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1997

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

NORTHERN MARIANAS HOUSING CORPORATION,

Plaintiff,

vs.

MARIANAS PUBLIC LAND TRUST,
and its Trustees, JUAN S. TORRES,
VICENTE M. CALVO, MARIA H. AGUON,
JOAQUIN I. PANGELINAN,
AND HERMAN R. GUERRERO,

Defendants.

Civil Action No. 97-499

DECISION AND ORDER

I. PROCEDURAL HISTORY

On May 8, 1997, Plaintiff Northern Marianas Housing Corporation ("Northern Marianas Housing") filed a complaint for injunctive relief against Defendants Marianas Public Land Trust and its Trustees ("MPLT"). MPLT responded by filing a motion to dismiss the complaint on several grounds.

On July 30, 1997, the Court heard MPLT's motion to dismiss. Appearing at the hearing were David A. Wiseman, Esq., for Plaintiff and Michael W. Dotts, Esq., for Defendants. At the conclusion of oral arguments, the Court asked the parties whether this case should be decided based on Defendants'

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1 motion to dismiss, or whether Plaintiff would prefer to amend its complaint to seek declaratory relief.^{1/}
2 Both parties agreed that the dispute was subject to resolution through declaratory judgment.
3 Accordingly, the parties stipulated and the Court agreed that Plaintiff would amend the complaint to seek
4 declaratory relief and that the Court would thereafter issue a decision based on all the papers on file, the
5 arguments of counsel, and the amended complaint for declaratory relief without any further arguments.

6 On August 1, 1997, Plaintiff filed its amended complaint for declaratory relief (“Amended
7 Complaint”). Having considered all the pleadings on file and the arguments of counsels, the Court now
8 renders its decision.

9 II. THE PARTIES

10 Plaintiff Northern Marianas Housing is a quasi-public corporation within the Commonwealth
11 Development Authority which assumed the functions of the former Mariana Islands Housing Authority
12 (“MIHA”).^{2/} *Exec. Order No. 94-3, § 407(a)*. MIHA was organized and operated principally for the
13 purpose of meeting the need for decent, safe and sanitary housing for persons of low and moderate
14 income with the power to, among other things, provide financing for housing for persons of low or
15 moderate income. *2 CMC §§ 4412(b), 4432*. In the statute at issue in this case, the MPLT-NMHC
16 Home Financing Act of 1996, MIHA’s role in the home construction loan program previously
17 established by the Legislature was assigned to Plaintiff Northern Marianas Housing. *PL 10-29, § 12(b)*.
18 Public Law 10-29 also appointed Plaintiff Northern Marianas Housing the successor to the Marianas
19 Public Land Corporation (“MPLC”) with respect to homesteads. *PL 10-29, § 12(d)*.^{3/}

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22 ^{1/} This case unquestionably raises issue(s) of constitutional dimension. The non-prevailing party is urged to
take this matter to the appellate court for final resolution.

23 ^{2/} *See, 2 CMC §§ 4411 et seq.*

24 ^{3/} In 1994, Governor Froilan C. Tenorio dissolved MPLC and transferred its functions to a Division of Public
25 Lands, Department of Lands and Natural Resources pursuant to Article XI, section 4(f) of the NMI Constitution.
Exec. Order 94-3, § 306(a). In 1996, Public Law 10-29 was passed. In 1997, the NMI Legislature passed Public
26 Law 10-57 which resuscitated the former MPLC by creating a Division of Public Lands and making it the
successor to MPLC with very similar powers pursuant to Section 4(f) of Article XI of the Constitution. *Public*
27 *Lands and Natural Resources Administration Act of 1997, Public Law 10-57, § 3* (effective August 29, 1997, as
28 amended by Public Law 10-63) (“Public Law 10-57”). Public Law 10-57 also vacated Section 306 of Executive
Order 94-3. *Public Law 10-57, § 4*.

1 Defendant Marianas Public Land Trust ("MPLT") is a constitutionally created trust managed by
2 its Trustees. *N.M.I. Const. art. XI, §§ 6, 6(a)-(b)*. Defendants Juan S. Torres, Vicente M. Calvo, Maria
3 H. Aguon, Joaquin I. Pangelinan, and Herman R. Guerrero are the Trustees of the MPLT ("Trustees").
4 MPLT's trust corpus ("the principal") is the money it receives from MPLC which MPLC receives from
5 public lands, less funds necessary to meet its reasonable expenses. *N.M.I. Const. art. XI, § 5(g)*.

6 7 III. BACKGROUND OF THE HOME FINANCING ACT OF 1996

8 The NMI legislature passed amended House Bill No. 10-238 and the governor signed it into law
9 on October 4, 1996 as the MPLT-NMHC Home Financing Act of 1996, Public Law 10-29 ("Public Law
10 10-29" or "Home Financing Act" or "Act"). The Home Financing Act authorized Defendant MPLT to
11 loan to the Plaintiff Northern Marianas Housing ten million dollars (\$10,000,000) at a rate of six percent
12 (6%). *See, PL 10-29, § 4(a)*. The legislature subsequently amended the Home Financing Act to lower
13 the loan rate for half of the authorized loan amount from six percent (6%) to four percent (4%). *See,*
14 *PL 10-49, § 3*.

15 The Act accomplished several things. First, it authorizes MPLT to lend to Northern Marianas
16 Housing five million dollars (\$5,000,000) at a rate of six percent (6%) and an additional five million
17 dollars (\$5,000,000) at a rate of four percent (4%). *See, PL 10-49, §3*. Second, it requires MPLT to
18 enter into a comprehensive loan agreement with Northern Marianas Housing. *See, PL 10-29, §4(a)*.
19 Third, it guarantees and secures the loan agreement between MPLT and Northern Marianas Housing
20 with the interest earnings accruing to the general funds (i.e. MPLT's interest proceeds while it is held
21 by MPLT), and the moneys received from public lands by the Division of Public Lands (i.e. the funds
22 that must be transferred into MPLT after an amount for reasonable expenses is deducted). *See, PL 10-*
23 *29, § 5(a)*. Fourth, it authorizes and directs the Secretary of Finance to pay to MPLT all obligations due
24 under the loan without further appropriation or fiscal year limitation. *See, PL 10-29, §5(b)*.

25 On March 20, 1997, Northern Marianas Housing was ready to sign a ten million dollar loan
26 agreement pursuant to the Home Financing Act. *Amended Complaint, ¶ 17*. MPLT and its Trustees
27 refuse to loan to Northern Marianas Housing any of the ten million dollars (\$10,000,000) referred to

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1 in the Home Financing Act. *Amended Complaint*, ¶ 21. On May 8, 1997 Northern Marianas Housing
2 filed this lawsuit.

3 4 **IV. ISSUES PRESENTED**

5 Plaintiff seeks a declaration that (1) the Trustees must consider factors other than obtaining the
6 maximum return on investment in exercising a strict duty of fiduciary care; (2) the Trustees must
7 consider, among other things, the social benefit to the Commonwealth that will result from their
8 decisions in exercising a strict duty of fiduciary care; and (3) MPLT's compliance with the Home
9 Financing Act is consistent with the Trustees' fiduciary duties as required by Article XI, section 6(f) of
10 the NMI Constitution.

11 12 **V. DISCUSSION AND ANALYSIS**

13 **A. The Constitutional Framework**

14 The Framers of the NMI Constitution carefully charted the route that must be followed when
15 dealing with funds received from public lands. A thorough examination of these constitutional
16 provisions shows that the Framers, by giving specific and unequivocal instructions, intended to have the
17 funds flow freely from one agency to another in the Executive Branch. These instructions must be
18 strictly adhered to in order for these funds to safely reach their final destination - the People of the
19 Commonwealth as a whole.

20 **1. The Role of the Marianas Public Lands Corporation (MPLC)**

21 Before MPLC was dissolved, the Constitution directed it to perform various functions. Prior to
22 the 1985 constitutional amendment to Section 5(g) of Article XI, the Constitution mandated only that
23 MPLC receive all the moneys from the public lands and that MPLC transfer these moneys promptly to
24 MPLT. The original language made it permissible for MPLC to retain the amount necessary to meet
25 reasonable expenses of administration. The present Article XI, Section 5(g) of the NMI Constitution
26 states that:

27 The [MPLC] shall receive all moneys from the public lands. . . and shall transfer
28 these moneys. . . to the [MPLT] except that the [MPLC] shall retain the amount
necessary to meet reasonable expenses of administration and management, land

1 surveying, homestead development, and any other expenses reasonably necessary for
2 the accomplishment of its functions. The annual budget of the corporation shall be
submitted to the legislature for information purposes only.

3 Clearly, the current Section 5(g) mandates four things. First, MPLC must receive the moneys from
4 public lands. Second, MPLC must transfer the money to MPLT. Third, MPLC must retain funds
5 sufficient to meet its necessary expenses to fulfill its functions. Fourth, MPLC must submit an annual
6 budget to the legislature for information purposes only.

7 The first and second mandates are specific and unequivocal, and essentially the same as the
8 provision prior to the 1985 Amendment. The significant change to Section 5(g) is the third mandate,
9 which was permissive in its original form. To understand the history behind the third mandate, and why
10 the Framers granted MPLC the power to retain funds from the public lands proceeds, the Court turns to
11 the ANALYSIS OF THE CONSTITUTION OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
12 (Dec. 6, 1976) (“ANALYSIS”). The ANALYSIS on Section 5(g) of the NMI Constitution states:

13 The corporation is permitted to retain a portion of the funds for administration
14 purposes with two restrictions: the funds must be necessary for administration and
15 the expenses of administration must be reasonable. Administration includes
16 administration of the management of public lands and administration of the
disposition of public lands. The determinations with respect to what is necessary and
reasonable are made by the corporation.

17 *It is intended that the Marianas Public Land Corporation be financially*
18 *independent of the legislature and that it meet its expenses with retained funds.*
19 There is no limitation on the percentage of the total revenues received that the
20 corporation may retain except the limitation of reasonableness and necessity set out
in the last clause. The corporation also has the power to borrow to meet expenses.

21 . . . All revenues from the public lands received on or after the effective date
of the Constitution go to the public land corporation. . . .

22 ANALYSIS, 158-159. (emphasis added).

23 Finally, the fourth mandate states that MPLC’s annual budget to the legislature is “for
24 information purposes only,” and not for review and subject to the legislature’s approval. Thus, based
25 on the statement of intent of the original Framers of the Constitution which permitted MPLC to retain
26 some of the funds, the change in the directive to mandate that it retain some of the funds, and the express
provision that MPLC’s annual budget report is “for information purposes only,” it is necessary to

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1 conclude that the Framers of our Constitution intended that MPLC be financially independent of the
2 legislature to ensure that MPLC fulfills its duty to manage and dispose of public lands.^{4/}

3 **2. The Role of the Marianas Public Land Trust (MPLT)**

4 As indicated above, Section 5(g) of Article XI of the NMI Constitution requires MPLC to
5 transfer the money to MPLT. Thereafter, Defendant Trustees are charged with the specific duty to
6 “make reasonable, careful and prudent investments” with these trust funds, i.e. “the principal.” *N.M.I.*
7 *Const. art. XI, § 6(b)*. After investing “the principal,” the Trustees must then transfer the income earned
8 to the general account of the Commonwealth:

9 The trustees shall transfer to the general revenues of the Commonwealth the
10 remaining interest accrued on the trust proceeds except that the trustees may retain
11 the amount necessary to meet reasonable expenses of administration. *See, N.M.I.*
Const. art. XI, § 6(b).

12 It is evident from the foregoing provision that the Framers of our Constitution also intended to
13 give MPLT all the financial independence it needs to carry on its duty to assure that the money it
14 receives from public lands (“the principal”) bear interest (“the net income”). MPLT must then transfer
15 the net income to the general funds of the Commonwealth for appropriation by the legislature. The
16 ANALYSIS supports this conclusion. It states that:

17 This section requires the trustees to transfer any interest earned on the trust
18 funds to the general revenues of the Commonwealth available for appropriation by
19 the legislature. These funds are not earmarked for any particular purpose. *The*
legislature may allocate funds from its general revenues among the competing needs
of the people of the Commonwealth as it sees fit.

20 There are two limitations on this general direction. First, the trustees may
21 retain sufficient funds for the administration of the trust. *This provision makes the*
trust independent of either the executive or legislative branches of the government
22 *but does not prohibit the trustees from using funds appropriated by the legislature for*
proper purposes.

23 ANALYSIS, 162 (emphasis added).

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26 ^{4/} The Court notes that when MPLC was dissolved by both Executive Order 94-3 and Public Law 10-57, its
27 functions were transferred to the Division of Public Lands, an executive branch agency. As an agency in the
28 executive branch, its budgetary needs must be addressed through the normal budgetary process. The rationale of
financial independence that underlies the authority of MPLC to retain funds for its own expenses therefore no
longer exists. Although this presents a serious question that is ripe for corrective action, the issue is not properly
before the Court at this time.

1 **B. The Structure of the Home Financing Act**

2 The expressed purpose of the Act is:

3 To authorize a single-family home loan financing program through the Northern
4 Marianas Housing Corporation, utilizing financial resources of the Marianas Public
5 Land Trust, with special provision for low income home purchasers; to facilitate
homestead development; to provide security for the investment of the Marianas
Public Land Trust; and for other purposes.

6 Clearly, the Act intends to assist home buyers in financing their home purchases, especially low income
7 home purchasers, and homestead owners in developing their homestead lots. However, the means the
8 Act uses to accomplish these goals conflict with the NMI Constitution.

9 **1. The Act's "Authorization" for MPLT to loan to NMHC.**

10 Section 4(a) of the Home Financing Act, which authorizes MPLT to loan to Northern Marianas
11 Housing ten million dollars (\$10,000,000), effectively appropriated the "principal" held by MPLT and
12 not "the net income" received from MPLT. The money in the hands of MPLT remains with MPLT as
13 three things: (1) the trust corpus ("the principal"), (2) the funds necessary to meet reasonable expenses
14 of administration, and (3) the interest accrued ("the net income"). As discussed earlier, the Constitution
15 directs MPLT's Trustees to deposit only "the net income" of the trust into the Commonwealth's general
16 revenues account. After MPLT transfers the net income into the government's general account, "the
17 legislature may allocate funds from its general revenues among the competing needs of the people of the
18 Commonwealth as it sees fit." Prior to the transfer, only the Trustees may decide what to do with the
19 funds. For these reasons, the Court concludes that until MPLT transfers the "net income" into the
20 general funds, the legislature cannot appropriate any of the funds held by MPLT.

21 **2. The Act's "Encumbrance" of interest earnings accrued by MPLT and moneys**
22 **received from Public Lands.**

23 Section 5 of the Home Financing Act effectively appropriated future money that belong in the
24 hands of Division of Public Lands and MPLT by encumbering the moneys from public lands and the
25 interest proceeds in the hands of MPLT. Under Section 5(a) of the Act, the Loan Agreement between
26 Northern Marianas Housing and MPLT is backed each year by "the interest earnings accruing to the
27 general fund pursuant to Article XI, Section 6(d) of the Commonwealth Constitution," (i.e. the interest
28 proceeds in the hands of MPLT prior to the transfer into the general fund), and "the moneys received

1 from public lands subject to Article XI, Section 5(g) of the Commonwealth Constitution” (i.e. the
2 moneys from all the public lands in the hands of Division of Public Lands). Under Section 5(b) of the
3 same Act, the Secretary of Finance is authorized and directed to pay to MPLT out of the moneys pledged
4 pursuant to subsection (a), the prior section.

5 First, for the reasons stated in Section V(B)(1) above, the legislature can neither appropriate nor
6 earmark any of the funds held by MPLT until MPLT transfers the net income into the general funds.
7 Second, the Constitution expressly directs MPLC, now the Division of Public Lands, to transfer the
8 moneys it receives to MPLT except for an amount necessary to meet its reasonable expenses.^{5/} See,
9 *Romisher v. Marianas Public Land Corp.*, 1 CR 898, 903 (Trial Ct. 1984) (“Were the legislature to
10 affirmatively state that the trust funds held by MPLC are to be used for land acquisition it would be, in
11 effect, appropriating funds not belonging to it but to MPLT”).

12 The legislature appears to attempt to justify using the revenues from public lands prior to
13 transferring them to MPLT by interpreting one of MPLC’s functions relating to “homestead
14 development” to include home financing. According to Section 2(f) of the Home Financing Act, the
15 Legislature finds that:

16 Home financing is an inherent part of *homestead development* within the meaning of
17 Article XI, Section 5(g) of the Commonwealth Constitution. Thus, it is appropriate
18 to use revenues from public lands *as security* against losses on capital made available
for home loans for homesteaders, and *offset any losses prior to transfer* of the net to
the Marianas Public Land Trust.

19 (emphasis added). The Court disagrees with this justification and interpretation of Article XI, Section
20 5(g) of the NMI Constitution. Section 5(g) states:

21 The corporation shall retain the amount necessary to meet reasonable expenses of
22 administration and management, land surveying, homestead development, and any
other expenses reasonably necessary for the accomplishment of its functions.

23 *N.M.I. Const. art. XI, § 5(g)*. The pertinent constitutional provision addressing MPLC’s function
24 regarding homesteads is Article XI, Section 5(a). Section 5(a) requires MPLC *to make available* some
25 portion of the public lands for a homestead program. (emphasis added). The function of making land
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27 ^{5/} *N.M.I. Const. art. XI, § 5(g)*. Although MPLC is dissolved under both Executive Order No. 94-3 and Public
28 Law 10-57, the functions of MPLC remain in the Division of Public Lands, the successor of MPLC. Financial
independence may not necessarily follow. See, *n.4, supra*.

1 available for a homestead program does not include the power to establish a homestead program. It is
2 for the legislature, not MPLC, to decide whether there is a homestead program at all.^{6/} The ANALYSIS
3 states:

4 This provision [Section 5(a)] requires that the corporation make land
5 available for a homestead program. *If a homestead program is continued by the
6 legislature, this section puts three limitations on the program.*

6 ANALYSIS, at 152 (emphasis added). The ANALYSIS continues by stating that the legislature is
7 responsible for all other matters not expressly addressed in the Constitution:

8 All other matters with respect to eligibility for homesteads, the nature of the interest
9 to be transferred to the homesteader and any other requirements relating to the
10 homestead program are left to the legislature.

10 ANALYSIS, at 154. For these reasons, the Court concludes that the fundamental policy behind MPLC's
11 authority to retain the amount necessary to meet reasonable expenses for homestead development and
12 others does not include providing for a home loan financing program.

13 **3. The Act's directive of the amount and the rate of the loan agreement, or the**
14 **investment of MPLT.**

15 The Home Financing Act requires MPLT to enter into a loan agreement with NMHC using
16 MPLT funds for the amounts and rates authorized by the Act. It is a statutory mandate for MPLT to
17 invest at the terms dictated by the legislature. The Court finds that this statutory mandate is both an
18 appropriation of MPLT money that is not available for appropriation by the legislature and a usurpation
19 of the Trustees' duty to invest the MPLT funds. This Court has already concluded that the legislature
20 may not appropriate any of the money held by MPLT. *See Section V(B)(1) above.* The Court now
21 discusses the view that the Act usurps the Trustees' duty.

22 By the express terms of the Constitution, only the Trustees may invest the funds of the MPLT.
23 Article XI, Section 6(b) states that "[t]he trustees shall make reasonable, careful and prudent
24 investments." The ANALYSIS explains that "[t]he main function of the Trustees is to invest the funds
25 derived from the public lands." ANALYSIS, 160. The Constitution did not provide nor did the Framers
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27 ^{6/} At the time the NMI Constitution was adopted, there was a pre-existing homestead program under the Trust
28 Territory Code, 66 TTC § 201, which was adopted in its entirety in the Commonwealth Code under 2 CMC §§
4301 *et seq.*

1 express any intent for any person or entity other than the Trustees to invest the public funds. Thus, it
2 is the MPLT board of Trustees that has the sole constitutional role to hold and invest the public funds
3 and the Framers intended that the Trustees operate independent of either the executive or legislative
4 branches of the government. Furthermore, under the common law,^{7/}

5 [a] trustee has a duty personally to perform the responsibilities of the trusteeship
6 except as a prudent person might delegate those responsibilities to others. In
7 deciding whether, to whom and in what manner to delegate fiduciary authority in the
8 administration of a trust, and thereafter in supervising agents, the trustee is under a
9 duty to the beneficiaries to exercise fiduciary discretion and to act as a prudent person
10 would act in similar circumstances.

11 *RESTATEMENT (THIRD) OF TRUSTS (PRUDENT INVESTOR RULE) § 171 (1990).*

12 Here, the legislative and executive branches unquestionably usurped the Trustees' function.^{8/}
13 The Home Financing Act mandates that MPLT grant a loan to NMHC a maximum amount under rates
14 of return they approved.^{9/} The Act states that "MPLT and NMHC shall execute a comprehensive loan
15 agreement setting forth the terms and conditions of the loan of the funds to NMHC."^{10/} The funds to be
16 loaned is the amount authorized under this Act, or "up to five million dollars (\$5,000,000) to NMHC
17 at an interest rate of six percent (6%) per annum, and another five million dollars (\$5,000,000) to NMHC
18 at an interest rate of four percent (4%) per annum." *P. L. 10-49, § 3.* The Court interprets these
19 provisions to require MPLT to enter into a loan agreement at the terms the legislature mandated by law.
20 This is something the legislative and executive branches cannot do under Article XI of the NMI
21 Constitution.

22 VI. CONCLUSION

23 The NMI Constitution is unequivocal in its directives concerning the handling of funds received
24 from public lands. Until such time that MPLT transfers the net interest accrued on the trust proceeds

25 ^{7/} See, 7 CMC § 3401.

26 ^{8/} Public Law 10-49 was passed by the legislature as House Bill No. 10-374 and signed into law by the governor
27 as Public Law 10-49 on March 19, 1997.

28 ^{9/} Counsel for Plaintiff at oral argument stated that the parties acted in concert to help the legislature formulate
Public Law 10-29. However, the parties were not involved in the formulation of Public Law 10-49, which lowered
the rate of return for half of the loan amount.

^{10/} Home Financing Act, § 4(a).

1 to the general revenues of the Commonwealth, these funds can neither be earmarked nor appropriated.
2 The trustees of MPLT are tasked with the awesome responsibility of making reasonable, careful and
3 prudent investments of these funds for the benefit of the People of this Commonwealth. In order to do
4 so, the Trustees must be free from being told with whom to invest, the amount of the investment, and
5 the interest rate to apply to a particular investment.

6 The Court is very much aware of the special financial needs of the homesteaders and the social
7 benefits the Home Financing Act of 1996 attempts to accomplish. The goals of the Home Financing Act
8 are unquestionably praiseworthy and the Court commends the legislature and the governor for their joint
9 effort to provide much needed assistance for low income home purchasers. Without a constitutional
10 amendment, however, neither the legislative, the executive, nor the judicial branch may follow these
11 particular steps toward these desirable goals. "It is not for the court to engraft an exception to a
12 constitutional restriction where none is expressed in the constitution, no matter how desirable or
13 expedient such an exception might seem." *Aldan-Pierce v. Mafnas*, 2 N.M.I. 122, 163 (1991).
14 Accordingly,

15 IT IS HEREBY ORDERED, ADJUDGED, AND DECLARED THAT Sections 4(a), 5(a), and
16 5(b) of Public Law 10-29, the MPLT -NMHC Home Financing Act of 1996, as amended by Public Law
17 10-49, are void as being violative of Article XI of the NMI Constitution.

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19 So ORDERED this 17th day of September, 1997.

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22 ALEXANDRO C. CASTRO, Presiding Judge
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