



FOR PUBLICATION



E-FILED  
CNMI SUPERIOR COURT  
E-filed: Mar 14 2017 08:12AM  
Clerk Review: N/A  
Filing ID: 60334040  
Case Number: 16-0169-CV  
N/A

By order of the Court, *Presiding Judge Roberto C. Naraja*

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

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

GPPC, INC., a Commonwealth of the Northern Marianas corporation, ) CIVIL ACTION NO. 16-0169

Plaintiff,

v.

ORDER DENYING DEFENDANT’S  
MOTION TO DISMISS

COMMONWEALTH PORTS  
AUTHORITY,

Defendant.

I. INTRODUCTION

THIS MATTER came before the Court on January 18, 2017, at 9:00 a.m. in Courtroom 202A, for a motion hearing. Attorney Mark B. Hanson represented Plaintiff GPPC, Inc. (“GPPC”). Attorney Robert T. Torres represented Defendant Commonwealth Ports Authority (“CPA”). The Court heard arguments on CPA’s motion to dismiss GPPC’s amended complaint pursuant to NMI R. Civ. P. 12(b)(1) and 12(b)(6).<sup>1</sup>

II. BACKGROUND

This case concerns a dispute over a runway project at the Fransisco C. Ada/Saipan International Airport (“Airport”). GPPC was contracted by CPA to participate in the rehabilitation of a runway at the Airport. It is alleged that the concrete laid and grooved by GPPC has experienced

<sup>1</sup> The Court finds that the substance of CPA’s motion is brought under NMI R. Civ. P. 12(b)(6). The question seems less to do with whether the Court is without jurisdiction, but whether GPPC has failed to state valid causes of action upon which relief can be granted.

1 instances of cracking and “spalling,” which has negatively impacted the project. GPPC alleges that  
2 the concrete was not given enough time to cure and/or the redesigned asphalt mix formula is to  
3 blame. CPA counters that GPPC’s work was subpar and that the issues with the runway are due to  
4 GPPC’s deficient work. Essentially, the substance of the dispute is whether GPPC completed its  
5 obligations under the contract or whether GPPC was or still is obligated to fix its allegedly  
6 defective work.

7         After allegedly completing its work, GPPC sought to have the project engineer,  
8 Hofschneider Engineering, LLC (“HE”), confirm that the project was completed and issue the  
9 appropriate documentation. Because of the spalling and cracking issue HE refused to sign off on  
10 GPPC’s work. Thereafter, GPPC filed a formal dispute under CPA’s Procurement Rules and  
11 Regulations, codified in Northern Mariana Islands Administrative Code (“NMIAC”) § 40–50–920.  
12 GPPC’s position was rejected at both the executive director level and the agency appeal level. As  
13 GPPC exhausted the agency process it now turns to the Court seeking to bring separate direct  
14 causes of action against CPA.<sup>2</sup>

15         In its motion, CPA claims that GPPC’s amended complaint is improper because it is merely  
16 a collateral attack that inappropriately couches its appeal of CPA’s final agency ruling against  
17 GPPC as a breach of contract claim and a request for declaratory relief. Moreover, CPA argues that  
18 the Commonwealth’s Administrative Procedure Act (“APA”), 1 CMC §§ 9101–9115, mandates  
19 that GPPC petition the Court for judicial review of the CPA Appeals Committee’s (“Appeal  
20 Committee”) adverse ruling.

21         GPPC counters that the APA not only does not prohibit its claims, but that the express terms  
22 of the APA read in conjunction with the Commonwealth’s Rules of Procedure for Administrative  
23

---

24 <sup>2</sup> The general rule requiring a party to exhaust its administrative remedies before bringing a claim does not appear to be at issue in this case because the parties seem to agree that GPPC exhausted the agency level process.

1 Appeals (“RPAA”) allows GPPC to bring its claims. Specifically, GPPC argues that NMI R. P.  
2 ADMIN. APP. 2 requires a contested case, which is not the case here because there was no mandatory  
3 hearing at the agency level. GPPC contends that without a formalized hearing process at the agency  
4 level it is prohibited from petitioning for judicial review, which opens the door under 1 CMC §  
5 9112(c) for GPPC to bring a separate breach of contract claim and a request for declaratory relief.

6 Currently, the Court is confronted with the question of whether GPPC’s suit is permissible  
7 in light of the contract, the RPAA, the APA, and the NMIAC. After reviewing the submissions of  
8 the parties as well as the relevant law the Court is persuaded that CPA’s motion to dismiss should  
9 be **DENIED**.

### 10 III. LEGAL STANDARD

11 A NMI R. Civ. P. 12(b)(6) motion tests the legal sufficiency of the claims asserted in a  
12 complaint. *Camacho v. Micronesian Dev. Co.*, 2008 MP 8 ¶ 10. To survive a NMI R. Civ. P.  
13 12(b)(6) motion to dismiss, a “complaint must contain either direct allegations on every material  
14 point necessary to sustain a recovery on any legal theory, even though it may not be the theory  
15 suggested or intended by the pleader, or contain allegations from which an inference fairly may be  
16 drawn that evidence on these material points will be introduced at trial.” *In re Adoption of Magofna*,  
17 1 NMI 449, 454 (1990) (citations omitted). This standard ensures that a pleading party pleads  
18 enough direct and indirect allegations to provide “fair notice of the nature of the action.” *Syed v.*  
19 *Mobil Oil Mariana Islands, Inc.*, 2012 MP 20 ¶ 19 (citing *Magofna*, 1 NMI at 454). In deciding a  
20 motion to dismiss under NMI R. Civ. P. 12(b)(6), the court must assume as true all factual  
21 allegations in the challenged pleading and construe them in a light most favorable to the non-  
22 moving party. *Cepeda v. Hefner*, 3 NMI 121, 127–28 (1992); *Govendo v. Marianas Pub. Land*  
23 *Corp.*, 2 NMI 482, 490 (1992).

24 ///

1 **IV. DISCUSSION**

2 Here, the Court is tasked with determining the interplay between NMI R. P. ADMIN. APP. 2,  
3 1 CMC § 9112, and NMIAC § 40–50–920 to see if GPPC’s amended complaint states causes of  
4 action upon which relief can be granted.

5 **A. Impact of the RPAA’s Contested Case Requirement.**

6 NMI R. P. ADMIN. APP. 2(a) provides: “[a]n appeal from an agency final order or decision  
7 in a *contested case* is commenced by filing a petition for judicial review in the office of the clerk of  
8 the Superior Court . . . .”<sup>3</sup> NMI R. P. ADMIN. APP. 1(f)(3) defines a contested case as: “a proceeding  
9 before an agency in which the legal rights, duties, interests or privileges of specific parties are  
10 required by law or constitutional right to be determined *after an agency hearing* . . . .” As a matter  
11 of law, a case is not “contested” at the agency level if the agency level proceeding does not mandate  
12 a hearing be held. *See Appeal of Coldwell Solar*, Civ. No. 14–0202 (NMI Super. Ct. Mar. 12, 2015)  
13 (Order Granting CUC’s Motion to Dismiss Without Prejudice at 4–5) (ruling that when a hearing is  
14 not a mandatory part of the agency appeal process judicial review is inappropriate).

15 Here, the administrative agency review process does not require that a hearing at either the  
16 executive director level or the agency appeal level be held. Specifically, NMIAC § 40–50–920  
17 provides:

18 (a) Any dispute between the Authority and a contractor to the performance,  
19 interpretation of a compensation due under a contract, which is the subject of this  
20 chapter, must be filed in writing with the Executive Director within ten calendar  
days after knowledge of the facts surrounding the dispute.

21 (b) When a claim by or against a contractor cannot be satisfied or settled by mutual  
22 agreement and a decision on the dispute is necessary, the Executive Director shall  
review the facts pertinent to the dispute, secure necessary legal assistance and

---

23 <sup>3</sup> The RPAA are authoritative because they were adopted by the Commonwealth Legislature and qualify as evidence of  
24 supporting legislative intent, illuminating how the Court should interpret and enforce the APA. *See In re Decision of the  
Office of the Public Auditor on the Admin. Appeal of Coldwell Solar, Inc.*, Civ. No. 14–0202 (NMI Super. Ct. Mar. 12,  
2015) (Order Granting CUC’s Motion to Dismiss Without Prejudice at 3–4) (citing Judicial Admin. Order No. 2010–  
ADM–0003–RULE (NMI Sup. Ct. Sept. 7, 2010)) (hereinafter “*Appeal of Coldwell Solar*”).

1 prepare a written description that shall include: (1) Description of the dispute; (2)  
2 Reference to pertinent contract terms; (3) Statement of factual areas of disagreement  
or agreement; and (4) Statement of the decision as to the factual areas of  
3 disagreement and conclusion of the dispute with any supporting rationale.

4 (c) Appeals. The Appeals Committee shall review and render a decision on an appeal  
from an adverse decision timely taken by a contractor. *The Appeal Committee may*  
5 *require a hearing or that information be submitted on the record, in his discretion.*  
The Appeal Committee may affirm, reverse or modify the decision or remand it for  
6 further consideration.

7 (d) Duty to Continue Performance. A contractor that has a dispute pending before  
the Executive Director or an appeal before the Appeal Committee must continue to  
8 perform according to the terms of the contract and failure to so continue shall be  
deemed to be a material breach of the contract unless he obtains a waiver of this  
9 provision by the Board.

10 NMIAC § 40-50-920 does not mandate that a hearing be held, but merely provides that  
11 during the appeals process the Appeal Committee may hold a hearing. In *Appeal of Coldwell Solar*,  
12 the court ruled that a bid protest proceeding was not a contested case for purposes of the RPAA and  
13 the APA because the NMIAC regulations at issue did not mandate a hearings process. Civ. No. 14-  
14 0202 (NMI Super. Ct. Mar. 12, 2015) (Order Granting CUC's Motion to Dismiss Without Prejudice  
15 at 4-5). The rationale for the court's ruling in *Appeal of Coldwell Solar* seems to be that if hearings  
16 are not a mandated part of the agency process the process is too informal for judicial review to be  
17 applicable.

18 Here, like in *Appeal of Coldwell Solar*, the relevant provision of the NMIAC, NMIAC § 40-  
19 50-920, provides an agency dispute process which is too informal to activate judicial review under  
20 the APA. CPA argues that GPPC must bring this matter before the Court as a petition for judicial  
21 review. However, after reviewing NMI R. P. ADMIN. APP. 1(f)(3) and 2(a) as well as NMIAC § 40-  
22 50-920, it is evident that GPPC is barred from petitioning for judicial review, just as the petitioner  
23 in *Appeal of Coldwell Solar* was. Absent mandatory hearings there is no contested case and when  
24 there is no contested case judicial review is inapplicable. GPPC correctly notes that CPA's focus on

1 GPPC’s ability to have requested a hearing is a red herring; the key to the analysis is not whether a  
2 hearing could have been held, but whether the agency process is formal enough to trigger the  
3 application of the standards and procedures governing petitions for judicial review. In this case,  
4 agency level hearings are not a mandatory part of the process making judicial review unavailable to  
5 GPPC.

6 **B. The APA’s Impact on GPPC’s Claims in Light of the Court’s Contested Case Ruling.**

7 The question then becomes whether GPPC’s breach of contract claim and/or its request for  
8 declaratory relief are allowed in light of the APA. 1 CMC § 9112(c) provides:

9 The form of proceeding for judicial review is the special statutory review proceeding  
10 relevant to the subject matter in the Commonwealth Superior Court *or, in the*  
11 *absence or inadequacy thereof, any applicable form of legal action, including*  
12 *actions for declaratory judgments or writs of prohibitory or mandatory injunction or*  
*habeas corpus, in that court.* Except to the extent that prior, adequate, and exclusive  
opportunity for judicial review is provided by law, agency action is subject to  
judicial review in civil or criminal proceedings for judicial enforcement.

13 Here, the Court has already ruled that judicial review is not only not mandated, but is actually  
14 prohibited because this case does not qualify as a contested case. 1 CMC § 9112(c) supports GPPC  
15 position that it should be allowed to bring a direct action in this case because the statute expressly  
16 recognizes that when a judicial review proceeding is unavailable or inadequate a party can bring a  
17 direct action in “any applicable form of legal action.” In the Court’s view, GPPC’s reading of 1  
18 CMC § 9112 in light of the RPAA and the NMIAC is the correct one; GPPC can bring its claims in  
19 a direct action because judicial review is inapplicable due to the nature of the agency level process.

20

21 **V. CONCLUSION**

22 At this time, the Court **DENIES** CPA’s motion to dismiss for the aforementioned reasons.

23 The lack of mandatory hearings at the agency level is dispositive because without mandatory  
24

1 hearings a case is not contested; if a case is not contested then it is not ripe for judicial review; and  
2 if judicial review is not available then a party like GPPC can bring a direct action.

3 **IT IS SO ORDERED** this 14th day of March, 2017.

4

5

/s/ \_\_\_\_\_  
**ROBERTO C. NARAJA**  
Presiding Judge

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24