



By Order of the Court, Judge Joseph N. Camacho

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FOR PUBLICATION



E-FILED
CNMI SUPERIOR COURT
E-filed: Jul 19 2017 04:23PM
Clerk Review: N/A
Filing ID: 60869985
Case Number: 17-0067-CV
N/A

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

SECUNDIA UNTALAN PANGELINAN)	CIVIL ACTION NO. 17-0067
AND SELINA MARIE PANGELINAN,)	
)	ORDER DENYING DEFENDANT’S
Plaintiffs,)	MOTION TO DISMISS AS PLAINTIFFS
)	HAVE ALLEGED SUFFICIENT FACTS
v.)	TO ESTABLISH ALL THE ELEMENTS
)	OF THE CAUSES OF ACTION OF
JOHN SABLAN PANGELINAN,)	ABUSE OF PROCESS AND
)	INTERFERENCE WITH CONTRACT
Defendant.)	
)	
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This matter came before the Court on May 23, 2017 on Defendant’s Rules 12(b)(1) & (6) Motion to Dismiss with Prejudice for Lack of Jurisdiction Over the Subject Matter and For Failure to State a Claim Upon Which Relief Can Be Granted Under the Commonwealth Rules of Civil Procedure (Com. R. Civ. P.). Attorney Janet King appeared for the Plaintiffs, Secundia Untalan Pangelinan (“Secundia”) and Selina Marie Pangelinan (“Selina”). Defendant John Sablan Pangelinan (“Defendant Pangelinan”) appeared *pro se*.

Based on a review of the filings, oral arguments, and applicable law, the Court **DENIES** Defendant Pangelinan’s Motion to Dismiss.

II. BACKGROUND

Plaintiffs Secundia Untalan Pangelinan and Selena Marie Pangelinan filed their complaint and demand for a jury trial on March 8, 2017, alleging two causes of action: abuse of process and interference with contract.

1 According to the Plaintiffs, Norberto Pangelinan (“Norberto”), who was Secundia’s husband
2 and Selena’s father, passed away on August 14, 2015. Norberto owned several pieces of property in
3 Tanapag, Saipan (“Tanapag Property”): Lot 018 B 102, Lot 018 B 103, and Lot 018 B 174. Prior to
4 his death, Norberto agreed to lease the Tanapag Property to Peak Development (CNMI), LLC, and
5 agreed to sell his reversionary interest to Pedro Kileleman. Secundia is the administratrix of
6 Norberto’s estate.¹

7 Before the transactions to Peak Development and Pedro Kileleman closed,² Norberto passed
8 away. In Norberto’s probate proceeding, Defendant Pangelinan filed numerous motions and
9 motions to reconsider, which were denied.³ See *In the Matter of the Estate of Norberto Pangelinan*,
10 Civ. No. 15-0169. Defendant Pangelinan ultimately appealed the probate case to the
11 Commonwealth Supreme Court.⁴

12 Plaintiffs allege that Defendant Pangelinan’s numerous filings in the probate case were
13 “without any credible evidentiary or legal support” and that Defendant Pangelinan “had no reason
14 to believe, and in fact did not believe, that the grounds for his challenges, motions to reconsider, or
15 appeal were meritorious.” Complaint ¶¶ 12-14, 18. Plaintiffs further allege that Defendant
16 Pangelinan specifically sought to “interfer[e] with a land transaction pending between Plaintiffs and
17 the third party, in an effort to force the payment of money to Defendant [Pangelinan].” Complaint ¶
18 23.

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21 ¹ See *Estate of Pangelinan*, Civ. No. 15-0169 (NMI Super. Ct. Dec. 22, 2015) (Order Appointing Administratrix at 1).

22 ² Closing is “[t]he final meeting between parties to a transaction, at which the transaction is consummated; esp., in real estate, the final transaction between the buyer and seller, whereby the conveyancing documents are concluded and the money and property transferred.” BLACK’S LAW DICTIONARY 233 (Abridged 9th Ed.).

23 ³ The Court ultimately held that Defendant Pangelinan was neither an heir nor a credit claimant, and thus lacked standing to participate in the probate case. *In the Matter of the Estate of Norberto Pangelinan*, Civ. No. 15-0169 (NMI Super. Ct. Dec. 12, 2016) (Order Denying John S. Pangelinan’s Motions for Reconsideration at 2).

24 ⁴ As of the filing of this order, the probate case is still pending in the Commonwealth Supreme Court under Supreme Court Docket Number 2017-SCC-0010 and 2017-SCC-0011.

1 The Plaintiffs filed their complaint and demand for a jury trial on March 8, 2017, alleging
2 two causes of action: abuse of process and interference with contract. On March 22, 2017,
3 Defendant Pangelinan filed his Rules 12(b)(1) & (6) Motion to Dismiss with Prejudice for Lack of
4 Jurisdiction Over the Subject Matter and for Failure to State a Claim Upon Which Relief Can Be
5 Granted Under the Commonwealth Rules of Civil Procedure (“March 22 Motion”). The Court set a
6 motion hearing date of May 23, 2017, and ordered that an opposition, if any, would be due on or
7 before April 28, 2017 and a reply would be due on or before May 19, 2017.

8 On April 5, 2017, Defendant Pangelinan filed his Ex Parte Motion for an Expedited Order
9 Granting Defendant Pangelinan’s Rules 12(b)(1) & (6) Motion to Dismiss with Prejudice for Lack
10 of Jurisdiction Over the Subject Matter and for Failure to State a Claim Upon Which Relief Can Be
11 Granted Under the Commonwealth Rules of Civil Procedure (Com.R.Civ.P.) (“April 5 Motion”).
12 The Court set a motion hearing date of May 23, 2017, and ordered that an opposition, if any, would
13 be due on or before April 28, 2017 and a reply would be due on or before May 19, 2017.

14 On April 18, 2017, Defendant Pangelinan filed his Second Ex Parte Motion for an
15 Expedited Order Granting Defendant Pangelinan’s Rules 12(b)(1) & (6) Motion to Dismiss with
16 Prejudice for Lack of Jurisdiction Over the Subject Matter and Failure to State a Claim Upon
17 Which Relief Can Be Granted Under the Commonwealth Rules of Civil Procedure (Com.R.Civ.P.)
18 (“April 18 Motion”). The Court again set a motion hearing date of May 23, 2017, and ordered that
19 an opposition, if any, would be due on or before April 28, 2017, and a reply would be due on or
20 before May 19, 2017.

21 The Plaintiffs filed their Opposition to Defendant’s Motion to Dismiss, their Opposition to
22 Defendant’s Motion for an Ex Parte Expedited Order, and their Opposition to Defendant’s Second
23 Motion for an Ex Parte Expedited Order on April 28, 2017.

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1 On May 8, 2017, Defendant Pangelinan filed his Ex Parte Motion to Strike Plaintiff's
2 Opposition Papers and for an Expedited Order Granting Defendant Pangelinan's Rules 12(b)(1) &
3 (6) Motion to Dismiss with Prejudice for Lack of Jurisdiction Over the Subject Matter and for
4 Failure to State a Claim Upon Which Relief Can be Granted Under the Commonwealth Rules of
5 Civil Procedure (Com.R.Civ.P) and Other Same Ex Parte Motions ("May 8 Motion").⁵ The Court
6 set a motion hearing date of May 23, 2017, and ordered that an opposition, if any, would be due on
7 or before May 18, 2017, and a reply would be due on or before May 23, 2017. The Plaintiffs filed
8 their opposition to the May 8 Motion on May 18, 2017.

9 The Defendant also filed his Reply on May 8, 2017, which addressed the March 22 Motion,
10 the April 5 Motion, and the April 18 Motion.

11 On May 10, 2017, the Plaintiffs filed their Motion Requesting An Order Requiring Pro Se
12 Defendant to Comply with General Order No 2006-32 ("May 10 Motion"). The Court set a motion
13 hearing date of May 23, 2017, and ordered that an opposition, if any, would be due on or before
14 May 18, 2017, and a reply would be due on or before May 23, 2017. Defendant Pangelinan filed his
15 opposition to the May 10 Motion on May 18, 2017.

16 At the May 23, 2017 motion hearing, the Court ruled from the bench, denying three of the
17 Defendant's motions: the April 5 Motion, April 18 Motion, and the May 8 Motion. The Court
18 granted the Plaintiff's May 10 Motion.⁶ Currently, the only motion pending before the Court is the
19 Defendant's March 22 Motion, the initial motion to dismiss.

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23 ⁵ The Court notes that Defendant Pangelinan's repeated filing of motions with little substance with accompanying
voluminous attachments is the same filing pattern that Defendant Pangelinan used in *Estate of Pangelinan*, Civ. No. 15-
0169.

24 ⁶ A written order regarding these rulings was issued on June 8, 2017. *Pangelinan v. Pangelinan*, Civ. No. 17-0067
(NMI Super. Ct. June 8, 2017) (Order at 1-2).

1 **III. LEGAL STANDARD**

2 Under Rule 8(a) of the Commonwealth Rules of Civil Procedure, a pleading “shall contain .
3 . . . a short and plain statement of the claim showing that the pleader is entitled to relief.” To comply
4 with Rule 8(a), the complaint must either “contain . . . direct allegations on every material point or
5 contain allegations from which an inference fairly may be drawn that evidence regarding these
6 necessary points will be introduced at trial.” *Atalig v. Mobil Oil Mariana Islands, Inc.*, 2013 MP 11
7 ¶ 23 (quoting *In re Adoption of Magofna*, 1 NMI 449, 454 (1990)) (internal quotation omitted).
8 Under Rule 12(b)(6), if a pleading fails to “state a claim upon which relieve can be granted,” the
9 Court may dismiss those portions of the claim.

10 The plaintiff must plead “enough direct and indirect allegations to provide adverse parties
11 with ‘fair notice of the nature of the action.’” *Syed v. Mobil Oil Mariana Islands, Inc.*, 2012 MP 20
12 ¶ 19. A pleading may not include claims that are purely speculative. *Atalig*, 2013 MP 11 ¶ 23. In
13 examining the sufficiency of the pleading, the Court will construe the factual allegations “in the
14 light most favorable to the [non-moving party].” *Id.* (quoting *Syed*, 2012 MP 20 ¶ 22).⁷ The Court
15 will not “strain to find inferences favorable to the non-moving party.” *Id.* (quoting *Cepeda v.*
16 *Hefner*, 3 NMI 121, 127 (1992)). The Court notes that if matters outside the pleadings are
17 considered on a Rule 12(b)(6) motion the motion shall be treated as one for summary judgment
18 under Rule 56. *See* NMI R. Civ. P. 12(b).

19 In a Rule 12(b)(6) motion, the Court may consider “documents incorporated into the
20 complaint by reference, and matters of which a court may take judicial notice.” *Tellabs, Inc. v.*
21 *Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (comparing sources considered by courts in
22 Rule 12(b)(6) motions to those considered in evaluating securities fraud complaints). The Court

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24 ⁷ The Court also notes that the Commonwealth Supreme Court has expressly rejected the *Twombly/Iqbal* pleading standard relied upon by Defendant Pangelinan. *Syed v. Mobil Oil Marianas*, 2012 MP 20 ¶ 11 (citing *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554 (2007)).

1 “can only take judicial notice of facts that are free of reasonable dispute because the facts are
2 generally known or capable of accurate and ready determination by resort to sources whose
3 accuracy cannot reasonably be questioned.” *Commonwealth v. Taman*, 2014 MP 8 ¶ 35 (citing NMI
4 R. Evid. 201(b); *In re Yana and Atalig*, 2014 MP 1 ¶ 19) (internal quotation marks omitted).

5 IV. DISCUSSION

6 Defendant Pangelinan argues (1) that the Court lacks subject matter jurisdiction over the
7 Plaintiffs due to their lack of standing, and (2) that the Plaintiffs have failed to state claims for
8 abuse of process and interference with contract.⁸ The Court will address each of these arguments in
9 turn.

10 A. The Court Cannot Consider the Unincorporated Exhibits Provided by the Plaintiffs

11 At the outset, the Court notes that Plaintiffs attached exhibits to their opposition to the
12 motion to dismiss, including an alleged letter from Defendant Pangelinan, Exhibit F., which they
13 used to argue standing. The Court cannot and will not consider these exhibits.

14 In a Rule 12(b)(6) motion, if “matters outside the pleading are presented to and not excluded
15 by the court, the motion shall be treated as one for summary judgment and disposed of as provided
16 in Rule 56, and all parties shall be given reasonable opportunity to present all material made
17 pertinent to such a motion by Rule 56.” NMI R. Civ. P. 12(b). In a Rule 12(b)(6) motion, the Court
18 may consider “documents incorporated into the complaint by reference, and matters of which a
19 court may take judicial notice.” *Tellabs, Inc.*, 551 U.S. at 322. The Court “can only take judicial
20 notice of facts that are free of reasonable dispute because the facts are generally known or capable

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22 ⁸ The Court notes that at the May 23, 2017 hearing, the parties made some arguments regarding whether the
23 Commonwealth Superior Court has jurisdiction over tort claims. “The Commonwealth [S]uperior [C]ourt shall have
24 original jurisdiction in all cases in equity and at law.” NMI Const. art. IV, § 2. “The Superior Court has original
jurisdiction over all civil actions, in law and in equity . . . and has the power to issue writs of mandamus, certiorari,
prohibition, habeas corpus, and all other writs and orders necessary and appropriate to the full exercise of its
jurisdiction.” 1 CMC § 3202. Thus, the Commonwealth Superior Court has jurisdiction over tort claims.

1 of accurate and ready determination by resort to sources whose accuracy cannot reasonably be
2 questioned.” *Taman*, 2014 MP 8 ¶ 35 (citing NMI R. Evid. 201(b); *In re Yana and Atalig*, 2014 MP
3 1 ¶ 19) (internal quotation marks omitted).

4 Since the alleged letter from Defendant Pangelinan was not incorporated into the complaint
5 by reference, and since it is not a matter that the court can take judicial notice of, the Court cannot
6 and will not consider Exhibit F., the alleged letter from Defendant Pangelinan in deciding this
7 motion.⁹

8 **B. The Plaintiffs Have Standing**

9 Before the Court can address whether the Plaintiffs properly plead their complaint, the Court
10 must address the threshold jurisdictional issue of standing. *Atalig*, 2013 MP 11 ¶ 10 (citing *Cody v.*
11 *N. Marianas Islands Ret. Fund*, 2011 MP 16 ¶ 23). In addressing standing, the Court must “accept
12 as true all material allegations of the complaint.” *Id.* (citing *Warth v. Seldin*, 422 U.S. 490, 501
13 (1975)). “General allegations of injury devoid of any facts” are insufficient to establish standing. *Id.*
14 However, “general factual allegations of injury resulting from the defendant’s conduct may
15 suffice.” *Id.* (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)).

16 To establish standing for tort claims, the Plaintiff must show “injury-in-fact, causation, and
17 redressability.” *Atalig*, 2013 MP 11 ¶ 11 (citing *Clapper v. Amnesty Int’l USA*, 133 S. Ct. 1138,
18 1147 (2013)); *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 19 (citations omitted). More specifically, to
19 have standing, the Plaintiff:

- 20 (1) must have suffered an injury in fact—an invasion of a legally protected interest
21 which is a) concrete and particularized, and b) actual or imminent, not conjectural or
22 hypothetical; (2) there must be a causal connection between the injury and the
conduct complained of—the injury has to be fairly traceable to the challenged action

23 ⁹ The Plaintiffs also mention Exhibits G and H in their arguments, which were not attached to their opposition. Thus,
24 the Court cannot consider those documents. Further, even if these documents were attached, the Court would not be
able to consider them since these alleged contract documents were not incorporated by reference into the complaint, nor
are they the type of documents that the Court can take judicial notice of.

1 of the defendant, and not the result of independent action of some third party not
2 before the court; and (3) it must be likely, as opposed to merely speculative that the
injury will be redressed by a favorable decision.

3 *Ogumoro*, 2011 MP 11 ¶ 19 (quoting *San Luis & Delta-Mendota Water Auth. v. Salazar*, 639 F.3d
4 1163, 1169 (9th Cir. 2011)) (internal quotation marks omitted).

5 The Court will now turn to whether the Plaintiffs have shown injury-in-fact, causation, and
6 redressability as required by *Ogumoro*. 2011 MP 11 ¶ 19.

7 **1. Injury-in-fact**

8 First, the Plaintiffs must show injury-in-fact. *Id.* Defendant Pangelinan argues that the
9 Plaintiffs cannot show injury-in-fact, since they are not parties to Norberto’s land-sale/lease
10 contract. March 22 Mot. at 3-7. Defendant Pangelinan contends that the Plaintiffs lack standing
11 because they “fail to show standing to sue upon the contracts executed by Norberto which became
12 non-performable upon his death” and that the present case is merely “grumblings about a
13 supposedly unperformed land-lease/sale contract entered into by the late Norberto E. Pangelinan.”
14 March 22 Mot. at 4-5. Defendant Pangelinan argues “Plaintiffs the Pangelinans state and bring
15 nothing of a justiciable nature, but just the grumblings of a disgruntled party who are not even party
16 to the alleged unperformed agreements complained of.” March 22 Mot. at 3.

17 The Plaintiffs argue that they were injured because Defendant Pangelinan’s continued legal
18 action prevents them from finalizing the sale of the Tanapag property, and that “[a]s heirs to
19 Norberto’s estate...the Plaintiffs have a direct interest in both the Tanapag Property and the
20 contracts for the lease and sale of the property.” Opp. at 7. The Plaintiffs contend that “Defendant’s
21 multiple filings in the Probate Action have delayed the settlement of Norberto’s estate and the
22 Plaintiff’s abilities to finalize the lease and sale of the Tanapag Properties.” Opp. at 7. The Plaintiffs
23 allege that they have “a direct interest in both the Tanapag Property and the contracts for the lease
24 and sale of the Property,” and that as heirs to Norberto’s estate, they have been ordered by the

1 Commonwealth Superior Court “to carry out contractual obligations” related to the Tanapag
2 Property. *Id.*¹⁰

3 In determining whether the plaintiff alleged injury-in-fact, Commonwealth Courts look to
4 “identification of an invaded legal interest, which is both ‘concrete and particularized’ and ‘actual
5 or imminent,’” *Atalig*, 2013 MP 11 ¶ 12 (quoting *Ogumoro*, 2011 MP 11 ¶ 19). Hypothetical injury
6 is insufficient. *Id.* “[A]n injury is ‘particularized’ when it affects the plaintiff in a ‘personal and
7 individual way.’” *Id.* (quoting *Lujan*, 504 U.S. at 560 n.1).

8 In *Atalig*, the plaintiffs alleged that Mobil’s unlawful release of pollutants caused
9 “interfere[nce] with sleep, upset appetite, . . . irritation of the upper respiratory tract, . . . [and]
10 symptoms of nausea,” without specifically stating which plaintiff suffered which injury. 2013 MP
11 11 ¶ 2. For standing purposes, these allegations were sufficient both to show actual injury. *Id.* ¶ 14.
12 The Commonwealth Supreme Court also made reasonable inferences to find that the plaintiffs’
13 allegations of general injuries suffered by unspecified individuals were actually the specific harms
14 suffered by the plaintiffs that were thus particularized for standing purposes.

15 In the Complaint, the Plaintiffs alleged that they “suffered harm, including without
16 limitation, the delay in receiving proceeds from the lease and sale transactions and a significant
17 increase in legal fees defending against Defendant’s baseless challenges.” Complaint ¶ 21. The
18 Plaintiffs also allege that Defendant Pangelinan’s interference with their contract “cause[d]
19 significant delay in the completion of the transaction, causing Plaintiff’s delay damages, to incur
20 legal fees that should not have been incurred by them, and to cause them emotional distress.”
21 Complaint ¶ 25.

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24 ¹⁰ See *Estate of Pangelinan*, Civ. No. 15-0169 (NMI Super. Ct. Dec. 19, 2016) (Order Determining Heirs and Approving the Lease and Sale of Real Property at 1-3).

1 Based on the facts plead in the complaint, the Plaintiffs suffered an injury-in-fact due to
2 Defendant Pangelinan’s interference between a “land transaction between Plaintiffs and a third
3 party,” and the Plaintiffs suffered damages due to Defendant Pangelinan’s legal action in the
4 probate case. Complaint ¶¶ 12-16, 20, 23. In essence, the Plaintiffs allege that the Defendant’s
5 actions harmed them by impeding their ability to complete transactions on the Tanapag Property,
6 which is sufficient to show that they have suffered actual, particularized harm for purposes of
7 standing.

8 **2. Causation**

9 Second, the Plaintiffs must show causation. *Ogumoro*, 2011 MP 11 ¶ 19. The Plaintiffs
10 allege that Defendant Pangelinan’s actions “delayed the closing of the lease and sale transactions”
11 for the Tanapag Property and “interfered with a land transaction pending between Plaintiffs and the
12 third party, in an effort to force the payment of money to Defendant.” Complaint ¶ 20, 23. Plaintiffs
13 allege that as a result of Defendant Pangelinan’s actions, they “suffered harm, including . . . the
14 delay in receiving proceeds from the lease and sale transactions and a significant increase in legal
15 fees in defending against Defendant’s baseless challenges.” *Id.* ¶ 22. Plaintiffs also allege that the
16 delay caused by Defendant Pangelinan “caus[ed] Plaintiffs’ delay damages, to incur legal fees that
17 should not have been incurred by them, and to cause them emotional distress.” *Id.* ¶ 25. The
18 Plaintiffs have shown a causal relationship between their injury and Defendant Pangelinan’s
19 actions.

20 **3. Redressability**

21 Third, the Plaintiffs must show redressability. *Ogumoro*, 2011 MP 11 ¶ 19. “[I]t must be
22 likely, as opposed to merely speculative that the injury will be redressed by a favorable decision.”
23 *Atalig*, 2013 MP 11 ¶ 20 (quoting *Ogumoro*, 2011 MP 11 ¶ 19). “[A] plaintiff satisfies the
24 redressability requirement when he shows that a favorable decision will relieve a discrete injury to

1 himself. He need not show that a favorable decision will relieve his *every* injury.” *Id.* (quoting
2 *Massachusetts v. EPA*, 549 U.S. 497, 526 (2007) (emphasis in original)). In *Atalig*, plaintiffs
3 seeking monetary damages for alleged health issues caused by pollution showed redressability. *Id.* ¶
4 21. In *Ogumoro*, an intervenor showed redressability where the intervenor “would regain his status
5 as undisputed leaseholder of the Lot.” *Ogumoro*, 2011 MP 11 ¶ 20.

6 Based on the facts plead in the complaint, the Plaintiffs suffered an injury-in-fact due to
7 Defendant Pangelinan’s interference between a “land transaction between Plaintiffs and a third
8 party,” and that the Plaintiffs suffered damages due to Defendant Pangelinan’s legal action in the
9 probate case. Complaint ¶¶ 12-16, 20, 23. The Plaintiffs seek actual damages, punitive damages,
10 pre- and post-judgment interest, attorney’s fees, and “equitable relief.” Complaint at 4-5. A
11 favorable outcome in the present case would allow the Plaintiffs to finalize any agreements
12 regarding the Tanapag Property and would remedy additional costs incurred by them due to any
13 abuse of process or interference with contract. Thus, the Plaintiffs’ claim is redressable.

14 In sum, the Plaintiffs have standing. The Court will now turn to whether the Plaintiffs
15 properly stated claims for abuse of process and interference with contract.

16 **C. The Plaintiffs Properly Stated a Claim for Abuse of Process**

17 Defendant Pangelinan argues that the Plaintiffs failed to state a claim for abuse of process.
18 Defendant Pangelinan specifically argues that the Plaintiffs failed to allege that Defendant
19 Pangelinan possessed an “ulterior motive” in his legal filings. March 22 Motion at 8. Defendant
20 Pangelinan also argues that the Plaintiffs were not injured by his actions, since they “did not appear
21 in their individual capacity in the probate case, nor were they a party to the Tanapag lands lease/sale
22 agreements.” March 22 Motion at 8.

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1 Under the Restatement (Second) of Torts,¹¹ abuse of process is defined as: “One who uses a
2 legal process, whether criminal or civil, against another primarily to accomplish a purpose for
3 which it is not designed, is subject to liability to the other for harm caused by the abuse of process.”
4 RESTATEMENT (SECOND) OF TORTS § 682; *See also Quitugua v. Al-Alou*, Civ. No 13-0229 (NMI
5 Super. Ct. Apr. 4, 2014) (Order Granting In Part and Denying In Part Motion to Dismiss and
6 Granting Motion to Strike at 9 n.3) (hereafter *Quitugua*); *Hiraga v. Sekisui House*, Civ. No. 98-
7 0100 (NMI Super. Ct. July 29, 1999) (Decision and Order Denying Motion to Strike Opposition,
8 Disqualify Counsel and Motion to Dismiss Third Party Complaint and Counterclaims at 6)
9 (hereafter *Hiraga*).

10 The Commonwealth Superior Court has previously outlined the elements of abuse of
11 process as:

- 12 (1) regularly issued process compelling the performance or foreclosure of some
13 prescribed act; (2) an intent to do harm without excuse or justification; and (3) the
14 person using the process must be seeking some collateral advantage or
corresponding detriment to the plaintiff which is outside of the legitimate ends of
process.

15 *Hiraga*, Civ. No. 98-0100 at 6 (quoting *Riddell Sports, Inc. v. Brooks*, 872 F. Supp. 73, 79 (SDNY
16 1993). Abuse of process requires more than “[m]erely filing a complaint.” *Id.* Thus, the Court will
17 now turn to whether the Plaintiffs stated a claim for abuse of process.

18 **1. The Plaintiffs Alleged that Defendant Pangelinan Used a Regularly Issued Process
19 Compelling the Performance or Foreclosure of Some Prescribed Act**

20 First, the Plaintiffs must allege that Defendant Pangelinan used a “regularly issued process
21 compelling the performance or foreclosure of some prescribed act.” *Hiraga*, Civ. No. 98-0100 at 6.
22 In the Complaint, the Plaintiffs allege that Defendant Pangelinan “challenged Norberto’s title to the

23 ¹¹ When there is no statutory authority in the Commonwealth, courts turn to the restatements of law from the American
24 Law Institute. 7 CMC § 3401. Title 7, Section 3401 states that “the rules of the common law, as expressed in the
restatements of law approved by the American Law Institute and, to the extent not so expressed as generally understood
and applied in the United States, shall be the rules of decision in the courts of the Commonwealth.” 7 CMC § 3401.

1 Tanapag Property” and “filed multiple motions to reconsider.” *Id.* ¶¶ 12, 14. The Plaintiffs allege
2 that Defendant Pangelinan then appealed the probate action to the Commonwealth Supreme Court.
3 *Id.* ¶ 16. Thus, the Plaintiffs have alleged that Defendant Pangelinan used “regularly issued
4 process.” *See Hiraga*, Civ. No. 98-0100 at 6.

5 **2. The Plaintiffs Alleged that Defendant Pangelinan Used That Process With an Intent**
6 **to Do Harm Without Excuse or Justification**

7 Second, the Plaintiffs must allege that Defendant Pangelinan used that process with “an
8 intent to do harm without excuse or justification.” *Hiraga*, Civ. No. 98-0100 at 6. In the Complaint,
9 the Plaintiffs allege that Defendant Pangelinan “challenged Norberto’s title to the Tanapag
10 Property, *without any credible evidentiary or legal support.*” Complaint ¶ 12 (emphasis in original).
11 The Plaintiffs also allege that Defendant Pangelinan “filed multiple motions to reconsider, still
12 *without any credible evidentiary or legal support.*” *Id.* ¶ 14 (emphasis in original). The Plaintiffs
13 also allege that “Defendant had no reason to believe, and in fact did not believe, that the grounds for
14 his challenges, motions to reconsider, or appeal were meritorious.” *Id.* ¶ 18. The Plaintiffs allege
15 that the Defendant’s numerous filings were filed “for the primary purpose of delaying the closing of
16 the lease and sale transactions.” *Id.* ¶ 20. The Plaintiffs further allege that Defendant Pangelinan
17 acted with “the purpose of interfering with a land transaction pending between Plaintiffs and the
18 third party, in an effort to force the payment of money to Defendant.” *Id.* ¶ 23. Thus, the Plaintiffs
19 have plead that Defendant Pangelinan was using the judicial process with the “intent to do harm,”
20 by delaying a land sale transactions to force the Plaintiffs to pay money to him. *See Hiraga*, Civ.
21 No. 98-0100 at 6.

22 **3. The Plaintiffs Alleged that Defendant Pangelinan Sought A Collateral Advantage Or**
23 **Corresponding Detriment to the Plaintiff Outside of the Legitimate Ends of Process**

24 Finally, the Plaintiffs must allege that Defendant Pangelinan was “seeking some collateral
advantage or corresponding detriment to the plaintiff which is outside of the legitimate ends of

1 process.” *Hiraga*, Civ. No. 98-0100 at 6. “Abuse of process is most often used as a ‘form of
2 extortion, using the [legal] process to put pressure upon the other to compel him to a different debt
3 or to take some other action or refrain from it.” *Quitugua*, Civ. No. 13-0229 at 9 (quoting
4 RESTATEMENT (SECOND) OF TORTS § 682 (1977) at cmt. b). The Plaintiffs allege that Defendant
5 Pangelinan sought to delay a land sale transaction to force the Plaintiffs to pay money to him.
6 Complaint ¶¶ 20, 23. The delay in the transaction and pressure upon Plaintiffs to compel them to pay
7 Defendant Pangelinan allegedly sought by Defendant Pangelinan would be a form of extortion
8 through legal process that is outside of the legitimate ends of process. In sum, the Plaintiffs have
9 plead every element required and properly stated a claim for abuse of process.

10 **D. The Plaintiffs Properly Stated a Claim for Interference with Contract**

11 Defendant Pangelinan argues that the Plaintiffs failed to state a claim for interference with
12 contract. In the Commonwealth, courts apply the Restatement (Second) of Torts in analyzing
13 interference with contract claims. *See Lucky Dev. Co. v. Tokai*, 3 NMI 79, 93-94, 93 n.6 (citing 7 §
14 CMC 3401). “One who intentionally and improperly interferes with the performance of a contract
15 between two parties, by inducing or otherwise causing a contracting party not to perform the
16 contract, is liable for resulting loss to the other contracting party.” *Del Rosario v. Camacho*, 2001
17 MP 3 ¶103 (citing *Lucky*, 3 NMI at 93-94 (1992); RESTATEMENT (SECOND) OF TORTS § 766). There
18 must also “be a prospective contractual relationship between the plaintiff and a third party . . .
19 [a]dditionally, the prospective economic advantage must have been reasonably probable to occur,
20 but for defendant’s interference.” *Id.* (citing *Kutcher v. Zimmerman*, 957 P.2d 1076, 1088 (Haw. Ct.
21 App. 1998); *Youst v. Longo*, 729 P.2d 728, 733 (Cal. 1987)).

22 Defendant Pangelinan draws on California common law as outlined by the Ninth Circuit,
23 which defines the elements of interference with contract as: “(1) a valid contract between plaintiff
24 and a third party; (2) defendant's knowledge of the contract; (3) defendant's intentional acts

1 designed to induce breach or disruption of the contract; (4) actual breach or disruption; and (5)
2 resulting damage.” March 22 Motion at 9 (citing *name.space, Inc. v. Internet Corp. for Assigned*
3 *Names & Numbers*, 795 F.3d 1124, 1133 (9th Cir. 2015) (quoting *Family Home & Fin. Ctr., Inc. v.*
4 *Fed. Home Loan Mortg. Corp.*, 525 F. 3d 822, 825 (9th Cir. 2008)). The Plaintiffs argued their
5 Opposition according to the elements outlined by Defendant Pangelinan, pointing out that the
6 elements described by Defendant Pangelinan match “how the [Commonwealth] Supreme Court has
7 described the tort.” Opp. to Mot. to Dismiss at 12. Defendant Pangelinan argues that the Plaintiffs
8 have failed to prove every element except that Defendant Pangelinan knew of the contract.

9 **1. The Plaintiffs Alleged a Valid Contract Between Themselves and a Third Party**

10 First, the Plaintiffs must allege “a valid contract between plaintiff and a third party.”
11 *name.space*, 795 F.3d at 1133. Plaintiffs allege that Defendant Pangelinan “knew about the contract
12 entered into between Plaintiffs and the third party and purposefully sought to interfere with it.”
13 Complaint ¶ 24.¹² This alleges the existence of a contract. *See name.space*, 795 F.3d at 1133.

14 **2. The Plaintiffs Alleged Defendant Pangelinan’s Knowledge of the Contract**

15 Second, the Plaintiffs must allege the “defendant’s knowledge of the contract.” *name.space*,
16 795 F.3d at 1133. The Plaintiffs allege that Defendant Pangelinan “knew about the contract entered
17 into between Plaintiffs and the third party and purposefully sought to interfere with it.” Complaint ¶
18 24. This alleges Defendant Pangelinan’s knowledge of the contract. *See name.space*, 795 F.3d at
19 1133.

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23 ¹² *See also Estate of Pangelinan*, Civ. No. 15-0169 (NMI Super. Ct. Dec. 19, 2016) (Order Determining Heirs and
24 Approving the Lease and Sale of Real Property at 1-3). Secundia Pangelinan is the administratrix of Norberto
Pangelinan’s estate. *Estate of Pangelinan*, Civ. No. 15-0169 (NMI Super. Ct. Dec. 22, 2015) (Order Appointing
Administratrix at 1).

1 **3. The Plaintiff’s Alleged that Defendant Pangelinan’s Intentional Acts Were**
2 **Designed to Induce a Breach or Disruption of the Contract**

3 Third, the Plaintiffs must allege that the “defendant’s intentional acts [were] designed to
4 induce breach or disruption of the contract.” *name.space*, 795 F.3d at 1133. The Plaintiffs allege
5 that Defendant Pangelinan “knew about the contract entered into between Plaintiffs and the third
6 party and purposefully sought to interfere with it” by means of his meritless litigation. Complaint ¶
7 24. This alleges Defendant Pangelinan’s intentional acts were designed to disrupt the contract. *See*
8 *name.space*, 795 F.3d at 1133.

9 **4. The Plaintiffs Alleged that There was an Actual Breach or Disruption of the**
10 **Contract**

11 Fourth, the Plaintiffs must allege an “actual breach or disruption” of the contract.
12 *name.space*, 795 F.3d at 1133. The Plaintiffs allege that Defendant Pangelinan “knew about the
13 contract entered into between Plaintiffs and the third party and purposefully sought to interfere with
14 it.” Complaint ¶ 24. Plaintiffs also allege that “[t]he result of Defendant’s interference with the
15 contract was to cause significant delay in the completion of the transaction, causing Plaintiffs’ delay
16 damages, to incur legal fees that should not have been incurred to them, and to cause them
17 emotional distress.” Complaint ¶ 25. This alleges actual disruption of the contract. *See name.space*,
18 795 F.3d at 1133.

19 **5. The Plaintiffs Alleged Resulting Damage from the Breach or Disruption**

20 Fifth, the Plaintiffs must allege “resulting damage” from the breach or disruption of the
21 contract. *name.space*, 795 F.3d at 1133. Plaintiffs allege that “[t]he result of Defendant’s
22 interference with the contract was to cause significant delay in the completion of the transaction,
23 causing Plaintiffs’ delay damages, to incur legal fees that should not have been incurred to them,
24 and to cause them emotional distress.” Complaint ¶ 25. This alleges resulting damage. *See*
name.space, 795 F.3d at 1133.

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In sum, the Plaintiffs plead every element of interference with contract.

V. CONCLUSION

The Plaintiffs have standing in this case. The Plaintiffs have also alleged facts sufficient to establish the elements of the causes of action of abuse of process and interference with contract.

Accordingly, the Defendant Pangelinan’s motion to dismiss is **DENIED**.

IT IS SO ORDERED this 19th day of July, 2017.

_____/s/_____
JOSEPH N. CAMACHO
Associate Judge