



By Order of the Court, Associate Judge JOSEPH N. CAMACHO

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

PRC LLC, SOPHIA P. TENORIO, and)	CIVIL CASE NO. 12-0163
PEDRO P. TENORIO,)	
)	
Plaintiffs,)	
)	ORDER DENYING PLAINTIFF PRC'S
v.)	MOTION FOR A DECLARATORY
)	JUDGMENT AND DENYING
CHANG SHIN RESORT SAIPAN)	DEFENDANT'S MOTION TO STRIKE
CORPORATION dba HOTEL RIVIERA)	
SAIPAN,)	
)	
Defendant.)	

I. INTRODUCTION

On April 23, 2014, Plaintiff PRC, LLC (“PRC”) filed a Motion to Terminate Lease Under NMI R. Civ. P. 57 (“Motion for Declaratory Judgment”). Instead of filing an opposition to this motion, on May 6, 2014, Defendant Chang Shin Resort Saipan Corporation d.b.a. Hotel Riviera Saipan (“Hotel Riviera”) filed a motion to strike PRC’s motion. Based on a review of the filings, oral argument, and applicable law, the Court finds that neither of these motions complies with procedures outlined in the Commonwealth Rules of Civil Procedure, and as a result, both motions are denied.

II. PROCEDURAL HISTORY

On July 13, 2012, this civil action was brought by plaintiffs PRC, Sophia P. Tenorio and Pedro P. Tenorio. Plaintiffs brought claims against Hotel Riviera for breach of contract and trespass

1 to land based on Hotel Riviera's failure to pay rent. The contracts at issue are three leases involving
2 four parcels of adjoining property on which Hotel Riviera built and operated a hotel. The Court has
3 already entertained a motion for summary judgment and reconsideration of that motion for
4 summary judgment. Plaintiff PRC's motion for summary judgment on the issue of breach of
5 contract was denied on March 8, 2013 because PRC did not establish that Hotel Riviera was bound
6 to the terms of the lease at issue. *PRC, LLC v. Chang Shin Resort Saipan*, Civ. No. 12-0163 (NMI
7 Super. Ct. March 8, 2013) (Order Granting in Part and Denying in Part Plaintiffs' Motion for
8 Summary Judgment at 3-4). PRC now asks the Court to grant declaratory relief, finding that Hotel
9 Riviera is in default on the same lease, terminating that lease and finding that PRC has the right to
10 possess the property. PRC makes this motion under Rule 57 of the Commonwealth Rules of Civil
11 Procedure.

12 On May 6, 2014 Hotel Riviera filed a motion to strike under Rule 12(f) of the
13 Commonwealth Rules of Civil Procedure, requesting that the Court strike PRC's entire Motion for
14 Declaratory Judgment. On May 6, 2014 Hotel Riviera also filed an ex parte request for an extension
15 of time in which to file an opposition, requesting that the Court decide Hotel Riviera's motion to
16 strike first, and if necessary, grant Hotel Riviera five calendar days after that decision to file the
17 opposition to PRC's motion. The Court denied Hotel Riviera's request to enlarge time on May 8,
18 2014, and Hotel Riviera did not file an opposition. PRC filed an opposition to Hotel Riviera's
19 motion to strike on May 14, 2014, to which Hotel Riviera replied on May 19, 2014.

20 The Court heard limited argument on PRC's Motion for Declaratory Judgment on May 20,
21 2014 at 1:30 p.m. in Courtroom 220A, but found that additional briefing was necessary to decide
22 the issue, reset the hearing for June 17, 2014, and issued a supplemental briefing schedule
23 concerning both outstanding motions. The parties filed supplemental briefs and oppositions.

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1 On June 17, 2014, at 1:30 p.m. in Courtroom 220A, the Court heard argument on both
2 motions. PRC was represented by Robert Torres. Hotel Riviera was represented by Mark Scoggins.

3 **III. HOTEL RIVIERA’S MOTION TO STRIKE**

4 A party may file a motion under Rule 12(f) of the Commonwealth Rules of Civil Procedure
5 to request that the court strike “any insufficient defense or any redundant, immaterial, impertinent,
6 or scandalous matter” from a pleading. NMI R. Civ. P. 12(f). Rule 12(f) applies to pleadings, not to
7 other motions, and not to legal arguments. *See, e.g. Hrubec v. Nat’l R.R. Passenger Corp.*, 829 F.
8 Supp. 1502, 1506 (N.D. Ill. 1993).¹ Although disfavored, at times courts allow a motion to strike
9 materials in summary judgment proceedings. *See, e.g., Kuntzman v. Wal-Mart*, 673 F. Supp. 2d
10 690, 695-96 (N.D. Ind. 2009). However, the proper way to oppose inappropriate or irrelevant
11 argument is through counterargument, not by filing a motion to strike under Rule 12(f). *See Morita*
12 *v. Scuba World, Inc.*, Civ. No. 07-0248 (NMI Super. Ct. Sept. 21, 2009) (Order Denying Defendant
13 PADI America’s Motion for Summary Judgment at 6-7).

14 As described above, instead of filing a timely opposition to PRC’s motion, Hotel Riviera
15 filed a motion to strike PRC’s entire motion under Rule 12(f). Such a request does not comply with
16 the Commonwealth Rules of Civil Procedure. Accordingly, the Court denies Hotel Riviera’s
17 Motion to Strike.

18 **IV. PRC’S MOTION FOR DECLARATORY JUDGMENT**

19 The Court has authority to issue a declaratory judgment, “in a case of actual controversy
20 within its jurisdiction . . . upon the filing of an appropriate pleading.” 7 CMC § 2421. To obtain a
21 declaratory judgment, the requesting party must follow the general procedures governing civil
22 actions outlined in the Commonwealth Rules of Civil Procedure. NMI R. Civ. P. 57 (“The

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24 ¹ The Commonwealth Rules of Civil Procedure are modeled after the Federal Rules of Civil Procedure, making federal case law interpreting those rules instructive. *Commonwealth Dev. Auth. v. Camacho*, 2010 MP 19 ¶ 16.

1 procedure for obtaining a declaratory judgment pursuant to 7 CMC § 2421, shall be in accordance
2 with these rules. . .”). “A declaratory judgment or decree is one which simply declares the rights of
3 the parties or expresses the opinion of the court on a question of law, without ordering anything to
4 be done.” *Fusco v. Matsumoto*, 2011 MP 17 ¶ 23 n.6 (quoting *Rayphand v. Tenorio*, 2003 MP 12
5 ¶ 25). Such a declaration is available whether or not additional relief could be sought or is being
6 sought and may assist the parties in deciding whether to pursue additional litigation. *See* 7 CMC
7 § 2421. If further relief flows from the declaratory judgment, there must be notice to affected
8 parties and a hearing to determine whether such relief is appropriate. *Id.* A declaratory judgment is
9 not a tool to “try a controversy by piecemeal, to try particular issues without settling the entire
10 controversy, or to interfere with an action already instituted.” *Gamble-Skogmo, Inc. v. McNair*
11 *Realty Co.*, 98 F. Supp. 440, 443 (D. Mont. 1951) (interpreting the federal Declaratory Judgment
12 Act).²

13 In this case, the complaint filed by PRC and the Tenorios does not request declaratory relief.
14 Instead, PRC has requested a declaratory judgment by motion, nearly two years into the civil action,
15 and months before trial. Moreover, PRC does not simply request a declaration of rights, but also
16 seeks immediate eviction of Hotel Riviera. PRC cited several cases wherein lease termination and
17 eviction followed a declaratory judgment, but in each of those cases, the plaintiff, whether landlord
18 or tenant, brought a claim for declaratory judgment. *See, e.g., Fucile v. L.C.R. Dev. Ltd*, 102 A.D.3d
19 915 (N.Y. Sup. Ct. App. Div. 2013); *and Lakeview Collection Inc. v. Bank of America, N.A.* 942 F.
20 Supp. 2d 830 (N.D. Ill. 2013).

21 PRC’s motion does not comply with the Commonwealth Rules of Civil Procedure, which
22 require actions for declaratory judgment to be plead in the same manner as actions for other types of
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24 ² 7 CMC § 2421 is nearly identical to 28 U.S.C. § 2201, thus federal case law is instructive. *See Tudela v. Superior Court*, 2010 MP 6 ¶ 19.

1 relief. See NMI R. Civ. P. 57; and *Kam-Ko Bio-Pharm Trading Co. v. Mayne Pharma Inc.*, 560
2 F.3d 935, 943 (9th Cir. 2009) (“a party may not make a *motion* for declaratory relief, but rather, the
3 party must bring an *action* for declaratory judgment.”) (quoting *Int’l Bhd. of Teamsters v. E.*
4 *Conference of Teamsters*, 160 F.R.D. 452, 456 (S.D.N.Y. 1995)). Declaratory judgment is not a
5 special tool that exists outside the structure of established civil procedure to be raised at any time.
6 An action for declaratory judgment is an action like any other, and to obtain declaratory judgment,
7 one must obtain a judgment through one of the mechanisms provided in the Commonwealth Rules
8 of Civil Procedure, such as summary judgment, trial, or judgment as a matter of law. See NMI R.
9 Civ. P. 50, 54, 56. Thus, the Court finds that a motion for declaratory judgment is procedurally
10 improper.

11 PRC argues that the Court has the authority to grant declaratory relief even though PRC did
12 not include a claim for declaratory judgment in its complaint. It is true that “[e]ven where
13 declaratory relief is not requested the courts may grant such relief where the pleading and proof
14 show such to be appropriate.” *Nemitz v. Norfolk & W.R. Co.*, 309 F. Supp. 575, 585 (D. Ohio 1969)
15 (citing *Katzenbach v. McClung*, 379 U.S. 294 (1964)). In the cases cited by PRC, in ruling upon
16 motions for summary judgment, the court exercised discretion in granting declaratory judgment in
17 situations where the interpretation of an ordinance or statute clarified other issues in the case. See
18 *Nemitz*, 309 F. Supp. at 580; *Schultz v. Kelly*, 188 F. Supp. 2d 38, 42 (D. Mass 2002); and *Fordyce*
19 *v. City of Seattle*, 55 F.3d 436, 442 (9th Cir. 1995) (vacating unrequested declaratory judgment not
20 because it was unrequested, but because the state attorney general was not given notice of
21 constitutional issue).

22 The situation in this case is different, both procedurally and substantively. PRC asks the
23 Court to issue a final judgment on several factual issues, not for interpretation of an ordinance or
24 statute. A final judgment on these issues of fact would not clarify the issues underlying the

1 remaining claims. And, as described above, PRC’s motion for final judgment is made outside of the
2 established procedural framework, in effect, both instituting and requesting final judgment on a
3 mini-action within the pending action. Unlike the cases cited, the issue of declaratory relief does not
4 come before the Court through summary judgment proceedings, or at any other juncture in which
5 final judgment is proper. Instead, the declaratory judgment motion here is inappropriate because it
6 “interfere[s] with an action already instituted.” See *Gamble-Skogmo*, 98 F. Supp. at 443.

7 Accordingly, the Court denies PRC’s Motion for Declaratory Judgment.

8 **V. CONCLUSION**

9 In accordance with the analysis above, Hotel Riviera’s Motion to Strike is **DENIED**, and
10 PRC’s Motion for Declaratory Judgment is **DENIED**.

11 **IT IS SO ORDERED** this 8th day of August, 2014.

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 /s/
15 JOSEPH N. CAMACHO
 Associate Judge
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