



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

ANTONINO S. SANTOS,

Plaintiff,

vs.

COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,
PUBLIC SCHOOL SYSTEM, JOHN DOE
1-5, AND JANE DOE 1-5,

Defendants.

CIVIL ACTION NO. 12-0088

ORDER GRANTING CNMI'S
MOTION TO DISMISS

I. INTRODUCTION

THIS MATTER was heard on June 13, 2012, at 9:00 a.m. in Courtroom 217A on Defendant Commonwealth of the Northern Mariana Islands' ("Defendant" or "CNMI") Motion to Dismiss. Antonio S. Santos ("Plaintiff") was represented by Michael W. Dotts, Esq. The CNMI was represented by Assistant Attorney General David Lochabay. The Court, having reviewed the pleadings and heard the arguments of counsel, now enters this written Order.

II. FACTUAL BACKGROUND

Plaintiff was employed by Public School System ("PSS") for 26 years. He was a maintenance worker and was injured on the job while using a table saw. He suffered a lacerated left index finger and injury to his joint. He has lost the use of the finger and suffers pain. Plaintiff claims he needs treatment

1 and possibly surgery to fix the joint. He also claims he is unable to work as a result of the injury.
2 Subsequently, Plaintiff filed a claim with the Workers' Compensation Commission ("WCC") but was
3 denied because there was no coverage existing for government employees employed by PSS.

4 On March 28, 2012, Plaintiff sued PSS and the CNMI seeking damages. The CNMI now asks
5 the Court to dismiss the Complaint against the CNMI because it was not the employer and that pursuant
6 to NMI R. Civ. P. 12(b)(6), Plaintiff failed to state a claim upon which relief can be granted. Plaintiff
7 opposed the motion, arguing that the CNMI is the *de facto* employer and is, therefore, vicariously liable
8 for PSS' failure to maintain workers' compensation insurance.

9 **III. MOTION TO DISMISS PURSUANT TO NMI R. Civ. P. 12(b)(6)**

10 **A. Legal Standard**

11 The purpose of a motion to dismiss under Rule 12(b)(6) for failure to state a claim is to test "the
12 sufficiency of the allegations within the four corners of the complaint." *Mobley v. McCormick*, 40 F.3d
13 337, 340 (10th Cir. 1994).¹ Under Commonwealth Rule of Civil Procedure 8(a)(2), a pleading must
14 contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "To
15 survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to
16 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009)
17 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Supreme Court has explained that
18 the Rule 8 pleading standard rests on two principles. *First*, "the tenant that the court must accept as true
19 all of the allegations contained in a complaint is inapplicable to legal conclusions." *Id.* Even though
20 showing an entitlement to relief "does not require 'detailed factual allegations,' . . . it demands more
21 than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (quoting *Twombly*, 550 U.S.
22 at 555). *Second*, "only a complaint that states a plausible claim for relief survives a motion to dismiss."
23 *Id.* at 1950. If the pleadings "do not permit the court to infer more than mere possibility of misconduct,
24 the complaint has alleged – but it has not 'show[n]' – 'that the pleader is entitled to relief.'" *Id.*
25 (quoting Fed. R. Civ. P. 8(a)(2)).

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27 ¹ "[W]hen interpreting our rules of civil procedure, which are patterned after the federal rules, we will
28 principally look to federal interpretation for guidance." *Commonwealth Dev. Auth. v. Camacho*, 2010 MP
19 ¶ 16.

1 **B. Discussion**

2 Defendant contends that Plaintiff’s Complaint fails to state a claim upon which relief can be
3 granted because the CNMI is not the employer. In opposition, Plaintiff offers two reasons why the
4 CNMI should be considered an appropriate defendant in this matter. First, Plaintiff contends that the
5 CNMI is the *de facto* employer, and as a public school employee he was also a “government employee”.
6 Second, Plaintiff argues that the CNMI, as a public employer, may be held vicariously liable for the
7 negligent acts of its agent, in this case PSS. At oral argument, Plaintiff conceded that PSS admitted in
8 its Answer that Plaintiff was PSS’ employee.

9 **1. “De Facto” Employer**

10 The Commonwealth Workers’ Compensation Law (“WCL”), codified at 4 CMC § 9301-9357,
11 provides the context under which coverage for injuries is available to workers who are injured during
12 the course of their employment. Under 4 CMC § 9304, “[e]very employer shall be liable for and shall
13 secure payment of such compensation as may be required under [the WCL]”. Thus, the CNMI is an
14 appropriate defendant only if it was Plaintiff’s employer within the meaning of the WCL at the time of
15 his injury.

16 The WCL defines an employer as:

17 “any person, corporate or unincorporate, public or private, who
18 employs the services of others in return for wages, salaries or
19 other remuneration and includes the legal representative of a
20 deceased employer. Employer excludes a person who employs
21 for a specified recompense for a specified result an independent
22 contractor and who may or may not in turn employ others whose
work is directed as to the means of accomplishing such result by
the independent contractor. If the employer is insured, it includes
his insurer as far as applicable.”

23 4 CMC § 9302(m).

24 It defines an employee as:

25 “any person in the service of an employer under any appointment
26 or contract of hire or apprenticeship, express or implied, oral or
27 written, whether lawfully or unlawfully employed, and where the
28 employer has the power or right to control and direct the
employee in the material details of how the work is to be

1 performed. Employee specifically includes aquacultural and
2 agricultural workers. Employee excludes any person whose
3 employment is purely casual and not for the purpose of the
4 employers trade or business, any corporate director not receiving
5 any compensation, independent contractors, and any person
employed by the inhabitant of a private dwelling to reside at the
dwelling and perform household domestic service.”

6 4 CMC § 9302(l).

7 ““A basic principle of construction is that language must be given its plain meaning. When
8 language is clear, we will not construe it contrary to its plain meaning.”” *Pacific Financial Corp v.*
9 *Sablan*, 2011 MP 19 ¶ 9, citing *King v. Bd. of Elections*, 2 NMI 398 ¶ 403 (1991) (quoting *Govendo v.*
10 *Micronesia Garment Manufacturing, Inc.*, 2 NMI 270 ¶ 284 (1991)).

11 In this case, it is PSS who pays² Plaintiff and who has the authority to “control and direct”³ him.
12 PSS is governed by a Board of Education consisting of “five voting members elected at-large on a
13 nonpartisan basis.” 1 CMC § 2261(a). The Board of Education, not the CNMI, formulates the policies,
14 rules, and regulations regarding PSS’ staff. 1 CMC 2268(b). Thus, the CNMI does not even indirectly
15 manage Plaintiff’s employment because it has no control over the daily operations of PSS. The mere
16 fact that PSS is a governmentally funded public organization does not, in any way, create a situation in
17 which the plaintiff can be construed as being employed by the CNMI. Therefore, to suggest that the
18 CNMI government is the employer in this case would be contrary to the statute’s plain meaning. Thus,
19 PSS, and not the CNMI, is Plaintiff’s employer.

20 **2. Vicarious Liability**

21 Plaintiff claims that the CNMI is vicariously liable for PSS’ failure to maintain workers’
22 compensation insurance. Vicarious liability (or *respondeat superior*) is an action in tort that allows an
23 injured party to recover damages from an employer when a tort has been committed by an employee
24 acting within the scope of his employment. Restatement of the Law, Third, Agency § 2.04 (2006).
25 Thus, in order for the CNMI to be vicariously liable for PSS’ alleged failure to pay into its workers’
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² 4 CMC § 9302(m).

28 ³ 4 CMC § 9302(l).

1 compensation insurance, an employer-employee or agency relationship must exist between the CNMI
2 and PSS.

3 Under the Restatement of the Law, Third, Agency § 1.01 (2006), agency is defined as “the
4 fiduciary relationship that arises when one person (a “principal”) manifests assent to another person (an
5 “agent”) that the agent shall act on the principal’s behalf and subject to the principal’s control, and the
6 agent manifests assent or otherwise consents so to act.” “A relationship is not one of agency within the
7 common-law definition unless the agent consents to act on behalf of the principal, and the principal has
8 the right throughout the duration of the relationship to control the agent’s acts.” Restatement of the Law,
9 Third, Agency § 1.01 cmt. c (2006).

10 Here, there is no evidence that PSS entered into any agreement to act on behalf of the CNMI,
11 nor is there any evidence that the CNMI has control over PSS. On the contrary, PSS is a nonprofit
12 corporation within the Commonwealth government, headed by a Board of Education, and making its
13 own policies in relation to its operation. (PL 6-10 § 1). Article 1 of PL 6-10 sets out in great detail the
14 way in which Board members are selected and goes on to discuss their powers, functions, and duties.
15 These powers include but are not limited to exercising control over PSS; establishing rules, regulations,
16 and policies for operating PSS and for its staff; maintaining Trust funds for special PSS projects;
17 acquiring property on behalf of PSS; and acting in its own name with respect to federal programs. It
18 seems clear from this PSS statute that PSS is working as its own entity, separate from the CNMI.

19 This Court cannot find that agency relationship exists between these two entities without
20 evidence of CNMI control over PSS. Thus, the CNMI cannot be found vicariously liable for any failing
21 on the part of PSS.

22 **IV. LEAVE TO AMEND**

23 Pursuant to Rule 15(a), leave to amend should be freely granted “when justice so requires.” NMI
24 R. Civ. P. 15(a). On a motion to dismiss, the Court must grant leave to amend unless it “determines that
25 the pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122,
26 1127 (9th Cir. 2000) (citing *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995) (holding that leave
27 should be granted unless defect cannot be cured).

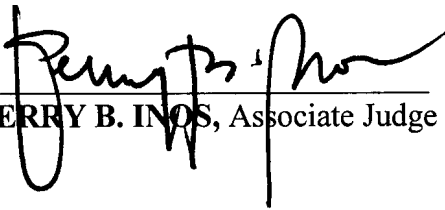
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1 Here, Plaintiff cannot assert any theory of liability under the WCL which would extend liability
2 to the CNMI government as a whole. Thus, the complaint is fatally flawed and leave to amend would
3 be futile.

4 **V. CONCLUSION**

5 Based on the foregoing, the Court hereby grants CNMI's Motion to Dismiss.

6 SO ORDERED this 15th day of June, 2012.

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10 PERRY B. INOS, Associate Judge
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