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ST. JOHN, MARIANA ISLANDS

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

WANDA TOVES MATERNE, for	)	Civil Action No. 92-1482
herself and for all other heirs)	)	
of Crisanto C. Toves and Ana	)	
Gogue Manglona and	)	
LEONARDO M. TOVES,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	<b>MEMORANDUM DECISION ON</b>
	)	<b>DEFENDANT'S MOTION FOR</b>
MARIANAS PUBLIC LAND	)	<b>SUMMARY JUDGMENT</b>
CORPORATION,	)	
	)	
Defendant.	)	
_____	)	

This matter came before the Court on July 13, 1994, on Defendant Marianas Public Land Corporation's (MPLC) motion for summary judgment against plaintiffs Wanda Materne Toves and Leonardo M. Toves who claim just compensation for Lot 007 R 38 as heirs of Crisanto C. Toves and Ana Manglona Toves.

**I. Facts**

Lot 007 R 38 (the Lot) is 20,126 square meters of ocean front land located on the bay side of Songsong Village, Rota. The Lot

1 encompasses the former Japanese dock and is across the street from  
2 the popular scuba diving shop called "**Dive** Rota." According to  
3 the February 1971 Determination of Ownership 007 R 38, the  
4 Government of the Trust Territory owned the Lot. See **Defendant's**  
5 **Exh. 7.** Today, MPLC holds title to the lot as successor in  
6 interest to the Government of the Trust Territory.

7 The alleged original owners of the Lot were the late Crisanto  
8 C. Toves and Ana Gogue Manglona (Crisanto and Ana) who originally  
9 resided in Rota but were forced to move to Saipan during World War  
10 II. Among their seven children were the late Albert M. Toves (the  
11 eldest son), Plaintiff Leonard M. Toves, and Pedro M. Toves, (the  
12 deceased father of Plaintiff Wanda Toves Materne). Although  
13 Crisanto and Ana were seen living at Lot 007 R 38 prior to the war  
14 (see Deposition of Raphael Quitugua at 33) they were forced to  
15 move to Saipan until the war ended. See Defendant's Exh. 9, at 3.  
16 Albert and Pedro remained on Rota during the war and were rejoined  
17 by their parents afterwards. Id. Although a concrete home once  
18 stood on the lot, the Toves family did not live there after the  
19 war and subsequently it was bulldozed by the Government and  
20 replaced with hardware belonging to the Mobil Oil Company. Id.

21 In 1970, the Mariana Islands District Land Commission of the  
22 Trust Territory of the Pacific Islands (Land **Commission**) appointed  
23 a land registration team (LRT) in Rota to make title  
24 determinations for over two hundred allegedly unclaimed properties  
25 in **Songsong** village (**commonly** referred to as the old Japanese  
26 village). Lot 007 R 38 was one of many tracts involved in this  
27 inquiry.

28

1           On February 3, 1970, Land Commission issued a **"Notice** of  
2 Preliminary Inquiry By Land Registration **Team"** (Notice of  
3 Inquiry). See Defendant's Exh. 2. The Notice of Inquiry was  
4 posted at stores and meeting places nearby. Albert M. Toves' name  
5 appears on the Notice of Inquiry as the ostensible owner of Block  
6 9 Lot 8 (later known as Lot 004 R 22). However, neither his name  
7 nor the names of his parents appear anywhere on the Notice of  
8 Inquiry as ostensible owners of the subject property.  
9 Nevertheless, on June 25, 1971, Albert M. Toves filed a claim on  
10 behalf of his deceased mother, Ana Gogue Manglona for "one  
11 house/lot - old Japanese Village (Songsong)." See Defendant's Exh.  
12 3. According to the testimony of a member of the Land Commission,  
13 Albert Toves had made several attempts to address the Land  
14 Commission about his **family's** ownership of the land "close to the  
15 east dock." See Deposition of Raphael Quitugua at 8. The Senior  
16 Clerk of the Land Commission has acknowledged that **Albert's** 1971  
17 claim referred to Lot 007 R 38. See Affidavit of Juan Manglona at  
18 3-4.

19           On June 6, 1974, the LRT issued a Notice of Formal Hearing by  
20 posting bulletins and making radio announcements. The Notice of  
21 Formal Hearing included Lot 007 R 38. See **Defendant's** Exh. 4.  
22 However, neither the English nor the Vernacular portions of that  
23 document list Albert, Crisanto, or **Ana** as "ostensible owners."  
24 The Vernacular version lists the "**T.T. Government**" as the  
25 ostensible owner. According to both versions, Lot 007 R 38 did  
26 not have a previous lot number.

27           Mr. Quitugua attempted to personally serve Mr. Toves with the  
28 notice about the hearing concerning Lot 007 R 38. Mr. Quitugua

1 testified that this service did not occur until 1976. His  
2 attempts failed because Mr. Toves was off-island at the time and  
3 his wife refused to accept it on his behalf. On July 22, 1974,  
4 the hearing was held without objection. Finally, on January 11,  
5 1975, the LRT determined that Lot 007 R 38 belonged to the Trust  
6 Territory Government. The LRT Chairman "**found** that [Lot 007 R 38]  
7 is owned by the Government," even though the hearing took place  
8 without any documents, witnesses, or adverse claims. See Summary  
9 of Hearing. This finding was confirmed and the Determination of  
10 Ownership of Lot 007 R 38 was issued by the Land Commission on  
11 February 28, 1975. See Defendant's Exh. 7. The Determination of  
12 Ownership was posted for 120 days as required by law, and a  
13 Certificate of Title issued. On February 18, 1982, Albert M.  
14 Toves voided his claim to the lot. See Defendant's Exh. 3. The  
15 circumstances surrounding **Albert's** cancelled claim are not clear.  
16 Upon **Albert's** death in the late 1980's and after learning about  
17 **Albert Toves'** fruitless efforts to obtain title to the lot, other  
18 heirs of Crisanto and Ana have resumed his endeavor.

## 19 20 **II. Procedural History**

21 On December 29, 1989, **Plaintiffs** filed a claim in the United  
22 States District Court for the Northern Mariana Islands involving  
23 Lot 007 R 38 and consisting of two counts: (1) a 14th Amendment  
24 procedural due process claim under 42 U.S.C. § 1983; and, (2) a  
25 claim alleging that the Trust Territory Government took the  
26 **Plaintiffs'** land without just compensation. The Defendants, MPLC  
27 and the CNMI, opposed both counts and requested summary judgment  
28 in their favor. The District Court concentrated on the first

1 claim and granted the **Defendant's** Motion for Summary Judgment  
2 after finding that: (1) the **Commonwealth's** two year statute of  
3 limitations for personal injuries barred **Plaintiffs'** due process  
4 claims, applying *Wilson v. Garcia*, 105 **S.Ct.** 1938, 1946-48 (1985)  
5 (courts required to apply the local statute of limitations for  
6 personal injury actions to Section 1983 claims); (2) neither the  
7 Mariana Islands District Land Commission's determination of  
8 ownership nor the application of the two year statute of  
9 limitations violates procedural due process; (3) a 42 U.S.C. §  
10 1983 suit cannot be brought against MPLC and the CNMI because the  
11 acts complained of occurred under the Trust Territory Government,  
12 an entity not bound by Section 1983. *Materne v. MPLC*, Civil Action  
13 No. 89-0018, slip op. at 5 (D.N.M.I. May 20, 1991).

14 In the wake of the District **Court's** decision and its  
15 subsequent affirmation by the Ninth Circuit Court of Appeals, the  
16 Plaintiffs have brought the present suit claiming that the  
17 District Court never reached the second count of their Complaint  
18 concerning the alleged taking of **Plaintiffs'** land without just  
19 compensation. In their Opposition to Defendant's Motion for  
20 Summary Judgment, Plaintiffs clarify their position by arguing  
21 that the Land **Commission's** title determination for Lot 007 R 38  
22 should not be given **res judicata** effect because the notice  
23 deficiencies and the **record's** inadequacy trigger all four of the  
24 administrative **res judicata** exceptions contained in *In re Estate*  
25 of Dela **Cruz**, 2 N.M.I. 1 (1991).

26 Thus, Plaintiffs contend that this Court should disregard the  
27 Title Determination for 007 R 38 and determine that: (1)  
28 **Plaintiffs'** ancestors (**Crisanto C. Toves** and **Ana Gogue Manglona**)

1 originally owned the lot; (2) MPLC and the CNMI took the lot by  
2 way of the 1975 Trust Territory Government's determination of  
3 ownership; and (3) neither the owners nor their heirs ever  
4 received just compensation for the lot. The Plaintiffs also claim  
5 that they are entitled to compensation through the Public Purpose  
6 Land Exchange Authorization Act of 1987 (the Act).

7 Defendant counters that: (1) the Court is precluded from  
8 hearing Plaintiffs' claim because it must give full faith and  
9 credit to the District Court's May 1991 Order which found no due  
10 process violation under 42 U.S.C. § 1983; (2) alternatively, the  
11 Court should find no due process violation because the government  
12 complied with the applicable notice requirements set forth in 67  
13 TTC § 110(1) (1970); (3) alternatively, the Court should not  
14 disrupt the Determination of Ownership because the 120 day limit  
15 for filing appeals found in 67 TTC § 117 (1970) expired without  
16 Plaintiffs' representative (Albert Toves) having filed an appeal;  
17 (4) alternatively, Plaintiffs' claim is barred by estoppel and  
18 waiver; and, (5) to the extent the Court allows Plaintiffs to  
19 pursue their claim, such claim should be limited to a "one house  
20 lot."

### 21 22 **III. Issues**

23 1. Whether the Public Purpose Land Exchange Authorization Act of  
24 1987 applies to public land transactions alleged to have occurred  
25 prior to the institution of MPLC.

26 2. Whether the full faith and credit doctrine precludes this  
27 Court from entertaining Plaintiffs' claim that the Trust Territory  
28 Government violated the Title 67 notice requirement.

1 3. Whether as a matter of law, none of the four Dela **Cruz**  
2 exceptions could apply the **LRT's** Title Determination for Lot 007  
3 R 38.

4 4. Whether as a matter of law, the affirmative defenses of  
5 estoppel and waiver preclude the **Plaintiffs'** from asserting their  
6 rights to Lot 007 R 38.

7 5. Whether Plaintiff's possibility for recovery should be  
8 resricted to "one house lot."

9  
10 **IV. Analysis**

11 **A. Summary Judgment Standard**

12 Summary judgment is entered against a party if, viewing the  
13 facts in the light most favorable to the non-moving party, the  
14 Court finds as a matter of law that the moving party is entitled  
15 to the relief requested. **Cabrera** v. Heirs of De Castro, 1 N.M.I.  
16 172, 176 (1990). Once the moving party meets its initial burden  
17 of showing entitlement to judgment as a matter of law, the burden  
18 shifts to the non-moving party to show a genuine dispute of  
19 material fact. Id. at 176.

20  
21 **B. No Relief Under Public Purpose Land Exchange Authorization Act**

22 Before reaching the arguments set out in Defendant's Motion  
23 for Summary Judgment, the Court shall address **Plaintiffs'**  
24 contention that the "**Public** Purpose Land Exchange Authorization  
25 Act of 1987" (the Act) grants them a right to compensation. The  
26 Act purports to facilitate the process by which MPLC obtains  
27 freehold interests in a persons private land by giving the person  
28 a freehold interest in public land. 2 CMC § 4142. Section 4147

1 makes the terms of the Act applicable only to agreements entered  
2 into by the *Corporation* prior to its effective date. However, the  
3 definition of the term "**Corporation**" in the Act is limited to  
4 "**Marianas Public Land Corporation...or its successor.**" 2 CMC §  
5 4143. Thus, the Act does not apply to public land transactions  
6 alleged to have taken place prior to the institution of MPLC. The  
7 determination that placed Lot 007 R 38 in the hands of the Trust  
8 Territory cannot be governed by the Act because it occurred back  
9 in 1975, prior to **MPLC's** existence. Therefore, as a matter of  
10 law, the **Plaintiffs'** reliance on the Act to secure just  
11 compensation must fail.

### 12 13 **C. Full Faith and Credit**

14 The Defendant contends that the Court is precluded from  
15 hearing Plaintiffs' claim because it must give full faith and  
16 credit to the District **Court's** May 1991 *Order* which found no due  
17 process violation under 42 U.S.C. § 1983. The District Court  
18 ruled that Albert **Toves'** Section 1983 procedural due process  
19 rights were not **violated.**<sup>1/</sup> See **Defendant's** Exh. 9.

20 The Court agrees with the Defendant that the District  
21 **Court's** determination should be afforded full faith and credit.  
22 *Partmar v. Paramount Pictures Theatres Corp.*, 74 S.Ct. 414 (1954).  
23 Thus, the Court shall not entertain **Plaintiffs'** claim to the  
24 extent that it alleges a violation of due process under 42 U.S.C.  
25 § 1983. However, **Plaintiffs'** notice claim is based on an alleged  
26 violation of Title 67 of the Trust Territory Code which contains  
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28 <sup>1/</sup> The District Court never addressed the specific issue of whether Lot 007 R 38 once was owned by Crisanto and Ana.



1 the notice requirements for title determination hearings  
2 applicable to the case at bar. As such, the claim does not raise  
3 a constitutional due process issue, but rather alleges a statutory  
4 violation of notice. Since the District Court did not address the  
5 alleged violation of the Title 67 notice requirement, the issue is  
6 now properly before this Court.

7  
8 **D. Title Determination Has Res Judicata Effect With Exceptions**

9 Although the District Court never decided who owned the lot,  
10 that issue was determined by the LRT on January 11, 1975 in favor  
11 of the Government of the Trust Territory. According to *In re*  
12 *Estate of Dela Cruz*, 2 N.M.I. 1, 11 (1991), land title  
13 determinations shall be given administrative res **judicata** effect  
14 and can only be set aside if the court finds: (1) that it was void  
15 when issued; or (2) that the record is patently inadequate to  
16 support the **agency's** decision; or that giving the determination  
17 res **judicata** effect would (3) contravene an overriding public  
18 policy; or (4) result in a manifest injustice. *Dela Cruz*, 2 N.M. I.  
19 at 9. The Plaintiffs contend that the Title Determination for Lot  
20 007 R 38 applies to all four of the *Dela Cruz* exceptions.

21  
22 **1. Lack of Notice Constitutes a  
23 Genuine Dispute of Material Fact**

24 The Plaintiffs contend that the determination was "**void** when  
25 **issued**" because the Land Commission violated Title 67 Section  
26 110(1)(c) when it failed to personally serve notice of the hearing  
27  
28

1 "upon all parties by the preliminary inquiry to be **interested**" at  
2 least thirty days in advance of the **hearing**.<sup>2/</sup>

3 The Plaintiffs direct the Court to Albert **Toves'** 1971  
4 Application for Registration of Land Parcel, See Defendant's Exh.  
5 3, in which Mr. Toves lists himself as the legal heir of the  
6 Applicant Ana **Gogue** Manglona as evidence that the LRT knew that  
7 Albert was an "**interested party**." Next the Plaintiffs direct the  
8 Court to Defendant's Exhibit 4 for the proposition that no party  
9 was served in June 1974. Plaintiffs' *Opposition to Defendant's*  
10 *Motion for Summary Judgment* at 6. Defendant's Exhibit 4 is a  
11 "**Notice of Formal Hearing by Land Registration Team on Claims**" and  
12 contains a list of all **Songsong** Village Lots and their apparent  
13 owners. Exhibit 4 was created for the purpose of providing public  
14 notice to ostensible owners on June 6, 1974. Despite the fact  
15 that Albert Toves filed an application for registration of land  
16 parcel on his mother's behalf on June 25, 1971,<sup>3/</sup> neither his nor  
17 her name appear on the public notice as ostensible owners of Lot  
18 007 R 38. In fact, while the English version of the public notice

19 \_\_\_\_\_  
20 <sup>2/</sup> Title 67, Section 110 of the Trust Territory Code:

21 (1) Before a land registration team commences  
22 hearing with respect to any claim, notice containing a  
23 description of the claim and the date, time, and place  
24 of hearing shall be given at least thirty days in  
25 advance of the hearing as follows:

26 **... (c)** By serving such notice upon all  
27 parties shown by the preliminary inquiry to be  
28 interested either;

(i) By service in the same  
manner as a civil summons;...

67 **TTC § 110(1)(c)(i)**

<sup>3/</sup> Although Albert Toves' 1971 claim generally asserts  
title to "**one** house lot - Old Japanese **Village**," the senior clerk  
of the Land Commission in 1971 acknowledged that the claim  
referred to Lot 007 R 38. See Affidavit of Juan Manglona at 3-4.

1 lists no one as the ostensible owner, the Vernacular version lists  
2 the Trust Territory Government as the ostensible owner of Lot 007  
3 R 38.

4 According to the deposition testimony of Raphael Quitugua, he  
5 attempted to serve Albert Toves with notice of the hearing during  
6 the same year in which he became a member of the Land Commission.  
7 See Deposition of Raphael Quitugua at 11. He insists that the  
8 year was 1976. Id. He testified that he was unable to complete  
9 the service in 1976 because Mr. Toves was off-island, and his wife  
10 refused to accept the notice because the claim to Lot 007 R 38 was  
11 not hers. If the Court accepts Mr. **Quitugua's** testimony as true,  
12 then the **LRT's** attempt to provide Mr. Toves with notice of the  
13 July 22, 1974 hearing occurred well after the hearing, sometime in  
14 1976.

15 By raising evidence such as the testimony of Mr. Quitugua and  
16 the fact that Exhibit 4 does not list Mr. Toves or his mother as  
17 an ostensible owner of Lot 007 R 38, the Plaintiffs contend that  
18 they have raised a genuine issue of material fact: Whether the  
19 notice received by Albert Toves violated Title 67 of the Trust  
20 Territory Code. However, the Land Commission's alleged non-  
21 compliance with the Title 67 notice requirement can only be a  
22 genuine issue of material fact if such a finding would constitute  
23 grounds for setting aside the title determination under one of the  
24 Dela **Cruz** exceptions.

25 According to In re Estate of **Mueilemar**, 1 N.M.I. 442, 446  
26 (1990), the mere fact that the Trust Territory Government has  
27 failed to notify all of the heirs about a title determination  
28 hearing does not amount to a due process violation. Id., citing

1 **Sablan** v. Iginoef, 1 N.M.I. 192, 198 n3 (1990). The Mueilemar  
2 decision clearly placed the burden of challenging a Land  
3 Commission decision on the party requesting the title  
4 determination be set aside. **Mueilemar**, 1 N.M.I. at 446. The  
5 Supreme Court went on to say that if the challenger introduces  
6 sufficient evidence of the circumstances underlying the claim of  
7 a lack of notice, the Court would address due process claims based  
8 on a lack of **notice**<sup>4/</sup>. Id. Similarly, a successful attack of the  
9 Title 67 notice requirement would render the **LRT's** title  
10 **determination** of Lot 007 R 38 "void when issued." See *Taman v.*  
11 *MPLC*, Civil Action No. 92-1490 slip op. at 6 (Super. Ct. May 11,  
12 1994).

13 Based on the facts presented above, the Court finds that  
14 Plaintiffs have produced evidence of a notice violation sufficient  
15 to warrant further inquiry from this Court. Accordingly,  
16 **Defendant's** motion for summary judgment is denied and Plaintiffs  
17 shall have the opportunity to proceed to trial on the issue of  
18 whether the LRT violated Title 67, Section 110(1)(c) of the Trust  
19 Territory Code by failing to serve notice of the hearing "**upon** all  
20 parties by the preliminary inquiry to be **interested**" at least  
21 thirty days in advance of the hearing.

22  
23 **2. Patently Inadequate Record Constitutes a**  
24 **Dispute of Material Fact**

25 There is a significant amount of evidence in the record  
26 indicating that Lot 007 R 38 originally belonged to the Parents.

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 Although the Plaintiffs have based their claim on an  
 alleged statutory violation, as opposed to a due process  
 violation, the Court considers the Mueilemar decision highly  
 analogous to and persuasive in the case at bar.

1 Notwithstanding the LRT's preliminary finding that Lot 007 R 38  
2 belonged to the Trust Territory Government, the Summary of Hearing  
3 shows that no adverse claimants appeared, no documents were  
4 produced, and no witnesses were heard on the subject of ownership.  
5 See Defendant's Exh. 5. In essence, the determination of  
6 ownership was based on a hearing that amounted to a default  
7 judgment in favor of the party who showed up: the Trust Territory  
8 Government.

9 In the recently issued Ogumoro decision, the Supreme Court  
10 ruled that a 1952 Land Title Office title determination was not  
11 worthy of administrative "**res judicata**" because it was based on a  
12 "**patently inadequate**" record. In re the Estate of Ogumoro, Appeal  
13 No. 93-007, slip op. at 12-13 (S. Ct. June 13, 1994). In reaching  
14 its conclusion, the Supreme Court examined three documents upon  
15 which the Land Title Office had based its decision; and after a  
16 meaningful inquiry, found the record patently inadequate to  
17 support the title determination at issue. Id. at 13-14. In light  
18 of the evidence contained in several of the depositions submitted  
19 by Plaintiffs, and the scant record accompanying LRT's title  
20 determination of Lot 007 R 38, the Court finds that a genuine  
21 dispute of material fact exists with respect to the alleged patent  
22 inadequacy of the **LRT's** title determination of Lot 007 R 38.

### 23 24 **3. Public Policy and Manifest Injustice Exceptions**

25 According to Dela Cruz, where the record is patently  
26 inadequate, an application of **res judicata** of a title  
27 determination is tantamount to a denial of due process because  
28 fairness is more important than finality. Dela Cruz, 2 N.M.I. at

1 12 n7, citing *Tipler v. E.I. duPont deNemours* and Co., 443 F.2d  
2 125, 128 (6th Cir. 1971). Similarly, the Ogumoro Court corrected  
3 a title determination based on a patently inadequate record in  
4 order to avoid a manifest injustice. Ogumoro, slip op. at 14.  
5 Based on the policy statements expressed in Dela Cruz and Ogumoro,  
6 the Court resolves that once disputes of fact exist with respect  
7 to the first two Dela Cruz exceptions, factual disputes  
8 necessarily arise under the public policy and manifest injustice  
9 exceptions. Thus, the Plaintiff shall have the opportunity at  
10 trial to show that according the LRT's title determination res  
11 **judicata** effect would either contravene an overriding public  
12 policy or result in a manifest injustice.

#### 13 14 **E. The 120 Day Limit for Filing Appeals**

15 The Defendant contends that this Court lacks subject matter  
16 jurisdiction to adjudicate this matter because Albert Toves failed  
17 to comply with the 120-day time limitation for appealing title  
18 determinations to the trial court. 67 TTC § 115 (1970).  
19 Defendants rely on *Rivera v. Guerrero*, No. 93-015, slip op. at 8  
20 (N.M.I. Dec. 22, 1993) which held that "a court lacks jurisdiction  
21 to review administrative decisions not timely appealed during the  
22 administrative process." Id. (emphasis added), citing *Nansay*  
23 *Micronesia Corp.* v. Govendo, 3 N.M.I. 12, 17-18 (1992) and *Da Cruz*  
24 *v. Immigration & Naturalization Serv.*, 4 F.3d 721, 722-23 (9th  
25 Cir. 1993) (court lacks jurisdiction to review administrative law  
26 **judge's** decision because the agency did not timely appeal to its  
27 own board of appeals). Thus, the lack of jurisdiction in *Rivera*  
28

1 resulted from an untimely appeal during the administrative  
2 process.

3 Unlike the Rivera case, the untimely appeal in the case at  
4 bar did not occur "**during** the administrative process." Rather,  
5 Albert **Toves'** failure to appeal within the 120-day period occurred  
6 after the administrative process had already concluded.  
7 Therefore, the fact pattern in the case at bar is more comparable  
8 to the circumstances accompanying the Ogumoro case.

9 In Ogumoro, this Court assumed jurisdiction over a party's  
10 claim that a title determination should be set aside even though  
11 the title determination had become final as a result of the  
12 party's failure to appeal it. The Court stated: "[a]lthough a  
13 final determination ordinarily bars subsequent actions, a court  
14 may set aside a title determination [under the Dela Cruz  
15 exceptions]." In re Estate of **Ogumoro**, Civil Action No. 91-78,  
16 slip op. at 7 (Super Ct. Feb. 9, 1993), **rev'd** on other grounds.  
17 Indeed, by addressing the res **judicata** effect of the **LRT's** title  
18 determination for Lot 007 R 38, this Court will simply be  
19 following the mandate advanced by the Supreme Court in Dela Cruz.  
20 See Dela Cruz, 2 N.M.I. at 11.

21  
22 **F. Estoppel and Waiver**

23 The Defendant has raised the affirmative defenses of estoppel  
24 and waiver as alternative basis for its motion for summary  
25 judgment. The Court acknowledges that if Plaintiffs, as a matter  
26 of law, have waived or are estopped from claiming their rights to  
27 Lot 007 R 38, the Court would have no choice but to grant the  
28 Defendant's motion. However, according to the **summary** judgment

1 standard expressed in Cabrera, 1 N.M.I. at 176, the burden of the  
2 non-moving party to show a genuine dispute of material fact does  
3 not arise until the moving party has met its initial burden of  
4 showing entitlement to judgment as a matter of law. Id.

5 Applying the Cabrera standard to the issue of estoppel, the  
6 Court finds that the Defendant has failed to meet its initial  
7 burden of showing entitlement to judgment as a matter of law.<sup>5/</sup>  
8 Thus, the estoppel doctrine involves factual issues which are best  
9 left for the upcoming trial.

10 With respect to the waiver issue, the Defendant contends that  
11 Albert M. Toves waived any rights the heirs of Crisanto C. Toves  
12 and **Ana** Gogue Manglona (Plaintiffs) had to Lot 007 R 38 by  
13 "**voiding**" his 1971 claim in February, 1982. The Defendant  
14 contends that the question of waiver in this case is a matter of  
15 law because the only evidence of waiver is contained in a writing  
16 (Defendant's Exh. 3) and such evidence is not in conflict.  
17 Although Defendant's Exh. 3 contains substantial evidence that Mr.  
18 Toves intended to void his claim, the Court does not agree with  
19 the Defendant's characterization that the "**evidence** is not in  
20 **conflict.**"

21 The depositions offered by the Plaintiff contain ample  
22 testimony which color Mr. **Toves'** 1982 actions as something other  
23 than waiver. For example, a member of the Land Commission  
24 testified that Mr. **Toves'** actions were merely part of a procedure  
25 to retire the 1971 claim and replace it with a new claim that  
26

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27 <sup>5/</sup> The Court refers both parties to page 10 of **Defendant's**  
28 June 24, 1994 memorandum citing In re Blankenship, 3 N.M.I. 209,  
213 (1992), and the four elements required to apply the doctrine  
of estoppel.



1 listed all Albert's brothers and sisters as claimants. See  
2 Deposition of Mr. Quitugua at 21-26. This evidence coincides with  
3 other testimony that the Government evaded or squelched Mr. Toves'  
4 pre-1982 and post-1982 attempts to claim Lot 007 R 38 for his  
5 family. See Deposition of Leonardo M. Toves at 8-9; see also  
6 Deposition of Leonardo M. Toves at 20-21, Deposition of Francisco  
7 S. Toves at 7. At a minimum, the oral testimony taken as a whole  
8 conflicts with the waiver evidence presented by the Defendant.  
9 Further, the Defendant has done nothing to dispel these apparent  
10 conflicts for the Court." Thus, the Defendant has failed to show  
11 how Plaintiffs' claim has been waived as a matter of law.<sup>2/</sup>

#### 14 G. Limiting Claim to One House Lot

15 Finally, the size of Lot 007 R 38 allegedly owned by the  
16 Plaintiffs as heirs of Crisanto C. Toves and Ana Gogue Manglona is  
17 clearly a question of fact that properly will be determined at  
18 trial. Without more information, the fact that Albert Toves  
19 referred to "one house lot" in his 1971 claim does nothing to  
20 limit the size of land which Plaintiffs may be entitled to. Until

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22 <sup>1/</sup> Short of a general failure to read them, the Court  
23 cannot fathom how counsel for the Defense could contend "waiver as  
24 a matter of law" without addressing the contrary evidence  
contained in the various depositions filed by the Plaintiffs.

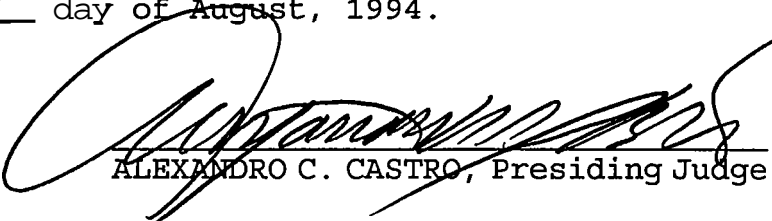
25 <sup>2/</sup> The Court's finding, that MPLC has not met its burden  
26 under *Cabrera*, acts to relieve Plaintiffs of their burden to show  
27 a genuine dispute of material fact on the issue of waiver. To be  
28 sure, a dispute of material fact exists as to waiver. However, it  
distresses the Court that Plaintiffs' counsel actually witnessed  
and subsequently presented the Court with the testimony cited  
above, yet failed to make any mention of this evidence in his  
written or oral attempts to defeat Defendant's summary judgment  
motion.

1 the Defendant can demonstrate that the term "one house lot"  
2 somehow translates into a specific amount of square meters, the  
3 Court can attach little if any weight to this alleged admission.

4  
5 **V. CONCLUSION**

6 For all the foregoing reasons, Defendant's motion for summary  
7 judgment is DENIED.

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9 So ORDERED this 11 day of August, 1994.

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12 ALEXANDRO C. CASTRO, Presiding Judge

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