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

IN RE THE ESTATE OF RITA KAIPAT, **Deceased.**	**CIVIL ACTION NO. 90-0840**
	ORDER FOLLOWING THE APRIL 18, 2006 HEARING ON THE OBJECTION TO DISTRIBUTION OF DOLORES PELISAMEN'S SHARE

This matter was last before the Court on April 12, 2006 and April 18, 2006 for an evidentiary hearing on the issue of Administrator Luis Pelisamen's ("Pelisamen's") liability for funds allegedly acquired from the leasing of portions of Lot 1772 (which belongs to the Estate of Vicenta Kaipat). Maria M. Yaisewil, Julita O.T. Kileleman, Jessica O.T. Roligat, and Victoria T. Moded objected to the distribution of Dolores Pelisamen's share of the Estate of Rita Kaipat (the "Estate") unless and until Pelisamen accounted for all money received from the lease of Lot 1772. The estate of Jesus Faisao joined in the objection. Appearing at oral arguments were:

1. Joseph A. Arriola for Pelisamen
2. Antonio M. Atalig for Alfred K. Pangelinan of Meridian Surveying and Juan I. Castro of Pacific Lands Surveying (collectively, "the surveyors") and the estate of Carmen Guelles (adopted daughter of Rita);
3. Jane Mack for Zenaida Laniyo, Administratrix of the estate of Alejandro I. Laniyo (son of Rita);

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4. Edward C. Arriola for Maria M. Yaisewil (heir to the estate of Nieves K. Olopai, Rita's daughter), and Julita O.T. Kileleman, Jessica O.T. Roligat, and Victoria T. Moded (heirs to the estate of Auria O. Tagabuel (daughter of Nieves);
5. Viola Alepuyo for the heirs of Isaac Kaipat; and
6. Joaquin Torres for Elia Odoshi, Administratrix of the estate of Jesus Faisao (son of Rita).

I. FINDINGS OF FACT

Having reviewed the testimony of Pelisamen, arguments from counsel, and the evidence submitted by movants, the Court makes the following findings of fact:

1. Pelisamen and/or his mother, Dolores, entered into leases for 5,628 square meters known as Lot 1772 New-1 with the following lessees:

a. Jo, Suk Kon for a term of 55 years beginning April 24, 1992, in exchange for $284,724;[1] and

b. Tony Glad and Manu Melwani for a term of 55 years beginning April 7, 1992, in exchange for $703,500.

2. There are one or more current lessees occupying parts of Lot 1772 that are not possessed by Pelisamen.

3. None of the lessees ever developed the property. Currently, none of the parties who entered into leases with Pelisamen are occupying the property.

4. No one who alleged that Pelisamen had improperly received funds could produce a witness to testify regarding the transfer of funds to Pelisamen.

5. Pelisamen did not recall whether Dolores had personally received funds. Pelisamen testified that some of the money received by Dolores was used to construct a house in Kagman for his aunt, Rosalia K. Olopai.

[1] This lease is recorded in various places with different commencement dates and different recitals of consideration.

6. In the lease to Jo, Suk Kon at ¶ 2, Pelisamen represented that the Lessor was "seized of the real property in fee simple" and warranted that he had "full right to make this lease."

7. At the hearing, Pelisamen admitted that his representation of full ownership in the Jo lease may have made a mistake. He testified that while he is the owner of the buildings on the land, the land belongs to the Kaipat family as a whole.

8. Jo, Suk Kon has not filed a claim against the Estate. At the hearing, Pelisamen testified that he hasn't seen Jo in more than fifteen years, and has never received payment from Jo.

9. Pelisamen admitted that he may have received checks for the Glad/Melwani lease, but stated that he never possessed the money. He endorsed the checks and negotiated them to an escrow account held by Pacific American Title Insurance & Escrow (CNMI), Inc.

10. Glad and Melwani have brought suit against the Estate. There has not yet been a hearing on this matter.

II. CONCLUSIONS OF LAW

There is no evidence that Pelisamen improperly retained funds belonging to the Estate. All the evidence before the Court suggests that any money received went directly into the escrow account. There is no evidence that Pelisamen received money from the escrow account.

The fact that Pelisamen leased out family land in his own name does not necessarily detract from his credibility. The Court recognizes that such a statement may be a product of Carolinian culture, in which any member of a family might refer to herself, individually, as the owner of family property. The Court places emphasis on Pelisamen's statement (made during the hearing) that he considers Lot 1772 to be family land.

The Court also recognizes that it is a common practice for Carolinians to lease undivided lands in their individual capacities. This is the situation in the instant case, where heirs other than Pelisamen have likewise rented out portions of Lot 1772 in their individual capacities. *See, e.g.*, Lease from Nieves O. Romolor to Ronaldo V. Lanuza of one-storey building and 1000 square

meters of land, dated March 1, 2000. This departure from American common law (which forbids leasing in the absence of consent from all co-tenants[2]) may need to be addressed by the Legislature. As long as the present state of murkiness continues, however, lessees of undivided land are entering leases at their own risk.

After reviewing the evidence, counsel for the objecting heirs is apparently satisfied that Pelisamen has not improperly retained funds belonging to the estate. At the April 18, 2006 hearing, counsel dropped the objection to the distribution, and asked the Administrator to quiet title to the land so that it can be distributed.

The Court is dismayed with the parties' focus on dealing out the liquid assets of the Estate. As counsel for the objectors may now recognize, the focus of probate litigation should be on settling the Estate and preserving family harmony. If the Administrator does not take the initiative to file quiet title actions against the former lessees, counsel for the other parties will have to move the Administrator to do so.

In the interest of facilitating probate, the Court hereby orders the Administrator to inform the other parties as to whether there are any clouds on the title of the property. Pelisamen will be compensated for taking the necessary actions to clear title (as these are costs associated with the probate procedure), unless the Court later finds that Pelisamen is responsible for clouding the title.

SO ORDERED this 26th day of April 2006.

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

[2] REST REST 125(2) comment b; *Reynolds v. Wilmeth*, 45 Iowa 693 (1877); *McCaw v. Barker*, 22 So. 131 (Ala. 1897); *Humphries v. Davis*, 100 Ind. 369 (Ind. 1885); *Brunscher v. Reagh*, 330 P.2d 396 (Cal. App. 1958); *Sequeira v. Sequeira*, 888 So. 2d 1097 (La. Ct. App. 5th Cir. 2004); *Horton v. Boatright*, 97 So. 2d 637 (Miss. 1957); *Gauger v. Gauger*, 376 A.2d 523 (N.J. 1977); *Cohen v. Cohen*, 297 A.D.2d 201 (NY App. 2002); *Parker v. Shecut*, 597 S.E.2d 793 (S.C. 2004); *Yakavonis v. Tilton*, 968 P.2d 908 (Wash. App. 1998); *Kyle v. Kyle*, 475 S.E.2d 344 (W. Va. 1996); *O'Connell v. O'Connell*, 117 A. 634 (N.J. 1922).