



FOR PUBLICATION



E-FILED
CNMI SUPERIOR COURT
E-filed: Mar 03 2017 08:09AM
Clerk Review: N/A
Filing ID: 60283315
Case Number: 16-0232-CV
N/A

By order of the Court, Presiding Judge Roberto C. Naraja

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

ANAKS INVESTORS, LLC,)	CIVIL ACTION NO. 16-0232
)	
Plaintiff,)	
v.)	
)	WRITTEN DECISION IN REGARDS TO
)	DEFENDANTS' MOTION TO DISMISS
ANAKS OCEAN VIEW HILL SAIPAN)	
HOMEOWNER'S ASSOCIATION, LTD.)	
and the MANUEL S. AND LUISE P.)	
VILLAGOMEZ FAMILY TRUST,)	
)	
Defendants.)	
)	
)	
)	

I. INTRODUCTION

THIS MATTER came before the Court on February 22, 2017, at 2:00 p.m. in Courtroom 202A, for a hearing on Defendants' motion to dismiss pursuant to NMI R. Civ. P. 12(b)(6). Attorney Daniel Guidotti represented Plaintiff ANAKS Investors, LLC ("ANI"). Attorneys Jennifer Dockter and Mark Scoggins represented Defendant ANAKS Ocean View Hill Saipan Homeowner's Association, LTD. ("HOA"). Attorney Michael Evangelista represented Defendant Manuel S. and Luise P. Villagomez Family Trust ("Trust").

On February 24, 2017, the Court issued an order which: granted HOA and Trust's motion to dismiss as to the declaratory relief cause of action; quashed the preliminary injunction restraining Trust from transferring any interest in Lot EA 129-R1; and ordered that ANI's \$50,000 of security be released to it. *See ANAKS Investors, LLC v. ANAKS Ocean View Hill Saipan Homeowner's*

1 *Ass'n, LTD., et al.*, Civ. No. 16–0232 (NMI Super. Ct. Feb. 24, 2017) (Order Granting Defendants’
2 Motion to Dismiss as to Plaintiff’s Request for Declaratory Relief). In its February 24, 2017 order
3 the Court stated that a full written decision would follow.

4 **II. BACKGROUND**

5 On November 10, 2016, ANI filed its complaint requesting that the Court declare HOA’s
6 right of first refusal (“ROFR”) void ab initio pursuant to Article XII of the Commonwealth
7 Constitution. The ROFR provides that if Trust were to receive a bona fide offer to purchase the
8 reversion for Lot EA 129–R1 that HOA would have a year to match the offer. On December 6,
9 2016, ANI applied for a temporary restraining order (“TRO”), which was subsequently granted by
10 the Court. *See ANAKS Investors, LLC v. ANAKS Ocean View Hill Saipan Homeowner’s Ass’n,*
11 *LTD., et al.*, Civ. No. 16–0232 (NMI Super. Ct. Dec. 13, 2016) (Order Granting Plaintiff’s
12 Application for a Temporary Restraining Order). On December 19, 2016, HOA moved to dismiss
13 under NMI R. Civ. P. 12(b)(6).¹ On December 22, 2016, the Court heard arguments on the issue of
14 whether a preliminary injunction in favor of ANI should be granted. At the hearing, the Court
15 determined that ANI could carry its burden and the Court converted the TRO to a preliminary
16 injunction as provided for under NMI R. Civ. P. 65. On December 28, 2016, the Court issued its
17 order articulating the specific grounds for granting ANI’s request for a preliminary injunction. *See*
18 *ANAKS Investors, LLC v. ANAKS Ocean View Hill Saipan Homeowner’s Ass’n, LTD., et al.*, Civ.
19 No. 16–0232 (NMI Super. Ct. Dec. 28, 2016) (Order Granting Plaintiff’s Application for a
20 Preliminary Injunction). On February 22, 2017, the Court heard arguments on HOA and Trust’s
21 motion to dismiss² and on February 24, 2017 the Court issued an order granting HOA and Trust’s
22 motion. *See ANAKS Investors, LLC v. ANAKS Ocean View Hill Saipan Homeowner’s Ass’n, LTD.,*

23 ¹ On the same day, Trust joined HOA’s motion to dismiss.

24 ² Immediately prior to the hearing, ANI filed its first amended complaint adding a breach of contract claim against Trust alleging that Trust’s failure to convey Lot EA 129–R1 to ANI was a breach of the purchase and sales agreement between them.

1 *et al.*, Civ. No. 16–0232 (NMI Super. Ct. Feb. 24, 2017) (Order Granting Defendants’ Motion to
2 Dismiss as to Plaintiff’s Request for Declaratory Relief).

3 During the pendency of HOA and Trust’s motion to dismiss the Court has thoroughly
4 reviewed the record and the applicable law and has become persuaded that its tentative ruling as to
5 ANI’s ability to bring an implied constitutional cause of action warrants reconsideration. *See*
6 *ANAKS Investors, LLC v. ANAKS Ocean View Hill Saipan Homeowner’s Ass’n, LTD., et al.*, Civ.
7 No. 16–0232 (NMI Super. Ct. Dec. 28, 2016) (Order Granting Plaintiff’s Application for a
8 Preliminary Injunction at 7) (“At this time, the Court is inclined to agree with ANI’s reading of 2
9 CMC § 4991(a), i.e. only claims related to reclaiming property have a statute of limitations and that
10 this case deals with a party seeking to acquire an interest in property. Moreover, 2 CMC § 4991(a)
11 by its express terms as well as its findings and purpose suggests that until its passage there was no
12 limit as to Article XII claims.”). The Court’s rationale for revising its ruling is discussed below.

13 **III. LEGAL STANDARD**

14 A NMI R. Civ. P. 12(b)(6) motion tests the legal sufficiency of the claims asserted in a
15 complaint. *Camacho v. Micronesian Dev. Co.*, 2008 MP 8 ¶ 10. To survive a NMI R. Civ. P.
16 12(b)(6) motion to dismiss, a “complaint must contain either direct allegations on every material
17 point necessary to sustain a recovery on any legal theory, even though it may not be the theory
18 suggested or intended by the pleader, or contain allegations from which an inference fairly may be
19 drawn that evidence on these material points will be introduced at trial.” *In re Adoption of Magofna*,
20 1 NMI 449, 454 (1990) (citations omitted). This standard ensures that a pleading party pleads
21 enough direct and indirect allegations to provide “fair notice of the nature of the action.” *Syed v.*
22 *Mobil Oil Mariana Islands, Inc.*, 2012 MP 20 ¶ 19 (citing *Magofna*, 1 NMI at 454). In deciding a
23 motion to dismiss under NMI R. Civ. P. 12(b)(6), the court must assume as true all factual
24 allegations in the challenged pleading and construe them in a light most favorable to the non-

1 moving party. *Cepeda v. Hefner*, 3 NMI 121, 127–28 (1992); *Govendo v. Marianas Pub. Land*
2 *Corp.*, 2 NMI 482, 490 (1992).

3 IV. DISCUSSION

4 While HOA and Trust’s motion to dismiss raises a number of challenges³ to the ability of
5 ANI to bring its declaratory relief claim, the Court is satisfied that dismissal is appropriate for at
6 least two reasons: (A) ANI lacks authority to bring an implied constitutional cause of action under
7 Article XII and (B) even if ANI were allowed to bring an implied constitutional cause of action
8 under Article XII the statute of limitations has run.

9 A. ANI’s Ability to Bring an Implied Constitutional Cause of Action.

10 In this case, HOA and Trust argue that 2 CMC § 4991 restricts Article XII causes of action
11 to those that seek to reclaim property. Particularly, HOA and Trust contend that the statutory
12 history as well as the NMI Supreme Court’s case law suggests that with the passage of 2 CMC §§
13 4941–92 the Legislature effectively cut off the ability of a party to bring an implied constitutional
14 cause of action under Article XII. *See Roberto I*, 2003 MP at ¶ 25–6. ANI responds that prior to the
15 passage of 2 CMC §§ 4941–92 there was no limit to Article XII claims and that the statutory

16 ³ For the present motion to dismiss, the Court considers it unnecessary to wade into the issue of whether or not a limited
17 liability company (“LLC”), like ANI, can hold long term property interests under Article XII. The Court appreciates
18 HOA and Trusts argument that the plain meaning of Article XII says nothing of LLCs; the Constitution merely provides
19 for natural persons and corporations, which meet the requirements for Northern Marianas Descent (“NMD”) status.

20 The Court is of the position that to deprive LLCs of NMD status would invariably lead to absurd results and LLCs
21 should be read into Article XII much in the same way trusts have been. *See generally In re Estate of Roberto*, 2003 MP
22 16 ¶ 31 (hereinafter “*Roberto I*”). In *Roberto I*, the NMI Supreme Court assumed that a trust can hold Article XII
23 interests, which is in direct conflict with the plain unambiguous language of Article XII. *Id.* The NMI Supreme Court’s
24 willingness to imply, albeit by silence, that trusts are an appropriate vehicle to hold Article XII interests suggests that
the primary concern with Article XII is not a strictly textual reading of the constitutional provision. *Id.* Instead, the
primary judicial concern is to ensure that land is controlled by NMDs and as long as a business entity and/or other
legally created entity has characteristics that ensure NMD control then it is permissible under Article XII.

22 Additionally, the Court agrees with ANI that the lack of constitutional authority for LLCs is likely based on the fact that
23 when Article XII was drafted LLCs were not yet widely recognized by jurisdictions in the American political family.
Moreover, the Court is generally persuaded that LLCs have mechanisms that mirror the requirements of Article XII
§ 5, which suggests that, like trusts, they can hold Article XII interests.

24 Yet, for purposes of this case the Court does not find it necessary to make a definitive ruling and/or rely on the LLC
arguments raised by the parties because dismissal is appropriate on other more firmly rooted grounds.

1 framework only speaks to a narrow set of claims, i.e. actions to recover property. ANI contends that
2 it is not recovering property, but is instead seeking to acquire an Article XII interest in Lot EA 129–
3 R1. ANI argues that it has an unlimited capacity under Article XII to challenge the ROFR held by
4 HOA because the scheme in place does not speak to acquiring property. In its preliminary
5 injunction order the Court initially ruled in ANI’s favor as to the interplay between the statutory
6 scheme and Article XII. *See ANAKS Investors, LLC v. ANAKS Ocean View Hill Saipan*
7 *Homeowner’s Ass’n, LTD., et al.*, Civ. No. 16–0232 (NMI Super. Ct. Dec. 28, 2016) (Order
8 Granting Plaintiff’s Application for a Preliminary Injunction at 7). Yet, after further review the
9 Court is convinced that its decision should be reconsidered. The Court finds that ANI’s attempt to
10 bring an implied constitutional cause of action under Article XII is impermissible.

11 In the Commonwealth, when a court analyzes whether a party can bring an implied
12 constitutional cause of action the court must look first to the plain language of the Constitution. *See*
13 *Rayphand v. Tenorio*, 2003 MP 12 ¶¶ 19–37. If the terms of the Constitution explicitly provide a
14 private cause of action then there is little doubt that a private party can bring a claim as provided for
15 in the Constitution. *Id.* (discussing the plain textual authority for taxpayers to bring suit under
16 Article X § 9). If the Constitution is silent as to a private right of action, an action can be implied
17 where the express terms of the Constitution indicate that private rights of action were intended. *Id.*
18 at ¶¶ 26–37 (recognizing that a taxpayer suit could seek to recover misspent funds even though the
19 express terms of the Article X § 9 indicate that only suits to enjoin the expenditure of funds are
20 authorized). However, as a general rule, a person is barred from bringing an implied cause of action
21 under a constitutional provision when the Legislature has provided a statutory scheme. *See*
22 *Christian v. Northern Mariana Islands*, No. 1:14–CV–00010, 2015 WL 1943773, 21 (D. N. Mar. I.
23 Apr. 24, 2015) (citing *Sablan v. Tenorio*, 1996 MP 08 ¶ 26) (“a statutory cause of action subsumes
24 any action at law that a person might otherwise press under an implied constitutional cause of

1 action”); *see also Johnson v. Fitial*, No. 1:09–CV–000023, 2012 WL 12542689, 12 (D. N. Mar. I.
2 Sept. 26, 2012) (citing *Wilkie v. Robbins*, 551 U.S. 537, 555 (2007)). Essentially, if the Legislature
3 has codified a statutory scheme to enforce provisions of the Constitution then a person bringing an
4 implied claim is confined to the scheme provided.

5 Article XII § 6 discusses enforcement of Article XII’s mandate to ensure that long term
6 interests in land are only held by NMDs. Article XII § 6 provides in relevant parts: “[a]ny
7 transaction made in violation of Section 1 shall be void ab initio . . . [and] the legislature may enact
8 enforcement laws and procedures.” Article XII § 6 expressly empowers the Legislature to create a
9 statutory scheme governing when and how a person can bring an Article XII cause of action. The
10 plain language of Article XII § 6 seems to codify the general rule that implied causes of action
11 under Article XII are permissible, but that the Legislature has the power, vested by the Constitution
12 itself, to enact a scheme to govern enforcement. Once a statutory scheme is in place the ability of a
13 person to claim an implied Article XII action is eliminated because to allow otherwise would
14 effectively usurp the Legislature’s constitutional prerogative to define the contours of Article XII
15 private rights of action. *See generally Roberto I*, 2003 MP at ¶ 25 (discussing that the Legislature is
16 empowered to institute a binding statute of limitations in order to provide a degree of finality to real
17 estate transactions).

18 The NMI Supreme Court in the *Roberto* trilogy suggested that the statutory scheme enacted
19 by the Legislature in 1993, 2 CMC §§ 4941–92, is constitutional because Article XII § 6 by its plain
20 terms authorizes as much. *Roberto I*, 2003 MP at ¶25; *In re Estate of Roberto*, 2004 MP 7 ¶ 4
21 (hereinafter “*Roberto II*”); *In re Estate of Roberto*, 2010 MP 7 ¶ 21 (hereinafter “*Roberto III*”) In
22 *Roberto I*, the NMI Supreme Court ruled that the terms of 2 CMC § 4991 govern private rights of
23 action under Article XII. *Roberto II* and *Roberto III* both reaffirm the NMI Supreme Court’s belief
24

1 that 2 CMC § 4991 is likely constitutional and binding on all Article XII causes of action brought
2 by anyone aside from the Government. 2004 MP at ¶ 4; 2010 MP at ¶ 21. 2 CMC § 4991 provides:

3 (a) Notwithstanding any other provision of law, no action for the recovery of real
4 property, or of any interest in real property, brought pursuant to N.M.I. Const. art.
5 XII, shall be allowed or maintained unless it appears that the plaintiff, or his
6 ancestor, grantor, or other predecessor in title, was seized or possessed of the
7 property, or of the interest in property which he seeks to reclaim, within six years
8 before the commencement of the action.

9 (b) Except for an extension of time by fraudulent concealment as set forth at 7 CMC
10 § 2509, the time prescribed in this section for bringing an action is absolute, and
11 applies notwithstanding any disability or lack of knowledge on the part of the
12 plaintiff or any other person, or absence from the Commonwealth of the Northern
13 Mariana Islands of the plaintiff, or of any other person, and notwithstanding any
14 other provisions of law, including any provision for tolling a statute of limitation;
15 excepting that, for six months after October 29, 1993, the time limit prescribed in
16 this section shall be subject to the “grace period” exception outlined in 2 CMC §
17 4992.

18 (c) Nothing in this section shall extend the time for bringing an action, or revive any
19 right of action or interest in real property that would otherwise be expired or
20 unenforceable.

21 (d) The provisions of this section shall apply to every action that may be brought
22 pursuant to N.M.I. Const. art. XII for the recovery of land or of an interest in land,
23 whether the cause of action accrued before or after October 29, 1993, excepting
24 only: (1) Actions brought within the “grace period” set forth in 2 CMC § 4992, and
25 (2) Actions brought by the Commonwealth government. The Commonwealth
26 government shall not be affected by this statute of limitations.

27 In this case, ANI argues that it can bring an implied claim under Article XII because 2 CMC
28 § 4991 only speaks to actions to reclaim property and it is seeking to acquire an Article XII interest
29 in Lot EA 129–R1. In all of its submissions to the Court, ANI repeats over and over again that
30 because its conduct falls outside of 2 CMC § 4991 it is allowed to bring an implied claim. ANI also
31 argues that its implied claim is virtually unlimited in scope and application. Yet, in its submissions
32 to the Court, ANI failed to point the Court to even a single example of a party seeking to acquire a
33 parcel being allowed to bring an Article XII claim. The Court is not aware of a single example of a
34 party in ANI’s position being allowed to make an Article XII claim when they are seeking to

1 acquire ownership. In every example that the Court found a party was seeking to recover an interest
2 in land. Actually, the Court is aware of examples, such as *Guerrero, et al. v. Nansay Micronesia,*
3 *Inc., et al.*, Civ. No. 94-0388 (NMI Super. Ct. Mar. 4, 1996) (Summary Judgment Order), where
4 plaintiffs were found to lack standing because they did not own the property at issue, i.e. they were
5 not seeking to recover a property.

6 Additionally, the *Roberto I* court rejected the contention that parties have an unlimited
7 ability to make Article XII challenges. 2003 MP at ¶ 25. The NMI Supreme Court opined:

8 The Executor essentially contends that the “right of recovery” in the grantor never
9 expires. He argues that, because land sales to a non-NMD are constitutionally void
10 ab initio, the land must be returned upon challenge to the original grantors, no matter
11 how much time has passed since the “sale.” With regard to the Government, this is
12 unquestionably true. [footnote omitted] However, individuals are bound by the
13 Commonwealth’s statute of limitations on Article XII claims. This statute of
14 limitations bars claims under Article XII brought more than six years after the
15 plaintiff last had possession of the property. 2 CMC § 4991(a). The statute is
16 consistent with the Legislature’s power to “enact enforcement laws and procedures”
17 under Article XII § 6, and it serves the valuable purpose of assuring that all real
18 estate transactions have some finality. After the lapse of the statutory period, the
19 non-NMD becomes not only the only person or entity (except possibly the
20 Government) with the apparent right to possess the land, but also the sole person
21 who could assert such a right.

22 *Id.* A natural extension of *Roberto I* is that ANI’s distinction between actions to reclaim and actions
23 to acquire is irrelevant because it was the intention of the Legislature to restrict Article XII claims
24 to a 6 year statute of limitations so as to provide a degree of stability and finality for real estate
25 transactions. If the Court were to allow ANI’s claim to proceed it would have the effect of
26 swallowing the rationale for the 6 year statute of limitations because it would allow parties like ANI
27 to pop up years down the road to make Article XII challenges. Here, it has been over 25 years since
28 the allegedly impermissible transaction between HOA and Trust took place. To rule in ANI’s favor
29 would upset the careful balance that the Legislature instituted when it passed 2 CMC § 4991
30 because it would eviscerate the Legislature’s exercise of its Article XII § 6 powers. Such a

1 usurpation is likely unconstitutional because the language of Article XII vests the Legislature with a
2 unique authority to shape Article XII causes of action by private persons like ANI.

3 Finally, while it may or may not be true that before the passage of 2 CMC §§ 4941–92 a
4 person seeking to acquire a property could bring an Article XII claim, the statutory scheme now in
5 place suggests that such a claim is impermissible. Combining the explicit language of article XII,
6 “the legislature may enact enforcement laws and procedures,” with the general rule favoring
7 statutory schemes over implied constitutional causes of action it is evident that ANI’s declaratory
8 relief claim should be barred. When the Legislature sat down to write 2 CMC §§ 4941–92 the
9 Legislature could have provided a mechanism to cover parties like ANI, the Legislature did not do
10 so. Quite the opposite, the Legislature expressly identified actions to recover real property and
11 made no mention of parties seeking to acquire property. The Court sees no way to allow ANI’s
12 claim to proceed because it has not pointed the Court to even a single example of why it should
13 overcome the NMI Supreme Court’s rulings in the *Roberto* trilogy. While the NMI Supreme Court
14 has not directly addressed the acquire versus reclaim distinction raised by ANI, the NMI Supreme
15 Court has suggested that the passage of 2 CMC § 4991 signaled the death kneel of the implied
16 Article XII claim. *See Roberto I*, 2003 MP at ¶ 25 (“individuals are bound by the Commonwealth’s
17 statute of limitations on Article XII claims,” implying all Article XII claims are now brought by
18 statute and are not implied); *see also Roberto II*, 2004 MP at ¶ 4 (suggesting that with the passage
19 of 2 CMC § 4991 all Article XII claims were fundamentally altered in that they are now governed
20 by statute); *accord Roberto III*, 2010 MP at ¶ 21 (rearticulating the NMI Supreme Court’s tacit
21 recognition that 2 CMC § 4991 supplants implied constitutional causes of action). Absent an
22 unlimited implied constitutional cause of action, ANI’s claim is barred by the 6 year statute of
23 limitations. Based on the foregoing, the Court is persuaded that implied constitutional causes of
24

1 action are no longer recognized and even if they were recognized there is a 6 year statute of
2 limitations, which has long since run.

3 **B. Even if ANI is Permitted To Bring An Implied Constitutional Cause of Action its Claim is**
4 **Barred by the Statute of Limitations.**

5 Even if the Court is mistaken as to ANI's ability to bring an implied claim, ANI's request
6 for declaratory relief is nonetheless barred by the statute of limitations. For one, as already noted,
7 the NMI Supreme Court has ruled that all Article XII claims are governed by the 6 year statute of
8 limitations contained in 2 CMC § 4991. *See Roberto I*, 2003 MP at ¶ 25. The offending lease
9 provision placed at issue by ANI was entered into in 1988, which is over 25 years ago. On the face
10 of ANI's complaint it is clear that it is barred by the statute of limitations.

11 Yet, for the sake of argument, even if for some reason ANI is correct that 2 CMC § 4991 in
12 no way governs its claim, its claim would still be barred by the statute of limitations governing civil
13 actions generally. *See* 7 CMC § 2505. 7 CMC § 2505 provides:

14 All actions other than those covered in 7 CMC §§ 2502, 2503, and 2504 shall be
15 commenced within six years after the cause of action accrues or, in the case of
16 actions brought by or on behalf of the former Saipan Credit Union or its depositors,
shareholders, investors, or guarantors on account of their interest therein, within 10
years after the cause of action accrues.

17 Once again, this case relates to a transaction over 25 years ago, the standard 6 year statute of
18 limitations would also have run.

19 The only other provision that may be relevant to this case is 7 CMC § 2502, which provides:

20 (a) The following actions shall be commenced only within 20 years after the cause of
21 action accrues: (1) Actions upon a judgment. (2) Actions for the recovery of land or
any interest therein.

22 (b) If the cause of action first accrued to an ancestor or predecessor of the person
23 who presents the action, or to any other person under whom he or she claims, the 20
years shall be computed from the time when the cause of action first accrued.

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1 Yet, even under 7 CMC § 2502 ANI's claim would be barred because it has been more than 20
2 years. No matter how the Court cuts it ANI's claim is barred by the statute of limitations. The only
3 way the Court could find in favor of ANI would be if the Court blindly adopted ANI's completely
4 unsupported argument that it can bring an implied constitutional cause of action, which has
5 absolutely no limit.⁴ The Court simply is not empowered to, nor does it wish to, ignore the text of
6 Article XII, the statutory scheme passed by the Legislature, and the NMI Supreme Court's rulings
7 in this area. While ANI presents a novel challenge to HOA and Trust's transaction, ANI's request
8 for declaratory relief fails as a matter of law for the aforementioned reasons.

9 IV. CONCLUSION

10 Overall, the foregoing discussion is the Court's reasoning for its earlier ruling: granting
11 HOA and Trust's motion to dismiss; quashing the preliminary injunction; and releasing the security
12 paid by ANI. After reviewing all the submissions of the parties and the relevant law the Court is
13 convinced that ANI's declaratory relief claim cannot survive judicial inspection.

14 **IT IS SO ORDERED** this 3rd day of March, 2017.

15
16 /s/

17 **ROBERTO C. NARAJA**

18 Presiding Judge
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21 _____
22 ⁴ The Court notes that it is very disappointed by ANI's briefing to this point in the case. The Court has repeatedly asked
23 ANI to provide specific citations and reasoning for its pronouncements that it can bring an implied cause of action,
24 which is not governed by a statute of limitations. All ANI has done is point to the text of 2 CMC § 4991 and say "this
case has to do with acquiring not recovering." ANI's arguments on these issues have been devoid of any meaningful
analysis and have utterly failed to address the legitimate and ultimately dispositive arguments raised by HOA and Trust.
Moreover, the Court does not find the imprecise argument that before the passage 2 CMC § 4991 Article XII claims had
an unlimited scope to be extremely unpersuasive and actually seems to be in direct conflict with prior Article XII case
law.