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FOR PUBLICATION

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

IN RE: ESTATE OF MARIA V. PANGELINAN) **CIVIL ACTION NO. 15-0111**
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)
) **FINDINGS OF FACT AND**
) **CONCLUSIONS OF LAW**
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Deceased.

I. INTRODUCTION

THIS MATTER came before the Court on June 30, 2016 and July 1, 2016 in Courtroom 205A on the Estate of David E. Pangelinan’s (David’s Estate) Motion for an Order in Aid of Judgment and Notice of Claims. David’s Estate was represented by Attorney Peter Prestley. The Estate of Maria V. Pangelinan (Maria’s Estate) was represented by Attorney Michael Evangelista.

At the hearings, the Court heard arguments from counsels and their witnesses, contesting ownership of two properties located on Saipan, Commonwealth of the Northern Mariana Islands. The disputed properties include (1) Tract No. 21975 (“the Kagman Property”); and (2) Lot No. 1897-B2-1 (“the Garapan/Ming Palace Property”). Essentially, the parties disagree on whose Estate the properties belong to. At the conclusion of the hearing, the Court ordered the parties to submit their respective proposed findings of fact and conclusions of law.

1 The Court, having considered the evidence presented at trial, the arguments raised by parties
2 in the record, and their proposed findings of fact and conclusions of law, hereby enters the
3 following ORDER:

4 **II. FINDINGS OF FACT**

5 After reviewing the evidence and the credibility of the witnesses, the Court FINDS the
6 following facts were established by a preponderance of the evidence.

- 7 1. David E. Pangelinan (“David”) and Maria V. Pangelinan (“Maria V.”) were married on
8 March 5, 1965 on Guam.
- 9 2. Maria V. is a Chamorro and is of Northern Mariana descent. David is a Chamorro, but is
10 not of Northern Mariana descent.
- 11 3. David and Maria V. had three children from their marriage: (a) Steven Villagomez
12 Pangelinan (“Steven”); (b) Jane Pangelinan Lizama (“Jane”); and (c) MaryAnn
13 Pangelinan Morrison (“MaryAnn”).
- 14 4. David and Maria V. were separated in March of 1997.
- 15 5. On October 22, 1997, Maria V. filed for divorce (FCD-DI Civil Action No. 97-0128).
16 The Court rendered a final divorce decree on August 26, 1998.
- 17 6. At the time of their divorce, David and Maria V.’s marital estate included personal and
18 real property including, but not limited to, the Garapan/Ming Palace Property, as well as
19 the right to receive rental payments from the Ming Palace, a restaurant that leased the
20 Garapan/Ming Palace Property until the year 2041 and pays \$3,327 rental per month.
- 21 7. Following David and Maria V.’s divorce, David married his second wife, Maria Corazon
22 B. Pangelinan (“Maria Corazon”), and adopted Maria Corazon’s daughter, Jamille
23 Pangelinan (“Jamille”).
24

- 1 8. On February 2, 2000, the Court issued an Order for Final Distribution, ordering that the
2 two properties be divided as follows:

3 Kagman Property . . . [E]ach party shall have a present undivided one-
4 half interest in Tract No. 21975. . . . Such interest shall be in strict
5 accord with the Commonwealth Marital Property Act and with Article
6 XII of the Commonwealth Constitution. [David] is not of Northern
7 Marianas descent and is therefore restricted to an interest in such
8 property not to exceed a period of 55 years. . . . *As such, [David]'s*
9 *interest in Kagman Tract No. 21975 is limited to the term of [David]'s*
10 *life, such term not to exceed 55 years.*

11 Garapan/Ming Palace Property. . . [E]ach party shall have a present
12 undivided one-half interest in Lot No. 1897-B2-1. . . . Such interest
13 shall be in strict accord with the Commonwealth Marital Property Act
14 and with Article XII of the Commonwealth Constitution. [David] is
15 not of Northern Marianas descent and is therefore restricted to an
16 interest in such property not to exceed a period of 55 years. . . . *As*
17 *such, [David]'s interest in Lot 1897-B2-1 is limited to the term of*
18 *[David]'s life, such term not to exceed 55 years.*

19 Presently, Lot 1897-B2-1 is subject to a lease agreement with Ming
20 Palace. . . . The parties shall make an equal division of this rental
21 income derived from such agreement *for the remaining term of the*
22 *lease. . . .*

23 (emphasis added)

- 24 9. On February 14, 2000, David filed a motion to reconsider the Court's Final Distribution
Order, dated February 2, 2000. Specifically, David sought an amendment regarding the
Kagman property. However, no amendment was sought as to the Garapan/Ming Palace
Property.

10. On April 5, 2000, the Court issued an Amended Final Distribution Order modifying its
award of the Kagman Property only:

Kagman Property . . . [E]ach party shall have a present undivided one-
half interest in Tract No. 21975. . . . Such interest shall be in strict
accord with the Commonwealth Marital Property Act and with Article
XII of the Commonwealth Constitution. [David] is not of Northern
Marianas descent and is therefore restricted to an interest in such
property not to exceed a period of 55 years. . . . *As such, [David]'s*

1 *interest in Kagman Tract No. 21975 shall be for a term not to exceed a*
2 *period of 55 years and at the expiration of such period all interest in*
3 *said property shall revert to [] [Maria V.].*

3 (emphasis added).

4 11. Subsequently, on January 27, 2005, the Court issued an Order in Aid of Judgment for
5 the two properties:

6 Kagman Property Tract No. 21975 located in Kagman shall be divided
7 equally between the parties, the method and manner of the division to
8 be agreed between the parties. Thereafter, *[Maria V.] shall execute a*
9 *lease for a period of 55 years to [David] in his own name. In the event*
10 *the parties are unable to reach an agreement as to how the property*
11 *shall be divided, either party may apply to the Court for the entry of an*
12 *order for equitable division.*

13 Garapan/Ming Palace Property *[David] is entitled to receive fifty*
14 *percent (50%) of any rentals due and owing arising out of the parties’*
15 *lease to the Ming Palace Restaurant. The Ming Palace Restaurant shall*
16 *continue to make payment equal to one-half of all payment due as*
17 *stated within the lease, without any deduction therefrom, to [David].*

18 (emphasis added).

19 12. Maria V. failed to execute a lease to David pursuant to the Court’s January 27, 2005
20 Order.

21 13. On May 10, 2005, the Court issued a second Order in Aid of Judgment. Again, the Court
22 confirmed that “[David] is entitled to receive fifty percent (50%) of any rentals due and
23 owing arising out of the parties’ lease to the Ming Palace Restaurant.” Again, the Court
24 ordered that “Tract No 21975 located in Kagman shall be divided equally between the
25 parties Thereafter, the plaintiff shall execute a lease for a period of 55 years to
26 [David] in his own name.”

27 14. Maria V. failed to execute a lease to David pursuant to the Court’s May 10, 2005 Order.

28 15. On May 22, 2008, the Court issued a third Order in Aid of Judgment. In that Order, the
29 Court accepted David’s proposed division of the Kagman Property and maintained that

1 the property shall also be divided as “per the terms set forth in the Order in Aid of
2 Judgment entered . . . on May 10, 2005.”

3 16. Maria V. failed to execute a lease to David pursuant to the Court’s May 22, 2008 Order
4 and has since passed away having never executed the lease the Court ordered her to
5 complete.

6 17. On December 4, 2013, David executed a Last Will and Testament (“Will”) bequeathing
7 to Maria Corazon all rights, title, and interest in the Garapan/Ming Palace Property, the
8 Kagman Property, and a Chalan Kanoa Property. David further stated in his Will, “It is
9 expressly my intent that my natural children take nothing under this will, from my
10 estate, as they have each received benefits and property from me during my lifetime.”

11 18. During the weeks just prior to his death, around the end of September and early October
12 of 2014, David suffered a debilitating medical emergency and was admitted to the
13 Commonwealth Healthcare Corporation where he remained until he died.

14 19. While David remained at the hospital before he passed away on October 10, 2014,
15 David entertained visitors during this time and was generally talkative and in good
16 spirits. David’s son, Steven, testified that David attempted to call the family together on
17 October 6, 2014 for the purpose of performing a partida ceremony wherein David
18 intended to transfer his interest in the Kagman Property to Steven, Jane, and MaryAnn,
19 in contravention of the disposition of his Will. According to Steven, the people present
20 at the partida were him, his new girlfriend, Gina Bacani, and his mother, Maria V., who
21 was by that time David’s ex-wife.

22 20. On October 6, 2014, David executed an affidavit conveying all his interest in the
23 Kagman Property in equal parts to Steven, Jane, and MaryAnn.

24 21. David passed away on October 10, 2014.

1 22. Since David's death, David's natural children have refused to share any of the rental
2 proceeds from the Ming Palace lease with David's wife, Maria Corazon, or his adopted
3 daughter, Jamille.

4 23. On February 9, 2016, David's Estate filed a motion in aid of judgment, requesting the
5 Court "for an order in aid of judgment directing the Clerk of Court to issue and execute a
6 lease to the [Kagman Property] to David's Estate" and "for an order awarding David's
7 Estate one-half of the rental income derived from the lease of the Garapan/Ming Palace
8 Property for the remaining term of the Ming Palace lease."

9 24. On April 13, 2016, David's Estate filed a Notice of Claim in this probate action (Civil
10 Action No. 15-0111), opposing the inclusion of the following properties as properties of
11 the decedent, Maria V., in Civil Action No. 15-0111: (1) Portion of David's interest in
12 the Kagman Property; and (2) one-half of the rental income on the Garapan/Ming Palace
13 Property.

14 **III. CONCLUSIONS OF LAW**

15 Three issues are before the Court: (1) under whose Estate, David or Maria V., does the
16 Kagman Property belong to; (2) under whose Estate, David or Maria V., does the Garapan/Ming
17 Palace Property belong to; and (3) whether David's Estate is entitled to one-half of the rental
18 income on the Garapan/Ming Palace Property for the duration of the lease.

19 **A. David's One-Half Interest in the Kagman Property Belongs in David's Estate.**

20 Maria's Estate argues that David's Estate has no claim whatsoever to the Kagman Property
21 because he has effectively conveyed his one-half interest in the Kagman Property by way of either
22 partida or deed of gift. Specifically, Maria's Estate asserts that David performed a valid partida to
23 his three natural children: Steven, Jane, and MaryAnn. According to Maria's Estate, the partida was
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1 valid notwithstanding David’s status as a non-Northern Marianas descent because he passed good
2 title to his Northern Marianas descent children.

3 Notwithstanding the partida, Maria’s Estate also contends that David executed a valid deed
4 of gift conveying his one-half interest in the Kagman Property to his three natural children.
5 According to Maria’s Estate, the elements of a valid gift were satisfied (donative intent, delivery,
6 and acceptance), such that David signed the affidavit of conveyance, parted with the document,
7 gave it to his natural children, and was recorded at the Commonwealth Recorder’s Office.

8 Despite Maria’s Estate’s contention that either a partida or deed of gift of the Kagman
9 Property divested David of his one-half interest in the Kagman Property, the Court finds to the
10 contrary.

11 ***1. Only persons with a long-term interest in land may perform a partida.***

12 The Court considers whether David, a person who is not of Northern Marianas descent, may
13 effectively convey his interest in property by way of partida. Although there are no Commonwealth
14 cases that have decided this specific issue, the Court is convinced that a partida may be performed
15 only by persons of Northern Marianas descent. In *In re Estate of Seman*, the Commonwealth
16 Supreme Court defined partida as a “mechanism under which *succession to family land* under
17 Chamorro customary law is effectuated.” 4 NMI 129, 132 (1994) (emphasis added). See also *In re*
18 *Estate of Deleon Castro*, 4 NMI 102, 110 (1994) (“A partida is the distribution of *family land*
19 holding under Chamorro custom.”) (emphasis added). Both of these cases envision the passage of
20 family lands from the father to his children in order for a valid partida to take place. Family land is
21 defined as “land acquired by any person by law or decision of the family or by inheritance from one
22 or more Carolinian ancestors, and held by the person as customary trustee for the use of the family
23 members.” 8 CMC § 2107(1). Based on the Court’s reasonable interpretation of the term “family
24 land,” the Court is persuaded that ownership of family lands require more than mere possessory

1 interest in the land, but a permanent and long term interest in land. Long-term interest in land is
2 exclusive to persons of Northern Marianas descent. *In re Roberto*, 2003 MP 16 ¶ 25 (“[A] non-
3 NMD purchaser does not acquire ownership of the land. However, the non-NMD does acquire a
4 bare right of possession.”); NMI CONST. art. XII, § 4 (Article XII limits the ownership of real
5 property to NMDs). The aim of Commonwealth probate law is “to discover and make effective the
6 intent of a decedent in distribution of his property . . . and to realize the compelling interest of the
7 Northern Mariana Islands in preserving the historic traditions and culture of its citizens of Northern
8 Marianas descent.” *In re Estate of Seman*, 4 NMI at 129 (citing 8 CMC § 2104(b)). Thus, this Court
9 concludes that a partida is a recognized historic tradition involving the succession of family lands,
10 which is a unique and distinct right afforded only to persons of Northern Marianas descent.

11 Moreover, Maria’s Estate cites to *In re Roberto* for the position that “even a non-NMD who
12 does not acquire ownership of land, but a bare right of possession, may pass good, fee-simple title
13 to any person or entity legally capable of owning such an interest in the commonwealth.” 2003 MP
14 16 ¶ 25. Maria’s Estate misinterprets *In re Roberto*’s holding. The instant case is easily
15 distinguishable. In *In re Roberto*, the Supreme Court dealt with the issue of whether a person who
16 is not of Northern Marianas descent, and who illegally obtained fee-simple interest title to a
17 property, may pass good title to a person of Northern Marianas descent. There, the Supreme Court
18 held that a non-NMD’s right of possession may become superior to the grantor and could transfer
19 good title to persons of Northern Marianas descent once the statute of limitations of six years have
20 passed. In the case at bar, there is neither an issue as to the statute of limitations nor was there an
21 illegal conveyance of fee-simple title in the Kagman Property to David. The Court previously ruled
22 that David is entitled only to one-half interest in the Kagman Property, not to exceed 55 years.
23 Therefore, the Court finds Maria’s Estate’s reliance on *In re Roberto* unpersuasive.

1 **2. David cannot convey his one-half interest in the Kagman Property by deed of gift.**

2 Maria's Estate argues that David effectively conveyed his one-half interest in the Kagman
3 Property to his three natural children by deed of gift. The alleged deed of gift (expressed in the
4 form of an affidavit) reads, in part:

5 I, David Edward Pangelinan . . . have no interest in Kagman I.

6 I would like to see that [Tract No. 21975] divided equally to my son,
7 Steven Villagomez Pangelinan, my daughter Jane Pangelinan Lizama
8 and my daughter MaryAnn Pangelinan Morrison.

8 At first glance, the affidavit appears to show that a valid deed of gift has been made.
9 However, the Court is compelled to consider whether a person of non-Northern Marianas descent
10 may transfer his interest in real property by deed of gift if he only had a possessory interest in it. As
11 articulated above, "a non-NMD does not acquire ownership of land, but only a bare right of
12 possession." *In re Roberto*, 2003 MP 16 ¶ 25. "To make a gift of property, the donor must transfer
13 an ownership interest to the donee without consideration and with donative intent. Acceptance by
14 the donee is required for a gift to become complete." Restatement (Third) Property: Wills and Other
15 Donative Transfers § 6.1(a),(b) (2003). Additionally, "[a] gift only occurs if the donor makes an
16 effective transfer of an ownership interest. . . . In order to make an effective transfer of an
17 ownership interest, the donor must own the property being transferred. . . . The donor cannot
18 transfer to the donee a greater ownership interest in the property that the donor owns." Restatement
19 (Third) Property: Wills and Other Donative Transfers § 6.1 cmt. a. (2003)). In the present case,
20 because David did not have any ownership interest in the Kagman Property, but merely had a
21 possessory interest in it, David could not have conveyed his interest in the Kagman Property by
22 deed of gift.

23 Based on the foregoing, David could not have conveyed his one-half interest in the Kagman
24 Property to his children by way of partida or deed of gift. Therefore, pursuant to Rule 70 of the

1 Commonwealth Rules of Civil Procedure (“Rule 70”), the Clerk of Court is ordered to execute a 55-
2 year lease to the Kagman Property on behalf of Maria V. to David, his heirs, or assigns, consistent
3 with this Court’s prior orders. Also, pursuant to Rule 70, Maria’s Estate is ordered to pay all costs
4 associated with the drafting of said lease due to Maria V.’s willful disobedience in executing the
5 lease during her lifetime despite the Court’s several orders compelling her to do so.

6 **B. David’s One-Half Interest in the Garapan/Ming Palace Property Terminated upon**
7 **His Death, but His Estate is Entitled to One-Half of the Rental Income from Ming**
8 **Palace for the Duration of the Lease.**

9 **1. David’s One-Half Interest in the Garapan/Ming Palace Property Terminated Upon**
10 **His Death.**

11 Based on the parties’ filings, the parties generally agree that David’s one-half interest in the
12 Garapan/Ming Palace Property terminated upon his death. Indeed, in the Court’s Final Distribution
13 Order, the Court awarded David a one-half interest in the Garapan/Ming Palace Property “limited
14 to the term of [David]’s life, such term not to exceed 55 years.” David passed away on October 10,
15 2014. Therefore, David’s interest in the underlying property has been terminated and any interest
16 thereon reverted to Maria’s Estate.

17 Although David’s interest in the Garapan/Ming Palace Property had concluded, the parties
18 dispute David’s right to receive rental income from the Ming Palace for the duration of the lease,
19 which expires on 2041.

20 **2. While the Court Finds that Rental Income from the Ming Palace Lease is an Interest**
21 **in Land, the Court Nevertheless Finds that David’s Estate is Entitled to Receive**
22 **Rental Income for the Duration of the Lease.**

23 David’s Estate argues that David’s right to receive rental proceeds is a personal property
24 interest and not an interest in land. This is incorrect. In *Stephanson v. Teregeyo*, the Commonwealth
Supreme Court disagreed with this Court when we found that “an interest in the rental proceeds of
real property is not an interest in real property, but rather, an interest in monetary income derived

1 from the use of real property.” 2008 MP 13 ¶ 18 (referring to Superior Court order, *Stephanson v.*
2 *Teregeyo*, Civ. No. 01-0497E (Decision and Final Order at 9)). The Supreme Court ultimately held
3 that “rents from real estate are deemed to be realty rather than personalty. *Id.* (quoting Restatement
4 (Third) of Property: Mortgages § 4.2 cmt. a. (1997)). Concluding similarly, this Court finds that
5 David’s right to one-half interest in rental income from the Ming Palace lease is an interest in land.
6 Therefore, if David’s right to rental income constitutes a long-term or permanent interest under
7 Article XII, this Court must extinguish his right to receive such income in violation of Article XII.
8 *See* NMI CONST. art. XII, § 3 (“The term permanent and long-term interests in real property . . .
9 include[] freehold interests of more than fifty-five years. . .”).

10 In its Final Distribution Order, this Court previously awarded David one-half interest in the
11 Garapan/Ming Palace Property for the duration of his life, or up to 55 years, whichever comes first.
12 The Court also included a second provision awarding David one-half interest in the rental income
13 for the duration of the lease, which expires on 2041. The Court agrees with David’s Estate that the
14 Court purposely made a distinction between David’s right to receive one-half of the proceeds from
15 the lease, and David’s interest in the underlying land itself. Here, since David was awarded one-
16 half interest of the rental proceeds until the lease expires on 2041, which is no more than 55 years,
17 the Court finds that David’s right to receive rental income for the duration of the lease does not
18 violate Article XII.

19 Based on the foregoing, the Court finds that David’s Estate has a right to one-half of the
20 rental proceeds from the Ming Palace lease through the year 2041.

21 V. CONCLUSION

22 Based on the abovementioned reasons, the Court finds as follows:

- 23 1. Pursuant to Rule 70 of the Commonwealth Rules of Civil Procedure, the Clerk of Court
24 is ordered to execute a 55-year lease to the Kagman Property on behalf of Maria V. to

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David, his heirs, or assigns, consistent with this Court’s prior orders. Also, pursuant to Rule 70, Maria’s Estate is ordered to pay all costs associated with the drafting of said lease due to Maria V.’s willful disobedience in executing the lease during her lifetime despite the Court’s several orders compelling her to do so;

2. David’s interest in the Garapan/Ming Palace Property has been terminated and any interest thereon reverted to Maria’s Estate; and
3. David’s Estate has a right to one-half of the rental proceeds from the Ming Palace lease through the year 2041.

SO ORDERED this 3rd day of November, 2016.

/s/
KENNETH L. GOVENDO
ASSOCIATE JUDGE