8-2-99 Law Revision

IN THE SUPERIORCOURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

PEDRO M. AGUON,

Plaintiff,

v.

MARIANAS PUBLIC LAND CORPORATION, PEDRO V. GUERRERO, ARTEMIO I. GUERRERO, JUAN CH. REYES, and EMERENCIANA A. HOFSCHNEIDER,

Defendants.

ET AL.

Civil Action No. 96-363

ORDER ON DEFENDANT DIVISION OF PUBLIC LAND'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO STRIKE

I. PROCEDURAL BACKGROUND

These matters came before the Court on Defendant Division of Public Land's motion for summary judgment and motion to strike. Brien Sers Nicholas, Esq. appeared on behalf of Plaintiff Thomas E. Clifford, Esq. appeared on behalf of Defendant Division of Public Lands. The Court, raving reviewed the memoranda, declarations, and exhibits, having heard and considered the uguments of counsel, and being fully informed of the premises, now renders its written decision.

FOR PUBLICATION

II. FACTS

In July 1955, the late Pedro M. Aguon ("Plaintiff') applied for a homestead of land in Papago, Saipan. The application indicated that the land occupied was "4.0 hectares."[1/] In June 1961, Plaintiff was issued a Permit to Homestead which indicated that Plaintiffs lot was 4 1,293 square meters. Nearly six years later, Plaintiff was issued a Certificate of Compliance which again indicated Plaintiffs lot as being 41,293 square meters.

In September 1974, during the course of the ongoing Land Registration process, Plaintiff requested that the boundaries of his homestead be adjusted to include additional land he alleged was mistakenly omitted. Two months later, Plaintiff signed a Certification of Agreement wherein he agreed to a revision of his homestead.[2/] As a result, Plaintiffs homestead lot was revised into three separate lots, thereby increasing the size of Plaintiffs homestead to 49,469 square meters.

In January 1977, the Land Registration Team issued its Adjudications on the three lots, all of which indicated that Plaintiffs homestead totaled 49,469 square meters. The Land Commission then issued Determinations of Ownership on the three lots, and Plaintiff was served with the Determinations in March 1977. In July 1977, Plaintiff was issued a Quitclaim Deed to his homestead and in August 1977, Plaintiff was issued Certificates of Title as to the three lots comprising his homestead. Both the Quitclaim Deed and the Certificates of Title indicated that Plaintiffs lot consisted of 49,469 square meters.

Sometime in 1994, Plaintiff corresponded with Marianas Public Land Corporation ("MPLC") to complain that the size and boundaries of his homestead were not what he had originally agreed to. He then requested that an additional 14,006 square meters of land adjacent to his homestead be given to him. However, MPLC refused.

[1/] *See* Application for Homestead in Saipan, dated July 9, 1955, attached as Exhibit A-l to Memorandum in Support of Motion for Summary Judgment.

[2/] *See* Certification of Agreement as to Location of Monuments and Boundaries, attached as Exhibit A-5 to Memorandum in Support of Motion for Summary Judgment.

In March 1996, Plaintiff filed a complaint to quiet title as to the additional 14,006 square meters sought by Plaintiff.

In January 1999, Defendant Division of Public Lands ("DPL") filed a motion for summary judgment wherein it contends, among other things, that both the Trust Territory homestead law and the Commonwealth's Homestead Waiver Act limit homesteads to five hectares.[3/]

III. ISSUES

1. Whether the applicable homestead law entitles Plaintiff to the additional land claimed by Plaintiff under his quiet title action?

2. Whether Plaintiffs statement of August 28, 1993 should be stricken as inadmissible hearsay?

3. Whether paragraph 10 of Tomas C. Aguon's declaration should be stricken as inadmissible hearsay?

IV. ANALYSIS

A. Motion for Summary Judgment

1. Summary Judgment Standard

The standard for summary judgment is set forth in Rule 56 of the Commonwealth Rules of Civil Procedure. Rule 56(a) 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.

Corn. R. Civ. P. 56(a). Rule 56(c) continues:

> Th 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 judgment as a matter of law.

Corn. R. Civ. P. 56(c). Once a movant for summary judgment has shown that no genuine issue of material fact exists, the burden shifts to the opponent to show that such an issue does exist. Riley v. Public School Svs., 4 N.M.I. 85, 89 (1994).

[3/]On January 28, 1999, Defendant Pedro V. Guerrero filed a joinder to Defendant DPL's motion for summary judgment. On February 2, 1999, Defendants Artemio I. Guerrero, Juan CH. Reyes, and Emerenciana A. Hofschneider also joined in the motion.

2. Trust Territory Homestead Program

In support of its motion, DPL contends that Plaintiff is not entitled to additional land as the Trust Territory homestead law never allowed homesteads to exceed five hectares.

Section 95 1 of the original Trust Territory Code provides, in pertinent part, that:

> "The District Administrator, upon advice of the District Land Advisory Board, shall, subject to approval of the High Commissioner, determine and establish:
>
> (a) the maximum area of land allowable for each agricultural, grazing, or village lot homestead tract within the district; . . . ".

Trust Territory Code, § 95 l(a)." In 1955, the same year Plaintiff applied for a homestead, the Saipan District Land Advisory Board passed a Resolution wherein it resolved "that the maximum area of land allowable for each agricultural homestead tract to be five (5) hectares."[5/] See *also* Sablan v. Cabrera, 4 N.M.I. 133, 140, fn. 44 (1994)(land given to homestead applicants under the TT government could not exceed five hectares)[6/]; Declaration of Miguel S. Sablan, at ¶ 16-17.

3. Homestead Waiver Act

In support of the instant motion, DPL contends that even if Plaintiff could meet the requirements for the land at issue under the Homestead Waiver Act, this Act also limits Plaintiff to five hectares.

According to the Homestead Waiver Act,[7/] a person can qualify for land under the Act if he continuously and actually occupied or used land for agricultural purposes for a period of at least 15 years prior to January 9, 1978. See 2 CMC $4323. However, the person must comply with the

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[4/] As amended by Executive Order No. 44, dated June 21, 1954.

[5/] *See* Resolution, dated October 25, 1955, attached as Exhibit A-l 8 to Memorandum in Support of Motion for Summary Judgment.

[6/] In making this statement, the Sablan court cited to Richard G. Emerick, *Land Tenure in the Marianas*, in 1 Office of the Staff Anthropologist, Trust Territory of the Pacific Islands, LAND TENURE PATTERNS, TRUST TERRITORY OF THE PACIFIC ISLANDS 233-34 (1958).

[7/] *See* 2 CMC §§ 4321, et seq.

procedures and requirements for the granting of deeds as established under 2 CMC § 4324. Id. 2 CMC § 4324(b), which appears to be dispositive on this issue, provides that:

> "A person receiving a deed under this article is limited to an agricultural homestead lot that does not exceed the land area allowable at the time the land was entered, occupied and improved."

2 CMC § 4324(b). As the Court indicated above, the "land area allowable at the time the land was entered, occupied and improved" was no more than five hectares, As such, even if Plaintiff could qualify for the land under the Homestead Waiver Act, he would still be limited to a five hectare lot.

4. The Land Commission Act

Even apart from the homestead law, DPL contends that the Land Commission Act of 1983[8] defeats Plaintiffs claim for additional land on several grounds and provides the statutory scheme for the registration, surveying and titling of all lands within the CNMI.[9]

First, at Plaintiffs request, the government agreed in 1974 to revise the boundaries of Plaintiffs lot. This resulted in a subsequent boundary agreement between Plaintiff and the Land Registration Team. As noted by DPL, such an agreement has the same legal force and effect as a full hearing, and represents a binding settlement and compromise. 2 CMC § 4241(b); 67 T.T.C. § 107(4). Second, following the boundary revision, the lot was surveyed resulting in the lot being revised into three parcels. Since this was the original government survey, it is legally conclusive and binding on Plaintiff. Boria v. Rangamar, 1 N.M.I. 347,360 (1990)(an original government survey may not be challenged in court).

Third, as a result of the boundary agreement and survey noted above, three Determinations of Ownership were issued and served on Plaintiff on March 23,1977.[10] At that point, Plaintiff had 120 days to appeal the Determinations. 2 CMC $4249; 67 T.T.C. § 1 15. However, Plaintiff failed to do

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[8] *See* 2 CMC § $42 11, et seq.

[9] This Act was preceded by the Trust Territory Land Commission Act, 67 T.T.C. §§ 10 l-l 20, which was in effect when Plaintiffs land was registered, surveyed and titled.

[10] *See* Exhibits A-10 through A-12 to Memorandum in Support of Motion for Summary Judgment.

so. See Sablan Declaration, ¶ 15. Therefore, the Determinations are final. In re Estate of Dela Cruz, 2 N.M.I. 1, 11 (1991) (Determination of Ownership not appealed becomes final under ***res judicata).***

Finally, in August 1977, three Certificates of Title were issued and served on Plaintiff. Certificates of Title are "conclusive upon all persons who have had notice of the proceedings and all those claiming under them . . .". 2 CMC § 4251(a); 67 T.T.C. § 117(1). In opposition, Plaintiff contends that he was never served with any notice of hearings under this Act. However, the facts clearly show that Plaintiff not only participated in the original agreement to revise the boundaries, but was served with the Adjudications, Determinations of Ownership, Quitclaim Deeds, and Certificates of Title, all of which show the area of Plaintiffs lot as 49,469 square meters, or just under five hectares. Therefore, the Court finds Plaintiffs lack of notice argument unconvincing.

5. Laches

As a final argument, DPL contends that the doctrine of laches bars Plaintiffs claim to additional land.

Laches has been defined as "the neglect or delay in bringing suit to remedy an alleged wrong, which taken together with lapse of time and other circumstances, causes prejudice to the adverse party and operates as an equitable bar." Rios v. MPLC, 3 N.M.I. 512, 523-524 (1993). A defendant who asserts laches must prove two elements: (1) that the plaintiff delayed filing suit for an unreasonable and inexcusable length of time from the time the plaintiff knew or reasonably should have known of its claim against the defendant; and (2), that the delay operated to the prejudice or injury of the defendant. Id.

Assuming all facts in the light most favorable to Plaintiff, it appears that the "delay" began in 1977 when Plaintiff was served with the Determinations of Ownership and the Certificates of Title and ended in 1994 when Plaintiff first complained to MPLC. The Court finds a delay of seventeen years unreasonable and inexcusable, especially here where Plaintiff offers no facts to justify the delay. Moreover, the Court finds that the prejudice element has also been met. The additional land at issue has been given to the other named Defendants in this action, just as Plaintiff admits in his quiet title action pleadings. Therefore, assuming Plaintiff was entitled to the land, DPL would now

be required to eject the other Defendants and compensate them for the land. Based on the foregoing, the Court finds that Plaintiffs claim to the additional land is barred by laches.

B. Motion to Strike

DPL moves to strike the late Plaintiffs 1993 statement as well as paragraph 10 of the declaration of Tomas C. Aguon as inadmissible hearsay.

Commonwealth courts have relied on the hearsay exceptions in Com.R.Evid. 803(13), 803(19) and 803(20) to allow hearsay testimony to prove title to land in the Commonwealth. Guerrero v. Guerrero, 2 N.M.I. 61, 68-69 (1991). However, none of these exceptions appear applicable here.

Com.R.Evid. 803(13) pertains to the admissibility of family records. This case does not involve family records nor are any such records present in this matter. Guerrero, supra, at 68 (existence of family records required).

Com.R.Evid. 803(19) involves reputation concerning personal or family history. The statement at issue here pertains to the alleged statements of former government officials, not to Plaintiffs reputation among family members, associates, or in the community. Guerrero, supra.

Finally, Com.R.Evid. 803(20) pertains to testimony involving one's reputation in the community as to "boundaries of or customs affecting lands in the community and reputation as to events of general history important to the community. . . ". The proffered statement does not go to Plaintiff's reputation in the community regarding either land boundaries or general history. Moreover, as noted by DPL, Rule 803(20) requires that the statement be made before the controversy arose. The Plaintiffs statement indicates it was made in 1993. This is approximately three years after the Plaintiff became aware that there was a potential claim for additional land against the government.[11/]

Based on the foregoing, the Court finds that Plaintiffs statement is inadmissible hearsay as it does not fall within any of the recognized exclusions pertaining to proving title to land in the

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[11/] See Statement of Pedro M. Aguon, dated August 28, 1993, at pp. 8-10.

Commonwealth. Likewise, the Court finds ¶ 10 of the Declaration of Tomas C. Aguon inadmissible for the same reasons stated above.

V. CONCLUSION

The Judicial branch is, on many occasions, called upon to vindicate the rights of individuals, especially in cases where those rights were infringed upon by government action or omission. The court is also aware that land, especially land inherited from one's ancestors, has major cultural significance to the indigenous people of the CNMI. Therefore, the court remains vigilant when such issues are implicated and does not hesitate to redress any wrongs when they are presented by the facts of the case. The undisputed facts of this case, however, reveal that the land in question was given by the government, under the agricultural homestead program, to the Plaintiff. Thus, there are no circumstances presented to indicate that an individual's land was taken without due process of law by the CNMI Government. Under these circumstances, it would be inequitable for the court to displace the long time owners of the property in question or to give away other public lands. The court has a moral, if not legal, duty to preserve this rapidly diminishing valuable public resource for the benefit of future generations of indigenous people of the CNMI.

For all the reasons stated above, Defendant DPL's motions for summary judgment and motion to strike are GRANTED.

So ORDERED this 31st day of July, 1999.

TIMOTHY H. BELLAS, Associate Judge