

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

SALVADOR L TAKAI and
REMEDIOS A. TAKAI,

 Plaintiffs,

 v.

ESTEVEN M. KING, EMILIANA KING,
JOHN T. SABLON, REX PALACIOS, and
DOES I-IV,

 Defendants.

Civil Action No. 92-086

**WRITTEN DECISION
FOLLOWING TRIAL**

I. PROCEDURAL BACKGROUND

This matter came before the Court for bench trial in former Courtroom A of the Commonwealth Superior Court. Reynaldo O. Yana, Esq. appeared on behalf of Plaintiffs Salvador L. Takai and Remedios A. Takai. Pedro M. Atalig, Esq. appeared on behalf of Defendant Esteven M. King. The Court, having reviewed the memoranda, declarations, and exhibits, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its written decision following trial.¹

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II. FINDINGS OF FACT

1. Plaintiff Salvador L. Takai (“Plaintiff Salvador”) was the lawful owner of real property located in As Lito, Saipan and known as Tract No. 22549-10 containing an area of 3,440 square meters.

¹ It does not appear to the Court that Defendants John T. Sablan or Emiliana King were ever served with a Summons and Complaint in this action. Since more than 120 days have elapsed since the filing of the Complaint, the Court dismisses these two Defendants with prejudice. Com.R.Civ.P.4(m).

In November 1998, attorney Ben Salas withdrew as counsel of record for Defendant Rex I. Palacios. There is no indication in the record that Defendant Palacios retained new counsel nor did he personally appear at trial in this matter.

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2. In late August/early September 1989, Plaintiff Salvador entered into lease negotiations with a Korean company to lease his As Lito land for \$1,000/month. The Korean company paid to Plaintiff Salvador \$1,000 as a deposit on the lease with the understanding that an additional \$24,000 would be paid to Plaintiff Salvador as a lease payment within thirty days.
3. While waiting for the Korean company to tender the remaining lease payment, Plaintiff Salvador met with Defendant Esteven M. King (“Defendant King”) on a social visit at Defendant King’s residence on Tinian. Defendant King suggested to Plaintiff Salvador that he not lease his property to the Korean company, but instead seek other lessees at a higher lease price. At this time, Defendant King suggested that he act as broker to lease and/or sell the property and advised Plaintiff Salvador that, in his opinion, the land was worth \$45/square meter, or \$154,800.
4. On or about September 15, 1989, Defendant King contacted Plaintiff Salvador in regard to two potential purchasers he had located, co-Defendant John T. Sablan (“Defendant Sablan”) and an Anthony Guerrero. Defendant King drafted a General Power of Attorney and insisted that Plaintiff Salvador sign the document in order to consummate the deal. Although Plaintiff Salvador was reluctant to sign the General Power of Attorney, he did eventually sign the document but refused to either date the document or have it notarized. The prospective purchase agreement between Defendant Sablan, Mr. Guerrero, and Defendant King fell through.
5. On September 22, 1989, Plaintiff Salvador and his wife, co-Plaintiff Remedio A. Takai (“Plaintiff Remedio”), entered into two agreements with Defendant King. In the first agreement (“Agent Agreement”), Defendant King agreed to act as Plaintiffs’ [p. 3] exclusive agent for 120 days in order to procure a long-term lessee for Plaintiffs’ property. In the second agreement (“Broker’s Agreement”), Defendant King agreed to pay taxes

upon leasing the property as well as tender to Plaintiffs \$10,000 as advance payment on any leases procured by him.²

6. At approximately the same time as the above Agreements were signed, Defendant King expressed an interest in purchasing Plaintiffs' property and instructed Plaintiff Salvador to keep the \$10,000 advance as a down payment on the purchase price. In addition, Defendant King provided to Plaintiff Salvador two post-dated checks of \$5,000 each as additional payment for the land.
7. In late 1989, Plaintiff Salvador was informed by MPLC that 270 square meters of his As Lito land would be needed by the government for road widening purposes. As such, Plaintiff Salvador and his family members entered into a land exchange agreement with MPLC. It was at this time that Plaintiff Salvador told Defendant King that Defendant King would have to wait until the government provided a survey of the land at issue before the land sale could be completed.
8. In January 1990, the Broker's Agreement expired without Defendant King procuring a lessee or a buyer for Plaintiffs' property.
9. In February 1990, Plaintiff Salvador met with Defendant King on Tinian and provided Defendant King with a copy of the government survey pertaining to the land exchange agreement. Plaintiff Salvador told Defendant King he needed the 270 square meter portion of the property for land exchange purposes. As such, Plaintiff Salvador intended to deduct the 270 square meters from the sale of the original 3,440 square meters of land.
10. In May 1990, Defendant King paid to Plaintiff Salvador an additional \$10,000 towards the purchase price of Plaintiffs' land. [p. 4]
11. In August 1990, the late Isaac Palacios dated the General Power of Attorney and notarized Plaintiff Salvador's signature without Plaintiff Salvador's presence or permission.
12. In October 1990, Defendant King drafted a Deed of Gift for the sale of Plaintiffs' land. Defendant King then provided the document to his mother who, in turn, delivered it to

² Each lease recited a lease price of \$154,800.

Plaintiffs' residence on Guam. Along with the unsigned and undated Deed of Gift, Defendant King's mother also delivered to Plaintiffs a check for \$59,000.³ At first, Plaintiff Salvador refused to sign the Deed of Gift since the purchase price on the property had not been paid in full. However, Plaintiff Salvador eventually signed the Deed of Gift, but he refused to date the document or have it notarized until Defendant King paid the remaining balance on the property. Defendant King promised to pay the remainder of the \$154,800 purchase price by December 15, 1990.

13. October 30, 1990, the late Isaac Palacios notarized Plaintiffs' signatures on the Deed of Gift without Plaintiffs' presence or permission.
14. Using the Deed of Gift, Defendant King sold Plaintiffs' land to Defendant Sablan for \$175,000 in November 1990.
15. At some point in 1991, Plaintiff Salvador was notified by the Marianas Public Land Corporation ("MPLC") that his As Lito land had been sold.

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III. CONCLUSIONS OF LAW

1. At trial, Plaintiff Salvador testified that although he initially sought to recover his property, he now seeks damages from Defendants King, to wit, the unpaid balance of their land sale agreement.⁴ Defendant King objected, contending that Plaintiffs could not seek monetary damages since such relief was not pled in the Complaint. However, although Plaintiffs primarily sought equitable relief, the complaint also requests damages.⁵ A plaintiff may claim legal and equitable remedies as alternatives in the complaint, leaving the ultimate election for the court. *E.H. Boly & Son, Inc. v. Schneider*, 525 F.2d 20, 23, n.3 (9th

³ According to Plaintiff Salvador, Defendant King made an additional purchase payment of \$4,800. However, Plaintiff Salvador could not locate any record of this payment.

⁴ Testimony at trial established that the following payments had been made for the property: (a) \$10,000 on September 22, 1989 in the form of an advance; (b) \$10,000 on or about September 22, 1989 in the form of two post-dated checks; (c) \$10,000 in May of 1990; (d) \$59,000 in October of 1990; and (e) an additional payment of \$4,800 for a total of \$93,800.

⁵ See Complaint for Cancellation of Deeds and to Quiet Title, dated February 3, 1992, at page 3, ¶ 5.

Cir.1975). Defendant King has been on notice of Plaintiffs' claims for legal and equitable relief since April 1992 when he answered Plaintiffs' Complaint. Therefore, Defendant King is not prejudiced by Plaintiffs' decision to opt for damages in lieu of equitable relief.

2. The Court finds that Defendant King was on notice that Plaintiff Salvador expected to be paid \$154,800 for the property. The asking price was quoted in the Agent Agreement and the Broker's Agreement, both of which Defendant King himself drafted. *See, i.e., Cheyenne Mountain School District No.12 v. Thompson*, 861 P.2d 711 (Colo.1993)(agreements are to be construed most strongly against the drafter). Had this been a situation where Defendant King was bound to accept property which had a market value less than what Plaintiffs sought, then Defendant King's argument that he never agreed to the asking price might have had some viability. However, Defendant King sold the property at issue for \$175,000. As such, the Court finds that the last payment of \$59,000 made by Defendant King to Plaintiffs was not intended by Plaintiffs to be the final payment on the property. [p. 6]
3. As noted *supra* at footnote 1, Defendant Palacios neither retained new counsel following the withdrawal of his attorney nor did he appear at trial. Accordingly, the Court finds Defendant King and Defendant Palacios jointly and severally liable to Plaintiffs for the balance of purchase price that Plaintiffs expected to receive for the sale of the property in the amount of \$61,000.00.

SO ORDERED this 13 day of January, 2000.

/s/ Timothy H. Bellas
TIMOTHY H. BELLAS, Associate Judge