



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**

**JANET U. MARATITA, RAY ANTHONY)
N. YUMUL, for themselves and on behalf)
of the taxpayers of the CNMI and the)
ratepayers of CUC, AND THE)
NORTHERN MARIANAS)
COMMONWEALTH SENATE,)**

Plaintiffs,

vs.

**BENIGNO R. FITIAL, EDWARD T.)
BUCKINGHAM, COMMONWEALTH)
UTILITIES CORPORATION, AND)
SAIPAN DEVELOPMENT, LLC,)**

Defendants.

CIVIL CASE NO. 12-0194

**ORDER
SDLLC'S MOTION TO VACATE
PRELIMINARY INJUNCTION**

THIS MATTER came before the Court on defendant Saipan Development LLC's motion to vacate the preliminary injunction. Attorney Ramon K. Quichocho appeared for Plaintiffs Janet U. Maratita, Ray Anthony N. Yumul, and the Commonwealth Senate ("Plaintiffs"). Assistant Attorney General David Lochabay appeared for defendants Benigno R. Fitial and Joey P. San Nicolas, Attorney General¹ ("Government Defendants") Deborah E. Fisher appeared for the Commonwealth Utilities Corporation ("CUC"). William M. Fitzgerald appeared on behalf of Saipan Development LLC ("SDLLC").

¹Edward Buckingham, former Attorney General was originally named in the lawsuit. NMI R. Civ. P. 25(d)(1). Provides that upon resignation, "the officer's successor is automatically substituted as a party. Following Buckingham's resignation Viola Alepuyo became Acting Attorney General and party to this lawsuit. Currently Joey P. San Nicolas is the Attorney General, and is automatically substituted as a party thereby.

1 **II. BACKGROUND**

2 On August 22, 2012 Plaintiffs filed a taxpayer lawsuit seeking a temporary restraining order (“TRO”) and preliminary injunction. A certificate of service was filed with the Court on August 28, 2012 indicating
3 that on August 28, 2012, plaintiffs emailed the summons and complaint to Keystone Shipping Company,
4 one of the members of SDLLC. (Mot. Vacate Ex. 2.) On August 23, 2012 Plaintiffs sent a copy of the
5 motion for injunctive relief certified mail to an office of Keystone in Wilmington Delaware. (Id. at Ex. 1.)
6 On August 30, 2012 Plaintiffs filed a First Amended Complaint and on September 4, the Court held a
7 preliminary injunction hearing.
8

9 At the hearing the Government Defendants and CUC consented to injunctive relief. Plaintiffs’
10 counsel, Ramon Quichocho represented to the Court that SDLLC had been served. The Court thereafter
11 granted a preliminary injunction based on the consent of the Defendants. On October 5, 2012 SDLLC filed
12 a motion to dismiss based on Rule 12(b)(6) for failure to state a claim and 12(b)(1) for lack of subject matter
13 jurisdiction.

14 SDLLC now challenges personal jurisdiction based on defective service of process, and moves the
15 Court to vacate the preliminary injunction.

16 **III. MOTION TO VACATE**

17 SDLLC advances several bases for vacating the preliminary injunction, namely: (1) the injunction
18 was improperly issued because the Court lacked personal jurisdiction over it at the time it was issued and
19 (2) the injunction is unnecessary because Plaintiffs have an adequate remedy at law and (3) the Court failed
20 to consider the appropriate factors in issuing the preliminary injunction.

21 **A. SDLLC WAIVED OBJECTION TO PERSONAL JURISDICTION**

22 SDLLC argues that the injunction should be vacated because it was not served prior to issuance of
23 the preliminary injunction, and as a result, the Court lacked jurisdiction over it.

24 Any objection to personal jurisdiction must be raised in the first responsive pleading otherwise it is
25 waived. NMI R. Civ. P. 12(h)(1); Santos v. Santos, 2001 MP 12, ¶ 14 (“[under NMI R. Civ. P. 12(h)]

1 [s]ufficiency of process and sufficiency of service are waived unless properly included in a responsive
2 pleading which is timely filed.”); *Shaffer v. Superior Court*, 2007 MP 15, ¶ 9 (“objections to personal
3 jurisdiction must be raised in a party’s first motion”).

4 SDLLC filed a motion to dismiss on October 5, 2012 brought pursuant to NMI R. Civ. P. 12(b)(1)
5 for lack of subject matter jurisdiction and 12(b)(6) for failure to state a claim. This is the first responsive
6 pleading by SDLLC but the motion fails to advance any argument concerning personal jurisdiction, lack of
7 process or defective service of process. Thus, SDLLC waived its argument that the Court lacked jurisdiction
8 over it when it issued the preliminary injunction.

9 **B. THE COURTS TREATS THE MOTION AS ONE FOR RECONSIDERATION**

10 SDLLC also moves the Court to vacate the preliminary injunction because it contends that (1) the
11 Court erroneously assumed that all defendants consented to be enjoined; and (2) the Court failed to address
12 the injunctive relief factors laid out in *Villanueva v. Tinian Shipping & Transp., Inc.*, 2005 MP 12 ¶ 20
13 (overruled on other grounds by *Friends of Marpi v. Commonwealth*, 2012 MP 9 ¶ 15). Here, the Court has
14 already considered the issuance of injunctive relief, therefore it treats the motion to vacate as one for
15 reconsideration.

16 In its discretion this Court may reconsider where there is “an intervening change of controlling law,
17 the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.” *Camacho*
18 *v. J.C. Tenorio Enterprises, Inc.*, 2 NMI 407, 414 (1992).

19 The Court granted the preliminary injunction principally relying on the Government Defendants’
20 non-opposition. SDLLC has asserted that they were not properly served until September 12, 2012, after the
21 injunction issued. Although SDLLC opposes injunctive relief it was not present to argue against the
22 imposition of injunctive relief prior to being enjoined. The Government Defendants present at the hearing
23 consented to be enjoined and as a result the Court did not take testimony regarding irreparable harm and the
24 other injunction factors. The Court also did not have the benefit of SDLLC’s arguments prior to rendering
25 its decision. In consideration of equitable and due process principles the Court finds that SDLLC

1 demonstrated a basis for reconsideration.

2 A hearing is set for January 17, 2013 at 1:30 p.m. in Courtroom 223A at which time the Court
3 reconsiders its preliminary injunction decision. The parties will have an opportunity to present evidence and
4 argue the merits of injunctive relief: irreparable harm; likelihood of success on the merits; balance of
5 hardships; and any public interest factors.

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7 **IT SO ORDERED** this 3rd day of January, 2013.

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10 David A. Wiseman, Associate Judge
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