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SUPERIOR COURT
OF GUAM

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IN THE SUPERIOR COURT OF GUAM

HAWAIIAN ROCK PRODUCTS, **Plaintiff,** **vs.** **THOMAS V. TANAKA JR. dba HSG CO., LTD.,** **Defendant.**	**Civil Case No. CV0516-25** **DECISION AND ORDER RE MOTION TO DISMISS**

This matter came before the Honorable Dana A. Gutierrez upon a Motion to Dismiss (Sept. 17, 2025) filed by Defendant HSG Co., Ltd. ("HSG").[1] Attorney Christopher D. Anderson represents HSG, and Attorney Georgette Bello Concepcion represents Plaintiff Hawaiian Rock Products ("Hawaiian Rock"). Upon consideration of the pleadings, supplemental briefings, and the applicable law, the Court hereby issues this Decision and Order.

BACKGROUND

In August 2025, Hawaiian Rock filed an Amended Complaint, which makes only the following factual allegations:

> 1. Jurisdiction is vested in the Superior Court of Guam.
> 2. On or about 05/01/2021, [sic] executed and delivered to Plaintiff a Promissory Note ("NOTE"), a copy of which is attached hereto as Exhibit "A", and incorporated by reference.

[1] Initially, the parties disputed whether HSG was an alter ego of former Defendant Thomas V. Tanaka Jr., or whether they were separate defendants. *See, e.g.,* Mem. P. & A. at 3 (Sept. 17, 2025). However, Hawaiian Rock has since dismissed former Defendant Tanaka from the case, leaving HSG as the sole remaining defendant. *See* Notice of Dismissal (Apr. 23, 2026).

3. Defendant defaulted on the payment of the note and the remaining balance due thereon, together with earned interest and bank collection costs, is now due, owing and unpaid. Unearned interest, if any, was rebated.
4. The amount now due includes principal of $128,522.60, accrued pre judgment interest of $0.00, bank collection costs of $0.00, plus additional pre judgment interest on the principal amount at the rate of 6%, from 03/07/2025, until the day of judgment.
5. By the terms of the note, it is provided that in the event legal action is necessary to enforce collection thereof, the maker promises to pay such sums as the court may affix as reasonable attorney's fees.

Am. Compl. at 1 (Aug. 6, 2025). The Promissory Note provides that from May 1, 2021, until the note's maturity date on February 28, 2031, HSG is required to make $500.00 monthly payments to Hawaiian Rock. *Id.*, Ex. 1. The Promissory Note also provides: "[i]f the maker fails to make any payment here under when due, the Holder hereof may declare the entire principal balance and all other amounts immediately due and payable without demand or notice." *Id.*

Thereafter, HSG moved to dismiss the Amended Complaint pursuant to Guam Rule of Civil Procedure ("GRCP") 12(b)(6), arguing the claim was beyond the four-year statute of limitations established by 7 GCA § 11303(a). *See* Mem. P. & A. at 1 (Sept. 17, 2025). HSG argues "the breach occurred on or about when the first payment was due, May 1, 2021, thus making the deadline to commence a breach of contract action within four years or by May 1, 2025." *Id.* HSG concludes that because the Amended Complaint was not filed until August 2025, "Plaintiff's claims are now time barred and the complaint must be dismissed." *Id.* at 2.

In response, Hawaiian Rock filed an Opposition to the Motion to Dismiss (Oct. 30, 2025) and a Motion for Leave to Amend (Oct. 30, 2025). Hawaiian Rock proposed to add new factual allegations to its Amended Complaint, i.e., that HSG had made a payment to Hawaiian Rock in April 2024 and that the principal balance owed in April 2024 was $114,000.00. Opp. Mot. Dismiss at 1 (Oct. 30, 2025). Hawaiian Rock argued that these amendments "will defeat Defendants' argument that Plaintiff's cause of action . . . is time-barred." *Id.* at 1–2. However, at the Motion Hearing, Hawaiian Rock withdrew its Motion for Leave to Amend, arguing that it was not necessary. *See* Min. Entry at 10:16 A.M. (Mot. Hr'g, Mar. 31, 2026).

Hawaiian Rock's Opposition additionally argues that the case should not be dismissed because the promissory note contains an acceleration clause, and because—according to Hawaiian Rock—when a promissory note contains an acceleration clause, the statute of limitations does not bar the holder of the note from bringing an action to recover the unpaid principal. *See* Opposition at 2–5 (citing *Trigg v. Arnott*, 71 P.2d 330 (Cal. Ct. App. 1930)). HSG filed a Reply, responding that "where a contract contains an acceleration clause, positive in its terms and without any optional features in it, a default under said clause renders the entire indebtedness due, and the statute of limitations runs from such default." Reply at 2 (Nov. 12, 2025) (citing *Perkins v. Swan*, 207 P. 585 (Idaho 1922)).

The Court held a Motion Hearing in March 2026, but the hearing did not proceed as planned because HSG's counsel did not appear. There, Hawaiian Rock's counsel appeared and requested an opportunity to file a supplemental briefing based on a recent decision by another Judge of the Superior Court.[2] *See* Min. Entry at 10:17 A.M. (Mot. Hr'g, Mar. 31, 2026). The Court gave both parties an opportunity to file supplemental briefings, *see* Order After Hearing (Mar. 31, 2026), and both parties did so. Hawaiian Rock's Supplement argues, in effect, that 13 GCA § 3122 of Guam's Uniform Commercial Code (UCC) bears on the relevant statute of limitations. *See* Supp. Opp. Mot. Dismiss (Apr. 3, 2026). HSG's Supplement argues, in effect, that the Promissory

[2] *Benavente v. Mortg. Elec. Reg. Sys., Inc.*, Civil Case No. CV0654-24 (Dec. & Order, Mar. 11, 2026).

Note is not a "negotiable instrument" within the meaning of the UCC, so 13 GCA § 3122 does not apply. *See* Supp. Mot. Dismiss (Apr. 10, 2026).

After reviewing the parties' pleadings, including the supplemental briefings, the Court determined that further oral argument was unnecessary and took the matter under advisement. Under Advisement Notice (May 18, 2026).

DISCUSSION

This matter is ostensibly before the Court on a GRCP 12(b)(6) motion, *see* Mot. Dismiss at 1 (Sept. 17, 2025), but neither party addresses the legal standards applicable to such a motion. A motion to dismiss under GRCP 12(b)(6) asserts that the plaintiff has "fail[ed] to state a claim upon which relief can be granted." Guam R. Civ P. 12(b)(6). GRCP 12(b)(6) must be "read in conjunction" with GRCP 8(a). *See* 5B Wright & Miller, *Federal Practice and Procedure* § 2472. GRCP 8(a) requires a complaint to provide only a "short and plain statement of the claim showing that the pleader is entitled to relief." Thus, a complaint is sufficient under GRCP 8(a) so long as it provides "fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Ukau v. Wang*, 2016 Guam 26 ¶ 22 (quoting *Conley v. Gibson*, 355 U.S. 41, 45–47 (1957)). Given this low burden, a GRCP 12(b)(6) motion to dismiss should not be granted 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." *Id.* (quoting *Conley*, 355 U.S. at 45–46) (emphasis added).

When reviewing a GRCP 12(b)(6) motion, the Court "must accept all the well-pleaded facts [in the complaint] as true, construe the pleading in the light most favorable to the non-moving party, and resolve all doubts in the non-moving party's favor." *Port Auth. Of Guam v. Guam Indus. Servs., Inc.*, 2026 Guam 2 ¶ 27 (quoting *Cruz v. Cruz*, 2023 Guam 20 ¶ 10). Moreover, the Court must "consider[] *only* the complaint, its exhibits, documents incorporated by reference, and materials relied upon therein." *Id.* (citing *Newby v. Gov't of Guam*, 2010 Guam 4 ¶ 14) (emphasis added). Thus, "evidence outside the pleadings . . . cannot normally be considered in deciding a 12(b)(6) motion." *Farr v. United States*, 990 F.2d 451, 454 (9th Cir. 1993).

HSG argues that the Amended Complaint is deficient because the claim it presents violates the statute of limitations. But generally speaking, "the defense of limitations is ordinarily not considered in the context of a motion to dismiss." *State Auto. Mutual Ins. Co. v. Lennox*, 422 F.Supp.3d 948, 964 (D. Md. 2019). The statute of limitations is an affirmative defense, and it is "general[ly] . . . difficult to successfully assert an affirmative defense in a Rule 12(b)(6) motion to dismiss." *Cruz*, 2023 Guam 20 ¶¶ 39, 41. As Wright and Miller explain:

> The rule against raising defenses by motion is based on the view that motions to dismiss . . . cannot be used to resolve disputed fact questions, and that courts should avoid "little trials" on the pleadings because under federal practice the pleadings are designed merely to provide notice of the respective claims and defenses of the adversaries. Since the facts necessary to establish an affirmative defense generally must be shown by matter outside the complaint, the defense technically cannot be adjudicated on a motion under Rule 12. According to this conception, *motions to dismiss . . . only can attack matters appearing on the face of the complaint; new defensive material therefore must be raised by answer.*

5 Wright & Miller, *Federal Practice and Procedure* § 1277 (emphasis added). Thus, a Rule 12(b)(6) motion premised on the statute of limitations should be granted only if "the running of the statute is apparent on the face of the complaint." *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1979); *cf. Amsden v. Yamon*, 1999 Guam 14 ¶ 12 (recognizing that "[w]hen a complaint shows *on its face or on the basis of judicially noticeable facts* that the cause of action is barred by the applicable statute of limitations," a plaintiff must plead affirmative facts showing the claim is not actually barred) (emphasis added).

There is no statute-of-limitations violation "apparent on the face" of the Amended Complaint. With respect to the alleged breach, the Amended Complaint alleges only that "Defendant defaulted on the payment of the note . . . ." Am. Compl. at 1. The Amended Complaint does not allege that the breach occurred on May 1, 2021, nor was Hawaiian Rock required to plead when the alleged breach occurred. *See, e.g., Int'l Decision Sys., Inc. v. JDR Solutions, Inc.*, 2019 WL 2009249, at *5 (D. Minn. May 7, 2019) ("No authority is cited supporting the proposition that a breach-of-contract plaintiff must identify particular dates of alleged breaches or attribute alleged breaches to particular periods. Requiring that level of particularity—both generally and here—would seem inconsistent with Rule 8(a)(2) . . . .'"); *cf. Cruz*, 2023 Guam 20 ("[w]here a complaint does not reveal on its face that it is barred by the statute of limitations, a plaintiff has no obligation to plead around the defense."). HSG's allegation that the breach occurred on May 1, 2021 also cannot be ascertained from the Promissory Note itself. Instead, this allegation arises solely from HSG's own motion to dismiss, which means it is the sort of "new defensive material" the Court cannot consider upon a GRCP 12(b)(6) motion. *See* 5 Wright & Miller, *Federal Practice and Procedure* § 1277.

HSG's allegation that the breach occurred on May 1, 2021 also cannot be judicially noticed. Generally speaking, a fact is judicially noticeable only if it is "(1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Guam R. Evid. 201(b). The date of HSG's breach is not generally known in Guam, and a party's pleadings are not "sources whose accuracy cannot reasonably be questioned." *See In re Dep't of Agric. v. Civil Serv. Comm'n*

(Rojas), 2007 Guam 21 ¶ 20 (denying appellant's request to take judicial notice of party's own filing in another forum).[3]

In sum, the Amended Complaint does not merit dismissal under GRCP 12(b)(6) because the Amended Complaint, as pleaded, does not facially implicate the statute of limitations. The Court does not suggest that HSG's allegation that the breach occurred on May 1, 2021 is untrue, or that the statute of limitations issue will not be relevant upon further factual development. The Court holds only that dismissal on this basis is unwarranted at this early stage of the case.

CONCLUSION

For the foregoing reasons, the Court **DENIES** HSG's Motion to Dismiss.

SO ORDERED this 17th day of August, 2026.

HONORABLE DANA A. GUTIERREZ
Judge, Superior Court of Guam

[3] The Guam Supreme Court has also suggested that judicial notice may be appropriate if the date the statute began to run was "undisputed" by the parties and had been "relayed orally in court." *See Amsden*, 1999 Guam 14 ¶¶ 9, 13. However, neither of these circumstances are present here. Hawaiian Rock and HSG dispute the date the statute began to run, and neither has relayed a breach date of May 1, 2021 "orally in court."