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

In the Matter of the Estate)	Civil Action No. 90-840
)	
of RITA KAIPAT,)	DECISION AND ORDER
)	ON REMAND
Deceased.)	
_____)	

This matter came before the Court on remand from a Commonwealth Supreme Court Judgment issued on February 18, 1933. Decedent Rita Kaipat died intestate in 1959, leaving property in Chalan Lau Lau, Saipan. Rita's direct descendants claim that she held individual title to this land and that it now belongs solely to them. The descendants of Rita's two brothers claim that she held the land as a land trustee under Carolinian custom and that the land belongs to members of all three branches of the family. The Supreme Court's Mandate asked this Court to reconsider two issues in determining the proper owners of this property: 1) the circumstances of Rita's inheritance of the land; and 2) Rita's conduct towards the family after she took control of the land.

I. FACTS

A. PROCEDURAL HISTORY

Decedent Rita Kaipat was one of three children of Joaquin Kaipat and Vicenta Mueilemar. Rita's brothers, Benigno and Isaac,

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1 predeceased her; Benigno died before the Second World War, and
2 Isaac was killed during the invasion of Saipan in 1944. However,
3 both brothers left surviving children and grandchildren, as did
4 Rita. The family is Carolinian.

5 Trial in this matter was held from July 29 through August 6,
6 1991. The trial concerned two principal issues: 1) whether Rita
7 had adopted certain persons by the Carolinian custom of mwei mwei;
8 and 2) whether Lot 1772 in Chalan Lau Lau belonged to Rita alone
9 or to the family as a whole under the Carolinian custom of land
10 trusteeship by the eldest female. The Superior Court issued its
11 Decision on September 24, 1991, finding that Rita adopted three
12 persons by mwei mwei but did not adopt four others. Decision at
13 2-3. The Court also found that Rita held individual title to Lot
14 1772, giving res judicata effect to Land Commission Title
15 Determination 277, which Rita obtained in 1952. Id. at 3-4.

16 While the Court's findings on the adoption issue were not
17 disturbed on appeal, the Supreme Court reversed this Court's
18 findings with respect to Lot 1772. *In re Estate of Kaipat*, 3
19 N.M.I. 494 (1993). According to the Supreme Court, the 1952 Title
20 Determination left unanswered:

21 the question of whether Rita inherited [Lot 1772] as her
22 own or on behalf of the clan. [...] Because such
23 "sole" inheritance appears to go against the grain of
24 Carolinian land law, it behooves the trial court to look
25 into the underlying basis for Rita's claim that she
26 inherited the land outright.

27 Id. at 499. On remand, the parties stipulated to a resubmission
28 of the matter to the Court on briefs and evidentiary exhibits, but
without further hearing.

1 not inherited from Isaac's parents. Id. at 385. The Land
2 Commission documents relating to the As Palomo parcel tend to
3 support Joaquina's testimony, stating variously that the land was
4 "from German Gov't" and that Isaac "inherited" the As Palomo lot
5 from "Luis Gapapi." Claimant No. 1's Exhibit 4.

6 Moreover, the record is completely devoid of evidence that
7 Rita's brother Benigno received any land from his parents. Rita's
8 children suggest in their briefs that this could be true because
9 Benigno was not truly the son of Vicenta Mueilemar and Joaquin
10 Kaipat Dolores *Pelisamen's Proposed Findings of Fact*, at 3 But
11 the testimony on which they base this assertion -- the statement
12 on cross-examination of family friend Elena Teregeyo -- is
13 extremely vague and far removed from personal knowledge.
14 Transcript at 281-2. Other witnesses with more direct knowledge
15 testified that Benigno was the son of Joaquin and Vicenta.

16 Viewed in its totality, Court finds the evidence relating to
17 Rita's acquisition of Lot 1772 to be highly inconclusive. This is
18 not entirely **surprising**, since the event in question took place
19 before the living memory of **any** witness and was unmarked by
20 written documents. However, such evidence as exists points to the
21 inference that Rita inherited the land pursuant to the Carolinian
22 custom of land trusteeship.

23 24 C. USE OF LOT 1772

25 Rita's use of Lot 1772 since the Second World War is not the
26 subject of serious dispute. In its original Decision, this Court
27 found that:

28 From the evidence presented, it is clear that [Rita]
opened her heart and home to her brothers Isaac and

1 Benigno and their children. Rita allowed them to stay
2 with her, permitted them to farm and build their houses
3 on her property and share virtually everything else she
4 owned.

5 *Decision* at 3. This finding was not disturbed on appeal, and the
6 Court sees no reason to depart from it now.

7 The parties' dispute arises from the meaning to be ascribed
8 to such conduct. In the **Court's** view, the evidence that Rita
9 allowed her nieces and nephews to farm and build on Lot 1772 does
10 not prove or disprove the parties' contentions regarding the
11 character of Rita's ownership. She could easily have allowed the
12 family this access to the land out of a sense of duty unconnected
13 to land trusteeship per se. If this were the case, it would be a
14 cruel irony to use her acts of generosity towards her extended
15 family as the basis for depriving her heirs their control over her
16 inheritance. Thus, the Court will not ascribe any weight to this
17 evidence.

18 Two principal pieces of evidence probative of the nature of
19 **Rita's** land ownership were presented. First, **Joaquina** Laniyo
20 presented testimony that Rita shared rental proceeds from the
21 Chalan Lau Lau property with her brothers Isaac and Benigno.
22 *Transcript* at 50, 76. Second, Rita's adopted daughter Auria
23 Tagabuel asserted that Rita gave her documents relating to the
24 ownership of Lot 1772 and to other properties Rita owned. Rita
25 allegedly gave Auria instructions to give documents relating to
26 two other properties to Rita's adopted sons **Alejandro** and Jesus.
27 As for Lot 1772, Auria stated that Rita "**told** me to have them."
28 *Transcript* at 206. However, on cross-examination, Auria testified
that Rita wanted her to hold the land as trustee for the entire
family and expected her "**to** follow Carolinian custom as to the

1 land." *Id.* at 255. Auria qualified this admission by stating
2 "[i]f it's family land, the brothers already have their own land,
3 but the land in Chalan Lau Lau is just like for a gathering." *Id.*
4 The Court considers this statement more probative of Auria's own
5 opinions regarding Carolinian custom than of Rita's expectations
6 on the issue.

7 8 **II. ANALYSIS**

9 **A. THE SUPREME COURT'S MANDATE**

10 In *Estate of Kaipat, supra*, 3 N.M. I. at 499-500, the Supreme
11 Court stated:

12 Only by examining the basis for Rita's ownership in her
13 name alone and determining whether it passes muster
14 factually in the light of Carolinian land law would
15 there be a basis for a literal reading of the title
16 determination issued to Rita. If there is no basis for
17 her to hold title in her name alone, then the land
18 remains clan land. [...] If it is proven that Rita
19 holds the land in trust, allowing the T.D. to stand
20 because it is "final" would result in manifest injustice
21 to other heirs.

22 [...] The trial court should have reviewed an
23 examined the basis for Rita's sole ownership against the
24 competing claim of the other heirs in view of the
25 Carolinian customary land Paw. Only if it is
26 established that Rita inherited the land alone, may the
27 title determination stand.

28 The parties dispute the meaning of these instructions on
remand. According to the heirs of Isaac and Benigno, the Supreme
Court's opinion establishes a presumption in favor of "clear
Carolinian land law" which must be rebutted by a party asserting
a deviation from customary practice. *Brief of Heirship Claimants*
at 11. Conversely, Rita's adopted child argues that the Supreme
Court wanted only a fuller statement from this Court providing
"assurance" that this Court's earlier finding of Rita's sole
ownership rested on the entire **evidentiary** record and not solely

1 on the face of Title Determination 277. Reply Brief of *Alejandro*
2 *Laniyo* at 2.

3 The Court rejects both of these interpretations. The Supreme
4 Court did not erect a "**presumption**" that a Title Determination by
5 the Land Commission is invalid if it runs counter to custom. Nor
6 did the Supreme Court reverse this Court's judgment merely for
7 want of "**assurance**" about the basis for the original ruling.
8 Rather, the Supreme Court deemed the Land Commission's finding
9 that Rita owned the land to be inadequate for an inquiry into the
10 character of that ownership -- whether it was by fee simple or by
11 customary trusteeship. In the Court's view, the Supreme Court's
12 decision stands for the following proposition: when a Title
13 Determination vests title in an individual, but fails to specify
14 the nature of the individual's ownership, the court must consider
15 any evidence that the individual owned other **than** a fee simple
16 interest pursuant to local custom.

17 Having conducted that inquiry here, this Court cannot say
18 that "**there** is no basis for Rita to hold title in her name **alone**."
19 However, neither can the Court say that "**it** is proven that Rita
20 holds the land in **trust**." The events in question are too remote,
21 and the available evidence too scanty, for such clear-cut
22 findings. However, the preponderance of the evidence weighs in
23 favor of Rita's customary trusteeship. In particular, the Court
24 takes note of the following evidence:

- 25 - that Rita mentioned being "**the** eldest of our
26 **family**" in her declaration before the Land
Commission;
- 27 - that Rita shared rental proceeds from the property
28 with her brothers;

- 1 - that there is no evidence of Rita's brother
2 Benigno receiving other property from his parents;
3 - that the available evidence suggests that Rita's
4 brother Isaac received the As Palomo property from
5 a source other than his parents;
6 - that Rita's adopted daughter Auria admitted that
7 Rita gave her title to Lot 1772 pursuant to
8 Carolinian custom.

9 In view of this evidence, and pursuant to the Supreme Court's
10 mandate, the Court now finds that Rita owned Lot 1772 as a land
11 trustee for the family, including the descendants of her two
12 brothers.

13 B. APPLICABLE CAROLINIAN CUSTOM

14 Title 8 CMC § 2904 governs Carolinian customary law regarding
15 descent and distribution of land. Estate of Kaipat, supra, 3
16 N.M.I. at 498 n. 2; see also *Willbanks v. Stein*, Civil Action No.
17 93-337 (N.M.I. Super. Ct. July 19, 1993) (although Probate Code
18 does not apply of its own force to estates prior to 1984, Court
19 Looks to Probate Code as **codification** of pre-existing custom). As
20 to **family** land, § 2904(b) specifies that members of the family
21 have the same use rights to the land as the customary trustee's
22 rights. Claimant **Alejandro** Laniyo argues that such "use rights"
23 do not affect the trustee's power of alienation over the land.
24 Laniyo Brief at 7-9. However, § 2904(c) requires the entire
25 family to consent to any transfer or disposition of the land by
26 the customary trustee.^{1/}

27
28 ^{1/} The procedures for obtaining such consent are set forth
in S 2909, which provides for majority vote among the children of
each deceased sibling of the original customary trustee.

1 Here, the preponderance of the evidence suggests that Rita
2 designated Auria Tagabuel as customary land trustee. Whatever
3 Auria's personal understanding of Carolinian custom may be, the
4 Court is constrained to apply those customs codified in 8 CMC §
5 2904 et seq. Accordingly, the Court finds that the heirs of
6 Benigno and Isaac have equal use-rights to Lot 1772 as the heirs
7 of Rita, and that all three branches of the family must consent to
8 any alienation of the land, pursuant to 8 CMC § 2909.

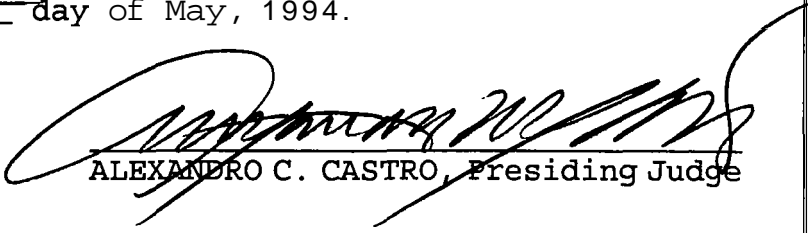
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10 **IV. CONCLUSION**

11 For the foregoing reasons, the Court hereby ORDERS:

12 1. Title to Lot 1772 in Chalan Lau Lau is hereby declared
13 to be family land, owned by the heirs of Vicenta Mueilemar
14 represented by Auria Tagabuel as customary trustee.

15 2. Within thirty days of the issuance of this Decision and
16 Order, the parties shall submit a stipulated Order setting forth
17 the final list of the heirs entitled to share Lot 1772. The Order
18 shall **constitute** the Decree of Final Distribution of the Estate of
19 Rita **Kaipat**. If the parties cannot agree, the **matter** may be
20 resubmitted to the Court by motion within thirty days.

21
22 So ORDERED this 2 day of May, 1994.

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24 
25 ALEXANDRO C. CASTRO, Presiding Judge
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