



By order of the court, *Judge PERRY B. INOS*

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FOR PUBLICATION

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

NORTHERN MARIANAS HOUSING)
CORPORATION,)

Plaintiff,)

vs.)

SSFM INTERNATIONAL, INC.,)
TELESOURCE CNMI, INC., TELEBOND)
INSURANCE CORPORATION and JOHN)
DOE,)

Defendants.)

CIVIL ACTION NO. 06-0123B

REISSUED
ORDER GRANTING MOTION FOR
JUDGMENT ON THE PLEADINGS

JESSICA CASTRO, KARATEL and)
MYRNA PHILLIP, ERIC and TANIA)
DAVID, MATTHEW and LAURA JEAN)
FEJERAN, ROBIN EUGENIO and)
PENELOPE JONES, WESLEY L. and)
JUSTINA W. FOSTER, JUAN S. and)
JANET TORRES, EDWARD A.)
CAMACHO, LYSANDER B. and MARIA)
ANA C. TUDELA, GREGORIO and)
SHANA SABLAN, RAMON DLG. DIAZ)
JR. and CLAUDINE DLC DIAZ,)
AUGUSTINE U. and ROBIN L.)
PALACIOS, WILLIAM and PAULINE)
CAMACHO, GEORGE DAVID, EMILY)
MACARANAS and IRENE TUPAS,)
THOMAS and RUTH COLEMAN,)
BEGONIA O. CAMACHO, KEVIN)
CASTRO, ALEXANDER and LOURDES)
VILLAZON, WAYNE and GIOVANNIE)
PANGELINAN, LORRAINE T.)

1 CABRERA, LUIS INDALECIO,)
2 FRANCISCO and ALVELINE TUDELA,)
3 CATHERINE ANDERSON, KENT and)
4 KAREN KALEN, JOSEPH and)
5 VICTORIA GUERREO, PHILLIP)
6 SEMAN, JERALD P. MENDIOLA,)
7 GILBERT and CARMEN MUNA,)
8 CARLINE B. SABLAN, PHILLIP G.)
9 SABLAN, JESSE and JOAN DUBRALL,)
10 ESTHER MAHORA AND JUAN S. ADA,)

11 **Plaintiffs in Intervention,**)

12 **vs.**)

13 NORTHERN MARIANAS HOUSING)
14 CORPORATION, SSFM)
15 INTERNATIONAL, INC., TELESOURCE)
16 CNMI, INC., TELEBOND INSURANCE)
17 CORPORATION and JOHN DOE,)

18 **Defendants in Intervention.**)

19 **TELESOURCE CNMI, INC., and**)
20 **TELEBOND INSURANCE**)
21 **CORPORATION,**)

22 **Third-Party Plaintiffs,**)

23 **vs.**)

24 NORTH PACIFIC BUILDERS, INC.,)
25 HAGEN'S SAIPAN, INC. dba PACIFIC)
26 PEST CONTROL, RICHARD P. KAUTZ dba)
27 KAUTZ GLASS CO., CHEN'S)
28 CORPORATION, THE REPAIR SHOP,)
29 INC., LANDSCAPERS MICRONESIA)
30 CORP., TROPICAL GARDENS, INC.,)
31 TRIPLE E CORPORATION, G.C.GOZUM,)
32 G.C.G. & COMPANY, INC., DYNAMIC)
33 POWER CONSTRUCTION, DUENAS &)
34 ASSOCIATES AND DOES 1)
35 THROUGH 10,)

36 **Third-Party Defendants.**)

1 **I. INTRODUCTION**

2 **THIS MATTER** was heard on April 4, 2012, at 9:00 a.m. in Courtroom 217A on a Motion for
3 Judgment on the Pleadings. Telesource CNMI, Inc. and Telebond Insurance Corp. (collectively,
4 “Telesource”) was represented by Joseph E. Horey, Esq. SSFM International, Inc. (hereafter, “SSFM”)
5 was represented by Brien Sers Nicholas, Esq. The Court, having had the benefit of written briefs and
6 oral argument from counsel, now enters this written Order.

7
8 **II. PROCEDURAL BACKGROUND**

9 On November 13, 2007, SSFM filed various cross-claims against Telesource (hereafter,
10 “SSFM Cross-Claim”). Included in these cross-claims is a claim for equitable indemnification. (SSFM
11 Cross-Claim at 8.) On January 23, 2012, Telesource filed their Motion for Judgment on the Pleadings
12 as to SSFM’s Cross-Claim Against Telesource and Telebond for Indemnity (hereafter, “Motion”).
13 SSFM timely filed their Defendant SSFM International, Inc.’s Opposition to Judgment on the Pleadings
14 by Defendants Telesource and Telebond on February 20, 2012 (hereafter, “Opposition”). On March
15 7, 2012 Telesource filed their Reply in Support of Motion for Judgment on the Pleadings as to SSFM’s
16 Cross-Claim Against Telesource and Telebond for Indemnity (hereafter, “Reply”).

17
18 **III. MOTION FOR JUDGMENT ON THE PLEADINGS**

19 **A. Legal Standard**

20 “After pleadings are closed but within such time as not to delay the trial, any party may move
21 for judgment on the pleadings.” NMI R. Civ. P. 12(c). When a party brings a Rule 12(c) motion for
22 “failure to state a claim upon which relief can be granted,” such a motion is essentially equivalent to
23 a Rule 12(b)(6) motion to dismiss; therefore, the court may dispose of the motion by dismissal rather
24 than judgment.¹ *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989)² (noting that

25 _____
26 ¹ The motions differ in only two respects: (1) the timing (a motion for judgment on the pleadings is usually brought after an
27 answer has been filed, whereas a motion to dismiss is typically brought before an answer is filed), and (2) the party bringing
28 the motion (a motion to dismiss may be brought only by the party against whom the claim for relief is made, usually the
defendant, whereas a motion for judgment on the pleadings may be brought by any party). *Sprint Telephony PCS, L.P. v.*
City to San Diego, 311 F. Supp. 2d 898, 902-03 (S.D. Cal. 2004).

² “[W]hen interpreting our rules of civil procedure, which are patterned after the federal rules, we will principally look to
federal interpretation for guidance.” *Commonwealth Dev. Auth. v. Camacho*, 2012 MP 19 ¶ 16.

1 pre-answer dismissal for failure to state a claim under Rule 12(b)(6) is “functionally identical” to post-
2 answer dismissal under Rule 12(c)).

3 Under Commonwealth Rule of Civil Procedure 8(a)(2), a pleading must contain “a short and
4 plain statement of the claim *showing* that the pleader is entitled to relief.” (emphasis added). “To
5 survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to
6 ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937,
7 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Supreme Court has
8 explained that the Rule 8 pleading standard rests on two principles. *First*, “the tenet that the court
9 must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.”
10 *Id.* Even though showing an entitlement to relief “does not require ‘detailed factual allegations,’ . . .
11 it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* (quoting
12 *Twombly*, 550 U.S. at 555). *Second*, “only a complaint that states a plausible claim for relief survives
13 a motion to dismiss.” *Id.* at 1950. If the pleadings “do not permit the court to infer more than mere
14 possibility of misconduct, the complaint has alleged – but it has not ‘show[n]’ – ‘that the pleader is
15 entitled to relief.’” *Id.* (quoting Fed. R. Civ. P. 8(a)(2)).

16 **B. Discussion**

17 Telesource contends that SSFM’s cross-claim for equitable indemnification “fails to state a
18 claim upon which relief can be granted.” (Motion at 2.) To support this contention Telesource argues
19 that because the CNMI has adopted the Uniform Comparative Fault Act, all claims for equitable
20 indemnification between joint tortfeasors who are found to be independently liable must fail. (*See id.*
21 at 2-3.) In further support of this contention Telesource cites to Restatement (Third) of Torts:
22 Apportionment of Liability § 22 which requires the person seeking indemnity to be liable to the third-
23 party but not independently liable.

24 In opposition, SSFM argues that (1) because Telesource has responded to the cross-claim for
25 equitable indemnification they “have admitted to the factual sufficiency” of the cross-claim; and (2)
26 equitable indemnity is a viable cause of action because “it is SSFM’s position that SSFM is not at
27 fault.” (Opposition at 4-5.)

28 The Court finds that SSFM’s arguments in opposition are not supported by law. *First*, the fact
that a defendant has responded to a cause of action does not preclude that defendant from later attacking

1 the sufficiency of the pleading under Rule 12(c). This Court, along with all other jurisdictions applying
2 Rule 12(c) recognize this basic principle of law. *Second*, another basic principle of law is that “fault”,
3 where contested, is not determined by the parties themselves. SSFM’s position on their liability or level
4 of “fault” has no bearing on this motion. Accordingly, the Court will offer no further analysis as to
5 these arguments in opposition.

6 As to Telesource, the Court finds its Motion well taken, in part, regarding its reference to and
7 application of Restatement (Third) of Torts: Apportionment of Liability § 22(a).³

8 **1. Equitable Indemnity**

9 The rationale behind equitable indemnity has been explained as:

10 The duty to indemnify may arise, and indemnity may be allowed in those
11 fact situations where in equity and good conscience the burden of the
12 judgment should be shifted from the shoulders of the person seeking
13 indemnity to the one from whom indemnity is sought. The right depends
14 upon the principle that everyone is responsible for the consequences of
his own wrong, and if others have been compelled to pay damages which
ought to have been paid by the wrongdoer, they may recover from him.
Thus, the determination of whether or not indemnity should be allowed
must of necessity depend upon the facts of each case.

15 *Herrero v. Atkinson*, 38 Cal. Rptr. 490, 493 (Cal. Ct. App. 1964). Following this rationale, the general
16 common law rule is that “there is no right to indemnity between joint tortfeasors.” 41 Am Jur 2d
17 Indemnity § 21 (citing cases).

18 Common-law indemnity is not a fault-sharing mechanism that allows a
19 party, whose negligence was minor, to recover from the tortfeasor whose
20 negligence was dominant. One who is him or herself at fault is not due
21 indemnity, because ***liability for indemnity exists only when the party
seeking indemnity, the indemnitee, is free of fault and has discharged
a debt that should be paid wholly by the indemnitor.***

22 *Id.* (emphasis added). *See also* 53 A.L.R.3d 184 (recognizing general rule and citing cases). Thus,
23 under the common law rule, a viable claim for equitable indemnity exists only when the indemnitee has
24 discharged the debt of the indemnitor; and is free of fault.

25 The Restatement⁴ concisely states the rule as follows:

26 (a) When two or more persons are or may be liable for the same harm
27 and one of them discharges the liability of another in whole or in part by
settlement or discharge of judgment, the person discharging the liability

28 ³ Because there is no dispositive Commonwealth written law, it is necessary to consult the common law as expressed in the Restatements. 7 CMC § 3401.

⁴ *Supra*, note 3.

1 is entitled to recover indemnity in the amount paid to the plaintiff, plus
2 reasonable legal expenses, if:

3 (1) the indemnitor has agreed by contract to indemnify the indemnitee,
4 or

5 (2) the indemnitee

6 (i) was not liable except vicariously for the tort of the indemnitor, or

7 (ii) was not liable except as a seller of a product supplied to the
8 indemnitee by the indemnitor and the indemnitee was not independently
9 culpable.

10 (b) A person who is otherwise entitled to recover indemnity pursuant to
11 contract may do so even if the party against whom indemnity is sought
12 would not be liable to the plaintiff.

13 Restatement (Third) of Torts: Apportionment of Liability § 22 (2000). Thus, under this section of the
14 Restatement, a claim for equitable indemnity arises only when (1) the claimant discharged a legal
15 obligation owed to a third-party;⁵ (2) the defendant was also liable to the third-party;⁶ and (3) the
16 claimant is free of independent liability.⁷

17 **2. Sufficiency of the Pleading**

18 SSFM's pleading for equitable indemnity states:

19 SSFM denies that it either caused or contributed to the damages alleged
20 by the Flores Plaintiffs and/or Castro Plaintiffs in this action. If,
21 however, it is found that SSFM was responsible for any part of the
22 damages claimed by the Flores Plaintiffs and/or Castro Plaintiffs, then
23 the circumstances are such that, as between SSFM and Cross-
24 Defendants, Cross-Defendants rather than SSFM should in equity be
25 liable for the said damages, and SSFM is therefore entitled to equitable
26 indemnity, reimbursement, subrogation from Cross-Defendants for the
27 injuries and damages allegedly suffered by the Flores Plaintiffs and/or
28 Castro Plaintiffs in an amount to be proven at trial.

(SSFM Cross-Claim at 8.)

⁵ *Id.* cmt. b (“[A]n indemnitee must extinguish the liability of the indemnitor to collect indemnity. The indemnitee may do so either by a settlement . . . or by satisfaction of judgment that by operation of law discharges the indemnitor from liability.”).

⁶ *Id.* cmt. c (“[A]n indemnitee must prove that the indemnitor would have been liable to the plaintiff in an amount equal to or greater than the amount the indemnitee seeks.”).

⁷ *See id.* cmt. e and corresponding Reporters Notes.

1 SSFM’s pleading for equitable indemnity is utterly bereft of any facts that (1) SSFM discharged
2 a legal obligation owed to a third-party; (2) Telesource and Telebond were also liable to the third-party;
3 and (3) SSFM is free from independent liability.

4 *First*, the Court finds that SSFM failed to allege any facts that it extinguished or mitigated
5 Telesource’s liability to a third-party; therefore, no right of indemnity exists under the facts pled.
6 Indeed, a claim for indemnity ripens into a cause of action only after one of the parties discharges the
7 liability of the other. Restatement (Third) of Torts: Apportionment of Liability § 22(a). *Second*, SSFM
8 has not yet been, and might not be, found to be “free of fault.” *See, e.g., Doe v. City of Chicago*, 360
9 F.3d 667, 672 (7th Cir. 2004) (“We have warned repeatedly against trying to resolve indemnity before
10 liability.”). Regardless of SSFM’s contention that it is free of fault, SSFM (the alleged “indemnatee”)
11 faces multiple claims for liability for their role as architect and construction manager in the project. *See,*
12 *e.g.,* NMHC’s Complaint (March 23, 2006) at ¶ 35(a) (alleging that SSFM “fail[ed] to plan, design,
13 adapt, modify, approve and maintain construction plans, designs, specifications, and requirements that
14 would result in a subdivision and homes suitable for their intended purposes”); Castro Homeowners’
15 Fourth Amended Complaint (March 6, 2009) at ¶ 70 (“SSFM breached its duty by designing . . . homes
16 which are not habitable and safe, not suited to the CNMI environment, and not in compliance with the
17 CNMI Building Safety Code.”); Flores Homeowners’ Complaint (December 12, 2006) at ¶ 40(l)
18 (alleging that SSFM “fail[ed] to ensure the sufficiency, accuracy and technical adequacy of its planning
19 and other designs, drawings, specifications used for the subdivision”).

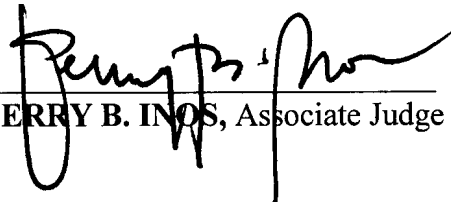
20 A claim for equitable indemnity sounds in equity and does not ripen until there has been a
21 discharge of liability and a finder of fact has apportioned fault. SSFM’s pleading fails to allege any
22 facts that make a plausible claim for relief for equitable indemnification.

23
24 **IV. CONCLUSION**

25 Based on the foregoing, the Court hereby **GRANTS** Telesource’s Motion for Judgment on the
26 Pleadings and **DISMISSES** Count II of SSFM’s Cross-Claim for equitable indemnification.

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SO ORDERED this 9th day of April, 2012.


PERRY B. INOS, Associate Judge