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

JOHN S. PANGELINAN,	)	Civil Action No. 92-1076
	)	
Plaintiff,	)	
	)	<b>DECISION AND ORDER</b>
v.	)	<b>ON REMAND FOR</b>
	)	<b>APPEAL NO. 93-012</b>
JULIANA L. ITAMAN, MAGDALENA	)	
L. METTAO, EMILIA L. SUARES,	)	
MARIA L. ILO, and ROMAN W.	)	
LAIROPE,	)	
	)	
Defendants.	)	

On March 21, 1994, this case was remanded and vacated in part by the Commonwealth Supreme Court on the issues of whether the parties entered into a valid enforceable contract and whether plaintiff John S. Pangelinan is entitled to specific performance. Moreover, the Supreme Court reversed as to the award of punitive damages and attorney's fees. Defendants Juliana L. Itaman, Magdalena L. Mettao, Emilia L. Soares, Maria L. Ilo and Roman W. Lairope argue that they should be discharged from performing under the Land Contract they entered into with Plaintiff. Specifically, Defendants claim that Plaintiff had no legal title to E.A. 222 at the time the transaction occurred. Conversely, Plaintiff argues that his ownership interest at the time the Contract was signed is irrelevant: the issue is whether he currently owns E.A. 222.

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**I. FACTS**

On October 26, 1982, the Commonwealth Land Commission issued a Certificate of Title finding that Plaintiff owned in fee simple E.A. 222 located in Papago, Saipan. (Pl.'s Ex. 2). On April 23, 1984, Plaintiff signed a Deed of Gift conveying certain land rights in E.A. 222 to various family members.<sup>1/</sup> (Defs.' Ex. A). On April 30, 1984, Plaintiff purported to convey to his wife, Merced B. Pangelinan, a possibility of reverter in E.A. 222. Despite these prior conveyances, on May 4, 1984, Plaintiff executed another deed of gift attempting to convey E.A. 222 in fee simple to his father-in-law, Dionicio M. Babauta. (Defs.' Supplemental Evidence.) The record also contains a document dated July 29, 1984, in which Dionicio conveyed E.A. 222 to Merced. Id.

On April 20, 1986, Plaintiff and Defendants entered into a contract (Land Contract). (Pl.'s Ex. 1). Under its terms, the five Defendants were to exchange their "short exchange" rights" with Plaintiff in return for a portion of E.A. 222. A condition of the Land Contract was the successful negotiation with the Marianas Public Land Corporation (MPLC) to exchange the "short exchange" rights for public land to be designated by Plaintiff.

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<sup>1/</sup> Land rights conveyed through this document shall be addressed below.

<sup>2/</sup> The five Defendants are heirs of Vicente Uol. Defendants' predecessors in interest entered into a land exchange agreement with the government. As a result of the exchange, Defendants' predecessors received less land than they were entitled to. Thereafter, they obtained a "short exchange" right whereby they were entitled to obtain land in the amount they were previously denied. See *Apatang v. MPLC*, 1 N.M.I. 140, 143 n.1 (1989); see also 2 CMC §§ 4141-49 (Supps. Feb. 1988 & Jan. 1990) (Public Purpose Land Exchange Authorization Act of 1987).

1 The time for the exchange of the properties was "upon the  
2 satisfactory attainment of the public land."

3 The Land Contract provided that Defendant Lairope would  
4 receive a two-fifths interest in E.A. 222, since Defendant Ilo  
5 agreed to give Lairope her one-fifth share of the "short exchange"  
6 rights. The remaining Defendants were entitled to receive a one-  
7 fifth share.

8 On August 10, 1987, Defendant Lairope and Plaintiff signed a  
9 contract whereby Lairope agreed to exchange his two-fifths share  
10 of the "short exchange" rights for cash and not for an interest in  
11 E.A. 222. (Pl.'s Ex. 3).

12 Plaintiff negotiated with MPLC that Defendants' "short  
13 exchange" rights would be exchanged for land in Obyan, Saipan.  
14 Thereafter, Plaintiff requested Defendants to execute the  
15 necessary documents in order to finalize the exchange of  
16 Defendants' "short exchange" rights for the Obyan property.  
17 However, upon this request, Defendants refused to do so.

18 On October 10, 1990, Plaintiff's mother Rosalia S. Pangelinan  
19 died. (Pl. Submission of Ev.). On August 29, 1992, Merced  
20 executed a deed of gift purporting to convey E.A. 222 to  
21 Plaintiff. (Defs.' Ex. B). Plaintiff filed suit on September 10,  
22 1992, seeking specific performance of the Land Contract and actual  
23 and punitive damages based on Defendants' alleged fraudulent  
24 misrepresentation.<sup>3/</sup>

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27 <sup>3/</sup> Plaintiff alleged that Defendants fraudulently  
misrepresented the identity of Vicente Uol's heirs. Defendants  
claimed they were the only heirs; however, the Court found Adela  
W. Quitugua to be an additional heir.

## 11. PROCEDURAL HISTORY

2 The trial in this matter was heard on January 11, 1993. In  
3 the Findings of Fact, the Trial Court found that Defendants  
4 voluntarily and knowingly executed the Land Contract and Defendant  
5 **Lairope** knowingly and voluntarily entered into the Contract with  
6 Plaintiff to sell his two-fifths interest for cash. When the  
7 Plaintiff entered into the Land Contract, "record title to Lot  
8 E.A. 222 was held for various reasons by Plaintiff's wife."  
9 *Pangelinan v. Itaman*, Civ. Act. No. 92-1076 slip op. at 2 (N.M.I.  
10 Super. Ct. Feb. 2, 1993). The Trial Court also found that  
11 Defendants refused to execute the necessary documents with MPLC.  
12 Finally, the Court found that Adela W. Quitugua an additional heir  
13 to the "short exchange" rights.

14 The Superior Court concluded that both the Land Contract  
15 between Plaintiff and Defendants and the Contract between  
16 Plaintiff and Defendant **Lairope** were valid and enforceable. It  
17 concluded that Quitugua, the sixth heir, could not be bound by the  
18 Land Contract, and that she owned one-sixth interest in the "short  
19 exchange" rights. Finally, the Court found Defendants conduct to  
20 be fraudulent, outrageous, knowing and willful because they did  
21 not disclose the existence of Quitugua. As a result, Defendants  
22 were ordered to pay punitive damages and attorneys fees.

23 The Supreme Court vacated and remanded on the issues of  
24 whether the parties entered into a valid, enforceable contract and  
25 whether Pangelinan is entitled to specific performance. Moreover,  
26 the Court reversed as to the award of punitive damages and  
27 attorney's fees. Specifically, the Supreme Court vacated the  
28 decree of specific performance and remanded "the case for the

1 trial court to re-determine: 1) what interest, if any, Pangelinan  
2 conveyed, and to whom, in the deed of gift dated April 23, 1984,  
3 and 2) whether Pangelinan still has, or has re-acquired, ownership  
4 of the Papago property." Pangelinan v. *Itaman*, App. No. 93-012,  
5 slip op. at 14 (Supreme Ct. Mar. 21, 1994).

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7 **III. ISSUES**

8 This Court will consider the following issues on remand<sup>4/</sup>:

9 A: What interests the August 23, 1984, Deed of Gift created;

10 B: What effect the later conveyances of the interests in  
11 E.A. 222 had on Plaintiff's title to the land;

12 C: Whether Plaintiff's interest in E.A. 222 at the time the  
13 Land Contract was signed rendered him capable of executing the  
14 Contract.

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16 **IV. ANALYSIS**

17 A: What Interests the April 23, 1984 Deed of Gift Created?

18 Plaintiff originally owned E.A. 222 in fee simple. (Pl.'s Ex.  
19 2). On April 23, 1984, he executed a Deed of Gift which states:

20 THAT I, JOHN S. PANGELINAN, for and in consideration of  
21 natural love and affection I have unto my children by my  
22 wife, MERCED B. PANGELINAN, and for their support . . . for  
23 and during their lifetime, do hereby give . . . unto them,  
subject to the estate reserved and the special limitation  
expressed hereunder, all of my right, title and interest in  
[Papago, Saipan property] . . . .

24 RESERVING, however, unto myself, for the life of their  
25 grandfather, DIONICIO M. BABAUTA, a life estate in the  
property herein conveyed.

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<sup>4/</sup> These issues will address the remanded issues the  
28 Commonwealth Supreme Court directed this Court to address, whether  
the parties entered into a valid and enforceable contract and  
whether Plaintiff is entitled to specific performance.

1 TO HAVE AND TO HOLD the same, so long as my mother, ROSALIA  
2 S. PANGELINAN, shall survive me . . . thereafter unto my said  
3 children, their heirs and assigns, forever, otherwise all  
herein conveyed shall revert back to me or to my heirs or  
assigns.

4 To interpret the Deed, this Court relies on the Restatement of  
5 Property. 7 CMC § 3401 (Supp. June 1992); See Ito v. Macro  
6 Energy, Inc., Appeal Nos. 92-020 & 92-022, slip op. at 19 (N.M.I.  
7 Oct. 26, 1993). According to the first and last paragraphs above,  
8 Plaintiff conveyed to his children a fee simple determinable. A  
9 fee simple determinable interest is created when a grantor creates  
10 an estate in fee simple and provides that the estate automatically  
11 expires upon the occurrence of a stated event. RESTATEMENT OF  
12 PROPERTY FREEHOLD INTERESTS § 44 (1936). Plaintiff conveyed all his  
13 interest in E.A. 222 to his children "so long as [Plaintiff's]  
14 mother shall survive me." Therefore, Plaintiff created an estate  
15 in fee simple for his children, and their estate would  
16 automatically expire upon the occurrence of a stated event, the  
17 death of Plaintiff's mother Rosalia S. Pangelinan. RESTATEMENT OF  
18 PROPERTY FREEHOLD INTERESTS §44 cmt. a, illus. 1 (1936).

19 In the second paragraph above, Plaintiff reserved for himself  
20 a life estate pur autre vie. A life estate pur autre vie is one  
21 which is measured by the duration of the life of a human being  
22 other than the beneficiary of the life estate and is not  
23 terminable at any fixed time. RESTATEMENT OF PROPERTY FREEHOLD INTERESTS  
24 § 18 cmt. a (1936). plaintiff reserved an estate for himself "for  
25 the life of . . . [Dionicio M. Babautal, a life estate."  
26 Therefore, Plaintiff created a life estate for himself measured by  
27 the life of Dionicio.

1           Accordingly, this Court finds that through the Deed of Gift  
2 dated April 23, 1984, Plaintiff granted to himself a life estate  
3 pur autre vie and a possibility of reverter, and to his children  
4 a fee simple determinable.

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6 B: The Effect of Later Conveyances of the Interests in E.A. 222  
7 on Title to E.A. 222?

8           After the April 23, 1984, Deed of Gift was signed, Plaintiff  
9 executed various documents effecting the ownership rights to E.A.  
10 222. On April 4, 1984, Plaintiff signed the following document:

11           THAT I, [Plaintiff], for and in consideration of love and  
12 affection I . . . do hereby give, remise, release and  
13 quitclaim unto [Merced Pangelinan], her heirs and assigns,  
forever, my future interest (right of reverter) in and to  
[E.A. 2221 . . . .

14 The owner of a possibility of reverter in land has the power  
15 through an effective conveyance inter vivos to transfer his  
16 interest. RESTATEMENT OF PROPERTY FUTURE INTERESTS § 159 (1) & cmt. a,  
17 illus. 3 (1936). As a result of this document, Plaintiff conveyed  
18 only his future interest, his possibility of reverter, in E.A. 222  
19 to his wife Merced.

20           On May 4, 1984, Plaintiff:

21           . . . for and in consideration of the special relationship I  
22 have unto my father-in-law, DIONICIO M. BABAUTA, do hereby  
23 give, remise, release and quitclaim unto him, his successors  
and assigns [E.A. 222].

24 A person who owns a life estate has the power to create any  
25 interest in land which includes any or all of the rights which  
26 constitute a life estate. *Tuttle v. Burrows*, 852 P.2d 1314, 1316  
27 (Colo. Ct. App. 1992). It is settled law that a grantor cannot  
28 convey to his grantee an estate of greater dignity than the one he  
has. *McDonald v. Burke*, 288 S.W.2d 363, 365 (Ky. Ct. App. 1955)

1 (conveyee obtained from the life tenant a life estate and not a  
2 fee simple he pretended to convey). Thus, when an owner of a life  
3 estate purports to transfer an estate greater than what is owned,  
4 the conveyee acquires no right greater than a life estate.  
5 RESTATEMENT OF PROPERTY INTRODUCTION TO FREEHOLD INTERESTS § 124 cmt. d  
6 (1936). Roberts v. Rhodes, 643 P.2d 116, 118 (Kan. 1982) (absence  
7 of intent to limit title, grantors pass all interest they owned).  
8 Accordingly, although Plaintiff appeared on the face of the  
9 document to transfer to Dionicio a fee simple interest in E.A.  
10 222, Plaintiff transferred a life estate to Dionicio for the  
11 duration of Dionicio's life since at the time the document was  
12 executed Plaintiff only had a life estate interest.

13 On July 29, 1984, Dionicio executed a Deed of Gift which  
14 states:

15 [F]or an [sic] in consideration of natural love and affection  
16 I have unto [Merced], and for her support, maintenance and  
17 livelihood, do hereby grant, give and convey unto her, her  
18 heirs and assigns, forever, [E.A. 222].

19 Again, it is clear from the law as stated above that since  
20 Dionicio at the time the document was entered into only had a life  
21 estate in E.A. 222, he transferred to Merced that interest.

22 In sum, when the Land Contract was executed on June 13, 1986,  
23 the status of ownership of E.A. 222 was as follows:

24 1: Plaintiff's children still had a fee simple determinable  
25 ownership in E.A. 222, which would automatically expire in the  
26 event that Plaintiff's mother predeceased Plaintiff;

27 2: Merced now had a possibility of reverter, and she would  
28 obtain fee simple absolute ownership if Plaintiff's mother  
predeceased Plaintiff; and



1           3: Merced had a life estate, measured by the life of her  
2 father Dionicio.

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4           C: Whether Plaintiff's Interest in E.A. 222 at the Time the Land  
5           Contract was Signed Rendered Him Capable of Executing the  
6           Contract.

7           The next issue is whether at the time the Land Contract was  
8 signed, Plaintiff's interest in E.A. 222 rendered him capable of  
9 executing the Land Contract. Plaintiff argues that since  
10 Plaintiff has now re-acquired ownership in E.A. 222, he is able to  
11 perform under the Contract. Defendant claims that because  
12 Plaintiff was not the owner of E.A. 222 at the time the Land  
13 Contract was signed he did not have the ability to convey the  
14 property.

15           A contract for the sale of land "contemplates the subsequent  
16 execution of a deed." 77 AM. JUR. 2D Vendor & Purchaser § 1 (1975).  
17 As long as the land contract is entered into in good faith, it is  
18 not required that a vendor have marketable title during the  
19 executory period. *Neves v. Wright*, 638 P.2d 1195, 1197 (Utah  
20 1981). Marketability of title is determined at the time the  
21 vendor is required to perform. *Woodward v. Allen*, 265 P.2d 398,  
22 399 (Utah 1953) (attack on marketability of title premature  
23 because made prior to time of performance). Thus, imperfections  
24 in title which exist when the contract is executed cannot form  
25 grounds for objection if those imperfections are removed before  
26 the transfer of title is to occur. *Townshend v. Goodfellow*, 41  
27 N.W. 1056 (Minn. 1889).

1           The governing rule is whether "title was beyond the control  
2 of the vendor so that his acts amounted to a repudiation of his  
3 contract." *Gillmore v. Green*, 235 P.2d 998, 1197 (Wash. 1951)  
4 (citing *Foxley v. Rich*, 99 P. 666 (Utah 1909)). If a vendor can  
5 acquire title by voluntary acts of persons holding title or  
6 through legal proceedings, he is in a position to make a valid  
7 land contract. *McNey v. Campbell*, 116 N.W. 671 (Neb. 1908); see  
8 *Neves*, 638 P.2d at 1199 (vendee not entitled to rescind because  
9 although vendor's parents owned property they intended to reconvey  
10 during executory period of contract). It is the vendee's burden  
11 to prove that the vendor cannot perform when the time for  
12 performance arrives. *Gilmore v. Green*, 235 P.2d at 1002.  
13 Moreover, the vendor cannot use a claimed deficiency in title as  
14 an excuse for refusing to keep a commitment to purchase property.  
15 *Leavitt v. Blohm*, 357 P.2d 190, 192-93 (Utah 1960).

16           The purpose of the rule is not to favor vendors over vendees  
17 but to "enhance the alienability of real estate by providing  
18 flexibility in real estate transactions." *Neves*, 638 P.2d at  
19 1198. Yet, it is essential that a court closely scrutinize the  
20 facts and apply the rule to avoid unfairness and dishonesty. *Id.*

21           Under the Land Contract, Plaintiff was required to tender to  
22 Defendants marketable title for E.A. 222 "upon the satisfactory  
23 attainment of the desired public land." (Pl.'s Ex. at 2)  
24 Plaintiff successfully negotiated with MPLC for Defendants to  
25 obtain public land located in Obyan, Saipan in exchange for their  
26 "short exchange" rights. (Trans. at 20). However, when Plaintiff  
27 requested Defendants to execute the documents which would finalize  
28 these negotiations, Defendants<sup>1</sup> refused to do so. (Trans. at 15).

1 Therefore, the time for Plaintiff to tender marketable title has  
2 still not yet arrived because the "satisfactory attainment"<sup>1</sup> of the  
3 Obyan property in exchange for Defendants' "short exchange" rights  
4 has not occurred.

5 This Court finds that although plaintiff did not own E.A. 222  
6 at the time the Land Contract was entered into, Plaintiff was in  
7 a position which rendered him capable of executing the document.  
8 First, because the time for performance has still not arrived  
9 Plaintiff is not required, even at the present time, to have  
10 marketable title in E.A. 222. Nevertheless, on August 29, 1992,  
11 prior to the commencement of this lawsuit, Plaintiff did re-  
12 acquire E.A. 222 in fee simple absolute. On October 10, 1990,  
13 Plaintiff's mother died, which extinguished Plaintiff's children's  
14 fee simple determinable. Thus, on August 29, 1992, Merced, who  
15 owned E.A. 222 in fee simple absolute, transferred her interest to  
16 plaintiff.<sup>2/</sup>

17 Second, Defendants failed to show that title was beyond the  
18 control of Plaintiff to the extent that it amounted to a  
19 repudiation of the Land Contract. Plaintiff testified that at any  
20 time during the executory period of the Land Contract he could  
21 have obtained marketable title in E.A. 222. Although at the time  
22 the Land Contract was signed, Plaintiff owned no interest in E.A.  
23 222, all of the interests were held by his immediate family. The  
24 stated event, the death of Plaintiff's mother, is of no  
25 consequence either. If Plaintiff's mother did not die prior to  
26 the time of performance, Plaintiff's children could have conveyed

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28 <sup>2/</sup> Merced testified that she intended to transfer any  
interest she had in E.A. 222 to her husband once he was required  
to perform under the Land Contract.

1 their fee simple determinable to their father<sup>6/</sup>, and Plaintiff's  
2 wife Merced could have conveyed her possibility of reverter and  
3 life estate to her husband. What occurred was that Plaintiff's  
4 mother did die, and Merced conveyed her fee simple absolute  
5 interest in E.A. 222 to Plaintiff. In either case, it seems clear  
6 that Plaintiff could have acquired property by the voluntary acts  
7 of his family to put him in a position to make a valid agreement  
8 for the sale. Moreover, Defendants cannot use the claimed  
9 deficiency in title as an excuse for refusing to exchange their  
10 "short exchange" rights with Plaintiff. Finally, Defendants  
11 failed to show that Plaintiff acted dishonestly or unfairly in any  
12 way. Therefore, this Court finds that the Land Contract was valid  
13 and enforceable, thus, entitling Plaintiff to specific  
14 performance.

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16 **V. CONCLUSION**

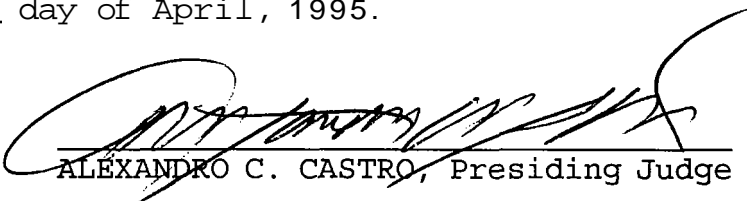
17 This Court holds that the April 23, 1984, Deed of Gift  
18 created a fee simple determinable in Plaintiff's children and a  
19 life estate and possibility of reverter in Plaintiff. Moreover,  
20 this Court finds that the later conveyances of the interests in  
21 E.A. 222 effectively transferred the life estate and the  
22 possibility of reverter to Merced Pangelinan leaving Plaintiff  
23 with no interest in the land at the time the Land Contract was  
24 executed. Finally, this Court notes that Plaintiff is not

25 \_\_\_\_\_  
26 <sup>6/</sup> This Court notes that Plaintiff's children were minors  
27 when they held an interest in E.A. 222. A guardian may have had  
28 to have been appointed if they were to transfer their fee simple  
determinable to their father. However, since Plaintiff most  
likely will gain a substantial income from the real estate venture  
with the Obyan property it would be in the children's best  
interest to transfer their interest in E.A. 222 to their father.

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required to have ownership in E.A. 222 since the time for performance has not yet arrived. Nevertheless, this Court finds that the Land Contract is valid and enforceable since Plaintiff has re-acquired a fee simple interest in E.A. 222 and from the surrounding circumstances. Therefore, this Court hereby GRANTS Plaintiff's request for specific performance under the Land Contract.

So ORDERED this 4<sup>th</sup> day of April, 1995.

  
ALEXANDRO C. CASTRO, Presiding Judge