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2 **FOR PUBLICATION**

3
4 **IN THE SUPERIOR COURT**
5 **OF THE**
6 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

7 **COMMONWEALTH OF THE**)
8 **NORTHERN MARIANA ISLANDS, EX**)
9 **REL. PAMELA BROWN, ATTORNEY**)
10 **GENERAL,**)

11 **Plaintiff**)

12 **vs.**)

13 **MARIANAS PUBLIC LANDS**)
14 **AUTHORITY, VICTORIA S. NICHOLAS,**)
15 **and ROSARIO DLG KUMAGAI,**)

16 **Defendants**)
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Civil Action No. 05-0332E

ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION
OF COURT'S DENIAL OF
SANCTIONS

I. INTRODUCTION

THIS MATTER came for hearing on November 3, 2005 at 1:30 p.m.. Assistant Attorney General James Livingstone appeared on behalf of Plaintiffs Commonwealth, *et al.* Counsel Brien Sers Nicholas appeared on behalf of Defendant Rosario DLG Kumagai ("Kumagai"). The hearing on the underlying Motion for Reconsideration was scheduled following the filing of Defendant's brief. Co-defendants Victoria S. Nicolas and Marianas Public Lands Authority join in Defendant Kumagai's Motion for Reconsideration.

II. AUTHORITY

Motions for reconsideration are governed by Commonwealth Rule of Civil Procedure 59(e) and are considered an extraordinary measure to be taken at the court's discretion. *See Yuba Natural Res., Inc. v. United States*, 904 F.2d 1577, 1583 (Fed. Cir. 1990) (interpreting the counterpart Federal rule). The Commonwealth Supreme Court articulated a limited number of grounds that warrant a court to

1 revisit an already decided matter. Consequently, only an “intervening change of controlling law, the
2 availability of new evidence, or the need to correct a *clear error* or prevent manifest injustice” are
3 sufficient grounds for reconsideration. *Camacho v. J.C. Tenorio Enter., Inc.*, 2 N.M.I. 407, 414 (1992)
4 (emphasis added) (*quoting* CHARLES WRIGHT, ET AL., FEDERAL PRACTICE AND PROCEDURES:
5 JURISDICTION § 4478 (1981)).

6 Kumagai in her motion to reconsider asks this Court to revisit its previous ruling wherein it
7 struck Plaintiffs’ amendment to Plaintiffs’ original complaint and dismissed Plaintiffs’ suit against
8 Kumagai but declined to dismiss Plaintiffs’ complaint against Nicolas. Essentially, Kumagai asks this
9 Court to reconsider its abstention from imposing sanctions, pursuant to Commonwealth Rule of Civil
10 Procedure 11, against Plaintiffs, because sanctions, in the form of Kumagai’s attorney fees are
11 necessary to “prevent manifest injustice.”

12 III. DISCUSSION

13 Kumagai, by her motion for reconsideration, appears to request that this Court impose sanctions
14 against Plaintiffs on several alternative grounds: (1) by motion under Rule 11 of the Commonwealth
15 Rules of Civil Procedure; (2) by this Court’s own initiative under Rule 11 of the Commonwealth Rules
16 of Civil Procedure; or (3) under this Court’s inherent power to control its courtroom. This Court will
17 address each ground separately.

18 A. Sanctions Requested by Motion Must be Filed Separately for Consideration.

19 When a party seeks sanctions by motion, claiming a Rule 11 violation, such motion must “be
20 made separately from other motions or requests” Com. R. Civ. P. 11(c)(1)(A). Here, Defendants
21 first sought sanctions under cover of their motion to dismiss. Because sanctions under Rule 11(c)(1)(A)
22 are required to be filed with the Court *separately from other motions*, this Court cannot be moved to
23 impose sanctions, which were attached to Kumagai’s motion to dismiss. Defendants in their motion
24 for reconsideration provide no alternative interpretations of this requirement. Therefore, this Court
25 must consider Kumagai’s request for sanctions solely within the strictures of issuing Rule 11 sanctions
26 under its own initiative, or within this Court’s inherent power.

27 B. A Court Cannot, on Its Own Initiative, Impose Rule 11 Sanctions in the Form of Attorney 28 Fees.

1 A court may sanction a party under Rule 11 on its own initiative by “enter[ing] an order
2 describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law
3 firm or party to show cause why it has not violated subdivision (b) with respect thereto.” Com. R. Civ.
4 P. 11(c)(1)(B). However, the Court’s authority to impose sanctions on its own initiative under Rule
5 11 is not without its limitations. Specifically, Rule 11 allows for sanctions in the form of reasonable
6 attorney fees and other costs incurred as a direct result of a violation only “if imposed *on motion* and
7 warranted for effective deterrence.” Com. R. Civ. P. 11(c)(2).

8 Thus according to the plain language of the rule, this Court has no authority under Rule 11 to
9 *sua sponte* direct even an offending party or counsel to pay the attorney fees of the opposing party
10 harmed by such violation. To be sure, our federal counterpart Rule 11 has been interpreted similarly.
11 *Nuwesra v. Merrill Lynch, Fenner & Smith, Inc.*, 174 F.3d 87, 94 (2d Cir. 1999) (“a court may award
12 attorneys’ fees under Rule 11 only if ‘imposed on motion’ under Rule 11(c)(1)(A). By its terms, the
13 rule thus precludes a court from awarding attorneys’ fees on its own initiative.”). The advisory
14 committee’s note to Fed. R. Civ. P. 11, 1993 amendments provide, “[t]he revision [to subsection (c)
15] provides that a monetary sanction imposed after a court-initiated show cause order be limited to a
16 penalty payable to the court.” “[W]here sanctions are imposed under Rule 11(c)(1)(B) by a district
17 court on its own initiative, [] the award of attorney’s fees . . . [does not] constitute a valid sanction.”
18 *Thornton v. Gen. Motors Corp.*, 136 F.3d 450, 455 (5th Cir. 1998); *see also*
19 *Johnson v. Waddell & Reed, Inc.*, 74 F.3d 147, 152 n.3 (7th Cir. 1996) (per curiam) (“[W]here
20 sanctions are imposed under Rule 11(c)(1)(B) by the district judge on his own initiative, Rule 11(c)(2)
21 provides that payment of sanctions may be directed only to the court as a penalty.”).

22 **C. The Court Has the Inherent Power to Order Sanctions, Apart from Rule 11.**

23 “The court has the inherent judicial power to enforce its promulgated rules and may impose
24 sanctions upon attorneys who violate the rules.” *Sonoda v. Villagomez*, 3 N.M.I. 535, 541 (1993).
25 “However, before exercising such inherent power to sanction, the court must allow the attorney fair
26 notice and an opportunity for a hearing on the record.” *Id.* When exercising its inherent powers, a
27 court is not limited by Rule 11. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 343 (1992).

28 Because a court employing its inherent powers to sanction reaches outside the bounds of Rule

1 11, such power is rarely invoked. *See id.* Essentially, a court should utilize its inherent powers when
2 it encounters conduct, which defies classification pursuant to either Rule 11 or its criminal contempt
3 authority, and yet still threatens the court’s ability to function properly.¹

4 The U.S. Supreme Court expressed the standard for a court to impose sanctions under its
5 inherent authority in *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 100 S. Ct. 2455, 65 L. Ed. 2d 488
6 (1980). In *Roadway*, the Supreme Court held that a court has the power to impose sanctions for “willful
7 disobedience of a court order . . . or when the losing party has acted in bad faith, vexatiously, wantonly,
8 or for oppressive reasons.” *Id.* 447 U.S. at 766, 100 S. Ct. at 2464, 65 L. Ed. 2d at 490 (internal
9 quotations and citations omitted). A recurring theme in cases involving sanctions properly imposed
10 under a court’s inherent authority is the presence of “bad faith,” “improper purpose” and conduct akin
11 to “abuse of process.” *See, e.g., In re Intel Sec. Litig.*, 791 F.2d 672 (9th Cir. 1986) (holding that non-
12 frivolous objections were still sanctionable under court’s inherent power because counsel’s goal was
13 to gain an advantage in another case); *cf., United States v. Stoneberger*, 805 F.2d 1391(9th Cir. 1986)
14 (finding inherent power sanctions levied against a chronically late attorney were improper, absent the
15 requisite bad faith). “Thus, we insist upon bad faith as a prerequisite to the award of sanctions for
16 conduct normally related to the pursuit of litigation because it ensures that ‘restraint is properly
17 exercised,’ and it preserves the balance between protecting the court’s integrity and encouraging
18 meritorious arguments.” *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 23, 6 N.M.I. 285, 294 (internal
19 citations omitted).

20 Here, Kumagai, has identified several instances of conduct that she considers sanctionable under
21 this Court’s inherent power, specifically, that the Attorney General brought this suit in bad faith when
22 it promised not to interfere in the distribution of funds compensating Kumagai for her land, that the
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25 ¹ In *Lucky Development Co. Ltd.*, the Supreme court reviewed the Superior Court’s use of its inherent power
26 to sanction an attorney by suspending him from practice before the Commonwealth Superior Court for misconduct
27 during litigation. Specifically the trial court imposed sanctions upon the attorney for behavior such as filing a complaint
28 unsupported by law, and making statements in defiance of the court’s authority. However, even given such egregious
behavior, the Supreme Court found that the trial court’s sanctions were in effect criminal contempt sanctions, governed
by statute, and therefore, the trial court’s suspension of the attorney was considered in light of criminal contempt
statutory authority rather than under the inherent powers doctrine. *Lucky Dev. Co., Ltd v. Tokai, U.S.A., Inc.*, 3 N.M.I.
343 (1992).

1 Attorney General's office sought to amend its complaint with an action unsupported by law for the
2 purpose of "gamesmanship," and that the Attorney General's office made frivolous arguments as part
3 of its opposition to Kumagai's motion to dismiss. Although this Court was not impressed by the
4 Attorney General's arguments in support of its opposition to Kumagai's motion to dismiss, and finds
5 its motive for some of its actions highly questionable, the Court is unable to find objectively, that the
6 Attorney General's office's conduct, however perfunctory, rises to the level clearly evincing bad faith.
7 For this reason, it would be imprudent for this Court to exercise its inherent power outside of statute
8 or procedural rules to levy sanctions in the form of an award of Kumagai's attorney fees.

9 **IV. CONCLUSION**

10 In conclusion, Kumagai has failed to demonstrate to this Court, within the requirements for
11 reconsideration, that this Court should change its earlier abstention and grant sanctions against
12 Plaintiffs. For the foregoing reasons, Defendant's request that the Court reconsider Defendant's
13 request for sanctions is DENIED.

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16 So ORDERED this 7th day of December 2005.

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18 /s/
19 David A. Wiseman, Associate Judge

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