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

COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS,

Plaintiff

v.

LEON I. TAISACAN,

Defendant

Civil Action 95-556

**ORDER DENYING
SUMMARY JUDGMENT**

This matter came before the Court upon motion by the Plaintiff for partial summary judgment on the issue of liability in this action to clear title on three public land parcels on Saipan. Defendant, Leon I. Taisacan ("Mr. Taisacan"), has made a cross motion for summary judgment on the same issue.

I. FACTS

In 1984, Mr. Taisacan, the fee simple owner of Rota Lot Number 3051, refused to permit the construction of a roadway to the Rota Airport across his property located outside Songsong Village until such time as a land exchange agreement was worked out with MPLC. Affidavit of Leon I. Taisacan,

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1 sworn to on August 17, 1995, paras 2-5. Mr. Taisacan states that in 1984, he negotiated to exchange
2 Saipan property for his Rota land. *Id.* at para 5. He further states that at the time the 1984 Agreement
3 was executed, the government agreed that he should receive property in exchange for his Rota land. *Id.*
4 at para. 6. Mr. Taisacan has identified specific properties located on Saipan in 1985 (Lots 055E03 and
5 055E05), but admits that no transfer of Saipan property in exchange for Rota land was memorialized in
6 writing until 1993. *Id.* at paras. 7-8.

7 On November 2, 1984, Mr. Taisacan executed a Land Exchange Agreement (“1984 Agreement”)
8 with the Marianas Public Land Corporation (“MPLC”). The terms of the 1984 Agreement state that
9 “The MPLC and Owner are currently negotiating to exchange private lands for public lands.” 1984
10 Agreement, para. 3. However, the 1984 Agreement does not identify what land Mr. Taisacan was
11 negotiating to receive in exchange for his Rota lot. The 1984 Agreement merely states that the “Owner
12 agrees to exchange the above-described property [Lot Number 3051, situated in Rota, Northern Mariana
13 Islands] for public lands . . .” 1984 Agreement, Section Three.

14 On June 1, 1987, P.L. 5-33 became effective, prohibiting inter-senatorial district land exchanges
15 for a period of ten years. 2 CMC §4145(d). On July 9, 1993, Mr. Taisacan and MPLC executed a Deed
16 of Exchange (“1993 Agreement”) conveying three Saipan parcels of land for Mr. Taisacan’s Rota
17 property. Accordingly, Plaintiff asks the Court to declare the 1993 Agreement conveying Saipan for
18 Rota land illegal and a violation of 2 CMC §4145(d) as a matter of law. Defendant cross moves for
19 summary judgment in its favor, asserting that the 1993 Agreement was executed prior to the effective
20 date of P.L. 5-33, and is therefore excepted from the ten year moratorium on inter-island land exchanges
21 pursuant to 2 CMC §4147.

22 23 II. ISSUES

- 24 1. Whether the Court may consider parol evidence to construe a document granting land.
25 2. Whether questions concerning the interpretation of an agreement granting land may be decided
26 as a matter of law.
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2 **III. ANALYSIS**

3 **A. Summary Judgment Standard**

4 Summary judgment is appropriate where the court, upon viewing the facts in a light most
5 favorable to the non-moving party, finds as a matter of law that the moving party is entitled to the
6 requested relief. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172, 176 (1990); *Rios v. Marianas Pub. Land*
7 *Corp.*, 3 N.M.I. 512, 518 (1993). Once the moving party meets its initial burden of showing entitlement
8 to judgment as a matter of law, the burden shifts to the non-moving party to show a genuine dispute of
9 material fact. *Id.*

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11 **B. Public Law 5-33**

12 Public Law 5-33 states:

13 For a period of 10 years after the effective date of this Article land exchanges
14 shall be made only for land physically located within the same Senatorial
15 District, as defined in 1 CMC §1402(d), as the land for which an exchange
16 is to be made.

17 2 CMC §4145(d). Since the statute explicitly prohibits inter-island land exchanges for the ten year period
18 between June 1, 1987 and June 1, 1997, and the 1993 Agreement between MPLC and Mr. Taisacan
19 exchanging Saipan for Rota land was executed during this period, plaintiff asserts that the 1993
20 Agreement is void as a matter of law and that summary judgment is appropriate.

21 Public Law 5-33 further states that:

22 Any land exchange Agreement entered into by the Corporation prior
23 to the effective date of this Act, which accomplished a public purpose
24 as defined in this Act, is hereby deemed to be a lawful and binding
25 agreement in the same manner and to the same extent as if entered into
26 after the effective date of this Act. Provided, however, this Section
27 shall not affect pending agreements to exchange all future claims,
28 pursuant to Public Law 5-5, or exchanges relating to 1944 land action,
until such claims have been completed.

29 2 CMC §4147. Despite the fact that the 1984 Agreement does not explicitly contemplate a Saipan for
30 Rota land exchange, Defendant asserts that the 1993 Agreement was completed in 1984 and is therefore
31 exempt from the ten year moratorium on inter-island land exchanges pursuant to 2 CMC §4147.

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C. Parol Evidence

Where the face of a document granting land does not fully disclose the government's intent, the court may consider parol evidence of the attendant and surrounding circumstances, at the time the grant was made, in order to construe the document. *Sablan v. Cabrera*, No. 93-032 (N.M.I. July 7, 1994) (citations omitted). Preliminary to application of the parol evidence rule, however, is a determination by the Court that the 1984 Agreement does not constitute a final expression of the parties' agreement in 1984. *See* RESTATEMENT OF THE LAW SECOND CONTRACTS §209.

To support his assertion that the 1993 Agreement was executed in 1984, Mr. Taisacan offers extrinsic evidence, in the form of four written affidavits from persons who claim to be familiar with the 1985 negotiations surrounding roadway land exchanges for the Rota roadway project, all stating that a Saipan for Rota land exchange was contemplated in 1984. *See* Affidavit of Jesus G. Villagomez, Executive Director of MPLC 1984-1988, sworn to on August 11, 1995; Affidavit of Benjamin T. Manglona, Rota Senator 1978-1990, sworn to on August 30, 1995; Affidavit of Aniceto H. Mundo, Administrator for Rota MPLC 1978-1986, sworn to on September 6, 1995; Affidavit of Jesus SN. Cabrera, MPLC Land Specialist, 1984-1985, sworn to on August 16, 1995. Defendant also relies on a portion of the 1993 Agreement, which states "MPLC, by action of its Board of Directors, has resolved to enter into a land exchange with Taisacan as authorized by Public Law 5-33;" to demonstrate that the land exchange executed in 1993 was intended to comply with 2 CMC §4147.

In light of the extrinsic evidence offered by the defendant, the Court finds that the 1984 Agreement is not a final expression of the intent of the parties, since it does not identify what land was intended to be exchanged for Mr. Taisacan's Rota property, and that the parol evidence rule is applicable to construe the 1984 Agreement. Having made this determination, the Court is left to interpret the supplemental extrinsic evidence offered by the Defendant to resolve the remaining questions concerning whether an agreement was in fact made in 1984 and what the exact terms of that agreement were. With these remaining factual questions unresolved, the Court cannot enter judgment as a matter of law. Since neither Plaintiff nor Defendant meets their burden of showing entitlement to judgment as a matter of law,

1 both Plaintiff's motion for summary judgment and Defendant's cross motion for summary judgment are
2 DENIED.

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6 **III. CONCLUSION**

7 The Court finds that a genuine issue of material fact exists concerning whether an agreement to
8 exchange Saipan for Rota property was executed between Mr. Taisacan and MPLC prior to the effective
9 date of Public Law 5-33. Accordingly, both plaintiff's motion for summary judgment and defendant's
10 cross-motion for summary judgment are hereby DENIED.

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12 So ORDERED this 31 th day of October, 1996.

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15 Miguel S. Demapan, Associate Judge