IN THE SUPERIOR COURT OF GUAM

HYUNG GON KIM and SOL YOUNG EUH,

Plaintiffs,

vs.

ANTONIO A. SABLAN, PAUL SABLAN, and PRIMOS HEAVY EQUIPMENT AND RENTAL SERVICES

Defendants.

PRIMOS HEAVY EQUIPMENT AND RENTAL SERVICES,

Cross-Plaintiff,

vs.

ANTONIO A. SABLAN and PAUL SABLAN,

Cross-Defendants.

ANTONIO A. SABLAN,

Counterclaim-Plaintiff,

vs.

PRIMOS HEAVY EQUIPMENT AND RENTAL SERVICES,

Counterclaim-Defendant.

CIVIL CASE NO. CV0188-22

DECISION AND ORDER RE MOTIONS FOR SUMMARY JUDGMENT

This matter comes before the Honorable Dana A. Gutierrez on three motions for summary judgment by Plaintiffs Hyung Gon Kim and Sol Young Euh ("Plaintiffs"), Defendant Primos

Heavy Equipment and Rental Services ("Primos"), and Defendant Antonio Sablan ("Antonio"). Having reviewed the record and applicable law, the Court now issues its Decision and Order.

BACKGROUND

Plaintiffs are the owners of Lot No. 3248-4-2 in Ordot-Chalan Pago ("Lot 3248"), which they acquired by warranty deed on September 8, 2020, as tenants in common with equal undivided interests. First Amended Compl. for Trespass, Negligence, and Unjust Enrichment ("First Amended Complaint") ¶ 2 (Aug. 9, 2023); Def. Primos CVR 56.1 Statement of Issues and Statements of Undisputed Facts ("Primos' SUF") (May 30, 2025), Ex. D (Warranty Deed); Decl. of Terry Hyunggon Kim[1] ¶ 2 (Nov. 22, 2022). At all relevant times, Lot 3248 was undeveloped and unoccupied, and Plaintiffs purchased the property for future residential development. Decl. of Terry Hyunggon Kim ¶ 3 (Nov. 22, 2022).

Antonio is the record owner of the adjoining Lot No. 3325-3 ("Sablan Property"), conveyed to him by deed of gift dated July 10, 2019. Primos' SUF, Ex. B (Deed of Gift); Primos' SUF, Ex. C[2] at 4. The Sablan Property was also vacant, undeveloped land during the relevant period. *Id.* Antonio is the father of Defendant Paul Sablan ("Paul"). Def. Antonio Sablan's Statement of Undisputed Material Facts CVR 56(1)(a)(2) ¶ 3 (May 30, 2025); Primos' SUF ¶ 1.

In December 2021, Paul rented a Caterpillar D-8 bulldozer and an operator from Primos for work at the Sablan Property. Primos' SUF, Ex. E[3] ¶ 6; Primos' SUF, Ex. F[4] ¶ 4; First Amended Compl. ¶ 6. Primos is in the business of leasing heavy equipment, either alone or with an operator,

[1] Mr. Kim is one of the Plaintiffs in this case. Decl. of Terry Hyunggon Kim at ¶ 1 (Nov. 22, 2022).
[2] Exhibit C to Primos' SUF is Defendant Antonio A. Sablan's Response to Plaintiff's First Set of Interrogatories dated Feb. 7, 2025.
[3] Exhibit E to Primos' SUF is an affidavit by Felix Quan, the president of Primos dated May 29, 2025.
[4] Exhibit F to Primos' SUF is an affidavit by Daniel Brown dated May 29, 2025.

and when equipment is leased with an operator, the customer assumes responsibility for directing and supervising the work while the operator remains a Primos employee. Primos' SUF, Ex. E ¶¶ 2–5.

The bulldozer operator, Daniel Brown ("Brown"), has been employed by Primos for approximately twenty-five years and was assigned to operate the bulldozer on Paul's project. Primos' SUF, Ex. F ¶¶ 1–2, 4; Primos' SUF, Ex. E ¶ 7. Brown did not negotiate any contract with Paul and was paid solely by Primos based on hours worked. Primos' SUF, Ex. F ¶ 6; Primos' SUF, Ex. E ¶ 9. All instructions regarding where and how to operate the bulldozer were provided by Paul, and Primos did not supervise or direct the work at the job site. Primos' SUF, Ex. F ¶¶ 3, 5, 8, 16; Primos' SUF, Ex. E ¶ 9.

Upon arriving at the site, Paul instructed Brown to park along the road abutting what Brown later understood to be Lot 3248 and to drive the bulldozer across Lot 3248 to reach the Sablan Property. Primos' SUF, Ex. F ¶ 10. Paul further directed Brown to remove dirt from Lot 3248 and use it to fill a ditch on the Sablan Property. Primos' SUF, Ex. F ¶ 10. Brown observed plastic markers on the ground that appeared to mark property lines and questioned Paul, who told him not to worry and stated that "it was all his land." Primos' SUF, Ex. F ¶ 11. Paul retained the authority to stop the work at any time. Primos' SUF, Ex. E ¶ 12; Primos' SUF, Ex. F ¶ 17.

Paul paid Primos a total of $14,099.50 for the rental of the bulldozer and operator between December 10 and December 30, 2021, as reflected in four invoices and corresponding receipts. Primos' SUF, Ex. E ¶¶ 14(a)–(d); Exs. G, H. Each invoice prominently stated: "PRIMOS NOT

RESPONSIBLE FOR PERMITS." Primos' SUF, Ex. E ¶ 13; Ex. F ¶ 7; Ex. G.[5] No permits were obtained for the land-clearing work. Primos' SUF, Ex. E ¶ 10; Ex. F ¶ 7.

On December 31, 2021, Plaintiff Euh discovered that soil had been removed from Lot 3248 and learned from neighbors that a bulldozer had been clearing Plaintiffs' property. Primos' SUF, Ex. J[6] at 5, 7. Brown later found the bulldozer secured with a chain and padlock and a note indicating the land was private property. Primos' SUF, Ex. F ¶ 13. Brown provided the note to his supervisor at Primos, who contacted Plaintiffs. Primos' SUF, Ex. F ¶ 14. Primos instructed Brown to remove the bulldozer, and no further work was performed at the site. Primos' SUF, Ex. F ¶ 15.

Plaintiffs filed their original complaint on March 28, 2022, asserting claims for trespass and unjust enrichment against Antonio and Paul based on the alleged unauthorized land clearing. Antonio initially defaulted but successfully moved to set aside the default, asserting that Paul directed the work and that Antonio did not benefit from it. Decision and Order Granting Antonio's Mot. to Set Aside Entry of Default (Apr. 20, 2023). Antonio thereafter denied involvement in or knowledge of Paul's actions, and Paul never appeared in the action. *See* Def. Antonio Sablan's Statement of Undisputed Material Facts CVR 56.1(a)(2) ¶¶ 10–14 (May 30, 2025).

On August 9, 2023, Plaintiffs filed a First Amended Complaint adding Primos as a defendant and asserting a negligence claim alleging that Primos owed a duty to survey property boundaries and obtain permits before performing work.[7] First Amended Comp. ¶¶ 6–29. Primos filed a cross-complaint against Antonio and Paul for negligence and indemnification based on

[5] Exhibit G to Primos' SUF is three invoices for the labor and equipment that Primos provided to Paul.
[6] Exhibit G to Primos' SUF is Plaintiffs' Response to Primos' First Set of Interrogatories dated February 26, 2025.
[7] Plaintiffs later stepped back from this argument, stating that "To be clear, Plaintiffs do not argue that PRIMOS had a duty to obtain permits." Pls.' Opp'n to Primos' Mot. for Summ. J. & Alternative Mot. to Dismiss Countercl. ("Pls.' Opp'n to Primos' Mot.") at 18.

Paul's direction of the work. Primos' Cross-Compl. (Sep. 18, 2023). Antonio answered and asserted a counterclaim against Primos for negligence, alleging similar failures regarding property boundaries, permits, and notice to neighboring landowners, but did not name Paul as a party. Antonio's Answer to Cross-Compl. & Countercl. (Sep. 29, 2023).

Primos moved to dismiss the First Amended Complaint and Antonio's counterclaim, arguing that Paul controlled the work and that Brown acted as Paul's borrowed servant. Primos Mot. to Dismiss (Oct. 17, 2023). The Court denied the motion on May 20, 2024, citing an underdeveloped factual record. Decision and Order Re Primos' Motions to Dismiss (May 20, 2024).

Primos, Plaintiffs, and Antonio all moved for summary judgment on May 30, 2025. On June 27, 2025, the parties filed their oppositions to each other's motions. On July 11, 2025, they filed their respective replies. The Court held a hearing on the parties' Motions for Summary Judgment on October 15, 2025, and took the matter under advisement. Min. Entry at 10:54:32 A.M. (Oct. 15, 2025).

DISCUSSION

I. Legal Standard for Summary Judgment

On a motion for summary judgment, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Guam R. Civ. P. 56(a). "The party moving for summary judgment 'bears the initial burden to show that undisputed facts in the record support a *prima facie* entitlement to the relief requested.'" *Cho v. Alupang Beach Club, Inc.*, 2025 Guam 3 ¶ 28 (citation omitted). "If the movant satisfies this burden, the burden then shifts to the [non-movant] to show

that there exists a material question of fact that would preclude the grant of summary judgment." *Id.* (quotation and citation omitted). "To avoid a grant of summary judgment in favor of the movant, 'the non-movant may not simply deny the allegations to create a factual dispute, but is obligated to set forth specific facts showing there is a genuine issue for trial.'" *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth., Guam*, 2020 Guam 20 ¶ 35 (citation omitted). "In reviewing the facts of a case on a motion for summary judgment, a court 'must view the evidence and draw inferences in the light most favorable to the non-movant.'" *Id.* at ¶ 36 (citation omitted).

II. Primos' Motion for Summary Judgment and Plaintiffs' Motion for Partial Summary Judgment Re Liability

Primos seeks summary judgment on (1) Plaintiffs' claims for negligence and trespass and (2) Antonio's claims for negligence, trespass, and injury to real property. Because Plaintiffs' arguments opposing summary judgment on their negligence and trespass claims substantially overlap with the arguments raised in their Motion for Partial Summary Judgment Re Liability,[8] the Court will address those arguments here as well. *See* Pls.' Opp'n to Primos' Mot. at 2 ("Moreover, because Plaintiffs' Motion for Partial Summary Judgment Re Liability against PRIMOS addresses many of the arguments raised in the present motion, Plaintiffs hereby incorporate by reference the arguments, declarations[,] and exhibits raised in that motion to [*sic*] this opposition."); Pls.' Reply to Primos Opp'n to Mot. for Partial Summ. J. Re Liability at 1 ("Plaintiffs also hereby incorporate by reference their opposition to PRIMOS's Motion for Summary Judgment of First Amended Complaint and Counterclaim.").

[8] The Court notes that Plaintiffs' Motion for Partial Summary Judgment Re Liability seeks summary judgment on the same claims for which Primos seeks summary judgment.

A. Plaintiffs' Claims of Negligence and Trespass Against Primos

Primos argues it is entitled to summary judgment on Plaintiffs' claims because the undisputed record shows Primos acted solely as an equipment lessor and exercised no control over the bulldozer operator, who was a "borrowed servant" acting entirely under the direction of Paul, the individual who rented the equipment, instructed the work, and paid for it. Primos' Mot. for Summ. J. & Alternative Mot. to Dismiss Countercl. ("Primos' Mot.") at 4–7, 9–11. Primos further contends the negligence claims fail because Plaintiffs identify no legal duty owed by an equipment rental company to survey property lines, obtain permits, or notify neighbors, and allege no negligent manner of performance—only that the work occurred in the wrong location. *Id.* at 12–15. Lastly, Primos was not a landowner and therefore owed no duty under 18 GCA § 90107, and it had no statutory authority or obligation to apply for permits under 21 GCA § 66202. *Id.* at 13–15.

In opposition, Plaintiffs argue Primos is not entitled to summary judgment because the undisputed facts show Primos, through its operator, trespassed onto and damaged Plaintiffs' property and was negligent in blindly following Paul's directions without taking any steps to confirm Sablan owned—or had authority over—the land being cleared. Pls.' Opp'n to Primos' Mot. at 4–7. They contend Primos' "borrowed servant" defense is a red herring because Plaintiffs do not claim the bulldozer was operated unsafely; the negligence is Primos' and its employee's failure to verify ownership or boundaries before proceeding, making any borrowed-servant control analysis irrelevant. *Id.* at 5–6. Even if the borrowed servant doctrine applied, Plaintiffs assert Brown remained Primos' employee because Brown was performing Primos' work as a licensed specialty contractor providing heavy equipment and an operator to a customer. *Id.* at 9–10 ("Daniel

Brown was performing PRIMOS work."). Plaintiffs further argue that Paul was merely an ordinary customer who controlled only the desired result, not the means or methods of performance. *Id.* at 10 ("PAUL SABLAN was just a regular customer who leased the services of a bulldozer and qualified operator."). Plaintiffs emphasize that Paul "did not provide any documents, survey maps, or any other type of proof." *Id.* at 6. Plaintiffs also argue that Primos was at fault because when Brown saw markers indicating property lines, he nevertheless continued after Paul told him not to worry about them. *Id.* at 6 ("Even when Daniel Brown saw markers indicating property lines and questioned PAUL SABLAN about them, he still trusted PAUL SABLAN who told him not to worry about it."). Plaintiffs further argue Primos owed a general duty of ordinary care under 18 GCA § 90107 and a heightened duty as a C-17/C-27 specialty contractor under 25 GAR § 12106(a)(4) to act "intelligently" and as a reasonably prudent contractor would, which required at least requesting proof of authority before clearing land, and that Primos' failure to do so foreseeably caused Plaintiffs' damages. *Id.* at 15–17.

1. The Borrowed Servant Doctrine Bears on the Outcome of this Case

"The law has long understood the concept of the borrowed (or lent) servant." *Amerada Hess Corp. v. Ogden Saguenay Transp., Inc.*, WL 6504675, at *1 (M.D. Fla. Nov. 21, 1979); *Parker v. Joe Lujan Enters., Inc.*, 848 F.2d 118, 120 (9th Cir. 1988) ("[The Ninth Circuit] has recognized the borrowed servant doctrine."). Under the borrowed servant doctrine, "[w]hen an employer . . . lends an employee to another employer and relinquishes to a borrowing employer all right of control over the employee's activities, a 'special employment' relationship arises between the borrowing employer and the employee," such that "[d]uring this period of transferred control, the [borrowing] employer becomes solely liable under the doctrine of respondeat superior

for the employee's job-related torts." *See Marsh v. Tilley Steel Co.*, 606 P.2d 355 (Cal. 1980); *see also Parker*, 848 F.2d 118, 119 (9th Cir. 1988) (applying the borrowed servant doctrine to an accident arising from "repair works on communications towers in Barrigada, Guam"). Such "job-related torts" include trespass and negligence. *See Swackhamer v. Johnson*, 65 P. 91, 94 (Or. 1901) (trespass); *Southway Indus. Servs., Inc. v. Boyd*, 642 S.E.2d 889, 891 (Ga. Ct. App. 2007) (negligence). Accordingly, in tort actions for negligence or trespass, "[t]ort immunity under the borrowed servant doctrine is an affirmative defense." *See Billeaud v. Poledore*, 603 So. 2d 754, 755 (La. Ct. App. 1992).

The borrowed servant doctrine is directly implicated in this case. Plaintiffs allege that Brown, a Primos employee, committed trespass and negligence by failing to ascertain the boundary of the property on which he operated the bulldozer. Based on the record before the Court, it is undisputed that, at the time Brown performed the work, he was acting at the direction of Paul, who identified the location of the work and controlled what was to be done. If Brown is found to be operating under Paul's exclusive direction and control at that time, then Primos cannot be held vicariously liable for any job-related torts arising from that work.

Plaintiffs contend that the borrowed servant doctrine applies only when the alleged negligence consists of the physical operation of machinery. *See* Pls.' Opp'n to Primos' Mot. at 5 ("[B]ecause there is no allegation that Daniel Brown negligently operated the bulldozer, the borrowed servant doctrine does not apply."). Without citing to legal authority, Plaintiffs urge this Court to disregard the borrowed servant doctrine because negligence in ascertaining land boundary—as opposed to negligence in operating the bulldozer—somehow falls outside the borrowed servant doctrine. *See id.* ("Plaintiffs maintain that the focus should be on PRIMOS' and

Daniel Brown's failure to take any action whatsoever to confirm that PAUL SABLAN owned the property before trespassing upon and damaging it.").

This distinction is unsupported by authority and finds no footing in the doctrine itself. The borrowed servant doctrine turns on control, not on the particular manner in which negligence is alleged. *Wilcox v. Basehore*, 356 P.3d 736, 751 (Wash. Ct. App. 2015) ("Analysis and application of the borrowed servant rule invariably focuses on who exerted control over the servant for the transaction causing an injury."); *Hartford Ins. Grp. v. Mile High Drilling Co.*, 292 N.W.2d 232, 233 (Mich. Ct. App. 1980) ("[T]he determination of which master is liable under the doctrine of respondeat superior in a borrowed servant situation depends upon which master had complete control over the servant at the time of the accident."); *Freeman v. Holzer Med. Ctr.*, 1989 WL 116944, at *4 (Ohio Ct. App. 1989) ("[T]he question of liability for the negligence of the servant depends upon a determination of which employer had the power to control and direct the servant at the time of the negligence."). If Brown was acting under Sablan's exclusive direction and control at the time of the entry onto Plaintiffs' property, then any job-related tort committed in furtherance of that work—including trespass or negligence in failing to verify property ownership —falls within the scope of the doctrine. Plaintiffs' attempt to cabin the doctrine to negligent "operation" of equipment improperly narrows settled law and thus does not defeat the application of the borrowed servant doctrine here.

2. Primos Has Presented Sufficient Evidence to Show that Brown Was a Borrowed Servant

"[U]nder the common law [borrowed]-servant doctrine immediate control and supervision is critical in determining for whom the servants are performing services." *Shenker v. Baltimore & O. R. Co.*, 374 U.S. 1, 6 (1963); *see Parker*, 848 F.2d at 120 (held "'authoritative direction and

control' were the critical factors by which the borrowed servant issue is to be determined"); *Lott v. Moss Point Marine, Inc.*, 785 F. Supp. 600, 603 (S.D. Miss. 1991) ("[T]he central question in borrowed servant cases is whether someone has the power to control and direct another person in the performance of his work.") (citing *Hebron v. Union Oil Co. of California*, 634 F.2d 245, 247 (5th Cir.1981)); *Wilcox*, 356 P.3d at 747 ("[T]he question is the control of the borrowed servant by the borrowing employer for the transaction causing injury.") (citation omitted); 30 C.J.S. Employer—Employee § 11, Westlaw (database updated Dec. 2025) ("It is the shift of the right to direct and control the details of the work that transforms a general employee of one employer into a borrowed employee of another, rendering the new employer vicariously liable for the borrowed employee's actions.").

The record shows that Paul had control over Brown. First, Paul selected the worksite and determined the location where clearing and grading would occur. *See* Primos' SUF ¶¶ 17, 23; *id.*, Ex. F ¶¶ 8, 10. Second, Paul provided on-site, task-specific instructions directing Brown where to clear, where to place the soil, how deep to dig, and Brown followed those instructions in performing the work. *See* Primos' SUF ¶¶ 25–27; *id.*, Ex. F ¶¶ 8, 10–11. Third, Paul paid for the bulldozer and operator on an hourly basis and controlled the scope and duration of the work by directing when and where the bulldozer would operate. *See* Primos' SUF ¶¶ 14–16, 23–24. Finally, the record reflects that Primos did not supervise the work, was not present at the jobsite, and exercised no day-to-day control over Brown once Paul assumed direction of the project. *See* Primos' SUF ¶¶ 21, 30–33; *id.*, Ex. F ¶¶ 10–12. Accordingly, the Court finds that the evidence Primos submitted suffices to show that Brown was a borrowed servant. The burden therefore shifts to Plaintiffs to produce admissible evidence creating a genuine dispute as to Paul's control over

Brown. Plaintiffs have failed to do so as Plaintiffs have submitted no evidence disputing Primos' showing that Paul exercised authoritative direction and control over Brown.

Nevertheless, Plaintiffs argue that Brown was not a borrowed servant because he is a "longtime employee" of Primos and he was "using [Primos'] bulldozer" at the time of the alleged negligence and trespass. Pls.' Opp'n to Primos' Mot. at 10. This argument contradicts the very case that Plaintiffs cited. *See id.* at 7 (citing *Denton v. Yazoo & M.V.R. Co.*, 284 U.S. 305 (1932)). In *Denton*, the U.S. Supreme Court held that a worker may be deemed the borrowed servant of another even though he remains in the general employ of, and is paid by, the original employer and continues to use the original employer's equipment, where the worker is placed at the disposal of another and is subject to that party's authoritative direction and control in the performance of the particular work. *Id.* at 308–11. The Court emphasized that the controlling inquiry is not who owns the equipment or who pays the worker, but "whose work is being performed" and who has the power to control and direct the manner in which the work is carried out. *Id.* Accordingly, the fact that Brown was Primos' employee and operated Primos' bulldozer does not preclude a finding that he was acting as a borrowed servant of Paul at the time of the alleged negligence and trespass. *See Standard Oil Co. v. Anderson*, 212 U.S. 215, 221 (1909) ("[H]e to whom the workmen are furnished is responsible for their negligence in the conduct of the work, because the work is his work, and they are, for the time, his workmen."); *Kirkpatrick v. Shell Oil Co.*, 912 F.2d 469 (9th Cir. 1990) ("[I]t is not essential, in order to constitute an employee a loaned servant, that the general employer relinquish full control over his employee, or that the special employee be completely subservient to the borrower.").[9]

[9] Both *Standard Oil* and *Kirkpatrick* were cited in Plaintiffs' Opposition. *See* Pls.' Opp'n to Primos' Mot. at 7, 9.

3. Plaintiffs' Assertion that Primos Is an Independent Contractor Does Not Change the Court's Analysis of the Borrowed Servant Doctrine

Plaintiffs argue that because Primos' "general work or business [is] to provide heavy equipment and an operator to rent," Primos "is an independent contractor [of Paul] and is not shielded from liability for trespass and for negligently following [Paul]'s instructions." Pls.' Opp'n to Primos' Mot. at 9–10. First, "[r]egardless of the contractual relationship between the general employer and the special employer, a 'borrowed servant' relationship may be established by showing the special employer's right of control to direct the details of work done by the borrowed employee." *Aguilar v. Wenglar Const. Co.*, 871 S.W.2d 829, 831 (Tex. Ct. App. 1994); *see Caso v. Nimrod Prods., Inc.*, 77 Cal. Rptr. 3d 313, 319 (Cal. Ct. App. 2008) ("When an employer lends an employee to another employer and relinquishes to the borrowing employer some right of control over the employee's activities, a 'special employment relationship' arises between the borrowing employer and the employee."). Second, even if Plaintiffs' assertion that Primos was an independent contractor who furnished labor and equipment to Paul were true, "[that] alone cannot be the basis on which control is found, because otherwise, the borrowed servant doctrine would be rendered meaningless in cases where an employer rents out both the machinery and employee to another." *See e.g., Cleveland v. Marco Crane & Rigging Co.*, 2021 WL 710790, at *4 (Ariz. Ct. App. 2021); *McCollum v. Smith*, 339 F.2d 348, 352 (9th Cir. 1964) ("[The plaintiff] rented defendants' machine and operator in order to do some work of their own and in their own fashion; the crucial right of control over those who performed this work unmistakably rested with [the plaintiff]."); *see also Wren v. Vaca*, 922 S.W.2d 408, 410 (Mo. Ct. App. 1996) (The borrowed servant doctrine "provides that 'in the leasing of equipment and operators to another, the mere fact

that the general employer continues to pay the operator's wages, the gas, oil and other expense, and is responsible for maintenance, does not prevent the operator from becoming an employee of the lessee."). In other words, Plaintiffs' focus on Primos' alleged role as an independent contractor is misplaced, the proper inquiry remains whether Paul had "authoritative direction and control" over Brown. *See Jeffrey v. Colley*, 322 S.W.2d 951, 953 (Mo. Ct. App. 1959) (Even when "the servant is using the machinery or appliance of his general employer, . . . the test of liability is the possession of control over the servant.").

While the Court's finding that the borrowed servant doctrine applies suffices to grant summary judgment in Primos' favor on both the negligence and trespass claims, the Court, in an abundance of caution, also addresses Plaintiffs' alternative arguments for imposing negligence liability on Primos below.

4. Plaintiffs Failed to Explain What Duty Primos Owes Them

A negligence claim requires "the existence of a duty, the breach of such duty, causation and damages." *Guerrero v. McDonald's Int'l Prop. Co.*, 2006 Guam 2 ¶ 9 (citation omitted). The plaintiff bears the burden of proving that the defendant owes a duty. *See Fenwick v. Watabe Guam, Inc.*, 2009 Guam 1 ¶ 12 ("[T]o succeed in a negligence action a plaintiff must prove . . . '[a] duty, or obligation, recognized by law, requiring the person to conform to a certain standard of conduct, for the protection of others against unreasonable risks of harm.'") (citation omitted). For a negligence claim to stand, there must be sufficient evidence showing that the defendant owes the plaintiff a duty. *See Moylan v. Citizens Sec. Bank*, 2015 Guam 36 ¶ 66 (The plaintiff's negligence claim failed because "[the plaintiff] ha[d] failed to provide any evidence that the [defendant] owed him any duty whatsoever . . ."); *Merch. v. Nanyo Realty, Inc.*, 1998 Guam 26 ¶ 15 ("[The plaintiff]

never succeeds beyond the first element of the negligence claim; that is, a duty owed to [the plaintiff] by [the defendants]. There is no proof in the record that [the defendants] owed [the plaintiff] any duty, thus obviating any breach of duty.").

Plaintiffs argue that because the "risk of trespass and negligence in this case was foreseeable," therefore Primos "had a duty to confirm that PAUL SABLAN owned the property before proceeding to damage Plaintiffs' property." Pls.' Opp'n to Primos' Mot. at 13. Plaintiffs contend that this duty to confirm is part of "a general duty of ordinary care to Plaintiffs to avoid causing injury or damage to Plaintiffs' property" pursuant to 18 GCA § 90107. *Id.* at 16.

There is no evidence in the record establishing that Primos owed Plaintiffs any duty. While Plaintiffs cite one California case confirming the general rule that "each person has a duty to use ordinary care," Pls.' Opp'n to Primos' Mot. at 16 (citing *Romero v. Superior Ct.*, 89 Cal. App. 4th 1068, 1080 (Cal. Ct. App. 2001)), Plaintiffs cite no statute or case law demonstrating how a duty to confirm boundaries falls within that general "duty to use ordinary care." Indeed, if citing such a general proposition of law were sufficient to carry a plaintiff's burden in a negligence action, a plaintiff could invoke it in every case and the duty requirement would be rendered meaningless. *See Parsons v. Crown Disposal* Co., 936 P.2d 70 (Cal. 1997) ("'[D]uty' is not an immutable fact of nature."); *Gilbert v. Clear Recon Corp*, 2025 WL 831787, at *5 (E.D. Cal. Mar. 17, 2025) ("A conclusory assertion of a legal duty owed is insufficient to support a negligence claim."); *Onoh v. Citigroup*, 2009 WL 2246207, at *2 (N.D. Cal. July 27, 2009) ("Plaintiff's purely conclusory negligence claim against defendants is premised on the unsubstantiated theory that defendants owed plaintiff a 'general duty of care' and failed to exercise 'reasonable care' in performing this duty."); *see also Raheel Foods, LLC v. Yum! Brands, Inc.*, 2017 WL 217751, at *6 (W.D. Ky. Jan.

18, 2017) ("We are convinced that our courts never intended their recent references to 'universal duty' as establishing a principle whereby a plaintiff could satisfy the first element of a cause of action for negligence . . . by mere citation [of the phrase].").

Plaintiffs also argue that Primos owes them "special duties as a licensed specialty contractor holding classifications of C-17 and C-27, among others." Pl.'s Opp'n at 17. Citing to Title 25 of the Guam Annotated Regulations ("GAR"), Plaintiffs contend that Primos "had the duty to 'intelligently dig, move, and place earthen materials for a cut, fill, grade or trench'" and "to 'intelligently prepare plots of land.'" *Id.*

In response, Primos argues that Plaintiffs improperly rely on specialty-contractor licensing rules (C-17 and C-27) to create a tort duty that does not exist, because those provisions "govern the classification and administrative enforcement of contractor licenses as opposed to tort duties or civil liability," and "do not create a private right of action or establish any duty owed to third parties in a negligence action." Primos' Opp'n to Pls.' Mot. for Summ. J. at 6.

Primos has the better of the arguments. First, the regulation itself does not impose duties—it provides "[d]efinitions of [s]ub-[c]lassifications" of specialty contractors such as excavating contractors (C-17) and landscaping contractors (C-27). *See* 25 GAR § 12106(a)(4). It is not clear to the Court how a regulatory definition describing the scope of work that a particular license classification may perform creates a tort duty owed to third parties, much less a duty to investigate or confirm a customer's property ownership or boundary lines. Nothing in 25 GAR § 12106(a)(4) imposes an affirmative obligation on a licensee to verify land title, obtain surveys, or police a customer's representations before performing work. At most, the regulation delineates the types

of activities a licensed contractor is permitted to perform for licensing and administrative purposes; it does not establish a duty of care or create a private right of action in negligence.

Second, even where statutes or regulations define a standard of conduct for specialty contractors, that alone does not create a legal duty in tort. "The standard of care is relevant only if there is a duty of care for it to impose." *Issakhani v. Shadow Glen Homeowners Assn., Inc.*, 278 Cal. Rptr. 3d 270, 284 (Cal. Ct. App. 2021). Likewise, "a statutorily defined standard of care does not, by itself, obligate a court to recognize a duty of care." *A.L. v. Harbor Developmental Disabilities Found.*, 321 Cal. Rptr. 3d 575, 592 (Cal. Ct. App. 2024); *see Urhausen v. Longs Drug Stores California, Inc.*, 65 Cal. Rptr. 3d 838, 849 (Cal. Ct. App. 2007) ("[A] regulation will not be found to have been intended to prevent a particular accident merely because compliance with the regulation would foreseeably have prevented the accident."). Thus, even if Plaintiffs could identify some regulatory standard governing contractor conduct in the GAR, that alone would not answer the threshold question of whether Primos owed Plaintiffs any duty at all.

Third, Plaintiffs have cited no authority holding that contractor licensing regulations create an independent duty owed to neighboring landowners or third parties in a negligence action. The GAR governing contractor licensing are enforced administratively by the Contractors License Board and are intended to regulate licensing qualifications and disciplinary matters—not to expand civil tort liability. *See* 25 GAR § 12101(b). Absent express legislative intent, courts do not infer a private cause of action or tort duty from regulatory schemes. *See, e.g., Weisenberger v. Ameritas Mut. Holding Co.*, 597 F. Supp. 3d 1351, 1362 (D. Neb. 2022) ("Without a legislative intent to create a private right and remedy, courts cannot create an implied cause of action no matter how desirable as a matter of policy, or how compatible that may be with the statute."); *Villazon v.*

Prudential Health Care Plan, Inc., 843 So. 2d 842, 852 (Fla. 2003) ("In general, a statute that does not purport to establish civil liability but merely makes provision to secure the safety or welfare of the public as an entity, will not be construed as establishing a civil liability."); *Dudley v. Cash*, 82 Va. Cir. 1 (Va. Cir. Ct. 2010) ("A statute (or inferior regulations), absent express direction from the legislature, will not create a duty in tort.").

In sum, Plaintiffs have not produced any evidence showing that Primos owed them a duty. Because Plaintiffs have failed to identify any cognizable legal duty owed by Primos to Plaintiffs, their negligence claim fails as a matter of law.

5. Summary Judgment on Plaintiffs' Claims Against Primos Is Proper

In conclusion, summary judgment in Primos' favor is proper because the undisputed evidence establishes that the borrowed servant doctrine applies, rendering Paul—and not Primos—vicariously liable for any negligence or trespass allegedly committed by Brown while performing the work at issue. Plaintiffs have also failed to establish that Primos owed them any cognizable legal duty to verify property ownership, confirm boundary lines, obtain permits, or notify adjoining landowners, and they do not allege any negligent manner of performance apart from the location of the work. Accordingly, the Court **GRANTS** Primos' Motion for Summary Judgment as to Plaintiffs' claims and **DENIES** Plaintiffs' Motion for Partial Summary Judgment Re Liability.

B. Antonio's Claims of Negligence, Trespass, and Injury to Real Property Against Primos

Primos argues that Antonio's counterclaim fails as a matter of law because it does not establish standing or any essential element of negligence or trespass. Specifically, Primos states that Antonio alleges no concrete injury-in-fact, relying instead on vague and speculative assertions

that soil was moved or that he is "unable to use" his property, without identifying any measurable physical damage, economic loss, or evidentiary support. Primos' Mot. at 15–17. Primos further contends that it owed no legal duty to Antonio because Antonio did not retain Primos, had no communications or contractual relationship with it, and admits that his son, Paul, independently rented the bulldozer and directed all aspects of the work, while Primos acted solely as an equipment lessor and exercised no control over the jobsite or the operator. *Id.* at 15–16. For the same reasons, Primos maintains that Antonio cannot establish causation or proximate harm, as the counterclaim identifies no specific negligent act attributable to Primos and rests entirely on speculative conclusions. *Id.* at 16–17. Primos also emphasizes that Antonio has produced no evidence disputing that Paul exercised exclusive direction and control over the operator, and that Antonio cannot rely on pleadings or conjecture to create a triable issue of fact. *Id.* at 5–6, 10–11. Alternatively, Primos argues that the counterclaim must be dismissed because Paul is the central and indispensable actor whose conduct must be adjudicated to allocate fault, and proceeding in his absence would prevent complete and equitable relief and risk prejudice and inconsistent determinations. *Id.* at 18–19. ("[Antonio] seeks to hold Primos liable for work he admits was arranged and directed by his son, Paul, yet he has taken no steps to hold Paul accountable.").

In his opposition, Antonio argues that genuine issues of material fact preclude judgment as a matter of law. Antonio's Opp'n to Primos' Mot. for Summ. J. ("Antonio's Opp'n to Primos' Mot.") at 1–2. He asserts that a key dispute is whether Primos' equipment operator, Brown, was Paul's "borrowed servant." *Id.* at 3–4. Relying on the multi-factor test from *Ruiz v. Shell Oil Co.*, 413 F.2d 310 (5th Cir. 1969), Antonio contends no single factor is dispositive and that the totality of circumstances must be evaluated. *Id.* 3–4. He maintains the evidence shows Primos retained

control over Brown because it paid his wages, retained the right to discharge him, furnished the equipment, and never terminated the employment relationship. *Id.* at 4–5. He further argues Brown worked only about twelve days, there was no agreement or meeting of the minds transferring Brown to Paul, and Brown neither signed a contract nor knowingly consented to assume the risks of temporary employment with Paul. *Id.* at 4–5. Antonio also contends that Primos owed him a general duty of ordinary care under 18 GCA § 90101 and breached that duty by exceeding the scope of its rental agreement when its employee entered Antonio's property without consent, cleared and graded it, and deposited soil from a neighboring parcel. *Id.* at 6. He asserts this conduct proximately caused damage because the deposited soil limits use of his property and will require removal costs. *Id.* at 6–7. Accordingly, Antonio maintains that disputed issues of fact remain on the borrowed-servant doctrine, negligence, trespass, and causation, requiring denial of summary judgment. *Id.* at 7.

1. Antonio's Reliance on *Ruiz* Is Misplaced

The Court first notes that its discussion of the borrowed servant doctrine above applies with equal force here because, like Plaintiffs, Antonio is a landowner who allegedly suffered harm from Paul's bulldozing activities. The Court now considers Antonio's argument that the borrowed servant doctrine must be analyzed under the multi-factor test articulated in *Ruiz*, and that a fact-intensive inquiry under *Ruiz* precludes summary judgment.

Antonio's reliance on *Ruiz* is misplaced. As the Fifth Circuit itself later clarified, the *Ruiz* factors were developed primarily in the context of the Longshore and Harbor Workers' Compensation Act ("LHWCA"), where the borrowed-employee doctrine functions not to impose vicarious liability, but rather as a mechanism to determine whether an employer may invoke the

statute's exclusive-remedy protection. *See Gaudet v. Exxon Corp.*, 562 F.2d 351, 356 (5th Cir. 1977); *Santorii v. MartinezRusso, LLC*, 381 P.3d 248, 251 (Ariz. Ct. App. 2016) (noting that "the reasoning underlying workers' compensation cases does not apply to vicarious liability in tort cases"). In that context, the doctrine "bears little resemblance" to the traditional respondeat superior analysis used to assign tort liability. *Gaudet*, 562 F.2d at 356. (citing *Standard Oil Co.*, 212 U.S. at 215). Thus, while the *Ruiz* factors may be useful in certain statutory workers' compensation contexts, they are not intended to displace the traditional common-law inquiry governing vicarious liability which focuses on control. *Garner v. Pontchartrain Partners, LLC*, 2022 WL 2116897, at *4 (E.D. La. June 13, 2022) ("In the vicarious liability context, the focus is more on which employer controlled the employee at 'the time when liability arises.'").

Subsequent Fifth Circuit authority confirms that the decisive inquiry in borrowed-servant cases is control. In *Hebron v. Union Oil Co. of California*, the Fifth Circuit explained that "the central question in borrowed servant cases is whether someone has the power to control and direct another person in the performance of his work." 634 F.2d 245, 247 (5th Cir. 1981). Likewise, in *Lott v. Moss Point Marine, Inc.*, a district court in the Fifth Circuit emphasized that although the *Ruiz* factors may be weighed as appropriate, "the question of control is the primary issue." 785 F. Supp. 600, 603 (S.D. Miss. 1991). Courts applying the doctrine in respondeat superior cases have consistently focused on which entity exercised control over the employee's daily activities. *See Arboleda v. Elmwood Dry Dock & Repair, Inc.*, 2000 WL 505898, at *1 (E.D. La. Apr. 25, 2000) ("When the borrowed servant issue arises in the context of which employer . . . should be held responsible under respondeat superior, the most important factor is which employer controlled the daily activity of the employee.") (citing *Gaudet*, 562 F.2d at 355).

Federal courts outside the Fifth Circuit likewise recognize that *Ruiz* does not mandate a rigid checklist analysis. In *Cruz v. United States*, a district court in the Ninth Circuit noted that there is no requirement that courts mechanically march through each factor of *Ruiz*, particularly where binding precedent focuses on control and direction of work. 247 F. Supp. 3d 1138, 1143 (S.D. Cal. 2017) ("[T]he Court isn't aware, and [the plaintiff] hasn't identified, any Ninth Circuit case law that requires the Court to march through the nine-factor test.").

Here, as explained below, the undisputed evidence establishes that Paul—not Primos—controlled and directed Brown's work on the subject property. Antonio himself admits that Paul "rented from Primos a bulldozer and bulldozer operator," Antonio's Amended Counter Cl. ¶ 5 (Jun. 10, 2024), and like Plaintiffs, did not present any evidence to dispute Primos' showing that Paul directed the bulldozing operations and determined where and how the work would be performed. The fact that Primos paid Brown's wages, owned the equipment, or retained a general right to terminate his employment does not override the dispositive inquiry of who exercised operational control at the time of the alleged tort. *See Denton*, 284 U.S. at 309 (noting that "the power of substitution or discharge, the payment of wages and other circumstances bearing upon the relation are dwelt upon . . . are not the ultimate facts, but only those more or less useful in determining whose is the work and whose is the power of control"). Because Antonio has offered no evidence creating a genuine dispute that Paul exercised such control, his attempt to invoke the *Ruiz* multi-factor test does not create a triable issue of fact.

2. Antonio Has Produced No Evidence Disputing Paul's Control over Brown

In addition, Antonio has not provided "specific facts" to create a genuine dispute that Paul exercised authoritative direction and control over Brown's work. The undisputed facts show that

Paul selected the worksite, instructed Brown where to clear and where to place the soil, represented that he owned the property, and supervised the progress of the work while it was being performed. Primos was not present on site, did not issue operational instructions, and relinquished control of the equipment and operator to Paul upon dispatch. These facts are established by Primos' Statement of Undisputed Material Facts and the sworn testimony of Brown and Primos' representatives, and Antonio has offered no contrary evidence to rebut them.

Antonio's reliance on details such as who paid Brown's wages, who owned the equipment, or whether Primos retained the theoretical ability to terminate Brown's employment is insufficient to create a triable issue. Courts consistently hold that such considerations do not defeat borrowed-servant status when operational control rests with the borrowing party. *See Parker*, 848 F.2d at 119–20 (held that a winch truck operator was a borrowed servant even when "[the general employer] owned the winch truck, selected the operators, required that the truck be operated by [the general employer's] operator, paid the operator's wages, and retained the authority to hire and fire the operator"); *Wren*, 922 S.W.2d at 410 (the test of liability is possession of control, not ownership of machinery). The dispositive question remains who controlled the manner and details of the work that allegedly caused the injury, and the undisputed evidence points solely to Paul. *See Styren v. Lab. Ready*, 135 Wash. App. 1017 (Wash. Ct. App. 2006) ("The issue here is common law vicarious liability . . . [a]nd so the dispositive question is simply whether the servant is under the exclusive control of the borrowing employer.").

Antonio also speculates that no "agreement" or "meeting of the minds" transferred Brown to Paul and that Brown did not expressly consent to a temporary employment relationship. But a formal agreement is not required to establish borrowed-servant status; what matters is the actual

power of control over the employee's work. *See O'Donnell v. New England Motor Freight, Inc.*, 2009 WL 674131, at *6 (M.D. Pa. Mar. 13, 2009) ("For the borrowed servant doctrine to apply, there is no requirement that there be a contract of hire, either expressed or implied, between the borrowing employer and the borrowed employee."); *Pemberton v. Daigle Welding Serv., Inc.*, 1980 WL 8156, at *7 (E.D. La. Feb. 14, 1990) ("A written agreement is not required in order to find borrowed servant status."). Antonio cites no evidence showing that Primos exercised any on-site supervision or retained authority over how Brown performed the bulldozing. Speculation and argument cannot substitute for admissible evidence at summary judgment. *Cass v. City of Abilene*, 2014 WL 12642572, at *11 (N.D. Tex. Oct. 3, 2014) ("It is well settled that conclusory allegations, unsubstantiated assertions, and speculation are not substitutes for summary judgment evidence."); *Roberta L. Marcus, Inc. v. New Cingular Wireless PCS, LLC*, 2013 WL 5554142, at *7 (S.D. Fla. Sept. 3, 2013) ("Argument is not evidence, and allegations and speculation are not enough on summary judgment."). Antonio's failure of proof is particularly stark given that he admits he lacks personal knowledge of the rental arrangement and did not depose Paul, Brown, or any Primos representative, subpoena documents, or present site evidence contradicting Primos' showing of Paul's control. *See* Decl. of Antonio A. Sablan in Supp. of Mot. for Summ. J. ¶¶ 8–9 (Antonio stated he "was not aware nor did [he] authorize Paul to hire [Primos] to perform the clearing and grading on Lot 3248-4-2.") (May 30, 2025); *id.* ¶ 18 ("Paul is a competent and discerning adult who acted on his own will at all times relevant to this case without my direction and knowledge."). Where a party opposing summary judgment fails to present significant probative evidence creating a genuine dispute of material fact, judgment as a matter of law is appropriate. *McLane Land & Timber Co. v. United States*, 1997 WL 792518, at *2 (W.D. Ark. July 8, 1997) ("If the non-movant

fails to demonstrate the existence of a genuine issue of material fact by offering significant probative evidence, the movant is entitled to summary judgment as a matter of law."). Because Antonio has produced no evidence that Primos exercised authoritative direction or control over Brown's work at the time of the alleged trespass and property damage, the borrowed servant doctrine applies as a matter of law, and Primos cannot be held vicariously liable for Brown's conduct.

3. Summary Judgment on Antonio's Claims Against Primos Is Proper

To conclude, summary judgment in Primos' favor is proper because the undisputed evidence establishes that the borrowed servant doctrine applies, making Paul—not Primos—vicariously liable for any negligence, trespass, or injury to real property allegedly committed by Brown. Accordingly, the Court **GRANTS** Primos' Motion for Summary Judgment as to Antonio's claims.

4. The Court Need Not Decide the Motion to Dismiss Because the Court Grants Summary Judgment

Because the Court grants Primos' Motion for Summary Judgment and thereby fully disposes of the claims asserted against Primos, there are no remaining claims to which Primos' alternative motion to dismiss under GRCP 12(b)(7) could apply. *See, e.g.*, *Honse v. Shulkin*, 2019 WL 4308780, at *10 (C.D. Cal. July 25, 2019) ("Because the Court grants Defendant's motion for summary judgment, Defendant's alternative motion to dismiss is denied as moot."); *U.S. ex rel. Tennessee Valley Marble Holding Co. v. Grunley Const.*, 433 F. Supp. 2d 104, 111 (D.D.C. 2006) ("Because defendant Atlantic's Motion for Partial Summary Judgment is granted, defendant's

alternative motion to dismiss is rendered moot."). Accordingly, Primos' Alternative Motion to Dismiss under Rule 12(b)(7) is **MOOT**.

III. Antonio's Motion for Summary Judgment

Antonio argues that all claims asserted against him—Plaintiffs' claims for trespass and unjust enrichment and Primos' cross-claims for negligence and equitable indemnification—rise or fall on the theory that Paul acted as Antonio's agent in hiring Primos to perform the clearing and grading and in depositing soil onto Antonio's property. He contends there is no evidence of any actual or ostensible agency because Antonio did not authorize, direct, or ratify Paul's conduct, was unaware of the work, and did not intentionally enter Plaintiffs' property or cause a third party to do so, and because both Plaintiffs' and Primos' agency allegations are conclusory and unsupported by discovery, which produced no documents or facts establishing agency or vicarious liability. Antonio's Mot. for Summ. J. ("Antonio's Mot.") at 2–3, 4–7. On that basis, Antonio asserts that Plaintiffs' trespass claim fails as a matter of law because intentional entry or causation cannot be shown without agency, that Plaintiffs' unjust enrichment claim fails because Antonio allegedly received no benefit from the soil and cannot use his property until it is removed, defeating the elements of benefit, knowledge, and inequitable retention, and that Primos' negligence and indemnification claims fail because vicarious liability requires a principal–agent relationship and right of control and indemnity applies only where Antonio is without fault and primarily liable. *Id.* at 4–8.

Plaintiffs and Primos both oppose summary judgment, arguing that genuine disputes of material fact remain as to whether Paul acted with actual, implied, or ostensible authority or whether Antonio ratified Paul's conduct, emphasizing that Antonio relies primarily on his own

self-serving declaration and that circumstantial evidence—including the duration and visibility of the work, Antonio's alleged acceptance of the resulting benefit, and discovery responses suggesting potential coordination—supports competing inferences that must be resolved by a trier of fact. Pls.' Opp'n to Antonio's Mot. for Summ. J. ("Pls.' Opp'n to Antonio's Mot.") at 1–5; Primos' Opp'n to Antonio's Mot. for Summ. J. ("Primos' Opp'n to Antonio's Mot.") at 1–6. Plaintiffs further contend that the soil placement may have conferred a benefit by filling a ditch and improving usability, creating a triable issue on unjust enrichment, while Primos additionally argues that even absent agency, Antonio may remain independently liable as the landowner for failing to exercise ordinary care in managing his property and preventing harm to neighboring land, such that agency is not dispositive of either Plaintiffs' claims or Primos' cross-claims. Pls.' Opp'n to Antonio's Mot. at 4–5; Primos' Opp'n to Antonio's Mot. at 6–7.

A. Genuine Issues of Material Fact Exist as to Whether Paul Acted as Antonio's Agent or Whether Antonio Ratified the Conduct

"Whether a person is the agent of another is a question of fact." *Leong v. Deng*, 2002 Guam 2 ¶ 10. In attempting to resolve this factual question, Antonio relies entirely on his own declaration denying that Paul was his employee or authorized agent and denying any knowledge or ratification of the clearing and grading work. Antonio's Mot. at 2–3, 4–5. The Court agrees with Plaintiffs and Primos that a self-serving declaration, standing alone, is insufficient to eliminate factual disputes, particularly where agency may be established by circumstantial evidence, implied authority, ostensible authority, or ratification. *See, e.g., Federated Mut. Ins. Co. v. Ever-Ready Oil Co.*, 2011 WL 13152539, at *2 (D.N.M. Jan. 12, 2011) ("'[C]onclusory and self-serving affidavits are not sufficient' to support summary judgment.") (citing *Skrzypczak v. Roman Catholic Diocese*, 611 F.3d 1238, 1244 (10th Cir. 2010)); *Fid. & Deposit Co. of Maryland v. Travelers Cas. & Sur. Co.*

of Am., 2018 WL 11409435, at *4 (D. Nev. Aug. 22, 2018) ("Unsupported, self-serving declarations are insufficient to defeat a motion for summary judgment, so they certainly can't carry the day in supporting one."); *Citadel Recovery Servs., LLC v. T.J. Sutton Enters., LLC*, 2024 WL 3374150, at *4 (E.D. La. July 11, 2024) ("Baptiste's self-serving declaration and the ambiguous emails and text messages attached to the motion are insufficient to support summary judgment.").

Furthermore, the evidence cited by Plaintiffs and Primos creates triable issues of fact. It is undisputed that Paul rented the bulldozer and directed the work over a period of days or weeks, that substantial clearing and grading occurred, and that soil from Plaintiffs' property was deposited onto Antonio's property. Pls.' Opp'n to Antonio's Mot. at 4–5; Primos' Opp'n to Antonio's Mot. at 2–3. Primos presents evidence that the work visibly benefited Antonio's land, that Antonio did not object, halt the work, or seek reimbursement from Paul, and that Antonio instead directed his claims solely against Primos. Primos' Opp'n to Antonio's Mot. at 2–3, 5–6. Plaintiffs further point to discovery responses raising questions as to whether Antonio and Paul acted in concert regarding improvements to Antonio's property. Pls.' Opp'n to Antonio's Mot. at 4.

Agency may be actual or ostensible and may be implied from a principal's conduct or established by ratification, including silence and acceptance of benefits. *Leong*, 2002 Guam 2 ¶ 12 ("[B]oth actual and ostensible authority may be implied if the principal's conduct causes anyone to believe that authority has been conferred upon the agent.") (citing *Tedtaotao v. One-Eighth Undivided Int. in Lot 98*, 1996 WL 879472, at *4 (D. Guam Sept. 30, 1996)); *Grippo v. Sugared + Bronzed, LLC*, 2025 WL 596095, at *3 (C.D. Cal. Feb. 24, 2025) ("One way to establish an agency relationship is 'ratification,' which can be shown by the principal's 'knowing acceptance of the benefit' or 'willful ignorance.'") (citing *Henderson v. U. Student Aid Funds, Inc.*, 918 F.3d

1068, 1073–4 (9th Cir. 2019)). Whether a principal's conduct reasonably caused third parties to believe authority existed is a question of fact. *See Leong*, 2002 Guam 2 ¶¶ 11–12. Viewing the record in the light most favorable to the non-movants, the Court could infer that Paul acted with implied or apparent authority, or that Antonio ratified the conduct by knowingly accepting its benefits. *See Hawaiian Rock Prods. Corp. v. Ocean Hous., Inc.*, 2016 Guam 4 ¶ 27 ("In determining appropriateness of granting summary judgment, a court 'must view the evidence and draw inferences in the light most favorable to the non-movant.'"). These factual disputes alone preclude summary judgment on all claims premised on agency.

B. Even Absent Agency, Disputed Issues Exist as to Antonio's Independent Liability as Property Owner

Primos also raises a separate and independent basis for denying summary judgment: even if Paul were not acting as Antonio's agent, Antonio, as the property owner, may still owe a duty to manage his property with ordinary care and prevent harm to neighboring property. Primos Opp'n to Antonio's Mot. at 6–7. The Court finds this argument persuasive because landowners are liable for injuries caused by a failure to exercise ordinary care in the management of their property, regardless of whether the physical acts were performed by a third party. *See Nissan Motor Corp. in Guam v. Sea Star Grp. Inc.*, 2002 Guam 5 ¶ 11 ("Under Guam law, every landowner owes a duty to exercise reasonable care in the management of his property."); *Garcia v. Paramount Citrus Assn., Inc.*, 80 Cal. Rptr. 3d 512, 517 (Cal. App. Ct. 2008) ("[A] landowner is not insulated from liability merely because a third party was the immediate cause of a plaintiff's injury.").

The record reflects that heavy equipment operated on Antonio's property over an extended period, materially altering the land and allegedly causing damage to neighboring property. Primos Opp'n to Antonio's Mot. at 2–3, 6–7. Whether Antonio knew or reasonably should have known

of the activity, whether he failed to exercise reasonable care in supervising or preventing it, and whether such conduct contributed to Plaintiffs' damages are factual issues that cannot be resolved on summary judgment. Accordingly, Antonio has not demonstrated entitlement to judgment as a matter of law on Plaintiffs' claims or on Primos' negligence and indemnification cross-claims, even under a non-agency theory.

C. Disputed Issues Also Preclude Summary Judgment on Unjust Enrichment

With respect to unjust enrichment, it is undisputed that soil from Plaintiffs' property was deposited onto Antonio's land. Pls.' Opp'n to Antonio's Mot. at 4–5. The material dispute is whether that soil conferred a benefit and whether retention of that benefit would be inequitable. Antonio again relies solely on his declaration asserting that he received no benefit and could not use the property until the soil is removed. Antonio's Mot. at 6. Plaintiffs counter that the soil was used to fill a ditch and potentially made the property more usable, which could reasonably be viewed as a benefit. Pls.' Opp'n to Antonio's Mot. at 5. Whether a benefit was conferred and unjustly retained is a classic factual determination inappropriate for resolution on summary judgment. *See, e.g.*, *Goodbye Vanilla, LLC v. Aimia Proprietary Loyalty U.S. Inc.*, 304 F. Supp. 3d 815, 827 (D. Minn. 2018) ("Whether a benefit was inequitably retained is a question generally reserved for the trier of fact."); *In re Worldcom, Inc.*, 371 B.R. 33, 39 (Bankr. S.D.N.Y. 2007) ("Whether MCI benefited and whether it would be unjust for MCI to retain any such benefit without compensating APG is a triable issue of fact for which summary judgment is not appropriate."); *Swift v. Pandey*, 2022 WL 1304953, at *5 (D.N.J. May 2, 2022) ("Therefore, an essential element for an unjust enrichment claim—whether a benefit has been conferred—remains in dispute and precludes the grant of summary judgment in either party's favor."). Because a

genuine dispute regarding whether Antonio received benefit remains, summary judgment on the unjust enrichment claim is improper.

D. Summary Judgment in Antonio's Favor Is Improper

Antonio has not met his burden of demonstrating the absence of genuine issues of material fact. Factual disputes exist regarding agency, ratification, Antonio's knowledge and conduct as property owner, and whether Antonio received and retained a benefit from the soil placement. Resolution of these disputes requires credibility determinations and weighing of evidence, functions reserved for the trier of fact, not the Court on summary judgment. Accordingly, Antonio's Motion for Summary Judgment is **DENIED**.

CONCLUSION

For the foregoing reasons, the Court hereby **GRANTS** Primos' Motion for Summary Judgment, **DENIES** Plaintiffs' Motion for Partial Summary Judgment Re Liability, and **DENIES** Antonio's Motion for Summary Judgment.

SO ORDERED this 15th day of January, 2026.

HONORABLE DANA A. GUTIERREZ
Judge, Superior Court of Guam