

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

L&W AMUSEMENT, CORP., NORTHERN )  
MARIANAS INVESTMENT GROUP, LTD, )  
PACIFIC AMUSEMENT, INC., and )  
LEONARD G. WOLF, JR., )

Plaintiffs,

v.

FRANK B. VILLANUEVA, Acting Director of )  
the CNMI Department of Finance, CNMI )  
DEPARTMENT OF FINANCE, )  
HYUN IN CORP., SHARON CORP., )  
M.K.K. INC., MANAGEMENT & )  
EMPLOYMENT CONSULTANT, INC., )  
KANDA INT'L, INC., MARTHAS RETAIL )  
SHOP, INC., LEO CORP., JIMIN ENTERPRISES, )  
INC., YOU RIM CORP., LIYA IMPORT & )  
EXPORT CORP., HAN HO CORP., )  
PACIFIC ISLAND CREATIONS, INC., )  
GIVE AND TAKE CORP., SAIPAN LUCKY )  
CORP., EVER DEVELOPING CORP., )  
LIFE CORP., B.G.K. CORP., )  
GUM CHOON CORP., K&K CORP., SOI-IN )  
CORP., TAPA BAR, INC., and )  
JOHN DOE I to JOHN DOE XXX, )

Defendants.

CIVIL ACTION NO. 02-0378

**ORDER GRANTING IN  
PART AND DENYING  
IN PART DEFENDANTS'  
MOTION TO DISMISS**

////  
////  
////

1 **I. INTRODUCTION**

2 The above matter came on for a hearing on November 20, 2002, at 9:00 a.m. on Defendant  
3 Frank B. Villanueva’s and Defendant CNMI Department of Finance’s (collectively the “Government  
4 Defendants”) Motion to Dismiss Amended Complaint Pursuant to Com. R. Civ. P. 12(b)(6) and 19.  
5 Assistant Attorneys General Joseph L.G. Tajeron and Deborah L. Covington appeared on behalf of  
6 Defendants. David G. Banes, Esq. appeared on behalf of Plaintiff Pacific Amusement, Inc. (“Plaintiff”).  
7 The Court, having reviewed the briefs, exhibits, affidavits, and having heard and considered the arguments  
8 of counsel, now renders its written decision.

9 **II. PROCEDURAL BACKGROUND**

10 On July 1, 2002, Plaintiffs filed a complaint against several defendants asserting three causes of  
11 action: for a taxpayer suit, unfair competition and unfair business practices. Plaintiffs then moved *ex parte*  
12 for a temporary restraining order, which this Court denied on July 16, 2002. On July 22, 2002,  
13 Defendant B.G.K. Corp. filed its Motion to Dismiss Complaint. Defendants Jimin Enterprises, Inc.,  
14 K&K Corp., You Rim Corp., Saipan Lucky Corp., Gum Choun Corp., Give and Take Corp., M.K.K.  
15 Inc., Leo Corp., Pacific Islands Creations, Inc., and Life Corp. joined in the motion.<sup>1</sup> Following a  
16 stipulation, Life Corp., Give and Take Corp., and M.K.K. Inc. withdrew from the Motion to Dismiss and  
17 filed their Answer and Affirmative Defenses to the Complaint. Marthas Retail Shop, Inc., Kanda Int’l,  
18 Inc., You Rim Corp., Saipan Lucky Corp., and Gum Choun Corp. also filed Answers to the Complaint.

19  
20 On August 12, 2002, the Government Defendants filed a Motion to Dismiss Complaint Pursuant  
21 to Com. R. Civ. P. 12(b)(6); or in the Alternative Motion for a More Definite Statement Pursuant to  
22 Com. R. Civ. P. 12(e). On September 17, 2002, Plaintiffs filed a Motion to Amend Plaintiffs’ Complaint,  
23 which this Court granted on October 24, 2002. That same day, Plaintiffs L&W Amusement, Northern  
24 Marianas Investment Group, Ltd., and Leonard G. Wolf stipulated to withdraw with prejudice any and  
25 all claims against the Government Defendants. Thereafter, Plaintiffs filed their Amended Complaint, which  
26 set forth the same three causes of action for a taxpayer suit, unfair competition and unfair business

27 \_\_\_\_\_  
28 <sup>1</sup>Plaintiffs moved to strike K&K Corp.’s, Saipan Lucky Corp.’s, Gum Choun Corp.’s and Life Corp.’s joinder to  
the Motion to Dismiss.

1 practices. On October 23, 2002, the Government Defendants filed this Motion to Dismiss Amended  
2 Complaint Pursuant to Com. R. Civ. P. 12(b)(6) and 19. Plaintiffs oppose the motion.

### 3 III. ISSUE

4 Whether to dismiss Plaintiffs' Amended Complaint for failure to state a claim upon which relief  
5 can be granted pursuant to Com. R. Civ. P. 12(b)(6).

### 6 IV. ANALYSIS

7 In considering a motion to dismiss for failure to state a claim upon which relief can be granted,  
8 "the court must accept the allegations in the complaint as true and construe them in the light most favorable  
9 to the plaintiff." *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270, 283 (1991) (citing  
10 *Abramson v. Brownstein*, 897 F.2d 389 (9th Cir. 1990)). "The defendant must then demonstrate that,  
11 even after taking the well pleaded facts as true, the plaintiff still fails to state a claim for relief." *Govendo*  
12 *v. Marianas Pub. Land Corp.*, 2 N.M.I. 482, 490 (1992). Dismissal is improper unless the court is  
13 absolutely certain that the plaintiff can prove no set of facts in support of his claim that would entitle him  
14 to relief. *See Micronesian Garment Mfg., Inc.*, 2 N.M.I. at 283.

15 In the case at hand, the Government Defendants first assert that the facts alleged by Plaintiffs do  
16 not state a cause of action for a taxpayer suit. In their complaint, Plaintiffs state that the Government  
17 Defendants failed in their responsibility to monitor and enforce the applicable laws and regulations with  
18 regard to the registration of, and operation of, poker machines. The Government Defendants further  
19 breached their fiduciary duty to Commonwealth taxpayers by failing to collect applicable licensing fees  
20 and taxes from poker machine operators. The Government Defendants, however, contend that Plaintiffs  
21 fail to properly allege an improper expenditure of public funds, which is a necessary element of a taxpayer  
22 suit. Plaintiffs, on the other hand, contend that taxpayer suits are not limited to enjoining the expenditure  
23 of public funds, but may also be brought to remedy a breach of fiduciary duty by a government official.

24 Pursuant to art. X, § 9 of the N.M.I. Constitution:

25 A taxpayer may bring an action against the government or one of its  
26 instrumentalities in order to enjoin the expenditure of public funds for  
27 other than public purposes or for a breach of fiduciary duty. The court  
shall award costs and attorney's fees to any person who prevails in such  
an action in a reasonable amount relative to the public benefit of the suit.

28 Upon reviewing reported cases addressing art. X, § 9, the court finds *Mafnas v. Commonwealth*, 2

1 N.M.I. 248 (1991), instructive. In *Mafnas*, Mafnas brought a taxpayer suit pursuant to art. X, § 9  
2 alleging that then Presiding Judge Robert A. Hefner unlawfully occupied the position of Presiding Judge  
3 because he was never expressly appointed to and confirmed to that office. The Superior Court dismissed  
4 Mafnas' suit with prejudice ruling that it was in essence a *quo warranto* action, which Mafnas lacked  
5 standing to bring. On appeal, though the Supreme Court agreed with the Superior Court that Mafnas'  
6 action was a proceeding "in the nature of quo warranto," the Court went on to examine whether art. X,  
7 § 9 conferred standing upon Mafnas. The Court stated that "[w]hile it is the traditional view that actions  
8 to redress public wrongs or breaches of public duty ordinarily cannot be brought by private individuals,  
9 such rights of action may be granted by statute or rule. In the NMI, the right of taxpayers to challenge  
10 allegedly illegal expenditures of public funds is expressly granted by our Constitution." *Mafnas*, 2 N.M.I.  
11 at 261 (internal citation omitted). The Court thus granted Mafnas standing to bring the action as a  
12 taxpayer suit. In determining whether art. X, § 9 allowed declaratory relief, the Court went on to state  
13 that in taxpayer suits, before giving injunctive relief, "a court must first find that public funds are being (or  
14 will be) expended for other than a public purpose or in breach of a fiduciary duty." *Id.* at 262. Thus, it  
15 is necessary to show an illegal expenditure of public funds to sustain a taxpayer suit.

16 Plaintiffs, however, contend that the history of taxpayer actions establishes that a taxpayer may  
17 bring suit solely for a breach of fiduciary duty. In support of this contention, Plaintiffs cite *Pangelinan*  
18 *v. Commonwealth*, 2 CR 1148 (Dist. Ct. App. Div. 1987). In *Pangelinan*, the appellee brought suit  
19 against the CNMI to enjoin the Legislature from expending sums allocated for legislative salaries. *See*  
20 *Pangelinan*, 2 CR at 1151. The trial court issued a permanent injunction prohibiting the Legislature from  
21 expending sums in excess of the constitutional ceiling on the legislative budget. *Id.* On appeal, the  
22 appellants asserted that the appellee did not have standing as a taxpayer to challenge legislative spending  
23 because appellee failed to show a direct injury. Appellants relied on *Taisacan v. Camacho*, 660 F.2d  
24 411 (9th Cir. 1981), in which Taisacan sought standing in a federal court and was denied because he  
25 failed to show any direct and unique injury. In determining the standing issue, the court cited *Lizama v.*  
26 *Rios*, 2 CR 568 (Dist. Ct. 1986), *Manglona v. Camacho*, 1 CR 820 (Dist. Ct. App. Div. 1983), and  
27 *Romisher v. Marianas Pub. Land Corp.*, 1 CR 841 (Trial Ct. 1983), for the proposition that "standing  
28 is recognized in the Commonwealth in [situations involving the unlawful expenditure of public funds]." *Id.*

1 at 1154.

2 In *Manglona*, the court dealt with the issue of whether appellees had standing to challenge certain  
3 expenditures of the executive branch. Appellants asserted that the appellee alleged insufficient injury to  
4 warrant standing and relied on a United States Supreme Court case holding that federal taxpayers did not  
5 have standing to challenge federal expenditures because the taxpayer's interest was minute and  
6 indeterminable given the millions of other taxpayers affected by the same expenditure. The U.S. Supreme  
7 Court, however, discerned that standing is appropriate in situations involving the interest of a taxpayer of  
8 a municipality. The NMI District Court, Appellate Division relied on this distinction, as well as a Ninth  
9 Circuit case upholding the standing of a territorial taxpayer (*Reynolds v. Wade*, 249 F.2d 73 (9th Cir.  
10 1957)), to conclude that the appellees had standing to challenge the expenditures of the executive branch,  
11 without a specific showing of a direct and unique injury. *Manglona*, 1 CR at 827.

12 In *Romisher*, plaintiff brought an action to enjoin defendant Marianas Public Land Corporation  
13 ("MPLC") from dispersing funds it held for payment to private landowners on Tinian for land leased to  
14 the United States Government. MPLC asserted that plaintiff's action was similar to a taxpayer action  
15 and, therefore, plaintiff had to show a pecuniary loss or injury to herself or MPLC. Because plaintiff  
16 could not show a direct injury, she did not have standing to bring the action. In determining the standing  
17 issue, the court first concluded that MPLC stood in a fiduciary capacity when it acted pursuant to the  
18 N.M.I. Constitution because it held and transferred public lands for the benefit of persons of Northern  
19 Marianas descent. Thus, plaintiff's position as a beneficiary of a specified class placed her in a position  
20 "much stronger than a [] taxpayer." The court went on to cite *Manglona* for the proposition that a  
21 Commonwealth taxpayer need not make a showing of direct personal injury to have standing. Thus a  
22 beneficiary, who stands in a better position than a taxpayer, also need not show a direct personal injury.  
23 *Romisher*, 1 CR at 849-50. "[I]f an ordinary taxpayer has standing in the Commonwealth to enjoin illegal  
24 payments of public funds, the plaintiff stands even in a better position [as a beneficiary] and the above  
25 question [of standing] is answered in the affirmative." *Romisher*, 1 CR at 850. *Romisher*, therefore,  
26 does not state that a taxpayer suit lies without an allegation of an illegal expenditure of funds. Rather,  
27 *Romisher* stands for the proposition that a beneficiary of a trust of public lands, like a taxpayer, need not  
28 show personal injury to have standing.

1 In *Lizama*, plaintiffs filed a complaint against the Mayor of Saipan for interfering in their right to  
2 possess a certain piece of property. The Mayor counterclaimed against the plaintiffs and joined the  
3 MPLC alleging that the MPLC violated the Fourteenth Amendment by treating the Mayor, and others,  
4 arbitrarily when it exchanged public lands without notice and a hearing. Plaintiffs moved to dismiss the  
5 Mayor's claim on the ground that he lacked standing. The Mayor asserted that he had standing in his  
6 capacity as a taxpayer and as a beneficiary of a public trust. Plaintiffs, however, asserted that there was  
7 no expenditure of public funds, merely an exchange of public lands, and therefore, there could be no  
8 taxpayer standing. The court, relying on both *Manglona* and *Romisher*, reaffirmed a Commonwealth  
9 taxpayer's standing to challenge the expenditure of public funds. See *Lizama*, 2 CR at 572. The court  
10 held that "[w]here a municipality surrenders something of value to the detriment of its taxpayers, a  
11 taxpayer action is appropriate." *Lizama*, 2 CR at 573 (citing *In re Cole's Estate*, 78 N.W. 402 (Wis.  
12 1899)). Thus, a Commonwealth taxpayer has standing with regard to public lands as it is a surrender of  
13 something valuable and essentially, a public expenditure. The court then went on to confer standing upon  
14 the Mayor as a taxpayer and as a beneficiary. *Id.* at 577.

15 Relying on the holdings in *Pangelinan*, *Manglona*, *Romisher*, and *Lizama*, the Court finds that  
16 the these cases do not support Plaintiffs' assertion that a taxpayer may bring suit for a breach of fiduciary  
17 duty without an allegation of an illegal expenditure of public funds. Rather, the foregoing cases clarify  
18 taxpayer standing in the CNMI by establishing the right of a Commonwealth taxpayer to bring suit to  
19 enjoin an alleged illegal expenditure of public funds without showing a direct and unique injury in light of  
20 the federal precedent. The cases cited herein also establish beneficiary standing in actions relating to  
21 public lands held in trust for those of Northern Marianas descent.

22 Plaintiffs also cite *Torres v. Tenorio*, 1997 MP 2, 5 N.M.I. 46, 47 (1997),<sup>2</sup> and *Taitano v.*  
23 *South Seas Corp.*, Civ. No. 92-1620 (N.M.I. Super. Ct. Mar. 7, 1994) (Decision and Order on  
24 Defendant Marianas Public Land Trust's Motion for Sanctions Against Plaintiff and his Counsel)  
25 [hereinafter Decision and Order]. In *Torres*, the plaintiffs initiated an action to set aside a commercial  
26

---

27 <sup>2</sup>The Court notes that the proper citation in support of Plaintiffs' argument on page six of its Opposition is  
28 *Torres v. Tenorio*, Civ. No. 95-0390 (N.M.I. Super. Ct. Nov. 6, 1995) (Memorandum Decision and Order Denying Motions  
to Dismiss and for Summary Judgment).

1 lease of public land asserting that the Governor, the Secretary of the Department of Lands and Natural  
2 Resources, and the Director of the Division of Public Lands breached their fiduciary duties by leasing the  
3 property at a substandard rental rate. The defendants claimed that plaintiffs lacked standing because they  
4 had not “suffered pecuniary injury or damages distinct from the general public.” *Torres v. Tenorio*, Civ.  
5 No. 95-0390 (N.M.I. Super. Ct. Nov. 6, 1995) (Memorandum Decision and Order Denying Motions  
6 to Dismiss and for Summary Judgment at 4). In determining the issue of standing, the court found that  
7 art. X, § 9 eliminated the need for proving unique damages as it “codified the treatment already granted  
8 Commonwealth litigants” in *Romisher, Manglona, and Lizama*. *Id.* at 5. Thus, defendants’ assertion  
9 that plaintiffs must show special harm was without merit. The court went on to state that because plaintiffs  
10 based their breach of fiduciary duty claim upon the theory that the CNMI Government held public lands  
11 in trust, standing necessitated “that a plaintiff be a beneficiary of the trust.” *Id.* After further analysis, the  
12 court found plaintiffs to have standing to bring the action as a “beneficiary of public lands.” *Id.* Thus, the  
13 court did not specifically uphold a taxpayer action that alleged only a breach of fiduciary duty.  
14 Regardless, had the court proceeded on taxpayer standing, it could have relied on *Lizama*, in which the  
15 surrender of public lands is essentially a public expenditure and taxpayer standing would have been  
16 appropriate. In the case at hand, Plaintiffs are neither beneficiaries of a trust, nor do they raise any issues  
17 involving public lands as public expenditures.

18 Plaintiffs assert that *Taitano*, in which MPLC and the Marianas Public Land Trust (“MPLT”)  
19 sought sanctions against plaintiff because plaintiff lacked a legal basis for asserting a breach of fiduciary  
20 duty claim, establishes conclusively that a taxpayer action may be brought for only a breach of fiduciary  
21 duty. This Court does not find *Taitano* persuasive even though the court stated that the “N.M.I. Const.  
22 art. X, § 9 authorizes taxpayers to sue the government for breaches of fiduciary duty.” *Taitano v. South*  
23 *Seas Corp.*, Civ. No. 92-1620 (N.M.I. Super. Ct. Mar. 7, 1994) (Decision and Order at 16).  
24 Markedly, the court cited *Lizama* and *Pangelinan*, as “plausibly stand[ing] for the proposition that a  
25 taxpayer, perceiving that MPLC and MPLT were not acting to protect and secure the public lands of the  
26 Commonwealth, had standing to name those agencies as defendants.” *Id.* at 16-17. Thus, *Taitano*, as  
27 with all of the taxpayer suits discussed herein, reasonably establishes that an expenditure, whether in  
28 public funds or in public land, is necessary for taxpayer or beneficiary standing.

1           Furthermore, the Court finds that the plain language of art. X, § 9 is consistent with the  
2 proposition that an expenditure of public funds is necessary to confer standing in a taxpayer action.  
3 Absent any ambiguity, the language of a statute itself is ordinarily regarded as conclusive. *See United*  
4 *States v. Mehrmanesh*, 689 F.2d 822, 828 (9th Cir. 1982). A statute is considered ambiguous when  
5 it is capable of more than one meaning and is confusing to a well-informed person. *See Wis. Dept. of*  
6 *Revenue v. Nagle-Hart Inc.*, 234 N.W.2d 350, 352 (Wis. 1975). Thus, unless the statute provides  
7 otherwise, the courts should adhere to the rule that words be given their plain meaning. *See*  
8 *Commonwealth Ports Auth. v. Hakubotan Saipan Enter., Inc.*, 2 N.M.I. 212, 221 (1991); *Office*  
9 *of the Attorney Gen. v. Deala*, 3 N.M.I. 110, 117 (1992) (stating that if the meaning of a statute is  
10 clear, it will not be construed contrary to its plain meaning). Here, the language of art. X, § 9, is clear on  
11 its face. A taxpayer may bring an action to enjoin the expenditure of public funds. The language does  
12 not state that a taxpayer suit lies to enjoin a breach of fiduciary duty. If this were the case, then taxpayer  
13 suits could conceivably be brought for the slightest negligence on the part of the government and any  
14 government official. It is fundamental that a statute should not be interpreted in a manner that would lead  
15 to absurd results. *See Cal. v. Morris*, 756 P.2d 843, 851 (Cal. 1988); *see also Redmond v. Carter*,  
16 247 N.W.2d 268, 277 (Iowa 1976) (stating that while the wisdom or policy of constitutional provisions  
17 are not to be questioned, courts are not required to act in a manner which brings about such palpable  
18 absurdities) (*citing* 16 C.J.S. *Constitutional Law* § 18; 16 AM. JUR. 2d *Constitutional Law* § 76).

19  
20           Thus, the Court finds that Plaintiffs fail to state a claim upon which relief can be granted with  
21 regard to their taxpayer action. Specifically, Plaintiffs fail to allege an expenditure of public funds for other  
22 than a public purpose or in breach of a fiduciary duty. The Government Defendants' Motion to Dismiss,  
23 therefore is GRANTED as to Plaintiffs' first cause of action.

24           The Government Defendants next assert that Plaintiffs' second and third causes of action should  
25 be dismissed because Plaintiffs fail to allege that the remaining Defendants knowingly violated 15 U.S.C.  
26 § 1173(a)(3). Insofar that the Government Defendants are not named in these causes of action, their  
27 Motion to Dismiss is DENIED. Further, because the first cause of action in which the Government  
28 Defendants are named is dismissed, the Court does not deem it necessary to address the Government

1 Defendants' assertion that Plaintiffs failed to join an indispensable party pursuant to Com. R. Civ. P. 19.

2 **V. CONCLUSION**

3 For the foregoing reasons the Government Defendants' Motion to Dismiss Amended Complaint  
4 Pursuant to Com. R. Civ. P. 12(b)(6) and 19 is GRANTED in part and DENIED in part. The Motion  
5 to Dismiss is GRANTED as to Plaintiffs' first cause of action. The Motion to Dismiss is DENIED as to  
6 Plaintiffs' second and third causes of action.

7

8 SO ORDERED this 21st day of January 2003.

9

10 /s/  
11 EDWARD MANIBUSAN, Presiding Judge

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28