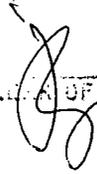


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CLERK OF COURT

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

IN THE MATTER OF THE) Civil Action No. 91-299 &
ESTATES OF) 91-298
ANTONIO TEREGEYO I and II,) **DECISION AND ORDER**
Deceased.)
_____)

This matter was heard before this Court on December 10, 1991, January 22, 1992 and March 17, 1992. Written closing arguments were later submitted by the parties. Administratrix Carmen Taitano argues that the two parcels of real property contained in the estates should be distributed equally between the heirs of Antonio Teregeyo I and Antonio Teregeyo II. Conversely, Claimants Antonia Tegita and Maria Phillips argue that the real property should not be distributed to the heirs of Antonio II because it belonged exclusively to Antonio I. Moreover, Claimants believe that Antonio I adopted Felix Tomo and conveyed the real property to Felix.

FOR PUBLICATION

1 I. FACTS

2 Antonio I and Antonio II were Carolinian brothers. Their
3 siblings were Felicita, Enriqueta, Maria and Vincente, with
4 Antonio I the being the eldest child and Antonio II the
5 youngest.^{1/} Only the heirs of Antonio I and Antonio II have made
6 a claim to the real property.

7 Antonio I married Consolacion Tomo and both had children from
8 previous relationships. Antonio I's natural children were
9 Trinidad, Antonia and Enrique. Consolacion's child was Felix
10 Tomo. Both Consolacion and Felix died during World War II in
11 1944, and Antonio I died in 1949.^{2/}

12 Antonio II's four natural children were Carmen, Maria, Pedro
13 and Felomina, and his adopted child was Grabella. The record does
14 not reflect the date of Antonio II's death, but he died sometime
15 after June 1985.^{3/} Carmen (the administratrix), Maria and
16
17

18 ^{1/} It is not clear how the Teregeyo children were related;
19 brothers and sisters from the mother, the father, or the father
and the mother.

20 ^{2/} The following grandchildren are Antonio I's surviving
21 heirs as listed in the Petition for Final Distribution:

- 22 1. Maria R. Fellys
- 23 2. Jessee Rosario
- 24 3. Jack Repekia
- 25 4. Ana C. Arriola
- 26 5. Mariana C. Guzman
- 27 6. Candilaria Jose
- 28 7. Antonio B. Cruz
8. Monica Lizama
9. Enrique Borja Cruz
10. Maria Cruz
11. Susana Cabrera
12. Ricardo Cruz

^{3/} The record contains a Quitclaim Deed with Antonio II's
thumbprint dated June 12, 1985.

1 Grabella are Antonio II's surviving children.^{4/}

2 As part of an agreement with the Government after World War
3 II, the two parcels of land which are the subject of this dispute
4 were given to the heirs of Antonio I in exchange for property
5 located in Chalan Nuevo, Saipan. There is conflicting testimony
6 as to how the Chalan Nuevo property was first acquired. Claimant
7 Maria Phillips testified that her grandfather Antonio I received
8 the property as part of a homestead program, presumably during the
9 German administration.^{5/} On the other hand, Administratrix Carmen
10 Taitano testified that a friend of Antonio I and Antonio II gave
11 the brothers the property.^{6/}

12 _____
13 ^{4/} Administratrix Carmen Taitano testified that Pedro and
Felomina died without heirs. *Transcript* at 72.

14 ^{5/} The following is the testimony of Claimant Maria Phillips:

15 Q: The land in Chalan Nue[v]o, who gave it to Antonio, the
16 first?

16 A: It's just his land . . .

17 Q: Just his land . . .

17 A: Yes.

18 Q: . . . is this a homestead?

18 A: Yes.

19 *Trans.* at 22.

20
21 ^{6/} During her direct examination, Administratrix Carmen
Taitano testified to the following:

22 Q: This land -- how did the two brothers get this land?

23 A: They have this friend . . .

23 Q: Do you have any knowledge of this friend of theirs?

24 A: To be honest, I don't know who their friend is, but that
was said.

25 Q: That friend of theirs gave these two brothers this land?

25 A: Yes.

26 Q: Who was telling you about that?

26 A: Them.

27 Q: Them . . .

27 A: The brothers -- all and him, the old man.

28 Q: So, it was known amongst the siblings that that land is
for the two brothers . . .

(continued...)

1 On August 26, 1953, the Trust Territory of the Pacific
2 Islands (T.T. Government) issued Title Determination No. 571 which
3 found that the Chalan Nuevo land was the property of the heirs of
4 Antonio I, represented by Antonio II, as Land Trustee. On June
5 10, 1954, Antonio II, as Land Trustee, representing the heirs of
6 Antonio I, exchanged with the T.T. Government the Chalan Nuevo
7 property for real property later referred to as E.A. 166. On
8 February 7, 1985, the CNMI Government issued a title determination
9 finding that E.A. 166 was the property of "Antonio G. Teregeyo."
10 Since the exchange of the Chalan Nuevo property for E.A. 166 was
11 not an even exchange, the CNMI Government on June 28, 1985,
12 conveyed Lot No. 019 D 39 to Antonio II as Land Trustee, for the
13 heirs of Antonio I. E.A. 166 is located in As Perdido, Saipan and
14 contains 9.1250 square meters. Lot 019 D 39 is located in Sugar
15 King II, Saipan and contains 654 square meters. These two parcels
16 are the real property contained in the estates and are the subject
17 of the present dispute.

18 On April 12, 1991, Petitions for Letters of Administration
19 were filed with this Court for each estate. Proper notices of the
20 hearing and notices to creditors of the actions were provided. On
21 May 13, 1991, Claims and Notices of Entry of Appearance were filed
22 against both estates by Claimants Antonia Tegita and Maria
23 Phillips who claimed that the estate of Antonio II consists of
24 real property owned by their grandfather, Antonio I, and also that
25

26 ^{ε/}(...continued)
27 A: Yes.
 Q: . . . that was given to them?
28 A: Yes.

Trans. at 82.

1 they have an interest in the estate of Antonio I.^{2/} On May 29,
2 1991, the Court appointed Carmen Taitano, a daughter of Antonio
3 II, administratrix of both estates. On September 16, 1991, the
4 Petition for Final Distribution of the estate of Antonio I was
5 filed and served on the heirs of Antonio I which stated that no
6 claims were filed with the Clerk of Court or raised at any
7 hearing. On the same day, a Petition for Final Distribution was
8 filed and served on the heirs of Antonio II in the estate of
9 Antonio II stating that "a claim has been filed with the Clerk of
10 the Court with respect to the claim of the heirs of Antonio
11 Teregeyo I interest in this estate."
12

13 **III. ISSUES**

- 14 A: Whether Antonio I customarily adopted Felix.
15 B: Whether Antonio I exclusively owned the Chalan Nuevo property.
16 C: Whether a new matrilineal lineage began with Antonio I's
17 family.
18 D: Whether Antonio I gave Felix the Chalan Nuevo property.
19

20 **III. ANALYSIS**

21 **A: Whether Felix Tomo was Adopted by Antonio I**

22 In order for a court to recognize a customary adoption in the
23 CNMI, notice must be provided to the interested parties and a
24 hearing must take place. 8 CMC §§ 1104, 1105; In re Estate of
25 Rofag, 2 N.M.I. 18, 27 (1991). A court may entertain the issue of
26 adoption during a probate proceeding. Rofag, 2 N.M.I. at 27; 8
27

28 ^{2/} A certificate of service was not attached to the Notice
of Entry of Appearance nor the Claims Against the Estate.

1 CMC § 1105(b).

2 In the present case, the hearing requirement was satisfied
3 since the adoption issue was heard during the probate proceeding.
4 However, notice was not provided to the interested parties, the
5 heirs of Antonio I.^{8/} Rofag, 2 N.M.I. at 27. First, Claimants
6 did not provide the interested parties with actual notice that the
7 issue of Felix's alleged adoption would be addressed at the
8 probate hearing. Second, there is no evidence that the interested
9 individuals received implied notice. There was no service of the
10 Notice of Claim and Entry of Appearance on the heirs of Antonio
11 I.^{9/} Additionally, although Claimants had filed a claim, the
12 heirs of Antonio I were told in the Petition for Letters of
13 Administration that no claims were made against Antonio I's
14 estate. Finally, all the interested parties were not present at
15 the hearing. Therefore, since Claimants did not provide the
16 interested parties with actual or implied notice regarding the
17 adoption issue, the customary adoption of Felix cannot be
18 judicially recognized.

19 If this Court were to assume that the interested parties
20 received the proper notice, the court must then apply the
21 preponderance of the evidence standard in determining whether a
22 recognized customary adoption took place. Rofag, 2 N.M.I at 27.
23 The CNMI Supreme Court has recognized the Carolinian customary

24 _____
25 ^{8/} Since the issue of whether Felix Tomo was adopted would
26 effect the proportionate shares to be distributed to Antonio I's
heirs, they are considered the interested parties.

27 ^{9/} The Entry of Appearance referred to both Antonia Tegita
28 and Maria Phillips as granddaughters of Antonio I. Therefore, if
an interested party were to receive this notice, they would have
implied notice that the issue of whether Antonia's father Felix
was adopted would arise during the probate proceedings.

1 adoption of "mwei-mwei." *Id.* at 23. Under this custom, it is
2 normally a married couple who adopts, although there is evidence
3 that single persons may do so. *Id.* Customarily, the natural
4 parents give their consent after the adoptive parents propose the
5 adoption. *Id.* These adoptions are usually initiated by women and
6 take place between relatives. The child is normally adopted as an
7 infant but children between the ages of nine and eleven have been
8 adopted. *Id.* Once a "mwei-mwei" has taken place, the child is
9 then considered a natural child of the adoptive parents. *Id.*

10 In the present case, the evidence failed to show that Felix
11 was adopted according to "mwei-mwei." Specifically, Claimants
12 failed to show that any of the above elements of this custom
13 transpired. Moreover, Claimant Maria Phillips testified that when
14 Felix was allegedly adopted he was a teenager. Trans. at 24.
15 Therefore, Claimants failed to show by a preponderance of the
16 evidence that Felix was adopted according to the recognized
17 Carolinian custom of "mwei-mwei."

18 Claimant Antonia Tegita testified that Felix was adopted
19 according to the Carolinian custom of "ilailata"^{10/} which she
20 claims is different from "mwei-mwei." She alleged that "ilailata"
21 is where a child's parent marries, and the stepparent rears the
22 stepchild as if the child were his own. Trans. at 35. First,
23 Claimants failed to prove by a preponderance of the evidence that
24 "ilailata" is a customary adoption recognized in the Carolinian
25 community. Claimants relied solely on Claimant Antonia Tegita's
26 testimony to show the existence of this custom. No treatises nor
27

28 ^{10/} The term referred to by the Claimant Antonia Tegita is
spelled in the transcript as "l-a-e-i-l-a-p-a."

1 expert testimony were admitted to support this allegation.^{11/}
2 Second, Claimants failed to show by a preponderance of the
3 evidence exactly how an "ilailata" takes place or how Felix was
4 adopted according to that custom.^{12/} Therefore, because
5 Claimants failed to prove that "ilailata" is a recognized
6 Carolinian adoption and failed to provide the interested parties
7 with proper notice this Court cannot judicially recognize that
8 Felix was adopted by Antonio I. Therefore, Felix was not
9 considered an heir of Antonio I.

10
11 B: Whether Antonio I Exclusively Owned the Chalan Nuevo Property

12 Although this Court found that Felix was not adopted
13 according to recognized Carolinian custom, this Court must still
14 determine whether Antonio I conveyed the Chalan Nuevo property to
15 Felix. However, this Court must first resolve whether Antonio I
16 exclusively owned the Chalan Nuevo property or whether the Chalan
17 Nuevo property was held consistent with Carolinian custom with
18 Antonio II's family.

19 Under Carolinian land tenure patterns, land tenure is
20 matrilineal and is owned and controlled collectively by the female
21 family members as a corporate land-holding group. The land is not
22 divided when members of the lineage die. ALEXANDER SPOEHR 41

23
24 ^{11/} Although Spoehr acknowledges that children may be reared
25 by their stepparents, and these children are treated with
26 consideration and care, he did not state that stepchildren are
then considered natural children. ALEXANDER SPOEHR SAIPAN: THE ETHNOLOGY
OF A WAR-DEVASTATED ISLAND 359 (1954) [hereinafter SPOEHR].

27 ^{12/} Although Claimants testified that Felix lived and was
28 raised in the same home as his mother and Antonio I, this fact
does not satisfy Claimants burden of proving by a preponderance of
the evidence that Felix was adopted according to a recognized
Carolinian custom.

1 FIELDIANA: ANTHROPOLOGY SAIPAN, THE ETHNOLOGY OF A WAR DEVASTATED ISLAND 363
2 (1954) [hereinafter SPOEHR]. Not all Carolinians continued to hold
3 their land according Carolinian custom as a result of the German,
4 Japanese and American administrations' influence on land
5 ownership.^{13/} In re Estate Rangamar, Appeal No. 92-029, slip op.
6 at 8 (N.M.I. Dec. 15, 1993) (citing SPOEHR). Therefore, custom
7 should be applied where the activities of the heirs in connection
8 with the land are consistent with Carolinian land custom,
9 resulting in title being held by the female heirs. Rangamar,
10 supra, slip op. at 12. Where the land is not family land or the
11 female family members consent to ownership and control of the land
12 inconsistent with Carolinian custom, the court may allow an
13 equitable distribution. Id. Moreover, when determining title,
14 courts must look beyond documentary title since title
15 determinations issued by American administrative agencies did not
16 always recognize Carolinian customary land tenure.^{14/} See
17 *Rangamar*, supra; see also *Igitol*, 3 CR at 906.

18 This Court finds that the property at issue was not held
19

20 ^{13/} The German administration initiated a homestead program
21 where they registered the land in the man's individual name. In
22 re Estate of *Rangamar*, appeal no. 92-029, slip op. at 8 (N.M.I.
23 Dec. 15, 1993) (citing SPOEHR, supra, at 365). After the male had
24 title to the land, the land was distributed in various ways.
25 First, the man may have passed the land on to his daughters who
26 subsequently founded a new matrilineal lineage. Second, the man
27 may have distributed the land in equal shares to his male and
28 female children who then kept the land undivided where all heirs
worked the land. Third, cases were cited by Spoehr where the man
gave the land to a single male or female child who considered the
land as individual property to dispose of as he or she wished. In
re Estate of *Igitol*, 3 CR 906, 909 (1989) (citing SPOEHR).

^{14/} When the American administration registered land in the
CNMI, the government registered lands in either the name of an
individual or the name of the heirs of a decedent with a trustee
designated; thus not recognizing the corporate land-holding group.

1 according to Carolinian land custom for the families of Antonio I
2 and Antonio II and was exclusively the property of Antonio I.
3 Administratrix Carmen Taitano argues that the documentary title
4 reflects that the land was held according to Carolinian custom
5 since Antonio II was acting as land trustee for the benefit of his
6 and Antonio I's heirs. Nevertheless, this contention does not
7 follow Carolinian land custom since in the matrilineal system of
8 collective ownership the role of a land trustee is held by a
9 female family member. Moreover, on its face, documentary title
10 indicates that Antonio II's role as land trustee was only as a
11 representative for the owners of the property, the heirs of
12 Antonio I. However, since courts are required to look beyond
13 documentary title, the land documents are not conclusive.

14 The land did not originally descend under the traditional
15 notions of Carolinian land custom. The land was either conveyed
16 as a homestead to Antonio I under the German administration or was
17 given to the brothers as a gift. This Court finds merit in
18 Claimants' contention that Antonio I received the Chalan Nuevo
19 property as a homestead and did not treat it as Carolinian
20 customary land with Antonio II's family.^{15/} First, only family
21 members from Antonio I's family farmed the land,^{16/} and following
22 the year Antonio I died, 1949, the land was no longer used.

23
24 ^{15/} "Admission of hearsay in the CNMI is necessary to prove
25 the wishes of a decedent concerning the division of his property
26 because there is often no other available evidence. Historically,
under local customary law no writing was necessary to devise
property." In re Estate of *Barcinas*, 2 N.M.I. 437, 444 (1992).

27 ^{16/} Claimants both testified that Antonio I, Felix, and
28 Claimants Maria Phillips and Antonia Tegita farmed the land.
Specifically, they cut the grass and planted corn, sweet potato,
tapioca and chinese cabbage. Moreover, Claimants testified that
none of Antonio I's siblings nor their children farmed the land.

1 Antonio II and his family never worked the Chalan Nuevo land.

2 Additionally, after this Court weighed the credibility of the
3 testimony before it, it finds that the land was exclusively
4 Antonio I's. Claimants testified that Antonio I told them that
5 the Chalan Nuevo land was for Felix. After World War II, Antonio
6 I told Claimant Antonia Tegita that the property was now hers
7 because her father had died. Moreover, Claimant Maria Phillips
8 testified that the Chalan Nuevo land was not held according to
9 Carolinian custom since her mother, Antonio I's eldest daughter,
10 was not the owner or representative of the land for the benefit of
11 the family. Claimant Maria Phillips testimony is significant
12 because her statements are against her interest. The effect of
13 her testimony is to exclude herself from any interest in the
14 property at issue. Furthermore, this Court is skeptical as to
15 portions of testimony presented by witnesses who appeared on
16 behalf of the estates. It seems peculiar that the witnesses had
17 little or no recollection of Felix's relationship to the family
18 although his mother Consolacion was married to Antonio I, and he
19 lived with them both.^{17/}

20 Therefore, this Court finds that the activities of Antonio I
21 and Antonio II and their heirs are inconsistent with Carolinian
22 land custom, since Antonio II and his family did not use or
23 control the land. Thus, the Chalan Nuevo property was owned
24 exclusively by Antonio I.

25
26
27 **EI** Administratrix Carmen Taitano testified that she treated
28 Felix as "just as a neighbor" and never inquired into his
relationship with the family. Trans. at 71-2. Joaquin Borja
testified that he never heard of Felix or Claimant Antonia Tegita.
Trans. at 97.

1 C: Whether A New Matrilineal Linease Besan with Antonio I's
2 Family

3 It appears from the activities of Antonio I and his heirs
4 that Antonio I did not begin a new matrilineal lineage with the
5 Chalan Nuevo property. First, Antonio I's daughters, Trinidad and
6 Antonia, never controlled or farmed the land. Claimant Maria
7 Phillips, the daughter of Antonio I's eldest daughter, farmed the
8 land. She also testified that once she got married she no longer
9 worked the land, which is inconsistent with Carolinian custom
10 where the men work and tend to the wife's family land. If custom
11 was followed, Maria would have continued farming the land and her
12 husband would have joined her. It appears that all the heirs of
13 Antonio I did not use the Chalan Nuevo property as a corporate
14 group and it was not controlled by the female members of the
15 family. Therefore, Antonio I's family did not hold the Chalan
16 Nuevo property according to Carolinian land tenure.

17
18 D: Whether Antonio I Gave Felix the Chalan Nuevo Property.

19 Claimants allege that Antonio I gave Felix the Chalan Nuevo
20 property. In order for this Court to conclude that Antonio I gave
21 Felix the land as a gift, this Court must find that Antonio I
22 intended to orally convey the land as a gift, and that the land
23 was delivered to and accepted by Felix. *Guerrero v. Guerrero*, 2
24 N.M.I. 61, 73 (1991) (citing *United States v. Schroeder*, 348 F.2d
25 223 (8th Cir. 1965)); see *Cabrera v. Cabrera*, 3 N.M.I. 1 (1992).

26 The intent of the donor is a controlling factor in questions
27 concerning gifts, *Stewart v. Damron*, 160 P.2d 321 (Ariz. 1945),
28 and a court must apply the rule so as to not frustrate that

1 intent. *Mallory v. Smith*, 290 A.2d 486 (Md. 1972) (citations
2 omitted). Both Claimants testified that Antonio I told them
3 during the Japanese administration that he gave Felix the Chalan
4 Nuevo land. Claimant Antonia Tegita stated that after World War
5 II Antonio I told her that the property was hers since her father
6 Felix had died. Accordingly, this Court finds that Antonio I
7 intended to give Felix the land as a gift.

8 The second requirement, delivery, is based on public policy
9 to make certain that the donor clearly intended a gift and
10 understood that the "thing given was irretrievably gone." In *Re*
11 *Dodge*, 234 A.2d 65 (NJ 1965). The accepted method to deliver real
12 property is the delivery of a deed. *Chaffee v. Sorenson*, 236 P.2d
13 851 (Cal. 1951). However, courts have held that intent
14 constitutes delivery when it is accompanied by an act sufficient
15 to pass title. In *Re Sullivan's Estate*, 234 N.Y.S. 311, 315
16 (1929); *Candee v. Connecticut Savings Bank*, 71 A. 551 (Conn.
17 1908).

18 This Court has not been made aware that a system of deeds for
19 real property existed during the Japanese administration.^{18/}
20 Moreover, since most documents existing prior to World War II were
21 destroyed during the war, there is no documentary evidence to show
22 that a transfer and delivery of a deed to Felix occurred. Thus,
23 the circumstances in the case at bar indicate that the delivery of
24 a deed was not likely, and it would be unjust to strictly impose
25 this requirement. This Court finds the acts of using and
26 cultivating farmland sufficient to pass title and therefore
27

28 ^{18/} However, it is clear that the Japanese instituted a
system of land registration.

1 constitute delivery. Although there was no evidence of a deed to
2 the Chalan Nuevo land, this Court deems the actions of Felix
3 working and farming the land sufficient to constitute delivery.

4 The assertion of a right by the donee has been held to be
5 evidence of acceptance. *Stratton v. Corder*, 366 S.W.2d 894 (Ark.
6 1963); cited in 38 AM. JUR. 2D Gifts § 34 (1968). Moreover, where
7 a gift is beneficial to the donee and imposes no burdens upon him,
8 acceptance is presumed. *First Nat'l Bank v. Connolly*, 138 P.2d
9 613 (Or. 1943). Since it is clear that the Chalan Nuevo land was
10 used exclusively for farming, Felix's actions of farming and
11 maintaining the land indicate that he accepted the property.
12 Likewise, there is nothing in the evidence to show that Felix
13 rejected the land and since it was for his benefit this Court
14 presumes that he accepted the gift. Finally, after Felix's death,
15 Antonio I confirmed with Claimant Antonia Tegita that he gave
16 Felix the land and no mention was made that Felix rejected the
17 gift. Therefore, this Court concludes that Antonio I gave the
18 Chalan Nuevo land to Felix as a gift.

1 IV. CONCLUSION

2 For the foregoing reasons, the Court hereby finds that:

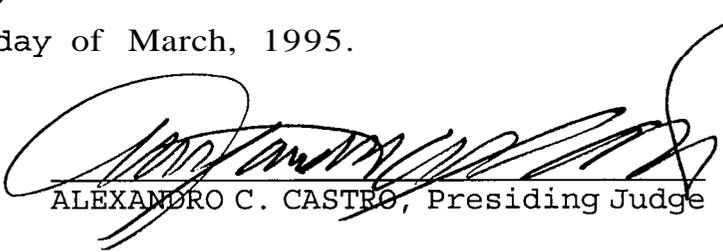
3 1: Antonio Teregeyo I did not adopt Felix Tomo according to
4 a recognized customary adoption;

5 2: the Chalan Nuevo property was exclusively the property of
6 Antonio Teregeyo I;

7 3: Antonio Teregeyo I gave the Chalan Nuevo property to
8 Felix Tomo.

9 In sum, this Court concludes that since the heirs of Felix
10 Tomo were the owners in fee simple of the Chalan Nuevo land, they
11 are now the fee simple owners of the E.A. 166 and Lot 019 D 39,
12 the property the Government exchanged for the Chalan Nuevo land.

13
14
15 So ORDERED this 14th day of March, 1995.

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17 
18 ALEXANDRO C. CASTRO, Presiding Judge
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