IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ANTONIO ARTERO SABLAN,
Plaintiff-Appellant,

v.

JESUS M. ELAMETO, ROSARIO M. ELAMETO, MARIA E. FITIAL, ESTANISLAO O. LANIYO, EI SOOK KIM LEE, H.S. LEE CONSTRUCTION CO., INC., LEE JAE HONG, FER DAVID, BANK OF SAIPAN, TERINA FITIAL SEMAN, and JOHN DOES I — IX,
Defendants-Appellees.

SUPREME COURT NO. 2012-SCC-0015-CIV
SUPERIOR COURT NO. 08-0039

ORDER DENYING PETITION FOR REHEARING

2013 MP 9

Decided July 3, 2013

Stephen J. Nutting, Saipan, MP, for Plaintiff-Appellant Antonio Artero Sablan
Douglas F. Cushnie, Saipan, MP, for Defendants-Appellees Jesus M. Elameto, *et al.*

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; JOSEPH N. CAMACHO, Justice Pro Tem.

PER CURIAM:

¶ 1 Plaintiff-Appellant Antonio Artero Sablan ("Sablan") prays for a rehearing of our decision in *Sablan v. Elameto*, 2013 MP 7 (Opinion, June 3, 2012). To prevail on this petition, Sablan "must demonstrate how 'the Court ignore[d] or incorrectly construe[d] legal issues or factual matters' in the resolution of that case." *Palacios v. Yumul*, 2012 MP 14 ¶ 1 (Order Denying Petition for Rehearing, Nov. 21, 2012) (quoting *Commonwealth Ports Authority v. Tinian Shipping Co.*, 2008 MP 2 ¶ 3). In particular, he "must state with particularity each point of law or fact . . . the Court has overlooked or misapprehended." NMI SUP. CT. R. 40(a)(2). For the reasons stated below, we conclude that Sablan's petition for rehearing does not offer a "point of law or fact" we "overlooked or misapprehended." NMI SUP. CT. R. 40(a)(2). Therefore, we DENY his petition for rehearing.

I. Facts and Procedural History

¶ 2 The facts of this case are contained in *Elameto*, 2013 MP 7 ¶¶ 2-13, although a few introductory remarks are appropriate here. In *Elameto*, we held the trial court erred when it sua sponte raised the affirmative defense of mutual mistake after the trial had concluded. 2013 MP 7 ¶ 28. By deciding the case on the basis of mutual mistake — a theory supported by the facts but not raised by either party — the trial court disregarded an important pleading precept: notice. In so holding, we emphasized how our Commonwealth Rules of Civil Procedure dictated such a result.

II. Analysis

¶ 3 Sablan raises a single issue in his petition for rehearing. He asserts that we incorrectly waived his argument on appeal that the Commonwealth Recording Statute, 1 CMC § 3711, protected his subsequent purchase of real property from Jesus and Victorina Elameto. In particular, he argues that "[w]hile the complaint does not references [sic] the CNMI Recording Statute[,] there was no obligation to do so, and certainly no waiver in failing to do so." Pet. for Reh'g 5. Requiring him to adhere to pleading rules, Sablan contends, "could result in a manifest injustice." *Id.* at 13. We disagree.

¶ 4 As a general legal matter, Commonwealth Rule of Civil Procedure 8 ("Rule 8") furnishes parties with pleading flexibility, so long as proper notice is provided to the opposing party and sufficient facts are alleged. *See Syed v. Mobil Oil Mariana Islands Inc.*, 2012 MP 20 ¶ 19 (Opinion, Dec. 31, 2012) (citing *In re Adoption of Magofna*, 1 NMI 449, 454 (1990)). In that vein, courts are not free to dismiss claims at the pleading stage merely because they are incorrectly identified or technically incorrect. *Syed*, 2012 MP 20 ¶ 19. But even then, Rule 8 demands specificity in pleading: a plaintiff "may not . . . set the machinery of the judiciary into motion with a 'short and plain statement' lacking either sufficient factual

accompaniment or a clear assertion of the claims presented." *Id*. ¶ 20 (quoting NMI R. CIV. P. 8(a)(2)[1]). This Sablan did not do. Nowhere in his complaint did he plainly present a claim under the Commonwealth Recording Statute.

¶ 5 In such cases, our pleading rules do not end with Rule 8, as Sablan suggests, by offering carte blanche to any party that seeks to raise an additional issue at trial. He argues, in effect, that our other procedural rules ought not apply here, because enforcement of these rules would "be a manifest injustice . . . based solely upon a perceived 'misstep by counsel.'" Pet. for Reh'g 12. We are not persuaded.

¶ 6 Commonwealth Rule of Civil Procedure 15 ("Rule 15") governs the process by which parties amend their original pleadings. This rule, which recognizes the importance of providing notice to an opposing party when the claims that will be tried at trial change, offers the rubric for parties wishing to amend their pleadings. NMI R. CIV. P. 15(a). Under Rule 15, numerous opportunities for amendment await a party. For example, a party may amend its pleading once as a matter of course. *Id*. After these opportunities have passed, however, a party may not unilaterally raise an issue supported or even suggested by the facts without the consent of the opposing party.[2] NMI R. CIV. P. 15(b). *See Consol. Data Terminals v. Applied Digital Data Sys., Inc.*, 708 F.2d 385, 396 (9th Cir. 1983) (discussing how an issue cannot be raised if prejudice will result and noting that "the question whether the defendant was prejudiced by the amendment is no different from the question whether the issue introduced by the amendment was tried by consent")

¶ 7 Despite abundant avenues for amendment, neither of the parties made any attempt to amend their pleadings (at any point during the lower court proceedings) to include such a claim. Sablan appears to touch on the Commonwealth Recording Statute in a pretrial statement, *see* Pet. for Reh'g 7, 8, but even a clearly articulated claim in a pre-trial statement could not, absent other action, amend a pleading. *See, e.g., S. Walk at Broadlands Homeowner's Ass'n v. Openband at Broadlands, LLC*, 713 F.3d 175, 184 (4th Cir. 2013) ("It is well-established that parties cannot amend their complaints through briefing or oral advocacy."). Because Sablan never sought leave of the court to amend his pleadings prior to trial, and because Sablan cannot point to "written consent of the adverse party" authorizing such an amendment, NMI R. CIV. P. 15(a), the applicability of the Commonwealth Recording Statute could only be "tried by express or implied consent of the parties." NMI R. CIV. P. 15(b).

¶ 8 We find no consent, express or otherwise. Notwithstanding Sablan's numerous citations to his own filings, none include any stipulations to try an issue regarding the Commonwealth Recording Statute,

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[1] Rule 8(a)(2) requires a complaint to include "a short and plain statement of the claim[s] showing that the pleader is entitled to relief."

[2] The court may also approve such a request under special circumstances if substantial prejudice is not caused to the opposing party. *Consol. Data Terminals v. Applied Digital Data Sys., Inc.*, 708 F.2d 385, 396 (9th Cir. 1983).

1 CMC § 3711. Nor does he direct our attention to "any indicia of consent in the trial transcript." *Elameto*, 2013 MP 7 ¶ 27. At most, this issue was "'inferentially suggested by incidental evidence in the record.'" *Patelco Credit Union v. Sahni*, 262 F.3d 897, 907 (9th Cir. 2001) (quoting *Consol. Data Terminals*, 708 F.2d at 396).[3] But mere failure to object does not constitute consent, particularly when that evidence possessed independent significance to other claims actually pled, as the land records operated here. *Patelco Credit Union*, 262 F.3d at 907 ("The introduction of evidence that directly addresses a pleaded issue does not put the opposing party on notice that an unpleaded issue is being raised."). Therefore, the issue was not properly raised below and we appropriately waived it on appeal.

¶ 9 Putting Sablan's hyperbolic assertions aside, Pet. for Reh'g 12, 13 (claiming twice that a "manifest injustice" would occur if the Court enforced fundamental procedural rules), his attempt to catalogue a vast number of cases accepting the general principle of notice pleading under Rule 8 misconstrues the *different* requirements for raising an issue long after a party has filed a complaint under Rule 15, including up until the day of trial arrives. And for good reason: these rules eschew anything that could fall into the realm of "trial by ambush." These neutral rules ensure fair proceedings. Moreover, Sablan's contention is squarely foreclosed by our decision in *Elameto*. There, we expressly accepted the proposition that Rule 15 served to ensure proper notice of the issues the parties intended to try. *Elameto*, 2013 MP 7. Thus, Sablan's admonition — that we set aside neutral rules of procedure intended to offer both parties a fair trial — can at best be characterized as opportunistic: particularly when Sablan recently contended that the trial court could *not* decide this case on the basis of mutual mistake because neither party properly raised the issue pursuant either to Rule 8 or Rule 15. Simply stated, "[r]ules are rules -- and the parties must play by them." *Mendez v. Banco Popular de Puerto Rico*, 900 F.2d 4, 7 (1st Cir. 1990). Even, as Sablan repeatedly pointed out in his petition, Pet. for Reh'g 5, 13, when they act to penalize an attorney's client due to that attorney's mistake.

III. Conclusion

¶ 10 For the foregoing reasons, we conclude that our opinion fully addressed the issue raised by Sablan. This Court has not "overlooked or misapprehended" a "point of law or fact." NMI SUP. CT. R. 40(a)(2). Accordingly, the petition for rehearing is DENIED.

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[3] "[W]hen our rules are patterned after the federal rules it is appropriate to look to federal interpretation for guidance."*Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 60.

SO ORDERED this 3rd day of July, 2013.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
JOSEPH N. CAMACHO
Justice Pro Tem