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For Publication

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

LPP MORTGAGE, LTD.,) **CIVIL ACTION NO. 03-0343C**

Plaintiff,)

v.)

RONALD D. SABLAN; MARIA ANA T. SABLAN; SY'S CORPORATION; COMMONWEALTH DEVELOPMENT AUTHORITY; GOVERNMENT OF THE NORTHERN MARIANA ISLANDS, DEPARTMENT OF FINANCE; AND UNITED STATES DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE,) **ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR DISMISSAL FOR FAILURE TO STATE A CLAIM FOR RELIEF**

Defendants.)

I. INTRODUCTION

This matter came before the Court for a hearing in courtroom 220A on September 8, 2003, at 9:00 a.m., to consider Defendants Ronald D. Sablan, Maria Ana T. Sablan, and SY's Corporation's MOTION FOR SUMMARY JUDGMENT OR DISMISSAL FOR FAILURE TO STATE A CLAIM (hereinafter "M.S.J."). Bruce L. Mailman, Esq. appeared on behalf of Plaintiff LPP Mortgage, Ltd., and Anthony Long, Esq., appeared on behalf of the Defendants Ronald D. Sablan, Maria Ana T. Sablan, and SY's Corporation. Having considered the arguments presented by counsel, having reviewed the pleadings submitted, and having considered the applicable statutory and case law, this Court now issues its decision, denying the Defendants' motion, for the reasons that follow.

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II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff LPP Mortgage, Ltd. (“LPP”) is a Texas limited partnership that is not a person of Northern Marianas descent. LPP seeks repayment of amounts owed on three separate promissory notes executed by Defendants Ronald D. Sablan and Maria Ana T. Sablan (“the Sablans”) in favor of the United States Small Business Administration (“SBA”) between March 27 and 28, 1992. These promissory notes were issued in exchange for three separate loans to the Sablans, authorized by the SBA on March 26, 1992. The three promissory notes were individually secured by three separate mortgages in fee simple on Lot 008 H 37, located in Chalan Kanoa, Saipan. Each mortgage was recorded with the Commonwealth Recorder. SY’s Corporation is a named defendant in this action because it may have a claim or interest in the mortgaged property pursuant to a Quitclaim Deed executed and recorded in the Commonwealth Recorder’s Office after the 1992 notes and mortgages were executed and recorded. In 2001, SBA assigned the promissory notes and mortgages to LPP. In 2003, LPP gave the Sablans notices of default under all three loans. LPP now seeks to collect on the amounts owed under the promissory notes, plus interest, and costs. In the event of a deficiency, LPP seeks foreclosure and sale of the mortgaged properties.

III. ISSUES

1. Whether the *acquisition* of a mortgage on a fee-simple interest in real property located within the CNMI by a person who is not of Northern Marianas descent effectuates a transfer of a long-term interest in real property in violation of Article XII of the CNMI Constitution, rendering an assignment of the mortgage and/or the mortgage itself unenforceable.
2. Whether the *foreclosure*, of a mortgage on a fee-simple interest in real property located within the CNMI, by a person who is not of Northern Marianas descent effectuates a transfer of a long-term interest in real property in violation of Article XII of the CNMI Constitution, rendering an assignment of the mortgage and/or the mortgage itself unenforceable.

1 **IV. APPLICABLE LEGAL STANDARDS**

2 **A. Legal Standard for a Rule 12(B)(6) Motion to Dismiss**

3 The Sablans have moved for dismissal on the basis of Commonwealth Rule of Civil
4 Procedure 12(b)(6) (“failure to state a claim upon which relief can be granted”). A 12(b)(6) Motion
5 differs from a Motion for Summary Judgment insofar as it “confines analysis to the allegations and
6 implications contained on the face of the complaint.” *In re Estate of Roberto*, 2002 MP 23 ¶12
7 (citing *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001); *Hal Roach Studios, Inc. v.*
8 *Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1989)). “Dismissal is improper unless
9 it appears beyond doubt that the [non-moving party] can prove no set of facts in support of his claim
10 which would entitle him to relief.” *Govendo v. Micronesia Garment Mfg., Inc.*, 2 N.M.I. 270, 283
11 (1991). A pleading setting forth a claim for relief must contain:
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13 either direct allegations on every material point necessary to sustain a recovery on
14 any legal theory, even though it may not be the theory suggested or intended by the
15 pleader, or contain allegations from which an inference fairly may be drawn that
16 evidence on these material points will be introduced at trial.

17 *In re Adoption of Magofna*, 1 N.M.I. 449, 454 (1990) (quoting 5 CHARLES A. WRIGHT & ARTHUR
18 R. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 1216 (1990)).

19 **B. Legal Standard for Summary Judgment**

20 The Sablans have also moved for summary judgment pursuant to Commonwealth Rule of
21 Civil Procedure 56(b). Summary judgment is appropriate where the materials submitted to the Court
22 demonstrate “that there is no genuine issue as to any material fact and that the moving party is
23 entitled to a judgment as a matter of law.” Com. R. Civ. P. 56(c); see, e.g., *In re Estate of Roberto*,
24 2002 MP 23 ¶14. “In deciding a summary judgment motion, a court will construe the evidence and
25 inferences drawn therefrom in favor of the non-moving party.” *Santos v. Santos*, 4 N.M.I. 206, 209
26 (1994).
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1 A moving party bears the “initial and the ultimate” burden of establishing its
2 entitlement to summary judgment. *Lopez v. Corporacion Azucarera de Puerto Rico*,
3 938 F.2d 1510, 1516 (1st Cir. 1991). If a moving party is the plaintiff, he or she
4 must prove that the undisputed facts establish every element of the presented *claim*.
5 *Id.* If a movant is the defendant, he or she has the correlative duty of showing that
6 the undisputed facts establish every element of an asserted affirmative *defense*. *Id.*
Upon satisfying this burden, the non-moving party must establish that there exists
a genuine issue of material fact. *Bais v. Advantage Int’l, Inc.*, 905 F.2d 1558, 1561
(D.C. Cir. 1990).

7 *Id.* at 210 (emphasis added). A “genuine” dispute exists “if the evidence is such that a reasonable
8 jury could return a verdict for the non-moving party.” *Eurotex (Saipan), Inc. v. Muna*, 4 N.M.I. 280,
9 283-84 (1995) (citations omitted). A non-moving party may not rest upon mere allegations or
10 denials of the moving party’s pleading, but must “set forth specific facts which were admissible in
11 evidence and showed a genuine issue for trial.” *Eurotex (Saipan), Inc.*, 4 N.M.I. at 283; Com. R.
12 Civ. P. 56(e).

14 V. ANALYSIS

15 A. LPP’s Claims Under the Promissory Notes Survive the Sablans’ Motion.

16 As a preliminary matter, the Court notes that foreclosure of the mortgages was only one of
17 the remedies requested in LPP’s prayer for relief. LPP first seeks judgment for each of the loans on
18 a plain breach of contract theory, based on the Sablans’ default of each of the loans. In the event
19 that the Court grants judgment in its favor, and in the event that the Sablans do not pay the judgment
20 in full within 3 months after the judgment date, LPP also requests that the Court order that Lot 008
21 H 37 be sold in accordance with Commonwealth law, and that the proceeds of said sale (after
22 deducting the expenses thereof) be applied toward the balance due on the judgment. The promissory
23 notes each provide an independent cause of action that would not be affected in any event by a
24 decision with respect to whether LPP violated Article XII by acquiring the mortgage in question,
25 or by pursuing foreclosure upon the property at issue. Accordingly, the Sablans’ motion should have
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1 been captioned instead as a *Motion for Partial Summary Judgment or Partial Dismissal for Failure*
2 *to State a Claim for Relief*, and the Court treats it as such. Having identified the separate claims that
3 survive the Sablans’ motion, the Court now considers the remaining issues, which are of first
4 impression in the Commonwealth.

5
6 **B. The Acquisition of a Mortgage on a Fee Simple Interest in Real Property Located**
7 **Within the CNMI Does Not Effectuate an Acquisition of a Long-Term or Permanent**
8 **Interest in the Underlying Real Property.**

9 The Sablans allege that LPP has violated (by acquiring the mortgages at issue), or will
10 violate (through the foreclosure of those mortgages) Section 1 of Article XII of the CNMI
11 Constitution. That section provides that “[t]he acquisition of permanent and long-term interests in
12 real property within the Commonwealth shall be restricted to persons of Northern Marianas
13 descent.” N.M.I. Const. art. XII, § 1 (“Alienation of Land”).¹ “The term permanent and long-term
14 interests in real property used in [Section 1] includes *freehold interests* and *leasehold interests of*
15 *more than fifty-five years.*” N.M.I. Const. art. XII, § 3 (emphasis added). Elsewhere, Article XII
16 explains when a corporation may qualify as a “person of Northern Marianas descent”:

17
18 A corporation shall be considered to be a person of Northern Marianas
19 descent so long as it is incorporated in the Commonwealth, has its principal place of
20 business in the Commonwealth, has directors one-hundred percent of whom are
21 persons of Northern Marianas descent and has voting shares (i.e. common or
22 preferred) one-hundred percent of which are actually owned by persons of Northern
23 Marianas descent.

24 N.M.I. Const. art. XII, § 5 (“Corporation”). Plaintiff LPP concedes that it is not a “person of
25 Northern Marianas descent” within this definition. Likewise, LPP concedes that, by the terms of
26 Art. XII, § 1, LPP cannot “acquire” a long-term or permanent interest in real property located within
27 the CNMI.

28 ¹ The enforcement provision at Section 6 of Article XII further provides that any transaction that violates Section 1
“shall be void ab initio.” N.M.I. Const. art. XII, § 6.

1 Section 2 of Article XII defines the word “acquisition” as it is used in Section 1, and
2 enumerates two *exceptions* to the Section 1 prohibition against the acquisition of real property by
3 persons not of Northern Marianas descent:

4
5 The term acquisition used in [Section 1] includes acquisition by sale, lease,
6 gift, inheritance or other means. A transfer to a spouse by inheritance is not an
7 acquisition under this section if the owner dies without issue or with issue not
8 eligible to own land in the Northern Mariana Islands. *A transfer to a mortgagee by*
9 *means of a foreclosure on a mortgage is not an acquisition under this section if the*
mortgagee is a full service bank, Federal Agency or Governmental entity of the
Commonwealth and does not hold the permanent or long-term interest in real-
property for more than ten years beyond the term of the mortgage.

10 N.M.I. Const. art XII, § 2 (emphasis added).

11 The Sablans argue that the mere *acquisition* of a mortgage may operate as a prohibited
12 transfer of a long-term interest in real property, and the Court first addresses that argument. The
13 Sablans contend that:

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15 Each mortgage in this case is a lien on the fee simple. In not falling within any of
16 the classifications allowed by Const. Art. Art [sic] XII to acquire a long-term and
17 permanent interest, *LPP can not hold a fee simple mortgage on any real property*
within the Commonwealth. As a result, each assignment of mortgage is void and
unenforceable.

18 M.S.J. at 5 (emphasis added) (*citing* N.M.I. Const. art. XII, § 2 and *Wabol v. Villacrusis*, 958 F.2d
19 1450, 1462-63 (9th Cir. 1992)). Implicit in this statement, and others made in the Sablans’ moving
20 papers, is the idea that a mortgage on a fee simple interest constitutes (in-and-of itself) an interest
21 in the fee, *i.e.*, a freehold interest in the mortgaged property, and that a mortgagee’s interest under
22 a mortgage on a fee simple interest in real property is therefore a “long-term and permanent interest”
23 in real property, in violation of Article XII. The Sablans, however, do not reference any legal
24 authority to support this argument.

25
26 A “mortgage” is defined in Commonwealth Real Estate Mortgage Law, 2 CMC §§ 4511, *et*
27 *seq.*, as “a contract in which real property is made the security for the performance of an act, usually
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1 the payment of a debt *without the necessity of a change of possession* and *without the transfer of*
2 *title.*” 2 CMC § 4513(e)(emphasis added). Elsewhere in the Real Estate Mortgage Law it is
3 reiterated that, “[t]he mortgagee is *not entitled to possession* of the mortgaged property unless the
4 mortgage expressly grants a right of possession.” 2 CMC § 4514 (emphasis added). These sections,
5 standing alone, demonstrate that the acquisition of a mortgage on real property located within in the
6 CNMI does not amount, in-and-of-itself, to a transfer of a “leasehold interest of more than fifty-five
7 years,” much less a transfer of a freehold interest. Thus, the acquisition of a mortgage on real
8 property located within the CNMI does not operate to transfer a “long-term or permanent interest”
9 in that property.
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12 In the case of *Villanueva v. City Trust Bank*, 2002 MP 1, the Commonwealth Supreme Court
13 confirmed that Commonwealth Real Estate Mortgage Laws are based on a *lien* theory, rather than
14 a *title* theory, of mortgage law. *Id.* at ¶15 (concluding that the trial court did not commit error when
15 it ruled that “our system of mortgage law is based on the lien theory”). Under the lien theory, title
16 remains in the mortgagor, and “the mortgagee holds only a lien as security.” *Id.* at ¶ 13 (*citing* 12
17 THOMPSON ON REAL PROPERTY § 101.01(b)(2) (David A. Thomas ed. 1994)). By contrast, the title
18 theory views a mortgage as transferring, among other things, a right to possession. *Id.* at ¶14.
19

20 For the reasons stated, this Court finds that Plaintiff LPP did not violate Commonwealth Real
21 Estate Mortgage Law when it acquired the mortgages at issue. The Sablans, however, raise a
22 separate *constitutional* argument in support of the proposition that the Commonwealth is not actually
23 a lien theory jurisdiction, which the Court addresses below.
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25 **C. The Foreclosure of a Mortgage in Fee Simple on Real Property in the CNMI Does Not**
26 **Effectuate a Prohibited Acquisition of a Long-Term or Permanent Interest in the**
Underlying Real Property Under Article XII.

27 The second of the Sablans’ arguments is the contention that *foreclosure* of a mortgage in fee
28 simple on real property located within the CNMI transfers to a mortgagee a long-term interest in that

1 property in violation of Article XII. For the reasons that follow, this Court holds that the initiation
2 of a foreclosure action upon a mortgage in fee simple on real property located within the CNMI does
3 not in-and-of itself impart to a mortgagee a long-term interest in real property.
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5 The Commonwealth Real Estate Mortgage Law provides that “[n]o mortgage may be
6 foreclosed other than by the judicial remedies provided by this chapter.” 2 CMC § 4531 (“No
7 Private Power of Sale Conferred by Mortgage”). All judicial actions for foreclosure upon mortgages
8 on property located in the CNMI must be initiated in the Commonwealth Trial Court, now known
9 as the Superior Court. 2 CMC § 4537(a). Section 4537(e) further provides that “[a]ny sale of
10 property under a judgment of foreclosure *shall be made by a person appointed by the court for that*
11 *purpose* and must be made at a public place to be designated by the court.” 2 CMC § 4537(e)
12 (emphasis added). As explained above, in a lien theory jurisdiction such as the CNMI, a mortgagee
13 holds only a lien as security, and has no right to possession of the mortgaged property in the
14 meantime unless the mortgage provides otherwise. 2 CMC § 4514. Thus, under Commonwealth
15 Real Estate Mortgage Law, a mortgagee has no right to either possess or privately sell mortgaged
16 property. The sale of mortgaged property is accomplished entirely through the Court and its
17 designees.
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20 Under Commonwealth Real Estate Mortgage Law, no interest in the mortgaged property
21 passes to a mortgagee upon the mortgagee’s foreclosure, unless and until the mortgagee purchases
22 an interest in the property at a foreclosure sale.² The Sablans’ argument in this case, however, is not
23 limited to Commonwealth statutory law, but raises an additional argument, that the lien theory
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26 ² As explained above, however, if the interest being sold is a “permanent or long-term interest,” the purchaser must
27 either qualify as a person of Northern Marianas descent, or must qualify as a “full service bank, Federal Agency or
28 Governmental entity of the Commonwealth.” N.M.I. Const. art. XII, § 2. Again, if they are the latter, they cannot hold
that long-term or permanent interest for more than 10 years. *See* 2 CMC § 4636; *see also* N.M.I. Const. art. XII, §
2.

1 adopted by the Commonwealth Real Estate Mortgage Law conflicts with the language of Article
2 XII, Section 2 of the CNMI Constitution. Again, Article XII, Section 2 provides that:

3 *A transfer to a mortgagee by means of a foreclosure on a mortgage is not an*
4 *acquisition under this section if the mortgagee is a full service bank, Federal Agency*
5 *or Governmental entity of the Commonwealth and does not hold the permanent or*
6 *long-term interest in real-property for more than ten years beyond the term of the*
mortgage.

7 N.M.I. Const. art. XII, § 2 (emphasis added). Read conversely, this passage provides that a “transfer
8 to a mortgagee by means of a foreclosure” *does* constitute a prohibited acquisition of a permanent
9 or long-term interest in real property if the mortgagee is *not* a full service bank, Federal Agency or
10 Governmental entity of the Commonwealth, *or* the mortgagee qualifies as one of the three but holds
11 “the permanent or long-term interest” for more than ten years beyond the term of the mortgage.³

12 The Sablans argue that the reference to a “transfer to a mortgagee *by means of a foreclosure*” implies
13 that the Framers understood foreclosure as automatically transferring an interest in the real property
14 underlying the mortgage to a mortgagee upon the initiation of foreclosure proceedings, and that it
15 is that interest that is then sold by the mortgagee at the foreclosure sale. Were this Court to adopt
16 this interpretation of Article XII, Section 2, the consequence would be twofold: (1) that under
17 Article XII, Section 2, only “full service” banks, Federal agencies and governmental entities of the
18 Commonwealth would be entitled to hold constitutionally valid mortgages, and that, since LPP does
19 not qualify as any one of these, LPP could not foreclose upon the mortgages that it holds; and (2)
20 that the Commonwealth Real Estate Mortgage Law would be unconstitutional to the extent that it
21 prohibit *all* mortgagees from possessing or privately selling mortgaged properties, considering that
22 the *exempted* mortgagees (such as a “full service” bank) would necessarily take possession upon the
23 initiation of foreclosure proceedings, and would privately sell the property thereafter.

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27 ³ The expression “term of the mortgage” is misleading, given that mortgages generally do not have “terms,” in the
28 sense of a limitation on the time span in which the mortgage can be enforced. Nevertheless, the Court understands this
expression as referring to the date of *the foreclosure sale*, since a mortgage *expires* upon that date.

1 The Sablans’ argument raises a fundamental issue: what is meant by the Article XII,
2 Section 2 expression, “transfer to a mortgagee by means of a foreclosure”? In other words, *how*
3 is an interest in the real property underlying a mortgage transferred “by means of a foreclosure”?
4 Nowhere in Article XII is the expression “transfer to a mortgagee by means of a foreclosure”
5 defined or explained. To help in discerning the Framers’ intent, this Court turns to the ANALYSIS
6 OF THE CONSTITUTION OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS (Dec. 6,
7 1976) (hereinafter “ANALYSIS”). Like Section 2 of Article XII itself, the ANALYSIS of Section 2
8 does not address this issue directly. However, it does provide the following:
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10 The second exception applies to banks or others that acquire permanent
11 and long-term interests in real property through mortgage foreclosure. *Those*
12 *who give mortgages normally do not do so for the purpose of acquiring property.*
13 *They are interested in receiving repayment of the principal amount loaned plus the*
14 *interest of the principal. Those who give mortgages insist on a right to acquire*
15 *interests in real property only to protect their investment in case of default. Their*
16 *intention, therefore, is not to retain the property acquired through foreclosure,*
17 *but to sell it in order to recover their investment. For this reason, foreclosure of*
18 *a mortgage is not treated as an acquisition if, within five years of the foreclosure,*
19 *the bank or other mortgagee disposes of the interest gained through the foreclosure.*
20 This exception permits normal banking operations to continue, and the five-year
21 limitation prevents circumvention of the restrictions on alienation through the use
22 of sham mortgages that would be foreclosed with consent.

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25 ANALYSIS at 168-69 (emphasis added).⁴ As with the Article XII, § 2 use of the phrase “transfer to
26 a mortgagee by means of a foreclosure on a mortgage,” the ANALYSIS refers to “property acquired
27 through foreclosure” and an “interest gained through foreclosure,” without explaining what the
28 Framers meant.

⁴ The references to “five years” in this passage refer to the time limitation under the prior version of Article XII, § 2, which was amended (by Amendment 34) in 1985 to extend the time period to ten years. Amendment 34 also added, among other things, the provision limiting acquisition by mortgagees to those qualifying as a “full service bank, Federal Agency or Governmental entity of the Commonwealth.” Under the original version of Article XII, § 2 (adopted December 5, 1976), *any mortgagee*, regardless of their status, could “acquire” a long- term or permanent interest in real property within the CNMI through foreclosure of a mortgage.

1 In analyzing provisions of the CNMI Constitution, this Court must “apply the plain,
2 commonly understood meaning of constitutional language unless there is evidence that a contrary
3 meaning was intended.” *United States v. Borja (Mayor of Tinian)*, 2003 MP 8 ¶9 (citing *Camacho*
4 *v. N. Marianas Ret. Fund*, 1 N.M.I. 362, 368 (1990)). As the CNMI Supreme Court has also stated,
5 “[i]t is a longstanding doctrine that an Act passed by the Legislature and signed into law by the
6 Governor is presumed to survive constitutional scrutiny. We will not ‘impute to the legislature an
7 intent to pass legislation that is inconsistent with the Constitution as construed by this Court.’”
8 *Rayphand v. Tenorio*, 2003 MP 12 ¶58 (quoting *Estate of Faisao v. Tenorio*, 4 N.M.I. 260, 266
9 (1995)).
10

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12 Neither the plain language of Article XII nor the ANALYSIS thereto expresses an intention
13 on the Framers’ part to adopt a theory of mortgage law under which the foreclosure (in itself)
14 confers to a mortgagee a long-term or permanent interest in real property. Without a clear
15 expression of that intention, or a clear statement of an intention to limit the practice of mortgage
16 lending to “full service” banks, Federal agencies and Commonwealth governmental entities, this
17 Court cannot conclude that the Framers had such an intention, or for that matter, that the CNMI
18 Legislature erred in drafting the Commonwealth Real Estate Mortgage Law. Moreover, the Sablans
19 have not offered any explanation why the CNMI Constitution’s Framers *might* have intended to
20 narrow the scope of persons eligible to issue loans in exchange for mortgages, particularly given the
21 detrimental impact that such a policy would have on the practice of private lending (and in
22 particular, the practice of issuing large loans for the construction of houses and commercial
23 buildings) in the CNMI. It also seems extraordinarily unlikely that the Framers intended to fabricate
24 and implement a new model of mortgage law through indirect language.⁵
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27 ⁵ Had the Constitution’s Framers intended Article XII, § 2 to require that the initiation of foreclosure proceedings
28 would automatically transfer an interest in the underlying property to the mortgagee (as the Sablans suggest), in doing
so they would have created an altogether new species of mortgage law. This is so because neither the lien theory *nor*
the title theory contemplates that a mortgagee acquires an interest in the real property underlying a mortgage upon the

1 Reading the plain language of Article XII, Section 2 together with the supplemental content
2 of the CNMI Real Estate Mortgage Law, this Court holds that the expression “transfer to a
3 mortgagee by means of a foreclosure” used in Art. XII, Section 2 refers to a mortgagee’s *purchase*
4 of a “permanent” or “long-term” interest in real property at a foreclosure sale. Thus, the only way
5 that an interest in the real property underlying a mortgage may be transferred to a mortgagee is if
6 the mortgagee first qualifies as a “full service bank, Federal Agency or entity of the CNMI
7 Government,” and purchases a long-term interest in real property in the CNMI at a foreclosure sale,
8 after which time it may hold that interest for up to ten years without the purchase constituting a
9 prohibited “acquisition.”
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11
12 When LPP was assigned the Sablans’ mortgages and promissory notes by SBA, it simply
13 stepped into SBA’s shoes, and like SBA before it, it did not derive any interest in the underlying real
14 property by holding the mortgages. The only “property interests” that LPP obtained when it
15 acquired the mortgages were the ones that SBA held before it: the ability to pursue foreclosure
16 through the Commonwealth Superior Court, and an interest in the proceeds of the sale of the
17 property when and if it was ever sold at a foreclosure sale. Further, LPP will not acquire any interest
18 in the underlying real property if those mortgages are ultimately foreclosed upon, unless it attempts
19 to purchase the property at the foreclosure sale and does not qualify within the exceptions to
20 “acquisition” stated at Art. XII, Section 2 of the CNMI Constitution.
21

22 **V. CONCLUSION**

23 For the foregoing reasons, this Court finds that LPP has stated a claim on which relief can
24 be granted, and that the Sablans have failed to establish an entitlement to judgment as a matter of
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initiation of *foreclosure*. As stated above, in a lien theory jurisdiction such as the CNMI, unless a contract between
28 the parties provides otherwise, mortgagees have no right to possess mortgaged properties, and in any case, mortgagees
have no right to privately sell those properties. In a *title theory* jurisdiction, the mortgagee acquires interests in the real
property upon the *acquisition* of the mortgage, rather than upon foreclosure.

1 law. Accordingly, the Sablans' MOTION FOR SUMMARY JUDGMENT OR DISMISSAL FOR FAILURE TO
2 STATE A CLAIM is DENIED.

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SO ORDERED this 15th day of June 2004.

/s/
RAMONA V. MANGLONA, Associate Judge