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By order of the Court, Pro Tem Judge David A. Wiseman

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

PAUL A. MANGLONA,) CIVIL ACTION NO. 17-0140
)
Plaintiff,)
v.) ORDER RE
) EVIDENTIARY RULINGS
PRISCILLA M. TORRES, THOMAS A.)
MANGLONA, VINCENT A.)
MANGLONA, JOHN A. MANGLONA,)
CHARLES A. MANGLONA,)
PRUDENCIO A. MANGLONA,)
ADMINISTRATOR[S] OF THE ESTATE)
OF FRANCISCO A. MANGLONA, CO-)
ADMINISTRATORS OF THE ESTATE)
OF BERNADITA A. MANGLONA, AND)
ALL OTHER PERSONS UNKNOWN,)
CLAIMING ANY LEGAL OR)
EQUITABLE RIGHT, TITLE, ESTATE,)
LIEN, OR INTEREST IN THE)
PROPERTY ADVERSE TO)
PLAINTIFF’S TITLE, OR ANY)
CLOUDED PORTION THERETO,)
Defendants.)

I. INTRODUCTION

THIS MATTER came before the Court for bench trial on February 20, 2018 at 9:30 a.m. in Courtroom 202A.¹ Attorneys Mark A. Scoggins and Rene Holmes represented Plaintiff Paul A. Manglona (“Plaintiff”). Attorney Samuel I. Mok represented Defendants Priscilla M. Torres and Thomas A. Manglona in their personal capacities and in their official capacity as Co-Administrators

¹ The bench trial continued on February 21, 2018 and February 22, 2018.

1 (“Co-Administrators”) for the Estate of Bernadita A. Manglona (“BAM Estate”). Defendants
2 Vincent A. Manglona, John A. Manglona, Charles A. Manglona, and Prudencio A. Manglona
3 appeared pro se. During the course of the bench trial, the Court took a number of evidentiary
4 rulings under advisement. More specifically, the Court reserved rulings as to: (1) the admissibility
5 of Defendants’ Exhibit 4, Prudencio T. Manglona’s (“PTM”) declaration dated April 10, 2014
6 (“PTM Declaration”); (2) the admissibility of Defendants’ Exhibit 9, Prudencio T. Manglona’s
7 affidavit dated December 10, 2013 (“PTM Affidavit”); and (3) the admissibility of Reed C. Hayes’
8 expert report dated July 3, 2017 (“Hayes Report”). The Court took the foregoing matters under
9 advisement with this order to follow.

10 **II. BACKGROUND**

11 This case concerns a dispute over real property, Lot 026 E 01, which both Plaintiff and Co-
12 Administrators claim to have an interest in by virtue of competing deeds of gift. The dispute over
13 Lot 026 E 01 has been long running and has centered on the validity of a July 11, 1985 deed of gift,
14 which purported to transfer Bernadita A. Manglona’s (“BAM”) interest in Lot 026 E 01 to Plaintiff.
15 All the named Defendants, except for Charles A. Manglona and Prudencio A. Manglona, have
16 claimed that the July 11, 1985 deed of gift is a forgery.² Much of the bench trial has centered on
17 each side attempting to prove that the deed of gift is either genuine or a forgery. During
18 presentation of the evidence each side presented a number of exhibits for admission. Defendants
19 have sought introduction of the PTM Declaration and the Hayes Report, arguing a number of
20 theories for admission. Plaintiff has objected to both the PTM Declaration and the Hayes Report
21 arguing that both are inadmissible hearsay not within a recognized hearsay exception. Plaintiff has
22 sought the admission of the PTM Affidavit. Defendants have objected on the grounds that the PTM
23 Affidavit is inadmissible hearsay not within a recognized exception. Further, Defendants claim that

24 ² The Court will refer to all defendants other than Charles A. Manglona and Prudencio A. Manglona as “Defendants.”

1 the PTM Affidavit lacks reliability because Plaintiff admitted during his testimony that the affidavit
2 was signed by PTM while he was hospitalized and in medical distress. The Court is tasked with
3 ruling on the admissibility of the aforementioned exhibits.

4 **III. DISCUSSION**

5 As previously mentioned, the Court has reserved its ruling as to the admissibility of: (A) the
6 PTM Declaration, (B) the PTM Affidavit, and (C) the Hayes Report. The Court now renders its
7 decision on the admissibility of these three documentary exhibits. All three are alleged to be
8 inadmissible as hearsay not within a recognized exception.

9 Generally, “[h]earsay is not admissible unless any of the following provides otherwise: a
10 Commonwealth statute; these rules; or other rules prescribed by the Commonwealth Supreme
11 Court.” NMI R. EVID. 802. Hearsay is a statement made by a declarant that was not made while
12 testifying during a trial or a hearing that is offered by a party into evidence for the purpose of
13 proving the truth of the matter asserted in the statement. NMI R. EVID. 801(c). While hearsay is
14 generally barred there are a number of exceptions, which allow the introduction of otherwise
15 impermissible evidence. *See* NMI R. EVID. 803–04. Therefore, when the Court determines that a
16 statement is hearsay the Court must still examine whether the statement is still admissible under at
17 least one of the hearsay exceptions. *Id.*

18 **A. The PTM Declaration.**

19 First, the Court addresses whether the PTM Declaration is admissible. It is undisputed that
20 the PTM Declaration contains hearsay statements made by PTM regarding Lot 026 E 01. The
21 dispute regarding this exhibit centers on whether those statements fall within one of the recognized
22 hearsay exceptions. Defendants maintain that the PTM declaration falls within at least one of four
23 hearsay exceptions: (1) then existing mental, emotional, or physical condition, see NMI R. EVID.
24 803(3); (2) statements in documents that affect an interest in property, see NMI R. EVID. 803(15);

1 (3) reputations concerning personal or familial history and/or boundaries or general history, see
2 NMI R. EVID. 803(19)–(20); and (4) statements offered against a party that wrongfully caused the
3 declarant’s unavailability, see NMI R. EVID. 804(b)(5). The Court will address each hearsay
4 exception argument in turn.

5 1. Then Existing Mental, Emotional, or Physical Condition.

6 NMI R. EVID. 803(3) allows the admission of otherwise inadmissible hearsay for:

7 A statement of the declarant’s then existing state of mind (such as motive, intent, or
8 plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or
9 bodily health), *but not including a statement of memory or belief to prove the fact
remembered or believed* unless it relates to the validity or terms of the declarant’s
will.

10 (emphasis added). This exception is qualified, by prohibiting a statement of memory or belief from
11 being used to prove the fact remembered or believed, because allowing memory or belief testimony
12 for that purpose would virtually destroy the hearsay rule. *See Commonwealth v. Togawa*, 2016 MP
13 13 ¶ 16 (citing FED. R. EVID. 803 advisory committee’s note to Exception (3) (citing in turn
14 *Shepard v. United States*, 290 U.S. 96 (1933))).

15 Here, Defendants argue that they are seeking to introduce the PTM Declaration for the
16 purpose of showing his then existing state of mind regarding his belief and memory regarding the
17 ownership of Lot 026 E 01. The PTM Declaration states that it was PTM’s and BAM’s intention to
18 leave Lot 026 E 01 to all their children in equal share. Defendants contend that the PTM
19 Declaration merely highlights PTM’s memory and belief about whether he and/or his wife ever
20 transferred Lot 026 E 01 to Plaintiff.

21 Reviewing the declaration it is evident that the statements contained within it do not fall
22 within the scope of NMI R. EVID. 803(3) because the PTM Declaration has been offered for the
23 purpose of proving that PTM and BAM never transferred Lot 026 E 01 to Plaintiff. It would be
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1 improper for the Court to admit the PTM Declaration because the Court would have to read NMI R.
2 EVID. 803(3) so broadly as to render the hearsay rule inoperative.

3 2. Statements in Documents that Affect an Interest in Property.

4 NMI R. EVID. 803(15) allows the admission of otherwise inadmissible hearsay for: “A
5 statement contained in a document that purports to establish or affect an interest in property if the
6 matter stated was relevant to the document’s purpose — unless later dealings with the property are
7 inconsistent with the truth of the statement or the purport of the document.”

8 Defendants argue that the PTM Declaration concerns an interest in property and therefore
9 should fall within the exception. Defendants’ interpretation misses the crux of the rule; statements
10 made in land documents such as deeds and mortgages have adequate guarantees of reliability and
11 trustworthiness to overcome the default rule that hearsay is inadmissible. *See Tri-Steel Structures,*
12 *Inc. v. Baptist Found. of Tex.*, 166 S.W.3d 443, 449–50 (Tex. App. Fort Worth 2005, pet. denied).
13 The PTM Declaration is not a statement in a document like a deed or mortgage, but is instead a
14 declaration prepared for the purposes of litigation. The PTM Declaration lacks the guarantees of
15 genuineness and trustworthiness contemplated by NMI R. EVID. 803(15). Therefore, the exception
16 is not applicable for purposes of admitting the PTM Declaration.

17 3. Reputations Concerning Personal or Familial History and/or Boundaries or General History.

18 NMI R. EVID. 803(19) allows the admission of otherwise inadmissible hearsay for a
19 statement regarding: “A reputation among a person’s family by blood, adoption, or marriage — or
20 among a person’s associates or in the community — concerning the person’s birth, adoption,
21 legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or
22 similar facts of personal or family history.” NMI R. EVID. 803(20) further allows admission of a
23 statement regarding: “A reputation in a — arising before the controversy — concerning boundaries
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1 of land in the community or customs that affect the land, or concerning general historical events
2 important to that community, state, or nation.”

3 In *Aguon v. Maraians Pub. Land Corp.*, 2001 MP 4 ¶¶ 12–22, the NMI Supreme Court
4 opined on the scope of NMI R. EVID. 803(19) and NMI R. EVID. 803(20). The NMI Supreme Court
5 held that NMI R. EVID. 803(19) and NMI R. EVID. 803(20) allow for the admission of hearsay
6 evidence regarding land when there is a lack of formal instruments that document the history of the
7 land in question. *Id.* However, the NMI Supreme Court explicitly ruled in *Aguon* that hearsay
8 evidence to prove transfers is only applicable if there is a lack of formal documentation. *Id.* Here,
9 like *Aguon*, there is not a lack of formal instruments, which would make introduction of evidence
10 like the PTM Declaration appropriate. The PTM Declaration is not being offered because it is the
11 only evidence of Lot 026 E 01’s status. Instead, the PTM Declaration is being offered to bolster the
12 litany of formal instruments concerning the property. Therefore, NMI R. EVID. 803(19) and NMI R.
13 EVID. 803(20) are inapplicable to the matter at hand.

14 4. Statements Offered Against a Party that Wrongfully Caused the Declarant’s Unavailability.

15 NMI R. EVID. 804(b)(5) allows the admission of otherwise inadmissible hearsay for: “A
16 statement offered against a party that wrongfully caused — or acquiesced in wrongfully causing —
17 the declarant’s unavailability as a witness, and did so intending that result.”

18 Defendants maintain that Plaintiff secured the unavailability of their father, PTM, in the
19 underlying probate matter, Civ. No. 13–0195, by opposing a motion to shorten time to hold an
20 evidentiary hearing. Defendants highlight that PTM would have testified along the lines of the PTM
21 Declaration and that he was unable to do so because he passed away due to his battle with cancer.
22 Defendants vigorously contend that Plaintiff’s opposition wrongfully caused PTM to be unavailable
23 to testify and therefore the PTM Declaration should be admitted.

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1 Generally, NMI R. EVID. 804(b)(5) is applicable in cases where a party has injured, killed,
2 or otherwise secured a witness' unavailability. In this case, there is no evidence that Plaintiff
3 undertook steps to wrongfully secure PTM's unavailability. Instead, the original opposition to the
4 motion to shorten time in Civ. No. 13-0195 claimed that Plaintiff's opposition was due to the fact
5 that Plaintiff was scheduled to be off island. Plaintiff wanted to be sure that he would be present at
6 the hearing where potentially significant testimony would be heard.

7 Further, as the Court noted in its original order denying the motion to shorten time, a
8 shortened hearing schedule was unworkable because there was a pending motion to be decided
9 before the evidentiary hearing. *See In re the Estate of Bernadita A. Manglona*, Civ. No. 13-0195
10 (Super. Ct. May 8, 2014) (Order Denying Ex Parte Application to Advance Witness Prudencio T.
11 Manglona).

12 For the foregoing reasons, Plaintiff did not wrongfully cause PTM's unavailability to testify.
13 Unfortunately, PTM passed away before he could testify regarding the dispute over Lot 026 E 01,
14 but nonetheless his prior declaration is inadmissible hearsay, which does not fall within the scope of
15 NMI R. EVID. 804(b)(5).

16 5. Conclusion as to the Admissibility of the PTM Declaration.

17 In sum, after reviewing the arguments of the parties and the relevant law, it is evident that
18 the PTM Declaration is hearsay that falls outside any recognized hearsay exception. Therefore, the
19 PTM Declaration cannot be admitted and Defendants' motion to admit the PTM Declaration is
20 hereby **DENIED**.

21 **B. The PTM Affidavit.**

22 Second, the Court addresses whether the PTM Affidavit is admissible. The PTM Affidavit is
23 almost identical to the PTM Declaration in that it purports to detail PTM's understanding as to who
24 owns Lot 026 E 01. The PTM Affidavit differs from the PTM Declaration in that the PTM Affidavit

1 claims that Plaintiff has owned Lot 026 E 01 since 1985 when his mother, BAM, executed a deed of
2 gift in his favor. The PTM Affidavit takes the exact opposite position of the later in time PTM
3 Declaration. However, like the PTM Declaration, the PTM Affidavit is hearsay that does not fall
4 within one of the recognized exceptions. The same legal reasoning would apply to the PTM
5 Affidavit as the PTM Declaration. Therefore, Plaintiff's motion to introduce the PTM Affidavit is
6 **DENIED**.

7 **C. The Hayes Report.**

8 Third, the Court addresses whether the Hayes Report can be introduced into evidence. It is
9 undisputed that the discussion of the handwriting exemplars and the resulting conclusions contained
10 within the Hayes Report are hearsay, and therefore would generally be barred. Yet, Defendants
11 argue that the Hayes Report can still be admitted. Defendants did not clearly articulate their legal
12 basis for admitting the Hayes Report. While the Hayes Report cannot be admitted into evidence, it
13 can still be used by the Court as a demonstrative exhibit. During trial, the parties stipulated to the
14 exemplars in the Hayes Report and therefore the report serves as a useful guide for organizing the
15 various signatures for comparison purposes. However, the analysis and conclusions of the report are
16 not admissible and will not be considered by the Court. The Court will base any determination on
17 the underlying signatures on the admissible testimony the Court heard from Reed Hayes, not the
18 Hayes Report, which is merely a demonstrative aid. The Hayes Report is similar to the slide
19 presentation that the Court received during Reed Hayes' testimony; it is a demonstrative exhibit that
20 helps organize the various data points under consideration. Defendants' motion to admit the Hayes
21 Report into evidence is **DENIED**.

22 **IV. CONCLUSION**

23 For the foregoing reasons, the Court makes the following orders:

- 24 1. Defendants' motion to admit the PTM Declaration is **DENIED**;

- 1 2. Plaintiff's motion to admit the PTM Affidavit is **DENIED**;
2 3. Defendants' motion to admit the Hayes Report is **DENIED**.

3 **IT IS SO ORDERED** this 26th day of March, 2018.

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5 /s/

6 **DAVID A. WISEMAN**
7 Judge Pro Tempore
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