

FILED
Clerk
District Court

FEB 23 2021

for the Northern Mariana Islands
By 
(Deputy Clerk)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

BETTY JOHNSON, on behalf of herself, and as
a representative of a class of similarly-situated
persons,

CIVIL CASE NO. 09-00023

Plaintiffs,

v.

ORDER

RALPH DELEON GUERRERO TORRES,
Governor of the Commonwealth of the Northern
Mariana Islands (“CNMI”), *et al.*,

Denying Settlement Fund’s Motion to
Enforce Final Judgment Approving Class
Action Settlement Against the CNMI Public
School System (ECF No. 794)

Defendants.

Pending before the court is a Motion to Enforce Final Judgment Approving Class Action Settlement Against the CNMI Public School System (the “Motion to Enforce”), filed by the Settlement Fund. *See* Mot. Enforce, ECF No. 794. Having reviewed the motion, the oppositions and replies thereto, the exhibits submitted with the pertinent filings, and relevant case law, the court issues this Order denying the Motion to Enforce.

BACKGROUND

The Settlement Agreement

On August 6, 2013, the parties to this action entered into a Final Amended Stipulation and Agreement of Settlement (“Settlement Agreement.”). *See* ECF No. 468. On October 23, 2013, the court entered a Final Judgment Approving Class Action Settlement (“Final Judgment”). *See* Final J., ECF No. 561. Under the terms of the Settlement Agreement, the Commonwealth of the Northern Mariana Islands (“Commonwealth”) and the signatory autonomous agencies, including

Betty Johnson v. Ralph Deleon Guerrero Torres, Civil Case No. 09-00023
Order Denying Settlement Funds' Motion to Enforce (ECF No. 794)

1 the CNMI Public School System (“PSS”), “agreed to the entry of a Consent Judgment against the
2 [Commonwealth] in favor of the Settlement Fund in the amount of \$779,000,000, or the equivalent
3 of the actuarial present value of benefits related to the Settlement Class Members.” Settlement
4 Agreement at ¶6.0, ECF No. 468-1. The Settlement Fund agreed not to “attempt to enforce the
5 Consent Judgment so long as the [Commonwealth] timely makes the minimum annual payments
6 required by paragraph 4.0, 4.1 and 4.2” of the Settlement Agreement.¹ *Id.*

7 The Commonwealth continues to make the minimum annual payments required to the
8 Settlement Fund.

9 The parties to the Settlement Agreement further agreed to this court’s “exclusive jurisdiction
10 to enforce and interpret any provision of [the Settlement A]greement and to enjoin any person or
11 entity from pursuing any action that is inconsistent with [the Settlement A]greement.” *Id.* at ¶28.0.

12 The PSS Lawsuit in the NMI Superior Court

13 The Commonwealth Constitution provides that PSS “shall be guaranteed an annual budget
14 of not less than twenty-five percent of the general revenues of the Commonwealth through an
15 annual appropriation.” Commonwealth Const. art. XV, §1(e). PSS believed that it had not been
16 receiving its share of the general revenues as set forth in the Commonwealth constitution, so on
17 October 19, 2018, PSS and CNMI Governor Ralph DLG. Torres filed a Joint Petition for Certified
18 Question (“Joint Petition”) in the NMI Supreme Court. *See* PSS Opp’n at 5, ECF No. 799. The
19 primary question raised in the Joint Petition was “[w]hat sources of income must be included when
20 determining PSS’s” share of general revenues as set forth in the Commonwealth Constitution. *Id.*

21 On January 14, 2020, the NMI Supreme Court issued its opinion on the Joint Petition. *See*
22 *id.* and Mot. Enforce at 3, n.2, ECF No. 794. The NMI Supreme Court held that “[g]eneral and
23

24 ¹ The Settlement Agreement specified the minimum annual payment amounts for fiscal
25 years (“FY”) 2014-2024. *See* Settlement Agreement at ¶4.0, ECF No. 468-1. After FY2024, the
26 Commonwealth agreed “to make minimum annual payments [(“MAP”)]to the Settlement Fund
27 sufficient to enable the Settlement Fund to pay 75% OF Class Members’ Full Benefits each year
28 for the Settlement Fund’s expected life as determined by an independent actuary[.]” *Id.* at ¶4.1.
The parties further agreed that if the CNMI economy improves, the Commonwealth would make
an alternative payment of a greater amount (“APGA”), which was based on the Commonwealth’s
Total Annual Revenue. *Id.* at ¶4.2.

Betty Johnson v. Ralph Deleon Guerrero Torres, Civil Case No. 09-00023
Order Denying Settlement Funds' Motion to Enforce (ECF No. 794)

1 special revenues are subcategories of revenue; and, special revenues are revenues which bear a
2 relationship between the revenue's source and purpose. PSS is not entitled to revenues that are
3 special; rather, PSS is only entitled to general revenues." In the Matter of a Certified Question
4 Petition from Ralph DLG. Torres and Marylou S. Ada, No. 2018-SCC-0021-CQU, 2020 WL
5 242488, at *10 (N. Mar. I. Jan. 14, 2020) (footnote omitted).

6 Because the Commonwealth and PSS still could not reach a consensus on what monies PSS
7 was entitled to, on March 12, 2020, PSS filed suit against Governor Torres and the CNMI Secretary
8 of Finance. *See* PSS Opp'n at 5, ECF No. 799, and Ex. 1² to Mot. Enforce, ECF No. 794-1. The
9 Superior Court Complaint sought declaratory and injunctive relief, including a declaration that
10 certain earmarks to fund various purposes such as payments to the Settlement Fund do not qualify
11 as special revenue and should be considered general revenue, thus entitling PSS to 25% of said
12 revenue. Superior Court Compl. at 7, ECF No. 794-1.

13 The action proceeded before the Superior Court, with PSS filing a motion for summary
14 judgment on April 29, 2020. Mot. Enforce at 4, ECF No. 794 and Ex. 3 thereto, ECF No. 794-3.
15 The Settlement Fund filed a Motion to Intervene in the Superior Court action. Mot. Enforce at 4,
16 ECF No. 794.

17 Thereafter, the Settlement Fund filed the instant motion before the court. *Id.* The
18 Commonwealth and PSS filed separate oppositions to the Motion to Enforce, *see* ECF Nos. 796
19 and 799, and the Settlement Fund filed replies thereto. *See* ECF Nos. 797 and 800. The Settlement
20 Fund requested that the court schedule a hearing on its Motion to Enforce, but the court finds it
21 appropriate to dispose of the motion without the need for oral argument. *See* LR 7.1(a)(2)("[o]ral
22 argument is at the discretion of the Court[.]").

23 ANALYSIS

24 The Settlement Fund argues that PSS's suit before the Superior Court seeks to invalidate
25 the public laws establishing the source of funding for payments to the Settlement Fund, thus
26 impairing or diminishing the payments required under the Settlement Agreement. *See* Mot. Enforce

27
28 ² Exhibit 1 shall hereinafter be referred to as the "Superior Court Complaint."

Betty Johnson v. Ralph Deleon Guerrero Torres, Civil Case No. 09-00023
Order Denying Settlement Funds' Motion to Enforce (ECF No. 794)

1 at 17-20, ECF No. 794. The Settlement Fund thus requests this court to enforce the Settlement
2 Agreement and find that PSS is not entitled to the appropriations made for the Settlement
3 Agreement payments. *Id.* at 20-21.

4 The Commonwealth and PSS, however, contend that the Superior Court action will not
5 affect the Commonwealth's obligation to make the annual payments to the Settlement Fund as
6 required by the Settlement Agreement. PSS asserts that it has not "tried to disturb, reduce, stop, or
7 curtail payments" to the Settlement Fund. PSS Opp'n at 9, ECF No. 799. They argue that even if
8 the laws at issue were invalidated, the Commonwealth's obligation to pay the minimum annual
9 payments each year remains unaffected. *See* Commonwealth Opp'n at 3, ECF No. 796, and PSS
10 Opp'n at 9-10, ECF No. 799.

11 The court concurs with the Commonwealth and PSS. PSS's suit in the Superior Court does
12 not concern the enforcement of the Settlement Agreement. The Settlement Agreement does not
13 mandate that "a special fund or earmark be created in order for [the Settlement Fund] to receive
14 payment." *Id.* at 8. "The Settlement Agreement does not direct the Commonwealth to establish the
15 special funds or enact continuing appropriation provisions to fund its payment obligations under
16 MAP." Commonwealth Opp'n at 4, ECF No. 796. If the Settlement Agreement included a
17 provision that required the establishment of a funding source for the MAP, then the Settlement Fund
18 would have a stronger argument for its Motion to Enforce. Here, the Settlement Agreement simply
19 required the Commonwealth to make the agreed upon minimum payments, which the
20 Commonwealth has done and continues to do.³ Because the Commonwealth continues to pay the
21 MAP, there has been no breach of the Settlement Agreement and no basis to grant the Motion to
22 Enforce.

23 Based on the record before the court, it appears to the court that PSS does not seek to
24 terminate the Commonwealth's payments to the Settlement Fund or to take 25% of any funds

26 ³ Both the Commonwealth and PSS note that the Settlement Fund's Motion to Enforce fails
27 to allege that the Commonwealth has failed to meet its obligation to make the minimum annual
28 payments owed to the Settlement Fund. *See* Commonwealth Opp'n at 3, ECF No. 796, and PSS
Opp'n at 10, ECF No. 799.

Betty Johnson v. Ralph Deleon Guerrero Torres, Civil Case No. 09-00023
Order Denying Settlement Funds' Motion to Enforce (ECF No. 794)

1 earmarked for the Settlement Fund. Both the Commonwealth and PSS acknowledge the
2 Commonwealth's obligation to pay the full MAP to the Settlement Fund. Rather, PSS seeks a
3 determination that the revenue sources used to pay the MAP are "general revenues" and not "special
4 revenues" such that PSS would be entitled to a greater amount from the Commonwealth. The
5 example set forth in PSS's Opposition is instructive on this point. *See* PSS Opp'n at 10-11, ECF
6 No. 799. Assume that for FY2020, the Commonwealth had \$100 million for appropriation. PSS
7 asserts it would be entitled to \$25 million pursuant to the Commonwealth Constitution. The
8 Settlement Fund would also be entitled to \$43 million under the terms of the Settlement Agreement.
9 *See* Settlement Agreement at ¶4.0, ECF No. 468-1. This would leave the Commonwealth with \$32
10 million to appropriate for other purposes. PSS asserts that the revenues used to pay the \$43 million
11 owed to the Settlement Fund should not be considered "special revenues" because to do so would
12 reduce the amount available for appropriation by the Commonwealth to \$57 million, thus reducing
13 PSS's constitutionally owed amount to \$14.25 million (25% of the lesser amount of \$57 million).
14 Under either scenario, the Settlement Fund is paid in full. What changes is the amount to which
15 PSS would be entitled.

16 The court finds that the Superior Court action does not affect the interpretation of any
17 provision of the Settlement Agreement nor its enforcement. Instead, the issues presented in the PSS
18 lawsuit are matters of state law and public policy, which do not affect the amounts owed to the
19 Settlement Fund. Accordingly, the court finds no basis to grant the relief request by the Settlement
20 Fund.

21 CONCLUSION

22 Based on the above analysis, the court **DENIES** the Settlement Fund's Motion to Enforce.
23 IT IS SO ORDERED.



/s/ Frances M. Tydingco-Gatewood
Designated Judge
Dated: Feb 23, 2021