. It denied the Bowies' claims against NMHC by summary judgment and the Commonwealth in a motion to dismiss. Apex defaulted and fled the Commonwealth and the Bowies' appeal against NMHC was voluntarily dismissed. The Commonwealth is now the only defendant. The sole remaining issue on appeal is whether the trial court properly granted the Commonwealth's motion to dismiss. For the following reasons, we REVERSE the order granting the motion to dismiss.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 James C. Bowie and his wife Linda M. Bowie ("Bowies") received a grant from NMHC to rehabilitate their home. They entered into a construction contract with Apex and a grant agreement with NMHC. Apex constructed the ramp according to NMHC's design standards, which ensure compliance with the International Building Code, American National Standards Institute, and Americans with Disabilities Act Accessibility Guidelines ("ADAAG").

¶ 3 In August 2010, Apex resurfaced the ramp to the Bowies' home. The ramp has an average slope of 11.78% and a 21-foot section has an average slope of 17.72%. These measurements are steeper than the original ramp and greatly exceed the maximum permitted under the design standards. An inspector from the Building Safety Division at the Department of Public Works ("DPW") approved the construction on August 12, 2010, despite knowing that the ramp did not comply with ADAAG standards. NMHC's Suppl. App. 120; Bowies' Suppl. App. 136. The Commonwealth does not dispute that another DPW inspector had recommended against approval because the ramp was too steep. *Id.* at 137. Northern Marianas Protection & Advocacy Systems also measured the ramp and sent NMHC a letter stating that it was not up to code. *Id.*

¶ 4 On April 25, 2011, Mr. Bowie was ascending a steep section of the ramp when his wheelchair tipped backward, causing him injury. The Bowies filed a tort claim with the Office of the Attorney General pursuant to 7 CMC § 2202(b), which was denied.[1] They then sued Apex, NMHC, and the Commonwealth. The Bowies' First Amended Complaint included five causes of action:

[1] This statute requires that a party cannot initiate an action against the Commonwealth for money damages for tort liability based on negligent acts of Commonwealth employees unless it first presents a claim to the Office of the Attorney General and such claim is denied.

1) For personal injury on the basis of negligence against all defendants;
2) For breach of contract against Apex;
3) For breach of contract against NMHC;
4) For Consumer Protection Act violation against Apex; and
5) For per se public nuisance under the Building Safety Code against all defendants.

App. 5–8. The court awarded the Bowies summary judgment against Apex. Apex fled the CNMI and defaulted. The court granted the Commonwealth's motion to dismiss under NMI Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)"), holding it enjoyed immunity under the Building Safety Code ("Code"), 2 CMC § 7122(f) ("Section 7122(f)"). It granted a summary judgment motion in favor of NMHC.[2] Only the first and fifth causes of action are now germane to this appeal against the Commonwealth.

¶ 5 The Bowies appeal the order dismissing the Commonwealth from the suit.[3]

II. JURISDICTION

¶ 6 The Supreme Court has appellate jurisdiction over final judgments and orders of the Superior Court of the Commonwealth. NMI Const. art. IV § 3.

III. STANDARD OF REVIEW

¶ 7 "We review de novo the Superior Court's dismissal of a complaint under Rule 12(b)(6) for failure to state a claim." *Syed v. Mobil Oil Marianas Islands, Inc.*, 2012 MP 20 ¶ 9.

IV. DISCUSSION

¶ 8 The sole remaining issue on appeal is whether the court properly granted the Commonwealth's 12(b)(6) motion to dismiss for failure to state a claim. We have not adopted the federal courts' stricter *Twombly-Iqbal* pleading standard. Whereas the United States Supreme Court requires that "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face,'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)), we require only "direct allegations on every material point necessary to sustain a recovery on any legal theory, even though it may not be the theory suggested or intended by the pleader, or contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial."

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[2] The Bowies' appeal against NMHC has been voluntarily dismissed.

[3] The Commonwealth moved to dismiss this appeal, asserting it was untimely and, therefore, we lacked jurisdiction. We denied the motion pursuant to NMI Rule of Civil Procedure 54(b), holding the order dismissing the Commonwealth was not a final judgment because it did not dispose of all claims against all parties. *Bowie v. Apex Construction*, 2020 MP 5.

Syed, 2012 MP 20 ¶ 19 (quoting *In re the Adoption of Magofna*, 1 NMI 449, 454 (1990)).

A. Building Safety Code

¶ 9 The court granted the motion to dismiss solely on the basis of Building Safety Code immunity. The Code regulates construction of structures in the Commonwealth to ensure public safety. It provides for a Building Safety Division within the DPW, whose division chief is principally responsible for enforcing the code. A liability provision, Section 7122(f), insulates DPW from liability for certain damages incurred in connection with safety inspections.[4]

¶ 10 The Bowies stress that the plain language of Section 7122(f) does not confer blanket immunity on the Commonwealth. They rely on the limiting language "any *such* liability," which limits the scope of immunity to liability "of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects," which may not be assumed by the Commonwealth by reason of a permit or inspection under the Code.

¶ 11 The Commonwealth asserts that Section 7122(f) absolves the government of all liability for injuries due to defects in buildings: "the second half of the section renounces *any* liability on the part of the Commonwealth for any damages caused by defects in the building or structure that it has issued a permit or certificate of inspection for." Br. 3 (emphasis added). That is, the Commonwealth simply ignores the "any *such* liability" limiting language that is central to the Bowies' argument.

¶ 12 The trial court mistakenly quoted Section 7122(f) as covering "any liability"; it in fact relieves the Commonwealth of "any *such* liability." *Bowie v. Apex*, No. 13-0092 (NMI Super. Ct. Dec. 9, 2014) (Order Granting Commonwealth of the Northern Mariana Island's Motion to Dismiss at 6); 2 CMC § 7122(f) (emphasis added) ("Order"). The antecedent of "such liability" is "the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects." 2 CMC § 7122(f). *See Littlefield v. Mashpee Wampanoag Indian Tribe*, 951 F.3d 30, 37 (1st Cir. 2020) ("Normal usage in the English language would read the word 'such' as referring to the entire antecedent phrase."). In other words, the statute plainly says: (1) any person owning, operating, or controlling a building or structure has a responsibility to other persons for any damages caused by defects in the building or structure; (2) the Code does not lessen the responsibility of the

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[4] Section 7122(f) reads as follows:

> This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the Building Safety Division or the Commonwealth government be held as assuming any such liability by reason of the permit or inspection authorized by this code or any certificate of inspection issued under this code.

person owning, operating, or controlling the structure; and (3) the Building Safety Division and the Commonwealth do not assume the liability of any person owning, operating, or controlling the structure by reason of inspections conducted or permits issued under the Code. Section 7122(f) immunizes the Commonwealth only from assuming liability for Apex's negligence and code violations, not from liability for its own employees' conduct. *See Campbell v. Bellevue*, 530 P.2d 234, 237–38 (Wash. 1975) (holding that a similarly worded provision of a municipal code "does not purport to relieve the [jurisdiction] of liability for tortious conduct of its agents.").

¶ 13 The Bowies' First Amended Complaint does not allege that the Commonwealth assumed Apex's liability for its negligent construction by wrongly issuing a permit. Rather, the first cause of action alleges that "the CNMI had a duty of care . . . to require the ramp to be constructed and/or corrected so that it could safely be used for its intended purpose." App. 5 ¶ 22. This is pleaded independently of the allegation that Apex had a duty of care to construct the ramp properly. *Id.* ¶ 21. The fifth cause of action alleges that "[a]s a consequence of Defendants' conduct in this matter, Plaintiffs' home was not provided with adequate egress, and was modified in such a manner as to render it unsafe and dangerous to human life, all in violation of the CNMI Building Safety Code . . . ." *Id.* at 8 ¶ 39.

¶ 14 These causes of action are plausibly read as a theory of liability holding the Commonwealth responsible for DPW officials' *own* code violation. 2 CMC § 7126(a) provides that " [i]f a violation of the building safety code has occurred, the building safety official *shall* require the completion of corrective measures that result in compliance with the building safety code before occupancy of the building is permitted." (emphasis added). 2 CMC § 7126(d) creates a private cause of action for "any person damaged economically, injured, or otherwise aggrieved as a result of a violation of the building safety code" against "the person who committed the violation." A violation of the building safety code "shall constitute a per se public nuisance." 2 CMC § 7126(d). This is what the Bowies' First Amended Complaint alleges in its fifth cause of action, which is expressly directed against all defendants. App. 8 ¶¶ 38–40.

¶ 15 To survive a 12(b)(6) motion under *Syed*, the Bowies need only plead "direct allegations on every material point necessary to sustain a recovery on any legal theory." In construing the Complaint such that the Bowies' theory of liability relied on the Commonwealth assuming responsibility for Apex's code violation, as opposed to being liable for its own employees' conduct, the court improperly relied on factual assumptions extrinsic to the face of the Complaint. *See Hagen v. U-Haul Co.*, 613 F. Supp. 2d 986, 1003 (W.D. Tenn. 2009) (reversing 12(b)(6) dismissal where defendant's argument "challenges the truth of the Plaintiffs' factual assertions and relies on facts that would need to be established by evidence extrinsic to the face of the complaint.").

¶ 16 Further, other jurisdictions with similar building code language have hesitated to find immunity on similar facts. The language of our Building Safety

Code in effect as of the relevant dates in 2010 and 2011 is modeled on the 1988 version of the Uniform Building Code.[5] In a Washington state case, a dissenting judge wrote that identical language derived from the Uniform Building Code should not confer statutory immunity (the majority did not address the issue). *Taylor v. Stevens County*, 732 P.2d 517, 523–24 (Wash. Ct. App. 1987) (McInturff, C.J., dissenting).

¶ 17 The waiver of liability in the Code is an exception to the general rule in the Government Liability Act that the Commonwealth assumes liability for damages caused by the negligent acts of its employees. We have held in cases interpreting remedial statutes that they should be read in favor of broad liability. *See, e.g.*, *Limon v. Camacho*, 1996 MP 18 ¶ 50; *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 30. Conversely, "their exclusions or exceptions should be construed narrowly." *Carter v. Welles-Bowen Realty, Inc.*, 553 F.3d 979, 985 (6th Cir. 2009); *see also Guerrero v. Santo Thomas*, 2010 Guam 11 ¶ 20 ("[W]hen construing remedial legislation, we narrowly construe exceptions[.]"). As an exception to a remedial statute, the scope of immunity should be read narrowly to preserve broad liability.

¶ 18 This language in the Code does not give the Commonwealth statutory immunity as a matter of law. In *Halvorson v. Dahl*, the Supreme Court of Washington held that a person injured by a hotel fire could survive a motion to dismiss against a city government for liability on the basis of negligent enforcement of the building code. 574 P.2d 1190, 1192–93 (Wash. 1978) (holding that, taking the plaintiff's factual allegations as true, the complaint could survive a 12(b)(6) motion on a theory of liability premised on negligent enforcement of a municipal code). This case is no different.

¶ 19 DPW personnel approved the ramp despite knowing that it was too steep to meet compliance with regulatory requirements. The Bowies' Complaint did not allege that the Commonwealth assumed Apex's liability by issuing a permit. The causes of action directed at the Commonwealth are plausibly read as a theory of liability predicated on DPW's own code violations, not Apex's. Accordingly, we reverse the order granting the Commonwealth's motion to dismiss.

B. Government Liability Act

¶ 20 The Bowies argue that, though the court did not rule on Government Liability Act immunity under 7 CMC § 2204(a),[6] we have discretion to address

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[5] In 2020, the Commonwealth adopted the 2018 edition of the International Building Code, which has a materially different provision governing liability of the building official than the 1988 edition of the Uniform Building Code. 2 CMC § 7142(a); *see* International Building Code § 104.8 (2018).

[6] 7 CMC § 2204(a) reads, in pertinent part:

> The government is not liable for . . . [a]ny claim based upon an act or omission of an employee of the government, exercising due care, in the execution of a statute or regulation, whether or not the statute or

the issue because "the proper resolution is beyond any doubt." Reply Br. 7 (quoting *Singleton v. Wulff*, 428 U.S. 106, 121 (1976)). They urge us to find the Commonwealth not immune. The Bowies rely on federal courts' interpretation of the similar discretionary function exception in the Federal Tort Claims Act. The Commonwealth also invites us to rule on Government Liability Act immunity, insisting that it *does* confer immunity.

¶ 21 The court did not reach this issue and neither should we. "It is the general rule, of course, that a[n] . . . appellate court does not consider an issue not passed upon below." *Singleton*, 428 U.S. at 120. The question of Government Liability Act immunity would be better suited to findings in the trial court and it would be premature for us to rule on it. *See In re Estate of Guerrero*, 3 NMI 253, 265 (1992) ("the trial court did not rule on [these] factual or legal issues . . . and therefore [they] are not ripe for our review").

V. CONCLUSION

¶ 22 Under our 12(b)(6) pleading standard, the Bowies did not fail to state a claim for which relief can be granted. Their Complaint articulates a cause of action whose theory of liability is not barred as a matter of law by Building Safety Code immunity. We therefore REVERSE the order granting the Commonwealth's motion to dismiss.

SO ORDERED this 20th day of January, 2021.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
PERRY B. INOS
Associate Justice

/s/
JOSEPH N. CAMACHO
Justice Pro Tempore

> regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Commonwealth agency or an employee of the government, whether or not the discretion is abused.

COUNSEL

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Deanna Manglona-Ogo and J. Robert Glass, Jr., Saipan, MP, for Defendant-Appellee.

NOTICE

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Supreme Court No. 2019-SCC-0009-CIV
Superior Court No. 13-0092

JUDGMENT

Plaintiffs-Appellants James C. and Linda M. Bowie appeal the order granting the Commonwealth's motion to dismiss. For the reasons discussed in the accompanying opinion, the Court REVERSES the order.

ENTERED this 20th day of January, 2021.

/s/
JUDY T. ALDAN
Clerk of the Supreme Court