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

JOSEPH C. ADA,

Plaintiff,

v.

ELISA PANGELINAN SABLAN,

Defendant.

) Civil Action No. 89-419

) **ORDER OF EQUITABLE
DISTRIBUTION OF
MARITAL PROPERTY**

This matter came before the Court on March 9, 1995, on a second remand from a Judgment of the Commonwealth Supreme Court which reversed in part and affirmed in part this Court's Order of May 19, 1993. At issue is the equitable distribution of one parcel of land, a former homestead in Chalan Kanoa. The Court, having heard the evidence presented by the parties and considered the arguments in their briefs, now renders its decision.

I. BACKGROUND

This case originally concerned two parcels of land. Lot 009 D 55 in Garapan was purchased in 1969 for \$425 and was appraised in 1990 at a value of \$111,500, not including improvements. The Supreme Court found that the Garapan lot was separate property, despite this Court's factual finding

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1 that the lot was purchased with fund's from the parties' joint bank account prior to their separation."

2 Moreover, at the hearing on remand Ms. Sablan submitted receipts amounting to several thousand
3 dollars spent renovating the house on the Garapan lot during the period after this Court had awarded
4 the Garapan lot to Ms. Sablan but before the Supreme Court had reversed this finding. Defendant's
5 Exhibits A and B. Ms. Sablan now seeks restitution of this amount spent on these improvements.

6 Lot 015 H 37 in **Clanan** Kanoa, acquired as a homestead in 1966, had an appraised value in
7 1990 of \$16,600. In its September 23, 1994 Opinion, the Commonwealth Supreme Court upheld
8 this Court's earlier finding that the Chalan Kanoa lot was marital property.

9 10 **II. FACTORS CONSIDERED IN EQUITABLE DISTRIBUTION**

11 The Court must now fashion an equitable distribution of the marital estate, pursuant to 8 CMC
12 § 1311. In doing so, the Court is empowered to fashion a flexible remedy that achieves fairness under
13 the circumstances, even if that remedy does not result in an exactly equal division in monetary terms.
14 See Annotation: Divorce: Equitable Distribution Doctrine, 41 **ALR4th** 481, 502-505 (collecting
15 cases). In particular, the Court is permitted to take into account non-marital assets as well as marital
16 ones, so long as the Court's exercise of discretion is grounded in the respective contributions of the
17 parties. *Id.* at 495. In this respect, Ms. Sablan urges the Court to consider two types of
18 contributions she made to the Garapan property. First, she argues that her initial contribution to the

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20 ^{1/} The Supreme Court's opinion stated:

21 [W]e would defer to the trial court's finding that the land in Garapan was purchased
22 with funds from Sablan and Ada's joint account and affirm, if that were the only
23 evidence before the Court. However, this piece of evidence is only one of several that
24 the trial court had before it when determining whether Ada rebutted the presumption
that the land in Garapan is marital property. The rest of the evidence in the record
comprises more than the preponderance needed to overcome the marital property
presumption.

25 *Ada v. Sablan*, slip op. at 12 (N.M.I. Sep. 23, 1994). In essence, the Supreme Court found the
26 following factors to outweigh the fact that the parcel was purchased with joint funds in the
27 classification of the lot as separate or marital property: 1) the Garapan property was originally Ada
family land; 2) the omission of the Garapan lot from the parties' 1970 property division agreement;
and 3) the fact that the Garapan lot was purchased in Ada's name alone.

1 purchase price of the parcel should be taken into account. Second, she claims reimbursement for the
2 improvements she made to the property during 1994.

3 As to Ms. Sablan's contribution to the purchase price, the Court has already found that the
4 \$425 used to purchase the Garapan lot in 1969 came from the parties' joint bank account. The Court
5 also notes that this property has enjoyed a vast appreciation in value since 1969, and that the Supreme
6 Court's ruling has the effect of denying Ms. Sablan the benefit of this investment. The Court will
7 therefore take this factor into account in fashioning an equitable distribution.

8 As to the money Ms. Sablan spent improving the property, it is true that the Supreme Court
9 has recognized a common-law right to reimbursement for improvements, in the absence of a
10 "betterment" statute in the Commonwealth. *Repeki v. MAC Homes*, 2 N.M.I. 33, 47 (1991).
11 However, in order to claim restitution under this doctrine, the improver must have acted 1) under
12 color or claim of title, and 2) in good faith. *Westenberger v. Atalig*, 3 N.M.I. 471, 477 (1993).
13 At the evidentiary hearing, Ms. Sablan testified that "she had no idea" she might lose the property.
14 On the other hand, she did acknowledge that these improvements were made during the time this
15 matter was before the Commonwealth Supreme Court on appeal, and she knew that Mr. Ada was
16 claiming the Garapan lot as his separate property.

17 There is no Commonwealth authority on the specific question of whether the construction of
18 improvements during the pendency of an appeal concerning a disputed claim to property can constitute
19 "good faith." However, the *Westenberger* Court held that knowledge of an adverse title claim negates
20 a finding of good faith. 3 N.M.I. at 477. *Hidden Meadows Development Co. v. Mills*, 590 P.2d
21 1244, 1250 (Utah 1979) found that reliance on the accuracy of a trial court finding was "not sufficient
22 to justify a finding of good faith." Accordingly, this Court finds that Ms. Sablan's expenditures
23 during 1994 were not made in "good faith" within the meaning of the doctrine of *MAC Homes* and
24 *Westenberger*. These expenditures will thus not be taken into account.

25 The final factor for the Court's consideration is the value of the property to be divided. In
26 light of the Supreme Court's finding that the Garapan lot is Mr. Ada's separate property, the only
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1 property subject to division is the Chalan Kanoa property. Its appraised value in 1990 was \$16,600.
2 Since the parties' separation, Mr. Ada has had sole possession of this property.

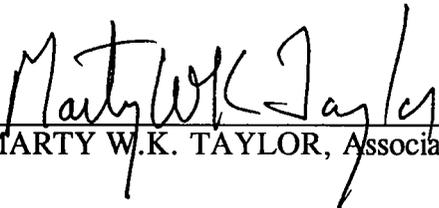
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IV. ORDER OF EQUITABLE DISTRIBUTION

Taking into account the fact that Ms. Sablan contributed one-half of the purchase price of the Garapan lot and did not retain the substantial benefit this investment has provided to her husband, the Court finds that it is equitable to award the Chalan Kanoa property to Ms. Sablan. The equity of this distribution is bolstered by the fact that Ms. Sablan has not had the use of this property since 1970, and that Mr. Ada has had the full economic and personal benefit of the property since that time. The Court therefore finds that no monetary offset is required from Ms. Sablan to Mr. Ada.

As to Ms. Ada's request for attorneys' fees, the Court finds no basis for an award of fees to either party. Each side shall bear its own fees and costs.

So ORDERED this 31st day of July, 1995.


MARTY W.K. TAYLOR, Associate Judge