

CLERK OF COURT  
SUPERIOR COURT  
1992

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

HENRY ERNEST HOFSCHEIDER,	)	CIVIL ACTION NO. 91-994
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
JOANNE M HOFSCHEIDER,	)	
	)	
Defendant.	)	

On September 30, 1992, this Court held a hearing concerning the distribution of the marital property of the Plaintiff Henry Ernest Hofscheider, a person of Northern Marianas descent and the Defendant Joanne M. Hofscheider, a person not of Northern Marianas descent. The Court hereby makes an equitable distribution of the marital property of the parties

**I. FACTS**

The Hofscheider marriage began on November 15, 1980. After living in Seattle, Washington for several years the couple moved back to the island of Tinian in 1987 with their two children. They began to live in a home allegedly gifted to the Plaintiff by his father. Signs of a troubled marriage surfaced in June of 1989 when the defendant sought a Temporary Restraining Order from this Court against her husband. This dispute was resolved when the

1 parties filed and the Court accepted a Notice of Attempt to  
2 Reconcile on July 7, 1989. The terms of the reconciliation were  
3 guided by the Family Protection Act and included the Plaintiff's  
4 promises to refrain from drinking alcohol and to begin marriage  
5 and family counselling.

6 The marriage continued without incident until September of  
7 1991 when the Defendant fled Tinian with the children. Although  
8 the Court granted the Plaintiff's request for a Temporary  
9 Restraining Order on September 30, 1991, the Court modified its  
10 Order five days later by directing each party to refrain from  
11 having any contact with the other. The Court also set up a  
12 temporary schedule for joint custody of the children.

13 The Court entered a Decree of Divorce on November 21, 1991  
14 pursuant to 8 CMC § 1331(b). Since the divorce, the Defendant has  
15 left the Commonwealth and returned to British Columbia, Canada,  
16 with the children. On September 30, 1992, the Court conducted a  
17 hearing concerning the distribution of marital property. The  
18 Plaintiff and his father offered substantial testimony about the  
19 property and obligations surrounding this marriage. Although  
20 represented by counsel, the Defendant did not appear or present  
21 witnesses at the hearing.

## 22 23 **II. STANDARD OF LAW FOR MARITAL PROPERTY DISTRIBUTION**

24 According to *Ada v. Sablan*, 1 N.M.I. 415, 428 (1990), both  
25 husband and wife have an ownership interest in any property  
26 acquired during marriage unless it is shown that such property  
27 belongs solely to one party. *Id.* Such "marital property" is  
28 subject to equitable distribution upon divorce. *Id.* Soon after

1 the *Ada* decision, the C.N.M.I. legislature noted the  
2 Commonwealth's lack of statutory guidance in the area of marital  
3 property distribution and passed Public Law No. 7-22  
4 ("Commonwealth Marital Property Act of 1990", hereinafter the  
5 Act), which became effective February 22, 1991.

6 Section 7 of the Act classifies property as either  
7 "individual" and non-divisible or "marital" and thus, capable of  
8 equitable distribution. Public Law No. 7-22 at § 7. The term  
9 "determination date" appears throughout Section 7 and acts as a  
10 dividing line between individual property and marital property.  
11 Although both parties have considered the date of marriage,  
12 November 15, 1980 as the "determination date," the actual  
13 determination date in the case at bar is February 22, 1991. 8 CMC  
14 § 1813(e). Nevertheless, Section 1833(a) requires this Court to  
15 presume that property acquired prior to the determination date and  
16 after the date of marriage is marital property.<sup>1/</sup>

### 17 18 III. MARITAL PROPERTY DISTRIBUTION

#### 19 A. Real Property

##### 20 1) Lot No. 006 T 45

21 The Plaintiff acquired ownership of a village homestead  
22 listed as Lot No. 006 T 45 on October 7, 1983. Although the  
23 Plaintiff did not receive a quitclaim deed to the property until  
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25 <sup>1/</sup> According to Section 1833(a): "In a  
26 dissolution, all property then owned by the  
27 spouses that was acquired during the marriage  
28 and before the determination date which would  
acquired after the determination date must be  
treated as if it were marital property." 8  
CMC § 1833(a).

1 three years after the marriage commenced, the Plaintiff argues  
2 that the Court ought to consider the homestead "individual  
3 property" of the Plaintiff because he began the homestead  
4 ownership process prior to his marriage to the Defendant. Section  
5 1820(f) clearly requires property to be "owned by a spouse at the  
6 determination date" in order to qualify as individual property. 8  
7 CMC 1820(f).

8 According to *Cabrera v. MPLC & Cabrera*, Civil Action No. 91-  
9 687, slip op. at 14 (Super. Ct. Aug. 7, 1992), a person holding a  
10 "homestead permit" acquires an ownership interest in the homestead  
11 upon his receipt of a "certificate of compliance" which signifies  
12 his satisfaction of all the homestead requirements. Therefore,  
13 the Plaintiff's mere receipt of a Permit to Homestead in 1979 does  
14 not indicate ownership. In fact, the Plaintiff did not acquire  
15 his certificate of compliance until October 7, 1983, three years  
16 after the Hofschneider marriage began. Therefore, pursuant to  
17 Section 1820(a), Lot No. 006 T 45 is marital property.

18 The Plaintiff also argues that 2 CMC § 4303 prohibits anyone  
19 other than persons of Northern Marianas descent from homesteading.  
20 The Court agrees with the Plaintiff's interpretation of Section  
21 4303; however, the Defendant spouse does not claim interest in  
22 this land as a homesteader. Rather, the Defendant has an  
23 undivided one-half interest in Lot No. 006 T 45 as a tenant in  
24 common subject to the restrictions of Article XII of the  
25 Commonwealth Constitution. 8 CMC § 1833(c).

26 Thus, the Court faces the task of making an equitable  
27 distribution of Lot No. 006 T 45 pursuant to the Act without  
28 awarding the Defendant (a person of non-Northern Marianas descent)

1 a permanent and long-term interest in real property. Article XII  
2 defines "permanent and long-term interests in real property" to  
3 include freehold interests and leasehold interests of more than  
4 fifty-five years including renewal rights. COMM. CONST., Art. XII,  
5 § 3. In essence, the legislature has permitted marital real  
6 estate to be equitably distributed to a spouse of non-Northern  
7 Marianas Descent so long as the distribution does not involve a  
8 leasehold interest which exceeds fifty-five years.

9 Although the Act strives for fairness, the confines of  
10 Article XII make a distribution of marital property in the case at  
11 bar especially difficult. The Court is troubled by the fact that  
12 the value of a fifty-five year lease in one-half of Lot No. 006 T  
13 45 does not approach the remaining value of a fee simple ownership  
14 in the entire lot. Such a distribution would create a windfall  
15 for the Plaintiff. The Court is also aware of the hazards which  
16 would accompany the creation of a landlord-tenant relationship  
17 between former spouses, one of whom no longer resides in the  
18 Commonwealth. Therefore, the Court hereby awards the Defendant  
19 the cash equivalent of a fifty-five year lease in Lot 006 T 45.  
20 This cash award will equal the fair market value of Lot 006 T 45  
21 as determined by a real estate appraiser to be chosen by both  
22 parties. The value given by the appraiser will be subject to this  
23 Court's approval. Of course, the Plaintiff shall retain fee  
24 simple ownership of Lot 006 T 45.

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26 **2) Lot 027 T 04**

27 The Plaintiff received a quitclaim deed to the agricultural  
28 homestead Lot 027 T 04 from Marianas Public Land Corporation on

1 June 19, 1980. The deed serves as evidence of the Plaintiff's  
2 ownership of the Lot prior to his marriage to the Defendant in  
3 November of 1980. According to Section 1820(f), Lot 027 T 04  
4 would constitute individual property not subject to equitable  
5 distribution if owned by the Plaintiff prior to the date of the  
6 marriage. 8 CMC § 1820(f).

7 The Defendant asks this Court to consider Lot 027 T 04  
8 marital property because of the parties' premarital relationship,  
9 which involved cohabitation and the birth of a child predating the  
10 receipt of the deed. In essence, the Defendant is asking this  
11 Court to recognize her relationship with the Plaintiff prior to  
12 November 15, 1980 as a common-law marriage. According to Section  
13 1817, except where the Act displaces local custom, local custom  
14 supplements the Act. However, neither the Act nor the rest of  
15 Title 8 of The Commonwealth Code make any mention of common-law  
16 marriage.

17 According to Chamorro Custom, the few common-law marriages  
18 that have existed here in the past have never been regarded as  
19 marriages by Chamorros. ALEXANDER SPOEHR, SAIPAN: THE ETHNOLOGY OF A WAR  
20 DEVASTATED ISLAND., 251 (1954). This non-recognition of common-law  
21 marriages seems to have resulted from the Chamorro view of a  
22 "Catholic marriage ceremony as an essential sanction for the  
23 existence of a marriage." *Id.* When the legislature decided that  
24 the date of marriage should serve as the proper determination  
25 date, the legislature contemplated the date of the marriage  
26 ceremony, and not the date that a common-law marriage may have  
27 begun. Therefore, Lot 027 T 04 was owned by the Plaintiff prior  
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1 to the marriage and is the non-divisible, individual property of  
2 the Plaintiff.

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4 3) Lot No. 021 T 14

5 During the seventh year of the Hofschneider marriage, the  
6 Plaintiff acquired title to Lot No. 021 T 14 on November 2, 1987  
7 through warranty deed from the Mariana Islands Housing Authority  
8 (MIHA). After improvements were made to the land, both the  
9 Plaintiff and the Defendant and their children occupied Lot No.  
10 021 T 14 as their family residence for the remainder of the  
11 Hofschneider marriage. Unless otherwise classified by the Act,  
12 all property of spouses is presumed to be marital property. 8 CMC  
13 § 1820(a), (b). A party attempting to overcome the presumption in  
14 favor of marital property has the burden of proving that the  
15 property in question is more likely to be individual property. 8  
16 CMC § 1813(n).

17 The Plaintiff has attempted to rebut the marital property  
18 presumption with respect to Lot 021 T 14 by claiming it as  
19 individual property received as a gift from his father. Evidence  
20 that the property was gifted to him is limited to the oral  
21 testimony of the Plaintiff's father claiming he purchased three  
22 lots including Lot 021 T 04 which he gave to the Plaintiff. The  
23 only other evidence of the alleged gift of property comes from a  
24 Certification of the Chief of the Mortgage Credit Division of MIHA  
25 that the Plaintiff's father used his own funds to purchase Lot 021  
26 T 14 for his son.

27 However, contrary to the father's testimony that he gave his  
28 son land, the warranty deed transferring title to Lot 021 T 14

1 indicates that it was transferred directly to the Plaintiff by  
2 MIHA and not by the Plaintiff's father. See Plaintiff's Memorandum  
3 of Law, Exhibit 8 (filed Nov. 19, 1992). Therefore, despite the  
4 Plaintiff's claim that his father gave him land, the Court finds  
5 that the gift from father to son amounted to a donation of funds  
6 which were used by the Plaintiff to purchase Lot 021 T 14.  
7 Pursuant to Section 1820(g)(1) of the Act, this gift of funds  
8 constituted individual property.

9 After receiving this monetary gift from his father, the  
10 Plaintiff used this individual property to purchase Lot 021 T 14  
11 as a residence for his wife and two children. Property acquired  
12 by a spouse during the marriage is individual property when it is  
13 purchased with proceeds of other individual property. 8 CMC  
14 §1820(g)(2). The evidence shows that the Plaintiff purchased Lot  
15 021 T 14 with the gift of funds he received from his father.  
16 Therefore, Lot 021 T 14 is individual property of the Plaintiff.

17 The Defendant argues that she should be reimbursed for half  
18 of three thousand and four hundred dollars (\$3,400.00) worth of  
19 marital funds used to add a bedroom to their residence on Lot 021  
20 T 14. As the Court will explain in the Marital Obligation section  
21 of this Order, the bedroom was paid for by proceeds from a loan  
22 from the Plaintiff's father to the Plaintiff. The Court has given  
23 the Plaintiff the sole responsibility of repaying that loan in  
24 order to achieve an equitable result. It would be unfair to award  
25 the Defendant half of the cost of an addition which will  
26 ultimately be paid for out of the Plaintiff's individual property.  
27 Therefore, the Defendant is not entitled to any reimbursement for  
28 the addition to Lot 021 T 14.



1 **B. Personal Property**

2 **1) Individual Personal Property**

3 The only individual personal property before the Court is the  
4 1963 Ford Galaxy Convertible owned by the Plaintiff. This  
5 property belongs to the Plaintiff and is not a part of this  
6 marital distribution.

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8 **2) Marital Personal Property**

9 The remaining personal property constitutes marital property  
10 capable of equitable distribution by this Court. Most of the  
11 marital property has remained in the possession of the Plaintiff.  
12 Neither party has expressed any special interest in any of the  
13 remaining marital personal properties. Given the cost of shipping  
14 fees and the fact that the Defendant now resides in British  
15 Columbia, Canada, the Court, by this Order, shall award the  
16 Defendant with a sum equal to one half of the difference in value  
17 between the marital personal property held by the Plaintiff and  
18 that held by the Defendant. The Sony TV alleged to be in the  
19 possession of the Plaintiff will not be included in the Court's  
20 calculation because of a lack of evidence as to its existence.

21 Although both parties have left the distribution of the  
22 marital property to the discretion of this Court, neither have  
23 supplied this Court with substantial evidence of the monetary  
24 value of each piece of property. Therefore, the values  
25 accompanying each piece of property listed below have been  
26 determined by the Court based on the parties' estimated values of  
27 the property, the oral testimony of the Plaintiff, and the Court's  
28 discretion.

1 Marital Property in Possession of the Plaintiff:

2 PROPERTY<sup>2/</sup> VALUE

3 1. 1979 Corvette	\$10,000.00
2. Ferari Kit car	\$ 8,000.00
4 3. 1986 Suzuki (sold)	\$ 1,500.00
4. 70 hp outboard motor	\$ 1,000.00
5 5. Dining room table with chairs	\$ 200.00
6. Antique sofa with 2 chairs	\$ 200.00
6 7. Refrigerator, stove, washer/dryer, microwave, dishwasher	\$ 2000.00
7 8. Dresser and waterbed	\$ 250.00
9. Camera and accessories	\$ 150.00
8 10. Antique Piano	\$ 350.00
11. Dishes, glassware, silverware, toaster, 9 bowls, silver tea set	\$ 200.00
12. Antique sewing machine	\$ 100.00
10 13. Sterec cabinet	\$ 50.00
14. Air conditioner	\$ 200.00
11 15. Two end tables	\$ 50.00
16. Stereo and record player	\$ 100.00
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	Total value= \$24,350.00

14 Marital Property in Possession of the Defendant:

15 PROPERTY VALUE

16 1. Antique radio	\$ 25.00
17 2. 2 beds for children	\$ 100.00
18 3. TV and VCR	\$ 400.00
19 4. Coffee table	\$ 50.00
20 5. Mirror and dresser	\$ 75.00
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	Total value= \$ 650.00

20 **Calculation**

21 The difference in the value of property held individually by  
22 the parties (\$24,350.00 - \$650.00) equals \$23,700. In order to  
23 evenly distribute the marital personal property, the Plaintiff  
24 must make a monetary payment to the Defendant in the amount of  
25 eleven thousand eight hundred and fifty dollars (\$11,850.00).  
26  
27

28 <sup>2/</sup> Although items 15 and 16 were originally listed as property in possession of the Defendant, oral testimony of the Plaintiff contains convincing evidence to the contrary.



1 family,<sup>4/</sup> the testimony of both the Plaintiff and his father make  
2 it clear that the Plaintiff incurred the obligation.<sup>5/</sup> More  
3 importantly, the evidence presented in this case creates an  
4 undeniable connection between the father's gift of funds to  
5 purchase Lot 021 T 14 and his loan of \$55,000.00.

6 Both the gift and the loan were made during 1987, the year  
7 the Plaintiff returned from Seattle. In fact, the bulk of the  
8 proceeds of the father's loan were used to fund his son's return.  
9 The Plaintiff testified that the loan was used to move back from  
10 Seattle with his family, to furnish Lot No. 021 T 14, and to build  
11 an addition to the house on that property. The Court finds the  
12 prospect of saddling the Defendant with responsibility for half of  
13 a \$55,000.00 loan wholly unfair in light of the fact that most of  
14 the proceeds were used to create a furnished home in Tinian which  
15 she and her children only used for four years.<sup>6/</sup> Therefore,  
16 pursuant to Section 1814(b)(2), this Court orders that the  
17 \$55,000.00 loan become the sole responsibility of the Plaintiff to  
18 be paid out of his individual property.

19  
20  
21 <sup>4/</sup> The Plaintiff testified that he used the money for legal  
22 fees (\$10,000), furnishing the home his father gave him (amount  
23 unknown), renovating his wife's shop (amount unknown), an addition  
24 of a bathroom and bedroom to his home (\$5,000), transporting three  
25 cars and one boat from Seattle to Tinian (\$5,000), and a trip to  
the mainland (\$3,500). The Court notes that the majority of the  
proceeds from the loan were used to pay for expenses closely  
related to moving into and furnishing the Plaintiff's new home.

26 <sup>5/</sup> When asked about the loan, the Plaintiff's father  
27 testified, "every time [the Plaintiff] needs money he asks me,  
28 'Dad can't you help me with this?' So, what can I do? I have to  
help my son. He pay me back when ever he has money."

<sup>6/</sup> The Plaintiff and his father have made it abundantly clear  
that the Defendant was not included as a donee of Lot 021 T 14.



1 real estate appraiser to be chosen by both parties. The value  
2 given by the appraiser will be subject to this Court's approval.

3 2) Lot 027 T 04 is the non-divisible, individual property  
4 of the Plaintiff.

5 3) Lot 021 T 14 is the non-divisible, individual property  
6 of the Plaintiff.

7 4) The Defendant is not entitled to any reimbursement for  
8 the addition to Lot 021 T 14.

9 5) The 1963 Ford Galaxy Convertible is the individual  
10 property of the Plaintiff.

11 6) The Plaintiff must make a monetary payment to the  
12 Defendant in the amount of eleven thousand eight hundred and fifty  
13 dollars (\$11,850.00) in order to complete the equitable  
14 distribution of the personal property.

15 7) The debts owed to J.R.S. (except for a \$50.00 balance),  
16 CUC, MTC, and Tommy Mendiola have already been paid with marital  
17 assets and are not marital obligations for purposes of this  
18 equitable distribution.

19 8) The seven thousand dollar (\$7,000.00) loan from Grace  
20 Campbell is the sole responsibility of the Plaintiff to be paid  
21 out of his individual property. The Plaintiff may not seek  
22 reimbursement from the Defendant for this debt.

23 9) The fifty-five thousand dollar (\$55,000.00) loan from  
24 Freddy and Maria Hofschneider is the sole responsibility of the  
25 Plaintiff to be paid out of his individual property. The  
26 Plaintiff may not seek reimbursement from the Defendant for this  
27 debt.

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10) The Plaintiff must pay all creditors for the remaining marital obligations, and the Defendant must reimburse the Plaintiff an amount equal to one-half of the remaining marital obligations, or four thousand five hundred and seven dollars (\$4507.00).

So ORDERED this 9<sup>th</sup> day of March, 1994.

*Marty W.K. Taylor*  
MARTY W.K. TAYLOR Associate Judge