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7 IN THE SUPERIOR COURT OF GUAM
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9 MOHAN BHOJWANI,
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11 Plaintiff,
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13 Civil Case No. CV0390-25
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15 vs.
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17 JAMES HENLY,
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19 Defendants.
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21 **DECISION AND ORDER GRANTING
22 PLAINTIFF'S MOTION TO DISMISS
23 DEFENDANT'S COUNTERCLAIMS**

24 **INTRODUCTION**
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26 This matter came before the Honorable John C. Terlaje on October 21, 2025, for a
27 Motion Hearing regarding Plaintiff's Motion to Dismiss Counterclaims. Attorney Charles
1 McDonald appeared on behalf of Plaintiff Mohan Bhojwani. Attorney Heidi Simpson appeared
2 on behalf of Defendant James Henly. After reviewing the record, relevant law, and arguments
3 from the parties, the Court GRANTS the Motion to Dismiss Counterclaims because Henly failed
4 to allege sufficient facts or law that would allow him to be granted relief.
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6 **BACKGROUND**
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8 Bhojwani filed his Complaint on May 30, 2025. Henly filed his Answer and
9 Counterclaim on July 14, 2025. Bhojwani filed his Motion to Dismiss Counterclaim on August
10 4, 2025. Henly filed his Opposition to Plaintiff's Motion to Dismiss Counterclaim on September
11 2, 2025. Bhojwani filed his reply to Defendant's Opposition on September 15, 2025. The Court
12 heard oral arguments for the Motion to Dismiss on October 21, 2025.
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STATEMENT OF FACTS

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1. In his Complaint, Bhojwani claims that Henly entered into a Contract of Sale with Bhojwani for the following lot:

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Lot Number 6, Block Number 4, Tract 63006 (formerly of Lot 10102-18), Municipality of Yigo (formerly municipality of MACHANAO), Territory of Guam (Estate No, 812 under basic lot no. 10112 sub-urban), as said lot is marked and designated on map drawing No. NI-01-02 (LM No. 244-FY2001), Prepared by Nestorio C. Ignacio PLS #65 dated July 25, 2001 & recorded on September 5, 2001, under instrument No. 643408 in the Department of Land Management, Government of Guam.

AREA: 929 ± Square Meters

(“Premises”).

Compl. at 2 (May 30, 2025).

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2. The Contract of Sale was made on July 1, 2018, and was recorded on September 24, 2019. *Id.* at 7.
3. Bhojwani claims that Henly failed to pay “rent or any other form of consideration” since May 31, 2024. *Id.* at 3. Because of this, Bhojwani seeks to cancel the contract and repossess the Premises.
4. In his Answer and Counterclaim, Henly denies Bhojwani’s claims that Henly failed to fulfill his obligations. Answer and Countercl. at 1–2 (Jul. 14, 2025).
5. Henly alleges that Bhojwani does not own a business license. *Id.* at 3.
6. Henly alleges that Bhojwani failed to provide meaningful access to a sewer line. *Id.*

DISCUSSION

In his Motion to Dismiss Defendant’s Counterclaims, Bhojwani first addresses Henly’s claim that the Court has no jurisdiction over this matter because Bhojwani has no business license. Mot. to Dismiss Countercl. at 2–3. Bhojwani then argues that Henly failed to meet the notice pleading standard. *Id.* at 3–4. And finally, Bhojwani claims that two of Henly’s assertions should be dismissed, namely, that the mutual rescission was invalid and that the Contract of Sale was unconscionable. *Id.* at 5–6.

The Court agrees with Bhojwani that the Court has subject matter jurisdiction and that Henly failed to meet the notice pleading standard for the asserted counterclaims. The Court, however, will not dismiss Henly's affirmative defenses.

I. Whether the Court has subject matter jurisdiction under 11 G. C. A. § 70131(b).

In his Answer and Counterclaim, Henly alleges that Bhojwani “lacks the business license necessary for the Court to exercise jurisdiction over this action pursuant to 11 G.C.A. § 70131(b).” Answer and Countercl. at 3. Bhojwani contends that selling property is exempt from the business license requirement under the same law. Mot. to Dismiss Countercl. at 2–3. The Court agrees with Bhojwani’s interpretation of the law.

Under Title 11 of the Guam Code, “[a]ny person engaging in, transacting, conducting, continuing, doing, or carrying on business on Guam without a business license . . . may not maintain a proceeding in any Court on Guam . . .” 11 G.C.A. § 70131(b). However, this business license requirement does not apply to “owning, without more, real or personal property.” 11 G.C.A. § 70103(e)(9).

1 The business license requirement does not apply to Bhojwani as a landowner selling
2 property to Henly. The statute that Henly appealed to clearly states that being a landowner is
3 excluded from the business license requirement. Henly did include a case regarding a land dispute
4 that required a business license, but the dispute regarded a rental agreement, not a sale agreement.
5 See *Taijeron v. Kim*, 1999 Guam 16. Therefore, the case cited by Henly is inapplicable to the
6 Contract for Sale in this case. Henly contends that the property ownership carveout does not apply
7 to Bhojwani because he had sold multiple lots. Def.'s Opp. to Pl.'s Mot. to Dismiss Countercl. at
8 4 (Sept. 2, 2025). However, this is an incorrect interpretation of what is meant by the phrase
9 "without more." 11 G.C.A. § 70103(e)(9). The "without more" phrase would apply if Bhojwani
10 had acted as a developer, but Henly never asserts that Bhojwani developed the land. Additionally,
11 the statute does not state that the business license requirement would be applicable if the owner of
12 real estate sold multiple pieces of property. Thus, Henly's argument regarding the amount of land
13 sales Bhojwani has executed is not relevant. Therefore, the Court has subject matter jurisdiction
14 over this matter regardless of whether Bhojwani has a business license.
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16 **II. Whether Henly failed to meet the notice pleading standard.**

17 Bhojwani argues that Henly's counterclaims fail to plead sufficient facts because Henly
18 lists only conclusions of law. Mot. to Dismiss Countercl. at 3–4.

19 For a Rule 12(b)(6) motion, the Court must "construe the pleading in the light most
20 favorable to the non-moving party, and resolve all doubts in the non-moving party's favor." *First*
21 *Hawaiian Bank v. Manley*, 2007 Guam 2 ¶ 9; *Taitano v. Calvo Finance Corp.*, 2008 Guam 12 ¶
22 9. "However, 'conclusory allegations of law and unwarranted inferences are insufficient to defeat
23 a motion to dismiss for failure to state a claim.'" *Taitano*, 2008 Guam 12 ¶ 9 (quoting *Epstein v.*
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1 *Washington Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996)); *see also Ukau v. Wang*, 2016
2 Guam 26 ¶ 52. A pleading does not need to prove a claim by a preponderance of the evidence.
3 *Ukau*, 2016 Guam 26 ¶ 52. Still, it must include “more than labels and conclusions, and a
4 formulaic recitation of the elements of a cause of action . . .” *Id.* Additionally, “[i]n ruling on a
5 12(b)(6) motion, a court’s consideration is limited to the complaint, written instruments attached
6 to the complaint as exhibits, statements or documents incorporated in the complaint by reference,
7 and documents on which the complaint heavily relies.” *Newby v. Gov’t of Guam*, 2010 Guam 4 ¶
8 14.

10 Here, Henly’s counterclaim stated conclusions of law and must be dismissed. The
11 counterclaim did not include a factual basis for the allegations against Bhojwani. Henly failed to
12 provide facts that showed Bhojwani did not provide access to water, sewer, and other services.
13 Henly failed to offer facts that showed Bhojwani interfered with Henly’s quiet enjoyment of the
14 property. Although Henly does include some factual allegations in his Opposition to the Motion
15 to Dismiss Counterclaim, the Court cannot consider these part of the counterclaim as these
16 allegations were not attached to the counterclaim “as exhibits, statements or documents
17 incorporated in the [counterclaim] by reference, and documents on which the complaint heavily
18 relies.” *Id.* The counterclaim lacked any of these attachments, and the Opposition cannot be
19 considered as an attachment under this definition. Therefore, none of the counterclaims made by
20 Henly meet the notice requirement for a complaint.

III. The Court will not dismiss Henly's affirmative defense of invalid mutual rescission and unconscionability.

Although Bhojwani argued to dismiss Henly's affirmative defense of invalid mutual rescission and unconscionability, a Rule 12(b)(6) Motion is not the appropriate motion to dismiss affirmative defenses.

Under the Guam Rules of Civil Procedure 12(b), a Rule 12(b)(6) motion is appropriate in response to “a claim, counterclaim, cross-claim, or third party claim.” Affirmative defenses are specifically defined as distinct from counterclaims and are to be treated differently under the Rules of Civil Procedure. Guam R. of Civ. P. 8(c). “When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleadings as if there had been a proper designation.” *Id.* Affirmative defenses are defined by a list of possible defenses including “duress. . . or any other matter constituting an avoidance or affirmative defense.” *Id.*

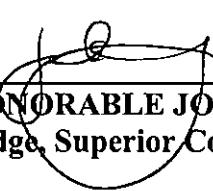
The Court determines that Henly's claim that the mutual rescission of the Contract of Sale was invalid and that the Contract of Sale is unconscionable are affirmative defenses. Henly listed his counterclaims and defenses together under one heading labeled "Defendant's Counterclaim and Affirmative Defenses." Answer & Countercl. at 3. Both the assertion that the Contract of Sale was unconscionable and the assertion that mutual rescission was invalid fell under the definition of affirmative defenses. Unconscionability implies that the party was not fully capable of agreement, much like the defense of duress. Similarly, the assertion that the mutual rescission was invalid regards whether parts of the Contract of Sale were unenforceable. Neither of these assertions can be brought as a claim on its own. These assertions are only

1 brought in response to Bhojwani's Complaint. Therefore, these assertions are affirmative
2 defenses. The other assertions made by Henly were not affirmative defenses, but counterclaims.
3 Each could be brought as a claim without Bhojwani's Complaint. A Rule 12(b)(6) motion is
4 inappropriate to dismiss affirmative defenses. Thus, the affirmative defenses of invalid mutual
5 rescission and unconscionability are not dismissed.
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7 **CONCLUSION**

8 Therefore, the Court **GRANTS** Bhojwani's Motion to Dismiss. The Court dismisses
9 Henly's counterclaims but does not dismiss the affirmative defenses of invalid mutual
10 rescission and unconscionability.

11 **SO ORDERED**, this 1 | 8 / 26.

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16 **HONORABLE JOHN C. TERLAJE**
17 **Judge, Superior Court of Guam**