

RECEIVED
NOV 29 1996
CLERK OF COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

IN THE MATTER OF THE)
ESTATE OF:)
ABEL RABAULIMAN OLOPAI,)
)
Deceased.)
_____)

Civil Action No. 95-111

**MEMORANDUM DECISION
AND ORDER**

This matter came before the Court for an evidentiary hearing on November 26, 1996. The dispute in this matter is whether Abel R. Olopai ("Decedent") owned certain real properties individually or whether he held them as a trustee for himself and his siblings. This decision refers to Decedent's spouse Co-Administratrix Carmen K. Olopai as "Defendant" and Co-Administratrix Connie O. Igisomar and her siblings collectively as "Petitioners." Having heard testimony and reviewed all the submissions, the Court now renders its decision.

I. FACTUAL BACKGROUND

A. Olopai Family. Juan Olopai ("Juan"), a Carolinian, married Rosa W. Olopai ("Rosa") who was also a Carolinian. They had six children; Abel R. Olopai, Carmen O. Taitano, Benusto R. Olopai (deceased), Concepcion O. Igisomar ("Igisomar"), Margarita Olopai-Taitano, and Edwin R. Olopai. Petitioners confirmed that their father Juan also had one illegitimate child, Amada O. Kaipat

FOR PUBLICATION

1 (“Amada”). Decedent passed away in December 1994 and is survived by his spouse Co-
2 Administratrix Carmen K. Olopai (“Defendant”) and six of seven children.

3 **B. Lot No. 1636.** The original owner of Lot 1636 was Jacinto Olopai who gave it to his son
4 Juan Olopai. Juan raised cattle on Lot 1636 during his lifetime. His male children and grandchildren
5 and one son-in-law helped maintained the cattle. There is also evidence that Juan's children helped
6 plant and harvest certain crops and fruit trees on the property.

7 On August 21, 1963, Juan executed a Deed of Gift^{1/} conveying all of his interest in Lot No.
8 1636 to his wife Rosa and Decedent as tenants in common. Defendant's Ex. D. Petitioners assert
9 that Juan's intention in conveying Lot 1636 to Decedent and Rosa was for them to hold it in trust for
10 the family. Declaration of Concepcion O. Igisomar (“Igisomar's Declaration”), para. 8.
11 Additionally, Igisomar testified that Juan conveyed all his interest in Lot 1636 in order to preclude
12 his illegitimate child, Amada, from inheriting a share in Lot 1636^{2/}.

13 In December 1982, Rosa's estate was probated and the Plaintiffs consented to Decedent's
14 appointment as administrator because they trusted the Decedent. Plaintiffs also waived their rights
15 to receive notice or appear in the proceeding. Petitioners' Ex. E. Rosa's one-half interest in Lot
16 1636 was conveyed to her six children as tenants in common without any objections. Defendant's Ex.
17 E.

18 **C. Lot No. 2004 NEW-R1.** It is undisputed that Lot No. 2004^{3/} was the property of Juan
19 and his sister, Ms. Carmen Olopai (a.k.a. Carmen O. Selepeo “Selepeo”). On June 29, 1962, Juan
20 and Selepeo executed a Deed of Gift conveying the property to Decedent. Defendant's Ex. B.
21 Petitioners assert, however, that because Juan and Selepeo trusted the Decedent to represent the
22

23 ^{1/} The Deed of Gift was drafted in English by the Decedent, but Juan could not read in English.

24 ^{2/} “In the late 1960's Amada tried to prove in court, with witnesses, that Juan Olopai did not own
25 the property now in question. Juan Olopai was successful in the defense of his ownership claim and told
Amada that she gets nothing from him because of the embarrassment she caused.” Petitioner's Ex. 2.

26 ^{3/} This is the original lot number designated by the Land Commission of the Trust Territory
27 Government. Subsequently, it was resurveyed and designated as Lot No. 2004 New-R1 (“Lot 2004”).
28

1 family in land matters, they placed Lot 2004 in Decedent's name to hold for the family in trust.
2 Igisomar's Declaration, para. 7. Petitioners also assert that Juan wanted to prevent Amada from
3 inheriting in his share of Lot 2004.

4 On August 16, 1977, Decedent conveyed, without his siblings' consent^{4/} one-half of Lot 2004
5 back to Selepeo so that she could give it to Amada. *Id.* at para. 8. In 1988, the Decedent received
6 an offer to lease the remaining one-half interest in Lot 2004. The Decedent allegedly called a family
7 meeting of his siblings to discuss the lease offer. Subsequently, the Decedent signed the lease
8 agreement and he received the proceeds^{5/}. The Petitioners allege that the Decedent called another
9 family meeting at which they had hoped to receive their expected share of the lease money. However,
10 the Decedent told his siblings that he was not dividing the money^{6/}, but instead was going to control
11 the lease proceeds. Decedent informed his siblings that if anyone needed to borrow from the lease
12 money they had to justify it^{7/}. The Decedent allegedly told his siblings that he was not sharing the
13 money because he owned the leased property. There was no other family meeting during Decedent's
14 lifetime.

15 On May 31 and June 11, 1995, the Olopai family met^{8/} to review and comment on the draft
16 distribution of Decedent's estate. Petitioners' Ex. 8. Igisomar informed those present at the May 31.
17
18

19 ^{4/} One of Decedent's siblings testified that their consent was not needed because Selepeo was
20 alive and she wanted the Decedent to return the one-half interest in Lot 2004 she conveyed to the
Decedent.

21 ^{5/} The lease proceeds were deposited in several accounts in the Decedent's name in the Bank of
22 Hawaii.

23 ^{6/} Petitioners alleged that the Decedent was changed and did not sound like their brother when he
told them that he was not sharing the lease money.

24 ^{7/} In August 1993, Decedent's sister Margarita signed a promissory note to repay \$250.00 at 35%
25 interest to Decedent. Defendant's Ex. I

26 ^{8/} Present at the May 31, 1995 meeting were Defendant, Petitioners and five of Decedent's
children. The June 11, 1995 meeting was attended by Defendant, Igisomar, Margarita Olopai-Taitano
27 and three of Decedent's children. The minutes of the meeting were taken and transcribed by
Margarita Olopai-Taitano. *See* Petitioners' Ex. 8.

1 1995 meeting that the content of the draft distribution was based on the agreement she and Defendant
2 reached at their last meeting with Ms. Jean Rayphand^{2/}. *Id.*

3 **C. WAR CLAIMS.** In October 1973, Rosa, for herself and on behalf of Juan's heirs, filed
4 war claims for compensation arising out of damages or losses to Lot 1636 from 1944 to 1952. The
5 same filing also claimed compensation for damages or losses to Lot 2004 for the same period on
6 behalf of Juan's heirs and Selepeo. Petitioner's Ex. 1. On April 28, 1975, Rosa, as representative
7 of the heirs of Juan, received compensation for war damage inflicted on Lot 1636 between 1944 and
8 1952. Igisomar's Declaration, Ex. A. Likewise, Rosa received war damage compensation for Lot
9 2004 for the same period on behalf of Juan's heirs and Selepeo. Both awards included interest for
10 the period up to 1975.

11 The war claims award for Lot 1636 was paid to Rosa and it was distributed equally to Juan's
12 heirs. The award for Lot 2004 was distributed to Juan's heirs and Selepeo. Petitioners argue that the
13 fact that Decedent did not receive one-half of the war claim payments for Lot 1636 and 2004
14 demonstrates that he did not own the two lots personally but, rather, held the lots as a trustee for the
15 family.

16 17 **II. ISSUES**

18 A. Whether Lot No. 1636 and Lot No. 2004 NEW-R1 is "family land" under Carolinian
19 custom.

20 B. Whether the Decedent held one-half interests in Lots 1636 and 2004 as a trustee to benefit
21 himself and his siblings.

22 23 **III. ANALYSIS**

24 **A. FAMILY LAND UNDER CAROLINIAN CUSTOM.** "Carolinian land tenure is
25 matrilineal." *In re Estate of Rangamar*, No. 92-029, slip op. at 7 (N.M.I. Dec. 15, 1993); *but see*

26
27 ^{2/} Law Office of Theodore R. Mitchel and Jeanne H. Rayphand initially represented Petitioners.

1 *In re Estate of Igitol* (citing R. EMERICK, PART IV, "LAND TENURE IN THE MARIANAS", LAND TENURE PATTERNS IN
2 THE TRUST TERRITORY OF THE PACIFIC ISLANDS, (1958)). Pursuant to Carolinian land custom, land is held
3 collectively by the family and recorded in the name of the oldest female member of the maternal line,
4 acting as a "trustee" for the rest of the lineage members. *Id.* at 9.

5 1. Lot No. 1636. It is undisputed that Juan was the fee simple owner of Lot 1636. This sole
6 ownership in and of itself is contrary to the matrilineal system of land ownership since Juan had one
7 sister, Carmen O. Selepeo. It is also undisputed that Juan deeded his entire interest in Lot 1636 to
8 his oldest son, Decedent, and his spouse, Rosa, in 1962. The Court has reviewed all the variations
9 of Carolinian custom recorded in such treatise as SPOEHR and EMERICK, and has not found any
10 illustrations of custom in which a fee simple owner of land conveys a deed of gift to a wife and to
11 only one of several male and female children.^{10/} As a Carolinian, Juan was presumably
12 knowledgeable of the traditional Carolinian land custom, but he did not follow it. Rather, Juan's
13 conveyance of all his interest to his spouse and oldest son as tenants in common was in direct
14 opposition to the traditional Carolinian land tenure. Therefore, the Court finds that Lot 1636 is not
15 Carolinian family land.

16 2. Lot 2004 NEW-R1. Similarly, Lot 2004 was not conveyed according to traditional
17 Carolinian land custom. Juan and his only sister, Selepeo, owned Lot 2004. It is undisputed that they
18 deeded all their interest in Lot 2004 to the Decedent in 1962. Such distribution represents a clear
19 departure from customary distribution of Carolinian family land, therefore, this Court also finds that
20 Lot 2004 is not Carolinian family land.

21 **B. Whether Decedent was a Trustee.** In order to establish an express trust, one must show
22 the following : (1) a settlor; (2) transferred an interest in property; (3) to a trustee; (4) for the benefit
23 of ascertainable beneficiaries; and (5) at the time of the transfer, manifested an intent to create the

24 _____
25 ^{10/} There is one case where the father gave his real property to his two children, a son and a
26 daughter, who kept the land undivided. There are other cases where the father has given his land to
27 a single child, male or female, who considers it his own, to dispose of as he sees fit. A. SPOEHR,
28 SAIPAN: THE ETHNOLOGY OF A WAR-DEVASTATED ISLAND, Vol. 41 pp. 365-366, (Chicago Natural History
Museum 1954). *See also*, R. EMERICK, PART IV LAND TENURE IN THE MARIANAS, pp. 226-227.

1 trust. *Lifoifoi v. Lifoifoi-Aldan*, No. 94-017, slip op. at 12 (N.M.I. June 24, 1996); *see also Palacios*
2 *v. CNMI*, 1 CR 657 (D.N.M.I. App. Div. 1986) (“In deciding whether a trust has been created, the
3 crucial question is whether the settlor manifested an intention to impose upon himself or upon a
4 transferee of the property equitable duties to deal with the property for the benefit of another
5 person.”). The “manifestation of intention” by the settlor must be disclosed by spoken words, written
6 words or conduct. *Lifoifoi, supra*.

7 “Where a person holding title to property is subject to an equitable duty to convey it to another
8 on the ground that he would be unjustly enriched if he were permitted to retain it, a constructive trust
9 arises.” Restatement of Restitution, § 160 (1937). A constructive trust is not like a true trust, and
10 is not based on any intention of the parties, but is a fiction imposed in equity to achieve justice.
11 *Healy v. Commissioner of Internal Revenue*, 73 S.Ct. 671 (1953). The CNMI Supreme Court stated
12 that a court may impose a constructive trust on a party who has acquired title to property to redress
13 wrongs or to prevent unjust enrichment. *Lifoifoi, supra*. However, the *Lifoifoi* court stated that it
14 would not exercise its equitable power unless there was clear and convincing evidence that the
15 transferee engaged in fraudulent or other wrongful conduct to procure the property in dispute. *Id.*

16 Here, the Petitioners contend that Juan created an express trust at the time he conveyed his
17 interest in Lot 1636 by Deed of Gift to the Decedent and Rosa. The language of the deeds do not in
18 any form or manner indicate that Juan or Selepeo intended to create an express trust when they
19 conveyed their respective interest in Lots 1636 and 2004 to the Decedent. Rather, the deed
20 unambiguously conveyed all Juan's interest in Lot 1636 to the Decedent and Rosa as tenants in
21 common, and Selepeo's interest in Lot 2004 to the Decedent.

22 Since neither the language of the deeds nor any other written document indicate that a trust
23 was created or declared, the Court reviews the evidence whether Juan or Selepeo manifested their
24 intention by spoken words or conduct at the time they made the transfer. Petitioners assert that Juan
25 conveyed his interest in Lots 1636 and 2004 to the Decedent in order to disinherit his illegitimate
26 child Amada. The evidence shows that Juan stated that Amada was not getting anything from him,
27 but such intention was made several years after he had already conveyed his interests in both

1 properties. His decision to disinherit Amada was not made at the time he executed the deeds.
2 Furthermore, there is no evidence that Juan manifested an intention to impose upon the Decedent any
3 equitable duties to deal with Lots 1636 and 2004 to the benefit of Juan and Rosa's heirs only. As to
4 Selepeo's intention regarding the conveyance of her interest in Lot 2004 to the Decedent, the
5 Petitioners failed to provide any evidence that she intended to create a trust.

6 In support of its claim that an express trust exists and that the Decedent was the trustee,
7 Petitioners rely heavily on the fact that the Decedent called family meetings before and after the lease
8 of Lot 200; that he gave back one-half of Lot 2004 to Selepeo; that he did not claim nor did he
9 receive one-half of the war claims payments for each lot; that his daughter and spouse inquired why
10 he was not sharing the lease proceeds of Lot 2004, and that his demeanor and relationship with his
11 siblings allegedly changed after he received the lease money. The Petitioners' contention is based on
12 what the Decedent allegedly did and did not do and his demeanor rather than what Juan and Selepeo
13 intended at the time the deeds were signed.

14 This Court finds that an express trust was not created at the time deeds were executed which
15 conveyed Lot 1636 to the Decedent and Rosa as tenants in common and Lot 2004 solely in the
16 Decedent's name. Instead, this Court finds that the deeds are unambiguously absolute gifts.

17 Petitioners argue, in the alternative, that a constructive trust should be imposed in order to
18 prevent unjust enrichment. The Petitioners assert that the Decedent's conduct was unconscionable
19 because the Decedent was to hold the property for himself and his siblings, but instead he had the
20 deeds prepared in English which conveyed Lot 1636 to his mother and himself and Lot 2004 solely
21 to himself as grantee. More importantly, they contend that the documents do not reflect what the
22 Decedent knew the intention of his father was, and now an advantage is being sought to the detriment
23 of the Decedent's siblings.

24 Having found that neither an explicit declaration nor clear circumstances indicating that an
25 express trust was intended to be created, the Court searches within its equitable power to achieve
26 justice. In doing so, it questions why the Petitioners stood idle for over two decades knowing the
27 existence of the deeds which transferred their father's interest in Lot 1636 to their mother and the

1 Decedent and Lot 2004 solely to the Decedent. Furthermore, the Petitioners did nothing even after
2 the Decedent leased Lot 2004 in 1988, told them that he was not sharing the lease proceeds and
3 deposited the lease proceeds entirely in his own name. They took no action between 1988 and their
4 brother's death in 1994, and they admitted at trial that there was no breach of any fiduciary duties.

5 The Court finds that the Petitioners failed to show by clear and convincing evidence that the
6 Decedent engaged in fraudulent, wrongful, or unconscionable conduct in procuring Lots 1636 and
7 2004. The conveyances were absolute gifts to the Decedent. Thus, this Court will not exercise its
8 equitable power to impose a constructive trust.

9
10 **IV. CONCLUSION**

11 For the foregoing reasons, the Court finds that the one-half portions of Lot 1636 and 2004
12 NEW-R1 in Decedent's name is not Carolinian family land. The Court also finds that a trust was
13 neither expressed nor declared by the Decedent's father or his aunt Selepeo when they conveyed their
14 respective interest in Lots 1636 and 2004 to the Decedent. It further finds that the evidence put forth
15 by the Petitioners does not trigger this Court's equitable power to impose a constructive trust in their
16 favor.

17
18 So ORDERED this 10 day of April, 1997.

19
20 
21 _____
22 MIGUEL S. DEMAPAN, Associate Judge
23
24
25
26
27
28