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

FAYTHE WISEMAN, CIVIL ACTION NO. 96-1270

Plaintiff

-v-

LARISSA SABLAN FLORES, aka :
LARISSA SABLAN BARKER, JOSEPH :
A. FLORES and GLORIA G. SABLAN, :

Defendants. :

ORDER

This matter came before the Court on Tuesday, July 8, 1997, at 9:00 a.m., upon various motions. Plaintiff appeared through her Attorney, David A. Wiseman, Esq. Defendants appeared through their Attorney, Eric S. Smith, Esq.

I. Plaintiff's Second Motion for Partial Summary Judgment

1. Issues. On January 24, 1997, Plaintiff filed a motion for summary judgment, which was granted in part in this Court's Order of May 6, 1997, q.v. On June 20, 1997, Plaintiff moved for partial summary judgment on three issues: (1) whether 8 CMC §1821(e) bars any cause of action which might be asserted by Defendant Gloria G. Sablan with respect to the May 12, 1993 lease of Lot 002 I 37 by her husband, John T. Sablan; (2) whether the Warranty Deed of Lot 002 I 37 executed on October 9, 1992 by Defendant Larissa S. Flores,

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in favor of her husband, Defendant Joseph A. Flores, is null and void; and (3) whether the May 12, 1993 Lease Agreement between John T. Sablan as Lessor, and David J. Lujan and Ignacio R. Garcia, as Lessees, is in full force and effect.

2. Undisputed Facts. The following facts are not in dispute. On August 13, 1982, Manuel B. Sablan conveyed Lot 002 I 37 to Larissa S. Flores by Deed of Gift. On November 26, 1990, Larissa S. Flores conveyed the property to her uncle John T. Sablan by Deed of Gift. Mr. Sablan recorded the deed the same day. Complaint at Exhibit D.

On October 9, 1992, Larissa S. Flores executed a Warranty Deed, purporting to convey Lot 002 I 37 to her husband Joseph A. Flores. Mr. Flores also recorded the deed the same day. Complaint at Exhibit F.

On May 12, 1993, John T. Sablan executed a lease of Lot 002 I 37 to David J. Lujan and Ignacio R. Garcia. His spouse, Gloria G. Sablan, did not sign this lease. The lease was recorded on July 19, 1993. Complaint at Exhibit C.

On April 5, 1995, John T. Sablan executed a Deed of Gift, conveying all of his interest in Lot 002 I 37 to Larissa S. Flores. This deed was recorded the following day. Complaint at Exhibit G.

On November 12, 1995, David J. Lujan and Ignacio R. Garcia assigned their leasehold interest to Ramon S. Deleon Guerrero and Ramona A. Villagomez. Complaint at Exhibit B. Their spouses, Anna B. Lujan and Lani Rae S.L. Garcia, did not sign the assignment. Lani Rae S.L. Garcia subsequently gave her written consent to the Assignment. Complaint at Exhibit E.

On August 17, 1996, Ramon S. Deleon Guerrero and Ramona A. Villagomez assigned the leasehold to Plaintiff and her husband David A. Wiseman. Complaint at Exhibit A. Thereafter, Mr. Wiseman executed a Deed of Gift, transferring all of his interest in Lot 002 I 37 to Plaintiff. Complaint, ¶9.

3. Summary Judgment Standard. The standard for summary judgment is set forth in Com. R. Civ. Pro. Rule 56. That rule provides:

> A party seeking to recover upon a claim . . . may . . . move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

Rule 56(c) continues:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Partial summary judgments are authorized by Rule 56(d).

Once a movant for summary judgment has shown that there is no genuine issue of material fact, the burden shifts to the non-moving party to show that such an issue does exist. Riley -v- Public School System, 4 NMI 85, 89 (1994).

We discuss each of the issues raised by the instant motion in turn.

4. Analysis.

a. The effect of 8 CMC §1821(e) on Gloria G. Sablan's interest in Lot 002 I 37.

It is not disputed that, on May 12, 1993, John T. Sablan leased Lot 002 I 37 to David J. Lujan and Ignacio R. Garcia; that at the time of the lease, John T. Sablan was married to Gloria G. Sablan; that the lot was marital property, 8 CMC §1820 ("[a]ll property of spouses is presumed to be marital property."); that Gloria G. Sablan did not join in the lease; and that Gloria G. Sablan has never brought suit to recover any interest which she may have in the property.

Plaintiff contends that Gloria G. Sablan is barred from asserting any claim to Lot 002 I 37 arising out of the fact that she did not sign the lease. The Court agrees.

8 CMC §1821(d) provides:

> The spouse with the right to management and control of real property must obtain the written consent of the other spouse in order to sell, convey or lease for more than one year any real property in which the other spouse has any legal or equitable interest. Absent the required consent, the transaction is voidable at the option of the non-consenting spouse.

8 CMC §1821(e) provides:

> "If any conveyance or transfer of marital real property is made in violation of subsection (d) of this section, the non-consenting spouse may bring an action to recover the property or a compensatory judgment in place of the property to the extent of the non-consenting spouse's interest in the real property. . . . The action must be commenced within the earlier of one year after the non-

consenting spouse has notice of the transfer or conveyance or three years after the transfer or conveyance." [Emphasis added].

In opposition, Defendants argue that Gloria G. Sablan had no notice of the lease until she received notice from Plaintiff's attorney in September of 1996; that she did not know that the lease was for a term in excess of one year; and that she did not see the lease itself until early 1997.[1]

The plain wording of 8 CMC §1821(e) sits squarely athwart Defendants' argument. That section requires that an action to recover a non-consenting spouse's interest in real property "must be commenced within the earlier of one year after the non-consenting spouse has notice of the transfer or conveyance or three years after the transfer or conveyance" [emphasis added], i.e., whichever occurs first.

The lease was recorded on July 19, 1993, at the Commonwealth Recorder's Office, as file no. 93-2565, pursuant to the provisions of 1 CMC §3703. If a document is properly recorded, the whole world is deemed to have constructive notice of it. Nile Valley Federal Savings & Loan Association -v- Security Title Guaranty Corp., 813 P.2d 849, 852 (Colo. App. 1991). Accordingly, Gloria G. Sablan is deemed to have had notice of the lease on July 19, 1993, the date it was recorded. 8 CMC §1821(e) requires that she bring an action to recover her interest in the property no later than one year thereafter, i.e., by July 18, 1994.

Regardless of when (or indeed, whether) Gloria G. Sablan received notice of the lease, it is not disputed that more than three years have elapsed since the date of the lease.

1/ She admits, however, that she was aware of an "encumbrance of the property" [sic] since 1993. Declaration of Gloria DLG. Sablan, ¶5, filed June 30, 1997.

Gloria G. Sablan has not commenced an action for the relief permitted by 8 CMC §1821(d). Accordingly, Section 1821(e) operates as a bar to any cause of action on her part to recover her interest, if any, in the property.

b. The Effect of the October 9, 1992 Deed from Larissa S. Flores to Joseph A. Flores.

Once again, the essential facts are not in dispute. On November 26, 1990, Larissa S. Flores executed a Deed of Gift, conveying Lot 002 I 37 to John T. Sablan. On October 9, 1992, Larissa S. Flores executed a Warranty Deed, purporting to convey the same property to her husband Joseph A. Flores. On April 5, 1995, John T. Sablan reconveyed the property to Larissa S. Flores.

Plaintiff argues that, when Larissa S. Flores executed the Warranty Deed on October 9, 1992, she had no interest in the property to convey to Joseph A. Flores. She therefore asks this Court to declare the 1992 Warranty Deed null and void.

Defendants argue that, when John T. Sablan deeded the land back to Larissa S. Flores on April 5, 1995, Joseph A. Flores succeeded to the interest of Defendant Larissa S. Flores by virtue of the doctrine of after-acquired title. That doctrine states that title acquired by a grantor, who previously attempted to convey title to land which the grantor did not in fact own, inures automatically to the benefit of prior grantees. 9 Thompson on Real Property, Thomas Edition, § 82.11, at 390-91 (David A. Thomas ed., 1994).

Under the law of the Commonwealth, where the grantor of a deed does not possess (and does not later acquire) title, the deed is void and unenforceable. In Re Estate of Castro, Civil Action No. 89-1041 (N.M.I. Super. Ct. Nov. 16, 1993) (Decision and Order at p.

3). Here, however, Larissa S. Flores did acquire title after executing the deed to her husband Joseph A. Flores. Under the doctrine of after-acquired title, Joseph A. Flores succeeded to the interest of Larissa S. Flores in and to the property. Accordingly, the Court cannot declare that the deed from Larissa S. Flores to Joseph A. Flores is void and unenforceable. However, as discussed below, the Court does conclude that, regardless of who owns the fee simple interest in Lot 002 I 37, that fee simple interest is subject to the 1993 Lease Agreement executed by John T. Sablan and its subsequent assignments.

c. The Validity of May 12, 1993 Lease Agreement.

Once again, the facts of the matter are not in dispute. On May 12, 1993, John T. Sablan leased Lot 002 I 37 to David J. Lujan and Ignacio R. Garcia. The leasehold was assigned to Ramon S. Deleon Guerrero and Ramona A. Villagomez, who subsequently assigned it to Plaintiff and her husband. Plaintiff's husband thereafter transferred all of his interest to Plaintiff. No action to void the 1993 lease has ever been filed. Plaintiff now asks the Court to declare the 1993 lease to be in full force and effect.

In opposition, Defendants offer the Declarations of Larissa S. Flores and John T. Sablan. Ms. Flores suggests that the purpose of the 1990 Deed of Gift was to consolidate the lot in question with other properties, so that they could be utilized for business purposes; that the intended business did not materialize; and that "it was understood that the property was to be returned" in that event.

Mr. Sablan declares that, on May 13, 1993, he was charged with a criminal offense in the United States District Court for the District of Guam; that he retained Mr. Lujan to defend him in that case; that he transferred the land to Mr. Lujan "to be used as security . . . if

my criminal case went to trial"; that his case did not go to trial; that Mr. Lujan made certain misrepresentations to Mr. Sablan with reference to the transfer of the property, upon which Mr. Sablan relied to his detriment; and that Mr. Sablan's case was disposed of without trial on December 17, 1993, whereupon Mr. Sablan assumed that the Lease was null and void. A similar Declaration, executed by Gloria G. Sablan, was also submitted.

(1) Larissa S. Flores is Estopped From Arguing That the Purpose of the 1990 Deed of Gift to John T. Sablan is Different From What the Deed's Terms Actually State.

The Declaration of Larissa S. Flores as to the purpose for executing the 1990 Deed of Gift to John T. Sablan does not and cannot affect the interest actually conveyed. One who places on record a deed or mortgage showing the nature of his or her interest in land is ordinarily estopped, as against one who relies on the record, to claim that the interest is other or greater than that which appears on the record. 66 Am. Jur. 2d, Records and Recording Laws, §99.

In this case, the 1990 Deed of Gift is clear on its face. It is not in any way conditional upon the success of a proposed business venture, and Larissa S. Flores is estopped to say otherwise. Plaintiff was entitled to rely on the documents on file at the Commonwealth Recorder's Office. The relevant document on file, the 1990 Deed of Gift, does not indicate any reserved interest in Larissa. Nor does it condition the conveyance on the happening of any event subsequent. Accordingly, the Court concludes that Larissa S. Flores' declared purpose of the conveyance to John T. Sablan does not affect John T. Sablan's interest under the Deed of Gift. That deed conveyed an unconditional fee simple ownership interest to him.

(2) The Fraud Alleged Here Does Not Render the Deed Void.

Defendants argue that the 1993 Lease Agreement is void because John T. Sablan was fraudulently induced to sign it. That argument is misplaced. Under the facts as Defendants allege them, the Lease Agreement would not be void but merely voidable.

In the absence of written law to the contrary, "the rules of the common law, as expressed in the restatements of the law approved by the American Law Institute . . . are the rules of decision in the courts of the Commonwealth". 7 CMC §3401.

Section 163 of the Restatement of the Law, Second, Contracts 2d (hereinafter, "the Restatement") indicates when a misrepresentation will prevent formation of a contract, and thereby render it void:

> If a misrepresentation as to the character or essential terms of a proposed contract induces conduct that appears to be a manifestation of assent by one who neither knows nor has reasonable opportunity to know of the character or essential terms of the proposed contract, his conduct is not effective as a manifestation of assent." [Emphasis added].

In contrast, Section 164(1) describes when a misrepresentation makes a contract merely voidable:

> If a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by the other party upon which the recipient is justified in relying, the contract is voidable by the recipient.

Thus, in order to prevail on the argument that the 1993 Lease Agreement is void, rather than voidable, Defendants, as the non-moving parties in this summary judgment

motion, have the burden of establishing that the lease was procured without John T. Sablan's knowledge, or without a reasonable opportunity on his part to know of its character or essential terms.

Defendants have not met this burden. The Declaration of John T. Sablan does not show that he had no knowledge or opportunity to know that the document he signed was a Lease Agreement. In fact, the opposite is arguably true. Declaration of John T. Sablan, ¶10.

For these reasons, the Court concludes that the 1993 Lease Agreement is voidable, and not void. Accordingly, the May 10, 1993 Lease Agreement between John T. Sablan and David J. Lujan and Ignacio R. Garcia is in full force and effect.

(3) Plaintiff's Status as a Bona Fide Purchaser.

Having concluded that the 1993 Lease Agreement is not void, but merely voidable, and is presently in full force and effect, the Court must still evaluate how this finding affects Plaintiff's interest in the event that the 1993 Lease Agreement should be subsequently rescinded.

As Defendants note, a party who is defrauded in executing a contract has a choice of remedies. "A party who was fraudulently induced by misrepresentation to enter into a contract may seek to rescind that contract." Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment, at 14 (filed June 30, 1997). In this case, those remedies do not include the right to recover Plaintiff's leasehold interest if Plaintiff was a bona fide purchaser.

As a general rule, a lessee "takes subject to all claims of title which are enforceable against his lessor". 49 Am. Jur. 2d, Landlord and Tenant, §12.

The Commonwealth, as a race-notice jurisdiction, protects bona fide purchasers. The Commonwealth's Recording Act, 1 CMC §3711, states:

> No transfer of or encumbrance upon title to real estate or any interest therein, other than a lease for a term not exceeding one year, shall be valid:
>
> (a) Against any subsequent purchaser or mortgagee of the same real estate or interest, or any part thereof, in good faith for a valuable consideration without notice of such transfer or encumbrance, or against any person claiming under them, if the transfer to the subsequent purchaser or mortgagee is first duly recorded . . ..

Thus, if Plaintiff took the assignment of the leasehold for valuable consideration, in good faith, and without notice of the claim of John T. Sablan, Plaintiff would have the status of a bona fide purchaser, and she would take the property free of any of Defendants' defenses against the validity of the 1993 Lease Agreement.

In their Answer to the Complaint, Defendants attacked Plaintiff's status as a bona fide purchaser. Answer, Affirmative Defenses, ¶4. None of the parties presented any evidence to the Court with regard to Plaintiff's status. The question of whether or not Plaintiff is a bona fide purchaser could affect her title to the property. For this reason, the Court cannot order that the 1993 Lease Agreement is valid and binding for the benefit of Plaintiff without evaluating her claimed bona fide purchase status. This matter must ultimately be resolved after further evidence is presented to the Court, either by a subsequent motion or at a trial of the case.

II. The Third Party Complaint

On February 10, 1997, Gloria G. Sablan moved for leave to file a Third-Party Complaint against David J. Lujan. The proposed Complaint would allege that Mr. Lujan

fraudulently induced John T. Sablan to enter into the 1993 Lease Agreement. The motion was not opposed.

In support of her motion, Gloria G. Sablan relies upon Com. R. Civ. Pro. Rule 14(a). That rule provides:

> At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the Plaintiff's claim against the third-party plaintiff.

Gloria G. Sablan may well have a claim against David J. Lujan arising out of the May 12, 1993 Lease. However, a Third-Party Complaint under Rule 14 is not the appropriate means to assert that cause of action.

Under Rule 14, a third-party defendant may be brought in only where that person "is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff." A third-party action presupposes the original Defendants' liability, which the original Defendant, as third-party Plaintiff, attempts to pass on to the third-party Defendant. Parr -v- Great Lakes Express Co., 484 F.2d 767 (7th Cir. 1973); U.S. -v- Joe Grasso & Son, Inc., 380 F.2d 749 (5th Cir. 1967). In this case, Plaintiff's Complaint against Gloria G. Sablan asks the Court to quiet title to Lot 002 I 37 and for related relief. Under no circumstances can it be said that Mr. Lujan is or may be liable over to Mrs. Sablan for any part of this claim.

Accordingly, the motion for leave to file a Third-Party Complaint against David J. Lujan is denied. The denial is without prejudice to the right of Mrs. Sablan (or for that matter,

John T. Sablan) to file a separate action against Mr. Lujan and others arising out of the 1993 lease. To the extent that Defendants, or any of them, may have causes of action against any persons not parties hereto, Defendants are free to assert them in any available forum.

III. Sanctions

The relevant procedural history of this case is set forth in the Court's Order of May 7, 1997. Briefly, Plaintiff filed a Motion for Summary Judgment on January 24, 1997. Pursuant to Com. R. Civ. Pro. Rule 6(d)(1), Defendants' opposition to the Motion was due by February 3, 1997. It was not filed until February 28, 1997. Defendants moved for an extension of time in which to file a memorandum in opposition, but that motion was not filed until February 10, 1997, seven days after the opposition was due. See Defendants' Motion to Continue Hearing of Plaintiff's Motion for Summary Judgment and Memorandum in Support thereof (filed February 10, 1997).

Com. R. Civ. Pro. Rule 6(b) provides that

> . . . The Court for cause shown may at any time in its discretion . . . upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Defendants have not made a showing of excusable neglect, and at the hearing of the motion, conceded that their failure either to file a memorandum in opposition to the motion for summary judgment or to move for an extension of time in which to do so was not the result of excusable neglect. In a Declaration filed on February 10, 1997, Defendants' attorney states that on January 22, he gave notice to opposing counsel that he would be off-island from February 16 until March 24. Clearly, this notice does not excuse a failure to file a timely memorandum on or

before February 3, 1997. In defense of his failure to meet the procedural deadline imposed by Rule 6(b), Defendants' attorney suggests only that Rule 6(b) was recently amended, and that he was not mindful of its new time requirements.

Com. R. Civ. Pro. Rule 11(b) provides that, by presenting a motion to the Court, an attorney certifies that its legal contentions "are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law", and that "the allegations and other factual contentions have evidentiary support".

Plaintiff argues that, in the absence of any showing of excusable neglect, and indeed, where Defendants admit that there has been no excusable neglect, Rule 11 sanctions are appropriate.

Defendants argue that the proper remedy under the circumstances is simply the denial of the request for extension of time, and that, in this case, there should be no sanction, because the motion for summary judgment was denied. Defendants suggest that Rule 11 requires more than a mere violation of the Rule, but that the Court must find that there has been a "callous disregard" for the Rule.

The Court is not persuaded. Sanctions under Rule 11 are warranted whenever a moving party fails to support a request for relief with existing law or a good-faith argument for a change in existing law, or when there is no factual basis for the relief sought. In this case, Defendants have presented no facts to the Court upon which the Court could make a finding of excusable neglect, and have presented no authority to the Court upon which the Court could disregard the excusable neglect requirement of Rule 6(b). Accordingly, the Court, having

afforded Defendants notice and a reasonable opportunity to respond, determines that Rule 11(b) has been violated, and that sanctions are appropriate.

Com. R. Civ. Pro. Rule 11(c)(2) prescribes the nature and limitations of the sanctions which the Court can impose. It provides:

> A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. . . . [T]he sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

In this case, the Court notes that the question of sanctions under Rule 11 was initiated not by motion made under Com. R. Civ. Pro. Rule 11(c)(1)(A), but on the Court's own initiative pursuant to Com. R. Civ. Pro. Rule 11(c)(1)(B). Moreover, the Court is not convinced that monetary sanctions are "warranted for effective deterrence". Furthermore, based upon the Court's own research of the law on Com. R. Civ. Pro. Rule 6(b), it is apparent that, after the time allowed for filing expired, the Defendants had little alternative but to seek the Court's discretion for an extension by filing a motion. The alternative would have been virtually to concede the motion.

In Ulloa -v- Maratita, Civil Action No. 91-365 (N.M.I. Super. Ct. Nov. 27, 1992) (Order at 10-11), aff'd, Appeal No. 95-025 (Aug. 25, 1997), the Superior Court relied upon the United States Supreme Court's interpretation of Rule 6(b) in Lujan -v- National Wildlife Federation, -- U.S. --, 110 S.Ct. 3177, 111 L.Ed. 2d 695 (1990). The Lujan Court stated:

> Rule 6(b)(1) allows a court ("for cause shown" and "in its discretion") to grant a "request" for an extension of time, whether the request is made "with or without motion or notice," provided the request is made before the time for filing expires. After the time for filing has expired, however, the court (again "for cause shown" and "in its discretion") may extend the time only "upon motion."

Id., citing Lujan, 110 S.Ct. at 3192. Further, Rule 6(b)(2) allows a court, "for cause shown" and "in its discretion" to enlarge the time where failure to act was the result of "excusable neglect." The Ulloa court stated that [t]he decision to enlarge a given time period rests with the discretion of the Court." Id. at 11.

In light of all the circumstances of this case, the Court finds that a sanction of a nonmonetary nature is most appropriate, and will deter repetition of such conduct or comparable conduct by others similarly situated. Defendants' attorney is therefore strongly cautioned that, in the future, the Court will expect compliance with the Commonwealth Rules of Civil Procedure, particularly Rules 6(b) and (d). Attorneys, particularly those as experienced as Defendants' in this case, are expected to know the rules and to abide by them.

IV. Conclusion

In summary, the Court finds that there are no genuine issues as to any material facts, and that Plaintiff is entitled to partial summary judgment as a matter of law, with respect to the issues of the effect of 8 CMC §1821(e) and the effect of the October 9, 1992 deed from Larissa S. Flores to Joseph S. Flores. Accordingly, the Court hereby orders and declares that (a) any cause of action which Gloria G. Sablan may have had to recover an interest in Lot 002 I 37 is barred by 8 CMC §1821(e); (b) when Larissa S. Flores executed a Warranty Deed to Joseph A. Flores on October 9, 1992, she had no right, title, or interest in or to Lot 002 I 37, having previously conveyed the

property to John T. Sablan by a Deed of Gift dated November 26, 1990; and (c) that the May 12, 1993 Lease Agreement between John T. Sablan and David J. Lujan and Ignacio Garcia is in full force and effect.

This decision leaves at least two issues undecided. First, the Court finds that there are genuine issues as to the material fact of whether or not Plaintiff had notice of any defenses which John T. Sablan may have had to the validity of the 1993 Lease Agreement. This fact affects Plaintiff's leasehold interest, since its determination will be dispositive as to whether or not Plaintiff took the assignment of Lot 002 I 37 subject to such defenses.

Second, there is an issue relating to the fact that Ana B. Lujan has apparently never consented to the November 22, 1995 Assignment of the Lease by her husband David J. Lujan and Ignacio R. Garcia.

There appear to be other issues raised by the pleadings, and not yet decided on summary judgment, which may or may not be relevant to the relief which Plaintiff seeks in this case.

Accordingly, within 30 days from the date of this Order, the parties will submit a list of issues which have not heretofore been resolved. The Court will then set the matter for a status conference, at which time the Court will consider the future progress of the case.

SO ORDERED, this 14th day of January, 1998:

MICHAEL A. WHITE, Special Judge