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By order of the Court, **GRANTED.** Judge Ramona V. Manglona

FOR PUBLICATION

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

HIDEKI MORITA, as Personal) Representative of the ESTATE OF MEGUMI) MORITA, deceased, HIDEKI MORITA,) individually, MICHIKO MORITA, and) ESTATE OF MEGUMI MORITA, deceased,)) Plaintiffs,) vs.)) SCUBA WORLD, INC. dba PASTIME) SAIPAN, H.I.S. CO. LTD, AIR WORLD) CO., LTD, RIE SUZIKU, REIJI TODA,) TEPPIE KOIKE, TOMOYUKI UMEMURA,) MAYUMI FUKUDA, deceased, through her) personal representative, PADI AMERICAS,) KIMIKO TAKEYA, KAZUHIRO TODA and) YOSHIO OTSU,)) Defendants.))	CIVIL ACTION NO. 07-0248 ORDER 1) GRANTING DEFENDANT PADI AMERICAS' MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO THE CONSUMER PROTECTION ACT and 2) GRANTING DEFENDANT PADI AMERICAS' MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO PUNITIVE DAMAGES ON PLAINTIFFS' WRONGFUL DEATH CLAIM
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I. INTRODUCTION

Plaintiffs brought this wrongful death action against multiple defendants after a scuba diving accident at the Saipan Grotto resulted in the tragic deaths of two individuals in 2005. Presently before the Court are Defendant PADI's motions for summary judgment 1) to preclude recovery of punitive damages from PADI with respect to Plaintiffs' wrongful death cause of action (filed June 17, 2011); and 2) with respect to Plaintiffs' Consumer Protection Act cause of action (filed June 17, 2011).

The Court conducted a hearing on July 21, 2011 at 1:30 p.m. Plaintiffs appeared through counsel William M. Fitzgerald, Esq., and Bruce L. Berline, Esq. Defendant PADI America (PADI) appeared

1 through counsel David G. Banes, Esq. At the conclusion of oral argument, the Court took the matters
2 under advisement.

3 Based on the record, the arguments of counsel, and consideration of the applicable law, the Court
4 hereby issues its decision 1) GRANTING Defendant PADI's motion for summary judgment to preclude
5 recovery of punitive damages from PADI with respect to Plaintiffs' wrongful death cause of action; and
6 2) GRANTING Defendant PADI's motion for summary judgment with respect to Plaintiffs' Consumer
7 Protection Act cause of action for the reasons set forth herein.

8 **II. BACKGROUND**

9 This action arises from the death of 26-year-old Megumi Morita ("Megumi") on July 16, 2005,
10 which occurred during her participation in an instructional scuba diving course conducted at the Grotto
11 diving site on Saipan. Megumi's diving instructor also died in the accident. The course was conducted
12 by Defendant Scuba World, Inc., doing business as Pastime Saipan ("Pastime"), a Saipan dive shop.
13 Defendant PADI Americas ("PADI") is a national recreational diving membership organization that
14 provides certification to divers according to the divers' completion of educational courses developed and
15 administered by PADI and provided through its certified members. Pastime offered PADI-authorized
16 diving instruction, and Megumi's participation in the course was for the purpose of obtaining certification
17 as a PADI "Advanced Open Water" diver. Prior to her arrival in Saipan, Megumi had completed four
18 dives in Japan and had obtained a basic PADI "Open Water" certificate issued under the auspices of
19 PADI Japan.

20 On January 11, 2011, Plaintiffs filed their Fourth Amended Complaint asserting three causes of
21 action against various defendants. (Fourth Amended Complaint, hereafter, "Complaint.") Plaintiffs
22 Hideki and Michiko Morita are the parents of the deceased, Megumi Morita. The Complaint alleges
23 causes of action against PADI for wrongful death pursuant to 7 CMC § 2101, the CNMI's wrongful death
24 statute (based on alleged negligent and reckless conduct), and a violation of the CNMI consumer
25 protection act.

26 On June 17, 2011, Defendant PADI filed a Motion for Summary Judgment to Preclude Recovery
27 of Punitive Damages from PADI with Respect to Plaintiff's Wrongful Death Causes of Action (hereafter,
28 "Punitive Damages MSJ"). On the same day, Defendants PADI also filed a Motion for Summary
29 Judgment with Respect to Plaintiffs' Consumer Protection Act Cause of Action (hereafter, "CPA MSJ").
30 Plaintiffs filed their oppositions to the two motions on June 30, 2011, and PADI filed its reply on July 11,
31 2011.

32 Trial in this case was set for August 15, 2011, but was vacated pursuant to the parties' stipulation.

1 **III. STANDARDS**

2 Summary judgment is appropriate where the materials submitted to the Court demonstrate “that
3 there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of
4 law.” NMI R. Civ. P. 56(c); e.g. *In re Estate of Roberto*, 2002 MP 23 ¶14. The purpose of summary
5 judgment “is to isolate and dispose of factually unsupported claims or defenses.” *Celotex v. Catrett*, 477
6 U.S. 317, 323-24 (1986).

7 The moving party always bears the initial burden of informing the court of the basis for its motion
8 and identifying the evidence which it believes demonstrates the absence of a genuine issue of material
9 fact. *Id.* at 323. The non-moving party must then identify specific facts “that might affect the outcome of
10 the suit under the governing law,” thus establishing that there is a genuine issue for trial. NMI R. Civ. P.
11 56(e). In deciding a summary judgment motion, a court must construe the evidence and inferences drawn
12 from the underlying facts in the light most favorable to the non-moving party. *Santos v. Santos*, 4 NMI
13 206, 209 (1995) (*citing Rios v. Marianas Pub. Land Corp.*, 3 NMI 512, 518 (1993)); *Anderson v. Liberty*
14 *Lobby Inc.*, 477 U.S. 242, 248 (1986).

15 **IV. DISCUSSION**

16 **A. THE CONSUMER PROTECTION ACT**

17 Defendant PADI contends that Plaintiff the Estate of Morita’s attempt to expand recoverable
18 damages for Ms. Morita’s death to damages provided under the CNMI Consumer Protection Act (4 CMC
19 § 5112, hereafter, the “Act”) should be declined for two reasons. (CPA MSJ at 5.) First, Defendant
20 argues the Estate of Morita is not a person as defined under the Act. Second, it argues Pastime Dive Shop
21 was not an agent of PADI. The Court agrees with the first argument, and because it is dispositive of the
22 motion, will not address PADI’s second argument.

23 The Act provides that “any person” aggrieved as a result of a violation of that statute may bring
24 an action in the Commonwealth Superior Court for such relief as the court may order. 4 CMC § 5112(a).
25 Plaintiffs allege in their First Amended Complaint that the Estate of Morita has been damaged in the
26 amount of \$1,050.00 and that under the Act, the Estate of Morita is entitled to liquidated damages and
27 attorney fees. (Complaint ¶ 181) However, the Act defines “person” as “natural person, corporations,
28 firms, partnerships, joint stock companies, and associations or other organizations.” 4 CMC § 5104(g).
29 Only those bodies listed under the act are entitled to bring a claim under the Act. Estates are not included
30 in those enumerated under the definition of “person,” and cannot be construed as a consumer under the
31 Act. Thus, the Estate of Morita is not entitled to bring a claim or obtain relief under the Act.

1 Accordingly, Defendant’s Motion for Summary Judgment with respect to Plaintiffs’ Consumer
2 Protection Act Cause of Action is GRANTED.

3 **B. PUNITIVE DAMAGES UNDER THE WRONGFUL DEATH CAUSE OF ACTION**

4 PADI contends that Plaintiffs should be precluded from recovering or claiming any punitive
5 damages and from introducing evidence or arguments in support of their claims for punitive damages
6 with respect to Plaintiffs’ wrongful death cause of action because punitive damages are not recoverable
7 under CNMI law.¹

8 The CNMI Wrongful Death Statute found at 7 CMC § 2103(a) (hereafter, the “Statute”) provides
9 as follows:

10 Except as provided for in 7 CMC 2202(a), *the court may award damages as it*
11 *may think proportioned to the pecuniary injury resulting from the death*, to the persons
12 for whose benefit the action was brought; provided, however, that where the decedent
13 was a child, and where the plaintiff in the suit brought under this chapter is the parent of
14 that child, or one who stands in the place of a parent pursuant to customary law, *the*
15 *damages shall include mental pain and suffering for the loss of the child, without regard*
16 *to provable pecuniary damages.*

17
18 (emphasis added). Based on a reading of the plain text of the Statute, general recovery is limited to
19 “pecuniary injury resulting from the death.” *Id.* If the decedent was a child, and plaintiff is the parent of
20 that child, recovery includes “mental pain and suffering for the loss of the child, without regard to
21 provable pecuniary damages.” *Id.* PADI does not dispute the Moritas’ right to recover as a parent. It
22 only contends that the Statute does not expressly include a right to punitive damages.

23 Plaintiffs contend that Commonwealth law has allowed for punitive damages for the past thirty
24 years. They cite to the trial court decisions in *Flowers v. Hyatt Regency Hotel*, 1 CR 692 (NMI Tr. Ct.
25 1983) and *Oikawa v. Niizeki Int’l Saipan Co., Ltd.*, Civ. No. 94-39 (NMI Super. Ct. June 3, 1994) (Slip
26 Opinion) (Decision and Order), for their contention that punitive damages are available under the Statute.
27 Defendant PADI contends that the reasoning applied in the interpretations of the Statute by these two trial

¹ Punitive Damages MSJ at 2, and Defendant PADI’s Amended Reply Memorandum in Support of its Motion for Summary Judgment to Preclude Recovery of Punitive Damages from PADI with respect to Plaintiffs’ Wrongful Death Cause of Action at 1, filed July 13, 2011, hereafter, “Reply to Punitive Damages MSJ.” On July 15, 2011, Plaintiffs’ filed a motion to strike Defendant’s amended reply memorandum. However, during the July 19, 2011 hearing, the Court denied Plaintiffs’ motion to strike and allowed Plaintiffs to file a supplemental brief in opposition to Defendant’s motion. Plaintiffs filed their supplemental brief on July 20, 2011.

1 court decisions have been rejected twice by subsequent Commonwealth Supreme Court decisions, and
2 therefore this Court should depart from these Commonwealth trial court precedents.

3 In *Flowers*, the trial court allowed punitive damages to stand in a wrongful death case. The
4 *Flowers* court relied solely on a district court case from Arkansas, *Fields v. Huff*, 510 F. Supp. 238 (E.D.
5 Ark 1981). While acknowledging that the statute in Arkansas was distinguishable and that the court there
6 based a major part of its decision on that distinction,² the court in *Flowers* was nevertheless swayed by
7 *Fields*' justification to allow pecuniary damages. Finding that there was no express preclusion of such
8 damages in the Statute, the court reasoned "why should the defendant be free from a claim of punitive
9 damages just because he killed the person rather than maim him or her?" *Flowers* 1 CR at 703. There,
10 the court based its interpretation on what it considered "common sense logic," all the while ignoring the
11 fact that no such right appears in the plain language of the Statute. Notwithstanding its holding, the
12 parties recognize that *Flowers* is a non-binding case, especially in the face of later Supreme Court
13 decisions clearly rejecting the lower court's analysis to read language into the statute allowing damages
14 other than for pecuniary loss.

15 The Commonwealth Supreme Court first held that the Statute limits recovery to pecuniary
16 damages and anything other than pecuniary loss will not be read into the Statute in the case of *Ito v.*
17 *Macro Energy, Inc.*, 4 NMI 46, 62 (1993). In *Ito*, in determining whether the plaintiff could recover
18 damages due to loss of consortium, the Court denied the request. It held that it was constrained by the
19 language of the statute. *Id.*

20 Despite the Supreme Court's language in *Ito*, the trial court in *Oikawa v. Niizeki Saipan Co.*,
21 *supra*, reached the same conclusion as the *Flowers* decision. The *Oikawa* court recognized that "*Ito*
22 strictly construed the general damages recoverable under 7 CMC 2103 to be the pecuniary loss to the
23 deceased dependents, thus excluding loss of consortium damages to the decedent's spouse." *Oikawa*,
24 Civil No. 94-39, slip op. at 9. It then reviewed the legislative history of the Statute in the context of the
25 two court decisions and, applying the statutory rule of construction that "an amended statute should be
26 interpreted in light of the court decisions that may have prompted the amendment," reaffirmed the
27 *Flowers* holding. *Id.* at 11.

² "Where there is also a survival act, justification for withholding punitive damages would seem to be wanting." *Fields*, 510 F. Supp at 239 (finding punitive damages recoverable in Arkansas). Arkansas has both Survival and Wrongful Death statutes. *Id.* The CNMI, on the other hand, has no Survival statute: "there is clearly no survival of a cause of action for the deceased." *Flowers*, 1 CR at 696.

