



By the order of the court, Judge David A Wiseman

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FOR PUBLICATION

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

MARITES A. AURELIO, RONNA D. )  
SANTA DOMINGO and ROSALIMA C. )  
OLIVA, )

Plaintiffs, )

vs. )

BIENVENIDA C. CAMACHO and )  
FELIPE SN. CAMACHO, )

Defendants. )

Civil Action No. 10-0021

ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS AND GRANTING  
PLAINTIFFS' CROSS MOTION FOR  
SUMMARY JUDGMENT

**I. INTRODUCTION**

**THIS MATTER** came before the Court on April 29, 2010, at 1:30 p.m. in Courtroom 223A for a hearing on Defendant's Motion to Dismiss. Counsel Robert Myers appeared on behalf of Defendant, Bienvenida C. Camacho. Counsel Joshua Berger appeared on behalf of Plaintiffs, Marites A. Aurelio, Ronna D. Santa Domingo, and Rosalima C. Oliva (hereinafter "Plaintiffs").

On March 25, 2010, Plaintiffs filed a Request to Take Judicial Notice of Public Law No. 17-1, signed into law by Governor Fitial, allowing employees to bring direct actions against their employers, on both insurance bonds, as well as, any administrative award on judgment pursuant to 3 CMC § 4950(d). After hearing oral arguments and reading over both parties' briefs, the Court finds that this law does have retroactive effect and plainly states that Plaintiffs do not need to go through the Department of Labor (hereinafter "DOL") to enforce their Administrative Orders. In lieu of the foregoing, the Court **DENIES**

1 Defendant's Motion to Dismiss and **GRANTS** Plaintiffs' Cross Motion for Summary Judgment since  
2 Plaintiffs are entitled to file suit against their employers without first going through the DOL pursuant to  
3 Public Law No. 17-1.

4  
5 **II. PROCEDURAL BACKGROUND**

6 On January 27, 2010, Plaintiffs filed a Complaint against Defendants, Bienvenida C. Camacho and  
7 Felipe SN. Camacho, in an attempt to enforce the DOL's Final Administrative Order of May 12, 2008,  
8 awarding Plaintiffs specific back wages and other relief.

9 On February 13, 2010, Defendant Felipe SN. Camacho filed a Motion to Dismiss. In his Motion,  
10 Defendant Camacho argues that since the DOL failed to file suit in the CNMI Superior Court to collect or  
11 enforce its 2008 Order, Plaintiffs' Complaint should be dismissed pursuant to Com. R. Civ. P. 12(b)(1) and  
12 12(b)(6).<sup>1</sup>

13 On February 18, 2010, Defendant Bienvenida C. Camacho filed a Motion to Dismiss arguing: (1)  
14 that this Court does not have jurisdiction to hear this matter since Plaintiffs failed to formally request for  
15 the DOL's collection and enforcement of the Administrative Order; and (2) Plaintiffs' Complaint should  
16 be dismissed because Plaintiffs failed to seek a Petition for Judicial Review or Mandamus Relief. To  
17 support her position, Defendant cites two Superior Court small claims decisions, *Smith & Williams* and *Ren*  
18 *Zhou*, to assert the fact that the DOL is the only authority to collect and enforce Administrative Orders  
19 and/or Awards.

20 On March 9, 2010, Plaintiffs filed an Opposition to Defendant's Motion to Dismiss, as well as, a  
21 Cross Motion for Summary Judgment. In addressing Defendant's arguments, Plaintiffs counter by stating  
22 that since the DOL, did not, and would not, enforce their awards, any efforts by the Plaintiffs to try and have  
23 the DOL enforce those awards would have been futile. Thus, Plaintiffs argue that they did not need to  
24 formally request the DOL to collect the awards nor did they need to file a Petition for Judicial Review since

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25 <sup>1</sup> A settlement has since been reached with Felipe SN. Camacho and a Stipulated Dismissal entered and approved  
by this Court.

1 this case was solely before the Court on collection purposes.

2 On March 16, 2010, Defendant filed a Reply to Plaintiffs' Opposition arguing once again that the  
3 DOL is the sole authority to collect all Administrative Orders under the Nonresident Workers Act and the  
4 Alien Labor Rules and Regulations. In addition, Defendant argues that: (1) the two small claims cases relied  
5 upon are not solely limited to the recovery of labor bonds by the DOL; and (2) the Court should apply the  
6 Alien Labor Rules and Regulations to the case at hand.

### 7 **III. DISCUSSION**

#### 8 **A. *Legal Standard for Motion to Dismiss***

9 Defendant's Motion to Dismiss is grounded in Com. R. Civ. 12(b)(1), which allows for the dismissal  
10 of claims for lack of subject matter jurisdiction. Under Com. R. Civ. 12(b)(1), dismissal is appropriate if  
11 the plaintiff does not have a right to be in a particular court. *See generally Atalig v. Inos*, 2006 MP 1. In  
12 addition, Defendant argues that pursuant to Com. R. Civ. 12(b)(6), dismissal is warranted since Plaintiffs'  
13 claims are such that the recognized law provides no relief.

14 Since Com. R. Civ. P. 8 requires only a "short and plain statement of the claim showing that the  
15 pleader is entitled to relief," there is "a powerful presumption against rejecting pleadings for failure to state  
16 a claim." *Auster Oil & Gas, Inc. v. Stream*, 764 F.2d 381, 386 (5th Cir. 1985). Consequently, a motion to  
17 dismiss for failure to state a claim upon which relief can be granted will succeed only if from the complaint  
18 it appears beyond doubt that plaintiffs can prove *no* set of facts in support of their claim that would entitle  
19 them to relief. *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999) (Emphasis Added).

20 The burden is upon the movants to establish beyond doubt that the plaintiff's action is one upon  
21 which the law recognizes no relief. All allegations of material fact are taken as true and construed in the  
22 light most favorable to the non-moving party. The court in examining the pleadings will assume all *well-*  
23 *plead* facts are true and draw reasonable inferences to determine whether they support a legitimate cause  
24 of action. *Cepeda v. Hefner*, 3 N.M.I. 121, 127-28 (1992); *In re Adoption of Magofna*, 1 N.M.I. 449, 454  
25 (1990); *Enesco Corp. v. Price/Costco, Inc.*, 146 F.3d 1083, 1085 (9th Cir. 1998).

1 In reviewing the sufficiency of the complaint, the “issue is not whether a plaintiff will ultimately  
2 prevail but whether the claimant is entitled to offer evidence to support the claims.” *Scheuer v. Rhodes*, 416  
3 U.S. 232 (1974). “[I]t may appear on the face of the pleadings that recovery is very remote and unlikely  
4 but that is not the test.” *Id.* Rather, the inquiry of the court should be whether the allegations constitute a  
5 short and plain statement of the claim showing that the pleader is entitled to relief. *Cedpeda*, 3 N.M.I. at  
6 127-28.

7 Here, Plaintiffs request that the Court take Judicial Notice of House Bill 17-25, also known as,  
8 Public Law No. 17-1, pursuant to NMI R. Evid. 201. Rule 201 allows a Court to take Judicial Notice of a  
9 fact capable of accurate and ready determination by resort to a source whose accuracy cannot reasonably  
10 be questioned. Here, the Court may take Judicial Notice of Public Law No. 17-1 since it comes from a  
11 source whose accuracy cannot reasonably be questioned.

12 The Legislature states, under the findings and purpose section of said Act that, “[i]t is the intent  
13 of the Legislature that this Act shall replace the decisions in *Smith & Williams v. Royal Crown Ins. Co.*,  
14 NMI Super. Ct. Small Claims Nos. 06-0676 et al. (February 5, 2007) and *Zhou v. Oceania Ins. Corp.*, NMI  
15 Super. Ct. Small Claims Nos. 08-0452 et al. (February 5, 2009) so that plaintiffs holding unpaid awards  
16 under orders issued by the Administrative Hearing Office of the Department of Labor may proceed with  
17 collection actions in the Commonwealth courts without first exhausting collection remedies at the  
18 Department of Labor.”

19 In addition, 3 CMC § 4950(a) states:

20 “A foreign national worker *may bring a direct action in the Commonwealth courts against*  
21 *an employer*, or against the issuer of any bond required by the Department of Labor to secure  
22 performance of an employer, *with respect to any obligation to pay wages, overtime, medical*  
23 *expenses, or other benefits secured by an employment contract.*” (Emphasis Added).

24 Section 4950(d) further states:

25 “This section shall have retroactive effect. Claims shall be preserved that are pending or  
were dismissed or *subject to dismissal for lack of authority to bring a direct action.* Any

1 statute of limitations for such claims shall be tolled from February 5, 2007, to the effective  
2 date of this Act.” (Emphasis Added).

3 The Court finds that sections 4950(a) and (d) make clear that a worker may bring a direct action  
4 against an employer for back wages. In addition, because this section has retroactive effect and preserves  
5 claims that are subject to dismissal for lack of authority to bring a direct action, Defendant’s Motion to  
6 Dismiss must be denied. Moreover, since the statute of limitations is tolled beginning February 5, 2007,  
7 to the effective date of said Act, Plaintiffs’ claims are tolled since Plaintiffs received their Awards at the  
8 very earliest in March and April of 2007.

8 ***B. Legal Standard for Motion for Summary Judgment***

9 A court may grant summary judgment when there are no genuine issues as to any material fact and  
10 the moving party is entitled to judgment as a matter of law. Com. R. Civ. P. 56(c); *Santos v. Santos*, 4  
11 N.M.I. 206, 209 (1994). The moving party bears the initial burden of demonstrating to the court that there  
12 is an absence of any genuine issue concerning any material fact and that as a matter of law, the non-moving  
13 party cannot prevail. *Id.* Where the moving party satisfies this heavy burden, the non-moving party must  
14 then show that there is evidence from which a jury might return a verdict in the non-moving party’s favor.  
15 *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172, 176 (1990). Conclusory allegations are not sufficient to defeat  
16 a motion for summary judgment. *Id.* The court must accept all of the non-moving party's evidence as true  
17 and will view all inferences drawn from the underlying facts in the light most favorable to the non-moving  
18 party. *Id.*

19 Here, Plaintiffs seek summary judgment arguing that all material facts are undisputed since all facts  
20 have been resolved at the administrative level, after a fully contested hearing as well as an administrative  
21 appeal. More specifically, Plaintiffs claim that the Court’s review should be based solely on the  
22 administrative disposition in this case, and not on the merits of the case since this is not a judicial review  
23 case, but instead is a complaint to enforce a final agency action.

24 Alternatively, Defendant counters by arguing that the Court should examine *Smith & Williams*  
25 before making a final determination of whether Plaintiffs are entitled to file their own claim against their

