



By Order of the Court, Judge Joseph N. Camacho

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

ROMAN BLANCO MATSUMOTO and	)	CIVIL ACTION NO. 17-0079
LILLIAN MANGLONA MATSUMOTO,)	
)	
Plaintiffs,	)	ORDER DENYING THE MOTION TO
	)	DISMISS AS THE PARTIES' CONSENT
v.	)	JUDGMENT VIOLATES NMI CONST.
	)	ART. XII, § 2 BECAUSE
COMMONWEALTH DEVELOPMENT	)	"FORECLOSURE" IS NOT THE SAME
AUTHORITY	)	AS A "DEED IN LIEU OF
	)	FORECLOSURE," MEANING ONLY
Defendant.	)	THE PROPERTY THAT WAS PUT UP
	)	FOR COLLATERAL CAN BE
	)	FORECLOSED, NOT A SUBSTITUTE
	)	PROPERTY
)	
)	

I. INTRODUCTION

This matter came before the Court on April 17, 2018 on a Motion to Dismiss 2nd Amended Complaint for Declaratory and Injunctive Reliefs filed by Defendant Commonwealth Development Authority ("CDA"). Attorney Mark Scoggins appeared for CDA. Attorney Juan T. Lizama appeared for Plaintiffs Roman Blanco Matsumoto and his wife, Lillian Manglona Matsumoto (collectively "the Matsumotos").

Based on a review of the filings, oral arguments, and applicable law, the Court hereby makes the following order.

1 **II. BACKGROUND**

2 On July 7, 2009, CDA filed in Superior Court Civil Action No. 09-0287, a Complaint to
3 Foreclose and for Money Due against the Matsumotos.

4 CDA is an autonomous public agency that provides financial and technical assistance to
5 private and public enterprises in the Commonwealth of the Northern Mariana Islands (“the
6 Commonwealth”). CDA is not a person of Northern Marianas Decent (“NMD”).

7 The Matsumotos borrowed money from CDA and pledged their lands situated in the
8 Garapan area, Saipan, as collateral – Lot 004 D 92, Lot 01 4 D 35, and Lot 014 D 76 (“the Garapan
9 Properties”). The Matsumotos did not pay back the money they borrowed. Instead of foreclosing on
10 the Garapan Properties, CDA authored two documents: (1) a proposed consent judgment and (2) a
11 deed in lieu of foreclosure. The deed in lieu of foreclosure offered land in As Lito, Saipan to CDA
12 as opposed to the Garapan Properties. The Superior Court approved the consent judgment on
13 November 14, 2012. As a result of the consent judgment, the Garapan Properties were not
14 foreclosed upon.

15 On January 8, 2018, the Matsumotos filed their 2nd Amended Complaint for Declaratory
16 and Injunctive Reliefs (“SAC”).¹ The SAC alleged (1) that CDA violated Article XII, Section 2 of
17 the CNMI Constitution by taking a deed in lieu of foreclosure from the Matsumotos, rather than
18 obtaining a judgment foreclosing the mortgaged properties; and (2) a Consumer Protection Act
19 Violation pursuant to 4 CMC § 5010.

20 CDA filed its Motion to Dismiss 2nd Amended Complaint For Declaratory and Injunctive
21 Reliefs on January 22, 2018 (“CDA’s Motion”). The Matsumotos filed their opposition on February
22 28, 2018. CDA filed its reply on March 29, 2018.

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24 ¹ The Matsumotos styled their Second Amended Complaint as “2nd Amended Complaint” and the Court will follow
this styling when naming the 2nd Amended Complaint in full.

1 **III. LEGAL STANDARD**

2 If a pleading fails to “state a claim upon which relief can be granted,” the Court may dismiss
3 those portions of the claim. NMI R. Civ. P. 12(b)(6). Under Rule 8(a) of the Commonwealth Rules
4 of Civil Procedure, a pleading “shall contain . . . a short and plain statement of the claim showing
5 that the pleader is entitled to relief.” To comply with Rule 8(a), the complaint must either “contain .
6 . . direct allegations on every material point or contain allegations from which an inference fairly
7 may be drawn that evidence regarding these necessary points will be introduced at trial.” *Atalig v.*
8 *Mobil Oil Mariana Islands, Inc.*, 2013 MP 11 ¶ 23 (quoting *In re Adoption of Magofna*, 1 NMI 449,
9 454 (1990)) (internal quotation omitted).

10 A pleading may not include claims that are purely speculative. *Id.* In examining the
11 sufficiency of the pleading, the Court will construe the factual allegations “in the light most
12 favorable to the [non-moving party].” *Id.* (quoting *Syed v. Mobil Oil Mariana Islands, Inc.*, 2012
13 MP 20 ¶ 22). The Court will not “strain to find inferences favorable to the non-moving party.” *Id.*
14 (quoting *Cepeda v. Hefner*, 3 NMI 121, 127 (1992)).

15 **IV. DISCUSSION**

16 CDA’s motion to dismiss makes two main arguments: (1) the Matsumotos’ Article XII
17 claim must be dismissed because the acceptance of the benefits rule prevents the Plaintiffs from
18 challenging the consent judgment, or, in the alternative, the deed in lieu of foreclosure satisfy the
19 foreclosure exception in Article XII, Section 2; and (2) that the Consumer Protection Act claim
20 must be dismissed for failure to state a claim.

21 After reviewing the filings, arguments, and applicable laws, CDA’s Motion to Dismiss with
22 respect to Article XII is DENIED.

23 After reviewing the filings, arguments, and applicable laws, CDA’s Motion to Dismiss with
24 respect to the Consumer Protection Act is GRANTED.

1 **A. Under These Particular Facts, the “Deed in Lieu of Foreclosure” Violates Article**
2 **XII of the CNMI Constitution**

3 CDA’s argument that the Matsumotos cannot challenge the deed in lieu of foreclosure
4 because the Matsumotos accepted the benefits of the arrangement is unpersuasive.

5 The Commonwealth observes the accepted benefits rule, which states that a party that
6 accepts “the benefits of a void judgment [cannot] later challenge that judgment’s validity.”²
7 However, here, the accepted benefits rule is inapplicable to the deed in lieu of foreclosure because
8 applying the rule to these particular set of facts would violate the plain language of Article XII,
9 Section 2 of the Commonwealth Constitution.³

10 Article XII, Section 1 of the CNMI Constitution states that “[t]he acquisition of permanent
11 and long-term interests in real property within the Commonwealth shall be restricted to persons of
12 Northern Marianas descent.” NMI CONST. art. XII, § 1. “A person of Northern Marianas descent is
13 a person who is a citizen or national of the United States and who has at least some degree of
14 Northern Marianas Chamorro or Northern Marianas Carolinian blood or a combination thereof.”
15 NMI CONST. art. XII, § 4. However, Article XII, Section 2 allows for property to be transferred: (1)
16 “to a mortgagee by means of a foreclosure on a mortgage [...] if the mortgagee is a full service
17 bank, Federal Agency or Governmental entity of the Commonwealth and does not hold the
18 permanent or long-term interest in real property for more than ten years beyond the term of the
19 mortgage[;]” and (2) “to a spouse by inheritance [...] if the owner dies without issue or with issue
20 not eligible to own land in the Northern Mariana Islands.” NMI CONST. art. XII, § 2. Any
21 transaction that violates Article XII’s restrictions is void ab initio. NMI CONST. art. XII, § 6. A

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23 ² *Sullivan v. Tarope*, 2006 MP 11 ¶ 37.

24 ³ CDA also argued that the Article XII question is not ripe for review because “CDA has not yet held the subject property for the ten-year period set forth in Article XII, Section 2.” Because the Court finds that CDA received the property in violation of Article XII and therefore void ab initio, for the purposes of this Order the Court need not reach the issue that CDA has not held the property for ten (10) years.

1 transaction that is void ab initio is “void from the beginning, as if it had never occurred.” *Aldan-*
2 *Pierce v. Mafnas*, 2 NMI 122, 143 (1991); *see also Atl. Nat’l Bank v. St. Louis Union Tr. Co.*, 357
3 Mo. 770, 782 (1948) (finding that “[b]eing void ab initio neither action (acceptance by Snyder of
4 the purported trust and acceptance of benefits) nor inaction (failure by Snyder to assert its
5 invalidity) could breathe life into it and make valid an instrument void from its very inception”).
6 Because land is a scarce cultural resource in the Northern Mariana Islands,⁴ the Supreme Court’s
7 mandate requires that Article XII be “strictly enforced.” *Manglona v. Kaipat*, 3 NMI 322, 335
8 (1992).

9 Here, CDA’s plan to obtain the land outlined in the deed in lieu of foreclosure via the
10 accepted benefits rule violates Article XII, Section 1 because CDA is not a person of Northern
11 Marianas descent (“NMD”). The Commonwealth Supreme Court has made it very clear that Article
12 XII, Section 2 provides the only two exceptions to Article XII, Section 1. *Aldan-Pierce v. Mafnas*, 2
13 NMI 122, 137-138 (1991) (finding that “*the only exceptions* are (a) transfers to a spouse (who is not
14 of Northern Marianas descent) by inheritance in certain circumstances, and (b) transfers to a
15 mortgagee (such as a bank or lending institution) by foreclosure on a mortgage”) (emphasis added).
16 Because CDA is an entity of the Commonwealth government, it can only obtain land in the CNMI
17 by means of foreclosure. To allow CDA to obtain land in the CNMI pursuant to the accepted
18 benefits rule would in essence create a third exception to Article XII, Section 2. Creating such an
19 exception would be impermissible because the Supreme Court requires the strict enforcement
20 Article XII. *See Manglona*, 3 NMI at 335. Therefore, because of Article XII’s restrictions, the
21 accepted benefits rule is inapplicable in this case. *See Tudela v. Tudela (In re Estate of Tudela)*,
22 2009 MP 9 ¶ 19 (finding that even though 8 CMC §§ 2601 and 2903 attempted to grant the
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24 ⁴ *See Diamond Hotel Co. v. Matsunaga*, 4 NMI 213, 216 (1995).

1 surviving spouse a fee simple interest in the property at issue, the Court still needed to determine
2 whether the grant was constitutional).

3 Additionally, CDA’s argument that a deed in lieu of foreclosure is sufficient to satisfy the
4 foreclosure exception in Article XII, Section 2 is also unpersuasive. Article XII, Section 2 allows
5 for “[a] transfer to a mortgagee by means of a foreclosure on a mortgage.” Though the phrase “by
6 means of foreclosure” is not defined by the Constitution, the word “foreclosure” is used in the
7 Commonwealth statutes in a manner that provides helpful guidance. 2 CMC § 6503 states that
8 “[n]othing herein contained shall invalidate any mortgage on any unit nor prevent the mortgagee
9 from obtaining title thereto upon foreclosure or deed in lieu of foreclosure.” Because 2 CMC §
10 6503 refers to foreclosures and deeds in lieu of foreclosures as two separate property redemption
11 options, 2 CMC § 6503 shows that the Commonwealth Legislature intended to treat these two
12 property acquisition options as separate and distinct. Therefore, for deeds in lieu of foreclosure to
13 be included as part of Article XII, Section 2’s exceptions, Article XII, Section 2 would have to had
14 expressly provided that exception. Thus, Article XII, Section 2 only allows for transfers that are the
15 result of foreclosures that have gone through the full judicial proceedings, not deeds in lieu of
16 foreclosures.⁵

17 **B. Consumer Protection Act**

18 Turning to the Matsumotos’ claim for violation of the Consumer Protection Act, the statute
19 makes it clear that “[n]othing in [the Consumer Protection Act] shall apply to: (a) Actions or

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21 ⁵ The requirement for a formal foreclosure proceeding makes sense because when a property is put up as collateral, the
22 ownership of the property is placed in jeopardy. When that property is foreclosed upon, then *that* specific property has
23 been brought before a court, the issues have been adjudicated by a judge, and the foreclosure decided and reduced to a
24 court judgment. A property whose title has only been transferred via a deed in lieu of foreclosure has not been put up
for collateral, placed in jeopardy, and had the issues fully adjudicated by a judge. In essences, a property whose titled
has only been transferred via deed in lieu of foreclosure has not been through the full legal proceedings. If deeds in lieu
of foreclosure are to be considered as an Article XII, Section 2 exception, then unscrupulous parties may invent
schemes to circumvent the strict requirements of Article XII and come up with pseudo lawsuits to transfer “other”
properties that were not originally put up as collateral.

1 transactions carried out by the Commonwealth government, any branch thereof or any other
2 governmental agency...” 4 CMC § 5106(a); *see also Commonwealth Ports Auth. v. Leo A. Daly*
3 *Co.*, No. 1:12-CV-00005, 2013 U.S. Dist. LEXIS 70583, at *12 (D. N. Mar. I. May 16, 2013)
4 (citing 4 CMC § 5106(a), the Court found that “[t]he Consumer Protection Act explicitly exempts
5 Commonwealth agencies”). As alleged, “Commonwealth Development Authority (CDA) is an
6 autonomous administrative government agency of the CNMI...” SAC ¶3. Under the plain language
7 of the Consumer Protection Act, the statute does not apply to CDA.

8 V. CONCLUSION

9 Land is a scarce cultural resource in the Northern Mariana Islands.⁶ Therefore, the
10 requirements of “Article XII should be strictly enforced.”⁷

11 Accordingly, CDA’s use of a deed in lieu of foreclosure instead of formally foreclosing
12 upon the land in the *As Lito*, Saipan violates Article XII, Section 2 of the Commonwealth
13 Constitution. Therefore, CDA’s Motion to Dismiss as to Article XII is **DENIED**.

14 As to the Matsumotos’ claim for violation of the Consumer Protection Act, the
15 Commonwealth Development Authority is a Commonwealth government agency thus the
16 Consumer Protection Act does not apply. Therefore, CDA’s Motion to Dismiss as to the Consumer
17 Protection Act is **GRANTED**.

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19 **IT IS SO ORDERED** this 3rd day of April, 2019.

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21 _____
22 /s/
JOSEPH N. CAMACHO
Associate Judge

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24 _____
⁶ *See Diamond Hotel Co.*, 4 NMI at 216.

⁷ *Manglona*, 3 NMI at 335.