

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

ANSELMO M. IGLESIAS,
Individually and as the Administrator of
the Estate of Anselmo Celis Iglesias

Plaintiff,

vs.

REALTY TRUST CORPORATION,
BONITA VISTA PROPERTIES, LTD.,
VIEW TASI LIMITED, CHARLES JORDAN,
KEITH AUGHENBAUGH, LUCY DL
GUERRERO NIELSEN, KENT HARVEY,
HARVEY, IVAN KENNETH PROPST, JR.,
JUANITA PALMAN PROPST, MARIA
LOURDES SIROK, IMANTS EDWARD
KLINGBERGS, MARIETTA GULMATICO
KLINGBERGS, JOSEPH V. HOBSON, JR.,
MARIA T. HOBSON, JEROME OLIVER
RABDAU, and ROSE MARY JENTGES
RABDAU

Defendants.

Civil Action No. 88-0704

**ORDER GRANTING
MOTION FOR SUMMARY
JUDGMENT**

INTRODUCTION

Article XII of the Constitution of the Northern Mariana Islands restricts the ownership of Commonwealth land to persons of Northern Marianas descent.¹ Plaintiff commenced this action in 1988, [p. 2] seeking to void a number of deeds on the basis that the original transfer violated Article XII of the Commonwealth’s Constitution. Plaintiff argues that when he sold the real property at issue to Defendant Realty Trust Corporation (“RTC”), RTC was legally precluded from acquiring the property as it did not qualify as a person of Northern Marianas descent. In a Second Amended

¹ See N.M.I. Const., art. XII, § 1 (1976).

Complaint filed on August 29, 1994, Plaintiff's Estate seeks a declaration that it is entitled to the return of the property from all people who subsequently leased or purchased portions of it, and that the heirs of Anselmo M. Iglesias own the property outright.

Defendants, on the other hand, claim that the conveyances to RTC and by RTC were lawful and enforceable, and that Plaintiff has no lawful claim to any or all of the property in question. On April 6, 1998, and approximately nine and one-half years after the complaint in this case was filed, Bonita Vista filed a motion for summary judgment or, in the alternative, to dismiss for failure to prosecute (the "Motion").² Bonita Vista contends that because RTC was a person of Northern Marianas descent as defined by Article XII of the Commonwealth Constitution, RTC legally acquired title to the property and the transfer to Bonita Vista was valid. Bonita Vista further contends that since Plaintiff has done nothing since September of 1993 to plead or prosecute his claims, Plaintiff has essentially abandoned this case.

After numerous requests to hold this case in abeyance pending the resolution of a number of cases interpreting Article XII by the Commonwealth Supreme Court, the Motion came before the court for hearing on May 13, 1998.³ After consideration of the arguments at the hearing and a careful review of all papers submitted in support of and in opposition to the motions, the court now renders its written decision granting the motion for summary judgment and ruling that, as a matter of law, the transfer to RTC complied [p. 3] with Article XII of the Commonwealth's Constitution. The following discussion sets forth the court's conclusions and rationale in support of its rulings.

² Defendant Realty Trust Corporation has joined in the motion.

³ At the start of the hearing, Plaintiff moved to disqualify the court on grounds of personal bias. The court declined to recuse itself, heard argument on the motion, took the matter under submission, and granted Plaintiff leave to seek review of its order denying the motion to disqualify. Although Plaintiff sought a writ directing the court to withdraw, on August 24, 1998, the Commonwealth Supreme Court dismissed the proceeding on grounds that Plaintiff failed to comply with rules of procedure. See *Iglesias v. Superior Court*, Original Action No. 98-004 (N.M.I. Sup. Ct. August 24, 1998) (Order dismissing action and issuing mandate). Although Plaintiff moved to reinstate the proceeding, the Court declined to take action and thus the matter is, once again, before this court for resolution.

I. FACTS

A. The History of this Proceeding

Undisputed facts reflect that in 1981, Anselmo Celis Iglesias was actively attempting to sell certain real property comprised of approximately 45,990 sq. meters and known as Agricultural Homestead Number 17 in Chalan Galaide, Saipan (the “Property”). To assist him, Iglesias retained Defendant Roger Gridley, then of Gridley Realty, to act as his marketing agent. In May of 1981, Gridley Realty contracted with Iglesias, through his son-in-law David Celis, for the exclusive right to sell the Property for \$80,000 (Listing Agreement, Ex. “A” to Motion). When the Listing Agreement expired, the Property remained unsold, and in October of 1981, Iglesias, through Celis, agreed to a second listing agreement granting Gridley Realty the exclusive right to sell the Property for the reduced price of \$35,000 until January of 1982. *See* Second Listing Agreement, Ex. “B” to Motion.

At or around this time, Defendant Charles Jordan and friends were seeking property on which to build their homes. *See* Declaration of Charles Jordan filed in support of Bonita Vista’s Motion (“Jordan Decl.”) at ¶ 2. In or about November of 1981, Gridley told Jordan about the Property. *See* Jordan Decl. at ¶ 3. In December of 1981, Iglesias offered the Property to Jordan for \$30,000. Jordan Decl. at ¶ 4. Along with several friends, Jordan agreed to form a CNMI corporation to purchase the property and develop it into homesites. *Id.* at ¶ 4.

According to Jordan, there was insufficient time to form the corporation and complete the purchase by Iglesias’ deadline. *Id.* at ¶ 4. Gridley, a citizen of the United States but not a person of Northern Marianas descent, had incorporated RTC in July of 1981, along with Josefa Flores and Bernie Cabrera, who were of Northern Marianas descent. *See* Affidavit of Jack Layne in support of Defendants’ motion for summary judgment, attached to the Motion as Ex. “F” (“Layne Aff.”); Articles of Incorporation of [p. 4] Realty Trust Corporation (“Articles”), attached to Motion as Ex. “E” at art. VIII, § 1.⁴ To meet Iglesias’ deadline, RTC accepted the offer to purchase with the intent of either leasing the property to Jordan on a long-term basis or selling it to the soon-to-be-formed

⁴ According to its articles of incorporation, RTC was incorporated, in part, to engage in all aspects of the real estate business, including the business of holding title to real property. Ex. E, art. IV.

corporation. Jordan Decl. at ¶ 4. Iglesias then sold the Property for \$30,000 to RTC by warranty deed dated January 13, 1982. *See* Warranty Deed, attached to Mot. as Ex. “C.” Roger Gridley received \$3,000 as a commission from Anselmo Iglesias. Jordan Decl. at ¶ 6.

RTC then appears to have leased the Property to KCK Development Company, a joint venture comprised of Jordan, Kent Harvey, and Keith Aughenbaugh (“KCK”), for a term of forty years. *See* Lease of Real Property dated January 13, 1982 between RTC and KCK, appended to Plaintiff’s Exhibits in Support of Opp. at 9-16.⁵ In May of 1982, Bonita Vista filed its articles of incorporation with the Registrar of Corporations, and on June 2, 1982, RTC conveyed the Property to Bonita Vista for ten dollars by warranty deed. *See* Plaintiff’s Exs. at 29-32 (Articles of Incorporation of Bonita Vista Properties, Ltd.); Motion, Ex. “D” (Warranty Deed transferring Property to Bonita Vista). Bonita Vista subsequently developed and subdivided the Property into twenty-two lots. Jordan Dec. at ¶ 7. Bonita Vista then leased a number of the lots to persons not of Northern Marianas descent, and sold lots to persons of Northern Marianas descent. *Id.* at ¶ 8.

In October of 1988, Plaintiff commenced the instant action contending that RTC was, at all times material to this action, organized and operated as the *alter ego* of Jack Layne and Roger Gridley for their personal benefit and advantage and for the primary purpose of conducting real estate transactions in violation of Article XII of the Commonwealth’s Constitution. Opp. at 6. Plaintiff argues that it was Gridley and Layne, or, alternatively, the joint venture comprised of Jordan, Harvey, and Aughenbaugh, who actually purchased the Property and took title in the name of RTC, acting as agent-trustee. Opp. at 8-9, 19-24; *see* Lease of Real Property dated January 13, 1982 between RTC and KCK, appended to [p. 5] Plaintiff’s Exhibits in Support of Opp. at 9-16. According to Plaintiff, persons not of Northern Marianas descent (Gridley and Layne, or, in the alternative, Aughenbaugh, Jordan, and Harvey) obtained equitable fee simple title to the Property, while RTC, as agent-trustee, held legal title. *Id.* at 20. Plaintiff maintains that by this means, persons not of Northern Marianas descent acquired a prohibited freehold interest in Commonwealth land.

⁵ Among Plaintiff’s exhibits is a Rescission of Lease Agreement dated January 13, 1982 between RTC and KCK in which the parties to the Lease Agreement mutually agreed to rescind the Lease and not to enforce it. *See* Exhibits at 17-18. Although executed by Gridley on behalf of RTC, the Release was not executed by KCK.

As additional support for his contention that RTC was nothing but a front to permit Gridley and Layne, or, in the alternative, Aughenbaugh, Jordan, and Harvey to acquire a freehold interest in Commonwealth real property, Plaintiff points to deposition testimony of Roger Gridley, purportedly establishing that RTC did not maintain an office but shared space with Gridley Realty. Opp. at 6-11.⁶ According to Plaintiff, RTC did not have any employees or office equipment, did not maintain a telephone in its own name, and did not even keep or maintain its files. *Id.*, citing excerpts from Gridley Dep. Not only were RTC's files kept in the office of Gridley Realty, but, Plaintiff argues, shareholder and director Cabrera was also an employee of Layne. *Id.*, citing excerpts from Gridley Dep. Of apparent significance to Plaintiff, moreover, is the fact that shortly after the incorporation, Flores, an original incorporator and a director who is of Northern Marianas descent, transferred her shares to Cabrera, another director and a person of Northern Marianas descent. *Id.* at 7-8.⁷ Aside from a claim that Cabrera did not receive profits comparable to her corporate share ownership interest and a ubiquitous reference to the "unscrupulous business practices" of Jack Layne and Roger Gridley in certain legislative debates,⁸ Plaintiff [p. 6] does not provide any evidence that RTC was not a properly formed corporation, that RTC did not purchase the Property, or that RTC simply held title for Gridley, Layne, Aughenbaugh, Jordan, and/or Harvey.

⁶ Plaintiff offers a number of excerpts from the deposition of Roger Gridley as support for his "*alter ego*" argument. See Opposition at 6-9. However, no excerpts from the deposition testimony were attached to his motion. Since unsworn statements and suggestions of counsel that are not part of the record are not evidence, they cannot properly be considered by the trial court. *Adickes v. Kress & Co.*, 398 U.S. 144, 157-158 n.17, 90 S.Ct. 1590, 1608, n.17, 26 L.Ed.2d 142 (1970).

⁷ Although Plaintiff further contends that there were "other transactions [that] reveal a course of business in which Realty Trust Corporation served as a middleman, a front for the purchase of real property by persons not of Northern Marianas descent in violation of Article XII of the Commonwealth Constitution," [Opp. at 8, ¶ 12], none of these transactions are specified in the Motion, nor did Plaintiff bother to submit any documents evidencing such transactions to support his position.

⁸ Plaintiff asserts that violations of Article XII and concerns about the "unscrupulous business transactions" committed by Layne, Gridley and other persons not of Northern Marianas descent prompted the Amendment of Article XII. Certainly there were those who, during the debates at the Second Constitutional Convention of the Northern Mariana Islands, expressed their concerns about persons of Northern Marianas descent being used as "figureheads" to maintain director and shareholder required ratios. See JOURNAL OF THE SECOND CONSTITUTIONAL CONVENTION OF THE NORTHERN MARIANA ISLANDS ("Second CON CON Journal") (July 18, 1985) (remarks of Delegate Tomokane) at 573, attached to Pl. Exs. at 52. With regard to Layne and Gridley, Floor Leader Lizama did express his concern that Layne and Gridley were involved in unidentified and unspecified "unscrupulous business transactions." *Id.* at 574, Pl. Exs. at 53. Lizama went on to say, however, that "in a corporation like the Gridley and ...Layne Corporation, we cannot ignore the fact, too, that [it] is a very well organized corporation." *Id.*

Bonita Vista maintains that RTC was never a sham since it qualified as a person of Northern Marianas descent under Article XII of the Commonwealth Constitution, and thus, as a matter of law, was authorized to own land in the Commonwealth. Bonita Vista asserts that since it was also empowered to acquire a permanent or long term interest in the Property under Article XII, § 5, it received legal title to the Property upon its acquisition from RTC and thus could convey the Property to the other defendants in this case.

B. The Corporations

RTC was incorporated under the laws of the Commonwealth on July 30, 1981. *See* Articles, Ex. “E;” Layne Aff. at ¶ 2. Its principal place of business has always been in Saipan. *Id.* at Art. II. Fifty-one percent of the voting shares of RTC were, and have been, held by persons of Northern Marianas descent. *Id.* at art. VI, § 2; *see also* Layne Aff. at ¶ 5. Of the 1000 shares of RTC’s authorized common stock, 250 shares were issued to Josefa K. Flores, a person of Northern Marianas descent; 260 shares were issued to Bernie S. Cabrera, another person of Northern Marianas descent; 260 shares were issued to Roger Gridley, a person not of Northern Marianas descent; and 240 shares were issued to First Commonwealth Corporation, a CNMI corporation that, under the Commonwealth Constitution, is not a person of Northern Marianas descent. Ex. “E” at art. VII; Layne Aff. at ¶¶ 5, 7. It is undisputed that fifty-one percent of the voting shares of RTC, therefore, were always held by persons of Northern Marianas descent. Layne Aff., ¶ 5. [p. 7]

RTC’s initial directors were Josefa K. Flores, a person of Northern Marianas descent (NMD), Bernie S. Cabrera (NMD), and Roger Gridley (non-NMD). The majority of RTC’s directors were, therefore, also persons of Northern Marianas descent. Articles, at art. VII, § 2; Layne Aff. at ¶ 4.

According to Bonita Vista, moreover, RTC also elected officers, and had a general manager.⁹ Bonita Vista points to additional excerpts from Gridley’s deposition to point out that RTC had a minute book and a stock book, issued stock certificates, and maintained a sign outside the office with its name on the outside door. On the basis of Gridley’s deposition testimony, moreover, Bonita

⁹ See Reply at 2, note 2, *citing* excerpts from Gridley Dep. Along with Plaintiff, Bonita Vista has likewise failed to attach any excerpts from the Gridley Deposition to support its papers, but Plaintiff does not controvert these allegations.

Vista also contends that RTC maintained a checking account, kept bank records and separate records of income and disbursements or other consideration, and paid all of its debts. *Id.* These assertions are not disputed by Plaintiff.

Bonita Vista was chartered as a CNMI corporation on May 24, 1982. *See* Corporate Charter, included among Plaintiff's Exs. to Opp. at 28. Its principal place of business has always been in Saipan. *See* Articles of Incorporation, included among Plaintiff's Exs. to Opp. at Art. II. It is undisputed that fifty-one percent of the voting shares of Bonita Vista were always held by persons of Northern Marianas descent, and that the majority of its directors were likewise persons of Northern Marianas descent. Accordingly, Plaintiff does not dispute that Bonita Vista is a person of Northern Marianas descent or is otherwise qualified to own land in the Commonwealth. *See* Second Amended Complaint, filed April 29, 1994; Opp. at 12.

C. Developments under Article XII

In material part, Article XII of the Commonwealth's Constitution restricts the acquisition of permanent and long-term interests in real property within the Commonwealth to persons of Northern Marianas Descent ("NMD"). Any transaction violating the constitutional restriction is void *ab initio*, that is, void from the beginning, as if it never occurred. N.M.I. Const. art. XII, §§ 1, 2, 6. *See Aldan-Pierce [p. 8] v. Mafnas*, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994), *cert. denied*, 513 U.S. 1116, 115 S. Ct. 913, 130 L. Ed. 2d 794 (1995).

In 1982, and at the time of the transaction culminating in the sale to RTC, the Commonwealth Constitution classified a corporation as an NMD, so long as it: (a) was incorporated in the Commonwealth; (b) had its principal place of business in the Commonwealth; (c) had directors of whom fifty-one percent were persons of Northern Marianas descent; and (d) had voting shares, fifty-one percent of which were issued to persons of Northern Marianas descent. N.M.I. Const. art. XII, § 5 (1976).¹⁰

¹⁰ On January 7, 1986, Article XII, section 5 of the Constitution was amended so that, to be a person of Northern Marianas descent, a corporation: (a) must have been incorporated in the Commonwealth; (b) have its principal place of business in the Commonwealth; (c) have directors, one-hundred percent of whom are persons of Northern Marianas descent; and (d) have voting shares, one-hundred percent of which are owned by Northern Marianas descent. N.M.I. Const. art. XII, art. XII, § 5 (1986) (emphasis added). This amendment was not retroactively applied to corporations formed before January 7, 1986.

During the pendency of this litigation, on October 29, 1993, the Legislature enacted Public Law 8-32, codified at 4 CMC § § 4941-4992, to address actions concerning Article XII of the Constitution. In material part, Public Law 8-32 limits contingent fees in Article XII cases (§ 4942), provides a statute of limitations (§ 4991), requires that an equitable adjustment be made if the court voids a transaction (§ 4951), prohibits the application of a resulting trust when a non-NMD provides purchase money for property (§§ 4961-4963), and discusses when the corporate entity will be disregarded in Article XII actions (§§ 4971-4973). In material part, section 4973 provides:

(a) Any corporation shall be deemed eligible to own land in the commonwealth if it met or meets the applicable four criteria set forth in [N.M.I. Const. art. XII, § 5] at such times as it acquired or acquires such interest. In conformity with Section 5 of Art. XII, beneficial title shall not be severed from legal title, and record proof of stock ownership and percentage of directors of Northern Marianas descent shall be conclusive as to which persons are directors or stockholders.

(B) Clear and convincing proof shall be required to disregard the corporate entity status of a corporation for purposes of divesting current owners or lessees of their interests in real property. The court may impose sanctions on any party or counsel bringing a proceeding on the basis of proof which could not have been reasonably believed to be clear and convincing. [p. 9]

(c) In any proceeding to invalidate the title or interest of any transferee of real property from a corporation pursuant to article XII, evidence of the conduct of the corporation or any persons associated with it, which conduct occurred after the transfer of the property interest from the corporation to any other person, may not be admitted or in any way considered for the purpose of establishing that the corporate entity should be disregarded.

(d) The prevailing party, whether plaintiff or defendant, in any action pursuant to Article XII in which an attempt is made to have the court disregard the corporate entity status of a corporation shall be entitled to any award of reasonable attorney fees.

(e) The provisions of this article shall apply to all real property transactions involving corporations heretofore or hereafter entered into, and shall govern in all proceedings in which a final judgment, not subject to appeal, has not been entered prior to October 29, 1993.

In addition to the passage of Public Law 8-93, while this litigation was pending, the Commonwealth Supreme Court decided a number of cases under Article XII, each of which impacts significantly on this case. In *Ferreira v. Borja*,¹¹ the Court considered whether the purchase of real

¹¹ 2 N.M.I. 514 (1992), *rev'd*, 1 F.3d 960 (1993), *on remand* Appeal No. 90-147, 4 N.M.I. 212 (N.M.I. January 4, 1995), *aff'd*, 93 F.3d 671 (9th Cir. 1996), *cert. denied sub nom Robert v. Ferreira*, 519 U.S. 1122, 117 S.Ct. 972, 136 L.Ed.2d 856 (1997).

property violated Article XII because Ferreira, the NMD purchaser, had received funds to purchase land from a non-NMD, in return for which Ferreira formed a partnership with the non-NMD and agreed to lease the land to the partnership for forty years. Claimants asserted that the record grantees took title as agents for ineligible principals who provided the purchase money for the property.

Although the Commonwealth Supreme Court originally concluded that the non-NMDs acquired an impermissible equitable fee simple interest in the property under a resulting trust principle, on remand from the Ninth Circuit, the Court reversed and squarely rejected the seller's agency and resulting trust theory.¹² *Ferreira* thus stands for the proposition that when one NMD transfers property to another NMD but the purchase price is provided by a non-NMD, the non-NMD does not receive a fee interest [p. 10] in the property. *Ferreira v. Borja*, Appeal No. 90-047, 4 N.M.I. 212 (N.M.I. Sup. Ct. 1995) (Opinion on remand).

On September 22, 1997, the Commonwealth Supreme Court issued its decision in *Dela Cruz v. Hotel Nikko Saipan, Inc.*, affirming the trial court's ruling that RTC qualified as a person of Northern Marianas descent under Article XII, § 5 of the Commonwealth Constitution. *Dela Cruz v. Hotel Nikko*, Appeal No. 95-031 (N.M.I. Sup. Ct. September 6, 1997). Although Plaintiff was not a party to the action, his counsel again represented the sellers who brought the quiet title action to recover their property. As in the case at bar, the *Dela Cruz* plaintiffs argued that RTC was a sham created to circumvent Article XII. Defendants, on the other hand, asserted that under Public Law 8-32, 2 CMC § 4973(a), compliance with Art. XII, § 5 was alone sufficient to establish the eligibility of RTC to own land in the Commonwealth.

In upholding the trial court's order granting summary judgment, the Court rejected plaintiffs' *alter ego* argument and refused to set aside the corporate entity. *Id.* at 5.¹³ Finding that plaintiffs had failed to establish how the local corporations were shams, the majority concluded that piercing the corporate veil would accomplish nothing, since to disregard the corporate entity would only

¹² The court takes judicial notice of the fact that Plaintiff's counsel acted as attorneys for sellers/defendants in the *Ferreira* case.

¹³ See *Dela Cruz v. Hotel Nikko Saipan, Inc.*, Nos. 91-0259 (N.M.I. Super. Ct. July 10, 1995) (Memorandum Decision and Order on Defendant's Motion for Reconsideration of Partial Summary Judgment)

impose liability upon the individual shareholders for the debts of the corporation, and the corporation would still continue to exist. *Id.* at 6-7. In light of the Court’s conclusion that summary judgment was proper, the Court found it unnecessary to address the constitutionality of PL 8-32.¹⁴ The Court saw “no difference,” moreover, between the analysis employed in *Ferreira* and the arguments raised by plaintiffs/appellants in the case at bar. The Court noted: “Appellants are asserting that Realty Trust and Blanco Vende acted as agents for JAL in purchasing the land in question and that JAL subsequently acquired an impermissible fee simple interest in the property. Under *Ferreira*, even if JAL provided the money to Realty Trust and Blanco Vende to purchase the property, JAL received no interest in the property and the transaction was proper.” *Id.* at 5. Thus, *Dela Cruz* again squarely rejected the theory that the corporations acted as the non- [p. 11] NMD’s *alter ego*, given the absence of any proof that JAL acquired a fee interest in the property or that RTC acted as agents-trustees.

Concurring in the decision, Special Judge Mack disagreed with the holding of the majority to the extent that it implied that the corporate status of an entity should be disregarded only when a litigant sought to pin personal liability for corporate debts upon individual shareholders. *Id.* at 8-9. In the Special Judge’s opinion, the benefits of incorporation could be denied, and the corporate status disregarded, “in any instance where the legal entity was used to perpetuate a fraud, to justify a wrong, or to defeat justice.” *Id.* at 8. The Special Judge noted, however, that plaintiffs/appellants “did not connect the dots between the facts and their asserted conclusion that the corporations in this case, namely Realty Trust and Blanco Vended, were sham corporations.” In light of their failure to present evidence of the factors to consider in a piercing analysis and even to cite a single case supporting their bald conclusions that the corporate entities legally qualified as shams, the concurrence likewise saw no need to consider the constitutionality of Public Law 8-32 on the facts of that case.

Notwithstanding the Court’s rulings in *Ferreira* and *Dela Cruz*, the *alter ego* argument and the agent-trustee theory surfaced once again in another Article XII proceeding. In *Milne v. Estate of Hillblom*, plaintiff challenged the purchase of certain real property by San Roque Beach

¹⁴ Plaintiff contends that *Dela Cruz* was appealed to the Ninth Circuit (Appeal No. 15117).

Development Company, Ltd. (“SRBD”) upon which the late Larry L. Hillblom constructed a home that he used as his primary residence¹⁵. *Milne v. Estate of Larry L. Hillblom*, Appeal No. 96-035 (N.M.I. Sup.Ct. June 25, 1997), *appeal dismissed*, 165 F.3d 733 (9th Cir. 1999). In the action against Hillblom and SRBD to regain title to the property, Milne asserted that the transfer to SRBD violated Article XII because, although SRBD purchased and took the land, the arrangement created a “principal-beneficiary/agent-trustee” relationship giving Hillblom an equitable fee simple title in violation of Article XII. Milne also contended that SRBD was the *alter ego* of Hillblom, and that its corporate entity should be disregarded.

Although the trial court relied in part on Public Law 8-32 in granting the motions of Hillblom’s estate and SRBD for summary judgment, the Commonwealth Supreme Court saw no need to affirm the [p. 12] trial court’s ruling on that basis. In reaching its decision, the Court first examined whether SRBD was a valid NMI corporation. Ruling that because SRBD met all the necessary requirements of being a NMD corporation under Article XII at the time of the conveyance, the Court held that as a matter of law, SRBD was qualified to own land in the Commonwealth. Slip. Op. at 4-5. Looking to *Ferreira v. Borja*, the Court then dismissed Milne’s “principal-beneficiary/agent-trustee” theory, reasoning that since SRBD was a validly formed corporation, the source of the funds used to purchase the land did not matter: Hillblom never acquired a fee interest in the land and thus Article XII could not have been violated. *Id.* at 5.¹⁶ Finally, the court rejected Milne’s attempt to pierce the corporate veil and dissolve SRBD, ruling, as the majority did in *Dela Cruz*, that since piercing the corporate veil would only impose liability on individual shareholders and would not dissolve or void the corporation, the Court would not disregard the corporate form in this case. *Id.* at 6. Finding that summary judgment was proper on these grounds, the Court did not find it necessary to address the constitutionality of PL 8-32. *Id.* at 7. Because the Supreme Court based its decision on local law and there was no “subterfuge to avoid federal review of a

¹⁵ The court takes judicial notice that counsel for Plaintiff in this proceeding also represented Milne.

¹⁶ The Court further characterized Milne’s *alter ego* argument as disingenuous. *Id.* Since Milne never contested the Estate’s claim that Hillblom had acquired only a tenancy at will that expired upon his death, the Court determined that Hillblom never possessed a fee interest in the land. Slip Op. at 5.

constitutional violation,” the Ninth Circuit declined to review the case. *See Milne v. Hillblom*, 165 F.3d 733, 736 (9th Cir. 1999).

QUESTIONS PRESENTED

1. Whether RTC was qualified to own land in the Commonwealth at the time of the conveyance from Plaintiff.
2. Whether recent decisions of the Commonwealth Supreme Court foreclose this action to set aside the corporate entity of Defendant RTC.
3. Whether recent decisions of the Commonwealth Supreme Court foreclose Plaintiff’s claim that persons not of Northern Marianas descent obtained equitable fee simple title to the Property while RTC, acting as agent-trustee, held legal title subject to their control. [p. 13]

III. ANALYSIS

A. Summary Judgment Standard

Summary judgment is appropriately entered against a party if, after viewing the undisputed facts in the light most favorable to the nonmoving party, the court finds as a matter of law that the moving party is entitled to the relief requested. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172 (1990). Once the moving party meets its initial burden of showing entitlement to judgment as a matter of law, the burden shifts to the nonmoving party to show a genuine dispute of material fact. *Id.* at 176. In its Motion, Bonita Vista set forth undisputed material facts demonstrating that RTC met all the requirements under Article XII to hold land in the Commonwealth. To defeat the Motion, Plaintiff is required to produce evidence disputing these requirements. Because Plaintiff failed to meet this burden and has neglected to produce even a shred of evidence demonstrating that any person not of Northern Marianas descent received a fee interest in the Property, summary judgment is appropriate in this case.

B. RTC was a Valid NMI Corporation.

To qualify as a properly formed NMD corporation that could lawfully acquire, hold and transfer real property in the Commonwealth, RTC must satisfy the four prerequisites of Article XII, § 5. Unrefuted record evidence indicates that RTC met these requirements at the time of the

conveyance: (a) it was incorporated in the Commonwealth; (b) it had its principal place of business in the Commonwealth; and (c) the requisite percentage of directors and shareholders were of Northern Marianas descent. Having determined that RTC satisfied the constitutional criteria at the time it acquired the Property, the court concludes that RTC was qualified to have acquired a permanent and long-term interest in CNMI land. Nor does any evidence offered by Plaintiff establish that RTC was anything other than a bona fide corporation, entitled to own land.

C. The Transaction between Anselmo M. Iglesias and RTC was Valid.

Ferreira, Dela Cruz, and Milne preclude Plaintiff from arguing that RTC acted as agents for Gridley and Layne in purchasing the land in question. Although Plaintiff's counsel raised the "agency-trustee" theory in each of these cases, on every occasion, the Commonwealth Supreme Court has unequivocally rejected the agency-trust theory as not viable. *Ferreira*, 4 NMI 212 (Opinion on remand); [p. 14] *Dela Cruz*, Slip Op. at 9; *Milne*, Slip Op. at 5. In each of these cases, the Commonwealth Supreme Court has ruled that where one NMD transfers property to another NMD, but the purchase price is provided by a non-NMD, the non-NMD does not receive a fee interest in the property. Plaintiff's argument to the contrary is thus entirely unwarranted by existing law.

D. Piercing the Corporate Veil is Inappropriate in this Case.

Plaintiff claims that RTC was created to circumvent and usurp Article XII, and thus it should be set aside by the court. In a last-ditch effort to manufacture an issue for review in this case, however, Plaintiff further contends that Public Law 8-32, and particularly section 4973, should not be applied to preclude persons of Northern Marianas descent from establishing that RTC is a sham, that its corporate entity should be disregarded, and that the transaction at issue violated Article XII.

The legal formation of a corporation is only one aspect in determining whether it exists as a real corporation or whether it is a sham. Under the *alter ego* doctrine, where a corporation is used by an individual or individuals, or by another corporation, to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, a court may disregard the corporate entity and treat the corporation's acts as if they were done by the persons actually controlling the

corporation.¹⁷ The key element underlying every such case, however, is control. Since many legitimate, wholly-owned subsidiary and closely-held corporations are not factually distinct from their owners but are in fact controlled and operated in close concert with the interests of the owners, they do not have a distinct factual existence--separate employees, separate offices, or separate properties. *See, e.g., Edwards Co. v. Monogram Industries*, 730 F.2d 977 (5th Cir.1984) (en banc). Thus, a party attempting to disregard the corporate entity and treat the corporation's acts as if they were done by persons actually in control of the corporation must show two requirements: (1) a unity of interest and ownership such that the separate [p. 15] personalities of the corporation and the individual no longer exist; and (2) that an inequitable result will follow if the acts are treated as those of the corporation alone. *See Playboy Enterprises, Inc. v. Terri Welles, Inc.*, 78 F.Supp.2d 1066 (S.D.Cal. 1999); *Mesler v. Bragg Management Co.*, 39 Cal.3d 290, 300, 216 Cal.Rptr. 443, 702 P.2d 601 (1985). While Plaintiff strenuously argues the second criteria, he has provided no proof of the first.

At issue is the potential perversion of a constitutional mandate. Thus, if Plaintiff were to have presented facts demonstrating that RTC was a dummy corporation created only as a business conduit for the actions of the non-NMD individuals who were controlling the transactions from behind the scenes, then the court could have looked behind the legal entity to assess the true relationship between the stockholders and the corporation to determine which stockholders own the assets. Plaintiff, however, has utterly failed to provide any such evidence in this case. Aside from a recitation of factors that could apply to any small corporation, Plaintiff has not provided the court with any authority supporting his conclusion that the "facts" concerning RTC's operation require a

¹⁷ *See, e.g., Schenley Distillers Corp. v. United States*, 326 U.S. 432, 437, 66 S.Ct. 247, 90 L.Ed. 181 (1946) (corporate entities may be disregarded where they are used to avoid a clear legislative purpose, but they will not be disregarded where those in control have deliberately adopted the corporate form in order to secure its advantages and where no violence to the legislative purpose is done by treating the corporate entity as a separate legal person); *Evans Products Co. v Interstate Commerce Com.*, 729 F2d 1107 (7th Cir. 1984) (piercing inappropriate without any evidence showing that the corporate structure was maintained to avoid clear legislative purpose or that the corporate form has been abused).

conclusion that it was a sham.¹⁸ Nor has Plaintiff bothered to present evidence of facts traditionally considered in determining whether to disregard the corporate status of an entity,¹⁹ despite having had more than *ten years* from the commencement of the action in which to build his case. Absent competent evidence from which the court could infer that Layne, Gridley, or any other person controlled RTC and used the corporation to circumvent Article XII, this court has no basis [p. 16] for disregarding the corporate entity and treating the corporation's acts as if they were done by the persons allegedly controlling the corporation. *Webber v. Inland Empire Investments*, 74 Cal.App.4th at 900, 88 Cal.Rptr.2d 594. Because Plaintiff has failed to raise a disputed issue of material fact, the court has no alternative but to grant summary judgment to Bonita Vista. See *Land Ocean Logistics, Inc. v. Aqua Gulf Corp.*, 68 F.Supp.2d 263 (W.D.N.Y. 1999) (transportation broker contracting with freight forwarding corporation failed to show that second forwarder, which had its corporate headquarters at same address as corporation, exercised such dominance that corporation was its mere instrumentality, or, even if such dominance occurred, that second forwarder abused privilege of incorporation to perpetrate a fraud or injustice or otherwise circumvent the law; corporations kept separate books, records and accounts, and single inter- corporate transaction did not show requisite control).

The record before the court contains no evidence to establish that RTC was formed for any purpose other than buying and selling real estate in the Commonwealth. In *Dela Cruz and Milne*,

¹⁸ Plaintiff has both failed to attach any sworn deposition testimony to the Motion and or cite any relevant case law establishing how these facts prove the corporation was a sham. As Plaintiff well knows, this court is not required to complete the legal work for the Plaintiff. See *Dela Cruz v. Hotel Nikko Saipan, Inc.*, App. No. 95-031 (N.M.I. June 25, 1997) (Mack, Special J., concurring) at 9.

¹⁹ A party seeking to disregard the corporate entity bears a heavy burden. See *Dela Cruz v. Hotel Nikko Saipan, Inc.*, App. No. 95-031 (N.M.I. June 25, 1997) (Mack, Special J., concurring), Slip. Op. at 9, note 10. In addition to evidence establishing the degree to which corporate formalities have been followed and the extent to which corporate and individual property has been kept separately, courts determining whether to disregard the corporate entity look at the amount of financial interest, ownership, and control the individual maintains over the corporation; and evidence showing that the corporation has been used for personal purposes. See, e.g., *Castleberry v. Branscum*, 721 S.W.2d 270, 272 (Tex.1986). Probative of *alter ego* status are such factors as: how much money each stockholder actually invested; what proof there was of the individual investments; bank records of the corporation showing capitalization and flow of the money; who controlled the deposits and withdrawals; who received the income or proceeds from the corporation's transactions; what corporate records were kept; what corporate formalities were adhered to; and who controlled the business. No evidence of this sort has been discussed, however, in the Motion.

the Commonwealth Supreme Court determined that the corporate form can only be ignored to apply liability, and not to dissolve the corporation. Since this court is unwilling to find that a corporation is a sham simply because it permits persons not of Northern Marianas descent to gain long-term interests in realty to the maximum extent allowable by Article XII of the Constitution, in light of unrefuted facts establishing compliance with Article XII, § 5, this court must conclude that RTC was a corporation eligible to hold land at the time of the relevant transaction. Accordingly, there is no need for the court to address the constitutionality of Public Law 8-32 here. *See In re Estate of Tudela*, 4 N.M.I. 1, 5 (1993) (this Court will not resolve constitutional issues unnecessarily), *appeal dismissed*, 43 F.3d 1479 (9th Cir. 1994); *Commonwealth v. Oden*, 3 N.M.I. 186, 202 (1992) (a court must never “formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied”).

CONCLUSION

During the twelve years during which Plaintiff elected to hold this case in abeyance, decisional law interpreting Article XII has settled. Persons of Northern Marianas descent, as well as those not of Northern Marianas descent, purchased or leased land and also invested their time, energy and income into improving [p. 17] and developing the Property. *See* Motion at 14-17. *Ferreira, Dela Cruz*, and *Milne* require that this litigation be ended. Accordingly it is hereby ORDERED that Defendants’ motion for summary judgment is GRANTED.

SO ORDERED this 21 day of July, 2000.

BY THE COURT:

/s/ Timothy H. Bellas

TIMOTHY H. BELLAS, Associate Judge