



By the order of the court, Judge David A Wiseman

1 FOR PUBLICATION

2
3
4
5 JANET U. MARATITA, RAY ANTHONY N.) CIVIL CASE NO. 12-0194
6 YUMUL, for themselves and on behalf of the)
7 taxpayers of the CNMI and the ratepayers of)
8 CUC, and the NORTHERN MARIANAS)
9 COMMONWEALTH SENATE,)

10 Plaintiffs,

11) ORDER DENYING CNMI'S MOTION TO
12 vs.) SUBSTITUTE
13)
14 BENIGNO R. FITIAL, EDWARD T.)
15 BUCKINGHAM, COMMONWEALTH)
16 UTILITIES CORPORATION, and SAIPAN)
DEVELOPMENT, LLC.,)
Defendants.)

17 I. INTRODUCTION

18 THIS MATTER came before the Court on March 6, 2013, at 1:30 p.m. in Courtroom 223A. At the hearing,
19 the parties presented arguments regarding the Commonwealth of the Northern Mariana Island ("CNMI")'s motion
20 to substitute the CNMI for Defendant Benigno R. Fitial. Plaintiffs Janet U. Maratita, et. al. ("Plaintiffs") were
21 represented by attorney Ramon K. Quichocho, Esq. Defendant Fitial and the CNMI were represented by Assistant
22 Attorney General David Lochaby. Defendants moved to substitute the CNMI Government for Benigno R. Fitial for
23 Count Three pursuant to the Government Liability Act. 7 CMC § 2201 *et seq.*
24

25 Based on the papers submitted and oral arguments of counsel, the Court hereby **DENIES** the CNMI's motion
for substitution.

E-FILED
CNMI SUPERIOR COURT
E-filed: May 28 2013 01:09PM
Clerk Review: N/A
Filing ID: 52481057
Case Number: 12-0194-CV
N/A



1 **II. BACKGROUND**

2 On January 12, 2013, Plaintiff filed a five-count complaint, charging Defendants with illegal expenditure of
3 public funds, breach of fiduciary duty, breach of trust, seeking declaratory relief and an injunction. While not all
4 Defendants are charged in each count, Defendant Filial is charged in all five counts.

5 On February 8, 2013, the CNMI filed the pending motion to substitute the CNMI government for Defendant
6 Filial in Count Three which alleges breach of fiduciary duty. The CNMI attached to its motion a “Certification of
7 Scope of Employment” signed by Attorney General Joey P. San Nicholas which certifies that Defendant Filial was
8 acting within the scope of his employment as the governor of the CNMI at the time of the alleged incidents giving
9 rise to the claims of the Plaintiffs in this action.

10 **III. LEGAL STANDARD**

11 Public Law 15-22, entitled “Commonwealth Employees’ Liability Reform and Tort Compensation Act of
12 2006” (CELTRCA) was passed by the CNMI Legislature for the purpose of preventing Commonwealth employees
13 from being sued in their individual capacities for actions performed as Commonwealth employees. *See* 1 CMC §
14 2201, commission cmt 2; *Ayuyu v. Mendiola*, Civ. No. 12-0051 (NMI Super. Ct. Nov. 29, 2012) (Order Granting
15 Defendants’ Motion for Partial Substitution of Parties at 3). Thus, “Commonwealth employees sued in their
16 individual capacities for acts committed within the scope of employment are dismissed from the lawsuit and the
17 CNMI government is substituted as the proper defendant.” *Id.*; *see Osborn v. Haley*, 549 U.S. 225, 229 (2007). 7
18 CMC § 2208 provides that a suit against the Commonwealth is the exclusive remedy for those claiming injury by
19 reason of acts of Commonwealth employees acting within the scope of their employment. The exclusive remedy rule
20 does not apply to claims brought for violations of the United States and CNMI Constitution(s). *See* 7 CMC § 2208
21 (b)(2).

22 **IV. DISCUSSION**

23 Plaintiffs claim a plaintiff may be able to recover against the individual employee tortfeasor for actions
24 brought for a violation of the CNMI Constitution, pursuant to 7 CMC § 2208(b)(2)(A). Plaintiffs assert CELRTCA’s
25 exclusive remedy rule does not apply because Count Three arises out of a violation of the CNMI Constitution under

1 NMI Const. art. X, § 9.

2 The CNMI argues Count Three reads like a count in common law breach of trust, which is not a constitutional
3 claim.¹ The CNMI argues if Count Three is indeed a constitutional claim, then Defendant Filial would be entitled
4 to qualified immunity under the reasoning employed in the pending motion to dismiss of Defendant Filial.

5 The Court finds Count Three does not sound in common law breach of trust but rather sounds in a
6 constitutional claim. The claim is brought as a taxpayer action and asserts Defendant Filial, as the former Governor
7 of the CNMI, breached his duty of trust by allegedly misapplying public funds. Because Count Three arises out of
8 a violation of the CNMI Constitution, the exclusive remedy rule does not apply and the CNMI Government is not
9 a proper substitution for Defendant Filial.

10 Based on the foregoing, the Court **DENIES** the CNMI's motion to substitute the CNMI for Defendant Filial.

12 **SO ORDERED this 28th day of May, 2013.**

14 / s /

15 _____
16 Judge David A. Wiseman

24 _____
25 ¹The CNMI argues if Count Three is a constitutional claim for breach of trust arising from a breach of fiduciary duty, the counts are redundant. The Court declines to address this argument as it is an issue not to be decided in a motion for substitution.