



By Order of the Court, DENIED *Judge Kenneth L. Govendo*

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CNMI SUPERIOR COURT

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

CONRAD M. SABLAN)	CIVIL ACTION NO.: 15-0175
)	
Plaintiff,)	ORDER DENYING
)	DEFENDANT CNMI'S MOTION
v.)	FOR SUMMARY JUDGMENT
)	
COMMONWEALTH UTILITIES)	
CORPORATION and)	
COMMONWEALTH OF THE NORTHERN)	
MARIANA ISLANDS,)	
)	
Defendants.)	

I. INTRODUCTION

THIS MATTER came before the Court on March 13, 2018 at 9 a.m. in Courtroom 205A for a hearing on a Motion for Summary Judgment by Defendant Commonwealth of the Northern Mariana Islands ("CNMI"). Attorney Brien Sers Nicholas represented the Plaintiff, Conrad M. Sablan ("Plaintiff"), who was present. Assistant Attorney General Christopher M. Timmons was present and represented Defendant CNMI. Attorney James S. Sirok was also present and represented Defendant Commonwealth Utilities Corporation ("CUC").

II. BACKGROUND

This case began October 28, 2015 when the Plaintiff filed a Complaint against Defendant CUC for the alleged trespass onto and taking of Plaintiff's real properties, Lots 22654-1 and 22654-

1 R2. In its answer, Defendant CUC claimed the CNMI as a necessary party to the case. Plaintiff
2 subsequently filed a First Amended Complaint (“FAC”) on September 5, 2016 against both CUC
3 and the CNMI. Plaintiff’s FAC, alleges: Count I: Trespass by Defendant CUC; and Count II: a
4 Constitutional Taking by Defendants CUC and the CNMI. Plaintiff brings an inverse condemnation
5 proceeding in order to recover just compensation for the unauthorized use and taking of his
6 properties.¹

7 Plaintiff alleges that he was and is the owner of two pieces of real properties located in
8 Rapugao, Saipan, Commonwealth of the Northern Mariana Islands at all relevant times. In October
9 2013, Plaintiff, in an effort to identify his exact property boundaries, caused to be prepared an “As-
10 Built” survey map of Tract Nos. 22654-1 and 22654-R2.² As a result of the survey, Plaintiff
11 discovered that Defendant CUC had constructed a water tank, commonly referred to as the Maui IV
12 Water Tank, on Tract No. 22654-R2. Plaintiff further discovered that Defendant CUC also
13 constructed wire fences that prevent Plaintiff from being able to access his other property, Track
14 No. 22654-1. The Maui IV Water Tank was constructed sometime before March 31, 1992,
15 evidenced by a Marianas Variety newspaper article. Plaintiff was aware of the water tank and
16 fences sometime after their construction, but was not aware they were on his land until the October
17 2013 “As Built” survey.

18 Plaintiff now brings Count I: Trespass by Defendant CUC, alleging that Defendant CUC’s
19 construction of the Maui IV Water Tank and wire fences on Plaintiff’s properties was done without

21 ¹ A government with eminent domain power may exercise that power to condemn private property and provide
22 compensation to the landowner; in contrast, an “inverse” or “reverse” condemnation proceeding arises from the
landowner’s attempt to receive compensation for a taking of property for public purposes when the government has not
brought formal condemnation proceedings.

23 ² The FAC originally identified Tract No. 22654-R2 as Tract No. 22654-R1. By oral stipulation at Plaintiff’s deposition,
24 Tract No. 22654-R1 was amended to Tract No. 22654-R2 (formerly part of the original Tract No. 22654-R1) and will
be referred to as such herein.

1 consent or authority from Plaintiff and constitute trespass. Upon discovering Defendant CUC's
2 trespass, Plaintiff unsuccessfully attempted to resolve the situation amicably. Plaintiff claims, as a
3 direct and proximate result of the Defendant CUC's trespass, he is denied and deprived of the full,
4 complete, and exclusive use and access to his real properties.

5 Plaintiff also brings Count II: Constitutional Taking by Defendants CUC and the CNMI.
6 Plaintiff alleges that the construction of the Maui IV Water Tank and wire fences on Plaintiff's
7 properties by Defendant CUC was done with the assistance and the consent of Defendant CNMI for
8 public purposes. Plaintiff maintains that the construction of the Maui IV Water Tank and wire
9 fences on Plaintiff's real properties constitute governmental takings, thus entitling Plaintiff to just
10 compensation. Defendants CUC and the CNMI continue to deny just compensation to Plaintiff for
11 the taking of his real properties.

12 On September 6, 2016, Defendant CUC filed an Answer to FAC; Affirmative Defenses; and
13 Crossclaim [against the CNMI]. Defendant CUC agrees that Plaintiff attempted to resolve the
14 matter with CUC and that said attempts were unsuccessful, but denies that CUC is trespassing on
15 said property or that Plaintiff is damaged by the alleged trespass. Defendant CUC agrees that
16 construction of the water tank and fences were done for public purposes as alleged, but denies that
17 the construction was done on the properties of Plaintiff. Finally, Defendant CUC agrees that it has
18 not provided the compensation Plaintiff seeks, but denies that CUC owes compensation to Plaintiff
19 or that it took Plaintiff's real properties as alleged in the FAC. As mentioned above, Defendant
20 CUC also brought a cross-claim against Defendant CNMI, which was dropped on September 12,
21 2017.

22 On September 28, 2016, Defendant CNMI filed its Answer to Plaintiff's FAC. The CNMI
23 denies that Plaintiff is entitled to recovery or relief whatsoever from either the CNMI or CUC.

1 On January 30, 2018, Defendant CNMI filed a Motion for Summary Judgment Pursuant to
2 Comm. R. Civ. Proc. 56 (c). Defendant CNMI makes this motion after taking the depositions of the
3 Plaintiff and all proposed witnesses. Defendant CNMI argues that there was no allegation of a
4 direct taking by the CNMI in Plaintiff's FAC, the CNMI has no vicarious liability for CUC's
5 actions,³ and that CUC has taken title to the disputed lot by adverse possession. On February 22,
6 2018, with Plaintiff's verbal consent, Defendant CUC filed an Amended Notice of Joinder in the
7 CNMI's Motion for Summary Judgment.⁴ Defendant CUC joins the CNMI's Motion for Summary
8 Judgment solely on the CNMI's argument that CUC acquired constructive title by adverse
9 possession to the portion of real property where Defendants have constructed and used the Maui IV
10 Water Tank.

11 Defendant CNMI attached a "Statement of Undisputed Facts" to its Motion for Summary
12 Judgment, which it claims demonstrates there is no genuine issue of material fact in dispute. The
13 CNMI summarizes the relevant facts as: CUC is an autonomous public corporation; which
14 constructed the Maui IV Water Tank and fences without any direct aid from the CNMI; CUC's
15 project was funded by the Department of Interior ("DOI") and CUC was given expenditure
16 authority under the grant; CUC independently contracted the whole process; and the CNMI gave no
17 authorization or consent nor did it have anything to do with site selection.

18 In its Motion for Summary Judgment, Defendant CNMI argues that Plaintiff's claims
19 against the CNMI fail as a matter of law because, at the close of discovery, there is no evidence that
20 the CNMI authorized or participated in any way in the construction of the Maui IV Water Tank or
21 fences. Defendant CNMI asserts that Plaintiff cannot point to a single witness with personal
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23 ³ Plaintiff never alleged that the CNMI had vicarious liability for CUC's actions, and this Court will not consider this
24 argument.

⁴ Amended due to other concerns not at issue here.

1 knowledge of facts to support his claims because those he identified testified to the contrary at
2 deposition. Defendant CNMI claims that all the evidence points to the Maui IV Water Tank project
3 being the product of the autonomous actions of Defendant CUC without input or control from the
4 central CNMI.

5 Finally, the CNMI claims Defendant CUC openly and notoriously occupied and used the
6 real property in question on an exclusive basis for the requisite time to establish title by adverse
7 possession. CUC agrees, and asserts its possession of said portion of real property was exclusive,
8 actual and uninterrupted, open and notorious, and hostile under a claim of right. Therefore, the
9 CNMI argues that even if this Court finds evidence that the CNMI authorized the Maui IV Water
10 Tank and fences, Plaintiff is not entitled to relief because Defendant CUC has acquired the
11 properties in question through adverse possession.

12 On February 14, 2018, Plaintiff filed an Opposition to Defendant CNMI's summary
13 judgment motion. Plaintiff alleges that the CNMI, by its own motion, has proven Plaintiff's case
14 because the Commonwealth "took" Plaintiff's lands as alleged in the FAC. Specifically, Plaintiff
15 believes that by arguing CUC adversely possessed Plaintiff's lands, the CNMI proved: Defendant
16 CUC is part of the Commonwealth; CUC constructed, on Plaintiff's land and without his consent, a
17 1,000,000 Maui IV Water Tank with the financial assistance from the DOI through the Executive
18 and the Legislative Branches of the Commonwealth; the Maui IV Tank was constructed for a
19 "public purpose" viz a viz to store water for use by the general public to include the Commonwealth
20 Health Center; the construction of the Maui IV Tank on Plaintiff's land constituted a taking; and
21 Plaintiff is therefore entitled to just compensation.

22 Plaintiff then submitted his own Statement of True Undisputed Material and Relevant Facts.
23 It puts forth the following: Plaintiff is the owner of the lands in question; CUC built the water tank

1 on Plaintiff's lands during Mr. Ramon Santos Guerrero's ["Guerrero"] tenure as the Executive
2 Director of CUC⁵; a great portion of the Maui IV Water Tank is situated on Tract No. 22654-R2
3 and a cyclone wire fence blocks Plaintiff's access to Tract No. 22654-1; the Maui IV Water Tank
4 was funded by grants from DOI through the CNMI Office of the Governor and the CNMI
5 Legislature; and construction of the Maui IV Water Tank started around March or April 1991 and
6 was completed mid-1992. Plaintiff calls the Court's attention to the deposition of Guerrero on April
7 26, 2017, wherein Guerrero testified that if CUC planned to build a project on private lands, it
8 needed to inform the Governor.⁶ Guerrero testified several projects were built on private lands
9 during his tenure as CUC's Executive Director, and compensation was provided to the private land
10 owners through land exchanges. On the issue of lands where CUC will build, Guerrero made it
11 clear that CUC had to go through the Central Government.

12 Plaintiff argues he alleged enough information in his FAC to withstand a motion for
13 summary judgment. He alleged that the CNMI—including CUC, as there is but one
14 Commonwealth—has taken his lands; the CNMI is liable to Plaintiff for the taking of his lands; and
15 CUC's claim of adverse possession, as asserted by the CNMI, is totally irrelevant and immaterial.
16 At minimum, Plaintiff put forth deposition testimony indicating that the CNMI may have
17 authorized the Maui IV Water Tank, therefore, Plaintiff believes he can defeat a summary judgment
18 challenge.

19 In support of his allegation that CUC and the CNMI are one in the same for the purposes of
20 this lawsuit, Plaintiff details that the "Commonwealth" is defined as a matter of law to include "the

21 ⁵ Guerrero was the Executive Director of CUC from 1990 to 1994.

22 ⁶ Guerrero was deposed twice in this action. His first deposition was on April 26, 2017, and, as a result of technical
23 problems with the first deposition, deposed for a second time on July 7th, 2017. Plaintiff attached the partial portions of
24 the original deposition to its Opposition as Exhibit A. This Court has already ruled on the partial deposition's
admissibility. *See* Order Partially Granting Defendant CNMI's Motion to Strike (March 22, 2018) (finding that the
remaining portions of the deposition, except one scandalous quote unrelated to the case, were properly admitted).

1 government established under the Constitution which became effective on January 9, 1978.” *See* 1
2 CMC 102 [“Commonwealth: Defined”]. As such, when CUC was created, it was made part of the
3 Commonwealth government, i.e., the CNMI. *See* 4 CMC § 8121(a).

4 The law is equally clear CUC is part of the “Commonwealth.” Section 8121(a), Title 4 of
5 CMC, specifically decrees “[t]here is in the Commonwealth government a Commonwealth Utilities
6 Corporation, a public corporation.” 4 CMC § 8121(a). The power of eminent domain is reserved to
7 the Executive Branch of the Commonwealth viz a viz the Governor and not CUC. *See* 1 CMC 9211
8 et seq. Thus, Plaintiff claims, those whose lands have been taken by the Commonwealth are able to
9 pursue an inverse condemnation case against the Commonwealth for just compensation.

10 Finally, Plaintiff finds that Defendant CNMI’s argument that CUC adversely possessed
11 Plaintiff’s land should be most troubling to this Court in light of the CNMI’s argument that the
12 CNMI and CUC are not the same for purposes of this case. Plaintiff asks this Court to hold the
13 CNMI accountable for the taking of private lands for public purposes and failing to provide just
14 compensation for the same to the private landowners in the Commonwealth. Plaintiff is disturbed
15 that the CNMI is making an argument on behalf of CUC in this case if CUC is not part of the
16 CNMI. Plaintiff argues if CUC and the CNMI are different then the CNMI has no standing to make
17 the argument that CUC could adversely possess Plaintiff’s private property. Article XIII (“Eminent
18 Domain”) of the CNMI Constitution makes it clear that “[p]rivate property may not be taken
19 without just compensation.” *See* CNMI Const. Art. XIII(b). The CNMI cannot, on one hand, deny
20 any involvement in the taking of Plaintiff’s lands by CUC only to turn around and make an
21 argument on behalf of CUC contrary to its constitutional duty to provide Plaintiff with “just
22 compensation” for the taking of his lands in the first place. By doing so, the CNMI has admitted
23 that the “Commonwealth” includes CUC for purposes of taking private lands for public purposes

1 and just compensation. The CNMI, by this argument, also admitted that the Commonwealth did
2 take Plaintiff's lands in this case. That is, by arguing adverse possession to this Court, the CNMI
3 admits that the Commonwealth took possession of Plaintiff's lands in this case. Plaintiff points out
4 the entirety of the CNMI's adverse possession argument is based on the CNMI's reliance on
5 Plaintiff's allegations about the takings. However, the CNMI denied all of Plaintiff's allegations
6 when it answered Plaintiff's FAC.

7 III. LEGAL STANDARD

8 Rule 56(a) of the Federal Rules of Civil Procedure states that "[t]he court shall grant
9 summary judgment if the movant shows that there is no genuine dispute as to any material fact and
10 the movant is entitled to judgment as a matter of law." *See* Com. R. Civ. Pro. 56(c); *see also*
11 *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). In bringing a summary judgment motion, the
12 "moving party bears the 'initial and ultimate' burden of establishing its entitlement to summary
13 judgment." *Santos v. Santos*, 4 N.M.I. 206, 210 (1995) (citation omitted).

14 The moving party must identify the pleadings, depositions, affidavits, or other evidence that
15 "demonstrates the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S.
16 317, 323 (1986); *see also Furuoka v. Dai-Ichi Hotel*, 2002 MP 5 ¶ 23 (discussing the application of
17 *Celotex* in the Commonwealth). The party moving for summary judgment has the burden of
18 establishing the nonexistence of a genuine issue. *Celotex*, 477 U.S. at 330. A moving party without
19 the ultimate burden of persuasion at trial can carry its burden by demonstrating that the nonmoving
20 party "does not have enough evidence of an essential element to carry its ultimate burden of
21 persuasion at trial." *Nissan Fire & Marine Ins. Co. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1102
22 (9th Cir. 2000). Essentially, "[i]f the nonmoving party cannot muster sufficient evidence to make
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1 out its claim, a trial would be useless and the moving party is entitled to summary judgment as a
2 matter of law.” *Furuoka*, 2002 MP 5 ¶ 24 (quoting *Celotex*, 477 U.S. at 331).

3 If a moving party fails to carry its initial burden of production, “the nonmoving party has no
4 obligation to produce anything, even if the nonmoving party would have the ultimate burden of
5 persuasion at trial.” *Nissan Fire & Marine Ins. Co. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1102-
6 03 (9th Cir. 2000). However, the nonmoving party must produce evidence to support its claim or
7 defense if the moving party carries its burden of production. *Id.* at 1103. In opposing a motion for
8 summary judgment, the nonmoving party may not rest simply upon allegations or denials of the
9 moving party’s pleading, but must “set forth specific facts which [are] admissible in evidence and
10 show[] a genuine issue for trial.” *Eurotex Inc. v. Muna*, 4 NMI 280, 284-85 (1995) (quoting Com.
11 R. Civ. P. 56(e)).

12 The moving party has the burden of demonstrating the absence of a genuine issue of material
13 fact for trial. *Id.* at 257. If the party moving for summary judgment “meets its initial burden of
14 identifying for the court those portions of the material on file that it believes demonstrates the absence
15 of any genuine issues of material fact,” the burden of production shifts and “the nonmoving party must
16 set forth, by affidavit or as otherwise provided in Rule 56, ‘specific facts showing that there is a
17 genuine issue [of material facts] for trial.’” *T.W. Electric Service, Inc. v. Pacific Elec. Contractors*
18 *Ass’n.*, 809 F. 2d 626, 630 (9th Cir. 1987) (quoting Fed. R. Civ. P. 56(e)). Genuine factual issues are
19 those for which the evidence is such that “a reasonable jury could return a verdict for the non-moving
20 party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In other words, material facts are
21 those that might affect the outcome of the suit under governing law. *See id.* In ruling on summary
22 judgment, a court does not weigh evidence to determine the truth of the matter, but “only determine[s]
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1 whether there is a genuine issue for trial.” *Crane v. Conoco, Inc.*, 41 F.3d 547, 549 (9th Cir. 1994)
2 (*internal citations omitted*).

3 When considering a motion for summary judgment, “the trial court must review the
4 evidence and inferences [drawn therefrom] in the light most favorable to the nonmoving party.”
5 *Estate of Mendiola v. Mendiola*, 2 N.M.I. 233, 240 (1991).

6 IV. DISCUSSION

7 The Plaintiff has brought an inverse condemnation proceeding against the CNMI and CUC
8 jointly and severally in order to recover financially for the continued use of his land by CUC and
9 the CNMI. Defendant CNMI believes Plaintiff’s lawsuit should fail for two main reasons the Court
10 will consider here.⁷

11 The Court first considers whether, as the CNMI alleges, Plaintiff’s claims against the
12 Commonwealth fail as a matter of law because, at the close of discovery, there is no evidence that
13 the Commonwealth constructed or authorized the construction of the Maui IV Water Tank or
14 encroaching fences.

15 Defendant CNMI provided deposition testimony for this Court that Defendant CUC is
16 separate from Defendant CNMI, and that the CNMI had no involvement in the site selection,
17 funding, or construction of the Maui IV Water Tank or surrounding fences. Defendant CNMI also
18 attached a “Statement of Undisputed Facts” to its motion. However, even if the Court finds the
19 lengthy “Statement of Undisputed Facts” persuasive in finding summary judgment in the CNMI’s
20 favor, the Plaintiff still had an opportunity to respond. “If the party moving for summary judgment
21 meets its initial burden of identifying for the court those portions of the material on file that it
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23 ⁷ Defendant CNMI also argued that it does not have vicarious liability for CUC’s actions. Plaintiff never alleged that the
24 CNMI had vicarious liability for CUC’s actions, it is irrelevant, and this Court will not consider the argument.

1 believes demonstrates the absence of any genuine issues of material fact,” the burden of production
2 shifts and “the nonmoving party must set forth, by affidavit or as otherwise provided in Rule 56,
3 ‘specific facts showing that there is a genuine issue [of material facts] for trial.’” *T.W. Electric*
4 *Service, Inc. v. Pacific Elec. Contractors Ass’n.*, 809 F. 2d 626, 630 (9th Cir. 1987) (quoting Fed.
5 R. Civ. P. 56(e)).

6 Plaintiff, in response, submitted his own “Statement of True Undisputed Material and
7 Relevant Facts,” and the deposition of Guerrero, wherein Guerrero testified that if CUC needed to
8 build a project on private lands, it needed to inform the Governor. During Guerrero’s tenure as
9 CUC’s Executive Director, several projects were built on private lands and compensation was
10 provided to the private land owners through land exchanges. Guerrero made it very clear that CUC
11 had to go through the Central Government before deciding where CUC would build. Defendant
12 CNMI never mentioned this part of the deposition in its Motion for Summary Judgment, but cited to
13 other witnesses who said the opposite. CUC also cites to other sources who said that, while it was
14 protocol that CUC get approval from the CNMI, it simply did not. Thus, the CNMI claims it never
15 actually heard of the project, even if it should have.

16 Some of the deposition testimony put forth by Plaintiff indicates that the building of the
17 Maui IV Water Tank was funded by grants from DOI which had to pass through the CNMI Office
18 of the Governor and the CNMI Legislature. Plaintiff puts forth deposition testimony that if CUC
19 needed to build a project on private lands, it needed to inform the Governor. CUC, allegedly, had to
20 go through the Central Government, including the Governor, to get approval for taking land and
21 getting funding for the Maui IV Water Tank. Whether or not it did so is a genuine issue of material
22 fact to be determined at a trial.

1 In ruling on summary judgment, a court does not weigh evidence to determine the truth of
2 the matter, but “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco, Inc.*,
3 41 F.3d 547, 549 (9th Cir. 1994) (*internal citations omitted*). There is enough testimony on record
4 that indicates that the Plaintiff may be able to establish his case at trial. The Plaintiff will need
5 sufficient evidence in order to win at trial, but the Plaintiff alleged that the construction of the
6 encroaching water tank and fences were done *with the assistance and the consent of* Defendant
7 CNMI. When considering a motion for summary judgment, the trial court must “review the
8 evidence and inferences [drawn therefrom] in the light most favorable to the nonmoving party.”
9 *Estate of Mendiola v. Mendiola*, 2 N.M.I. 233, 240 (1991). Plaintiff’s allegations in the FAC and
10 deposition testimony set forth in the Opposition can withstand a summary judgment motion.

11 The Court finds it particularly important to look at this case as a whole. Plaintiff’s original
12 Complaint named CUC as the only Defendant. In CUC’s Answer, it identified the CNMI as a
13 necessary party to the proceeding, naming the CNMI as “the real party in interest.” After Plaintiff
14 amended his Complaint to include Defendant CNMI, CUC immediately brought a cross-claim
15 against the CNMI, claiming the following:

- 16 1. The construction of the Mau IV Water Tank and wire fences on the real
17 property identified as Tract Numbers 22645-1 and 22654-R1 was done in
18 collaboration with the CNMI Government and the location of the
19 construction was based on representations by the CNMI Government that
20 said real properties where the water tank and fences were being constructed
21 was publically owned properties.
- 22 2. Based on such collaborative conduct and representations made to Defendant
23 CUC during the construction of the water tank and fences, Defendant CNMI

1 Government is required to indemnify CUC and hold it harmless for any
2 damages which may be awarded to Plaintiff based on the claims he has made
3 in this matter against CUC.

- 4 3. In the event that a Judgment for damages, if any, is entered against
5 Defendant CUC based on the claims of Plaintiff herein, then in such event
6 Defendant CNMI Government is liable to CUC for all or a portion of the
7 amount of such Judgment and damages awarded.

8 Defendant CUC's Answer to Complaint and Affirmative Defenses. (e-filed Nov. 22, 2015).

9 In Defendant CUC's original Answer, CUC admitted that the building of the Maui IV Water
10 Tank and fences was done in collaboration with the CNMI. Additionally, CUC claimed it
11 picked the location of the construction based on representations by the CNMI Government
12 that the properties were publicly owned.

13 In conclusion, Plaintiff has put forth sufficient allegations that the CNMI
14 government potentially authorized the construction of the Maui IV Water Tank and fences.
15 There are disputed questions of material fact. Plaintiff alleges that Defendant CUC built the
16 Maui IV Water Tank with the assistance and the consent of the Defendant CNMI.
17 Defendant CNMI denies that it had anything to do with the site selection, authorization, or
18 funding of the Maui IV Water Tank. The Court is unclear as to whether the CNMI was
19 involved in the site selection or approval of funds for the Maui IV Water Tank. The
20 deposition testimony, some of it at least, indicates that the CNMI would *have* to have
21 approved it. This is enough for the Court to find that the matter must be decided at trial. The
22 discrepancies in the pleadings, alone, coupled with the case history, is enough for the Court
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1 to find that material questions of fact regarding the claims against Defendant CNMI do
2 exist.

3 The Court furthermore considers whether, as Defendant CNMI alleges, Plaintiff's whole
4 case fails anyway because Defendant CUC has continually satisfied the requirements under
5 common law for the requisite time to establish title by adverse possession. CUC agrees and asserts
6 its possession of said portion of real property was exclusive, actual and uninterrupted, open and
7 notorious, and hostile under a claim of right. Therefore, the CNMI argues that even if this Court
8 finds evidence that the CNMI authorized the Maui IV Water Tank and fences, Plaintiff is not
9 entitled to relief because Defendant CUC has acquired the properties in question through adverse
10 possession.

11 This Court must consider two questions: Is CUC a part of the Commonwealth of the
12 Northern Mariana Islands, or a wholly separate autonomous organization; and is the CNMI able to
13 adversely possess private citizens' lands?

14 The "Commonwealth" is defined as a matter of law to include "the government established
15 under the Constitution which became effective on January 9, 1978." *See* 1 CMC 102
16 ["Commonwealth: Defined"]. The law is equally clear CUC was made part of the Commonwealth
17 government when CUC was created. *See* 4 CMC § 8121(a). Section 8121(a), Title 4 of CMC,
18 specifically decrees, "[t]here is in the Commonwealth government a Commonwealth Utilities
19 Corporation, a public corporation." 4 CMC § 8121(a). This Court wants to be clear that the CNMI
20 cannot bypass its duties in this case by claiming CUC is entirely autonomous. CUC is part of the
21 Commonwealth government.

22 Finally, this Court considers whether the CNMI is authorized to adversely possess CNMI
23 citizen's private lands. This Court is not only tasked with determining if the elements of adverse
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1 possession are satisfied in this case. The Court must determine if the CNMI government can
2 adversely possess private citizens' lands in the first place. This issue has not yet been explored by
3 the CNMI Supreme Court.

4 To establish adverse possession, the possession must be (1) exclusive, (2) actual and
5 uninterrupted, (3) open and notorious and (4) hostile under a claim of right. *Mackinac Island Dev.*
6 *Co., Ltd. v. Burton Abstract & Title Co.*, 349 N.W.2d 191, 195 (Mich. Ct. App. 1984); *Chaplin v.*
7 *Sanders*, 676 P.2d 431, 434 (Wash. 1984). In the Commonwealth of the Northern Mariana Islands,
8 adverse possession may only be established under common law because no statutory provisions
9 defining the elements of adverse possession exist, although the period throughout which the
10 requisite elements of adverse possession must concurrently exist is twenty (20) years. *Apatang v.*
11 *Mundo*, 4 NMI 90, 93 (1994) (The passing of the statutory time period effectively creates a new
12 title in the adverse possessor); *Devins v. Borough of Bogota*, 592 A.2d 199, 201 (N.J. 1991).

13 The Maui IV Water Tank and surrounding fences have stood on Plaintiff's properties since
14 at least March 31, 1992. Plaintiff has never used or lived on the land. The water tank is a million-
15 gallon tank and the local newspaper reported its completion. Plaintiff admits that he was aware of
16 the tank's existence in 1992, though he did not realize it was on his property until he had the As-
17 Built survey done in 2013. The CNMI Supreme Court has construed the hostility element of
18 adverse possession narrowly to mean a person claiming adverse possession merely needs to occupy
19 the property without the consent of the record holder. *Teregeyo v. Fejeran*, 2004 MP 18 ¶ 19 (citing
20 *Barker v. Bd. Of County Comm'rs*, 48 F. Supp. 2d 1203, 1215-16 (D. Colo. 1999).

21 Adverse possession is sometimes justified by the idea that the adverse possessor has earned
22 title to the land by working it and putting it to use *during the period of the statute of limitations.*
23 *Teregeyo v. Fejeran*, 2004 MP 18 ¶ 10 (emphasis added). However, in the last hearing on this case,

1 counsel for CUC made it known to the Court that the Maui IV Water Tank is currently not in use,
2 and has been non-operational. This million-gallon water tank is now sitting, unused, on Plaintiff's
3 land. There was no testimony offered regarding when CUC stopped using the tank. However, CUC
4 is clearly no longer using the land. This Court finds it unjust to grant title by adverse possession to
5 the portion of land CUC took from Plaintiff when CUC is no longer using the land.

6 Finally, even assuming that CUC met all the common law elements of adverse possession,
7 this Court must determine if the CNMI government can adversely possess private citizens' lands in
8 the first place. The CNMI claims that CUC adversely possessed Plaintiff's lands, and thus, this
9 Court should find in Defendant CNMI's favor. The entirety of the CNMI's adverse possession
10 argument is based on the CNMI's reliance on Plaintiff's allegations about the takings. Interestingly,
11 the CNMI denied all of Plaintiff's allegations when it answered Plaintiff's FAC. The doctrine of
12 adverse possession is a common law concept the CNMI Legislature has yet to adopt by statute.

13 Article XIII of the CNMI Constitution makes it clear that "[p]rivate property may not be
14 taken without just compensation." *See* CNMI Const. Art. XIII(b). The CNMI is unlike any other
15 jurisdiction in the United States. The CNMI Superior Court has said that the United States
16 Constitution provides a floor, not a ceiling, for the protections granted to those in the
17 Commonwealth. *See CNMI v. Li* (Super. Ct. Sept. 2015). The CNMI Supreme Court puts special
18 emphasis on the importance of local CNMI residents' land ownership rights. *See Ma. Marilyn V.*
19 *Castro v. Ricardo C. Castro*, 2009 MP 8. Covenant § 805 in part addresses "the importance of the
20 ownership of land for the culture and tradition of the people of the Northern Mariana Islands" 48
21 U.S.C. § 1801 note art. VIII § 805.

22 Indeed, Article XII of the CNMI Constitution is a perfect example of how closely the people
23 of the Northern Marianas wish to guard their land. *See* CNMI Const. Art. XII ["Restrictions of

1 Alienation of Land”] (preserving land ownership in the CNMI to those persons of Northern
2 Marianas decent). Land is many CNMI residents’ most valued possession. The framers of the
3 Constitution made clear the importance of land to the people of the Commonwealth. Analysis at
4 165 (“Land is the only significant asset that the people of the Commonwealth have. There are no
5 substantial mineral resources; there is no large manufacturing enterprise capable of sustaining large
6 numbers or people; there is no valuable location on important trade routes.”). *Department of Public*
7 *Lands v. CNMI* 2010 MP 14.

8 However, the CNMI has made a habit of taking land and attempting to refuse to pay the
9 people of the Northern Marianas just compensation. Alternatively, the CNMI simply stalls for
10 years, dragging its feet before paying out. The staggering amount of land comp cases in the CNMI
11 demonstrates the CNMI Government’s laissez-faire attitude towards private land ownership rights.
12 This new argument of adverse possession is simply another example of the CNMI, once again,
13 trying to circumvent its duties under the CNMI Constitution and take away land from private land
14 owners in the CNMI without providing just compensation. The CNMI Government has gotten away
15 with these evasion tactics for a long time. Therefore, the Court finds that allowing the government
16 to adversely possess land in the CNMI will dilute Art. XIII of the CNMI Constitution.

17 The Commonwealth government’s eminent domain authority derives from the
18 Commonwealth Constitution, which states, “[t]he Commonwealth may exercise the power of
19 eminent domain as provided by law to acquire private property necessary for the accomplishment of
20 a public purpose.” *Ma. Marilyn V. Castro v. Ricardo C. Castro*, 2009 MP 8 ¶ 12 (citing NMI Const.
21 art. XIII § 1). However, when it does so “[t]he government is *required* to pay ‘just compensation’
22 for private property taken for a public purpose.” *Id.* (citing *Commonwealth v. Bordallo*, 1 NMI 208,
23 219 (1990) *citing* NMI Const. art. XIII § 2)) (emphasis added). It is well settled that a taking

1 requires state action. *Castro v. Castro* 2009 MP 8 ¶ 12. The CNMI's claim that it has no place in
2 this case is categorically wrong. First, CUC does not have the constitutional allowance to take
3 private property. The CNMI made an adverse possession argument on behalf of CUC. By doing so,
4 the CNMI admitted that the Commonwealth did take Plaintiff's lands in this case. Second, "cases
5 centering on the government's power of eminent domain overwhelmingly, if not uniformly, include
6 the government as a party to the action." *Id.* at ¶14. Plaintiff has brought an inverse condemnation
7 proceeding, thus the case centers on the government's power of eminent domain.

8 The Court is particularly disturbed after reading the depositions provided by Plaintiff.
9 Former Deputy Director Timothy Villagomez testified under oath at deposition that utility projects
10 were strategically located without regard to land ownership and that it was not CUC's practice to
11 seek approval from anyone before constructing utility improvements. CUC directors stated that
12 CUC simply starts building its projects on the land it finds most suitable, and will only stop if a
13 landowner takes issue with the project or some other reason forces construction to stop. Such
14 careless disregard for land owners' rights is shocking and offends the rights of the Northern
15 Marianas people. Plaintiff in this case has testified that the land at issue is difficult to navigate due
16 to rocky terrain, and thus, he does not use the land for much except to occasionally collect coconuts
17 and fruit. This Plaintiff should not lose his rights to his family land—for nothing—because the
18 CNMI and/or CUC did not think to inquire about the land it decided to build a million-gallon water
19 tank on.

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22 V. CONCLUSION

1 In conclusion, Plaintiff has put forth sufficient allegations that the CNMI government
2 potentially authorized the construction of the Maui IV Water Tank and fences. Whether or not it did
3 so is a genuine issue of material fact to be determined at a trial. Additionally, this Court finds that
4 CUC is a part of the Commonwealth of the Northern Mariana Islands for purposes of this lawsuit.
5 Finally, Article XIII of the CNMI Constitution makes it clear that “[p]rivate property may not be
6 taken without just compensation.” *See* CNMI Const. Art. XIII(b). While other jurisdictions may
7 find differently, the Commonwealth of the Northern Mariana Islands is a unique jurisdiction that
8 affords unique rights to its indigenous people. Private citizens’ land rights must be protected,
9 particularly in the CNMI where land ownership is of special importance to the culture and people.
10 Therefore, this Court finds that the CNMI government is not able to gain title to a private CNMI
11 citizens’ lands through adversely possession.

12 For the forgoing reasons, Defendant CNMI’S Motion for Summary Judgment—and CUC as
13 Joinder in the adverse possession claim—is **DENIED**.

14 **SO ORDERED** this ____ day of April, 2018.

16 /s/
17 **KENNETH L. GOVENDO**
Associate Judge

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