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

CARMEN B. PANGELINAN, PAUL S. ) Civil Action No. 93-340  
E AND BARBARA P. LEE )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
ODORICO DLG. SAN NICOLAS and ) FINDINGS OF FACT and  
CARMEN P. SAN NICOLAS ) CONCLUSIONS OF LAW  
 )  
Defendants. )  
\_\_\_\_\_ )

This matter came for trial on May 12 and 13, 1994, on the Plaintiffs action against the Defendants for breach of warranty, interference with easement, and injunctive relief. After the conclusion of trial, the Court ordered the parties to file proposed Findings of Fact and Conclusions of Law. Upon reviewing the evidence presented at trial and considering the applicable law, the Court hereby makes the following Findings of Fact and Conclusions of Law.

FOR PUBLICATION

1 I. FINDINGS OF FACT

2 On June 19, 1980, the Commonwealth Government deeded to  
3 Defendants Odorico San Nicolas and Carmen San Nicolas Lot No. 026  
4 T 05, which consisted of approximately 2.5 hectares of  
5 agricultural land. On June 6, 1984, the Defendants conveyed by  
6 deed two thousand square meters of Lot 026 T 05 to **Trinidad S.**  
7 **Mendiola.** On November 28, 1989, the San Nicolas conveyed by  
8 Warranty Deed, one thousand square meters of Lot No. 026 T 05 to  
9 Plaintiff Carmen B. Pangelinan. Plaintiff Pangelinan authorized  
10 co-Plaintiffs Barbara P. Lee and Paul S. Lee, daughter and son-in-  
11 law respectively, to build a house and make improvements on said  
12 lot.

13 There is no public access to the Plaintiffs' real property.  
14 However, prior to the Defendants' conveying the property to the  
15 Plaintiffs, the Defendants built a coral road which presently runs  
16 along the southeastern portion of the Plaintiffs' property. This  
17 road provided the Plaintiffs with access to their land. The  
18 Plaintiffs utilized this access road from the time the Defendants  
19 conveyed the property to them until the onset of this dispute,  
20 approximately three (3) years.

21 Thereafter, the Defendants cut off the Plaintiffs' access to  
22 their property by placing boulders in the coral road and fencing  
23 in with barb-wire the Plaintiffs' property which ran along the  
24 coral road. Moreover, the Plaintiffs' water line was cut off  
25 requiring the Plaintiffs to pipe their water from another source.  
26  
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1    II.    CONCLUSIONS OF LAW

2    Easements may be created by express agreement, prescription  
3    or by implication.    *Kohlman* v. Rivera, 701 P.2d 982, 985 (Mont.  
4    1985).  An easement by necessity arises from an implied grant or  
5    reservation of right of ingress and express to a land-locked  
6    parcel.  Cf. *Otero v. Pacheco*, 612 P.2d 1335, 1337 (N.M. 1980).

7           When Plaintiff Pangelinan bought the property from  
8    Defendants, there was no express language in the Warranty Deed as  
9    to the right of ingress or egress.  At the time of purchase, the  
10    only road available to Plaintiffs' property was the route used by  
11    the Defendants to get to Defendant's house.  Absent any right of  
12    ingress or egress to the Plaintiffs' land, the Plaintiffs' land-  
13    locked property is surrounded on all corners by land owned by  
14    third parties.  Necessity for such an easement arises from a  
15    presumption that, when a grantor conveys property, absent a clear  
16    indication to the contrary, the grantor is presumed to have  
17    intended to have reserved to himself, or to have conveyed to his  
18    grantees, a means of access to the property in question, so that  
19    the land may be beneficially utilized.  See *Porter v. Griffith*,  
20    543 P.2d 138, 140 (Ariz. 1975).  Without that right of ingress or  
21    egress, the Plaintiffs would not have been able to build a house  
22    on their property.

23           It is undisputed that prior to conveying their land to the  
24    Plaintiffs, the Defendants were the original owners to the real  
25    property at issue.  Furthermore, the Plaintiffs showed to the  
26    satisfaction of this Court that when the Defendants conveyed the  
27    property to the Plaintiffs, there was no public roadway to the  
28    Plaintiffs' land, and the only access was the easement serving the

1 Defendants' and Plaintiffs' property.

2 Moreover, the fact that the Plaintiffs have an alternate  
3 permissive route is irrelevant. If the permissive or revocable  
4 alternative means of access is terminated, Plaintiffs may still  
5 avail themselves of an easement by necessity implied in the deed  
6 serving the original estates. Reasonable permissive use of  
7 another's property does not negate an easement by necessity. *Finn*  
8 v. Williams, 33 N.E.2d 226, 228 (Ill. 1941). Therefore, the fact  
9 that the Plaintiffs obtained permission to use a third person's  
10 property to get to their house is irrelevant and does not  
11 extinguish the easement by necessity. The fact is that the  
12 Plaintiffs were forced to seek another access to their property  
13 after the Defendants denied them access to their land.

14  
15 **III. CONCLUSION**

16 This Court, therefore, finds that both the Plaintiffs' and  
17 Defendants' land were previously held by the Defendants as a  
18 single unit before severing it and selling a parcel to Plaintiff  
19 Pangelinan. The evidence at trial supports an inference that a  
20 reasonable necessity existed from the easement at the time of the  
21 severance and sale to the Plaintiffs. The Defendants or any other  
22 persons are enjoined from blocking or impeding the easement under  
23 dispute in this civil action, and all barriers shall be removed  
24 within two (2) weeks of this Order. Each party shall bear its own  
25 costs.

26 So ORDERED this 23 day of June, 1994.

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MIGUEL DEMAPAN, Associate Judge