FOR PUBLICATION

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, ex rel. PAMELA BROWN, ATTORNEY GENERAL, **Plaintiff,** **v.** **ANA DEMAPAN-CASTRO, et al.** **Defendants.**	**CIVIL ACTION NO. 04-0563** **ORDER DENYING PARTIES' CROSS- MOTIONS FOR SUMMARY JUDGMENT**

On July 26, 2005, this Court heard arguments for cross-motions on summary judgment. Appearing at oral arguments and/or on the briefs were: Matthew T. Gregory and Alan L. Lane for defendant Marianas Public Land Authority (MPLA), Mark S. Smith for defendant the Board of Directors of MPLA, Ramon K. Quichocho for defendant Edward M. Deleon Guerrero, Antonio M. Atalig for defendant Jesus C. Tudela, as the Administrator of the Estate of Angel Malite, and Benjamin Sachs, Jeanne H. Rayphand, and Deborah L. Covington for the plaintiff. Having carefully considered the pleadings and the arguments of counsel, the Court is now prepared to rule.

FACTUAL AND PROCEDURAL BACKGROUND

The facts pertinent to this case were published in the Court's March 22, 2005 Order Denying Various Motions to Dismiss, With Some Treated as Motions for Summary Judgment. In summary, on November 9, 1978, the Trial Court of the Trust Territory of the Pacific Islands (hereafter, "TTC") awarded the Commonwealth of the Northern Mariana Islands ("CMNI") a 1.7-acre plot of land formerly belonging to Angel Malite. As compensation for this act of eminent domain, the TTC set aside $3,682.30. The TTC directed dispersal of this amount only after (1) all of the condemnees or their representatives filed a signed stipulation with the TTC, or (2) the TTC produced a judgment determining the distribution of the funds and the rightful recipients.

The Estate of Angela Malite ("the estate") was not probated until 1997. None of the $3,682.30 was ever distributed to the heirs. The location of these funds remains a mystery.

In 2004, pursuant to the 2002 Land Compensation Act (P.L. 13-17), the estate (through counsel Antonio M. Atalig) applied with the Marianas Public Lands Authority ("MPLA") for compensation. In August 2004, MPLA approved but did not disperse an award of $3.45 million. In December 2004, the Attorney General of the CMNI brought action against the MPLA and the estate to prevent distribution of this award, on grounds that it was excessive.

In October 2005, the estate filed an improper motion to reduce the TTC judgment to a CNMI judgment, to set it aside, and to award just compensation. Despite having been granted leave to file a ***separate action*** to address the TTC judgment, counsel for the heirs has thus far failed to do so. The Court reiterates the need for the estate to file an action, based on Com R. Civ. Pro. 60(b),[1] that is ***separate*** from both the instant action and the probate action.

PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT

Summary judgment under Com R. Civ. Pro. 56(c) should be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." The moving party "bears the initial and the ultimate burden of establishing its entitlement to summary judgment." *Santos v. Santos*, 4 N.M.I. 206, 210 (1995).

Disputed Material Facts

The estate's May 23, 2005 motion for summary judgment improperly characterizes several issues as undisputed fact. First, the estate cannot rest on mere allegations (some of which are inadmissible under the evidentiary rules) to assert a lack of notice with respect to the TTC proceedings.

[1] Com R. Civ. Pro. 60(b) offers relief from a judgment "on motion and upon such terms as are just," for several reasons, including where "(5) a prior judgment . . . is no longer equitable . . . or (6) any other reason justifying relief from the operation of the judgment."

The estate has offered no evidence in support of its claim that, "the Malite's [sic] were never given notice and the opportunity to be heard regarding their property," Motion for Summary Judgment at 2, other than the affidavits of two granddaughters of Angel Malite, neither of whom have personal knowledge of the TTC proceedings. The assertions of the granddaughters that, "According to my aunt, Joaquina Malite had no lawyers representing her in the condemnation action . . .My aunt never agreed to a compensation of . . . $3,682.00," Affidavits of Lourdes Malite Rangamar and Rosa Malite at ¶¶ 3-4, are hearsay that do not fall into any exception. *See* Com. Evid. R. 802, Civ. Proc. R 56(e).

Second, Mr. Atalig's statement regarding his conversation with Mr. Nabors, the attorney listed as representing the estate in the TTC judgment, is also hearsay not falling into any exception. Further, it is surprising that Mr. Atalig would blatantly disregard the rules of professional conduct prohibiting a lawyer from serving simultaneously as witness and counsel. ABA Model Rule of Professional Conduct 3.7.

Third, it is certainly not an "undisputed fact that . . . MPLA has exclusive jurisdiction in this land compensation matter." Motion for Summary Judgment at 5. This issue was settled in the Court's March 22, 2005 order, which held that the delegation of power to MPLA under the Land Compensation Act to adjudicate land claims does not prevent the Office of the Attorney General from bringing the instant action.

Finally, the most significant disputed fact is the valuation of the property at issue. Litigants have presented two competing valuations—one achieved by multiplying the number of square meters by $500, the other by multiplying the number of square meters by $0.50. Neither of these numbers agrees with the original TTC judgment of $3,682.30.

Considering that material facts remain in dispute, the Court cannot grant either party summary judgment.

Res Judicata

Res judicata, as the CMNI correctly states, depends not on whether there was a trial but whether there was a final judgment on the merits. *See* CMNI's Cross-motion for Summary Judgment at 8. However, the Restatement (Second) of Judgments §26 provides an exception to the general rule of res judicata when "it is clearly and convincingly shown that the policies favoring preclusion of a second action are overcome for an extraordinary reason, such as . . . the failure of the prior litigation to yield a coherent disposition of the controversy." The instant case presents such a scenario. The dismissal of this action on grounds of res judicata would leave the estate with a judgement from a court that no longer exists, and an award of a fund that cannot be found.

In sum, the Court will not grant the CMNI summary judgment based on its res judicata claim.

Statute of Limitations and the Land Compensation Act of 2002

The Court does not believe that the estate's claim is barred by the statute of limitations. First, the Court is not convinced that 7 CMC § 2501 sets forth an irrebuttable presumption that the passage of twenty years renders a satisfied judgment. The plain language of the statute reads: "A judgment of any court shall be ***presumed*** to be paid and satisfied at the expiration of 20 years after it is rendered." *Id.* (emphasis added). While the courts of some states with similar statutes have held the presumption to be conclusive, *see, e.g.*, *Wormington (Woolsey) v. City of Monett*, 218 S.W.2d 586 (Mo. 1949), others have not, *see, e.g.*, *Hays v. McCarty*, 195 So. 241 (Ala. 1940) (the statutory presumption of payment of judgment after ten years casts burden on plaintiff of proving that it is not satisfied); *In re Lefever's Estate*, 122 A. 273 (Pa. 1923) (after the lapse of 20 years, during which no demand has been made, there is a strong presumption that a judgment has been paid; however, it may be overcome by affirmative proof that the judgment has not been paid). The Court has not uncovered any CMNI cases in which the presumption of satisfaction was held to be irrebuttable.

In a CMNI case similar to the instant case, *Apatang v. Marianas Public Land Corporation*, 1 N.M.I. 142 (1989), the CMNI Supreme Court dismissed the applicability of the statute of limitations to a land compensation claim:

> [Claimant] received less land than what was agreed upon. His claim, but for P.L. 5-33[2] and 6-43, would be barred by the applicable statute of limitations addressed by Section 7 of the Schedule on Transitional Matters. P.L. 5-33 now permits the filing of such claims with MPLC. P.L. 6-43 clarifies that if a land claimant was "short-changed" by over 500 square meters he is "deemed inadequately compensated." ***The issues of laches, estoppel, and statute of limitations have little relevance, if any, to a determination of whether a claimant is entitled to the difference in land area promised and not conveyed. Here, by statute, any limitations bar and any defense of laches have been set aside to permit the filing of land exchange claims that were previously barred.*** . . . Whether [claimant] previously had a viable claim or not under either contract or property law is also irrelevant because P.L. 5-33 and P.L. 6-43 provides the basic elements required for consideration and compensation.

Id. at 156 (emphasis added).

The Court believes that the Land Compensation Act of 2002 had an intention similar to that of P.L. 5-33 and P.L. 6-43, as interpreted in the *Apatang* case: "The Legislature further finds that the current rate of payment is unacceptable . . .The purpose of this Act, therefore, is to . . .settle and to discharge outstanding land compensation claims against the Commonwealth." P.L. 13-17 § 2. The Land Compensation Act was enacted pursuant to Article XII § 1 of the CMNI Constitution, which requires the government to pay "just compensation" for private property taken for a public purpose. Committee on Ways and Means, Standing Committee Report No. 13-21, April 29, 2002. The Senate Standing Committee on Fiscal Affairs expressed support for "such scheme to the extent that all those whose lands have been taken away or is [sic] being used for a public purpose receive an equitable public land exchange or fair monetary compensation therefore." Standing Committee Report No. 13-29, July 3, 2002.

[2] P.L. 5-33 required MPLC, the predecessor to MPLA, to fully satisfy land exchanges "in which the full area of public land agreed upon was not conveyed to the landowner."

The Court is not convinced that the Land Compensation Act was intended merely for right-of-way purposes, although these purposes may take priority. The plain language of the statute, quoted in CMNI's brief, states that the MPLA "shall compensate the acquisition of private lands for right of way purposes . . . ***and other claims involving private land acquisition***" (emphasis added). P.L. 13-17 § 1. "Basic principle of statutory construction is that the language must be given its plain meaning." *Pellegrino v. Commonwealth*, 5 N.M.I. 242, 247 (1999). The CMNI has not shown that the estate's claim fails to fall into the category of "other claims involving private land acquisition."

The Court is not of the opinion that 1990 is the cut-off date for compensable takings. Again, the plain language reads that "This Act shall apply to land compensation claims against the Commonwealth Government ***submitted*** to the Marianas Public Land Corporation, or its successor agency, on or after January 1, 1990." P.L. 13-17 § 6 (emphasis added). The Act says nothing about the time frame in which the claim must have originated, it simply refers to claims submitted to the MPLA (in this case) after 1990. In the instant case, the estate submitted its claim in 2004.[3] This is within the time period for claim submissions.

Finally, the Court is not inclined to construe the Savings Clause in P.L. 13-17[4] in a manner that would bar any reconsideration of the TTC judgment. The Savings Clause preserves the right of the estate to use Com. R. Civ. P. 60(b) in attacking the TTC judgment.

In sum, the Court will not grant the CMNI summary judgment based on its statute of limitations claim.

---

[3] The Court acknowledges CMNI's statement that "On page 9 of their Memorandum [Defendants] admit that the claim was submitted to MPLA or its predecessors *before* January 1, 1990." However, the Court's March 22, 2005 ruling settled the time of taking: "The issue of this land then lay dormant from the 1978 judgment until June 30, 2004, when Antonio M. Atalig, representing the Malite Estate, made a presentation to the MPLA Board, in which he asked for payment of $3,450,000 for the land." Order at p. 3, l. 6. The Court chooses not to punish the estate for the carelessness of its lawyer in suggesting that the claim was submitted to MPLA prior to 1990.

[4] P.L. 13-17 § 10 reads: "This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes."

Amount of Compensation

The Court will not reach the issue of the merits of the amount of compensation at this time, other than to reiterate the sentiment expressed in the March 22, 2005 ruling that the date forming the basis of the MPLA appraisal, August 30, 1991, is inappropriate. As discussed with respect to the Motion to Reduce Judgment, the Court will consider the merits of TTC compensation award if and when the estate's claim is made in the proper form.

CONCLUSION

The cross-motions for summary judgment on behalf of the CMNI and the Estate of Angel Malite are DENIED.

SO ORDERED this 12th day of December 2005.

/s/_____
Juan T. Lizama
Associate Judge, Superior Court