

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

COMMONWEALTH DEVELOPMENT,
AUTHORITY,

Plaintiff,

v.

COMMONWEALTH UTILITIES
CORPORATION,

Defendant.

248D
Civil Action No. 01-~~0149~~

**ORDER GRANTING
PLAINTIFF'S CROSS-MOTION
FOR SUMMARY JUDGMENT
AND DENYING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

I. PROCEDURAL BACKGROUND

This matter came before the court on August 24, 2001, in Courtroom 220 at 9:00 a.m. on Plaintiff's motion for summary judgment and Defendant's cross-motion for summary judgment. Vicente T. Salas, Esq., appeared on behalf of the Plaintiff, the Commonwealth Development Corporation (CDA). Robert T. Torres, Esq., appeared on behalf of the Defendant, the Commonwealth Utilities Corporation (CUC). The court, having reviewed the briefs, affidavits, exhibits and declarations, and having heard and considered the arguments of counsel, now renders its written decision.

II. FACTS

On May 31, 1985, the Legislature passed Public Law 4-49, the Commonwealth Development Authority Act, codified at 4 CMC § 10101 *et. seq* (CDA Act). The CDA Act "created as an autonomous public agency of the Commonwealth of the Northern Mariana Islands, a body corporate to be known as

FOR PUBLICATION

1 the Commonwealth Development Authority to serve those functions provided for in N.M.I. Const. art.
2 XI, § 6(c) and such other purposes as this division establishes.” *See* 4 CMC § 10201.

3 On July 10, 1985, the Government of the Commonwealth of the Northern Mariana Islands
4 (CNMI) entered into a Special Representatives Agreement with the Government of the United States
5 (Special Representatives Agreement) wherein the United States agreed to provide the CNMI with
6 \$223,000,000.00 over a seven-year period, beginning October 1, 1985, and ending on September 30,
7 1992. *See* Special Representatives Agreement (July 10, 1985). \$125,000,000.00 of the aforementioned
8 funds were allocated for “Capital Development.” *Id.* at 2. Eighty percent (80%) of the “Capital
9 Development” funds were to be set aside for essential capital improvement products and twenty percent
10 (20%) of the “Capital Development” funds were set aside to finance a “plan that shall provide for
11 economic development activities.” *Id.* To provide for such economic development activities the Special
12 Representative’s Agreement states that “[t]he Government of the Commonwealth of the Northern
13 Mariana Islands shall establish a revolving fund, into which repayments of principal and interest from
14 revenue-producing projects shall be deposited for financing of additional revenue-producing capital
15 development projects.” *Id.*

16 On October 1, 1985, the Legislature passed Public Law 4-47, the Commonwealth Utilities
17 Corporation Act, codified at 4 CMC § 8111 *et. seq.* (CUC Act). The CUC Act created “in the
18 Commonwealth government a Commonwealth Utilities Corporation, a public corporation.” *See* 4 CMC
19 § 8121(a).

20 On July 23, 1986, House Joint Resolution 5-12 was adopted to implement the Special
21 Representatives Agreement “by maximizing capital development through the use of public and private
22 financing techniques administered by CDA.” *See* H.J.R. 5-12. House Joint Resolution 5-12 authorized
23 “the CDA to enter into an agreement to issue tax exempt bonds for infrastructure development in the
24 sum not to exceed \$140,000,000.00.” *See* H.J.R. 5-12. The \$140,000,000.00 was designated to be
25 “deposited into a Trust Account and held in a trust for CDA and shall not be committed to any project
26 except those CIP projects shown on Attachment One hereto, or as such may be amended, until approved
27 by the affirmative vote of a majority of the members representing the respective Senatorial District as
28 to projects in that District.” *Id.*, at 2.

1 On July 29, 1987, the Legislature passed Public Law 5-37, amending the CDA Act to include
2 a new fifth chapter, 4 CMC § 10501 *et. seq.*, which created an Irrevocable Trust Fund and a Revolving
3 Fund “to appropriate Covenant Multi-Year Financial Funds to the Commonwealth Development
4 Authority for use.” *See* P. L. 5-37. The Revolving Fund, pursuant to 4 CMC § 1501(k), is defined as
5 a “fund established by CDA into which repayments of principal and interest from Loan Agreements
6 made by CDA to borrowing autonomous public agencies with respect to the Bonds shall be deposited
7 into.” *See* 4 CMC § 1501(k).

8 On October 1, 1987, the CNMI and the United States entered into a Grant Pledge Agreement
9 wherein the United States pledged the payment of \$228,000,000.00 in guaranteed annual amounts of
10 direct grant assistance. *See* CUC’s Exhibit C. The Grant Pledge Agreement specifically references a
11 previous loan agreement between CDA and CUC to finance acquisition and construction of facilities
12 for generation and public distribution of electrical power. *See* CUC’s Exhibit C, Grant Pledge
13 Agreement at 2.

14 On February 17, 1988, CDA and CUC entered into a Loan Agreement wherein CDA agreed to
15 lend \$30,000,00.00 to CUC in exchange for CUC’s agreement to repay such principal to CDA with
16 interest. *See* CUC’s Exhibit D.

17 On January 13, 1989, CDA and CUC entered into a Loan Agreement whereby CDA agreed to
18 lend \$16,068,750.00 to CUC in exchange for CUC’s agreement to repay such principal to CDA with
19 interest. *See* CUC’s Exhibit E.

20 On January 30, 1990, CDA and CUC entered into a Loan Agreement wherein CDA agreed to
21 lend \$5,000,000.00 to CUC in exchange for CUC’s agreement to repay such principal to CDA with
22 interest. *See* CUC’s Exhibit F.

23 On August 23, 2001, CDA filed a Complaint for Money Due seeking an order of the court
24 finding CUC to be in default on the aforementioned Loan Agreements and ordering declaring that the
25 entire outstanding loan amount, principal plus interest, be immediately due and payable to to enforce
26 collection through all available remedies.

27 On July 2, 2001, CUC admitted that “[t]here is no question that CUC has defaulted under these
28 loans. *See* CUC’s Motion for Summary Judgment at 8.

1 **III. ISSUES**

2
3 1. Whether the underlying complaint seeking to enforce the three (3) loan agreements entered
4 into by the Commonwealth Development Authority and the Commonwealth Utilities Commission
5 present a nonjusticiable political question requiring the court to refrain from deciding the matter on the
6 merits.

7
8 2. Whether the court shall grant summary judgment in the present matter pursuant to Com. R.
9 Civ. P. 56 on the ground that there is no dispute as to material fact and that the moving party is entitled
10 to judgment as a matter of law.

11 **IV. ANALYSIS**

12 **A. Separation of Powers / Justiciability of the Present Matter Under the Political Question Doctrine.**

13 “The separation of powers concept came into being ‘to safeguard the independence of each
14 branch of the government and protect it from domination and interference by the others.’” *Sablan v.*
15 *Tenorio*, 4 N.M.I. 351, 363 (1996).” “The separation of powers concept takes the form of the ‘political
16 question’ doctrine in the context of judicial review of legislative and executive decisions.” *Id.* “The
17 political question doctrine, a doctrine of judicial abstention, comes into play when the controversy
18 brought before the court (1) involves a decision made by a branch of the government coequal to the
19 judiciary, and (2) concerns a political matter.” *Id.* “The presence of a political question renders the
20 controversy nonjusticiable.” *Id.* “In other words, it immunizes the disputed legislative or executive
21 decision from judicial scrutiny. *Id.*

22
23 “The assessment of whether a given controversy presents a political question must be made on
24 a case-by-case basis.” *Sablan v. Tenorio, supra* at 363. “A number of factors may be considered in this
25 analysis: whether there is a textually demonstrable commitment of the issue to a coordinate branch of
26 government; whether judicially discoverable and manageable standards for assessing the dispute are
27 lacking; whether a court could render a decision without also making an initial policy determination that
28 clearly should be left to another branch; whether it would be possible for a court independently to

1 resolve the case without undercutting the respect due to coordinate branches of government; whether
2 there is an unusual need to adhere to a political decision already made; or whether an embarrassing
3 situation might be created by various governmental departments ruling on one question.” *Id.*
4 “Deciding whether a matter has in any measure been committed by the Constitution to another branch
5 of government, or whether the action of that branch exceeds whatever authority has been committed,
6 is itself a delicate exercise in constitutional interpretation, and is a responsibility of [the court] as
7 ultimate interpreter of the Constitution.” *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663
8 (1962). “The judicial power of the Commonwealth shall be vested in a judiciary of the Northern
9 Mariana Islands which shall include one supreme court and one superior court and such other inferior
10 courts as may be established by law.” N.M.I. Const. art. IV § 1. “The Commonwealth superior court
11 shall have original jurisdiction in all cases in equity and at law . . .” N.M.I. Const. art. IV § 2.

12 The present matter calls upon the court to interpret the CDA Act, (4 CMC § 10101 *et. seq.*), the
13 CUC Act (4 CMC § 8111 *et. seq.*), House Joint Resolution 5-12, the Special Representatives
14 Agreement, Public Law 5-37, and the Grant Pledge Agreement to determine whether the three (3) loan
15 agreements entered into by the CDA and the CUC are valid and enforceable. “The judiciary is the final
16 authority on issues of statutory construction.” *Chevron U.S.A. Inc. v. Natural Resources Defense*
17 *Council*, 104 S.Ct. 2778, 2781 n. 9 (1984). As such, the present matter presents a justiciable question
18 because there is a textually demonstrable commitment of the issue, statutory interpretation, to the
19 judiciary branch of government and it is possible for the court to resolve the case without undercutting
20 the respect due to coordinate branches of government.

21
22 **B. Summary Judgment Standard.**

23 The standard for summary judgment is set forth in Rule 56 of the Commonwealth Rules of Civil
24 Procedure. Rule 56(a) provides:

25 A party seeking to recover upon a claim . . . may . . . move with or
26 without supporting affidavits for a summary judgment in the party’s
favor upon all or any part thereof. Com. R. Civ. P. 56(a).

27 Rule 56(c) continues:
28

1 The judgment sought shall be rendered forthwith if the pleadings,
2 depositions, answers to interrogatories, and admissions on file, together
3 with the affidavits, if any, show that there is no genuine issue as to any
4 material fact and that the moving party is entitled to judgment as a matter
5 of law.

6 Com. R. Civ. P. 56(c). *see also Celotex v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 92 L.Ed.2d 264
7 (1986). Once a movant for summary judgment has shown that no genuine issue of material fact exists,
8 the burden shifts to the opponent to show that such an issue does exist. *See Riley v. Public School Sys.*,
9 4 N.M.I. 85, 89 (1994); *see also Castro v. Hotel Nikko, Saipan, Inc.*, 4 N.M.I. 268, 172 (1995). In
10 determining whether to grant summary judgment, the court must view the evidence and all inferences
11 to be drawn from the underlying facts in the light most favorable to the nonmoving party. *See Anderson*
12 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

13 Pursuant to Com. R. Civ. P. 56(e):

14 When a motion for summary judgment is made and supported as
15 provided in this rule, an adverse party may not rest upon the mere
16 allegations or denials of the adverse party's pleading, but the adverse
17 party's response, by affidavits or as otherwise provided in this rule, must
18 set forth specific facts showing that there is a genuine issue for trial. If
19 the adverse party does not so respond, summary judgment, if appropriate,
20 shall be entered against the adverse party.

21 Com. R. Civ. P. 56(e). To defeat a supported motion for summary judgment, the non-moving party must
22 assert sufficient factual indicia from which a reasonable trier of fact could reasonably find in his or her
23 favor." *Castro supra*, at 272 (1995), *citing Anderson, supra* at 249; *see also Eurotex, Inc. v. Muna*, 4
24 N.M.I. 280, 284 (1995).

25 **B. CUC's Motion for Summary Judgment / CDA's Cross-Motion for Summary Judgment.**

26 Four elements are essential to the formation of a contract: (1) parties capable of contracting;
27 (2) their consent; (3) a lawful object; and (4) sufficient consideration. *Bretz v. Portland General*
28 *Electric*, 882 F.2d 411, 413 (9th Cir. 1989). CUC asserts that the three (3) Loan Agreements entered into
were illegal and therefore unenforceable because the CDA lacked the first essential element, the
capability of lawfully entering into the contracts. CUC claims that House Joint Resolution No. 5-12
allowed CDA to issue bonds totaling \$140,000,000.00, but that such money was "public funds" which

1 could only be appropriated by the Legislature. CDA, however, asserts that the three (3) loan agreements
2 were lawfully entered into pursuant to House Joint Resolution No. 5-12, the CDA Act (4 CMC § 10101
3 *et. seq.*), the Special Representative’s Agreement, and the Grant Pledge Agreement.

4
5 1. CUC’s Authority to Enter into Loan Agreements.

6 Pursuant to 4 CMC § 8123:

7 Except as otherwise provided or limited in this chapter, or by other law,
8 in order to carry out its duties, [CUC] shall have all of the powers
9 conferred by law on a public corporation, and all powers reasonably
10 incidental to its purpose, including the powers:

- 11 (e) To borrow money from any private or public source, either
12 within the Commonwealth or the United States or in any other
13 country, and to give security in connection with such borrowing.

14 4 CMC § 8123. As such, CUC was enabled by the Legislature to borrow money from public sources
15 and to give security in connection with such borrowing. Accordingly, CUC had the authority to enter
16 into the Loan Agreements with CDA on February 17, 1988, (\$30,000,00.00), January 13, 1989,
17 (\$16,068,750.00), and January 30, 1990, (\$5,000,000.00). The question remains, however, whether
18 CDA had the authority to enter into the Loan Agreements and to lend the aforementioned sums to CUC.

19 2. CDA’s Authority to Enter into the Loan Agreements.

20 On July 29, 1987, the Legislature passed Public Law 5-37, amending the CDA Act to include
21 a new fifth chapter, 4 CMC § 10501 *et. seq.*, which created an Irrevocable Trust Fund and a Revolving
22 Fund “to appropriate Covenant Multi-Year Financial Funds to the Commonwealth Development
23 Authority for use.” *See* P. L. 5-37. The Revolving Fund, pursuant to 4 CMC § 1501(k), is defined as
24 a “fund established by CDA into which repayments of principal and interest from Loan Agreements
25 made by CDA to borrowing autonomous public agencies with respect to the Bonds shall be deposited
26 into.” *See* 4 CMC § 1501(k).

27 CUC contends that the funds established by Public Law 5-37 are “public funds” which must be
28 appropriated by the Legislature, not by the CDA in the form of loan agreements to autonomous public
agencies. CUC’s argument, however, fails to take into account the plain language of the CDA Act.

1 First, the funds loaned to CUC in the first and second Loan Agreements were dispersed to the
2 CDA pursuant to 4 CMC § 10503, which codified the Special Representatives Agreement and the Grant
3 Pledge Agreement. Pursuant to 4 CMC § 10503:

4 Pursuant to a grant pledge agreement between the Commonwealth and
5 DOI, or any successor to DOI, with respect to Covenant funds, such
6 pledged Covenant funds shall be transferred, as received, to the Covenant
7 funds trustee for deposit in the respective parity lot subaccount of the
8 trust account, on the dates and in the amounts scheduled in such grant
9 pledge agreement. **The receipt of such funds into the trust account
10 shall constitute an act of appropriation by the legislature and shall
11 enable the funds to be expended as set forth in 4 CMC § 10504.**

12 4 CMC § 10503, *see also* 4 CMC § 10401(a)(6) (“[t]he funds available to the [CDA] as paid-in capital
13 shall consist of the following . . . [a]ll United States capital development assistance provided pursuant
14 to the terms of the July 10, 1985, Agreement of the Special Representatives on Future United States
15 Financial Assistance for the Northern Mariana Islands.” 4 CMC § 10401(a)(6).

16 Second, the plain language of the CDA Act makes it clear that although the above funds may
17 be “public funds,” the appropriation of such funds is not made by the Legislature as a whole, but rather,
18 by specific legislators from the affected senatorial districts who, in conjunction with the CDA, would
19 certify that any dispersal of such funds would only be for those projects set out in House Joint
20 Resolution 5-12. Specifically, 4 CMC § 10502 states, in pertinent part:

21 Covenant funds may be pledged to secure the payment of principal,
22 premium and interest on bonds, **the proceeds of which are to be used
23 by CDA to finance specified capital improvement projects; provided
24 however, that the indenture of trust shall provide that no bond
25 proceeds shall be released by the bond trustee from the construction
26 fund of the indenture of trust for expenditure on a project unless
27 CDA, by an authorized officer, and the majority of the legislative
28 members representing the respective senatorial district in which the
29 CIP project is located, certifies to the bond trustee that such project
30 is a CIP project further approved pursuant to House Joint
31 Resolution 5-12, S.D. 1, as amended, by the affirmative vote of a
32 majority of the legislative members representing the respective
33 senatorial district in which such CIP project is located . . .**

34 4 CMC § 10502 (emphasis added).

35 The funds referred to above are derived from the Special Representatives Agreement which
36 provides that the United States would grant the CNMI \$223,000,000.00 over a seven-year period,
37 beginning October 1, 1985, and ending on September 30, 1992. *See* Special Representatives Agreement
38

1 (July 10, 1985). \$125,000,000.00 of the aforementioned funds were allocated for “Capital
2 Development.” *Id.* at 2. Eighty percent (80%) of the “Capital Development” funds were to be set aside
3 for essential capital improvement products and twenty percent (20%) of the “Capital Development”
4 funds were set aside to finance a “plan that shall provide for economic development activities.” *Id.*

5 The funds used to finance the first two (2) Loan Agreements were derived from the eighty
6 percent (80%) of the “Capital Development” funds that were set aside to finance essential capital
7 improvement projects. The first two (2) Loan Agreements, therefore, are subject to the requirements
8 of 4 CMC §§10502-10503.

9 The funds used to finance the third Loan Agreement, however, were derived from the twenty
10 percent (20%) of the “Capital Development” funds that were set aside to finance a “plan that shall
11 provide for economic development activities.” *Id.* To provide for such economic development activities
12 the Special Representative’s Agreement states that “[t]he Government of the Commonwealth of the
13 Northern Mariana Islands shall establish a revolving fund, into which repayments of principal and
14 interest from revenue-producing projects shall be deposited for financing of additional revenue-
15 producing capital development projects.” *Id.* The \$5,000,000.00 used to finance the third Loan
16 Agreement was derived from this money, accordingly, the third Loan Agreement is not subject to the
17 requirements set forth at 4 CMC §§10502-10503.

18
19 a. Lawfulness and Enforceability of First Loan Agreement.

20 On February 17, 1988, CDA and CUC entered into a loan agreement wherein CDA
21 agreed to lend \$30,000,00.00 to CUC in exchange for CUC’s agreement to repay such principal to CDA
22 with interest. *See* CUC’s Exhibit D. The first Loan Agreement was entered into to finance a Capital
23 Improvement Project outlined in Appendix C of the agreement. *See* CUC’s Exhibit D. Attached to the
24 agreement was a copy of the required legislative approval from a majority of the legislative members
25 representing the Legislative District where the Capital Improvement project was located. *See* CUC’s
26 Exhibit D. The first Loan Agreement, therefore, was entered into pursuant to the mandates of the House
27 Joint Resolution No. 5-12, the CDA Act (4 CMC § 10101 *et. seq.*), the Special Representative’s
28 Agreement, and the Grant Pledge Agreement and is a legal and enforceable contract. Further, given that

1 CUC has admitted that “[t]here is no question that CUC has defaulted under these loans,” the court
2 finds that CUC is in default and that CDA is entitled to judgment as a matter of law.

3
4 b. Lawfulness and Enforceability of Second Loan Agreement.

5 On January 13, 1989, CDA and CUC entered into a second Loan Agreement whereby
6 CDA agreed to lend \$16,068,750.00 to CUC in exchange for CUC’s agreement to repay such principal
7 to CDA with interest. *See* CUC’s Exhibit E. The second Loan Agreement was entered into to finance
8 a Capital Improvement Project outlined in Appendix D of the agreement. *See* CUC’s Exhibit E. The
9 Capital Improvement Project involved financing infrastructure improvements so that CUC could provide
10 better water services and facilities to the people of the Commonwealth. Attached to the agreement was
11 a copy of the required legislative approval from a majority of the legislative members representing the
12 Legislative District where the Capital Improvement project was located. *See* CUC’s Exhibit D,
13 Appendix G (Third Senatorial District Resolution No. 6-7). The second Loan Agreement, therefore, was
14 entered into pursuant to the mandates of the House Joint Resolution No. 5-12, the CDA Act (4 CMC
15 § 10101 *et. seq.*), the Special Representative’s Agreement, and the Grant Pledge Agreement and is a
16 legal and enforceable contract. Further, given that CUC has admitted that “[t]here is no question that
17 CUC has defaulted under these loans,” the court finds that CUC is in default and that CDA is entitled
18 to judgment as a matter of law.

19
20 c. Lawfulness and Enforceability of Third Loan Agreement.

21 On January 30, 1990, CDA and CUC entered into a third Loan Agreement wherein CDA
22 agreed to lend \$5,000,000.00 to CUC in exchange for CUC’s agreement to repay such principal to CDA
23 with interest. *See* CUC’s Exhibit F. The second Loan Agreement was entered into to enable CUC to
24 to finance a Capital Improvement Project involving the construction of a new “Saipan power plant
25 number 2.” *See* CUC’s Exhibit F, at 2. The \$5,000,000.00 lent to CUC under the third Loan
26 Agreement did not come from the same source as those used to fund the first two (2) Loan Agreements.
27 Specifically, the \$5,000,000.00 was derived from the “capital development funds” which the Special
28 Representatives Agreement allocated to CDA to “finance a plan that shall provide for economic

1 development activities.” *See* Special Representatives Agreement, July 10, 1985. As such, the third
2 Loan Agreement did not require legislative approval from a majority of the legislative members
3 representing the Legislative District where the Capital Improvement project was located. The third Loan
4 Agreement, therefore, was entered into pursuant to the mandates of the House Joint Resolution No. 5-12,
5 the CDA Act (4 CMC § 10101 *et. seq.*), the Special Representative’s Agreement, and the Grant Pledge
6 Agreement and is a legal and enforceable contract. Further, given that CUC has admitted that “[t]here
7 is no question that CUC has defaulted under these loans,” the court finds that CUC is in default and that
8 CDA is entitled to judgment as a matter of law.

9
10 C. Damages / Remedies.

11 The terms of the three (3) Loan Agreements set forth a remedy provision wherein CUC agreed
12 that upon default, CDA may “[d]eclare the entire outstanding amount of the Loan to be immediately due
13 and payable, and enforce collection of the same through all remedies available by law.” *See* CUC’s
14 Exhibit D, at 6-7; CUC’s Exhibit E, at 6; CUC’s Exhibit F, at 6. The court agrees that such a provision
15 is acceptable and judgment will be entered accordingly.

16 The terms of the three (3) Loan Agreements set forth a second remedy provision wherein, upon
17 default, the CDA may “[a]ppoint a business entity to manage the operations of CUC . . . [i]f CUC has
18 an outstanding management contract at the time of the default, CDA may terminate the contract on the
19 first date permitted by its terms.” *See* CUC’s Exhibit D, at 7; CUC’s Exhibit E, at 6-7; CUC’s Exhibit
20 F, at 6. CDA, therefore, seeks an order of the court appointing an independent business entity to review
21 the management operations of CUC and to assume day-to-day management of CUC.

22 The court is concerned that such a remedy would unduly interfere with role of CUC’s Board of
23 Directors who are appointed by the Governor with the advice and consent of the Senate. As such,
24 despite the court’s authority to appoint an independent business entity to review the management
25 operations of CUC and to assume day-to-day management of CUC, the court exercises its discretion to
26 deny such relief.

27 The court notes that it is disappointed that CUC has failed to responsibly adhere to the terms of
28 the three (3) Loan Agreements. The court further notes that it is now incumbent on the Executive and

1 Legislative Branches to bear the burden placed upon them by the CNMI electorate to ensure that CUC
2 is managed in an efficient and accountable manner. There is nothing more important than to ensure that
3 CUC abides by the mandate set forth at 4 CMC § 8141 which states that “[t]he executive director and
4 board shall manage [CUC] in a business-like manner so as to provide the most efficient delivery of its
5 services at the most reasonable cost to consumers.” See 4 CMC § 8141.

6 7 V. CONCLUSION

8 For the foregoing reasons, the court finds that the three (3) Loan Agreements entered into on
9 February 17, 1988, (\$30,000,000.00), January 13, 1989, (\$16,068,750.00), and January 30, 1990,
10 (\$5,500,000.00), between the CDA and CUC are legal and enforceable contracts. As such, pursuant to
11 the terms of the Loan Agreements, and given that CUC has admitted that “[t]here is no question that
12 CUC has defaulted under these loans”, the court finds that CUC is in default and that CDA is entitled
13 to judgment as a matter of law. Accordingly, CDA’s cross-motion for summary judgment is
14 **GRANTED** and CUC’s motion for summary judgment is **DENIED**.

15 In furtherance of the above ruling and in accordance with the remedies provisions set forth in
16 the three (3) Loan Agreements, the court hereby orders the following:

- 17
18 1. The entire outstanding amount of the February 17, 1988, Loan
19 Agreement is immediately due and payable by CUC to CDA;
- 20
21 2. The entire outstanding amount of the January 13, 1989, Loan
22 Agreement is immediately due and payable by CUC to CDA; and
- 23
24 3. The entire outstanding amount of the January 30, 1990, Loan
25 Agreement is immediately due and payable by CUC to CDA.

26 So ORDERED this 6th day of September, 2001.

27
28 /S/
JUAN T. LIZAMA, Associate Judge