

**Juan GOMEZ 1 through 17
vs.
WESTERN EQUIPMENT, INC.**

**Civil Action No. 87-0008
District Court NMI**

Decided July 22, 1987

**1. Civil Procedure - Parties -
Fictitious Names**

The exceptions to the general rule that every action be prosecuted in the name of the real party in interest are limited to those situations where a party can show a strong privacy interest or a threat of physical danger and economic harm is generally not a sufficient ground to proceed under a fictitious name. Fed.R.Civ.P. 17(a).

**2. Civil Procedure - Parties -
Fictitious Names**

Plaintiffs could proceed under fictitious names where the plaintiffs' employment contracts could be terminated by defendant at will rendering plaintiffs immediately deportable, and where such action would frustrate the purposes of the court action. Fed.R.Civ.P. 17(a).

**3. Jurisdiction - District Court -
Diversity**

Diversity jurisdiction exists in the NMI District Court between aliens and CNMI corporations.

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IN THE DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

JUAN GOMEZ 1 through)
4 JUAN GOMEZ 17,)
5 Plaintiffs,)
6 vs.)
7 WESTERN EQUIPMENT, INC.)
8 Defendant.)
9

CIVIL ACTION NO. 87-0008

DECISION

FILED
Clerk
District Court

JUL 21 1987

For the Northern Mariana Islands
By _____

On June 8, 1987, Plaintiffs filed suit alleging that Defendant Western Equipment, Inc., had failed to pay overtime wages in violation of both Title 29 U.S.C. §207 and Title 4 CMC §9222. Plaintiffs further alleged that Defendant had violated the terms of certain government contracts which required that Plaintiffs be paid a specified hourly rate. Although Plaintiffs are not a party to these government contracts, they contend that they are third-party beneficiaries and, consequently, entitled to maintain an action on the contract.

The unique twist in this case is the fact that Plaintiffs filed suit under assumed names. They have sought a protective order asking this Court to permit them to proceed under aliases until it can be determined whether the Court will accept their position that they are beneficiaries to the contracts.

Plaintiffs feel that it is necessary to proceed under fictitious names during the preliminary stages of this lawsuit to protect themselves from adverse actions from their employer when

1 it learns the names of the individuals who are suing it.
2 Additionally, in oral argument it was brought out that the
3 Commonwealth Legislature has recently passed Public Law 5-32
4 which was signed into law by the Governor and is effective July
5 29, 1987. This law provides that an alien who is not employed
6 and, consequently, not entitled to remain in the Commonwealth
7 under an alien worker status, is deportable, despite the fact
8 that he or she is involved in a pending lawsuit. The law allows
9 the alien to return to the Commonwealth, at his or her own
10 expense, one week prior to the commencement of trial. On the
11 other hand, the former law, 3 CMC §4437(b)(1), allowed alien
12 workers who had filed suit against their former employers to
13 remain in the Commonwealth until the complaint was reduced to
14 judgment.

15 [] Federal Rule of Civil Procedure 17(a) requires that
16 every action be prosecuted in the name of the real party in
17 interest. There are numerous exceptions to the rule, however.
18 See, e.g., Roe v. Wade, 410 U.S. 113 (1973). Generally, the
19 exceptions to the rule requiring identification of the real party
20 in interest are limited to those situations wherein a party can
21 show a strong privacy interest or a threat of physical danger.
22 As Defendant points out, economic harm is generally not a
23 sufficient ground to proceed under a fictitious name. Coe v.
24 United States District Court for the District of Colorado, 676
25 F.2d 411, 417 (10th Cir. 1982). Plaintiffs have submitted
26 authority for the opposite proposition, Gomez v. Buckeye Sugars,
27 60 F.R.D. 10 (N.D. Ohio 1973), but the general rule still
28 remains.

1 [2] The circumstances surrounding this lawsuit militate
2 that Plaintiffs be allowed to proceed temporarily under
3 fictitious names. Defendant has pointed out that Plaintiffs have
4 not shown any situation in which Defendant has terminated an
5 employee because he or she has filed a lawsuit. Defendant also
6 has pointed out that Plaintiffs have not shown any situation
7 where Defendant has not paid its employees in full. As to the
8 second point, this lawsuit will determine if Defendant has acted
9 as altruistically as it now claims. As to the first, Defendant
10 or any other employer would be hard-pressed to deny the
11 attractiveness of summary termination of an employee who has
12 filed suit against an employer. The employee is rendered
13 immediately deportable and only allowed to return to the
14 Commonwealth at his or her own expense one week before trial
15 begins. This, naturally, would render any effective suit
16 practically impossible. This law encourages employers to
17 terminate their alien employees, with or without cause, at the
18 commencement of a suit. The breach of an employment contract is
19 not illegal; it is an economic decision and for this reason there
20 are no negative or punitive consequences attached to it.

21 Arguably, the Court's decision to allow Plaintiffs to
22 proceed under assumed names is based merely on speculation that
23 the Defendant will terminate Plaintiffs' contracts. Termination
24 would necessarily result in economic harm to Plaintiffs. But the
25 Court sees it as much more. Defendant's rational business
26 decision to terminate litigious employees will, under the new
27 law, frustrate the functions and the purpose of this tribunal.
28 Plaintiffs will be deportable and once removed to the Philippines

1 their attorney will be left to prosecute the case without
2 clients. This is not to say that the case cannot proceed but the
3 Court can envision the morass that will develop as a result of
4 Plaintiffs' absence. Additionally, in many instances this law
5 will effectively preclude an aggrieved alien worker from seeking
6 redress in this Court, or the Commonwealth Trial Court, which he
7 has a right to do, due to the fact that he will be whisked away
8 to the Philippines during the pendency of the litigation.

9 [3] As a further basis for compelling Plaintiffs to reveal
10 their names, Defendant points out that this suit is brought
11 pursuant to the Court's diversity jurisdiction and that without
12 the names of the Plaintiffs, diversity cannot be established.
13 This argument is meritless. First, and foremost, Plaintiffs'
14 counsel has signed the complaint, and, therefore, verified under
15 Rule 11 that all plaintiffs are citizens of the Philippines.
16 Diversity exists between aliens and CNMI corporations. Second,
17 Plaintiffs also base jurisdiction on Title 29 of the United
18 States Code and, even assuming arguendo that Plaintiffs are not
19 aliens, the Court has jurisdiction over this action and any
20 pendent state claims under 28 U.S.C. §1337.

21 For these reasons, Plaintiffs' motion for a protective
22 order to allow them to proceed temporarily under fictitious names
23 shall be GRANTED.
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JUDGE ALFRED LAURETA