IN THE HIGH COURT OF AMERICAN SAMOA

TRIAL DIVISION

PACIFIC GRADING CORP. and VAILU'U & SONS TRUCKING, Plaintiffs, v. CONSTRUCTION SERVICES OF SAMOA, INC., MORU MANE, SALLIE MANE, & AMERICAN SAMOA GOVERNMENT, Defendants, GMP & ASSOCIATES, Intervenor.	CA No. 43-02 ORDER GRANTING AMERICAN SAMOA GOVERNMENT'S MOTION FOR SUMMARY JUDGMENT
CONSTRUCTION SERVICES OF SAMOA, INC., Crossclaimant, v. AMERICAN SAMOA GOVERNMENT, Cross-defendant.	
AMERICAN SAMOA GOVERNMENT, Crossclaimant, v. CONSTRUCTION SERVICES OF SAMOA, INC.,	

Before KRUSE, Chief Justice, LOGOAI, Chief Associate Judge, and FA'AMAUSILI, Associate Judge.

Counsel: For Defendant/Crossclaimant/Cross-defendant Construction Services of Samoa, Inc., Charles V.

Ala'ilima
For Defendant/Cross-defendant/Crossclaimant American Samoa Government, Daniel Woods, Assistant Attorney General

BACKGROUND

On or about January 8, 2001, the American Samoa Government ("ASG") awarded a construction contract to Construction Services of Samoa ("CSS"). CSS was to act as a general contractor for the Masausi Road and Drainage Reconstruction Project. CSS allegedly hired subcontractors for this project, including but not necessarily limited to: Pacific Grading Corp. ("PGC"), Vailu'u & Sons Trucking ("VST"), and GMP and Associates ("GMP"). PGC allegedly constructed and/or placed four-hundred and thirty linear feet of concrete drainage and two catch basins, for which PGC alleges $10,941 is still due and owing. VST billed CSS for trucking services allegedly rendered, the total still owing on the same being $10,530. CSS allegedly hired GMP for design services totaling $38,000, for which $22,830.43 is allegedly still owing.

ASG avers that CSS began performing under the contract in 2001, but failed to supply serviceable workers, pay its subcontractors, and timely complete the Masausi Project. ASG, at some point between January 2001 and February 2002, revised and extended the completion date of the contract to February 12,

2002.[1] CSS did not complete the project by that date. By April 8, 2002, ASG decided to terminate its contract with CSS and secured a "cover-contractor," GMP, to finish the Masausi Project. ASG avers it has suffered some "$66,000 more than ASG would have spent had CSS simply fulfilled its obligations under the Construction Contract." ASG's Amended Answer to Cross-claim at 2, *Pac. Grading Corp. v. Constr. Servs. of Samoa*, CA No. 43-02 (Trial Div. Nov. 7, 2011).

We intimate nothing as to these averments; the former paragraphs are a skeletal framework of the plot underpinning this entire dispute, something we have pieced together while evaluating all of the parties' allegations. We now document the procedural maelstrom of this ongoing dispute. In May of 2002, Counsel Paul F. Miller of the Law Offices of Marshall Ashley represented PGC and VST. On May 10, 2012, PGC and VST filed a complaint, listing PGC and VST as Plaintiffs and CSS and ASG as Defendants. PGC and VST alleged that the services rendered by each of its companies to CSS and ASG were to the tune of $21,471 and that each company should collect under a theory of "implied contract...open account and/or unjust enrichment." Pl.'s Complaint at 3, *Pac. Grading Corp. v. Constr. Servs. of Samoa*, CA No. 43-02 (Trial Div. May 10, 2002).

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[1] We do not know the original terms of the construction contract between ASG and CSS because, through ten years of litigation, no party has volunteered a copy of the original construction contract.

Marie Ala'ilima Lafaele (also known as "Marie Alailima") originally represented CSS. On June 3, 2002, CSS filed an "Answer, Counter-claim, and Cross-claim." In that pleading, CSS answers PGC and VST's Complaint, and then raises a counterclaim against VST. CSS's counterclaim alleges that VST agreed to use CSS's equipment for a charged fee; the usage-fee CSS alleges VST owes amounts to $4,510.[2] CSS's cross-claim against ASG maintains,

> The cross-defendant [ASG] is withholding funds earned by CSS in excess of the claims complained of by plaintiffs. Said funds have already been set aside to pay CSS's subcontractors on the Masausi road project pursuant to agreement and representations made to CSS. The exact amount of this set aside, cross-plaintiffs will establish at trial.... The Cross-defendant is therefore solely liable to pay plaintiffs from this set aside to the extent that plaintiffs claims are proven.... Cross-defendant is liable to defendant, CSS for return of remaining balance of [sic] set aside they have withheld after all claims of subcontractors have been paid.

CSS's "Answer, Counter-claim, and Cross-claim" at 4, *Pac. Grading Corp. v. Constr. Servs. of Samoa*, CA No. 43-02 (Trial Div. June 3, 2002).

On August 1, 2002, Counsel Marcellus T. Uiagalelei, then an Assistant Attorney General, filed ASG's Answer to PGC and VST's Complaint. On August 8, 2002, ASG denied CSS's allegations quoted *supra* in its Answer to CSS's Cross-claim, while raising a list of affirmative defenses.

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[2] VST, at that time, denied owing the same and preserved defenses of its own in its Answer to Counterclaim, filed June 7, 2002.

On August 8, 2002, during the initial stages of discovery, the law offices of Rose & Joneson, P.C., substituted Marie Alailima as the attorney of record for CSS. After some discovery papers passed hands, on July 30, 2003, Marie Alailima substituted herself back in as the attorney of record for CSS, replacing Rose & Joneson, P.C. Less than a month later, on August 19, 2003, this Court approved the Law Offices of Marshall Ashley's withdrawal, by stipulation, as the attorney of record for PGC.[3] By early 2004, not to be outdone, Assistant Attorney General Valerie McGuire replaced Counsel Uiagalelei as the lead attorney for ASG in this action.[4]

On March 18, 2004, GMP, represented by Counsel S. Salanoa Aumoeualogo, filed its "Intervenor's Complaint," alleging an amount GMP felt CSS still owed GMP ($22,830.43) while GMP was a subcontractor for CSS on the Masausi Project. On April 20, 2004, this Court granted GMP's motion to intervene. On May 4, 2005, CSS filed its "Answer to Intervenor's Complaint, Counter-claim and Cross-claim."[5] In that pleading, CSS avers that GMP overestimated the amount due and owing from CSS (averring that

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[3] The Law Offices of Marshall Ashley never formally withdrew from representing VST. We note, however, that VST has filed nothing further in this action since at least 2003.

[4] Counsel McGuire did not file a formal replacement of lead counsel notice with this Court.

[5] CSS's cross-claim against ASG filed here is more detailed than its original cross-claim (filed June 3, 2002); however, CSS appears to have amended its original cross-claim without moving this Court for leave to do the same. *Cf.* T.C.R.C.P. 15(a).

the true amount owing to be $19,830.43 not $22,830.43).[6] Moreover, CSS alleges that GMP rented office space from CSS, office space GMP used while working on the Masausi Project, and, further, that GMP delayed the Masausi Project by failing to render its design work timely. In its counterclaim against GMP, CSS avers that GMP owes CSS $4,350.44 in rental arrearage and $9,520 for the losses CSS suffered due to delay in design rendering.

Regardless, by January of 2007, Counsel Robert K. Maez represented PGC.[7] On January 25, 2007, PGC moved this Court to set a trial date for this action. On March 16, 2007, at the hearing regarding PGC's Motion to Set Trial, this Court ordered trial to commence on September 27, 2007.

On September 27, 2007, GMP; ASG, now represented by Counsel Frederick J. O'Brien;[8] and CSS stipulated to continue the trial because Counsel Maez died between March and September of 2007. This Court rescheduled the trial for November of 2007. However, by December 17, 2007, the intervenor (GMP), and both Defendants, (ASG) and (CSS), through each of its respective counsel, filed a

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[6] CSS avers that the design work GMP performed was for $36,500 not $38,000 Furthermore, CSS avers that it had paid GMP an additional $1,500 GMP failed to include in its calculations.

[7] Maez did not file a formal substitution of counsel notice. In our review of Maez's briefs, it does not appear that Maez represented VST, only PGC, as he made no submissions on VST's behalf.

[8] Again, ASG did not file a replacement of lead counsel notice.

"Joint Stipulation to Remove Matter From Trial Docket."[9]

On December 17, 2007, this Court found "that the Plaintiffs are currently not represented by counsel, and that good cause exists [for] removing this matter from the court's trial docket [and that Plaintiffs PGC and VST] are hereby ordered to either...[o]btain new counsel who shall file a Notice of Appearance within sixty (60) days, [or f]ile a Notice of Intent to Proceed *Pro Se* within sixty (60) days...." We accordingly removed the action from the trial docket. In the years since this December 2007 Order, neither PGC nor VST filed a notice of appearance nor a notice of intent to proceed *pro se*.[10]

Indeed, no party filed anything further in this matter until October 20, 2011, when CSS, now represented by Counsel Charles V. Ala'ilima[11] filed a "Request to ASG for Production of Documents and Things." On November 7, 2011, ASG, now represented by Counsel Daniel Woods,[12] responded by filing its "Combined Motion for Leave to File an Amended Answer to CSS's Crossclaim and

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[9] The Stipulation incorrectly lists Marie Alailima as "Counsel for Defendant[,] Pacific Grading Corporation." By this time ASG was represented by Counsel Jennifer L. Augspurger; Counsel Augspurger, as all of her predecessors before her, did not file a formal replacement of lead counsel notice.

[10] Neither defendant, CSS nor ASG, has taken the initiative to invoke T.C.R.C.P. 41(b) to possibly dismiss PGC and VST's claims/Complaint.

[11] Brother of Marie Alailima. He did not file a formal substitution of counsel notice.

[12] Counsel Woods did not file a replacement of lead counsel notice.

Memorandum in Support." ASG wanted to bring a contract breach cross-claim against CSS for the Masausi Project contract. In the interests of justice, and seeing as how the whole underlying complaint which gave rise to this action concerned the very same construction contract, we granted ASG leave to amend its original Answer (to CSS's Crossclaim, which ASG originally filed on August 8, 2002) to include a breach of contract cross-claim against CSS. *Pac. Grading Corp. v. Constr. Servs. of Samoa*, CA No. 43-02, slip op. at 2-3 (Trial Div. Dec. 29, 2011) (order granting ASG's motion for leave to amend answer to cross-claim). *See* T.C.R.C.P. 15(a).

On January 10, 2012, CSS filed an answer to ASG's Amended Answer/Cross-Claim, styled incorrectly as "Answer to Amended Counter-claim." On January 12, 2012, ASG filed its "Motion for Summary Judgment on CSS's Three Affirmative Defenses" (hereinafter "Motion for Summary Judgment"). The matter came on for hearing on March 15, 2012, ASG and CSS appearing through counsel.

In its Motion for Summary Judgement, ASG argues that CSS's T.C.R.C.P. 12(b)(6), laches, and statute of limitations defenses cannot inure at trial and should be adjudicated now via summary judgment. We agree with ASG and issue summary judgment disposing of these three particular defenses.

SUMMARY JUDGEMENT STANDARD OF REVIEW

Summary judgment is proper where the record shows there is

no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. T.C.R.C.P. 56(c). When the moving party sets out a *prima facie* case for summary judgment, the burden shifts to the non-moving party to "set forth specific facts showing that there is a genuine issue for trial." T.C.R.C.P. 56(e). "Only disputes over facts that might affect the outcome of the suit under the governing law" are "material," and such a dispute is "genuine" only where the evidence is such that a reasonable factfinder could return a verdict for the nonmoving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1985). A court must resolve any factual issues in a controversy in favor of the nonmoving party, but conclusory, non-specific allegations are not sufficient to survive a motion for summary judgment, and missing facts will not be presumed. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888-89 (1990).

A.S.C.A. § 43.0201(a) mandates that the High Court "shall conform [the civil practice], as closely as practicable, to the practice provided for in the Federal Rules of Civil Procedure, Title 28, U.S.C." Indeed, this Court often looks to the Federal Rules of Civil Procedure for guidance and statutorily must conform itself to those Federal Rules as closely as is practicable. *Crispin v. Am. Samoa Gov't*, 21 A.S.R.2d 60, 66-7 (Trial Div. 1992). In 1981, this Court adopted most of the Federal Rules of Civil Procedure when it published its Trial

Court Rules of Civil Procedure ("T.C.R.C.P."). The Federal Rules have stylistically changed in the time since the T.C.R.C.P.'s genesis (though the numbering of the rules, and the topics each number discusses, has not). Given the statutory mandate of A.S.C.A. § 43.0201(a), the current Federal Rules of Civil Procedure are controlling (when practicable) in this Court.

After review of the 2012 version of Rule 56 of the Federal Rules, we are satisfied that this current iteration of federal Rule 56 to be "practicable" and, therefore, controlling and applicable. The distinctions between the federal version of Rule 56 and T.C.R.C.P. 56 are merely stylistic, not substantive. For instance, T.C.R.C.P. 56 does not explicitly state that a party moving for summary judgment can simply point to factual admissions or stipulations in the record as grounds for a *prima facie* showing of summary judgment. However, the Federal Rules say just that. FED. R. OF CIV. P. 56(c)(1) ("A party asserting that a fact cannot be or is genuinely disputed must support the assertion by...citing to particular parts of materials in the record, including...admissions). CSS is incorrect in stating that a party moving for summary judgment must provide an affidavit to make a *prima facie* showing for summary judgment.[13]

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[13] "ASG presents no affidavits or other supporting evidence in connection with its memorandum and motion." Def.'s Opp. to ASG's Combined Summ. J. Mot., *Pac. Grading Corp. v. Constr. Servs. of Samoa*, at 1 (Trial Div. Feb. 3, 2012). *But cf.* T.C.R.C.P. 56(a) ("A party seeking to recover upon a claim, counterclaim or to obtain a declaratory judgment may...*move with or without supporting affidavits* for a summary judgment in his

An affidavit is not always necessary, admissions are sometimes sufficient. FED. R. OF CIV. P. 56(c)(1). *Cf.* T.C.R.C.P. 56(c) ("The judgment sought shall be rendered forthwith if the...admissions on file...show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.").

Here, ASG relies solely on sufficient admissions and points of law;[14] accordingly, we rule ASG has made a *prima facie* showing of summary judgment from the admissions ASG culled from the record and marshaled in this present motion. It bears noting that CSS did not file affidavits or other evidence contesting those admissions. *Cf.* T.C.R.C.P. 56 (c).

DISCUSSION

We address the defenses in order: T.C.R.C.P. 12(b)(6); statute of limitations; and laches. We note, with the latter two defenses, the application of T.C.R.C.P. 15(c)'s relation-back principle, finding that summary judgment is appropriate for the three CSS affirmative defenses ASG targets in this present motion. We lastly address ASG's convincing alternative argument, moving that we strike all three of the aforementioned defenses for failing the particularity standard.

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favor upon all or any part thereof.")(emphasis added).

[14] Indeed, CSS never denied the averments ASG cites in support of ASG's Motion for Summary Judgment. We therefore consider those averments CSS did not deny as admissions of fact. *Cf.* T.C.R.C.P. 8(d).

I. T.C.R.C.P. 12(b)(6) Defense: Failure to State a Claim Upon Which Relief can be Granted

T.C.R.C.P. 8(a) and T.C.R.C.P. 12(b)(6) are inextricably linked. T.C.R.C.P. 8(a) espouses a seemingly lax pleading standard, "A pleading...shall contain (1) a short and plain statement of the claim showing the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled." T.C.R.C.P. 12(b)(6) is a defense utilized in civil proceedings. If a party seeking relief under a claim, counterclaim, or cross-claim fails to state a claim upon which relief can be granted pursuant to T.C.R.C.P. 8(a), the defending party may move the court to dismiss the claim so affected under T.C.R.C.P. 12(b)(6).

In the 1957 U.S. Supreme Court case of *Conley v. Gibson*, the Court articulated Rule 8(a)'s relaxed notice-pleading standard along with an analysis as to how a pleading could survive a Rule 12(b)(6) challenge, "we follow...the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove *no set of facts in support of his claim which would entitle him to relief.*" *Conley v. Gibson*, 355 U.S. 41, 45-6 (1957) (emphasis added). This quoted passage has befuddled legal scholars, as a literal interpretation of that passage would allow for parties seeking relief to allege no facts at all in their pleadings and yet survive a 12(b)(6) challenge. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 561 (2007) ("On such a focused and literal reading

of *Conley*'s "no set of facts," a wholly conclusory statement of claim would survive a motion to dismiss whenever the pleadings left open the possibility that a plaintiff might later establish some 'set of [undisclosed] facts' to support recovery."). The Supreme Court revisited this peculiar passage from *Conley* in the case of *Bell Atlantic Corporation v. Twombly*,

> To be fair to the *Conley* Court, the [quoted] passage should be understood in light of the opinion's preceding summary of the complaint's concrete allegations, which the Court quite reasonably understood as amply stating a claim for relief. But the passage so often quoted fails to mention this understanding on the part of the Court, and after puzzling the profession for 50 years, this famous observation has earned its retirement. The phrase is best forgotten as an incomplete, negative gloss on an accepted pleading standard: once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint.

Id. 562-63. The Supreme Court in *Twombly* articulated a standard of plausibility; to survive a T.C.R.C.P. 12(b)(6) challenge, a plaintiff must allege enough *plausible* facts to sustain a claim. *See id.* at 557; T.C.R.C.P. 8(a).

This plausibility standard was further illuminated in 2009 in the case of *Ashcroft v. Iqbal*, where the Supreme Court articulated a two-part test that courts should use when evaluating pleadings under this particularity standard. 556 U.S. __, 129 S. Ct. 1937, 1949-50 (2009) (citations omitted). First, the court must accept all allegations contained in a complaint as true provided the facts are not merely legal conclusions veiled as facts ("naked assertions"). *Id.* (citations omitted).

Accordingly, if the facts are "naked assertions," the court need not consider those facts as true (thereby making the complaint, or claim, subject to dismissal under Federal Rule of Civil Procedure/T.C.R.C.P. 12(b)(6)). *See id.* Secondly, "only a complaint that states a plausible claim for relief survives a motion to dismiss [for failure to state a claim]." *Id.* at 1950 (citations omitted). The second prong is "context specific" and the court draws from its own "experience and common sense" when making this determination. *Id.* (citations omitted). Therefore, when the court looks upon the *well-pleaded* facts and those facts permit the court to infer only "the possibility of misconduct," and nothing more, the complaint fails because it *alleges* but does not *show* its pleader is entitled to relief. *Id.* The complaint, or claim, will then be subject to dismissal under a T.C.R.C.P. 12(b)(6) challenge. *See id.*[15] *But cf. Ericksson v. Pardus*, 551 U.S. 89, 91 (2007) (holding, even in light of *Twombly*, that seemingly-cursory facts in a civil, *pro se* complaint are afforded more liberal construction than pleadings drafted by an attorney).

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[15] We adopted the *Twombly-Iqbal* plausibility standard in the case of *Vergara v. American Samoa Government*, CA No. 86-11, slip op. at 5 (Trial Div. Feb. 9, 2012) (order on def.'s mot. to dismiss). This plausibility standard has always existed, even at the time of *Conley – Conley's* seemingly contrary holding (allowing "naked assertions" to survive a Rule 12(b)(6) challenge) seemed contrary because of a misunderstanding by legal commentators and scholars. *See Twombly*, 550 U.S. at 562-63. A misunderstanding the Supreme Court subsequently called out and resolved. *Id.* The standard articulated in *Twombly* and *Iqbal* derives its validity from Rule 8(a) of the Federal Rules of Civil Procedure.

In a T.C.R.C.P. 12(b)(6) challenge, the court's mandate to liberally construe pleadings to do substantial justice, T.C.R.C.P. 8(f), does *not* mandate the court take everything alleged in a pleading's claim for relief as true. Indeed, under *Iqbal* and *Twombly's* interpretation of Rules 8(a) and 12(b)(6), a pleading's "naked assertions" are given no weight at all, only well-pleaded facts. And well-pleaded facts are still subject to the court's scrutiny: if, when drawing upon the court's "experience and common sense," the well-pleaded facts do not state a claim upon which relief can be granted, the claim is subject to dismissal. *Iqbal*, 129 S. Ct. at 1950.

"A statement of a cause of action for breach of contract requires [the] pleading of (1) [a] contract, (2) plaintiff's performance or excuse for non-performance, (3) defendant's breach, and (4) damage to plaintiff therefrom." *Acoustics, Inc. v. Trempte Constr. Co.*, 14 Cal. App. 3d 877, 913 (Cal. Ct. App. 1971) (citing WITKIN, CAL. PROCEDURE, *Pleading* § 251 (1954)).[16]

Looking at ASG's Cross-claim, we are now asked to determine if summary judgment is appropriate on CSS's 12(b)(6) defense — whether CSS at this time could maintain a T.C.R.C.P. 12(b)(6) defense. We conclude that CSS could not.

A T.C.R.C.P. 12(b)(6) defense is predicated upon the face of

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[16] We find this statement of elements in line with the common law elements of a breach of contract claim and apply it in the case at bar. *See* RESTATEMENT (SECOND) OF CONTRACTS § 236 cmt. a (1979). *Cf.* A.S.C.A. § 1.0201(4).

a claim for relief (ASG's Amended Answer/Cross-claim). Here, ASG's Amended Answer/Cross-claim, on its face, satisfies its burden under T.C.R.C.P. 8(a), by alleging well-pleaded facts that would satisfy the elements of a contract breach. ASG avers in its Cross-claim that on January 8, 2001, ASG and CSS entered into a written contract concerning the Masausi Road and Drainage Reconstruction Project, where CSS was to serve as general contractor (contract); that ASG made payments to CSS pursuant to the contract (performance); that CSS began to perform, but subsequently failed to pay its subcontractors and to timely complete the project; that CSS breached the agreement by failing to complete the project by the completion date (breach); and that in an effort to mitigate its damages, ASG suffered $66,000 when hiring another firm to complete the project (damages). ASG's Amended Answer to CSS's Cross-claim at 2-3, *Pac. Grading Corp. v. Constr. Servs. of Samoa,* CA No. 43-02 (Trial Div. Nov. 7, 2011). ASG did not file a pleading merely stating that there was a breach of contract (a "naked assertion"), but instead provided enough well-pleaded facts which, *if true*, would grant ASG relief.[17] At trial, ASG must prove those very facts to merit

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[17] We do not have an opinion as to whether ASG's averment that a contract between ASG and CSS formed is sufficient enough to withstand a T.C.R.C.P. 12(b)(6) challenge – whether enough well-pleaded facts were alleged to assert all the elements of a contract – because CSS admitted a contract so existed. *See* T.C.R.C.P. 8(d) (CSS did not deny the existence of the Masausi contract between itself and ASG in its "Answer to Amended Counterclaim [sic]", filed January 10, 2012; that averment is therefore considered an admission).

relief.

CSS's T.C.R.C.P. 12(b)(6) defense cannot, by law, inure – ASG's pleadings are sufficient to survive such a challenge now as at trial.

Accordingly, we grant ASG's motion for summary judgment on this particular CSS defense – CSS's T.C.R.C.P. 12(b)(6) defense shall not be availed at trial.

II. Defenses Concerning Time: Relation Back

T.C.R.C.P. 15(c) states that "[w]henever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to [the] date of the original pleading."

Under T.C.R.C.P. 15(a), we allowed ASG to Amend its Answer to include a cross-claim against CSS. *Pac. Grading Corp. v. Constr. Servs. of Samoa, Inc.*, CA No. 43-02 slip op at 2-3, (Trial Div. Dec. 29, 2011) (order granting ASG's mot. for leave to amend answer to cross-claim). We ruled that justice so required the amendment – indeed, CSS's own cross-claim against the government concerns the same transaction and occurrence (the underlying construction contract between ASG and CSS concerning the Masausi Project). Consequently, ASG's Amended Answer/Cross-claim relates back to the date ASG first filed its Answer against CSS's cross-claim, August 9, 2002.

A. Statute of Limitations

A.S.C.A. § 43.0120(5) provides that "[a]ctions may be brought...after their causes accrue" and that "actions founded on written contracts, or a judgment of a court record, [must be brought] within 10 years" unless it is "otherwise especially declared." Therefore a breach of contract action, premised on a written contract must be brought within 10 years from the date of the breach unless "otherwise especially declared." A.S.C.A. § 43.0120(5). A party defending against a claim may raise a statute of limitations defense to dismiss the claim for the party-seeking-relief's failure to file the claim within the statutory period. *See* A.S.C.A. § 43.0120.

Here, CSS's statute of limitations defense is deficient, as ASG's Amended Answer/Cross-claim is timely brought. We construe CSS's following admission as fact: that ASG and CSS entered into a construction contract for the Masausi Project on January 8, 2001. *See* T.C.R.C.P. 8(d); CSS's "Answer to Amended Counter-claim [sic]" at 1, *Pac. Grading Corp. v. Constr. Servs. of Samoa*, CA No. 43-02 (Trial Div. Jan. 10, 2012). By admitting as much, CSS acknowledges that *if* any contract-breach occurred, it would have occurred sometime in 2001 or 2002.[18] ASG's Amended

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[18] CSS denies that there was a breach, but ASG alleges there was one. We intimate nothing as to whether there was a breach (as that issue has not been raised in the present summary judgment motion), only that if there was a breach, it could only conceivably have occurred in 2001 or 2002, while the construction contract was in effect. *See* ASG's Amended Answer to CSS's Crossclaim at 2-3, *Pac. Grading Corp. v. Constr. Servs. of Samoa*, CA No. 43-02 (Trial Div. Nov. 7, 2011).

Answer/Cross-claim relates back to the date it was originally filed, August 9, 2002. T.C.R.C.P. 15(c). Less than two years had passed from the date the construction contract came into being to the date ASG filed its Answer (from which ASG's Cross-claim relates back). Within that less-than-two-year timeframe, ASG alleges a breach occurred. The related-back-to filing lies well within the 10-year statute of limitations period for contract disputes premised on a breach of written contract. A.S.C.A. § 43.020(5).

Based on the preceding analysis, CSS's statute of limitations defense could not inure at trial. Accordingly, we grant ASG's motion for summary judgment as concerns CSS's statute of limitations defense.

B. Laches

Laches is an equitable principle, which will bar a claim for relief subject to (1) the laches' elements being met, and (2) this Court's discretion. *See, Jennings v. Thompson*, 25 A.S.R.2d 77, 82 (App. Div. 1994). Laches is composed of two elements: (1) a party-seeking-relief's unreasonable delay in asserting his rights; and (2) an undue prejudice stemming from such delay affecting the other party. *TCW Special Credits v. F/V Cassandra Z*, 7 A.S.R.3d 3, 11 (App. Div. 2003); *Jennings*, 25 A.S.R.2d at 82; *Siofele v. Shimasaki*, 9 A.S.R.2d 3, 14 (Trial Div. 1988) (citing *Gardner v. Panama R.R. Co.*, 342 U.S. 29, 31 (1951)).

Here, as a matter of law, laches could not bar ASG's Amended

Answer/Cross-claim for contract breach.[19] ASG's Cross-claim is not violative of this Territory's statute of limitations, A.S.C.A. § 43.0120(5). *See supra.* Therefore, CSS's request that we find a timely filing unreasonable is inherently flawed.

Moreover, CSS's argument that it will be unduly prejudiced is unsupported by any admissible affidavits or the record. A summary judgment opposition must present admissible sets of facts which would indicate a genuine issue of material fact warranting trial (where a fact-finding would yield the actual facts used to render a judgment).

Here, CSS's averments are deficient and unsupported. Proper notice of a summary judgment proceeding being had, we rule that CSS's laches argument is lacking, that there is no genuine issue of material fact, and summary judgment is appropriate as applied to this particular defense – consequently, CSS's laches defense cannot be brought at trial.

III. ASG's Alternative Argument: Motion to Strike

In the wake of *Iqbal* and *Twombly*, federal district courts

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[19] ASG cites to *Mageo v. Government of American Samoa*, for the proposition that ASG is always immune from laches and statutes of limitations defenses. 4 A.S.R. 874, 881-85 (App. Div. 1963). However, *Mageo's* holding concerning the government's immunity from laches and statutes of limitations defenses was specifically rendered in a lands-action context and vein. *Id.* at 882 (holding, inter alia, "it is the basic law that the statute of limitations does not run against...the Government of American Samoa with respect to land."). We find it unnecessary, and hence decline, to address that concept of immunity in this action concerning contract breach, as we can decide this present motion on other principles.

have had to sort out a different issue: whether the "particularity standard" stemming from the Supreme Court's interpretation of Federal Rule of Civil Procedure 8(a)'s mandate for a "short and plain statement" of claims, is similarly applicable to defendants when pleading defenses pursuant to Federal Rule of Civil Procedure Rule 8(b)(1)(A)'s mandate that a party shall "state in *short and plain terms* its defenses to each claim asserted against it." FED. R. CIV. P. 8(b)(1)(A) (emphasis added). *Cf.* T.C.R.C.P. 8(b) ("A party shall state in short and plain terms his defense to each claim asserted..."). *See, e.g., Barnes v. AT&T Pension Benefit Plan*, 718 F.Supp.2d 1167 (N.D. Cal. 2010). Neither the Supreme Court, nor any Circuit Court, has addressed the particularity standard's application when pleading affirmative defenses. *Barnes*, 718 F.Supp.2d 1171-72.

Here, ASG moves us alternatively to strike CSS's T.C.R.C.P. 12(b)(6), statutes of limitations, and laches defenses under this novel interpretation of the particularity standard (as it relates to pleading defenses).[20] *See* T.C.R.C.P. 12(f). We find this nascent strain of the particularity standard persuasive and find all three of CSS's aforementioned defenses should be struck. CSS merely listed its defenses, with no factual allegations of any kind accompanying any listed defense. *Cf.* CSS's "Answer to Amended Counter-claim [sic]" at 1-2, *Pac. Grading Corp. v.*

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[20] To cure a struck defense for failing the particularity standard, one would amend his pleading. *Cf.* T.C.R.C.P. 15.

Constr. Servs. of Samoa, CA No. 43-02 (Trial Div. Jan. 10, 2012). Under *Iqbal* and *Twombly's* particularity standard, CSS's conclusory list would amount to "naked assertions" for which we would give no weight. *Iqbal*, 129 S. Ct. at 1949-50 (2009) (citations omitted).

Indeed, we would strike these CSS defenses, but for summary judgment already disposing of the same. *See supra*.

ORDER

ASG's motion for summary judgment against CSS's T.C.R.C.P. 12(b)(6), statute of limitations, and laches defenses is granted. The listed defenses may not be availed at trial.

It is so ordered.

Dated: May 3, 2012.

F. MICHAEL KRUSE
Chief Justice

LOGOAI SIAKI P.
Chief Associate Judge

FA'AMAUSILI P. POMELE
Associate Judge