

JUL 10 2000

For The Northern Mariana Islands
By
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

UTHAYACHANDRAN R. KANDIAH,
et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA and
COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,

Defendants.

Civil Action No. 00-0005

ORDER FINDING DEFENDANT
CNMI MOTION TO DISMISS
AND MOTION TO QUASH
SUMMONS MOOT AND
DIRECTING PLAINTIFFS TO
SERVE DEFENDANTS
PURSUANT TO FED.R.CIV.P. 4

Defendant Commonwealth of the Northern Mariana Islands (CNMI) has filed a Motion to Dismiss the first amended complaint and Motion to Quash the summons. Plaintiffs have filed their opposition to the Motion to Dismiss but have failed to file opposition to the Motion to Quash within the time frame provided by Local Rule 7.1(c)(2). Pursuant to Federal Rule of Civil Procedure 78, the Court finds the motions are appropriate for submission without oral argument.

Upon consideration of the written argument of counsel and in light of the Court's

1 June 22, 2000 Order granting plaintiffs leave to file a second amended complaint, the Court
2 finds defendant's Motion to Dismiss and the Motion to Quash are MOOT. Accordingly,
3 the motions which are set for hearing on July 13, 2000, are taken off calendar.

4 On June 22, 2000, by Order of the Court, plaintiffs were permitted leave to file a
5 second amended complaint within twenty days of the date of the Order and were granted
6 permission to add new claims and new parties. (Order Granting Plaintiffs' Motion to
7 Amend and Finding Defendant United States' Motion to Dismiss Moot) Defendant CNMI
8 filed their Motion to Dismiss the first amended complaint on June 12, 2000 prior to the
9 Court's Order permitting amendment. Because plaintiffs were subsequently permitted to
10 file a second amended complaint and have filed their complaint within the time allotted by
11 the Court, defendant's Motion to Dismiss the first amended complaint is moot.
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13 Defendant also moves to quash the summons that was served with the first amended
14 complaint. Defendant contends the summons does not comply with the requirements of
15 Fed. R. Civ. P. 4(a) because it is directed to the "Office of the Attorney General, Attn:
16 Herbert Soll" (a non-party) and not to the CNMI who is the defendant in the case, it fails to
17 identify the Court, and it fails to identify all the parties. Defendant argues that strict
18 compliance with the process rules are necessary to ensure that the court can invoke its
19 judicial authority.
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21 Because the Court has granted plaintiffs leave to file a second amended complaint
22 and to add new claims and parties, the Court finds plaintiffs must serve all named
23 defendants with the second amended complaint pursuant to Fed. R. Civ. P. Rule 4 to ensure
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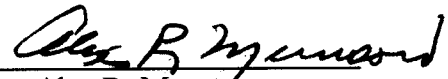
1 that the defendants receive notice of all the claims that are being brought against them.¹

2 Therefore, defendant's Motion to Quash the summons served with the first amended
3 complaint is moot.

4 Accordingly, the Court finds defendant's Motion to Dismiss and Motion to Quash
5 are moot and the July 13, 2000 hearing date is hereby taken off calender. Further, the
6 Court orders plaintiffs to serve the second amended complaint on all named defendants
7 pursuant to Fed. R. Civ. P. 4 with in 20 days of the date of this Order.
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9 IT IS SO ORDERED.

10 DATED this 10th day of July, 2000.

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13 Alex R. Munson
14 District Judge
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21 ¹“A difficult problem is presented when a party seeks to serve an amended pleading containing
22 new or additional claims on an opposing party's attorney under Rule 5 rather than as required by Rule
23 4. In addition to raising questions about the respective application of these two Rules, this situation
24 also implicates personal jurisdiction issues.... In a case in which the amended pleading contains a
25 claim or claims that are related to those set out in the original complaint, [and the party has already
26 appeared], it seems fair to permit service on the party's attorney. Nonetheless, the court should
27 dispense with the presumption that service on the attorney gives adequate notice to the litigant and
28 should direct personal service on the party pursuant to Rule 4 ... if the new claims are radically
29 different from those set out in the original pleading.” 4A Charles Alan Wright & Arthur R. Miller,
Federal Practice and Procedure, § 1146.