



By the order of the court, Judge David A Wiseman

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FOR PUBLICATION



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

IN THE MATTER OF THE CLASS OF )  
NONRESIDENT WORKERS, )  
MEMBERS 001-127, )  
  
Plaintiffs, )  
  
vs. )  
  
CNMI DEPARTMENT OF LABOR, et )  
al., )  
  
Defendants. )

Civil Action No. 08-0454E

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT  
ON PLAINTIFFS' REMAINING CLAIMS

I. INTRODUCTION

**THIS MATTER** came before the Court on June 24, 2010 at 1:30 p.m. in Courtroom 223A for a hearing on Defendant's Motion for Summary Judgement. Counsel Robert Myers appeared on behalf of Plaintiffs, Class of Nonresident Workers (hereinafter "Plaintiffs"). Counsel Eli Golob appeared on behalf of the Department of Labor (hereinafter "DOL" or "Defendant").

In DOL's Motion for Summary Judgment, DOL argues that: (1) Plaintiffs' Count II, alleging equitable estoppel and equitable tolling, do not allege a cause of action, but rather allege an affirmative defense and remedy; (2) Plaintiffs are not entitled to the mandamus relief requested in Count III; and (3) Plaintiffs do not qualify for the preliminary injunction requested in Count IV. DOL argues that summary judgment is proper since DOL is no longer a proper party in light of Public Law No. 17-1 signed into law by Governor Fitial on March 22, 2010 which provides that the "Department of Labor, may, but is not required to, enforce its administrative orders by bringing an action in the courts." After hearing oral

1 arguments and reading over both parties' briefs, the Court finds that summary judgment is appropriate. For  
2 the foregoing reasons, Defendant's Motion for Summary Judgment is hereby **GRANTED**.

3  
4 **II. PROCEDURAL BACKGROUND**

5 On December 4, 2008, Plaintiffs filed a Complaint for Judicial Review or Mandamus Relief  
6 requesting a mandamus order compelling DOL to enforce surety obligations under the statutory labor bonds  
7 pursuant to final administrative orders issued by the DOL.

8 Plaintiffs alleged among other things, that (1) equitable estoppel was warranted to preserve Plaintiffs'  
9 rights and prevent manifest injustice, and (2) mandamus relief was warranted because the facts and history  
10 of this class suit are unique, Plaintiffs have no adequate means to attain relief, and the prejudice being  
11 suffered is not correctable on appeal.

12 Counsel for Defendant espoused that the Complaint for Judicial Review or Mandamus Relief was not  
13 properly before the Court as a matter for Judicial Review because Plaintiffs were not appealing the  
14 underlying administrative damage awards. The Court agreed.

15 On February 8, 2010, the Court issued an Order Dismissing Plaintiffs' Petition for Judicial Review.  
16 However, the Court did allow Plaintiffs to move forward with their Complaint for Mandamus Relief, as well  
17 as their Motions for Summary Judgment since these matters were re-classified as a civil action.

18 On March 2, 2010, the Court granted Defendant's two Motions for Partial Summary Judgment  
19 dismissing all claims with respect to six persons named as "members" in this class action since the Court  
20 found that there were no material facts at issue with respect to five Plaintiffs lacking bonds and one Plaintiff  
21 lacking a solvent bonding company against which to proceed.

22 On March 19, 2010, the Court denied Plaintiffs' Motion for Summary Judgment finding that there  
23 were still material facts in dispute as to whether each Plaintiff was covered by a labor bond, whether each  
24 Plaintiffs' labor bond was issued by a solvent bond company, whether each Plaintiff was awarded a  
25 monetary sum by the DOL that was covered by his/her labor bond, and finally whether the DOL was legally

1 required to take legal action against the relevant labor bond sureties to collect the monetary awards covered  
2 by the bonds.

3 On April 30, 2010, Defendant filed a Motion for Summary Judgment on Plaintiffs' Non-Judicial  
4 Review Claims arguing that Summary Judgment was warranted because: (1) Plaintiffs' Count II, alleging  
5 equitable estoppel and equitable tolling, do not allege a cause of action; (2) Plaintiffs are not entitled to the  
6 mandamus relief requested in Count III; and (3) Plaintiffs do not qualify for the preliminary injunction  
7 requested in Count IV.

8 On May 10, 2010, Plaintiffs filed an Opposition arguing: (1) that Plaintiffs are entitled to mandamus  
9 relief despite 3 CMC §4950; (2) Plaintiffs are entitled to a preliminary injunction despite 3 CMC §4950;  
10 and (3) Plaintiffs are entitled to assert equitable estoppel and/or equitable tolling notwithstanding the fact  
11 that neither theory is its own cause of action.

12 On May 18, 2010, Defendant filed a Reply arguing that Plaintiffs are attempting to confuse the issue  
13 regarding the preservation of evidence since the original claim was for the enforcement of surety bonds by  
14 the DOL. DOL argued that they were not under an obligation to produce any documents to Plaintiffs  
15 because Plaintiffs have not served any formal discovery requests on DOL. DOL further stated that it would  
16 allow Plaintiffs to inspect the underlying administrative case files under the Open Government Act, if  
17 appropriate requests are made.

### 18 19 **III. DISCUSSION**

20 A court may grant summary judgment when there are no genuine issues as to any material fact and  
21 the moving party is entitled to judgment as a matter of law. Com. R. Civ. P. 56(c); *Santos v. Santos*, 4  
22 N.M.I. 206, 209 (1994). The moving party bears the initial burden of demonstrating to the court that there  
23 is an absence of any genuine issue concerning any material fact and that as a matter of law, the non-moving  
24 party cannot prevail. *Id.* Where the moving party satisfies this heavy burden, the non-moving party must  
25 then show that there is evidence from which a jury might return a verdict in the non-moving party's favor.

1 *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172, 176 (1990). Conclusory allegations are not sufficient to defeat  
2 a motion for summary judgment. *Id.* The court must accept all of the non-moving party's evidence as true  
3 and will view all inferences drawn from the underlying facts in the light most favorable to the non-moving  
4 party. *Id.*

5 Here, the Court takes Judicial Notice of House Bill 17-25, also known as, Public Law No. 17-1  
6 signed into law by Governor Fitial on March 22, 2010. Under the findings and purpose section of said Act,  
7 the Legislature states that, “this Act shall replace the decisions in *Smith & Williams v. Royal Crown Ins. Co.*,  
8 NMI Super. Ct. Small Claims Nos. 06-0676 et al. (February 5, 2007) and *Zhou v. Oceania Ins. Corp.*, NMI  
9 Super. Ct. Small Claims Nos. 08-0452 et al. (February 5, 2009) so that plaintiffs holding unpaid awards  
10 under orders issued by the Administrative Hearing Office of the Department of Labor may proceed with  
11 collection actions in the Commonwealth courts without first exhausting collection remedies at the  
12 Department of Labor.” 3 CMC § 4950 discusses preservation of private rights of action and provides in part:

13 (a) A foreign national worker may bring a direct action in the Commonwealth courts against  
14 an employer, or against the issuer of Public Law No. 17-1 on any bond required by the  
15 Department of Labor to secure the performance of an employer, with respect to any  
obligation to pay wages, overtime, medical expenses, or other benefits secured by an  
employment contract.

16 Section 4950(b) further provides:

17 (b) The Department of Labor may, but ***is not required to***, enforce its administrative orders  
18 by bringing an action in the courts.” (Emphasis Added).

19 The Court finds that sections 4950(a) and (b) make it clear that the Legislature intended to preempt  
20 lawsuits like the present suit. Notwithstanding such intent, Plaintiffs vigorously argue that DOL should be  
21 compelled to assist Plaintiffs in the full and complete enforcement of the administrative orders on behalf  
22 of the remaining 122 Plaintiffs. The Court disagrees.

23 P.L. 17-1 makes it explicitly clear that a worker may bring a direct action against an employer and  
24 specifically states that the Department of Labor may, **but is not required to**, enforce its administrative  
25 orders. As such, Plaintiffs cannot compel DOL to enforce their bonds since the law clearly states that DOL

1 has no affirmative duty to do so. Additionally, Plaintiffs' request for mandamus relief, a preliminary  
2 injunction, and equitable relief no longer apply.

3 **A. Plaintiffs Are Not Entitled To Mandamus Relief In Light Of 3 CMC § 4950.**

4 Plaintiffs argue that they are entitled to mandamus relief despite 3 CMC § 4950. In support  
5 thereof, Plaintiffs contend that: (1) they have a clear legal right to the relief sought; (2) DOL is under an  
6 affirmative duty to maintain and preserve discoverable materials; and (3) Plaintiffs do not have an  
7 adequate means of enforcing their labor administrative awards without mandamus relief.

8 The Court analyzes a writ of mandamus according to the five factors described in *Tenorio v.*  
9 *Superior Court*, 1 N.M.I. 1. *Kevin Int'l Corp. v. Superior Court*, 2006 MP 3 ¶ 14. *CNMI v. Pua*, 2006 MP  
10 19 ¶ 19. Those factors are:

- 11 1. The party seeking the writ has no other adequate means, such as a  
12 direct appeal, to attain the relief desired;
- 13 2. The petitioner will be damaged or prejudiced in a way not correctable  
14 on appeal;
- 15 3. The lower court's order is clearly erroneous as a matter of law;
- 16 4. The lower court's order is an oft-repeated error, or manifests a  
17 persistent disregard of applicable rules; and
- 18 5. The lower court's order raises new and important problems, or issues  
19 of law of first impression. *Id.*

20 These factors are not set against any objective standard, but are balanced and weighed against the costs of  
21 issuing a writ, such as interfering with trial court proceedings prior to final adjudication. "The  
22 considerations are cumulative, and proper disposition will often require a balancing of conflicting  
23 indicators." *Commonwealth v. Superior Court (Ada)*, 2004 MP 14 ¶ 8.

24 Given the extraordinary nature of mandamus relief, it is rarely granted, and only granted if the  
25 petitioner establishes the following elements: (1) a clear legal right to the relief sought; (2) a legal duty  
on the part of the respondent to do the thing which the petitioner seeks to compel; and (3) the absence of  
another adequate remedy. *Elm's, Inc. v. Nielsen*, Civil Action No. 01-0054B, slip op. at 5, ¶ 10 (Super.Ct.  
Nov. 29, 2001)(Order on Motion for Summary Judgment). Accordingly, whether mandamus is appropriate  
depends heavily on the existence of a clear legal right to the relief sought, or on an examination of the legal

1 merits for the action sought.

2 Here, Plaintiffs fail to satisfy either of the above mentioned mandamus tests. The *Tenorio* test is not  
3 met for the following reasons. First, Plaintiffs have a private right of action under 3 CMC § 4950, and thus  
4 have adequate means to enforce their labor administrative awards. Second, Plaintiffs will not be damaged  
5 or prejudiced in a way not correctable on appeal. Third, Plaintiffs do not allege that DOL's administrative  
6 orders are clearly erroneous as a matter of law, 3 CMC § 4950(a) allows Plaintiffs to enforce their awards,  
7 and 3 CMC §4950(b) explicitly permits DOL to decline to enforce the awards. Fourth, DOL's  
8 administrative orders do not reflect an oft-repeated error or manifest a persistent disregard of the applicable  
9 rules. Fifth, DOL's orders do not raise new and important problems or issues of law of first impression.

10 Additionally, even if Plaintiffs were to establish that they had a clear legal right to the relief sought,  
11 under 3 CMC §4950, there is no legal duty on DOL's part to enforce the administrative orders. Plaintiffs  
12 can sue their former employers and labor bond sureties under 3 CMC § 4950(a), and thereby obtain an  
13 adequate remedy. Accordingly, mandamus relief is not proper.

14 **B. Plaintiffs Are Not Entitled To A Preliminary Injunction In Light Of 3 CMC § 4950.**

15 Plaintiffs argue that they are entitled to interim relief via a preliminary injunction in order to preserve  
16 and produce certain evidence that allegedly is in the sole possession of DOL prior to letting DOL out of the  
17 case. Plaintiffs contend that failure to issue such relief would irreparably injure Plaintiffs, since there is no  
18 other adequate means to attain such evidence.

19 The purpose of a preliminary injunction is to preserve the status quo between the parties to an action  
20 pending a final determination of the case on the merits. Com. R. Civ. P. 65 governs the issuance of a  
21 preliminary injunction and provides in relevant part:

22 (d) FORM AND SCOPE OF INJUNCTION OR RESTRAINING  
23 ORDER. Every order granting an injunction and every restraining order  
24 shall set forth the reasons for its issuance; shall be specific in terms;  
25 shall describe in reasonable detail and not by reference to the complaint  
or other document, the act or acts sought to be restrained; and is binding  
only upon the parties to the action, their officers, agents, servants,

1 employees, and attorneys, and upon those persons in active concert or  
2 participation with them who receive actual notice of the order by  
3 personal service or otherwise.

4 Com. R. Civ. P. 65(d). The Court must examine four factors when determining whether or not to grant a  
5 preliminary injunction: (1) whether the Plaintiffs have a strong likelihood of success on the merits; (2) the  
6 level of threat of irreparable harm to the Plaintiffs if the relief is not granted; (3) the balance between the  
7 harm the Plaintiffs will face if the injunction is denied and the harm the Defendant will face if the injunction  
8 is granted; and (4) any effect the injunction may have on the public interest. *Frank B. Villanueva, Secretary*  
9 *of Finance, CNMI Department of Finance, Division of Customs v. Tininan Shipping and Transportation,*  
10 *Inc.*, 2005 MP 12 ¶ 20 (citing *Johnson v. California State Bd. Of Accountancy*, 72 F.3d 1427, 1430 (9<sup>th</sup> Cir.  
11 1995) (citing *Dollar Rent A Car v. Travelers Indem. Co.*, 774 F.2d 1371, 1374 (9<sup>th</sup> Cir. 1985)).  
12 “Alternatively, a court may issue a preliminary injunction if the moving party demonstrates either a  
13 combination of probable success on the merits and the possibility of irreparable harm, or the existence of  
14 serious questions going to the merits and a balance of hardships tipping in its favor.” *Id.*

15 Here, a preliminary injunction is legislatively precluded by 3 CMC § 4950, which creates a private  
16 right of action for foreign national workers to enforce their DOL administrative awards against former  
17 employers and labor bond sureties. 3 CMC § 4950 also permits DOL to decline to enforce its own awards.  
18 However, assuming that a preliminary injunction would not be precluded by 3 CMC § 4950, Plaintiffs still  
19 fail to satisfy the requirements set forth above.

20 First, Count II does not allege a claim upon which relief can be granted and Count III does not allege  
21 a valid basis for mandamus relief. Additionally, DOL has a right to decline to enforce DOL administrative  
22 decisions and 3 CMC § 4950(a) creates a private right of action for foreign national workers to enforce their  
23 DOL administrative decisions against former employers and labor bond sureties. As such, irreparable injury  
24 will not result from Defendant’s legislatively authorized decision to decline to enforce Plaintiffs’  
25 administrative awards, since this approach is authorized by 3 CMC § 4950(b). Finally, the balance of

1 hardships do not tip sharply in Plaintiffs’ favor since 3 CMC § 4950 expressly grants them a private right  
2 of action to enforce their administrative awards and permits DOL to decline to do so. As such, Plaintiffs  
3 are not entitled to a preliminary injunction.

4 **C. Plaintiffs May Not Assert Equitable Tolling And/Or Equitable Estoppel Since**  
5 **These Are Not Legal Claims Upon Which Relief May Be Granted.**

6 Plaintiffs attempt to assert equitable tolling and/or equitable estoppel not as separate causes of  
7 action, but instead, allegedly to prevent injustice owing to inconsistency and to protect the remaining 122  
8 Plaintiffs from being harmed by Defendant’s voluntary conduct. Plaintiffs claim that equitable estoppel  
9 applies to prevent DOL from denying that the remaining 122 Plaintiffs have a valid bond by a solvent  
10 bonding company and requires DOL to enforce administrative orders in full against cross-Defendants. The  
11 Court disagrees.

12 Equitable tolling “relieves a party from the bar of a limitations statute when, possessing several legal  
13 remedies, a party reasonably, and in good faith, pursues one designed to lessen the extent of his injuries or  
14 damage.” *Marianas Insurance Co. Inc., v. CPA*, 2007 MP 24 ¶ 32 (citing *Zhang*, 2001 MP 18 ¶ 18).  
15 Equitable considerations dictate that a plaintiff should be able to proceed with a subsequent action, so long  
16 as the first action was filed within the applicable statute of limitations and the defendant, having received  
17 timely notification, suffers no unfair prejudice. *Id.* Thus, when a plaintiff has several legal remedies but only  
18 pursues one, the statute of limitations related to the unpursued remedies may be tolled under the appropriate  
19 circumstances.<sup>1</sup> As is evident by the definition, equitable tolling is a remedy that may toll the statute of  
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21 <sup>1</sup> The application of the equitable tolling doctrine depends on an assessment of three essential elements: “(1) the  
22 defendant must receive timely notice of the claims; (2) the defendant must suffer no prejudice from the delay; and (3) the  
23 plaintiff must act reasonably and in good faith.” *Id.* ¶ 33. The first factor, or the timely notice requirement, means in essence  
24 that the first claim was filed within the statutorily required period. *Collier v. City of Pasadena*, 142 Cal. App. 3d 917, 924  
25 (1983). The filing of the first claim must notify the defendant of the second claim of the need to investigate the facts forming  
the basis of the second claim. *Id.* The second prerequisite, or the “no prejudice to the defendant factor,” amounts to a  
requirement that the facts of the two claims be similar enough that the defendant’s investigation of the first claim will put the  
defendant in a position to fairly defend the second. *Id.* at 685-86. For all practical purposes, however, the defendant typically  
receives proper notice through the filing of the initial lawsuit, leaving the first two elements generally undisputed and the  
third element as the determinative factor. *Marianas Ins. Co.*, 2007 MP 24 ¶ 33. The third prong of the equitable tolling



