



1 *Castro*, 1 N.M.I. 172, 176 (1990). In making its determination, the Court must “review the evidence  
2 and inferences in a light most favorable to the nonmoving party.” *Id.* The Court will begin with a  
3 brief recitation of the facts.

#### 4 FACTUAL BACKGROUND

5 This lawsuit arises from a contract entered into by the parties under which Defendant would  
6 operate and manage a Mobil service station on the island of Tinian. The contract, executed on  
7 August 18, 1999, provided, inter alia, that Defendant was to be Mobil’s agent for the sale of fuel at  
8 the service station. Defendant was required to collect the proceeds of fuel sales, hold them in trust  
9 for Mobil, and pay them over to Mobil in a timely manner. For her services she received 15 cents  
10 for every gallon of fuel sold. The facilities for dispensing fuel were constructed and maintained by  
11 Mobil. The facility included a market area, which was provided so that Defendant could stock  
12 convenience store items for sale. The market inventory was paid for and owned by Defendant, but  
13 Defendant was required to remit to Mobil the greater of 6% of gross sales receipts or \$1,900 per  
14 month as a license fee and rental on the building.

15 Within a few months of taking over the station, Defendant began to fall behind in payments  
16 to Mobil for rent and for lubricants purchased from Mobil for resale at the convenience store. In  
17 addition, she fell behind in her utility payments (eventually paid by Mobil) and in remitting proceeds  
18 from fuel sales. In January of 2001, Mobil terminated its relationship with Defendant. According  
19 to Mobil, Defendant owes it a total of \$116,597.32, including \$39,270.05 for unpaid rental/license  
20 fees and lubricants, \$13,926.03 for unpaid utilities, and \$63,401.24 for unremitted fuel sale  
21 proceeds. Defendant has disputed the amount owed, but has provided no alternate figures or any  
22 records showing additional payments.

#### 23 LEGAL CONCLUSIONS

24 As is noted above, to prevail in a motion for summary judgment, the moving party must first  
25 establish a prima facie case for entitlement to summary judgment. To do this as a plaintiff, the  
26 moving party must provide sufficient evidence for each element required to proceed under a  
27 particular cause of action. In this action for breach of contract, the moving party, Mobil, must prove  
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1 that there was a contract, that the contract was breached, and that damages were sustained. To  
2 receive summary judgment on the amount of damages, Mobil must also establish the amount of  
3 damages. In this case, Defendant does not dispute either the existence of the contract or that she has  
4 breached it. Furthermore, she does not dispute that she owes money to Mobil. However, she does  
5 dispute Mobil's claim as to the amount owed. If there is any factual dispute that would prevent  
6 complete summary judgment in this case, it revolves around the amount of damages.

7 Defendant disputes the amount of damages in three respects. First she claims that Mobil has  
8 not properly credited her for payments made to Mobil and for expenses she had to bear which were  
9 the responsibility of Mobil. Unfortunately for Defendant, she has provided the Court with no  
10 evidence documenting these payments. By contrast, Mobil has provided the Court with ample and  
11 detailed evidence of the amounts due and left unpaid. Where, as here, the moving party has  
12 provided the Court with sufficient evidence to establish a prima facie claim for a specific amount  
13 of damages, the non-moving party must provide more than mere declarations that this number is  
14 incorrect. Instead, the non-moving party must show actual evidence that the damages claimed are  
15 incorrect or offer some convincing explanation why such evidence cannot be provided, (such as  
16 because discovery is not yet complete, for example). In this case, Defendant claims that she made  
17 certain additional payments by cashiers check but has provided no evidence of the payments. The  
18 Defendant has shown, and Plaintiff has conceded, that she was forced to pay \$912.50 out of her own  
19 pocket to photocopy blank report forms. These reports were to be filled out and returned to Mobil  
20 periodically and Mobil was contractually required to provide them. Therefore, any damages to be  
21 awarded to Mobil must be reduced by this amount.

22 Second, Defendant argues that Mobil's damages should be reduced because Mobil failed to  
23 provide her with adequate support services. Specifically, she alleges that Mobil failed to provide  
24 adequate signage, to involve her in sales promotions, to allow her to run additional stations on  
25 Tinian should they open, to provide facilities for operating an oil-change business, and to repair  
26 broken gasoline pumps in a timely manner. Together these comprise a failure to mitigate damages  
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1 defense.<sup>1</sup> If Defendant can prove that Mobil failed to mitigate damages, then her obligations to  
2 Mobil would be reduced.

3           Unfortunately for Defendant, it is apparent that Mobil was not contractually obligated to  
4 provide most of the additional support that Defendant requested and did not receive. There is  
5 nothing in the contract that obligates Mobil to provide any signage beyond the “motor fuel price  
6 signs” that it did provide, to provide sales promotions, or to allow Defendant to be the contractor  
7 on any new Mobil stations on Tinian. Neither was Mobil required to provide Defendant with the  
8 facilities necessary to run a oil change business. The premises did include a lube bay in which oil  
9 changes could be done and it appears that Defendant was counting on giving oil changes to meet her  
10 revenue projections. However, the premises did not include a tank for the storage of used oil.  
11 Without a storage tank approved by the Commonwealth’s Department of Environmental Quality,  
12 the oil change business could not operate. Though it was not obligated to do so, Mobil did offer  
13 Defendant help in setting-up an oil changes business if the Defendant could acquire the proper  
14 permits, but she was unable to do so.

15           Mobil was contractually obligated to repair and maintain the fuel pumps at the service  
16 station. Mobil does not dispute that some of the pumps broke down from time to time and that two  
17 or three days sometimes passed before they were repaired. If Defendant could show that these  
18 breakdowns cost her revenue, a reduction in the amount she owes to Mobil might be justified.  
19 However, Defendant has produced no documentary evidence to demonstrate lost revenue.

20           Third and finally, Defendant argues that Mobil shorted her on gasoline deliveries and that  
21 this contributed to the shortfall in remitting fuel sale proceeds. She discovered this alleged shortfall  
22 by comparing the amount of gasoline supposedly pumped into the stations fuel storage tanks with  
23 the amount dispensed at the pumps. Defendant claims that there was a substantial discrepancy. This  
24 might well be true, but does not explain Defendant’s failure to remit. Mobil has provided sufficient  
25 evidence to demonstrate that Defendant’s remittances were determined by the amount of fuel  
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27           <sup>1</sup> These claims also might arguably make up a counter-claim for breach of contract. However, Defendant has  
28 not brought a counter-claim.

1 dispensed at the pump, not the amount delivered to the storage tanks. Defendant cannot look here  
2 for offsets against her debt to Mobil.

3 CONCLUSION

4 Having carefully considered the evidence presented, the Court concludes that Mobil has  
5 made a prima facie case for breach of contract. Mobil has established that a contract exists, that  
6 Defendant breached that contract, and that it was damaged by the breach. It has also established the  
7 amount of those damages: \$115,684.82.

8 Defendant has been unable to produce anything concrete to create a question of material fact  
9 as to any of these elements. Therefore, the Court must and does GRANT summary judgment in  
10 favor of the Plaintiff and HEREBY ORDERS Defendant to pay Mobil the sum of \$115,684.82, plus  
11 post-judgment interest at the rate of 9% per annum.

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13 SO ORDERED this 17th day of May 2004

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15 /s/ \_\_\_\_\_  
16 JUAN T. LIZAMA, Associate Judge  
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