

1. **FOR PUBLICATION**

2. **IN THE SUPERIOR COURT**  
3. **OF THE**  
4. **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

5. **MARIANO S. SABLAN,**

**CIVIL ACTION NO. 04-0166**

6. **Plaintiff,**

7. **v.**

8. **BENJAMIN T. MANGLONA and**  
9. **VICENTE M. ATALIG,**

**ORDER GRANTING DEFENDANTS’**  
**MOTION FOR JUDGMENT ON THE**  
**PLEADINGS ON THE ISSUE OF**  
**WRONGFUL TERMINATION**

10. **Defendants.**

11. \_\_\_\_\_

12.

13. THIS MATTER was last before the Court on February 21, 2006 on defendants’ joint motion

14. for summary judgment and plaintiff’s cross motion for summary judgment. Appearing on the briefs

15. and/or oral arguments were: Joseph E. Horey for Plaintiff Mariano S. Sablan and Assistant Attorney

16. General Jeanne H. Rayphand for Defendants Benjamin T. Manglona and Vicente M. Atalig

17. (collectively, “Defendants”). Having carefully considered the pleadings and the arguments of

18. counsel, the Court is prepared to rule.

19.

20. **I. FACTS AND PROCEDURAL BACKGROUND**

21. The defendants in this matter are Benjamin T. Manglona, the Mayor of Rota, and Vicente

22. M. Atalig, the Resident Head of the Department of Lands and Natural Resources for Rota. Both are

23. sued here in their individual capacities, although the complaint alleges that defendants were acting

24. “under color of law” and the Commonwealth Attorney General has taken responsibility for their

25. defense. Mariano Sablan, the Plaintiff in this matter, was made the Deputy Director of Land

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1. Registration and Survey on Rota on May 24, 1998. His employment was then renewed annually  
2. until 2003, when it was terminated.

3. Plaintiff challenged his termination with the Civil Service Commission (“the Commission”),  
4. arguing that he was a Civil Service employee. The Commission agreed and on March 3, 2004, it  
5. ordered Plaintiff reinstated and awarded him back pay and benefits from May 24, 2003 on. The  
6. Commission required compliance with its order within 15 days. Plaintiff was reinstated on or about  
7. March 18, 2004 but did not receive his back pay and benefits until April 28, 2004.  
8.

9. Plaintiff’s original suit alleged four causes of action against Defendants: wrongful  
10. termination, breach of contract, and deprivation of property (right to job and right to timely  
11. compensation) without due process of law. Plaintiff’s wrongful termination was dismissed without  
12. prejudice due to his failure to allege that any public policy violation was implicated in his  
13. termination. *See* Order Granting In Part and Denying In Part Motion For Summary Judgment  
14. (November 2, 2005) at 3. Plaintiff’s contract claim was dismissed without prejudice because  
15. Plaintiff did not appear to have evidence of the existence of a contract between himself and the  
16. Defendants. Plaintiff’s claims relating to deprivation of property survived Defendants’ motion for  
17. summary judgment.  
18.

19. Plaintiff submitted a First Amended Complaint to address some of the deficiencies of the  
20. original complaint. In response, Defendants moved for judgment on the pleadings with respect to  
21. the wrongful termination claim. Defendants allege that (1) they are not the proper parties for the  
22. action, and (2) the tort of wrongful termination against public policy does not apply to the facts at  
23. hand.  
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**II. STANDARD FOR GRANTING JUDGMENT ON THE PLEADINGS**

Defendants’ motion for judgment as a matter of law states that Plaintiff fails to state a claim against the defendants upon which relief can be granted. *See* Defendant’s Motion at 2, 4. When a Rule 12(c) motion raises a Rule 12(b)(6) defense, the motion should be evaluated under the familiar standard applicable to a Rule 12(b)(6) motion for failure to state a claim upon which relief can be granted. *Office of the Attorney General v. Luo*, No. 98-1107 (N.M.I. Super. Ct. Feb. 22, 1999). The complaint must be construed in the light most favorable to the nonmoving party, and all allegations in the complaint must be accepted as true. *Cepeda v. Hefner*, 3 N.M.I. 121, 126 (1992). The ultimate question that must be addressed is whether the allegations of the complaint constitute a “statement” of a claim under Com. R. Civ. P. 8(a)(2). *Ada v. J.J. Enters., Inc.*, No. 93-0644, (N.M.I. Super. Ct. Aug. 11, 1993) (Order to Parties to Submit Supplemental Memorandum of Law at 6). To that end, the CNMI Supreme Court has established the following test: “A complaint must contain either direct allegations on every material point necessary to sustain a recovery on any legal theory . . . or contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial.” *In re Adoption of Magofna*, 1 N.M.I. 449, 454 (1990).

**III. ANALYSIS**

**A. From the Complaint alone, it does not appear that Plaintiff can satisfy the elements for an action on a wrongful tort in violation of public policy.**

Defendants state that the only situations in which the tort applies are when an employee is fired (1) for refusing to commit an illegal act, (2) performing a public duty or obligation, (3) exercising a legal right or privilege, or (4) in retaliation for reporting employer misconduct. Motion at 4, citing *Smith v. Bates Technical College*, 991 P.2d 1135, 1150 (Wash. 2000).

1. The Court does not believe the tort to be as limited as Defendants suggest. On the contrary,  
2. courts have employed a four-step test for determining if the tort applies. Under this test, the plaintiff  
3. must prove that (1) there is a clear public policy (clarity element); (2) discouraging the conduct in  
4. which he or she engaged would jeopardize the public policy (jeopardy element); (3) the public-  
5. policy-linked conduct caused the dismissal (causation element); and (4) there is no overriding  
6. justification for the dismissal (absence of justification element). *Hubbard v. Spokane County*, 50  
7. P.3d 602, 606 (Wash. 2002); *see also Greeley v. Miami Valley Maintenance Contractors, Inc.*, 551  
8. N.E.2d 981 (Ohio 1990) (in which the Ohio Supreme Court first recognized the common law tort of  
9. wrongful discharge in violation of public policy).

11. Although Plaintiff’s supplemental briefing has identified the public policy on which his  
12. argument relies, Plaintiff has not shown causation or an absence of justification. Based on these  
13. pleadings, it does not appear that Plaintiff will be able to maintain the action.

14. **B. The Defendants are not the proper object of a suit for wrongful termination in**  
15. **violation of public policy.**

16. Defendants state that since Plaintiff’s employer was the Commonwealth, a cause of action  
17. cannot lie against Defendants, who were his supervisors. Motion at 2. Plaintiff argues that because  
18. Defendants had the power to terminate Plaintiff’s employment (and did so), they can be held liable.  
19. Opposition at 2. In support of this argument, Plaintiff notes that the Civil Service Commission  
20. concluded that Defendants were “appointing authorities” with the power to terminate Plaintiff’s  
21. position. *Sablan v. Department of Lands and Natural Resources, et al.*, N.M.I. Civ. Serv. Comm.  
22. No. 03-009, Decision and Order at 5, ¶ 7.

24. The Court first considers whether there was an employer-employee relationship between  
25. Defendants and Plaintiff. Title 1 Section 8152 defines “government employee” as “any person  
26. employed by a branch, agency, department, commission, board, authority or public corporation of

1. the Commonwealth of the Northern Mariana Islands, whether in the civil service system or  
2. otherwise.” Plaintiff falls into this category, meaning that he is an employee of the Commonwealth.  
3. See Complaint at ¶ 6 (Plaintiff is “a civil service employee as defined by the law of the CNMI.”)  
4. and ¶ 1 (Plaintiff is “Deputy Director for Land Registration and Survey for Rota”).

5. The Court next determines whether Plaintiff, as an employee of the Commonwealth, can  
6. also be considered an employee of Defendants. Black’s Law Dictionary (8<sup>th</sup> Ed., 2004) defines  
7. “employer” as “A person who controls and directs a worker under an express or implied contract of  
8. hire and who pays the worker's salary or wages.” The fact that Defendants had the power to  
9. terminate Plaintiff’s position is significant. However, Defendants were not responsible for paying  
10. Plaintiff’s wages. The Commonwealth was responsible. Thus, it is the Commonwealth alone who  
11. was the employer of Plaintiff.  
12.

13. Finally, the Court considers whether a party who is not the official employer may  
14. nevertheless be a target of a wrongful termination claim. In *Bragg v. East Bay Regional Park Dist.*,  
15. No. C-02-3585, 2003 WL 23119278 (N.D. Cal. Dec. 29, 2003) at \*7, the court held that supervisors  
16. sued in Plaintiff’s wrongful termination claim could not be liable for wrongful termination, as they  
17. did not employ plaintiff. See also *Travillion v. Heartland Pork Enterprises, Inc.*, 669 N.W.2d 262  
18. (Iowa App. 2003) (same).  
19.

20. Courts that have allowed suits against a supervisor have done so only where statutes  
21. explicitly provided for suits against supervisors. See *Palmer v. Regents of University of*  
22. *California*, 107 Cal.App.4th 899, 909 (Cal. App. 2003) (“unlike claims under FEHA or for the  
23. common law tort of wrongful termination in violation of public policy . . . an injured party may sue  
24. his or her supervisor under section 8547.10, rather than only the employer”). In *Palmer*, the court  
25.  
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1. noted that the public policy upon which plaintiff's wrongful termination suit is based must not  
2. prohibit a direct action against a supervisor (as does the Fair Employment Housing Act).

3. Under the existing case law, there is no basis for bringing the tort of wrongful termination  
4. against a supervisor rather than the employer. Because Defendants were allegedly the supervisors of  
5. Plaintiff, they are not the proper subjects for a tort action based on wrongful termination.

6. **IV. CONCLUSION**

7. Plaintiff's complaint does not contain allegations from which an inference fairly may be  
8. drawn that evidence on the public policy at issue will be introduced at trial. Nor does the complaint  
9. set forth a claim against the proper party—the Commonwealth. Thus, pursuant to Com. R. Civ. P.  
10. 12(c), Defendant's motion for judgment on the pleadings on the issue of wrongful termination is  
11. GRANTED.<sup>1</sup>

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14. SO ORDERED this 27th day of February 2006.

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16. /s/ \_\_\_\_\_  
17. Juan T. Lizama  
18. Associate Judge, Superior Court

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<sup>1</sup> The Court does not reach the issue of whether the tort of wrongful termination extends to all employees in the Commonwealth.