



By Order of the Court, Judge Joseph N. Camacho

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**FOR PUBLICATION**



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**CNMI SUPERIOR COURT**  
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N/A

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

<b>DR. ALAN STUART MARKOFF, DDS,</b>	)	<b>CIVIL ACTION NO. 13-0075</b>
<b>dba Toothworks,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>FINDINGS OF FACT AND</b>
	)	<b>CONCLUSIONS OF LAW THAT</b>
<b>v.</b>	)	<b>DEFENDANT JUAN TUDELA LIZAMA</b>
	)	<b>BREACHED A CONTRACT BY FAILING</b>
<b>LIZAMA, JUAN TUDELA</b>	)	<b>TO PAY FOR DENTAL WORK HE</b>
	)	<b>ORDERED PERFORMED ON A FAMILY</b>
<b>Defendant.</b>	)	<b>MEMBER</b>
	)	

**I. INTRODUCTION**

This matter came before the Court for a bench trial on December 30, 2014 in Courtroom 220A. Plaintiff Dr. Alan Stuart Markoff, DDS, dba Toothworks (“Plaintiff”) was present and represented by Michael A. White. Defendant Juan Tudela Lizama (“Defendant Lizama”) was present and represented himself.<sup>1</sup> Robert Myers made a limited appearance, also representing Juan Tudela Lizama.

Plaintiff alleges a breach of contract related to dental work performed by Plaintiff on Defendant Lizama’s brother, Antonio Lizama. Plaintiff argues that Defendant Lizama promised to pay for Antonio Lizama’s dental care and later refused to make payments beyond a single \$1,000 payment made on August 30, 2012.

<sup>1</sup> Defendant Lizama is an attorney and former Commonwealth Superior Court Judge. *Judiciary of the Northern Mariana Islands: Former Judges*, [http://www.justice.gov.mp/uploads/former\\_judges\\_page2.pdf](http://www.justice.gov.mp/uploads/former_judges_page2.pdf).

1 **II. FINDINGS OF FACT**

2 At the December 30, 2014 bench trial, the Court heard testimony from the parties. The  
3 Court also heard testimony from the following witnesses: Dr. Caroline Galanza Marzan and Ruth  
4 Munoz Deleon. Dr. Marzan is a dentist working at the Plaintiff’s clinic, while Ms. Deleon is the  
5 clinic’s accountant. Based on the evidence presented at trial and the facts admitted in the pleadings,  
6 the Court finds that the following facts were established by a preponderance of the evidence.

7 The parties first became acquainted through their work with the Northern Marianas College  
8 Foundation (“NMC Foundation”). In June 2012, the parties dined together at the Hyatt. While at the  
9 Hyatt, they discussed a range of topics, which included the condition of Defendant Lizama’s  
10 brother’s teeth.<sup>2</sup>

11 On June 12, 2012, Defendant Lizama’s brother, Antonio Lizama, went to the Plaintiff’s  
12 clinic to have a dental exam. The Plaintiff’s clinic prepared a treatment proposal for Antonio  
13 Lizama, dated June 18, 2012. On June 19, 2012, Defendant Lizama met with the Plaintiff and Dr.  
14 Marzan to discuss Antonio Lizama’s treatment proposal. At this June 19 meeting, Defendant  
15 Lizama promised to take care of his brother – reflected in Antonio Lizama’s patient chart, where  
16 Defendant Lizama is quoted as saying “Take care of my brother. He doesn’t have any money and I  
17 will pay for it.” Plaintiff suggested that Antonio Lizama go to Guam for a cone beam x-ray to  
18 determine if he would be a candidate for dental implants.

19 On June 27, 2012, Antonio Lizama informed the Plaintiff that he would not be able to go to  
20 Guam for the cone beam x-ray, as he did not have the funds to pay for it. The Plaintiff added the  
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23 <sup>2</sup> Defendant Lizama claimed that the purpose of the Hyatt meeting seemed to be “luring” him, and that the main focus  
24 of the meeting was discussing the Defendant’s sister, Esther Muna, who is the Chief Executive Officer of the  
Commonwealth Health Center. The Court notes that it is possible to discuss more than one topic over the course of a  
meal.

1 cost of the x-ray to Antonio Lizama's bill, allowing him to have the x-ray in Guam without paying  
2 the dentist in Guam up front. Antonio Lizama underwent the cone beam x-ray on June 29, 2012.

3 On July 10, 2012, the Plaintiff met with Defendant Lizama again, first at the Hyatt and later  
4 at the clinic, to discuss Antonio Lizama's dental care. Defendant Lizama told the Plaintiff to "keep  
5 it simple," when they discussed potential implants for Antonio Lizama. Defendant Lizama then  
6 went on to say, "Just remove the teeth and the infection and make him a set of dentures and I will  
7 be responsible. He has no money and this is the right thing to do for my brother." At this point,  
8 Plaintiff commenced dental work on Antonio Lizama.

9 On August 23, 2012, a statement for Antonio Lizama's treatment was sent to Defendant  
10 Lizama, with a balance of \$6,381. On August 30, 2012, Defendant Lizama was at the Plaintiff's  
11 office. Defendant Lizama claims that he was only at the clinic to discuss NMC Foundation  
12 business. There is an email from August 30, 2012 from the Plaintiff indicating that Defendant  
13 Lizama was in his office at 4:30 p.m. discussing NMC Foundation business. That same day, at 4:36  
14 p.m., Defendant Lizama made a \$1,000 payment on Antonio Lizama's account.<sup>3</sup> Defendant Lizama  
15 discussed a potential payment plan for the remainder of Antonio Lizama's account with Ms.  
16 Deleon, the clinic's accountant.

17 On September 1, 2012, the Plaintiff emailed Defendant Lizama to inform him that the  
18 Plaintiff's clinic will not allow Antonio Lizama's account to be paid on installments. There was no  
19 evidence provided to the Court to indicate that Defendant Lizama ever responded to this email. On  
20 September 21, 2012, the Plaintiff sent Defendant Lizama an additional statement regarding Antonio

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22 <sup>3</sup> Defendant Lizama claims that it would be impossible for him to have been in the office on August 30, 2012 discussing  
23 **both** NMC Foundation business while also making a payment on Antonio Lizama's account. The Defendant indicated  
24 that, since this was impossible, the timestamp of August 30, 2012 on the Plaintiff's email must be a mistake based on an  
inaccurate time zone or date line setting. The Court notes that it is entirely possible to meet with the Plaintiff and make  
a payment to the Plaintiff's accountant at the same office visit – these are not tasks so complex that they require  
separate trips.

1 Lizama’s dental work, with a balance of \$5,381, which reflected Defendant Lizama’s \$1000  
2 payment on August 30. On November 8, 2012, the Plaintiff sent Defendant Lizama a letter  
3 demanding payment. No additional payments beyond the initial \$1,000 were made.  
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### 5 III. CONCLUSIONS OF LAW

#### 6 1. There Is a Valid Contract Between the Plaintiff and Defendant Lizama Regarding 7 Antonio Lizama’s Dental Care

8 When there is no statutory authority in the Commonwealth, courts turn to the restatements  
9 of law from the American Law Institute. 7 CMC § 3401. “In many jurisdictions, statutory authority  
10 governs the enforceability of contracts. In the absence of such statutory authority, we must look to  
11 the common law as expressed in the Restatement of Contracts. *Isla Financial Services v. Sablan*,  
12 2001 MP 21 ¶ 12.

13 The elements of a contract are offer, acceptance, and consideration. *Isla Financial Services*  
14 *v. Sablan*, 2001 MP 21 ¶ 13 (citing Restatement (Second) of Contracts § 17 (1981)). To form a  
15 valid contract, there must be “a bargain in which there is a manifestation of mutual assent to the  
16 exchange and a consideration.” Restatement (Second) of Contracts § 17 (1981).

17 To prove a breach of contract claim, Plaintiff must: (1) establish an enforceable contract  
18 between himself and Defendant Lizama; (2) a failure to perform by Defendant Lizama; and (3)  
19 damages. *Salty Saipan Corporation v. Shakir*, Civ. No. 11-0082 (NMI Super. Ct. Dec. 22, 2014)  
20 (Findings of Fact and Conclusions of Law at 24-25) (citing *PRC LLC v. Chang Shin Resort Corp.*,  
21 Civ. No. 12-0163 (NMI Super. Ct. Mar. 8, 2013) (Order Granting in Part and Denying in Part  
22 Plaintiffs’ Motion for Summary Judgment at 4); *Fujie v. Atalig*, Civ. No. 10-0131 (NMI Super. Ct.  
23 Feb. 3, 2011) (Order Denying Defendant’s Motion to Dismiss at 4).  
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1                                   **a. There Was Mutual Assent Between the Two Parties**

2                   For there to be a valid contract, there must be mutual assent, or a “meeting of the minds.”  
3 Restatement (Second) of Contracts § 17 (1981). “Manifestation of mutual assent to an exchange  
4 requires that each party either make a promise or begin or render a performance.” Restatement  
5 (Second) of Contracts § 18 (1981). Based on the testimony and evidence provided at trial, the  
6 parties did agree that the Plaintiff would provide dental care for Antonio Lizama and that Defendant  
7 Lizama would pay for this care. In particular, at the June 19, 2012 meeting, Defendant Lizama  
8 reviewed the Plaintiff’s treatment proposal and agreed to pay for the costs of the dental care. This  
9 promise to pay is reflected both in Antonio Lizama’s patient chart and is corroborated by Dr.  
10 Marzan testimony, who was present at the June 19, 2012 meeting. There was a mutually agreed  
11 upon plan to take care of Antonio Lizama’s teeth – the Plaintiff would provide dental work, while  
12 Defendant Lizama would pay the account.

13                   At trial, Defendant Lizama claimed that the Plaintiff was “luring” him into the dental work  
14 situation. Defendant Lizama further implied that he was only speaking with the Plaintiff regarding  
15 the NMC Foundation business and Esther Muna, Defendant Lizama’s sister. Defendant Lizama  
16 claims that he had made no promise to pay. Despite this, Defendant Lizama met with the Plaintiff  
17 more than once to discuss Antonio Lizama’s dental care, and indicated on June 19, 2012 that  
18 Defendant Lizama would pay for Antonio Lizama’s dental care. The Court finds that Defendant  
19 Lizama’s testimony lacks credibility, especially because of Defendant Lizama’s circular and  
20 evasive answers to questions while on the witness stand.

21                   Based on the testimony and evidence provided at trial, Defendant Lizama did ask the  
22 Plaintiff to look at Antonio Lizama’s teeth. Defendant Lizama also offered to cover the bill for  
23 Antonio Lizama’s dental care. In return, the Plaintiff agreed to provide dental care to Antonio  
24 Lizama.

1                                   **b. There Was Bargained-for Consideration**

2                   In addition to offer and acceptance, consideration is required for a valid contract. *Isla*, 2001  
3 MP 21 ¶ 13 (citing Restatement (Second) of Contracts § 17 (1981)). Consideration is the exchange  
4 of a bargained-for performance or promise. Restatement (Second) of Contracts § 71 (1981). “It  
5 matters not from whom the consideration moves or to whom it goes. If it is bargained for and given  
6 in exchange for the promise, the promise is not gratuitous. *Id.* at § 71 cmt. e. For instance, if A  
7 promises to pay B in exchange for B performing a service for C, B’s performance is consideration  
8 for A’s promise. *See id.* at § 71 cmt. e, illus. 14. A personal benefit to a party who makes a promise  
9 is simply not required for valid consideration.

10                   “The existing debt of a third person, even a spouse or other close relation is not regarded as  
11 sufficient consideration and does not give rise to a legal duty.” *Isla*, 2001 MP 21 ¶ 15. In *Isla*, a  
12 daughter agreed to pay her late mother’s loan, and she executed a promissory note to that effect. *Id.*  
13 at ¶ 8. The NMI Supreme Court held that there was no consideration for the daughter’s promise,  
14 and thus the promissory note was unenforceable, as there was no bargained-for consideration. *Id.* at  
15 ¶¶ 15, 17. In *Isla*, however, the daughter was agreeing to pay a *pre-existing* debt, rather than  
16 agreeing to pay a future debt on behalf of a third party. The present case is distinguishable from  
17 *Isla*, as Defendant Lizama was agreeing to pay for future work, rather than settling a past debt.

18                   In *Jing Yu Stephanson v. Teregeyo*, 2008 MP 13, the NMI Supreme Court further elaborated  
19 on the issue of consideration. In *Stephanson*, Stephanson forgave the debt of a third party in  
20 exchange for payments from Teregeyo. *Stephanson*, 2008 MP 13 ¶ 21. The Court in *Stephanson*  
21 distinguished *Isla*, stating that there was bargained for consideration, as “Stephanson’s attorney met  
22 multiple times with Teregeyo to negotiate an agreement.... The decision to eliminate the debt was  
23 bargained for, and it is not relevant that Teregeyo did not personally benefit from the bargain.” *Id.*

1 at ¶ 22. Thus, although Defendant Lizama does not personally benefit from the contract between  
2 himself and the Plaintiff, there is still bargained for consideration for their agreement.

3 In the present case, there was consideration for the agreement between the parties regarding  
4 Antonio Lizama’s dental care. The parties met on multiple occasions to discuss Antonio Lizama’s  
5 dental work, including on June 19, 2012, where Defendant Lizama discussed the proposed dental  
6 work and indicated that he would be financially responsible for the work. Although Defendant  
7 Lizama does not personally benefit from the bargain, there is still valid consideration, as this  
8 contract is **not** related to a pre-existing debt.

9 **2. Defendant Lizama Breached the Contract When He Failed to Pay Antonio**  
10 **Lizama’s Account in Full**

11 “[W]hen performance of a duty under a contract is due any non-performance is a breach.”  
12 *Triple J Saipan, Inc., dba Triple J Motors v. Agulto*, 2002 MP 11 ¶ 9 (quoting *Reyes v. Ebeteur*, 2  
13 NMI 418, 429 (1992)). As there is a valid contract between the parties, and as the work on Antonio  
14 Lizama’s teeth was completed, Defendant Lizama must pay the remaining balance on the bill.

15 There is no evidence that Plaintiff’s work on Antonio Lizama’s teeth was defective in any  
16 way. Defendant Lizama claims that he is not responsible for the balance due on Antonio Lizama’s  
17 account. The Court finds that Defendant Lizama contradicts himself, because on August 30, 2012  
18 Defendant Lizama went to the Plaintiff’s office and paid \$1000 on an account that Defendant  
19 Lizama claims he does not owe. Thus, this Court finds that Defendant Lizama promised to pay for  
20 Antonio Lizama’s dental care, that the dental work was performed, and that Defendant Lizama  
21 failed to make full payment, thus breaching the agreement that Defendant Lizama made with the  
22 Plaintiff.  
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