

1
2 **FOR PUBLICATION**

3
4
5 **IN THE SUPERIOR COURT**
6 **OF THE**
7 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8
9 **SOLEDAD CEPEDA OCAMPO,**) **CIVIL ACTIONS NOS. 01-0229A,**
10 **DOLORES DLG CEPEDA, JESUS DLG**) **01-0228E, 01-0227D, 01-0226C, 01-0225B,**
11 **CEPEDA, CARMENT C. REYES, FRANK**) **01-0224A, 01-0223E, 01-0222D**
12 **DLG CEPEDA, LUTMINA C.**)
13 **DECHERRONG, ROMAN DLG**)
14 **CEPEDA, CONSOLACION C. SABLAN,**)
15 **Plaintiffs,**)
16 **v.**) **ORDER DENYING PLAINTIFFS' AND**
17 **COMMONWEALTH OF THE**) **DEFENDANT'S MOTIONS FOR**
18 **NORTHERN MARIANA ISLANDS,**) **SUMMARY JUDGMENT**
19 **Defendant.**)
20 _____)

21 THIS MATTER came before the Court on summary judgment motions by Defendant,
22 Commonwealth of the Northern Mariana Islands (hereafter "Defendant") and Plaintiffs Soledad
23 Cepeda Ocampo, Dolores DLG Cepeda, Jesus DLG Cepeda, Carment C. Reyes, Frank DLG Cepeda,
24 Lutmina C. Decherrong, Roman DLG Cepeda, Consolacion C. Sablan (hereafter "Plaintiffs") tort
25 and contract claims. Oral arguments were heard on September 23, 2004, at 1:30 p.m. G. Anthony
26 Long, Esq. appeared for Plaintiffs and Asst. Attorney General David Lochabay appeared on behalf
27 of Defendant.

28 **FACTS**

Plaintiffs filed the underlying complaint against Defendant Commonwealth of the Northern

1 Mariana Islands alleging tort and breach of contract stemming from the mishandling of their
2 mother's body following her death at the Commonwealth Health Center (hereafter "CHC").
3 Plaintiffs claim that Defendant failed to properly monitor the chiller in which their mother's body
4 was kept. The chiller malfunctioned, which went unnoticed for a disputed period of time. As a
5 result of the chiller's malfunctioning, the decedent's body began to decompose, thereby emitting a
6 foul odor. The condition of the decedent's body allegedly necessitated a closed casket funeral, and
7 required all windows and doors in the church to remain open during the funeral service.

8 To support its Motion for Summary Judgment, Defendant contends that the law relied on
9 by Plaintiffs, which allows emotional distress damages for the mishandling of a body, is not the law
10 applicable in the CNMI, that Plaintiffs overstate the condition of their mother's body, and that
11 Defendant was not negligent in monitoring the chiller, and that there was no contract between
12 Plaintiffs and Defendant. Plaintiffs, in their Motion for Summary Judgment, contend that the
13 testimony of Mr. Tom Palacios ("Palacios") proves liability, and therefore, summary judgment is
14 appropriate.

15 DISCUSSION

16 A court may grant summary judgment only if there is no genuine issue as to any material fact
17 and the moving party is entitled to judgment as a matter of law. Com. R. Civ. P. 56(c); *Santos v.*
18 *Santos*, 4 N.M.I. 206, 209 (1994). The moving party bears the initial burden to show the court that
19 there is an absence of a genuine issue concerning any material fact and that the non-moving party
20 cannot prevail. *See Santos*, 4 N.M.I. at 210. In order to survive the motion, the non-moving party
21 must then show that there is evidence from which a jury might return a verdict in his favor. *See*
22 *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172, 176 (1990).

23 Conclusory allegations are not sufficient to defeat a motion for summary judgment. *Id.* at
24 177. The Court must accept all of the non-moving party's evidence as true and will view all
25 inferences drawn from the underlying facts in the light most favorable to the non-moving party. *Id.*
26 at 176.

27 Turning first to Defendant's argument regarding the applicability of the RESTATEMENT.
28 Pursuant to RESTATEMENT (SECOND) OF TORTS § 868 (1979), a family member is entitled to recover

1 for mental distress arising from negligent mishandling of a decedent's body without making a
2 showing of the physical consequences of the mental distress. Defendant contends that the
3 RESTATEMENT does not apply here because the RESTATEMENT reflects the minority, rather than the
4 majority, view regarding emotional distress claims stemming from the mishandling of bodies. The
5 CNMI has determined by statute that:

6 In all proceedings, the rules of the common law, as expressed in the restatements of
7 the law approved by the American Law Institute and, to the extent not so expressed
8 as generally understood and applied in the United States, shall be the rules of
9 decision in the courts of the Commonwealth, in the absence of written law or local
10 customary law to the contrary

11 7 CMC § 3401. There is no mention in the statute of the Court disregarding the RESTATEMENT
12 when it is not the majority view in other Circuits. Furthermore, as this Court has previously stated
13 in *Flores v. Hazelwood*, Civil No. 00-0332 (N.M.I. Super. Ct. July 5, 2001), despite the existence
14 of a modern trend to the contrary of that provided by the RESTATEMENT, the Court will not assume
15 the role of the Commonwealth Legislature. A primary basis of the Court's decision in *Flores* was
16 deference to the Commonwealth Legislature and the refusal of the Court to assume the role of the
17 Commonwealth Legislature. Likewise, the Court declines to assume the role of the Legislature in
18 the present case. As such, the RESTATEMENT applies to the mental distress cause of action in the
19 current matter and summary judgment is denied. The issue of the extent of emotional distress and
20 the extent of the body's decay are issues of fact.

21 Turning next to the breach of contract cause of action, Defendant moves for summary
22 judgment on the basis that Plaintiffs have not produced a signed, written agreement and offer no
23 evidence of terms. However, it is a universally excepted principal of law that a contract does not
24 have to be in writing to be enforceable. Therefore, whether there was an enforceable contract is an
25 issue of fact and Defendant's Motion for Summary Judgment is denied.

26 Plaintiffs' Motion for Summary Judgment contends Palacios' statements establish liability;
27 therefore, summary judgment is proper. However, Palacios merely states that CHC does not have
28 staff assigned specifically to work in the morgue, and that, at times, multiple bodies are kept in one
chiller. Contrary to Plaintiffs' assertions, these statements do not establish Defendant's liability.
Defendant has offered the Declaration of Gregory W. Hurst, an air-conditioning specialist at CHC,

1 whose duties include maintenance of the cooling units of the chillers. Mr Hurst's Declaration states
2 that maintenance personnel are required to check the chillers every two or three hours, and were
3 required to do so in December 2000. Whether the regime constituted negligence is a question of fact
4 to be determined at trial, not by summary judgment.

5 Finally, Plaintiffs raise the doctrine of *res ipsa loquitur*. Plaintiffs raised this same issue
6 before Judge Lizama, in their first Motion for Summary Judgment, with Judge Lizama rejecting its
7 applicability. The doctrine of *res ipsa loquitur* allows an inference of negligence to be drawn when
8 certain criteria are met: (1) when the event is of a kind that does not ordinarily occur in the absence
9 of negligence; (2) other reasonable causes, including the conduct of the plaintiff and third persons
10 are sufficiently eliminated; and (3) the indicated negligence is within the scope of the defendant's
11 duty to the plaintiff. RESTATEMENT (SECOND) TORTS § 328D (1979). In considering a summary
12 judgement motion, all inferences are to be drawn in the light most favorable to the non-moving
13 party. Here, it could be inferred that Defendant did not act negligently. As such, Plaintiffs' Motion
14 for Summary Judgment is DENIED.

15
16 SO ORDERED this 4th day of October 2004.

17
18 /s/ _____
19 DAVID A. WISEMAN
20 Associate Judge
21
22
23
24
25
26
27
28