



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**

JAMES C. DELEON GUERRERO,)
and 26 DPS Officers as Intervenors,)
)
Plaintiffs,)
vs.)
)
CNMI DEPARTMENT OF PUBLIC)
SAFETY, by and through its)
Commissioner, SANTIAGO F. TUDELA,)
)
Defendant.)
_____)

CIVIL CASE NO. 09-0186

**ORDER DENYING MOTION TO
AMEND OR ALTER JUDGMENT**

I. INTRODUCTION

THIS MATTER was scheduled to come before the court on May 3, 2012, at 1:30 p.m. in courtroom 223A for a hearing on Defendant’s motion to amend findings of facts and to alter or amend judgment. Robert Tenorio Torres represented James C. Deleon Guerrero (“Deleon Guerrero”). Assistant Attorney General Tiberius D. Mocanu represented CNMI Department of Public Safety (“Defendant”). Counsels for the parties did not appear. Based on the matters adduced and for good cause shown, the court took the matter under advisement for ruling on submission of the briefs.

Having considered the written arguments of both parties, the Court DENIES Defendant’s motion.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**¹

2 On March 19 and 20, 2012, respectively, this Court issued a judgment and amended final judgment
3 in the present case. On April 11, 2012, Defendant motioned the court to amend its findings of fact and to
4 alter or amend the judgment pursuant to Com. R. Civ. Pro. 52(b) and Com R. Civ. Pro. 59. On April 17,
5 2012, Deleon Guerrero filed an opposition to Defendant’s motion.
6

7 **III. DISCUSSION**

8 **A. DEFENDANT FAILS TO ESTABLISH ANY MAJOR GROUNDS JUSTIFYING AMENDMENT**
9 **OF THE JUDGMENT**

10 Com. R. Civ. Pro. 52(b) provides that a court may amend its findings or make additional findings
11 and amend the judgment accordingly upon motion of a party made not later than ten days after the entry of
12 judgment. Com. R. Civ. Pro. 52(b). Such a motion may be made with a motion for a new trial pursuant to
13 Com. R. Civ. Pro. 59. Com. R. Civ. Pro. 52(b). Com. R. Civ. Pro. 59 provides that a motion to alter or
14 amend a judgment must be served no later than ten days after entry of judgment. Com. R. Civ. Pro. 59.
15 “[T]he major grounds justifying reconsideration involve an intervening change in the controlling law, the
16 availability of new evidence, or the need to correct a clear error or prevent manifest injustice.” *Angello v.*
17 *Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 23 (citing *Camacho v. J.C. Tenorio Enter. Inc.*, 2 NMI 407, 414
18 (1992)).
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21 Defendant states the claims tried to the Court include violations arising out of the promotion of Eloy
22 K. Fitial from Sergeant to Captain. Defendant claims this Court relied on the presumption that Fitial
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24 _____
25 ¹ A detailed factual summary is contained in this Court’s previous Order: *Deleon Guerrero v. CNMI Dept. of Public Safety*,
Civ. No. 09-0186 (Super. Ct. March 19, 2012) (Findings of Fact and Conclusions of Law at 2).

1 remained at the rank of captain in its justification for awarding attorney's fees. Defendant argues Fitial was
2 actually demoted in October 2011 and the Court must therefore amend its Findings of Fact and Conclusions
3 of Law to clarify its judgment. Defendant argues such a motion is appropriate when the record needs to be
4 clarified for appeal and where without amending the findings there is manifest injustice.
5

6 Deleon Guerrero argues Defendant has not alleged any intervening change in law and has failed to
7 demonstrate manifest injustice as required by law. Deleon Guerrero argues despite the alleged post-hearing
8 demotion of Fitial, the record still establishes there is evidence to justify the awarding of attorney's fees.
9 Deleon Guerrero argues the Court noted that despite Defendant's assertions that its practice of wrongful
10 promotions had ended, the evidence indicated that it had not ended. Deleon Guerrero asserts it is undisputed
11 that Fitial was unlawfully reallocated and Defendant did not bother to file a motion to reopen the record to
12 introduce evidence of the belated demotion nor did it file a motion to supplement the record to bring the
13 evidence properly before the Court. Deleon Guerrero further asserts that even if the Court did consider
14 amending its Findings of Fact and Conclusions of Law, Defendant does not deny that Fitial was improperly
15 promoted or that it only took corrective measures after Deleon Guerrero brought his grievance. Deleon
16 Guerrero claims Defendant has taken no action to recover, among others, the improperly paid salary to Fitial
17 and further, Defendant waived any opportunity to present new evidence by failing to present new evidence
18 it had in its possession prior to entry of judgment.
19
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21 Defendant has not presented any of the grounds upon which reconsideration may be granted.
22 Defendant has not pointed to any intervening change in the controlling law or the availability of new
23 evidence. Defendant, rather, points to evidence in existence prior to entry of judgment. Further, Defendant
24 has failed to demonstrate any clear error or the need to prevent manifest injustice. Judgment was entered
25

1 based on the evidence before the Court at that point in time and for reasons set forth below, Defendant has
2 failed to demonstrate manifest injustice.

3 **B. THE AWARDING OF ATTORNEY’S FEES WAS JUSTIFIED IN THIS CASE**

4 Defendant claims the award of attorney’s fees based on the private attorney general doctrine of
5 attorney’s fees should be revised because the doctrine has been struck down by the U.S. Supreme Court and
6 is disfavored by a majority of states. Defendant claims the Commonwealth does not have a statute
7 permitting a court to shift fees based on this doctrine. Defendant further claims that although the Court and
8 Deleon Guerrero mentioned 1 CMC § 8144(a)² as allowing for attorney’s fees to be collected by a prevailing
9 plaintiff, the Court’s final order did not use this statute as a basis for the award. Defendant argues that
10 because the award of attorney’s fees was based on a concept that has been abandoned by federal courts, and
11 there is no statute relied upon to shift the cost of litigation to Defendant, the Court must amend its judgment
12 pursuant to Com. R. Civ. Pro. 59(e) and not award attorney’s fees to Deleon Guererro.
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14
15 Deleon Guerrero argues the purpose of the private attorney general doctrine of attorney’s fees is to
16 encourage suits that effectuate strong public policies by awarding attorney’s fees to those who successfully
17 bring such suits and thereby benefit a broad class of citizens. Deleon Guerrero claims the Court established
18 Defendant was in violation and further argues that despite the belated demotion of Fitial, this does not
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20
21 ² Finally, any citizen may bring suit to restrain a disbursing officer from making any payments of any salary or
22 compensation to any person whose appointment or employment has not been made in accordance with the CSA
23 or the rules and regulations implementing its provisions. *See* 1 CMC § 8144(a). The CSA further provides that
24 “[a]ny sum paid contrary to . . . [its provisions] and the rules and regulations established thereunder may be
25 recovered in an action maintained by any citizen from any officer who made, approved, or authorized such
payment, or who signed or countersigned a voucher, payroll, check or warrant for such payment . . .” Any
citizen bringing such an action is entitled, under the CSA, “to costs of the suit, including a reasonable attorney’s
fee, from any money recovered in such action.” *Id.*
Deleon Guerrero, Civ. No. 09-0186 (Findings of Fact and Conclusions of Law at 10).

1 change the fact that Deleon Guerrero shouldered the costs of bringing this grievance. Deleon Guerrero
2 argues his pursuit of this lawsuit placed a burden on him that was out of proportion with and transcended
3 his individual stake in the matter. Deleon Guerrero asserts it would be inequitable to force him to pay for
4 litigation that resulted in an equal benefit not only to all DPS officers and government employees, but to the
5 public at large. Deleon Guerrero argues bad faith conduct of the losing party is also a ground for awarding
6 fees, especially where there has been a delay by the losing party. Deleon Guerrero points out that Defendant
7 has a history of ignoring grievances and in this case refused to act, forcing him to shoulder the costs of
8 litigation and abandoning the administrative process that could have resolved this matter without the expense
9 of filing this lawsuit. Deleon Guerrero therefore argues the award of fees remains justified in this case.
10

11 As this Court indicated in its Findings of Fact and Conclusions of Law, the general rule is that “the
12 prevailing litigant is ordinarily not entitled to collect a reasonable attorneys’ fee from the loser.” *Alyeska*
13 *Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 247 (1975). Private attorney general actions are
14 among one of the exceptions to the American Rule. *Public Util. Dist. 1 v. Kottsick*, 86 Wash.2d 388, 545
15 P.2d 1 (1976).
16

17 This Court found in its Findings of Fact and Conclusions of Law that the private attorney general
18 doctrine applied in this case. The Court, again, operated under the evidence before it at the time of its
19 decision. Even if the Court had been made aware of Fitial’s demotion before entry of judgment, the fact
20 remains that Deleon Guerrero was forced to hire an attorney and shoulder the expenses of litigating the issue
21 for the benefit of not only himself but all government employees.
22

23 **V. CONCLUSION**

24 Based on the foregoing, Defendant’s Motion to Amend or Alter Judgment is **DENIED**.
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