

1 Pacific Resort Development, Inc. ("PRDI"), moved the Court to 1) reopen Plaintiffs summary
2 judgment motion based on newly discovered evidence, and to 2) grant summary judgment in its
3 favor. Defendant, Marianas Public Land Corporation ("MPLC"), joined PRDI's motion on July 28,
4 1995. Defendant, Manuel S. Villagomez, joined PRDI's motion to the extent that it challenged
5 Plaintiffs claim to the land, but opposed PRDI's request for summary judgment in its favor. Based
6 on the Court's July 31, 1995 denial of summary judgment to the Plaintiff, PRDI withdrew its request
7 to reopen Plaintiff's motion on August 21, 1995, but left its present motion for summary judgment
8 standing.

9 I. FACTS

10 PRDI alleges that Plaintiff submitted false information on material matters concerning the
11 Obyan property to the MPLC and to this Court. Specifically, PRDI states that new evidence that it
12 received in June 1995 from MPLC's successor, the Division of Public Lands ("DPL"), indicates that
13 Joaquin had a permit for a 1.9 hectare agricultural homestead, beginning in 1961, which he
14 subsequently improved and was forced to give to his daughter, Dolores San Nicolas, based upon the
15 Land Advisory Board's 1968 determination that his acquisition of U.S. citizenship in 1963
16 disqualified him from owning land in the Trust Territory. Declaration of Benigno M. Sablan, sworn
17 to on June 30, 1995, Exhibits A-3, C-8-30, C-41 ("Sablan June 30, 1995 Declaration"). PRDI points
18 out that in 1956 Joaquin stated, in his application for the permit for the 1.9 hectares, that he had no
19 other homestead permit and no revocable permit. *Id.* In addition, PRDI argues that Dolores San
20 Nicolas' receipt of a homestead disqualifies Joaquin's other heirs from eligibility for a homestead
21 pursuant to Article XI § 5(a) of the Commonwealth Constitution and 2 CMC § 4303(a).

22 In opposition to PRDI's allegations, Plaintiff argues that no conclusive documentation exists
23 to prove that Joaquin was either a U.S. citizen or that he was not a citizen of the Trust Territory.
24 Plaintiff also asserts that more than one person from each family can receive a homestead, and that
25 since Joaquin's heirs occupied the Obyan land at the same time that he did, they satisfy the requisite
26 15 year use period and are entitled to a homestead.

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II. ISSUES

1. Whether, as a matter of law, Joaquin San Nicolas' citizenship precludes his heirs from claiming an agricultural homestead.

2. Whether, as a matter of law, Joaquin San Nicolas' heirs are precluded from claiming an agricultural homestead by Article XI § 5(a) of the Commonwealth Constitution and/or 2 CMC § 4303(a).

II. ANALYSIS

A. SUMMARY JUDGMENT STANDARD

Summary judgment is entered against a party if, viewing the undisputed facts in the light most favorable to the non-moving party, the Court finds as a matter of law that the moving party is entitled to the relief requested. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172 (1990).

B. JOAQUIN'S ELIGIBILITY TO HOMESTEAD

Only persons of Northern Marianas descent are entitled to claim land in the CNMI. Commonwealth Const.Art. XII; 2 CMC § 4303(a). Article XII §4 of the Constitution defines a person of Northern Marianas Descent as one who is:

“...a citizen or national of the United States and who is of at least one-quarter Northern Marianas Chamorro or Northern Marianas Carolinian blood or a combination thereof...For purposes of determining Northern Marianas descent, a person shall be considered to be a full-blooded Northern Marianas Chamorro or Northern Marianas Carolinian if that person was born or domiciled in the Northern Mariana Islands by 1950 and was a citizen of the Trust Territory of the Pacific Islands before the termination of the Trusteeship with respect to the Commonwealth.”

The fact that Joaquin continuously resided in Saipan from 1906 until at least 1963 is undisputed. Sablan June 30, 1995 Declaration, Exhibits C-42-43, C-50. During this time period, Trust Territory citizenship was governed by the Trusteeship Agreement, approved by the U.S. Department of State on July 18, 1947. Article II of the Trusteeship Agreement states:

“1. The administering authority shall take the necessary steps to provide the status of citizenship of the Trust Territory for the inhabitants of the trust territory.”

1 Also in 1947, Congress made plans to enact an Organic Act for the Trust Territory. However, to
2 avoid "interim citizenship," the Department of State decided to wait for the United States to pass the
3 Organic Act before it conferred citizenship status on the Trust Territory inhabitants. *Analysis of the*
4 *Constitution of the Commonwealth of the Northern Mariana Islands*, December 6, 1976, p. 173
5 ("Constitutional Analysis"). The plans for an Organic Act were eventually abandoned, and the
6 citizenship requirement of the Trusteeship Agreement was not formally implemented until Title 53
7 § 1 of the Trust Territory Code was enacted in 1966. *Id.* Title 53 § 1(2) provided:

8 "A child born outside of the Trust Territory of parents who are citizens of the Trust
9 Territory shall be considered a citizen of the Trust Territory while under the age of
10 twenty one years, and thereafter becomes a permanent resident of the Trust Territory
11 while under the age of twenty-one years."

12 Between 1947 and 1966, the U.S. Department of Navy and Department of State considered
13 this requirement of Trust Territory citizenship to be met if persons were citizens under the Trust
14 Territory Code, *or were treated as citizens of the Trust Territory by the administering agencies of the*
15 *U.S. government acting under the Trusteeship Agreement.* *Id.* at 174 (emphasis added).
16 Accordingly, if a person acquired Trust Territory citizenship *at any time and for any period between*
17 *1947 and the termination of the Trusteeship Agreement* with respect to the Commonwealth, he or she
18 met the Title 53 § 1(2) requirement with respect to citizenship, *even if they subsequently became a*
19 *U.S. citizen.* *Id.* at 175 (emphasis added).

20 Despite the fact that Joaquin was not born in the Trust Territory, he was a permanent resident
21 of the Trust Territory from 1906 through 1963, during which time he was treated as a citizen and was
22 permitted to vote and to apply for a homestead permit. Indeed, Elias P. Sablan wrote, in a letter to
23 the District Immigration and Land Title Officers on September 14, 1965, (Sablan June 30, 1995
24 Declaration, Exhibit C-50) that:

25 "Joaquin Cruz Sanicolas was born in Agat, Guam on or about 1904. Moved to Saipan
26 with his father Carmelo Sanicolas on or about 1906. He married to Ana Lizama on
27

1 Saipan and resided in San Antonio village, Saipan. They^{1/} were considered Saipanese
2 by the local community. As a matter of fact, they were allowed to vote in all previous
3 public elections and were also considered qualified for homesteading” (emphasis
4 added).

5 In addition, a letter written on September 17, 1965 by the Mariana Island District's Acting District
6 Administrator to the U.S. Department of Justice Immigration and Naturalization Service, enclosed
7 voting and homesteading application records of Mr. & Mrs. Joaquin San Nicolas. Sablan June 30,
8 1995 Declaration, Exhibit C-44. A September 2, 1965 letter from the Immigration and Naturalization
9 Service (Sablan June 30, 1995 Declaration, Exhibit C-42) states that Joaquin and his wife claimed
10 citizenship of the United States under § 206 of the Organic Act of Guam and were admitted to the
11 U.S. at Agana, Guam as citizens in 1963.

12 Because Joaquin was treated as a Trust Territory citizen during the time he permanently
13 resided in the Trust Territory and subsequently became a U.S. citizen, he met the Title 53 § 1 (2)
14 requirement with respect to citizenship and is entitled to claim land.” Furthermore, because Joaquin’s
15 permit was canceled in 1968 and given to his daughter, the proviso contained in Article XI § 5 of the
16 Commonwealth Constitution and 2 CMC § 4303 (a) with regard to a person acquiring more than one
17 homestead is only applicable to Dolores SanNicolas’ claim to the Obyan property.

18 m. CONCLUSION

19 For the foregoing reasons, it is hereby ORDERED that:

- 20 1. Defendant PRD1’s motion for summary judgment is DENIED; and
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23 ^{1/} As no further mention of Joaquin's father, Carmelo San Nicolas, or of his mother, appears in
24 the record presented to the Court, the term "they" is interpreted to apply to Carmelo, Joaquin and
25 Ana Lizama, as all being considered Saipanese by the local community.

26 ^{2/} The Land Advisory Board's determination in 1968 to cancel Joaquin's permit on the 1.9 hectare
27 homestead because of U.S. Citizenship (see Declaration of Connie C. Togawa, sworn to on June 28,
28 1995, Exhibit 1) was incorrect in light of the *Constitutional Analysis*' explanation of the term "citizen
of the Trust Territory" at pp. 170-75.

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2. This case proceed to trial on the issue of Plaintiffs' compliance with 2 CMC § 4323.

So ORDERED this 13 day of December, 1995.


MIGUEL S. DEMAPAN, Associate Judge