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

JOAQUIN CRUZ CABRERA,	)	CIVIL ACTION NO. 91-687
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
MARIANAS PUBLIC LAND CORPORATION	)	
and ISABEL CABRERA,	)	
	)	
Defendants.	)	
	)	

This matter came before the court on July 28, 1992 for reconsideration of this court's July 7, 1992, decision granting summary judgment in favor of the plaintiff. The defendant's<sup>1</sup> motion correctly points out that this court should not have applied 67 TTC § 212 to this case since that law did not come into existence until five months after the decedent's death. The court recognizes the need to reconsider its prior order.

In June of 1961, the decedent, Jose Cabrera and his wife, Isabel Cabrera received a homestead permit ("permit") from the Trust Territory Government with respect to a tract of land on the

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<sup>1</sup> The court refers to the defendant in the singular throughout this opinion because MPLC does not have a preference as to which of the parties it must give title.

Island of Saipan. The permit specified that upon the decedent's death, his wife, a defendant in this action, would obtain all interest in the homestead. The permit describes the metes and bounds of this tract which it refers to as Agricultural Homestead No. 304 ("A.H. 304").

On January 24, 1967, the District Administrator issued a certificate of compliance to the decedent for A.H. 304.

On August 31, 1971, the decedent transferred an interest in one hectare of the homestead to Mr. Sablan, who then sold it to a third person who subsequently sold it to the plaintiff.

In December of 1973, the decedent died. Prior to his death, the decedent never obtained a quitclaim deed from the Trust Territory Government.

On December 5, 1990, the Marianas Public Land Corporation ("MPLC") issued a quitclaim deed to Isabel Cabrera.<sup>2</sup>

**Can the Plaintiff Avail Herself to the  
Equitable Remedy of Quiet Title?**

In order for the plaintiff to obtain equitable relief, he must prove, among other things, that he has no adequate remedy at law. *Republic Financial Corp. v. Mize*, 682 P.2d 207 (Okla. 1983). The defendant argues that the plaintiff has an adequate remedy at law and, therefore, may not pursue the equitable relief afforded in an action to quiet title. Defendant argues that

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<sup>2</sup> This deed was subsequently filed with the Commonwealth Recorder's Office (File No. 90-5019).

because plaintiff's complaint seeks the legal remedy of ejectment based on the enforcement of a deed as well as the equitable remedy of quiet title, he concedes that he has an adequate remedy at law. Within the same breath, however, the defendant argues that the plaintiff's ejectment action at law is barred by the terms of the homestead statute. If the defendant is correct in concluding that the Homestead Act bars enforcement of the deed, she thereby concedes that the remedy at law is inadequate, thus clearing one of the hurdles the plaintiff must overcome to be heard with respect to his equitable claim.

The defendant also argues that in order for plaintiff to pursue an equitable action to quiet title, he must have at some point been in either actual or constructive possession of the land. *Adams v. Bethany Church*, 380 So.2d 788, 791 (Ala. 1980). The plaintiff is not now, nor has he ever been, in actual or constructive possession of the land. Merely warning other persons that he claims legal title to the land is insufficient to constitute constructive possession. *Id.* Therefore, he does not meet one of the requirements for pursuing an action to quiet title and may not pursue that remedy. Since the plaintiff has not requested relief under any other equitable theory he is left only with his legal remedy.<sup>3</sup>

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<sup>3</sup> The plaintiff phrases his equitable claim solely on the basis of the maxim "equity regards as done that which ought to have been done." Unfortunately, the plaintiff has not raised an equitable claim to which this maxim can be attached. A party must have a valid equitable claim before the equitable maxims

## The Summary Judgment Standard

Summary judgment is proper "only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Ito v. Macro Energy, Inc. et al.*, slip. op. at 6 (N.M.I. Super. Ct. December 17, 1990). The dispute before the court must contain a genuine dispute where the evidence is such "that a reasonable jury could return a verdict for the non-moving party." *Borja v. Rangamar*, Appeal No. 89-009, slip op. at 7 (N.M.I. September 17, 1990).

## The Law of Homestead

The defendant claims that the nature of the legal right the decedent passed to the plaintiff's predecessor in interest was merely an equitable interest in the land. Therefore, the defendant argues that title did not pass to the original purchaser because the decedent could not acquire a vested interest that would have entitled him to sell a fee simple interest in the land until he obtained a quitclaim deed from the government. The defendant concedes, however, that if the decedent had a vested interest in the land at the time of the sale, the sale vested full title in the plaintiff. The plaintiff has put forth a weak, if not nonexistent effort to combat the defendant's interpretation of the statute. After reviewing the apply. Having pled no valid equitable claim, the plaintiff cannot resort to these maxims.

case law cited by the defendant, and conducting its own research of the issues she has presented, and despite the plaintiff's weak legal argument and failure to properly research the authority cited by the defendant, the court's original conclusion remains unaffected.

There is no common law right to a homestead. *Pelisamen v. Land Commission of the Commonwealth Government*, 3 CR 791 (N.M.I. Tr. Ct. 1989). Homesteads are purely statutory creatures. *Id.* The law to be applied in this case is 67 TTC § 209.<sup>4</sup> As correctly pointed out by defendants, section 212 did not yet exist at the time of the decedent's death and should not have been the basis of this court's earlier decision. Section 209 clearly forbids the sale of a homestead permit. That section states in relevant part:

No rights in or to a homestead permit granted under the provisions of this Chapter shall be sold, assigned, leased, transferred or encumbered, except that in the event of the death of a homesteader prior to the issuance of a deed of conveyance, all rights under the permit shall inure to the benefit of such person or persons, if any, as the homesteader shall last designate in writing filed in the District Land Office. . . .

67 TTC § 209.

Despite the relatively straight-forward message conveyed in the statute, case law interpreting the provision has been varied and inconsistent. For example, an analogous situation was presented in *Romolor v. Igisiar*, 4 TTR 105 (High Ct. Tr. Div.

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<sup>4</sup> This section has since been codified verbatim at 2 CMC § 4309:

1968). In *Romolor*, the defendant agreed to sell the plaintiff his unmatured homestead rights, the legal title to which he promised to convey once his homestead matured. The court ruled that this transaction was illegal since it violated both the terms of the Agricultural Homestead Permit and section 958 of the Trust Territory Code.<sup>5</sup> Therefore, the court refused to grant the plaintiff specific performance since that equitable remedy cannot be based on an illegal, unenforceable contract.

In *Cruz v. Johnston*, 6 TTR 354 (High Ct. Tr. Div. 1973), the court ruled that once a homesteader complies with the requirements for obtaining a homestead, and goes to the government to demand issuance of a deed, the government's obligation to convey title is mandatory rather than permissive. The defendant in the present case distinguishes the *Cruz* decision based on the fact that the homesteader in *Cruz* was alive and the mandatory nature of the government's directive to convey title under § 208 could only come about upon a request by the living homesteader or a person named to act post mortem in his stead. As discussed *infra*, the court does not completely agree with this interpretation of the *Cruz* decision.

In *Sablan v. Norita*, 7 TTR 90 (High Ct. Tr. Div. 1974), the grantor/permittee, who had already been issued a certificate of

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<sup>5</sup> Section 958 later became 67 TTC § 209. Although the court does not have available a copy of the 1966 version of the Trust Territory Code, the revisor's note for section 209 in the 1970 version of the Code notes that only "minor changes [were] made in phraseology" to § 958. 67 TTC § 209, at 618 (1970).

compliance at the time of sale in question, brought suit under 67 TTC § 209 challenging the validity of a deed he entered into prior to receiving a quitclaim deed from the Government. The *Sablan* court rejected the plaintiff's argument that the deed was invalid because he did have title at the time of the purported sale. The court applied the doctrine of after acquired title, which operates to wrest title from one who later acquires title to land that he or he did not own at the time of its previous sale. The court stated that:

[R]eceipt of a certificate of compliance constitutes evidence of a vested right which may be conveyed or otherwise alienated.

. . .

I find, as fact, that plaintiff had complied with homestead entry requirements, as evidenced by his certificate of compliance. I find, as a matter of law that, having so complied, *he held title which was his to convey.*<sup>6</sup>

*Id.* at 92 (emphasis added).

The court concluded that "a homesteader, having met [the] requirements of law precedent to issuance of a Certificate of Compliance, 67 TTC 208, has an interest subject [to] conveyance."

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<sup>6</sup> The court notes that the *Sablan* court's application of the doctrine of after acquired title is somewhat inconsistent with its statement that title vested at the time the certificate of title was issued. The doctrine of after acquired title naturally requires that a grantor who did not have title at the time of sale eventually obtain title to the land. After all, the homesteader in this case had a certificate of compliance at the time of the sale. If a certificate of compliance was sufficient to vest title in the homesteader, than there would have been no need to apply the doctrine of after acquired title because the homesteader had title all along.

Therefore, the plaintiff could not invalidate the deed and had to transfer the deed once he obtained it from the Government.

The *Sablan* court also interpreted the *Cruz* decision as meaning that "where full compliance was established, and nothing more than the ministerial act of deed execution remained . . . . *the plaintiffs [were] entitled to their deeds which, in effect, were nothing more than evidence of the already acquired title.*" *Sablan v. Norita, supra*, 7 TTR at 92 (emphasis added).

In *Castro v. Commonwealth*, 2 CR 271 (N.M.I. Tr. Ct. 1975) the homestead permittee sold his land even before receiving a certificate of compliance. The permittee subsequently obtained a certificate of compliance and later received a quitclaim deed to the land. The court validated this seemingly premature transaction by noting that although the permittee had not yet obtained a certificate of title, he had done everything necessary to become eligible to obtain the certificate. Therefore, the court determined that the permittee conveyed to the purchaser his equitable interest in the land.

In *Ilisari v. Taroliman*, 7 TTR 392 (High Ct. App. Div. 1976), the defendant conveyed his agricultural homestead to the plaintiff before it matured. After acquiring a certificate of compliance and the deed from the government, the defendant handed the deed to the plaintiff and again orally conveyed the land to him. The Appellate Division required specific performance of this transaction, presumably because the oral conveyance occurred



after the issuance of the quitclaim deed, thus validating the previous transaction. The court distinguished *Romolor, supra*, by stating that "the defendant went one crucial step further than the defendant in *Romolor*. He conveyed the land after acquiring it from the government." *Id.* at 394.

In *Guerrero v. Norita*, 1 CR 929 (N.M.I. Tr. Ct. 1984), a homestead permittee deeded his interest in the homestead tract prior to obtaining the certificate of title.<sup>7</sup> The *Guerrero* court, citing *Sablan v. Norita, supra*, applied the doctrine of after acquired title and determined that the deed was not void because the permittee merely had to give up his title once he subsequently acquired it.

It is obvious from the case law citing section 209 that there is no consensus of opinion with respect to when title vests in a homesteader under the Act.

### The Defendant's Authority

The defendant cites the following language from *Norman v. Eskar*, 4 TTR 164, 166 (High Ct. Tr. Div. 1968):

Except where specific statutory provision is made for inheritance and continuation of the homestead, all rights of the settler are lost by his death.

The *Eskar* case, however, is clearly distinguishable from, if

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<sup>7</sup> It is unclear from the opinion whether a certificate of compliance was ever issued. From the court's statement of the facts, it appears that the land was sold after obtaining the permit.

not supportive of the plaintiff's claim in the present case. In Eskar, no certificate of compliance had been issued at the time of conveyance. That court specifically stated:

I conclude that, *failing proof of compliance with the conditions established by the homestead law*, no title or claim of title had been perfected in Eskar at the time of his death, and that consequently no rights remain which can pass by inheritance or otherwise to either party.

The *Eskar* case stands for the proposition that the heirs of homesteaders who have not complied with the conditions required to obtain title at the time of their death cannot inherit the property from the decedent. In the present case, the decedent had complied with the conditions necessary to obtain title under the homestead law. He received a certificate of compliance, which is essentially a notice telling the homesteader to come pick up his or her deed. Therefore, title vested in decedent at that time.

The defendant also cites *Pelisamen v. Land Commission of the Commonwealth Government*, 3 CR 790 (N.M.I. Tr. Ct. 1989). In *Pelisamen*, the homesteader entered and occupied the homestead before he even received a permit. Although he had applied for the permit, he died before receiving it. After his death, the plaintiff, with whom the decedent lived on the homestead prior to his death, applied for, and received, a quitclaim deed and a determination of ownership from the government. The plaintiff in that case argued that the failure of the Trust Territory Government to issue a certificate of compliance could not

extinguish the decedent's claim to the homestead. The court declined to address this issue, claiming that the decedent's failure to name a beneficiary in the manner required under the statute resulted in his interest dying with him, thus extinguishing any rights plaintiffs may have claimed in the land.

The most recent interpretation of Section 209 came in the case of *Tudela v. MPLC*, No. 89-230 (N.M.I. Tr. Ct. 1990). In *Tudela*, the court cited *Eskar* for the proposition that a patent must issue before the entryman dies. This was a misapplication of the *Eskar* case as precedent. The *Eskar* court never said that a patent must issue before the death of the entryman. As previously noted, that court merely stated that the entryman had to comply with the terms of the statute before title could pass. In the case at bar, the decedent complied with the statute before his death.

Furthermore, the *Tudela* court cited *Hall v. Russell*, 101 U.S. 503, 25 L.Ed. 829 (1879), for the proposition that a patent must issue before the death of the entryman. The *Hall* case does not stand for that proposition. In *Hall*, the statute in question specifically stated that the entryman could devise the homestead if he met the qualifications for receiving it. Since the entryman in that case died before meeting the qualifications, he could not devise the interest to anyone. In discussing when title passed to the entryman the Court stated:

*Whenever a settler qualified himself to become a grantee, he took the grant and his right to a transfer of the legal*

*title from the United States became vested. But until he was qualified to take, there was no actual grant of the soil. The act of Congress made the transfer only when the settler brought himself within the description of those designated as grantees. A present right to occupy and maintain possession, so as to acquire a complete title to the soil, was granted to every white person in the Territory meeting the requisite qualifications, but beyond this nothing passed until all was done that was necessary to entitle the occupant to a grant of the land.*

*Id.*

In the present case, the decedent did all that was required to entitle him to a grant of the land. Therefore, title vested in the plaintiff when he qualified to become a grantee.

In discussing at what point an entryman could devise the homestead property as allowed under the statute, the *Hall* court stated:

*As there could be no grant until there was some person entitled to receive it, the conclusion would seem to be irresistible that, under this provision, married settlers had no estate in the land which they could devise by will, until from being qualified settlers only they become qualified grantees. Having completed their settlement, and nothing remaining to be done but to get their patent, their estate in the land was one they could devise by will . . . . Not so, however, with the mere possessory rights which proceeded compliance with the provisions of the act so as to entitle the settlers to their grant of the land.*

As is true in the present case, the statute at issue in *Hall* did not state the specific point at which title was vested in the entryman so that he could devise it as his own property. The U.S. Supreme Court determined that when an entryman meets the qualifications outlined in the statute, title vests at that time.

In an earlier case, the U.S. Supreme Court determined that the right to a patent perfects and vests when a certificate of

compliance issues which indicates that the entryman has done all that is required to obtain the homestead. *Stark v. Starr*, 6 Wall 402, 413-14 (1868). The Court stated that once the requirements for obtaining public lands were met, the rights of the entryman are the same as they would have been had the patent issued.

This same statement concerning homestead law was made by the Idaho Supreme Court in *Hays v. Wyatt*, 115 P. 13 (Idaho 1911). In *Hays*, the decedent resided on the land for the full term required under the homestead statute. He performed every act required for him to obtain title under the statute. The only step left in the process was for him to present his final proof and receive the deed. The court concluded that:

Wyatt having resided on the land for the full length of time required by the statute, and having performed all acts required by the statute, was at the time of his death entitled to a patent upon presenting his final proof, *and since the right to a patent once vested is treated by the government when dealing with public lands as equivalent to a patent issued, . . .* and having a devisable interest in said land, had full right to devise it as he did.

*Id.* at 16.

Based on the foregoing precedent this court finds that the decedent had title in the land at the time of the conveyance. It is uncontested that the decedent performed all acts necessary to fulfill the requirements under the homestead statute. He received a certificate of compliance which indicates that he met those requirements. As noted above, United States case law treats full compliance as the equivalent of receiving title. It is, therefore, irrelevant that the entryman did not perform the

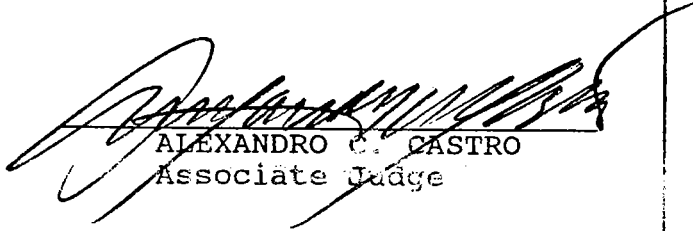
ministerial task of obtaining the deed from the government before his death.

Furthermore, section 209 merely prohibits the sale or assignment of rights in or to a homestead permit. It is uncontested that once title vests in the entryman, he can sell that interest. *Estate of Villagomez*, 2 CR 850 (N.M.I. Tr. Ct. 1986). Once title vested in the decedent upon receipt of the certificate of compliance, he was no longer selling his rights to or in his permit. Rather, he was selling his title to the property and the right to obtain the evidence of the already vested title from the government. *Sablan v. Norita*, *supra*, 7 TTR at 92 (once entryman established compliance with the homestead law, obtaining deed was "nothing more than evidence of the already acquired title"). See *Hays v. Wyatt*, *supra*, 115 P. at 16 (Idaho 1911) ("the right to a patent once vested is treated by the government when dealing with public lands as equivalent to a patent issued").

Based on the foregoing, it is obvious that this court does not adopt the reasoning and holding in *Tudela v. MPLC*, *supra*. The court finds that title vested in the decedent at the time he received the certificate of compliance. Therefore, he passed good title to the plaintiff. As noted in the court's previous decision, the only factual issue remaining lies in the defendant's contention that the land described in the August 27, 1991 deed is no longer identifiable because it was not done in

metes and bounds. The Plaintiff is entitled to an opportunity to prove the dimensions of the land at trial. If the parties cannot settle this amicably, they should set a date for trial.

DATED this 7 day of August, 1992.



ALEXANDRO C. CASTRO  
Associate Judge