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

JAGUAR, INC.,)
JAPAN ENTERPRISES, INC.,)
WORLD INTERNATIONAL, INC., and)
TAKAHARU KOMODA,)
)
Plaintiffs,)
)
v.)
)
ITO SUISAN FOOD CO., INC.,)
MERCY CORP., HIDEAKI SAWADA,)
MISAE TAMBO, AMERIANA CORP.,)
EMPEROR ENTERPRISES CORP., and)
HIROFUMI NAKAYAMA)
)
Defendants.)
_____)

CIVIL ACTION NO. 00-0145

**ORDER GRANTING
DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

I. INTRODUCTION

The above matter came on for a hearing on September 25, 2002, at 9:00 a.m. on Defendants' Motion for Summary Judgment. Robert B. Dunlap, II, Esq. appeared on behalf of Defendants. William M. Fitzgerald, Esq. appeared on behalf of Plaintiffs. The Court, having reviewed the briefs, exhibits, affidavits, and having heard and considered the arguments of counsel, now renders its written decision.

II. FACTS

A. The Parties

Plaintiffs in this case are Jaguar, Inc. ("Jaguar"), Japan Enterprises, Inc. ("Japan Enterprises"), World International Corp. ("World") and Takaharu Komoda ("Mr. Komoda"). Mr. Komoda is a principal officer and shareholder in each of the plaintiff corporations.

Defendants in this case are Ito Suisan Food Co., Inc. ("Ito Suisan"), Mercy Corp. ("Merci"),

1 Ameriana Corp. (“Ameriana”), Emperor Enterprises Corp. (“Emperor”), Misae Tambo (“Mrs. Tambo”),
2 Hideaki Sawada (“Mr. Sawada”), and Hirofumi Nakayama (“Mr. Nakayama”). Mrs. Tambo became
3 the president and principal stockholder of Ito Suisan upon the death of her husband Eizo Tambo (“Mr.
4 Tambo”). Mr. Sawada is the principal owner and officer of Ameriana and the principal officer of
5 Emperor and Merci. Mr. Nakayama is Ito Suisan’s attorney in Japan.

6 *B. Factual Background*

7 Sometime in the 1980’s, Mr. Tambo began investing in Saipan real estate through his company
8 Ito Suisan. First, Ito Suisan built the May Ten I building in Garapan. Then, Ito Suisan subleased property
9 in Garapan from Japan Enterprises, and built the May Ten II building.¹ Mr. Tambo also opened a
10 nightclub and a restaurant through the Saipan Futaba Group Corp. (“Saipan Futaba”),² and indirectly
11 purchased land on Navy Hill for employee dormitories and apartments. Mr. Komoda partially managed
12 Mr. Tambo’s and Ito Suisan’s business affairs on Saipan.³ In return, Japan Enterprises kept all rents and
13 profits from the various Ito Suisan land and commercial property holdings while Mr. Komoda paid Mr.
14 Tambo a set annual fee.⁴ In March 1995, Ito Suisan and World executed a one year term agreement in
15 which World agreed to sublease and manage Ito Suisan’s Saipan real estate for a set fee.⁵ Under this
16 agreement, Ito Suisan gave World the power to sublease the properties.

17 In 1996, Mr. Tambo passed away and Mrs. Tambo became the president and principal
18

19 ¹ Japan Enterprises entered into a property lease agreement with Emiliana C. Sablan in April 1984. The lease
20 will expire in April 2009.

21 ² Mr. Tambo and Mr. Komoda were both shareholders. Mr. Tambo’s and Mr. Komoda’s ownership interests
22 varied from twenty-five percent each to ninety-five percent and five percent respectively prior to the dissolution of the
23 corporation in January 1994.

24 ³ Mr. Komoda signed an agreement with Ito Suisan in which he agreed to consult on management issues,
25 conduct certain office duties, recruit foreign workers, assist in raising funds and assist Ito Suisan with written
26 documents. Mr. Komoda’s duties did not include “executing business, delegation, substitution or administration of Ito
27 Suisan’s management and/or operations.” Defs.’ Reply to Pls.’ Opp. at Ex. 1. Mr. Komoda received a monthly
28 compensation of ¥100,000. *Id.*

⁴ Mr. Sawada assisted Mr. Komoda in the management of the properties. Mr. Sawada held shares in Ito Suisan
for Mr. Komoda as a nominee and worked as an employee of Ito Suisan, Japan Enterprises, and then World Enterprises
until Mr. Komoda terminated him in 1997.

⁵ This agreement was not provided to the Court.

1 stockholder in Ito Suisan. After Mr. Tambo's death, Plaintiffs assert that the arrangement between World
2 and Ito Suisan continued without interruption from 1996 to 1999.⁶ During that period, World continued
3 to collect rents, maintain the properties, make improvements and sublease the properties.

4 In July 1998, Mrs. Tambo and Mr. Nakayama informed Mr. Komoda that Ito Suisan's property
5 holdings were to be transferred to a third party for tax liability purposes. Mr. Komoda protested and
6 informed Ito Suisan that he wanted to sever the relationships between the parties and settle debts and
7 credits between them. In March 1999, Mr. Nakayama, Mrs. Tambo and Mr. Komoda met at the Hyatt
8 Hotel to settle the transfer arrangement and all accounts between the parties. Plaintiffs assert that as part
9 of the agreement reached at this meeting, World would maintain its management of the Ito Suisan
10 properties through March 2009. The agreement would further allow for a setoff of claims and debts
11 between the parties including fees and costs associated with a Fair Labor Standards Act enforcement
12 action brought by the United States Department of Labor against Sawada, Saipan Futaba, Japan
13 Enterprises, Ameriana and Komoda ("U.S. Labor case"),⁷ expenses incurred from closing the May Ten
14 I Piano Bar upon Mr. Tambo's request, and debts owed by Mr. Tambo to Mr. Komoda. The agreement
15 further contemplated the transfer of World property holdings and Japan Enterprises property holdings to
16 Merci, for Mr. Komoda, Japan Enterprises and World to consent to the transfer of properties from Ito
17 Suisan to Merci and finally, for Merci to execute a promissory note to Ito Suisan for the Ito Suisan
18 properties. Mr. Komoda asserts that all parties were in agreement that Mr. Komoda, through World,
19 would manage the properties for a period of ten years.

20 Following the Hyatt meeting, several agreements were drawn up and signed. On March 12,
21 1999, Ito Suisan assigned all of its leasehold interests in its real properties to Merci. Also, on March 12,
22 1999, Merci and World entered into a one year term General Lease Agreement for several properties.⁸
23 On March 14, 1999, Japan Enterprises subleased the Garapan property where the May Ten II building
24 sits to Ito Suisan for a term of years ending April 15, 2009. Ito Suisan then subleased this interest to

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26 ⁶ These agreements were not provided to the Court. The Court will assume that the arrangement between World
and Ito Suisan continued as one year term agreements similar to the first agreement in March 1995.

27 ⁷ See *Reich v. Japan Enterprises Corp.*, 91 F.3d 154 (9th Cir. 1996) (unpublished).

28 ⁸ This agreement appears to be similar to the previous management agreements between World and Ito Suisan.

1 Merci. In June 1999, Mr. Komoda received a memorandum documenting the agreement reached at the
2 Hyatt meeting. Mr. Komoda refused to sign the document because it allowed Ito Suisan to cancel
3 World's rights to Ito Suisan's properties before 2009.

4 On January 30, 2000, Merci notified World, Japan Enterprises and Jaguar that effective April
5 1, 2000, they would have to vacate the premise pursuant to the terms of the March 12, 1999 General
6 Lease Agreement. Thereafter, on March 20, 2000, Plaintiffs filed a Complaint for Fraud and Other
7 Relief. Plaintiffs also filed an Emergency Motion for Temporary Restraining Order and Preliminary
8 Injunction, which this Court denied on April 26, 2000.

9 On April 10, 2000, Merci filed six separate actions against World, Japan Enterprises, and Jaguar
10 pursuant to the Holdover Tenancy Act. Plaintiffs moved to consolidate this matter with the Holdover
11 cases, which this Court denied on July 14, 2000. On November 9, 2000, Plaintiffs filed an Amended
12 Complaint for Fraud and Other Relief setting forth twenty-three claims for relief. On August 12, 2002,
13 Defendants filed this Motion for Summary Judgment. Plaintiffs oppose the motion.

14 **III. ISSUES**

15 1. Whether a partnership or joint venture relationship exists between Mr. Komoda, Mr.
16 Tambo and Ito Suisan thereby barring the defense of statute of frauds.

17 2. Whether Plaintiffs sufficiently plead promissory estoppel thereby barring the defense of
18 statute of frauds.

19 **IV. ANALYSIS**

20 *A. Summary Judgment*

21 Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories,
22 admissions on file, and affidavits, if any, show that there are no genuine issues of material fact and that the
23 moving party is entitled to judgment as a matter of law. *See* Com. R. Civ. P. 56(b); *see also Celotex*
24 *Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265, 274 (1986). When
25 the moving party has shown an absence of evidence to support the non-moving party's case, the non-
26 moving party must present specific facts showing there is a genuine issue for trial. *See Matsushita Elec.*
27 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538, 552
28 (1986); *see also Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268, 272 (1995). “[A] complete failure

1 of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts
2 immaterial." *Celotex Corp.*, 477 U.S. at 322, 106 S. Ct. at 2552, 91 L. Ed. 2d at 274. In attempting
3 to meet the moving party's burden, a movant that does not bear the ultimate burden of persuasion at trial
4 need not negate the other party's claim; rather, the movant need simply point out to the court the lack of
5 evidence for the other party on an essential element of that party's claim. *Id.* 477 U.S. at 325, 106 S.
6 Ct. at 2554, 91 L. Ed. 2d at 275.

7 If the moving party meets its initial responsibility, the burden then shifts to the opposing party to
8 establish that a genuine issue as to any material fact actually does exist. *See Matsushita Elec. Indus.*
9 *Co.*, 475 U.S. at 586, 106 S. Ct. at 1356, 89 L. Ed. 2d at 586. In attempting to establish the existence
10 of this factual dispute, the opposing party may not rely upon the denials of its pleadings, but is required
11 to tender evidence of specific facts in the form of affidavits, and/or admissible discovery material, in
12 support of its contention that the dispute exists. *See Com. R. Civ. P. 56(e); Matsushita Elec. Indus.*
13 *Co.*, 475 U.S. at 586 n.11, 106 S. Ct. at 1356 n.11, 89 L. Ed. 2d at 586 n.11; *see also Strong v.*
14 *France*, 474 F.2d 747, 749 (9th Cir. 1973). The opposing party must demonstrate that the dispute is
15 genuine in that the evidence is such that a reasonable jury could return a verdict for the nonmoving party.
16 *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d
17 202, 211 (1986); *see also Wool v. Tandem Computers, Inc.*, 818 F.2d 1433, 1436 (9th Cir. 1987).

18
19 In resolving a motion for summary judgment, the court examines the pleadings, depositions,
20 answers to interrogatories, and admissions on file, together with the affidavits, if any. *See Com. R. Civ.*
21 *P. 56(c); SEC v. Seaboard Corp.*, 677 F.2d 1301, 1305-06 (9th Cir. 1982). The court must view the
22 evidence and all inferences to be drawn from the underlying facts in the light most favorable to the
23 nonmoving party. *See Anderson*, 477 U.S. at 247-48, 106 S. Ct. at 2510, 91 L. Ed. 2d at 211.
24 Nevertheless, inferences are not drawn out of the air, and it is the opposing party's obligation to produce
25 a factual predicate from which the inference may be drawn. *See Richards v. Nielsen Freight Lines*, 602
26 F. Supp. 1224, 1244-45 (E.D. Cal. 1985). The evidence proffered by the non-movant, however, must
27 be more than the non-movant's own pleadings and affidavits. *Crest Uniform Co. v. Foley*, 806 F. Supp.
28 164, 167 (E.D. Mich. 1992)

1 In the case at hand, Defendants move for summary judgment on the following claims for relief:

2 (1) Plaintiffs' Eighth Claim for Relief in which Plaintiffs assert that
3 Mr. Sawada is indebted to Japan Enterprises in the amount of
¥9,923,000 and \$192,851.61, plus interest;

4 (2) Plaintiffs' Ninth Claim for Relief in which Plaintiffs assert that Mr.
5 Sawada and Ameriana are indebted to Japan Enterprises in the amount
of \$630,954.33, less credit for a payment of \$46,000.00, for their share
6 of fees and costs related to the U.S. Labor case;

7 (3) Plaintiffs' Fourteenth Claim for Relief in which Plaintiffs assert
8 that Mrs. Tambo is indebted to Mr. Komoda in the amount of
¥120,000,000.00 with regard to consideration paid by Ito Suisan for the
9 sublease of the Garapan Property on which the May Ten II building is
located;

10 (4) Plaintiffs' Twenty-first Claim for Relief in which Plaintiffs assert
11 that Ito Suisan and Mrs. Tambo are indebted to Japan Enterprises for
the amount of \$630,954.33, plus interest, for their share of fees and
costs related to the U.S. Labor case;

12 (5) Plaintiffs' Twenty-second Claim for Relief in which Plaintiffs
13 assert that Ito Suisan and Mrs. Tambo are indebted to Japan Enterprises
for the amount of \$115,446.00, plus interest, for expenses associated
14 with the closing of the May Ten I Piano Bar; and,

15 (6) Plaintiffs' Twenty-third Claim for Relief in which Plaintiffs assert
16 that Mrs. Tambo, Ito Suisan and Mr. Nakayama are liable to Mr.
Komoda and Japan Enterprises for the value of Lot 025 D 07, which
Mrs. Tambo had conveyed from Saipan Futaba to Ito Suisan.

17 Defendants assert that they are entitled to summary judgment on claims fourteen, twenty-one and twenty-
18 two because they are barred by the statute of frauds and/or the statute of limitations, while claims eight,
19 nine and twenty-three are legally deficient. Plaintiffs, on the other hand, assert that summary judgment
20 is inappropriate because there is a question of fact as to whether Mr. Komoda, Mr. Tambo and Ito
21 Suisan were engaged in a partnership or joint venture, which created a fiduciary relationship barring the
22 application of the statute of frauds and the statute of limitations. Plaintiffs also assert that summary
23 judgment is inappropriate because there is a question of fact as to promissory estoppel.

24 *B. Partnership or Joint Venture*

25 In their Opposition, Plaintiffs request the Court to refer to Ito Suisan's memorandum in opposition
26 to Mr. Komoda's Motion to Vacate filed in *Merci Corp. v. World Int'l Corp.*, Civ. No. 00-0173
27 (N.M.I. Super. Ct), which "gives a fairly accurate rendition of the facts surrounding the relationship
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1 between Ito Suisan, [Mr.] Komoda, [Mr. & Mrs.] Tambo[], [Mr.] Nakayama.” Pls.’ Opp. at 2.
2 Because there is no factual dispute, the relationship between the parties is a matter of law. *See County*
3 *of Riverside v. Loma Linda Univ.*, 118 Cal. App. 3d 300, 313 (Cal. Ct. App. 1981) (“Where the
4 evidence bearing on the issue is conflicting, the existence of a joint venture is primarily a question of fact.
5 On the other hand, where there is no conflicting extrinsic evidence concerning the interpretation of the
6 contract creating the relationship, the issue is one of law.”) Plaintiffs conclude that, based on the facts
7 surrounding the relationship between Mr. Komoda and Mr. Tambo, as well as Mr. Komoda’s
8 contribution of time, labor and money, a partnership or joint venture existed between Mr. Komoda, Mr.
9 Tambo, and Ito Suisan up to March 1999. Defendants, however, disagree. In determining whether a
10 partnership or joint venture exists:

11 The Court [] looks to RESTATEMENT (SECOND) OF AGENCY § 14A
12 (1958), which defines a partnership as “an association of two or more
13 persons to carry on as co-owners a business for profit,” incorporating
14 the definition of the Uniform Partnership Act § 6(1). A partnership is
15 characterized by a voluntary agreement [to] “share profits and losses .
16 . . . which may arise from the use of capital, labor or skill in a common
17 enterprise, and an intention on the part of the principals to form a
18 partnership for that purpose.” While no single factor is determinative in
19 any given case, courts look most frequently to three factors: the right of
20 a party to share in profits, her liability for losses, and her right to exert
21 some control over the business enterprise. While a joint venture is of
22 shorter duration than a partnership, the same legal criteria govern the
23 existence of a joint venture as define a partnership.

18 *Prop. Mgmt., Inc. v. Inoue*, Civ. No. 92-1455 (Super. Ct. Apr. 4, 1994) (Decision and Order on
19 Plaintiff’s Motion for Partial Summary Judgment at 6-8)(citations omitted); *see also County of Riverside*,
20 118 Cal. App. 3d at 313 (holding that with a “joint venture” there is “an understanding as to sharing of
21 profits and losses, and right of joint control”).

22 Upon review of the record, there is no evidence to establish a partnership or joint venture
23 between Mr. Komoda, Mr. Tambo, and Ito Suisan. Plaintiffs fail to establish that Mr. Komoda and Mr.
24 Tambo entered into an agreement with the intent to form a partnership. There is no written contract or
25 agreement establishing a partnership or joint venture between Mr. Komoda, Mr. Tambo and Ito Suisan.
26 The only written agreement between Mr. Komoda and Ito Suisan is one in which Mr. Komoda is
27 specifically prohibited from conducting business on behalf of Ito Suisan or being responsible for Ito
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1 Suisan's external operations. *See* Defs.' Reply at Ex. 1. Rather, Mr. Komoda acted as a consultant and
2 property manager for Ito Suisan. *Id.* The evidence proffered by Plaintiffs to support their contention
3 consists of Mr. Komoda's statements that he and Mr. Tambo acted as partners and short references to
4 pleadings, declarations and affidavits filed in *Merci Corp. v. World Int'l Corp.*, Civ. No. 00-0173
5 (N.M.I. Super. Ct.). The Plaintiffs have not attached these pleadings, declarations and affidavits, or
6 provided them to this Court for full review in this case. Such conclusory statements, without evidentiary
7 support, are insufficient to create a genuine issue of fact. *See Causey v. Balog*, 162 F.3d 795, 802 (4th
8 Cir. 1998). Thus, based on the record before the Court, the Court finds that Mr. Komoda did not exert
9 any control over the business enterprise of Ito Suisan, nor did he share in the profits and losses of Ito
10 Suisan. Further, there is no evidence that Ito Suisan shared in the profits and losses of Mr. Komoda and
11 his corporations. Thus, as a matter of law, Plaintiffs fail to establish the elements necessary for a
12 partnership or joint venture.

13 *C. Promissory Estoppel*

14 Plaintiffs next assert that summary judgment is inappropriate because there is a question of fact
15 as to whether Mr. Komoda relied to his detriment on promises made by Mrs. Tambo and Mr.
16 Nakayama. Specifically, Plaintiffs allege that Mrs. Tambo and Mr. Nakayama agreed to allow Mr.
17 Komoda to manage and lease the properties transferred from Ito Suisan to Merci for a period of ten
18 years so that he could earn back various debts and obligations owed to him by Mr. Tambo and Ito
19 Suisan. In return, Mr. Komoda would forego taking immediate action on his claims. Mr. Komoda
20 contends that because he relied on this agreement he is now not able to pursue the monies owed him.

21 "Application of the doctrine of promissory estoppel is based on the particular factual
22 circumstances of a case and, as an equitable remedy, is employed to alleviate an injustice resulting from
23 strict adherence to established legal principles, such as those underlying the statute of frauds. Thus,
24 promissory estoppel, if established, can be invoked to defeat the defense of the statute of frauds." *Crest*
25 *Uniform Co.*, 806 F. Supp. at 169 (citations omitted). To establish promissory estoppel, Plaintiffs must
26 show:

27 (1) a clear and definite promise;

28 (2) [that] the promise was made with the promisor's clear understanding

1 that the promisee was seeking an assurance upon which the promisee
2 could rely and without which he would not act;

3 (3) [that] the promisee acted to his substantial detriment in reasonable
4 reliance on the promise; and

5 (4) [that] injustice can be avoided only by enforcement of the promise.

6 *Schoff v. Combined Ins. Co. of Am.*, 604 N.W.2d 43, 49 (Iowa 1999). To be sufficient to support
7 estoppel, a promise must be definite and clear. *Crest Uniform Co.*, 806 F. Supp. at 169. Where a
8 defense under a statute of frauds is raised, the rule is that one must have acted to his detriment solely in
9 reliance on the oral agreement. *Id.* Where a plaintiff sufficiently alleges promissory estoppel to
10 circumvent the statute of frauds, a question of fact is raised. *Id.*

11 Here, Plaintiffs assert in their pleadings that Mrs. Tambo's and Mr. Nakayama's promise that Mr.
12 Komoda would be able to recoup the ¥120,000,000 owed by Ito Suisan to Mr. Komoda "was definite
13 and substantial in that it involved large sums of money and substantial assets and was in fact a quid pro
14 quo - go along with us and don't make any trouble now and we'll take care of you, allowing you to
15 recoup your money." Pls.' Opp. at 9. Upon review of the record it appears that the only evidence
16 submitted by Plaintiffs of a promise are Mr. Komoda's declarations that refer to a continuing partnership
17 after Mr. Tambo's death, as well as excerpts of affidavits of Mr. Kinashita and Mr. Miyoshi that are not
18 submitted in their entirety.⁹ This evidence is conclusory and insufficient to establish a genuine issue of
19 material fact or the requisite elements for a defense of promissory estoppel.

20 *D. Plaintiffs Claims for Relief*

21 Turning now to Plaintiffs' Claims for Relief, the Court finds the following:

22 1. *Plaintiffs' Eighth Claim for Relief* – At the hearing, Plaintiffs conceded this claim.
23 Defendants' Motion for Summary Judgment is, therefore, GRANTED as to Plaintiffs' Eighth Claim for
24 Relief.

25 2. *Plaintiffs' Ninth Claim for Relief* – Plaintiffs assert that Mr. Sawada and Ameriana are
26 indebted to Japan Enterprises in the amount of \$630,954.33 less credit for a payment of \$46,000 with
27 regard to the judgment, as well as fees and costs related to the U.S. Labor case. In the U.S. Labor case,

28 ⁹ Mr. Kinashita and Mr. Miyoshi appear to be Japanese lawyers for Ito Suisan.

1 Mr. Sawada, Saipan Futaba, Japan Enterprises, Ameriana, and Mr. Komoda were held jointly and
2 severally liable for the amount of \$594,432.¹⁰ Sawada's maximum liability totaled \$445,682.00. This
3 amount included Ameriana's liability for \$8,383.02 and Japan Enterprises liability of \$437, 298.98,
4 because the District Court found Mr. Sawada to be an "employer" within the meaning of the FLSA with
5 respect to the employees of Ameriana and Japan Enterprises and, therefore, liable for those defendants'
6 violations.

7 Defendants contend, however, that Mr. Sawada was an employee of Japan Enterprises and never
8 agreed to be responsible for the debts of Japan Enterprises. Mr. Sawada's only obligation was to pay
9 for Ameriana's liability. Thus, Mr. Sawada's personal liability to the U.S. Department of Labor was
10 satisfied by Japan Enterprises' payment of that liability and Japan Enterprises is not entitled to
11 contribution. Defendants assert that Mr. Sawada is entitled to indemnification as an employee pursuant
12 to 4 CMC § 4497, which states that "[u]nless a corporation's articles of incorporation provide otherwise:
13 The corporation may indemnify and advance expenses under this article to an officer, employee,
14 or agent of the corporation who is not a director to the same extent as to a director."

15 Defendants fail to establish as a matter of law that Plaintiffs are not entitled to any amount of
16 contribution from Mr. Sawada as a statutory employer. Though a corporation may indemnify an
17 employee, the District Court did not find Mr. Sawada to be liable as an employee.¹¹ Regardless, the
18 claim is now time barred under 7 CMC § 4304(c), which states that "any separate action by the
19 tortfeasor to enforce contribution must be commenced within one year after the judgment has become
20 final by lapse of time for appeal or after appellate review." Defendants' Motion for Summary Judgment
21 as to Plaintiffs' Ninth Claim for Relief is, therefore, GRANTED.

22 3. *Plaintiffs' Fourteenth Claim for Relief* – Plaintiffs assert that Mrs. Tambo is indebted
23 to Mr. Komoda in the amount of ¥120,000,000. Mr. Komoda contends that this amount was

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25 ¹⁰ The costs and fees incurred totaled over \$1 million.

26 ¹¹ Attached to Mr. Sawada's Declaration is a document drafted by Mr. Komoda entitled "Commitment." This
27 document appears to release Mr. Sawada from having to pay back "advanced money paid." Defendants assert that this
28 document intended to release Mr. Sawada from any liability as to debts owed under the U.S. Labor case. The document,
however, does not make any mention of the U.S. Labor case and is disputed by Mr. Komoda. Thus, there is a question
of fact as to whether Mr. Komoda released Mr. Sawada from any monetary liability related to the U.S. labor case.

1 consideration for the Garapan property subleased by Ito Suisan from Japan Enterprises and that upon
2 Mr. Tambo's death, Mrs. Tambo agreed to pay back the debt over a period of ten years. Defendants
3 contend that Mr. Komoda's claim is barred by the statute of limitations and that his claim for the
4 ¥120,000,000 should have been made against Mr. Tambo's estate in 1998. Plaintiffs on the other hand
5 assert promissory estoppel.

6 As discussed above, the Court finds that Plaintiffs failed to sufficiently establish promissory
7 estoppel. Again, the record before the Court reveals no evidence of a promise by Mrs. Tambo to repay
8 Mr. Tambo's debt. Plaintiffs merely state that Mrs. Tambo made a promise. *See Hansen v. United*
9 *States*, 7 F.3d 137, 138 (9th Cir. 1993) (holding that a party cannot rely on unsupported conclusory
10 statements). Moreover, a promise to pay for the past debts of another is a collateral promise that falls
11 under the statute of frauds, which requires that certain contracts be in writing to be enforceable.
12 *Gillhespy v. Bolema Lumber and Bldg. Supplies, Inc.*, 146 N.W.2d 666 (1966); 2 CMC § 4914.
13 Here, there is no written agreement. Defendants' Motion for Summary Judgment is, therefore,
14 GRANTED, as to Plaintiffs' Fourteenth Claim for Relief.

15 4. *Plaintiffs' Twenty-first Claim for Relief* – Plaintiffs assert that Mrs. Tambo and Ito
16 Suisan are indebted to Japan Enterprises for the amount of \$630,954.33, plus interest, for their agreed
17 share of costs, expenses and the Judgment in the U.S. Labor case. Defendants assert that this claim is
18 barred by the statute of frauds and the statute of limitations.

19 Plaintiffs contend that Mr. Tambo agreed to pay one third of the expenses related to the U.S.
20 Labor case. Mr. Tambo and Ito Suisan, however, were not parties to the litigation. Thus, Pursuant
21 to the statute of frauds:

22 The following contracts are invalid unless the same, or some note or
23 memorandum thereof, is in writing and subscribed by the party to be
charged or by his agent:

24

(b) A special promise to answer for the debt, default, or
miscarriage of another.

25 2 CMC § 4914. Plaintiffs fail to provide a written document evidencing Mr. Tambo's agreement. Thus,
26 pursuant to the statute of frauds, this claim is barred. Further, there is no evidence that Mrs. Tambo
27 agreed that Ito Suisan would pay the one third share of expenses. Because Plaintiffs concede that claims
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1 of contribution or claims against Mr. Tambo's estate are not relevant, this Court declines to address these
2 issues. Defendants' Motion for Summary Judgment as to Plaintiffs' Twenty-first Claim for Relief is
3 GRANTED.

4 5. *Plaintiffs' Twenty-second Claim for Relief* – Plaintiffs assert that Mrs. Tambo, Ito
5 Suisan and Mr. Nakayama are responsible for the expenses in the amount of \$115,446 related to the
6 closure of the May Ten I Piano Bar owned by Saipan Futaba. Plaintiffs contend that Mr. Tambo
7 requested the closure of the piano bar and would bear the expenses. Plaintiffs, however, fail to proffer
8 any evidence of this promise, including a written agreement. *See* 2 CMC § 4914. After his death,
9 Plaintiffs assert that Mrs. Tambo agreed to be responsible for the debt. Mr. Komoda asserts that this
10 expense was included in the agreement between the parties in which Mr. Komoda would remain in
11 control of the properties for ten years.

12 As discussed above, the Court finds that Plaintiffs failed to sufficiently establish a clear and definite
13 promise and, therefore, cannot rely on promissory estoppel. Because there is no written agreement and
14 Plaintiffs fail to establish a partnership or promissory estoppel, summary judgment is appropriate.
15 Defendants' Motion for Summary Judgment is, therefore, GRANTED as to Plaintiffs' Twenty-second
16 Claim for Relief.

17 6. *Plaintiffs' Twenty-third Claim for Relief* – Plaintiffs assert that Mrs. Tambo breached
18 her fiduciary duty to Mr. Komoda when, acting in her capacity as Executrix of Mr. Tambo's estate, she
19 executed an Assignment of Lease transferring property owned by Saipan Futaba to Ito Suisan. The
20 evidence supports a finding that Mr. Komoda did not object to the transfer and in fact participated in the
21 property transfer. The evidence also supports that Mr. Komoda did not suffer any damages as a result.

22 Again, Plaintiffs failed to present evidence of a clear and definite promise. Further, Plaintiffs failed
23 to show damage from the transfer of the property. Defendants Motion for Summary Judgment, is
24 therefore GRANTED as to Plaintiffs' Twenty-third Claim for Relief.

25 V. CONCLUSION

26 For the foregoing reasons it is hereby ordered that summary judgment is GRANTED as to the
27 following claims:

28 1. Plaintiffs' Eighth Claim for Relief.

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- 2. Plaintiffs' Ninth Claim for Relief.
- 3. Plaintiffs' Fourteenth Claim for Relief.
- 4. Plaintiffs' Twenty-first Claim for Relief.
- 5. Plaintiffs' Twenty-second Claim for Relief.
- 6. Plaintiffs' Twenty-third Claim for Relief.

SO ORDERED this 22nd day of October 2002.

/s/ Edward Manibusan
EDWARD MANIBUSAN, Presiding Judge