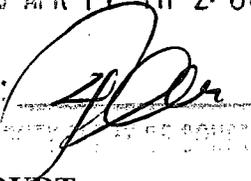


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

FOR PUBLICATION

CLERK OF COURT
SUPERIOR COURT
FILED

2019 APR 11 PM 2:06

BY: 
CLERK OF COURT

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

| | | |
|---------------------------|---|------------------------------|
| ESTANISLAO C. VILLAGOMEZ, |) | SMALL CLAIM CASE NO. 04-1240 |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | ORDER GRANTING |
| |) | DEFENDANT'S |
| BRENDA K. DIONISIO, |) | MOTION TO DISMISS |
| |) | |
| Defendant. |) | |
| |) | |

I. INTRODUCTION

THIS MATTER came before the Court upon Defendant's Motion to Dismiss on March 11, 2019 at 9:00 a.m. in Courtroom 212A of the Marianas Business Plaza. Plaintiff Estanislao C. Villagomez ("Plaintiff") appeared in person with his attorney Michael A. White. Defendant Brenda K. Dionisio ("Defendant") also appeared in person with her attorney Thomas E. Clifford.

Based on the matters adduced at the hearing and the relevant law, the Court hereby grants Defendant's Motion to Dismiss with prejudice pursuant to Com. R. Civ. P. 41(b) for Plaintiff's failure to prosecute.

II. FINDINGS OF FACT

1. This lawsuit stems from a lease agreement between Plaintiff and Defendant.
2. In 2004, Plaintiff filed a Complaint against Defendant for \$2,035.00 in principal—and for pre-judgment interest and attorney fees—based on what Defendant allegedly owed Plaintiff under the terms of the lease agreement.

1 3. In January 2005, Plaintiff served Defendant with a Summons and Complaint ordering her to
2 appear in Court on February 24, 2005.

3 4. At the February 24, 2005 hearing, the case was taken off calendar and Defendant was
4 informed that she would later be served with an Amended Summons and Complaint.

5 5. Defendant was not served with the Amended Summons and Complaint until over twelve (12)
6 years later on September 22, 2017.

7 6. The Court set a Pre-Judgment Hearing on February 1, 2018 and Defendant appeared on that
8 date in custody of the CNMI Department of Corrections on an unrelated matter.

9 7. At the February 1, 2018 hearing, Plaintiff informed the Court that the amount of the
10 underlying debt due in this case was \$2,165.00 in principal and that he was additionally
11 requesting for \$55.00 in costs and/or attorney fees.

12 8. As Defendant was incarcerated on an unrelated matter, this small claim case was continued
13 several times until after Defendant's release.

14 9. At a Pre-Judgment Hearing on October 1, 2018, the Court took under advisement Plaintiff's
15 motion to consolidate this case with twelve (12) other collection cases against Defendant, and
16 appointed Thomas A. Clifford—who also represents Defendant in those twelve (12) other
17 cases—to represent Defendant in this matter.

18 10. On November 10, 2018, the Court ordered both parties to brief and provide the Court with a
19 Memorandum of Points and Authorities (“Memorandum”) addressing the passage of more than
20 twelve (12) years time between the initial service on Defendant and the instant collection
21 efforts.

22 11. The Court also ordered Plaintiff to provide some evidence and/or background debt
23 information to verify the underlying amounts requested in the Complaint, the claims for
24 damages and other costs against the Defendant (“debt information”).

1 12. In response to the November 10, 2018 Order, Defendant filed a Motion to Dismiss for
2 Failure to Prosecute and a memorandum in support of its motion.

3 13. In its Motion to Dismiss, Defendant asserted that Com. R. Civ. P. 41(b)(1) provides for the
4 dismissal of cases for failure to prosecute upon the motion of a defendant and that this lawsuit
5 should be dismissed under that Rule because—among other reasons—Plaintiff failed to
6 prosecute its case over twelve (12) years ago.

7 14. At a December 10, 2018 hearing, Plaintiff informed the Court that it was unable to file its
8 Memorandum or the debt information because its counsel had a heavy workload. Plaintiff also
9 failed to file an Opposition to Defendant's Motion to Dismiss because of its counsel's workload
10 and requested for an extension of the deadline to file the three (3) documents.

11 15. The Court set a January 11, 2019 deadline for Plaintiff to file its Memorandum and debt
12 information and also to respond to Defendant's Motion to Dismiss.

13 16. At a March 11, 2019 hearing, Plaintiff once again informed the Court that, due to its
14 counsel's heavy workload, it was unable to file a Memorandum, the debt information or an
15 Opposition to Defendant's Motion to Dismiss.

16 17. In addition, at the March 11, 2019 hearing, Plaintiff affirmatively represented that it no
17 longer wished to pursue the instant lawsuit against Defendant.

18 **III. LEGAL STANDARD**

19 Com. R. Civ. P. 41(b)(1) provides that "[f]or failure of the plaintiff to prosecute or to
20 comply with these rules or any order of the court, a defendant may move for dismissal of an action
21 or of any claim against the defendant." Upon a motion to dismiss for failure to prosecute, the trial
22 court has the discretion to determine whether dismissal is appropriate and utilizes a number of
23 factors in order to arrive at its decision. *Wabol v. Villacrusis*, 2000 MP 18 ¶ 8-9 (citing *Henderson*
24 *v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)). These factors are: (1) the public's interest in

1 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
2 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and
3 (5) the availability of less drastic sanctions. *Id.*

4 "Dismissal with prejudice for failure to prosecute is appropriate in the face of extremely
5 protracted inaction (measured in years), disobedience of court orders, ignorance of warnings,
6 contumacious conduct, or some other aggravating circumstance." *Pomales v. Celulares Telefonica,*
7 *Inc.*, 342 F.3d 44, 48 (1st Cir. 2007) (citing *Cosme-Nieves v. Deshler*, 826 F.2d 1, 2 (1st Cir. 1987))
8 (internal quotation marks omitted); *see also* 9 Charles Alan Wright & Arthur R. Miller, Federal
9 Practice & Procedure § 2369 (2d ed. 1995). Further, when "a noncompliant litigant has manifested a
10 disregard for orders of the court and been suitably forewarned of the consequences of continued
11 intransigence, a trial judge need not first exhaust milder sanctions before resorting to dismissal."
12 *HMG Property Investors, Inc. v. Parque Indus. Rio Canas, Inc.*, 847 F.2d 908, 918 (1st Cir. 1988).

13 IV. DISCUSSION

14 As the above-described fact pattern is capable of repetition in other small claims cases
15 before the Court (and involves a matter of some public interest), the instant Order Granting
16 Defendant's Motion to Dismiss with Prejudice is published even as Plaintiff represents that it is now
17 willing to dismiss its case. Defendant argues that this case should be dismissed because of
18 Plaintiff's failure to prosecute for over twelve (12) years. The Court agrees with Defendant and
19 further finds that the *Wabol* factors weigh heavily in favor of Defendant's Motion to Dismiss for
20 failure to prosecute for the following reasons.

21 **A. The Public's Interest in Expeditious Resolution of Litigation.** Over twelve (12) years
22 of time passed between the initiation of this lawsuit and service of Plaintiff's Amended Complaint
23 on Defendant. The passage of this much time obviously negates one of the stated goals of the small
24

1 claims court: to promote an expeditious resolution of litigation.¹ As such, Plaintiff's failure to take
2 any affirmative action to further the prosecution of its claim towards resolution—or even attempt to
3 preserve an active status with the underlying lawsuit—does not at all satisfy the expeditious
4 resolution prong of the *Wabol* factors that this Court is to consider. Accordingly, this factor clearly
5 weighs in favor of dismissal.

6 **B. The Court's Need to Manage its Docket.** Docket control is an extremely complicated
7 and time-consuming judicial activity. Without some good cause shown, the Court considers the
8 twelve (12) years between the initiation of this lawsuit and service of Plaintiff's Amended
9 Complaint to Defendant an unreasonable delay on its face. The delay has only compounded this
10 Court's effort to manage the thousands of open small claims cases in its docket. The amount of
11 time and resources that the Court expended—even for just Plaintiff's recent efforts to revive this
12 long dormant case from hibernation—were considerably and totally squandered, given Plaintiff's
13 decision to no longer prosecute this matter. This *Wabol* factor therefore weighs in favor of dismissal
14 with prejudice.

15 **C. The Risk of Prejudice to the Defendants.** Moreover, the significant passage of time has
16 prejudiced the Defendant. In her moving papers, Defendant asserts that her records related to the
17 instant lawsuit (and other personal documents) were all recently destroyed by Typhoon Yutu.
18 Those records, she argues, were part of her legal defenses to Plaintiff's Complaint. This Court
19 takes judicial notice that there have indeed been several typhoons over the past twelve (12) years
20 which have caused great destruction and adversely impacted life on Saipan, CNMI. Accordingly,
21 this factor also weighs in favor of dismissal with prejudice.

22
23
24

¹ The small claims procedure enables “small claims to be justly decided and fully disposed of with less formality, paperwork, and expenditure of time than is required by the ordinary procedure for larger claims.” Com. R. Civ. P. 83(b).

