

1. **FOR PUBLICATION**

2.  
3. **IN THE SUPERIOR COURT**  
4. **OF THE**  
5. **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

6. **IN RE THE ESTATE OF**  
7. **MARIA TAISAKAN WABOL,**  
8. **Deceased.**

**CIVIL ACTION NO. 04-0173**

**ORDER FOLLOWING THE OCTOBER 24,**  
**2006 EVIDENTIARY HEARING**

9.  
10. This matter was last before the Court for an evidentiary hearing concerning the distribution  
11. of land belonging to the Estate of Maria T. Wabol (“Maria”). Brien Sers Nicholas appeared on  
12. behalf of the Administrator for the Estate of Jesus Wabol (“Jesus”). Joseph Arriola appeared on  
13. behalf of the Administrator of Maria’s Estate, Francisco Wabol (“Frank”).

14. **FINDINGS OF FACT**

15. Maria inherited Lot No. 1774-4 in Chalan Lau Lau from her mother, Ramona Wabol. When  
16. Maria died on October 19, 1974, the land was left to her children, Jesus, Teresa, Jose, Louis,  
17. Monica, and Frank. Teresa, the oldest daughter, served as administratrix of her mother’s estate until  
18. her death on July 13, 2005. Frank substituted as administrator on October 11, 2005.

19. In 1983, Teresa initiated a meeting to discuss the distribution of Lot No. 1774-4. The  
20. siblings met at Teresa’s house in San Vicente, but moved the meeting to the family property at Lot  
21. No. 1774-4 when Jesus did not show. Jess, the younger son of Jesus, testified that his father never  
22. attended family meetings as he was not on good terms with his siblings. Jess testified that he (Jess)  
23. was not aware that a meeting was occurring until he woke up in the afternoon and heard the siblings  
24. talking outside of his house. (At that time, Jess lived in a house on Lot No. 17-74-3.) Jesus had not  
25.  
26.

1. asked Jess to represent Jesus, but Louis invited Jess to participate. Whether Jesus was mentally  
2. incompetent at the time of this meeting is disputed.<sup>1</sup>

3. Frank, the youngest son of Maria, stated that Jesus did not participate in the meeting other  
4. than to request the portion of property containing mango and avocado trees. According to Frank, the  
5. siblings decided to divide the property into six equally sized parcels. Louis was given Lot No. 1774-  
6. 4-4, as he had already built a concrete house on this portion. Frank testified that Jesus was given Lot  
7. No. 1774-4-5. Jess testified that Jesus stayed in the family house, the first structure that was built, on  
8. Lot No. 74-4-R1, and that it was Frank's idea to put him on Lot No. 74-4-5.

10. The rest of the siblings picked their own portions. Frank stated that Monica selected Lot No.  
11. 1774-4-1, Jose selected Lot No. 1774-4-3, and Teresa selected Lot No. 1774-4-R1.<sup>2</sup>

12. According to Frank, Teresa drew a sketch of the division, and all siblings approved the  
13. sketch. The siblings hired Takai and Associates to survey the land. Frank and Louis observed the  
14. surveying. Jess stated that he never saw surveyors on the land, although he saw the surveyors'  
15. markers.

16. The surveyors created a map, dated August 16 1995, which only Frank signed. Jess stated  
17. that he did not see the map until 2005.

19. On September 6, 1989, Monica transferred her share to Frank. The siblings dispute whether  
20. Monica specifically transferred Lot No. 1774-4-1 to Frank, or Frank simply received her undivided  
21. share. Frank testified that Monica prepared the documents of sale, and that it was understood that  
22. the probate would have to be completed before Frank would get Monica's share. The documents of  
23. sale do not specifically refer to Lot No. 17-74-1.

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25. <sup>1</sup> A June 2, 2005 decree of distribution was set aside upon a finding that Jesus was incompetent, such that notice  
26. of the proposed distribution should have been served on him through a guardian. Jesus's son Bonifacio was appointed as  
Jesus's guardian. Jesus died August 19, 2005.

<sup>2</sup> The amended petition designates Lot No. 1774-4-1 to both Frank and Teresa. Counsel for Frank suggested that  
this was a typographical error, as Teresa should have been assigned Lot No. 1774-4-R1.

1. Frank testified that he never built anything on Lot No. 1774-4-1, but that he maintained the  
2. property from the 1970s to the 1990s (when he moved off of Lot No. 1774-4). Other parties may  
3. have also maintained the land.

4. Bonifacio, Jesus's son, began occupying part of Lot No. 1774-4-1 around 1986. According  
5. to Frank, Bonifacio stated that he was using the land for farming, and would vacate this portion after  
6. the division of Lot No. 1774-4. Frank allegedly informed Bonifacio that the land was already  
7. divided, and Bonifacio allegedly said he would remain on the land until told to vacate. Bonifacio  
8. denies indicating that he would vacate the property.

9. Bonifacio did not vacate Lot No. 1774-4-1. Instead, he rented portions of Lot No. 1774-4-1  
10. and kept the proceeds. Frank testified that several years ago he saw cars belonging to tenants parked  
11. on Lot No. 1774-4-1. Frank advised Bonifacio to vacate the premises. Bonifacio has continued to  
12. maintain the property.  
13.

#### 14. CONCLUSIONS OF LAW

15. The Court's policy is to apply customary law whenever appropriate.<sup>3</sup> Under Carolinian law,  
16. the oldest daughter (Teresa) would serve as the trustee of family land. *See Estate of Jose Camacho*,  
17. No. 05-0545 (Super Ct. Feb. 27, 2006), *Amended Order Partially Denying Defendant's Motion to*  
18. *Dismiss*. Teresa deviated from this custom when she initiated the division of the land. Thus, it is not  
19. appropriate to apply Carolinian law,<sup>4</sup> and statutory or common law should be followed.

20. Under statutory and common law, the alleged transfer of Lot No. 1774-4-1 from Monica to  
21. Frank fails for several reasons. First, there is no evidence that there was a "meeting of the minds" on  
22.

23. \_\_\_\_\_  
24. <sup>3</sup> The former 1 TTC § 102 offers guidance in determining the distribution of property for people who died  
25. intestate before February 15, 1984. *In re Estate of Cabrera*, 2 N. M. I. 195, 204 (1991). The statute stated that the  
26. customs of Trust Territory inhabitants were to have full force and effect of law so far as they were not in conflict with  
other laws.

<sup>4</sup> *See In Re Isaac Kaipat*, No. 05-0247 (Super. Ct. Apr. 25, 2006), *Order Following Evidentiary Hearing and Denying Heirship Claim on Behalf of the Estate of Dolores K. Pelisamen* (finding the application of Carolinian custom inequitable and unprecedented where neither the parties nor the courts had applied Carolinian custom to the distribution of family property); *Diaz v. Taylor*, Civ. No. 97-0879 (Super. Ct. 1998).

1. Frank's proposed property distribution. Only Frank signed the surveyors' map. It is unclear whether  
2. Jesus was even aware of the proposed distribution. Second, the statute of frauds would have  
3. prevented the transfer of land unless it were specifically memorialized in a written document.<sup>5</sup>  
4. Third, an heir is not entitled to distribution until the court determines which party is going to receive  
5. each share. *In re Estate of Cabrera*, 2 N.M.I. 195, 210 (N.M.I. Supr. Ct. 1991). Given that probate  
6. was not complete, Monica could not have transferred title of a particular section of Lot No. 1774-4  
7. to Frank. Finally, once Monica had transferred her undivided share, she had no further say in the  
8. matter of distribution. She could not designate a particular piece of property to Frank.  
9.

10.         Given the disagreement over how to divide the property, the Court must divide the property  
11. using equitable principles. Equitable distribution of property requires courts to use their  
12. discretion to balance the relative significance of the facts and applicable law in order to achieve a  
13. fair and equitable result. *United Park City Mines Co. v. Stichting Mayflower Mountain Fonds*, 140  
14. P.3d 1200, 1207 (Utah 2006). A party who has made improvements to the property (in this case, by  
15. adding buildings) should receive the benefit of the enhancement if this result can be achieved  
16. equitably. *Schroeder v. Lawhon*, 922 So.2d 285, 294 (Fla.App.2.Dist. 2006). *See also Carter v.*  
17. *Brewton*, 396 So.2d 617, 619 (Miss. 1981) (co-tenants should retain their houses as improvements  
18. on the land, if practicable).  
19.

20.         In the instant case, it is equitable to assign Lot No. 1774-4-4 to Louis, as he had already built  
21. a concrete house on this portion. Lot No. 1774-4-3 is assigned to Jose. Francisco shall receive Lot  
22. No. 1774-4-2, the property he originally picked. He shall also receive Lot No. 1774-4-5, which is  
23. undeveloped and adjacent to Lot No. 1774-4-2. The Estate of Teresa shall receive Lot No. 1774-4-  
24.

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25. <sup>5</sup> See 4 CMC 4912. Before the promulgation of this statute on October 28, 1983, oral conveyances of land were  
26. permissible in the Commonwealth. *See Guerrero v. Guerrero*, 2 N.M.I. 61 (1991). The current Statute of Frauds still  
recognizes the validity of traditional oral wills or *partidas*. 2 CMC § 4916; *In re Estate of Barcinas*, 2 N.M.I. 437  
(1992). However, the division about which Frank testified was not a *partida* or oral will. It was initiated by the siblings  
after the decedent's death.

1. R1. The Estate of Jesus shall receive Lot No. 1774-4-1, which has already been developed by  
2. Jesus's heirs.

3. Currently, an easement runs through Lot No. 1774-4, dividing the two estates that the Court  
4. has assigned to Frank. If feasible, Frank has the option of joining his estates by moving the easement  
5. to the back of Lot Nos. 1774-4-5 and 1774-4-R1. Such relocation would be consistent with the  
6. division of land according to its highest and best use. If all of the parties do not agree to this option,  
7. they shall appear for a status conference on October 31, 2005 at 1:30 p.m. in Courtroom 217.  
8.

9.  
10. SO ORDERED this 27<sup>th</sup> day of October, 2006.

11. /S/  
12. \_\_\_\_\_  
13. Juan T. Lizama  
14. Associate Judge, Superior Court

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