



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

TERESITA CAMACHO DELA CRUZ,
et al.,

Plaintiffs,

v.

HOTEL NIKKO SAIPAN, INC.,
et al.,

Defendants.

Civil Action No. 91-259

**MEMORANDUM DECISION AND
ORDER ON DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

This matter came before the Court on October 27, 1994, on the motion of Defendant Hotel Nikko Saipan, Inc. ("Nikko") for summary judgment. Nikko argues that the terms of Public Law 8-32 entitle it to judgment as a matter of law. Plaintiffs respond that the statute violates Article XII, § 5 of the Commonwealth Constitution and therefore cannot stand. The Court, having considered the pleadings on file, the arguments of counsel, and the applicable law, now renders its decision.

I. FACTS

Plaintiffs have submitted a considerable amount of evidence regarding the transactions and the business entities at issue here, and argue that more discovery is needed to develop a still fuller record. Defendants, in contrast, base their motion on the barest factual outline,

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1 arguing that these facts alone entitle them to summary judgment. The recitation below will
2 contain only such facts as are necessary to determine the motion at hand.

3 **1. The Transactions.**

4 This lawsuit concerns a parcel of property in San Roque/Matanza, Saipan, identified
5 as Lot Number 006 B 03 and consisting of 3,183 square meters. *Plaintiff's Exh. at 51.* On
6 August 1, 1983, Plaintiffs conveyed this property to two corporations: Realty Trust Corp. and
7 Blanco Vende, Ltd. On the same day, Realty Trust conveyed its interest in the property to
8 Blanco Vende. *Id.* at 59. Blanco Vende remains the record owner of the property. The
9 purchase price of the property was paid by Japan Air Lines Development Co., which secured
10 the debt through a mortgage on the property. *Id.* at 62. Blanco Vende subsequently leased
11 the property to Nikko, which constructed a luxury hotel.

12 **2. The Corporations.**

13 Realty Trust was incorporated in the Commonwealth on July 30, 1981. *Defendant's*
14 *Exh. 1.* According to the Articles of Incorporation, the corporation issued one thousand shares
15 of stock. The original subscribers were Bernie S. Cabrera (260 shares), Josefa K. Flores (250
16 shares), Roger Gridley (250 shares) and First Commonwealth Corp. (240 shares). Ms.
17 Cabrera and Ms. Flores are persons of Northern Marianas descent. *Defendant's Exh. 2.*
18 Realty Trust had its principal place of business in the Commonwealth. *Affidavit of Jack Layne.*

19 Blanco Vende was incorporated in the Commonwealth on July 8, 1993. *Defendant's*
20 *Exh. 6.* Blanco Vende had its principal places of business in the Commonwealth. *Affidavit*
21 *of Riichi Yamamoto.* Its Articles of Incorporation list one thousand shares outstanding,
22 subscribed to by the following: Riichi Yamamoto (490 shares), Rita H. Sablan (255 shares) and
23 Bernie S. Cabrera (255 shares). *Defendant's Exhibit 7.* Like Ms. Cabrera, Ms. Sablan is a
24 person of Northern Marianas descent. Mr. Yamamoto held his stock for Japan Air Lines
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1 Development Corp., the entity which furnished the purchase price of the stock. *Yamamoto Aff.*
2 According to the Amended Articles of Incorporation, any transfer of real property owned by
3 the corporation had to be approved by 75% of the voting shares. *Certificate of Amendment to*
4 *Articles of Incorporation* (submitted at oral argument by Plaintiffs).
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6 7 **II. ISSUES**

8 Three issues are presented:

- 9 1. Whether Realty Trust and Blanco Vende were qualified to own land in the
10 Commonwealth at the time of the conveyance from Plaintiffs;
- 11 2. Whether 2 CMC § 4973 mandates judgment as a matter of law that the
12 transactions at issue complied with Article XII of the Commonwealth Constitution;
- 13 3. Whether recent decisions of the Commonwealth Supreme Court foreclose
14 Plaintiffs' argument that Blanco Vende is the "alter ego" of Japan Air Lines Development
15 Group.
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17 18 **III. ANALYSIS**

19 20 **A. SUMMARY JUDGMENT STANDARD**

21 Summary judgment is entered against a party if, viewing the undisputed facts in the
22 light most favorable to the non-moving party, the Court finds as a matter of law that the
23 moving party is entitled to the relief requested. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172
24 (1990). Once the moving party meets its initial burden of showing entitlement to judgment as
25 a matter of law, the burden shifts to the non-moving party to show a genuine dispute of
26 material fact. *Id.*, at 176.
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1 Here, the record evidence of stock subscriptions and the articles of incorporation of
2 both companies indicate that they met the four requirements of Article XII, § 5 at the time of
3 the conveyance. Defendants claim that by the terms of 2 CMC § 4973(a), this evidence is
4 sufficient to establish the eligibility of Realty Trust and Blanco Vende to own land in the
5 Commonwealth. Plaintiffs respond that this statute is an unconstitutional legislative
6 infringement upon the powers of the judiciary.
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8 Statutes are presumed valid. *In re Seman*, 3 N.M.I. 57, 73 (1992). In construing a
9 statute, courts are constrained to adopt any reasonable interpretation that will avoid
10 unconstitutionality. *Id.*

11 In Plaintiffs' view, § 4973(a)'s mandate that "record proof of stock ownership [...] *shall*
12 *be conclusive* as to which persons are directors or shareholders" unconstitutionally prevents a
13 court from hearing a claim that records on file with the Registrar of Corporations are
14 completely false, listing persons **as** owners who in fact have nothing to do with the corporation,
15 or listing shareholders as being of Northern Marianas descent when in fact they are not.
16 Plaintiffs' scenarios may be presented in future cases; however, the facts here do not involve
17 such a claim. It is undisputed that the persons listed in Defendants' Exhibits 2 and 7 are in
18 fact the shareholders of Realty Trust and Blanco Vende, and that a majority of these shares
19 were in fact held by persons of Northern Marianas descent. Thus, the Court has no occasion
20 to reach Plaintiffs' constitutional claim. As the Commonwealth Supreme Court noted in
21 *Commonwealth v. Oden*, 3 N.M.I. 186, 202 (1992), a court must never "formulate a rule of
22 constitutional law broader than is required by the precise facts to which it is to be applied"
23 (citation omitted).
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27 Plaintiffs further argue that the retroactive application of this statute, mandated by the
28 terms of § 4973(e), violates vested property rights. However, property rights do not vest in

1 this constitutional sense until a final, unreviewable judgment is obtained. *Austin v. City of*
2 *Bisbee*, 855 P.2d 1429, 1435 (9th Cir. 1988) (citations omitted). Here, whatever property
3 rights Plaintiffs may have are as yet inchoate and are therefore not subject to constitutional
4 protection from retroactive enactments of the Legislature.

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6 In view of the undisputed evidence presented, the Court applies the terms of § 4973(a)
7 and finds that both Realty Trust and Blanco Vende were eligible to own land in the
8 Commonwealth at the time of the transactions at issue here.

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10 **C. DISREGARD OF THE CORPORATE ENTITY AND § 4973**

11 The Court must next consider whether its finding above warrants a grant of summary
12 judgment that the transactions at issue satisfied Art. XII as a matter of law. Defendants base
13 their motion on a broad construction of § 4973(a) that, so long as a corporation satisfies the
14 four criteria of Art. XII defining a Northern Marianas corporation, no further inquiry of any
15 type is allowed into that corporation's land acquisitions. Defendant's Motion at 11-12. The
16 Court rejects this proffered interpretation.

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18 A court should not construe statutes so as to render any portion meaningless. In *re*
19 *Estate of Rofag*, 2 N.M.I. 18, 29 (1991). Here, Defendants' broad reading of the statute
20 stands at odds with § 4973(b) and (c), both of which set forth guidelines for the Court in
21 determining whether to disregard the corporate entity. If no further inquiry beyond the
22 establishment of the corporate entity itself were permitted, sections (b) and (c) of the statute
23 would be meaningless. The only reading of § 4793(a) which harmonizes sections (b) and (c)
24 is one in which inquiry into the identities of shareholders or directors is precluded beyond a
25 showing of record proof, but inquiry is permitted into allegations of fraud, "alter ego"
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1 treatment by corporate owners, or other circumstances which may warrant disregard of the
2 corporate entity under the common law, as modified by sections 4973(b) and (c).

3 Second, while a legislature is free to enact statutes to supplement a constitutional
4 provision, such enactments must be in harmony with the constitution and not in derogation of
5 it. *Hainline v. Bond*, 824 P.2d 959, 963 (Kan. 1992). Defendants rely heavily on § 4973(a)'s
6 mandate that "[i]n conformity with section 5 of Article XII, beneficial title shall not be severed
7 from legal title...." They also point to the legislative history of § 4973, which expressed the
8 intent of the Legislature that:
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10 There shall be no further inquiry into the internal operations of a qualifying
11 corporation in order to "pierce the corporate veil," or to determine equitable
12 ownership, control or interest or to prove the corporation a "sham."

13 *Special Committee Report No. 8-7, at 5 (Oct. 8. 1993)*

14 The language of the statute regarding severance of title appears at first blush to track
15 the text of Art. XII, § 5, as amended by the Second Constitutional Convention of 1985, which
16 mandates that "[b]eneficial title shall not be severed from legal title." However, a comparison
17 of the history of that Convention with the legislative history of § 4973 points to an opposite
18 conclusion. The floor debates of the 1985 Constitutional Convention are replete with
19 discussion that the drafters of the amendment to section 5 of Article XII intended to close a
20 perceived "loophole" in the existing law whereby outside investors "are forming dummy
21 corporations using people of Northern Marianas descent as fronts." *Journal of the Second*
22 *Constitutional Convention, 31st Day at 579 (July 18, 1985) (Delegate Nabors)*. As Delegate
23 Kaipat put it:
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25 I also mentioned that [...] there were guises who were hiding behind the fifty-
26 one percent vote rights and also behind the very word being labeled as a
27 Northern Marianas descent -- the corporation of Northern Marianas descent.
28 Now, we have found the loophole. What we are doing now is just plugging up
the loophole; so simple as that.

1 Id. At 580. In this context, it is clear that the framers intended to prohibit *private parties* from
2 entering into arrangements in which legal title would be severed from equitable title.

3 Public Law 8-32 arose from a different set of public policy concerns. It was intended
4 to restore security of title and safety of investment in the Commonwealth, which, in the view
5 of the Legislature, had been eroded by Article XII litigation. See *Special Committee Report*,
6 *supra*, at 2, 5. In particular, the Legislature sought to foreclose a particular line of judicial
7 interpretation regarding the severance of legal and beneficial title. In enacting § 4973(a), the
8 Legislature declared that "beneficial title shall not be severed from legal title' by *judicial fiat*
9 *or otherwise.*" *Special Committee Report, supra*, at 5 (emphasis added). Where the drafters
10 of Article XII had intended the title severance provision to prohibit private parties from
11 entering into commercial transactions which separated legal and equitable title, the Legislature
12 transformed this phrase into a limitation on the power of a court to respond to such
13 transactions. Clearly, such an attempted transformation is not "in harmony with [...] the
14 provisions of the Constitution." *Hainline, supra*, 824 P.2d at 963. Therefore, the Court finds
15 that the title severance provision cannot be read to foreclose inquiry by the Court into whether
16 a given corporate entity must be disregarded.
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21 **D. DISREGARD OF THE CORPORATE ENTITY AND FERREIRA V. BORJA.**

22 Defendants further claim that, even if the Court were to disregard Public Law 8-32
23 altogether, the Commonwealth Supreme Court's decisions in *Ferreira v. Borja, supra*, slip. op.
24 at 2, and *Diamond Hotel v. Matsunaga*, App. No. 93-023 (N.M.I. Jan. 19, 1995) mandate
25 summary judgment in their favor. The Court agrees that *Ferreira* forecloses Plaintiffs' theory
26 that Realty Trust and Blanco Vende acted as agents for Japan Air Lines Development
27 Corporation in purchasing the land in question. As Chief Justice Dela Cruz' concurrence
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1 makes abundantly clear, "we have earlier rejected [the agency-trust] theory as not viable." *Id.*,
2 slip op. at 4. This Court therefore grants summary judgment that the transactions at issue here
3 did not give rise to an agency trust in favor of persons not of Northern Marianas descent.

4 However, neither *Ferreira* nor *Diamond Hotel* speak to Plaintiffs' claims that the
5 corporations at issue here were shams or "alter egos" of the principals involved. As discussed
6 above, these claims are governed by the common-law doctrine of disregard of the corporate
7 entity, as modified by the Legislature in § 4973(b) and (c).¹ Defendants' motion does not
8 demonstrate facts sufficient to grant summary judgment on these issues.
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10 11 **IV. CONCLUSION**

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13 For the foregoing reasons, the Court hereby ORDERS:

14 1. Defendants' motion for summary judgment that Realty Trust Corporation and
15 Blanco Vende, Ltd. were eligible to own land under the terms of Art. XII, § 5 of the
16 Commonwealth Constitution in force at the time Plaintiffs conveyed the property at issue is
17 GRANTED.

18 2. Defendants motion for summary judgment on the basis of Public Law 8-32 is
19 DENIED.

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21 3. Defendants' motion for summary judgment that no agency trust arose from the
22 conveyance from Plaintiffs to Realty Trust Corporation and Blanco Vende, Ltd. is GRANTED.
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27 ¹Plaintiff also attacks the constitutionality of these provisions, arguing that they impair
28 the enforcement of Art. XII by imposing improper evidentiary constraints. The Court does not
reach these claims at this juncture. It is not clear from the facts yet presented whether
Plaintiffs will have standing under the rule of *Commonwealth v. Oden, supra*, 3 N.M.I. at 202
to press their constitutional arguments. The parties are free to revisit these issues upon a fuller
presentation of the record, either on a later motion for summary judgment or at trial.

