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

9	FELICIDAD C. BODDY,)	Civil Action No. 93-245
10	Plaintiff,)	
11	v.)	DECISION AND ORDER ON
12	JESUS S. LEON GUERRERO)	CROSS-MOTIONS FOR
13	<u>et al.</u> ,)	SUMMARY JUDGMENT
14	Defendants.)	

This matter came for hearing on September 15, 1993 on Plaintiff Felicidad C. Boddy's motion for partial summary judgment that Defendant Eugenia A. Leon Guerrero is not of Northern Marianas Descent for the purposes of Article XII of the Commonwealth Constitution. On the same date, the Court heard a cross-motion for partial summary judgment by Defendants Mike and Ana Naholowaa that the property conveyance at issue did not constitute a resulting trust. The Court grants both motions.

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I. FACTS

In May 1988, Plaintiff sold a parcel of land on Rota, described as Lot No. 444 R 02, to Defendant Ana Naholowaa, a person of Northern Marianas descent ("NMD"). The consideration for this purchase, \$50,000, was provided by Defendants Eugenia and Jesus Leon Guerrero.

According to Defendants, Eugenia Leon Guerrero is of Northern Marianas descent. Her grandfather was appointed Mayor of Rota from Guam in 1890. Her mother was born on Rota in 1895 and lived there with her family until 1908, when the family returned to Guam. Eugenia became a United States Citizen in 1950, pursuant to the Organic Act of Guam. Plaintiff does not dispute this family history.

The parties agree that, pursuant to an informal, oral agreement, the land was to be used by the Guerreros and by Ana Naholowaa. The nature of this oral agreement is not clear from the record. However, on January 8, 1993, Defendants executed a Promissory Note from Ana Naholowaa to the Guerreros in the amount of \$45,000, plus interest, and a mortgage in the same amount on the property. Further, on January 4, 1993, the Guerreros quitclaimed any interest they may have had in the land to Ana Naholowaa.

II. ISSUE

1. Is Eugenia A. Leon Guerrero an NMD as defined in Article XII of the Commonwealth Constitution?
2. Did the transaction between Plaintiff and Defendants create a "resulting trust" in favor of non-NMD's?

1 persons who chose to make the Northern Marianas their home and who
2 acquired citizenship of the Trust Territory as of 1950.

3 It is also clear that the Framers meant to distinguish
4 between Chamorros living in the Northern Marianas and those from
5 Guam. Both parties cited to Wilmer, Cutler and Pickering,
6 *Briefing Paper No. 8, Eligibility to Vote and Election Procedures*;
7 however, Plaintiff cites the more pertinent passage: "Chamorros
8 living on Guam, and Carolinians living on Truk, presumably could
9 not be considered as being of 'Northern Marianas descent.'" *Id.*
10 at 27. Applying this authority to the facts, this Court finds
11 that Eugenia A. Leon Guerrero is not an NMD as defined by Article
12 XII. Her family came from Guam to Rota in 1891 as colonial
13 administrators and left in 1908. Eugenia acquired U.S.
14 citizenship as a Guamanian, pursuant to the Organic Act of Guam,
15 48 U.S.C. §1421 et seq.

16 The fact that, as of 1895, there was no Guamanian
17 "citizenship" does not alter the analysis. Guam became a United
18 States Territory through the 1898 Treaty of Paris. 30 Stat. 1754.
19 Article IX of the Treaty provided that "the civil rights and
20 political status of the native inhabitants [...] shall be
21 determined by the Congress." See also *Rabang v. Boyd*, 77 S. Ct.
22 985, 986 (1957). Congress did not make such a determination until
23 1950. Defendant Eugenia argues that because of this lack of
24 citizenship, a person from a Guamanian family born on Rota, but
25 raised on Guam since 1908, retroactively acquired Trust Territory
26 citizenship in 1947. Eugenia further asserts that such
27 retroactive Trust Territory citizenship also attached to children
28 born in Guam who may never have set foot in the Trust Territory.

1 The argument is far too attenuated. The Trust Territory
2 designation employed by the Department of State beginning in 1947
3 was designed to describe people inhabiting the Trust Territory,
4 not people whose parents were born there but who have lived
5 elsewhere since before the First World War.

6 The test enunciated in Article XII was designed to confine
7 land ownership to those people who "worked for the political and
8 economic betterment of the Northern Mariana Islands, and
9 considered these islands their home." *Analysis, supra*, at 171.
10 It was not designed to encompass a diaspora of persons whose
11 families at one time lived on the islands as administrators from
12 elsewhere, even if those persons are of Chamorro ethnicity. Thus,
13 viewing the evidence in the light most favorable to Defendant
14 Eugenia A. Leon Guerrero, this Court therefore finds that, for
15 purposes of Article XII, she is not an NMD.

16 17 C. RESULTING TRUST

18 Defendants Ana and Mike Naholowaa have also moved for summary
19 judgment that the 1988 transaction between them, Plaintiff and the
20 Guerreros did not create a "resulting trust" in favor of the
21 Guerreros. The Court agrees. The Ninth Circuit Court of Appeals
22 has held that the "resulting trust" doctrine of the *Restatement*
23 (*Second*) of *Trusts*, § 440 is inapplicable to transactions such as
24 this, in which a non-NMD person provides the purchase money for
25 the acquisition of land by an NMD person. *Ferreira v. Mafnas*,
26 F.2d ___, 1993 WL 312268 (9th Cir. 1993). Moreover, since this
27 motion was submitted for decision, the Commonwealth Legislature
28 passed into law 2 CMC §§ 4922, which provides:

1 Where a transfer of an interest in real property is made to
2 one person and the purchase price is paid by another who is
3 not qualified under the Constitution or laws of the Northern
4 Mariana Islands to acquire that interest, a resulting trust
5 does not arise in favor of the person by whom the purchase
6 price is paid.

7 On the basis of these authorities, this Court rules as a matter of
8 law that no resulting trust arose from the transaction at issue
9 here.

10 D. VIOLATION OF ARTICLE XII

11 However, Defendants' cross-motion reaches beyond the
12 "resulting trust" doctrine. Defendants request a determination
13 that their acquisition of the Rota parcel did not violate Article
14 XII as a matter of law.

15 In rejecting the "resulting trust" theory, the Ninth Circuit
16 cited with approval a dissent by Special Justice Edward C. King in
17 *Ferreira v. Borja*, No. 90-047 (N.M.I. Feb. 18, 1992) slip op. at
18 18-46. *Ferreira v. Mafnas*, *supra*, at *2. Special Justice King
19 proposed that alleged Article XII violations be adjudicated by

20 scrutiniz[ing] carefully any transaction entered into by a
21 non-NMD person to determine whether the transaction would
22 result in the acquisition of a long-term interest by a non-
23 NMD person, or in having land pass out of the people of the
24 NMI.

25 *Borja*, *supra*, slip op. at 33.

26 The facts presented to the Court on Defendants' motion are
27 not sufficiently developed to allow such careful scrutiny.
28 Plaintiff asserts that she has not had an opportunity to conduct
discovery concerning the promissory note and mortgage attached to
Defendants' cross-motion. The facts surrounding the oral
agreement among Defendants have also not been fully disclosed.
Therefore, the Court finds the issue of whether the 1988

1 transaction violated Article XII unripe for summary judgment.
2 Defendants may renew their Motion upon a fuller factual record,
3 and taking into account recent developments in the applicable law,
4 at a future date.

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6 **IV. CONCLUSION**

7 For the foregoing reasons, the Court ORDERS:

8 1. Plaintiff's Motion for Partial Summary Judgment, that
9 Eugenia A. Leon Guerrero is not a person of Northern Marianas
10 descent, is hereby GRANTED.

11 2. Defendants' Cross-Motion for Partial Summary Judgment,
12 that the 1988 sale of Lot No. 444 R 02 to Ana Naholowaa did not
13 give rise to a "resulting trust" in favor of Jesus and Eugenia
14 Leon Guerrero, is hereby GRANTED.

15 3. Defendant's Cross-Motion for Partial Summary Judgment,
16 that the 1988 sale of Lot No. 444 R 02 to Ana Naholowaa did not
17 violate Article XII of the Constitution of the Commonwealth of the
18 Northern Mariana Islands, is hereby DENIED.

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20 So ORDERED this 17 day of November, 1993.

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23 MIGUEL S. DEMAPAN, Associate Judge