

FEB 15 2002

For The Northern Mariana Islands
By [Signature]
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

ZHANG, Gui Juan,

Plaintiff

v.

ISIDRO T. CABRERA, in his
individual capacity; THE
GOVERNMENT OF THE
COMMONWEALTH OF THE
NORTHERN MARIANA
ISLANDS; and, TRICIA AGUON,
in her individual capacity,

Defendants

Civil Action No. 98-0012

ORDER GRANTING
DEFENDANTS' MOTION FOR
RELIEF FROM ORDER, DENY-
ING AS MOOT PLAINTIFF'S
MOTION TO DISQUALIFY
DEFENDANTS' COUNSEL,
DESIGNATING CAPTION
TO BE USED, and
SANCTIONING PLAINTIFF'S
COUNSEL FOR FAILURE
TO PROPERLY SET MOTION

THIS MATTER came before the court on Thursday, February 7, 2002,

1 for hearing of defendants'¹ motion for relief from order granting plaintiff leave
2 to amend her complaint, plaintiff's motion to disqualify defendants' counsel on
3 grounds of conflict, plaintiff's motion to strike defendants' caption and for
4 sanctions against defendants, and defendants' motion for monetary sanctions
5 against plaintiff for improperly scheduling her motion to strike caption.
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7 Plaintiff appeared by and through her attorney, Joe Hill; defendants
8 Commonwealth and Aguon in her individual capacity appeared by and through
9 their attorney, Commonwealth Assistant Attorney General Karen M. Klaver.
10 Defendant Cabrera did not appear.
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12 THE COURT, having considered the written and oral arguments of
13 counsel, rules as follows.
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15 Defendants' motion for relief from the court's November 15, 1999, order
16 granting plaintiff leave to file an amended complaint is granted. The following
17 dates are relevant to the court's analysis and decision.
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19 Plaintiff was released from the Commonwealth of the Northern Mariana
20 Islands Division of Immigration Services detention facility on January 23, 1997.
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25 Defendant Cabrera is not a party to these motions. Where the court uses
26 the word "defendants," it is intended to refer only to the Government, Aguon,
or both, as the context indicates.

1 She filed her complaint in this court on March 12, 1998, alleging both
2 federal and common law claims for relief.
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4 On November 15, 1998, the court dismissed without prejudice plaintiff's
5 common law negligence claim and her claim brought pursuant to Article I, §
6 3(c) of the Commonwealth Constitution. The court declined to exercise its
7 supplemental jurisdiction over those claims because the latter claim presented a
8 novel issue of Commonwealth law; i.e. whether or not a plaintiff could sue
9 directly under Article I, § 3(c) of the Commonwealth Constitution or whether
10 enabling legislation first needed to be enacted. The court retained jurisdiction
11 over the federal claims.
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15 Five months later, on March 16, 1999, plaintiff filed a complaint in the
16 Commonwealth Superior Court.
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18 On April 12, 1999, this court entered "final judgment with respect to all
19 defendants" except Cabrera. (Docket No. 82)
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21 On September 30, 1999, the Superior Court dismissed plaintiff's
22 complaint on a Rule 12(b)(6) motion holding that, pursuant to the relevant
23 Commonwealth statute of limitations, her Commonwealth claims had been
24 extinguished on January 22, 1999, two years from January 23, 1997, the date of
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1 her release from detention. Thus, her March 16, 1999, filing date in Superior
2 Court was approximately two months outside the statute. Plaintiff appealed to
3 the Commonwealth Supreme Court.
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5 On November 9, 1999, plaintiff and defendants stipulated to the dismissal
6 with prejudice of plaintiff's motion to amend the Superior Court's judgment or,
7 in the alternative, for relief from the judgment or, in the alternative, for
8 reconsideration of the Superior Court's September 30, 1999, dismissal order.
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10 On November 15, 1999, as part of its order granting plaintiff leave to
11 amend, the court withdrew its April 12, 1999, judgment as improvidently
12 granted. The order stated that the judgment "did not accurately reflect the
13 court's intention" and was "against the clear intent" of the court's dismissal
14 without prejudice of the Commonwealth claims, which had been entered "to
15 provide the local courts the opportunity to address an issue of first impression
16 involving interpretation of the Commonwealth Constitution." "Order
17 Granting Plaintiff's Motion for Leave to Amend Complaint," at 2 -3 (Nov. 15,
18 1999) (Docket No. 104). Plaintiff was given leave to amend her complaint to
19 again include her non-federal claims.
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26 On November 17, 1999, defendants filed this motion for relief from the

1 court's order granting plaintiff leave to amend.

2 On November 19, 1999, and based upon the agreement of the parties, the
3 court entered an order staying all matters pending the outcome of plaintiff's
4 appeal to the Commonwealth Supreme Court.
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6 On November 19, 2001, the Commonwealth Supreme Court affirmed the
7 decision of the Superior Court to dismiss plaintiff's lawsuit on statute of
8 limitations grounds.
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11 Defendants' Motion for Relief from Order

12 Defendants filed this motion for relief from order on November 17, 1999,
13 two days after the court had withdrawn its April 12, 1999, judgment as having
14 been improvidently entered and given plaintiff leave to amend her complaint.
15 *See supra.* As of that date, the Commonwealth Superior Court had dismissed
16 plaintiff's Commonwealth claims as barred by the statute of limitations and
17 defendants were arguing that she should not be allowed to again allege her
18 previously dismissed non-federal claims. Defendants argued that they would be
19 prejudiced by being required to defend against the non-federal claims which this
20 court had dismissed, for which judgment had been entered (if later withdrawn),
21 and upon which the Superior Court had already ruled adversely to plaintiff.
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1 The posture of this motion has been changed by the intervening decisions
2 of the Commonwealth Superior Court and the Commonwealth Supreme
3 Court. At the time of the court's November 15, 1999, order granting plaintiff
4 leave to re-plead her common law and Commonwealth Constitution-based
5 claims for relief, the Commonwealth Superior Court had already issued its
6 decision denying those claims on statute of limitations grounds. This court's
7 order of November 15, 1999, spoke of withdrawing its own judgment in order
8 to give plaintiff leave to amend her complaint to re-plead the Commonwealth
9 claims. However, the continued viability of those claims would depend in large
10 measure on the decisions of the Commonwealth courts.² It should not have
11 been plaintiff's plan, and it certainly was not the intention of this court, to
12 allow plaintiff to proceed in the Commonwealth courts on her non-federal
13 causes of action and then return to this court to collaterally attack those
14 decisions if she did not prevail.

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21 Now, both the Commonwealth Superior Court and the Commonwealth
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24 Also, plaintiff's decisions in the Superior Court have hurt her in this
25 court. The court cannot ignore her choice to quit pursuing her Commonwealth
26 claims, as shown by the November 9, 1999, stipulation to dismiss with prejudice
all her post-dismissal order motions.

1 Supreme Court have spoken on plaintiff's Commonwealth claims and have held
2 that they are barred by the statute of limitations. Plaintiff ran afoul of the
3 limitations period due to the five-month delay between the dismissal of her
4 Commonwealth claims in this court and the filing of a new lawsuit in the
5 Superior Court. Because two courts have now addressed the issue, it would be
6 inappropriate for this court not to accord their decisions *res judicata* effect.³
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9 Further, the court agrees with the limitations analysis of the
10 Commonwealth courts:
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12 Under Section 1367, if the claim is validly within the court's
13 supplemental jurisdiction under subsection (a), the period of
14 limitations is tolled while the claim is pending and for a period of 30
15 days after it is dismissed unless state law provides for a longer
16 tolling period. Thus, the statute shows a preference for allowing
17 supplemental state claims to be heard in state court if the
18 jurisdiction-conferring claim is dismissed, and provides a brief
19 window of protection that allows the plaintiff to file in state court
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22 Although not stated specifically, because the Commonwealth Superior
23 Court found that plaintiff's Commonwealth claims were barred by the statute
24 of limitations, the dismissal was with prejudice. "Federal law now treats a
25 dismissal with prejudice under Federal Rule of Civil Procedure 12(b)(6) as a
26 judgment on the merits, with the same preclusive effects as any other valid final
judgment." 18 James Wm. Moore, *et al.*, Moore's Federal Practice § 131.30[3][e]
(3d ed.) Because the Commonwealth's rules of civil procedure closely mirror
the federal rules, the court will accord the dismissal the same preclusive effect.

1 without having to face a limitations defense.

2 16 James Wm. Moore, *et al.*, Moore's Federal Practice § 106.66[3][c] (3d ed.)

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4 Plaintiff had two years from January 23, 1997, to file her complaint.

5 Under Commonwealth law, she had to file her complaint no later than January
6 22, 1999, or, under 28 U.S.C. § 1367, 30 days from the date of the dismissal of
7 her supplemental jurisdiction-based claims, whichever gave her the longest
8 period of time. Because her non-federal claims were dismissed on November 15,
9 1998, she had until January 22, 1999, the longer of the two available periods, to
10 file in the Commonwealth Superior Court. She did not file her complaint there
11 until March 16, 1999, almost two months beyond the limitations period.
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15 Accordingly, by virtue of the decisions of the Commonwealth courts and
16 their *res judicata* effect on this court, plaintiff is now precluded from re-alleging
17 her Commonwealth law claims. As the only remaining claims against them in
18 the last amended complaint were based on common law and the
19 Commonwealth Constitution, defendants Government of the Northern
20 Mariana Islands and Tricia Aguon in her individual capacity are dismissed with
21 prejudice and this lawsuit will proceed on the remaining federal claims plaintiff
22 has against defendant Cabrera. Plaintiff is given until 3:30 p.m., Friday, March
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1, 2002, to file an amended complaint in accordance with this order.

Motion to Disqualify Defense Counsel

Plaintiff's motion to disqualify defendants' counsel is denied as moot.

Caption and Sanctions

Given the decision above, all parties shall henceforth use this caption:

ZHANG, Gui Juan,	)	Civil Action No. 98-0012
	)	
Plaintiff	)	
	)	
v.	)	
	)	
ISIDRO T. CABRERA, in his	)	
individual capacity,	)	
	)	
Defendant	)	
	)	

Plaintiff's motion for sanctions against defendants for using an improper caption is denied, as neither party has shown full consistency in that regard.

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