



By Order of the Court, Judge Joseph N. Camacho

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

SECUNDINA UNTALAN PANGELINAN)	CIVIL ACTION NO. 17-0067
AND SELINA MARIE PANGELINAN,)	
)	ORDER DISMISSING DEFENDANT’S
Plaintiffs,)	COUNTERCLAIMS OF QUIET TITLE
)	AS BARRED BY RES JUDICATA; ABUSE
v.)	OF PROCESS SINCE THE
)	UNDERLYING LITIGATION IS STILL
JOHN SABLAN PANGELINAN,)	PENDING; AND LIBEL AS LIBEL
)	CANNOT ARISE OUT OF COURT
Defendant.)	FILINGS
)	
)	

I. INTRODUCTION

This matter came before the Court on October 27, 2017 on Defendant John Sablan Pangelinan’s Demand for Default Judgment and Plaintiffs’ Motion to Dismiss Defendant’s Counterclaim. Attorney Janet King appeared for the Plaintiffs, Secundina Untalan Pangelinan (“Secundina”) and Selina Marie Pangelinan (“Selina”). Defendant John Sablan Pangelinan (“Defendant Pangelinan”) appeared *pro se*. This order will address Plaintiffs’ Motion to Dismiss Defendant’s Counterclaim. Defendant Pangelinan’s Demand for Default Judgment was addressed in a previous order.¹

Based on a review of the filings, oral arguments, and applicable law, the Court makes the following order.

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¹ See *Pangelinan v. Pangelinan*, Civ. No. 17-0067 (NMI Super. Ct. April 5, 2018) (Order Denying Defendant’s Demand for Default Judgment as the Clerk of Court Did Not Make an Entry of Default).

1 **II. BACKGROUND**

2 Plaintiffs Secundina Untalan Pangelinan and Selena Marie Pangelinan filed their complaint
3 and demand for a jury trial on March 8, 2017, alleging two causes of action: abuse of process and
4 interference with contract. Defendant Pangelinan moved to dismiss both causes of action, and the
5 Court denied Defendant Pangelinan’s motion on July 19, 2017. *Pangelinan v. Pangelinan*, Civ. No.
6 17-0067 (NMI Super. Ct. Jul. 19, 2017) (Order Denying Defendant’s Motion to Dismiss as
7 Plaintiffs Have Alleged Sufficient Facts to Establish all the Elements of the Caused of Action of
8 Abuse of Process and Interference With Contract at 17).

9 Defendant Pangelinan filed his Answer and Counterclaim on July 24, 2017. Defendant
10 Pangelinan’s Answer and Counterclaim brought a quiet title action as to the ancestor’s lands² in
11 Norberto E. Pangelinan’s estate,³ abuse of process, and libel. On July 31, 2017, Defendant
12 Pangelinan filed his Answer and Amended Counterclaim, alleging the same three causes of action
13 as his initial Answer and Counterclaim.

14 On August 15, 2017, Defendant Pangelinan filed his Demand for Default Judgment,
15 claiming “the Clerk [of Court] entered on the docket plaintiffs’ ‘default’ on August 15, 2017.”
16 Demand for Default at 1. There is no record of an entry of default in this case. Further, there is no
17 record of Defendant Pangelinan filing a motion for entry of default. On September 15, 2017, the
18 Plaintiffs filed their Opposition to Defendant’s Demand for Default Judgment.

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² In his Amended Answer and Counterclaim, Defendant Pangelinan listed Lot No. 018 B 101, Lot No. 018 B 102, Lot
23 No. 018 B 67, Lot No. 018 B 68, Lot 018 B 69, Lot No. 018 B 58, Lot No. 018 B 29, Lot No. 018 B 27, Lot No. 018 B
24 No. 018 B 06, Lot No. 006 D 14, Lot No. 004 H 18, Lot No. 006 H 42, Prewar Lot No. 446, Prewar Lot No.
447, and Prewar Lot No. 448.

³ Norberto E. Pangelinan’s estate is filed with the court under Civ. No. 15-0169, and is currently on appeal to the
Commonwealth Supreme Court under case number 017-SCC-0010/0011-CIV.

1 On August 18, 2017, the Plaintiffs filed their Motion to Dismiss Defendant’s Counterclaim,
2 moving that the Court dismiss Defendant Pangelinan’s counterclaims for quiet title, abuse of
3 process, and libel. Defendant Pangelinan did not file an opposition.

4 Prior to the October 27, 2017 hearing date, Defendant Pangelinan filed a number of motions
5 to shorten time,⁴ which were denied at the October 27, 2017 hearing. At the October 27, 2017
6 hearing, the Court took under advisement Defendant Pangelinan’s Demand for Default Judgment
7 and the Plaintiff’s Motion to Dismiss Defendant’s Counterclaim.⁵ The Court denied Defendant
8 Pangelinan’s Demand for Default Judgment on April 5, 2018. *Pangelinan v. Pangelinan*, Civ. No.
9 17-0067 (NMI Super. Ct. April 5, 2018) (Order Denying Defendant’s Demand for Default
10 Judgment as the Clerk of Court Did Not Make an Entry of Default). The Court now turns to the
11 Plaintiff’s Motion to Dismiss Defendant’s Counterclaim.

12 III. LEGAL STANDARD

13 Under Rule 8(a) of the Commonwealth Rules of Civil Procedure, a pleading “shall contain .
14 . . a short and plain statement of the claim showing that the pleader is entitled to relief.” To comply
15 with Rule 8(a), the complaint must either “contain . . . direct allegations on every material point or
16 contain allegations from which an inference fairly may be drawn that evidence regarding these
17 necessary points will be introduced at trial.” *Atalig v. Mobil Oil Mariana Islands, Inc.*, 2013 MP 11

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19 ⁴ On August 28, 2017, Defendant Pangelinan filed his Rule 6(c), Com.R.Civ.P., Motion to Shorten Time for Hearing on
20 Defendant Pangelinan’s “Demand for Default Judgment” to a Date Much Sooner than the Date Set by the Court for
21 October 3, 2017 as Ordered on August 21, 2017. On September 24, 2017, Defendant Pangelinan filed his First
22 Amended Declaration of John S. Pangelinan in Support of Rule 6(c), Com.R.Civ.P., Motion to Shorten Time for
23 Hearing on Defendant Pangelinan’s “Demand for Default Judgment” to a Date Much Sooner than the Date Set by the
24 Court for October 3, 2017. On October 12, 2017, Defendant Pangelinan filed his Second Amended Declaration of John
S. Pangelinan in Support of Rule 6(c), Com.R.Civ.P., Motion to Shorten Time for Hearing on Defendant Pangelinan’s
“Demand for Default Judgment” to a Date Much Sooner than the Date Set by the Court on October 3, 2017 as Ordered
on August 21, 2017. On October 24, 2017, Defendant Pangelinan filed his Third Amended Declaration of John S.
Pangelinan in Support of Rule 6(c), Com.R.Civ.P., Motion to Shorten Time for Hearing on Defendant Pangelinan’s
“Demand for Default Judgment” to a date much sooner than the Date set by the Court for October 3, 2017 as Ordered
on August 21, 2017. These motions were all denied as moot at the October 27, 2017 hearing.

⁵ At the October 27, 2017 hearing, Defendant Pangelinan orally moved to strike the Plaintiffs’ Motion to Dismiss
Counterclaims, arguing that he was not properly served. The Court has already addressed how Defendant Pangelinan
may be served. *See Pangelinan v. Pangelinan*, Civ. No. 17-0067 (NMI Super. Ct. Jun. 8, 2017) (Order 1-2).

¶ 23 (quoting *In re Adoption of Magofna*, 1 NMI 449, 454 (1990)) (internal quotation marks omitted). Under Rule 12(b)(6), if a pleading fails to “state a claim upon which relieve can be granted,” the Court may dismiss those portions of the claim.

The plaintiff must plead “enough direct and indirect allegations to provide adverse parties with ‘fair notice of the nature of the action.’” *Syed v. Mobil Oil Mariana Islands, Inc.*, 2012 MP 20 ¶ 19. A pleading may not include claims that are purely speculative. *Atalig*, 2013 MP 11 ¶ 23. In examining the sufficiency of the pleading, the Court will construe the factual allegations “in the light most favorable to the [non-moving party].” *Id.* (quoting *Syed*, 2012 MP 20 ¶ 22).⁶ The Court will not “strain to find inferences favorable to the non-moving party.” *Id.* (quoting *Cepeda v. Hefner*, 3 NMI 121, 127 (1992)). The Court notes that if matters outside the pleadings are considered on a Rule 12(b)(6) motion the motion shall be treated as one for summary judgment under Rule 56. *See* NMI R. Civ. P. 12(b).

IV. DISCUSSION

The Plaintiffs argue (1) that Defendant Pangelinan’s quiet title claim is barred by res judicata, (2) that Defendant Pangelinan’s abuse of process counterclaim must be dismissed as underlying litigation is still pending, and (3) that Defendant Pangelinan’s libel claim must be dismissed as libel cannot arise out of court filings. The Court will address each of these arguments in turn.

A. Quiet Title

The Plaintiffs argue that Defendant Pangelinan’s quiet title claim must be dismissed as it is barred by res judicata. “A motion to dismiss under Rule 12(b)(6) cannot be granted based upon an affirmative defense unless that ‘defense raises no disputed issues of fact.’” *Tatung Co. v. Shu Tze*

⁶ The Court also notes that the Commonwealth Supreme Court has expressly rejected the *Twombly/Iqbal* pleading standard relied upon by Defendant Pangelinan. *Syed v. Mobil Oil Marianas*, 2012 MP 20 ¶ 11 (citing *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554 (2007)).

1 *Hu*, 43 F.Supp. 3d 1036, 1057 (C.D. Cal. 2014) (quoting *Scott v. Kuhlmann*, 746 F.2d 1377, 1378
2 (9th Cir. 1984)). Generally, “[a] complaint need not anticipate every defense and accordingly need
3 not plead every response to a potential defense.” *Memphis, Tenn. Area Local, Am. Postal Workers*
4 *Union v. City of Memphis*, 361 F.3d 898, 902 (6th Cir. 2004). However, if the party “effectively
5 pleads [himself] out of court by alleging facts that are sufficient to establish the defense,” the
6 affirmative defense may be raised in a Rule 12(b)(6) motion to dismiss. *Hollander v. Brown*, 457
7 F.3d 688, 691 n.1 (7th Cir. 2006). “[A] motion to dismiss may be granted based upon an affirmative
8 defense where the complaint’s allegations, with all inferences drawn in the Plaintiff’s favor,” or in
9 this situation, the Defendant’s favor, as these are counterclaims, “nonetheless show that the
10 affirmative defense ‘is apparent on the face of the complaint.’” *Tatung Co.*, 43 F.Supp. at 1057
11 (citing *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 969 (9th Cir. 2010)).

12 Res judicata is an affirmative defense under Rule 8(c); however, res judicata may at times
13 be raised in either an answer or a motion to dismiss. NMI R. Civ. P. 8(c) (“In pleading to a
14 preceding pleading, a party shall set forth affirmatively . . . res judicata.”); *Williams v. Murdoch*,
15 330 F.2d 745, 749 (3rd Cir. 1964) (“[T]he defense of res judicata might be raised by [motion] to
16 dismiss or by an answer.”). Res judicata may be considered under Rule 12(b)(6) “when the
17 elements of res judicata are apparent on the face of the pleadings.” *Murry v. General Services*
18 *Administration*, 553 Fed. Appx. 362, 364 (5th Cir. 2014).

19 Res judicata may be considered in a motion to dismiss “when the prior litigation is plain
20 from the face of the complaint and the party properly requests the court to take judicial notice of
21 prior proceedings.” *Seminole Tribe of Fla. v. State*, 202 So.3d 971, 973 (Fla. Ct. App. 2016)
22 (citations omitted) (emphasis omitted). Thus, before determining whether Defendant Pangelinan’s
23 quiet title claim is barred by res judicata, the Court must first determine whether the Plaintiffs have
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1 properly requested judicial notice of the prior case, and whether “the prior litigation is plain from
2 the face of the complaint.” *Id.*⁷

3 **1. The Plaintiffs have Properly Requested Judicial Notice of the Prior Case**

4 The Plaintiffs argue that Defendant Pangelinan is attempting to re-litigate the claims
5 adjudicated in Civ. No. 15-0169, *In Re Estate of Norberto Eduardo Pangelinan* (“the probate
6 case”), and asked the Court to take judicial notice of the probate case. Mot. to Dismiss
7 Counterclaims at 5-7. In a Rule 12(b)(6) motion, the Court may consider “documents incorporated
8 into the complaint by reference, and matters of which a court may take judicial notice.” *Tellabs,*
9 *Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (comparing sources considered by
10 courts in Rule 12(b)(6) motions to those considered in evaluating securities fraud complaints). The
11 Court “can only take judicial notice of facts that are free of reasonable dispute because the facts are
12 generally known or capable of accurate and ready determination by resort [sic] to sources whose
13 accuracy cannot reasonably be questioned.” *Commonwealth v. Taman*, 2014 MP 8 ¶ 35 (citing NMI
14 R. Evid. 201(b); *In re Yana and Atalig*, 2014 MP 1 ¶ 19) (internal quotation marks omitted). The
15 Probate Court’s orders in the probate case are the kind of facts that “can be accurately and readily
16 determined from sources whose accuracy cannot reasonably be questioned,” since those orders are a
17 part of the Court’s records. NMI R. Evid. 201(b)(2). Thus, the Court will take judicial notice of the
18 Probate Court’s orders in the probate case. Since “the prior litigation is plain from the face of the
19 complaint and the party properly requests the court to take judicial notice of prior proceedings,” the
20 Court will now turn to whether Defendant Pangelinan’s quiet title claim is barred by res judicata.
21 *See Seminole Tribe of Fla. v. State*, 202 So.3d at 973 (citations omitted) (emphasis omitted).

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24 ⁷ Although *Seminole Tribe of Florida* addressed whether the prior litigation was plain from the face of the complaint prior to addressing judicial notice of the prior litigation, for the sake of simplicity the Court will address these prongs in the opposite order—otherwise, the Court will be referencing litigation that it had not yet taken judicial notice of.

1 **2. The Prior Litigation is Plain from the Face of the Complaint**

2 Now, the Court will turn to whether the probate case is plain from the face of the complaint.
3 In *Seminole Tribe of Florida*, “the Tribe had mentioned the prior case history between the parties in
4 its complaint . . . and did not oppose the Department’s motion for judicial notice,” thus “[t]he trial
5 court properly considered the Department’s res judicata argument in its motion to dismiss.” 202
6 So.3d at 973. Here, Defendant Pangelinan’s Amended Answer and Counterclaim mentions the
7 probate case multiple times and thus the probate case’s existence is apparent from the face of
8 Defendant Pangelinan’s Amended Answer and Counterclaim. Amended Answer and Counterclaim
9 ¶¶ 4, 12, 17, 19, 37. Thus, since the Court has taken judicial notice of the probate case *and* the
10 probate case is plainly discussed numerous times in Defendant Pangelinan’s Amended Answer and
11 Counterclaim, the Court may now consider whether Defendant Pangelinan’s quiet title claim is
12 barred by res judicata.

13 **3. Defendant Pangelinan’s Quiet Title Action is Barred by Res Judicata**

14 The Court will now turn to whether Defendant Pangelinan’s quiet title action is barred by
15 res judicata. “Under res judicata, a final judgment on the merits of an action precludes the parties or
16 their privies from relitigating issues that were or could have been raised in that action.” *Santos v.*
17 *Santos*, 4 NMI 206, 209 (1994) (citation omitted). “[A] valid judgment extinguishes all rights of a
18 plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series
19 of connected transactions, out of which the action arose, including remedies or forms of relief not
20 demanded in the first action.” *Marianas Pub. Land Corp. v. Kan Pac. Saipan, Ltd.*, 1 NMI 431, 437
21 (1990). “[P]robate judgments are actually afforded a greater degree of finality than regular
22 judgments.” *In re Estate of Hillblom*, 2011 MP 5 ¶ 14 (citation omitted).

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1 The Commonwealth Supreme Court has stated that res judicata:

2 [P]rovides that when a court of competent jurisdiction has entered a final judgment
3 on the merits of a cause of action, the parties to the suit and their privies are
4 thereafter bound not only as to every matter which was offered and received to
sustain or defeat the claim or demand, but as to any other admissible matter which
might have been offered for that purpose.

5 *Id.* at ¶ 20 (quoting *Commissioner v. Sunnen*, 333 U.S. 591, 597 (1948)). In other words, res
6 judicata applies where there has been a final judgment on the merits, both actions involve the same
7 parties or their privies, and the claims were or could have been raised in the prior action. *Id.*;
8 *Santos*, 4 NMI at 209.

9 First, the Court will look to whether there was a final judgment on the merits in the probate
10 case. In the probate case, the Probate Court found that Defendant Pangelinan was not a claimant or
11 heir to the Estate of Norberto Eduardo Pangelinan, and made a Decree of Final Distribution
12 distributing the properties of the estate to the heirs, Secundina Untalan Pangelinan and Selina Marie
13 Pangelinan, the Plaintiffs in the present case. *In re Estate of Norberto Eduardo Pangelinan*, Civ.
14 No. 15-0169 (NMI Super. Ct. Dec. 19, 2016) (Decree of Final Distribution); *In re Estate of*
15 *Norberto Eduardo Pangelinan*, Civ. No. 15-0169 (NMI Super. Ct. Dec. 19, 2016) (Order
16 Determining Heir and Approving the Lease and Sale of Real Property); *In re Estate of Norberto*
17 *Eduardo Pangelinan*, Civ. No. 15-0169 (NMI Super. Ct. Dec. 19, 2016) (Order Denying John S.
18 Pangelinan's Motions for Reconsideration). Defendant Pangelinan's arguments in the probate case
19 centered around whether the Plaintiffs were persons of Northern Marianas Descent who could
20 inherit real property from the estate. *In re Estate of Norberto Eduardo Pangelinan*, Civ. No. 15-
21 0169 (NMI Super. Ct. Sept. 20, 2016) (Order Denying Motion, Claim and Petition of John S.
22 Pangelinan, and Granting Estate's Motion to Dismiss Demands of John S. Pangelinan).

23 Defendant Pangelinan's quiet title claim argues that Norberto Eduardo Pangelinan and his
24 daughter, Selina Pangelinan, are not persons of Northern Marianas Descent, despite the fact that

1 these arguments were already rejected by the Probate Court in the probate case. Amended Answer
2 and Counterclaim ¶¶ 2, 6; *see generally* Amended Answer and Counterclaim ¶¶ 2-17. As there was
3 already a final judgment on this issue in the probate case, the first requirement for res judicata has
4 been satisfied. *See In re Estate of Norberto Eduardo Pangelinan*, Civ. No. 15-0169 (NMI Super.
5 Ct. Dec. 19, 2016) (Decree of Final Distribution); *In re Estate of Norberto Eduardo Pangelinan*,
6 Civ. No. 15-0169 (NMI Super. Ct. Dec. 19, 2016) (Order Determining Heir and Approving the
7 Lease and Sale of Real Property); *In re Estate of Norberto Eduardo Pangelinan*, Civ. No. 15-0169
8 (NMI Super. Ct. Dec. 19, 2016) (Order Denying John S. Pangelinan’s Motions for
9 Reconsideration.)

10 Second, the Court must look to whether both actions involve the same parties or their
11 privies. *In re Estate of Hillblom*, 2011 MP 5 ¶ 20. Defendant Pangelinan attempted to make a claim
12 on the Estate of Norberto Eduardo Pangelinan in the probate case, and the Plaintiffs were both heirs
13 to the Estate, thus the probate matter involved the same parties or their privies. *See In re Estate of*
14 *Norberto Eduardo Pangelinan*, Civ. No. 15-0169 (NMI Super. Ct. Dec. 19, 2016) (Order Denying
15 John S. Pangelinan’s Motions for Reconsideration).

16 Third, the Court must look to whether the claims were or could have been raised in the prior
17 action. *In re Estate of Hillblom*, 2011 MP 5 ¶ 20; *Santos*, 4 NMI at 209. Here, the exact issue of
18 whether Norberto Eduardo Pangelinan and his daughter Selina are persons of Northern Marianas
19 Descent was ruled upon by the Probate Court. *See In re Estate of Norberto Eduardo Pangelinan*,
20 Civ. No. 15-0169 (NMI Super. Ct. Dec. 19, 2016) (Order Denying John S. Pangelinan’s Motions
21 for Reconsideration); *In re Estate of Norberto Eduardo Pangelinan*, Civ. No. 15-0169 (NMI Super.
22 Ct. Sept. 20, 2016) (Order Denying Motion, Claim and Petition of John S. Pangelinan, and Granting
23 Estate’s Motion to Dismiss Demands of John S. Pangelinan). Accordingly, Defendant Pangelinan’s
24 quiet title claim is dismissed as barred by res judicata.

1 **B. Abuse of Process**

2 Defendant Pangelinan argues that he has a claim for abuse of process, since the Plaintiffs
3 allegedly brought the “present lawsuit for the sole purposes of stalling his appeals to the Supreme
4 Court and of bullying and forcing Defendant Pangelinan into settling his appeals.” Amended
5 Answer and Counterclaim ¶ 29. Essentially, Defendant Pangelinan argues that the present case, Civ.
6 No. 17-0067, is being used to stall his appeal in the probate case, which is currently on appeal to the
7 Commonwealth Supreme Court. The Plaintiffs argue that Defendant Pangelinan’s abuse of process
8 counterclaim must be dismissed as premature. Mot. to Dismiss Counterclaims at 14.

9 “Although abuse of process claims do not include favorable termination as an essential
10 element, the cause of action is still considered premature until the underlying litigation has been
11 completed.” *MacDermid, Inc. v. Leonetti*, 118 A.3d 158, 163 (Conn. App. 2015) (citation omitted).
12 The underlying cause of action “must be completed before a litigant may bring an abuse of process
13 claim.” *Giordano v. Claudio*, 714 F.Supp. 2d 508, 533 (E.D. Pa. 2010). “The assertion, by way of
14 counterclaim, that the underlying litigation as a whole constitutes an abuse of process fails to state a
15 claim which is ripe for adjudication. By definition, a lawsuit in its entirety cannot constitute an
16 abuse of process when it has not yet concluded.” *Id.* (quoting *Access Fin. Lending Corp. v.*
17 *Keystone State Mortgage Corp.*, Civ. A. No. 96-191, 1996 U.S. Dist. LEXIS 14073, 1996 WL
18 544425, at *5 and n.3 (W.D. Pa. Sept. 4, 1996)). The lawsuit alleged to be an abuse of process must
19 be completed so that “the factfinder can determine the primary reason for the use of allegedly
20 abusive process.” *Id.* (internal quotation marks omitted). Thus, Defendant Pangelinan’s abuse of
21 process counterclaim is not yet ripe, as the Court cannot yet determine whether the present case,
22 Civ. No. 17-0067, was instituted “primarily to accomplish a purpose for which [legal process] is not
23 designed.” RESTATEMENT (SECOND) OF TORTS § 682. Accordingly, Defendant Pangelinan’s abuse
24 of process claim is dismissed without prejudice.

1 **C. Libel**

2 The Plaintiffs argue that Defendant Pangelinan’s libel counterclaim is barred and must be
3 dismissed since defamation actions cannot arise out of judicial proceedings. Mot. to Dismiss
4 Counterclaims at 18. Under the Restatement (Second) of Torts,⁸

5 An attorney at law is absolutely privileged to publish defamatory matter concerning
6 another in communications preliminary to a proposed judicial proceeding, or in the
7 institution of, or during the course and part of, a judicial proceeding in which he
8 participates as counsel, if it has some relation to the proceeding.

9 RESTATEMENT (SECOND) OF TORTS § 586. Comment a. to Section 586 provides further clarification:

10 The publication of defamatory matter by an attorney is protected not only when
11 made in the institution of the proceedings or in the conduct of litigation before a
12 judicial tribunal, but in conferences and other communications preliminary to the
13 proceeding. The institution of a judicial proceeding includes *all pleadings and*
14 *affidavits necessary to set the judicial machinery in motion.* The conduct of the
15 litigation includes the examination and cross-examination of witnesses, comments
16 upon the evidence and arguments both oral and written upon the evidence, whether
17 made to court or jury.

18 RESTATEMENT (SECOND) OF TORTS § 586 cmt. a. (emphasis added).⁹

19 Defendant Pangelinan’s libel counterclaim alleges that the Plaintiffs’ lawsuit in the present
20 case falsely accused Defendant Pangelinan of abuse of process. Amended Answer and
21 Counterclaim ¶ 35. Defendant Pangelinan further alleges that the Plaintiffs “repeatedly and
22 maliciously badmouthed Defendant Pangelinan as a ‘vexatious litigant’ in their Complaint here and
23 in [sic] *Re Estate of Norberto E. Pangelinan.*” Amended Answer and Counterclaim ¶ 37. Defendant
24 Pangelinan alleges that the Plaintiffs caused *Marianas Variety News and Views* to publish
falsehoods about himself on May 8, 2017 and July 21, 2017, where counsel for the Plaintiff was

22 ⁸ When there is no statutory authority in the Commonwealth, courts turn to the restatements of law from the American
23 Law Institute. 7 CMC § 3401. Title 7, Section 3401 states that “the rules of the common law, as expressed in the
24 restatements of law approved by the American Law Institute and, to the extent not so expressed as generally understood
and applied in the United States, shall be the rules of decision in the courts of the Commonwealth.” 7 CMC § 3401.

⁹ This protection from libel suits must be balanced against the ABA Model Rules of Professional Responsibility, in particular Rule 3.3, Candor Toward the Tribunal.

1 quoted in the articles. Amended Answer and Counterclaim ¶ 38. Defendant Pangelinan argues that
2 the negative press caused him to lose purchase offers for his land and caused him emotional
3 distress. Amended Answer and Counterclaim ¶ 42.

4 The May 8, 2017 publication, attached to the Amended Answer and Counterclaim as
5 Exhibit A, is clearly drawing from the Plaintiffs’ complaint throughout the article. Ex. A
6 (“According to the complaint...”). Statements made by an attorney during the course of a case,
7 including “all pleadings and affidavits necessary to set the judicial machinery in motion,” are
8 absolutely privileged. RESTATEMENT (SECOND) OF TORTS § 586 cmt. a. Since Defendant
9 Pangelinan’s counterclaim clearly establishes the absolute defense against it, that the contents of a
10 complaint cannot be libelous, Defendant Pangelinan’s counterclaim for libel must be dismissed.

11 **V. CONCLUSION**

12 Defendant Pangelinan’s quiet title, abuse of process, and libel counterclaims are dismissed.
13 Accordingly, the Plaintiffs’ motion to dismiss is **GRANTED**.

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15 **IT IS SO ORDERED** this 5th day of April, 2018.

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17 _____ /s/
18 JOSEPH N. CAMACHO
19 Associate Judge
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