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

CHRISTINE REBECCA S. ALDAN, JESSEE S. ALDAN, JR., VELMA MARIE A. REYES, JESSICA RORY S. ALDAN, JEFFRY LEE S. ALDAN, and VINCENT RAYMOND S. ALDAN,
Plaintiffs-Appellants,

v.

GONZALO T. PANGELINAN, DIANA C. FERREIRA, BRADLEY ALLEN COATES, FRANK F. FERREIRA, Jr., PACIFIC PROPERTIES MANAGEMENT CORP., M&T CORP., and EIJI TANIGUCHI,
Defendants-Appellees.

SUPREME COURT NO. 2010-SCC-0024-CIV
SUPERIOR COURT NO. 09-0269 CIVIL

Cite as: 2011 MP 10

Decided August 24, 2011

Matthew T. Gregory and William R. Satterberg, Saipan, MP, for Plaintiffs-Appellants
Robert T. Torres, Saipan, MP, for Defendants-Appellees
BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; and ALBERTO C. LAMORENA, III, Justice Pro Tem.

CASTRO, J.:

¶ 1 Jesus T. Aldan's children ("Aldans") appeal from the trial court's dismissal of their suit for failure to state a claim pursuant to Commonwealth Rule of Civil Procedure 12(b)(6). The Aldans' seek to quiet title in certain real property that they hold in trust, but that is currently leased to Appellee Eiji Taniguchi ("Taniguchi"). The Aldans argue that Taniguchi's lease is void ab initio because at the time their father originally leased the property in 1978 to Diana C. Ferreira ("Ferreira"),[1] he did so in violation of a divorce decree that required him to hold the property in trust for his children. The Aldans argue that when the divorce court approved of the lease, it failed to appoint a guardian ad litem to protect their interest in the property, and that this failure renders the judgment and the lease void. Taniguchi counters that there was no duty to appoint a guardian ad litem, and further that Ferreira was a bona fide purchaser without notice of the trust, so her interest was superior to that of the beneficiary minor children; thus, the judgment is not void and the lease is valid. The trial court also found that the Aldans filed their cause of action after the six year statute of limitations expired. The Aldans' argue on appeal that the twenty year period controls this action. We hold that the Aldans' failed to state a claim because divorce court's failure to appoint a guardian ad litem does not render the lease void ab initio, and that the six year statute of limitations period bars the Aldans' suit. Therefore, we AFFIRM the trial court's order.

I

¶ 2 In 1974 the Aldans' parents divorced, and the divorce court ordered Jesus to hold certain real property in trust for his six minor children. The order specified that Jesus could not transfer or convey any interest in the property without first obtaining the court's permission. In 1978, however, Jesus leased the property to Ferreira without the court's approval. At the time they entered into the lease, Jesus did not inform Ferreira that he held the property in trust for his children. Ferreira later learned that Jesus held the land as a trustee, and in 1979 she successfully intervened in Civil Action No. 33-73, the divorce action, for the purpose of establishing her rights to the property. The divorce court found that while Jesus had breached his trustee duties, Ferreira was a bona fide purchaser without notice, and pursuant to the Restatement of Trusts, when a trustee breaches his duties by selling an interest in trust property to a bona fide purchaser without notice, the beneficiaries of a trust cannot reclaim the property. Thus, the divorce court approved the Ferreira lease, including Ferreira's right to sublease, assign, or hypothecate her interest without court approval. The court did not appoint a guardian ad litem, and it stated that its order did not adjudicate the rights of the minor children. During the 1980s, Jesus and Ferreira made two modifications to the original lease—both of which the divorce court approved and recorded. Subsequent to those

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[1] Since Ferreira originally leased the property, it has been subleased and assigned numerous times. The current lease holder is Taniguchi.

modifications, the lease was then assigned and transferred several times, and all of the later leasees had knowledge of the trial court's orders pertaining to the property. Taniguchi ultimately acquired the remainder of the lease.

¶ 3 In 2009, the Aldans filed this case, seeking to void Taniguchi's lease. They brought their case nineteen years after the youngest child reached the age of majority in 1990. They argued that Taniguchi's lease is void ab initio because the divorce court did not appoint a guardian ad litem to protect their interests in the property when it approved of the original lease to Ferreira. The trial court found that the Aldans' argument failed to state a claim, and additionally that the applicable statute of limitations mandated that the complaint be filed no later than 1996. Taniguchi was dismissed from the suit, and this appealed followed. The Aldan's timely filed their appeal, and we have jurisdiction pursuant to 1 CMC § 3102(a).

II

A. Rule 12(b)(6)

¶ 4 The issue is whether the trial court properly dismissed Taniguchi from the Aldans' complaint for failure to state a claim under Commonwealth Rule of Civil Procedure 12(b)(6). The Court reviews *de novo* dismissals under rule 12(b)(6). *O'Connor v. Div. of Pub. Lands*, 1999 MP 5 ¶ 2. The Aldans argue that they did state a claim because in 1979 the divorce court did not appoint a guardian ad litem to protect their interests when it approved of the Ferreira lease. The Aldans further assert that this failure renders the lease void ab initio, the void lease is a cloud on their title, and therefore, they should be allowed to proceed with their quiet title suit. Taniguchi counters that the divorce court was under no duty to appoint a guardian ad litem, and even if it should have appointed one, such a failure does not render the lease void.

1. The Order

¶ 5 We must determine whether the failure to appoint a guardian ad litem renders the lease void/void ab initio, voidable, or is of no consequence. In *Reyes v. Reyes*, the court described the difference between a void and a voidable judgment:

> A void judgment is a simulated judgment devoid of any potency because of jurisdictional defects only, in the court rendering it. . . . A judgment entered where such defect exists has neither life nor incipience, and a court is impuissant to invest it with even a fleeting spark of vitality, but can only determine it to be what it is—a nothing, a nullity. Being naught, it may be attacked directly or collaterally at any time.

2001 MP 13 ¶ 26 (citation omitted). A voidable judgment, also described as an irregular or erroneous judgment:

> is one rendered contrary to the method of procedure and practice allowed by the law in some material respect. An erroneous judgment is one rendered in accordance with the method of procedure and practice allowed by the law, but contrary to the law. Irregular and erroneous

judgments necessarily retain their force and have effect until modified by the trial court in consequence of its authority in certain circumstances, or until vacated pursuant to new trial procedures . . . or until reversed by an appellate court in review proceedings. Such judgments are subject only to direct attack; they are not vulnerable to collateral assault.

Id. (citation omitted). A similar definition describes a "void" judgment as "of no legal effect; null," whereas a "voidable" judgment is "valid until annulled; esp., (of a contract) capable of being affirmed or rejected at the option of one of the parties. This term describes a valid act that may be voided rather than an invalid act that may be ratified." Black's Law Dictionary 1270 (7th ed. 1999). Similar to void, "void ab initio" means "[n]ull from the beginning, as from the first moment when a contract is entered into." *Id*. This distinction is of great consequence because it determines whether Taniguchi's lease is currently invalid, or whether the Aldans only have an opportunity to annul it through a direct challenge. As described in *Reyes*, we must first ascertain whether the divorce court had jurisdiction to render its judgment over the property, because if it lacked jurisdiction, the order is void. *See Reyes*, 2001 MP 13 ¶ 26. If the court did have jurisdiction then we will address whether the failure to appoint a guardian ad litem also renders the judgment void or if it renders it merely voidable.

¶ 6 While the Aldans were not named parties in civil action 33-73, and the divorce court's order stated that their rights were not adjudicated, they were nevertheless under the court's jurisdiction and control as minors whose parents were named parties in a divorce proceeding. We made clear in *Santos v. Santos*, 2000 MP 9 ¶ 12, that "when a court grants a divorce it may make any appropriate orders for child custody, support for the children or either party and for the disposition of the parties' interests in marital property." In other words, the children of divorcing parents are subject to all applicable court orders. *See also* 8 CMC § 1311 ("Any decree as to custody or support of minor children or of the parties is subject to revision by the court at any time upon motion of either party and such notice, if any, as the court deems justice requires."); *cf.* 8 CMC § 1101 ("The Commonwealth Trial Court has jurisdiction to grant any adoption, annulment or divorce authorized under this division."). Thus, even though the Aldans were not named parties to their parents divorce, they were nevertheless subject to the court's jurisdiction.

¶ 7 Furthermore, the jurisdiction that a court possesses over a divorcing couples minor children does not end when the divorce is finalized, but rather, the court retains continuing jurisdiction over the children as needed. *In re Marriage of Olson*, 850 P.2d 527, 532 (Wash. Ct. App. 1993). In *In re Marriage of Olson*, the court stated that it "is clear that a court in a divorce action retains jurisdiction over children of the marriage until they reach majority . . . ." *Id*. (quoting *Dickson v Dickson*, 529 P.2d 476, 479 (Wash. Ct. App. 1974) review denied, 85 Wn.2d 1003, cert. denied, 423 U.S. 832 (1975)). In *Dickson*, 529 P.2d at 479, the court issued an injunction that prohibited the husband from speaking and writing about his ex-wife after the couple was divorced. The court reasoned that while the injunction restricted his first amendment rights, the thrust of the order was to protect the couple's minor children from his highly

disparaging remarks concerning their mother. *Id*. The court stated that these remarks harmed the children, and that since his conduct affected their welfare, it was justified in issuing the injunction restricting his speech. *Id*. Thus, the court's continuing jurisdiction over a couple's minor children allowed it to issue an injunction that limited the husband's first amendment rights. *See Whitten v. Whitten*, 592 So. 2d 183, 186 (Ala. 1991) ("The state, as parens patriae, possesses an interest sufficient to provide the court with continuing equitable jurisdiction over minor children for whose welfare the judicial machinery has been invoked."); *Application of Spaulding*, 402 P.2d 52, 58 (Idaho 1965) (". . . as regards the custody and welfare of a minor child of a marriage, involved in a divorce proceeding, the district court exercises continuing jurisdiction during the minority of the child."); *cf. Weathersbee v. Weathersbee*, 1998 MP 14 ¶¶ 5-11 (allowing for prospective modification of family court order providing for spousal support pursuant to 8 CMC § 1311). Given the above authorities, we hold that a court involved in a divorce proceeding retains jurisdiction over the couple's minor children in regard to their custody and welfare until they reach the age of majority.

¶ 8 With respect to the case before us, Ferreira intervened in the Aldans' parents divorce action for the purpose of establishing her rights in the property. While the custody of the children was not at issue, matters pertaining to their welfare were—the disposition of property that was held in trust for their benefit. Thus, the court enjoyed jurisdiction over the Aldans, and all orders it issued in civil action 33-73 applied to them just as they applied to their parents regardless of the divorce court's statement that the Aldans' rights in the property were not adjudicated. *See infra* note 4. Therefore, the 1979 order is not void for a lack of jurisdiction, and we must next determine what effect, if any, the divorce's court's decision to not appoint a guardian ad litem had on its order and the lease.

¶ 9 A court's failure to appoint a guardian ad litem does not render a judgment void, but at most such a judgment is voidable. *Stephenson v. Stephenson*, 167 P.2d 63, 63 (Okla. 1945). In *Stephenson*, a minor married couple sought a divorce. Both the husband and the wife were minors when they were married, the husband was a minor when the wife filed for divorce, and he was still a minor when the trial court granted her request. On appeal, the husband argued that the divorce order was void on the grounds that the trial court lacked jurisdiction because he was a minor at the time, and it did not appoint a guardian ad litem. 167 P.2d at 65. The husband maintained that the failure to appoint a guardian ad litem meant that the trial court lacked jurisdiction to enter the order, and therefore, the order was void. While the court recognized that the trial court's failure to appoint a guardian ad litem violated a state statute, the interests of the minor husband were nevertheless adequately protected. Thus, that failure was insufficiently prejudicial to the minor to warrant vacating the divorce decree. The court explained that "[a] judgment rendered against a minor, without the appointment of a guardian ad litem, may be voidable, but is not void." *Id*. The court concluded by stating that the general presumption is that a trial court protects the rights of minors, and

that when it fails to appoint a guardian ad litem, it is up to the minor to demonstrate that he or she has been prejudiced by that failure in order to overturn an otherwise valid judgment. *Id*. 65-66. Therefore, the failure to appoint a guardian ad litem renders a court order voidable.[2]

¶ 10 The above authorities are all similar to the facts of this case—a guardian ad litem was not appointed even though the court issued an order that affected the rights of unrepresented minors. The divorce court might have erred in failing to appoint a guardian to protect the Aldans', but this error does not strip the court's order of its validity. Stated differently, the divorce court's failure to appoint a guardian does not mean that the order it issued approving of the lease was a nullity. It was and still is a valid and binding order that is only capable of being annulled. Therefore, like the judgment in *Stephenson* that was upheld, the judgment before us is not void.

¶ 11 Since the 1979 order is merely voidable, we must determine whether it warrants being annulled. In *Reyes*, 2001 MP 13 ¶ 26, we held that voidable judgment cannot be attacked collaterally. In an analogous situation, in *Robinson v. Gatch*, 87 N.E.2d 904, 905 (Ohio 1949), the court held that "the failure to appoint a guardian ad litem or trustee does not render the proceedings absolutely void, but only voidable; such irregularity cannot be attacked collaterally, but it is such an irregularity as to be considered reversible error." Similarly, in *Graham v. Commonwealth*, 443 S.E.2d 586, 587 (Va. 1994), the court held that even a criminal conviction was not void on account of the fact that no guardian ad litem was appointed to defend the interests of the minor defendant, but only that the conviction was voidable. It further held that such a voidable judgment could not be set aside in a collateral proceeding. *Id*. Thus, only a direct challenge, and not a collateral attack, can annul a judgment for the failure to appoint a guardian ad litem.[3]

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[2] *See also Curtis v. Curtis*, 229 N.W. 622, 623 (Mich. 1930); *Levystein v. O'Brien*, 17 So. 550, 550 (Ala. 1894); *Medical Legal Consulting Servs. v. Covarrubias*, 234 Cal. App. 3d 80, 88 (1991) (citing *Pacific Coast etc. Bank v. Clausen*, 65 P.2d 352 (1937)) (the failure to appoint a guardian ad litem is not a jurisdictional defect); *Nesbitt v. Nesbitt*, 402 P.2d 228, 230 (Ariz. Ct. App. 1965) ("Where the court otherwise has jurisdiction, a judgment or decree rendered against an infant without appointment of a guardian ad litem, while it may be erroneous, at most is only voidable, and not absolutely void."); *Bellchambers v. Ebeling*, 13 N.E.2d 804, 808 (Ill. App. Ct. 1938).

The Aldans' argue in both their opening and reply briefs that *Gann v. Burton*, 511 S.W.2d 244, 247 (Tenn. 1974), stands for the proposition that the failure to appoint a guardian ad litem may render a judgment void. *Gann* is not quite that generous, as the opinion states that "the failure to appoint a guardian ad litem must affect the substantial rights of the infant in order to avoid a judgment. *Id*. *Gann* did not discuss whether the failure to appoint such a guardian renders a judgment void or voidable, and we do not find the case persuasive in light of the above authority.

[3] *See also Trolinger v. Cluff*, 57 P.2d 332, 334 (Idaho 1936); *Levystein*, 17 So. at 550; *Hungate v. Hungate*, 531 S.W.2d 650, 653 (Tex. App. 1975) (". . . the failure to appoint a guardian ad litem to represent the interest of a minor will result in a judgment being voidable, and subject to a direct attack, but not void and subject to a collateral attack."); *Bellchambers*, 13 N.E.2d at 808.

¶ 12 The United States Supreme Court has succinctly explained that a collateral attack on a judgment "is an attack on a judgment in a proceeding other than a direct appeal." *Wall v. Kholi*, _ U.S. _, 131 S. Ct. 1278, 1284 (2011) (citation and quotation omitted). In this case, the Aldans did not intervene in civil action 33-73 by filing an action to overturn the order on the basis that their interest were not protected because a guardian ad litem was not appointed. Instead, they filed a new complaint in the trial court that sought to quiet title to the real property. On appeal their theory—that the failure to appoint a guardian ad litem renders the lease void—is unequivocally an attack on the 1979 order. Thus, this appeal represents a collateral attack on the 1979 order. As a matter of law, neither this Court nor the trial court can collaterally disturb the divorce court's judgment on the ground that it should have appointed a guardian ad litem before it approved of the lease to Ferreira.[4] *Reyes*, 2001 MP ¶ 13 ¶ 26. Therefore, the Aldans' failed to state a claim and the trial court property dismissed Taniguchi pursuant to Commonwealth Rule of Civil Procedure 12(b)(6).

2. The Appointment of Guardians Ad Litem

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[4] We take judicial notice that the 1979 order stated that the Aldans were not named parties to the action and that their rights were not adjudicated. Our holding today finds that the Aldans were nevertheless under the court's jurisdiction, and therefore, its order binds them. If the Aldans' had known this, they might have attempted to intervene in civil action 33-73 and directly attacked the judgment. While we recognize this situation, it is ultimately the responsibility of the parties' counsel to ensure that the correct legal theories are pled; if counsel fails, it is not the Court's responsibility to remedy such an oversight. We also take judicial notice of other potential infirmities in the 1979 order. First, the court states that the Aldans' father held the property in trust for his children and that he also held the property fee simple in his own name. We find this statement troubling, but we neither have the need, nor the jurisdiction to address it at this time.

Finally, and perhaps most important, the original divorce decree placed the property in trust for the minor children. In *Reyes*, 2001 MP 13 ¶ 13, the court determined whether a divorce court could create a trust out of marital property. It cited to *Taisacan v. Manglona*, 1 CR 812, 816 (Dist. Ct. App. Div. 1983), for the proposition that a divorce court could not establish a trust absent statutory authority, and that 8 CMC § 1311, which was substantially identical to the statute that the *Taisacan* court interpreted, 39 TTC 103, did not permit the establishment of trusts. *Id.* Thus, *Reyes* held that under our current law, and under the Trust Territory Code that controlled in civil action 33-73, the creation of a trust in a divorce action was not permitted.

Examining *Taisacan* in greater detail, we find that the case presents a factual scenario extremely similar to the underlying issue in this case. In *Taisacan*, the court ordered that certain real property awarded to the husband in a divorce action be held in trust by him for the benefit of his children and his father. 1 CR at 814. The husband sold the property, and several years later the children, in an attempt to regain title to the land, filed a quiet title suit arguing that the buyer was not a bona fide purchaser without notice. The court refused to answer this question, instead finding that "a court granting a divorce has no authority to establish a trust upon the property of one of the parties to secure payments of alimony or amounts decreed for child support." *Id.* at 816. The court further found that "while such statutes give the divorce court broad authority to make distributions of the parties' property and provide for the protection and maintenance of the parties' children, it has universally been held that the court is without authority to give the property of the father to the children." *Id.* at 817. The court held that while a trust could potentially be established by a divorce court if its sole purpose was for the support of the children that was not the situation before it. *Id.* at 819. As a result, it invalidated the trust, and found that the children had no claim to the property. While we lack jurisdiction to examine the merits of the trust established in 1979, we note that upon first glance, the establishment of this trust is strikingly similar to the trust invalidated in *Taisacan*.

¶ 13 Despite our inability to review the merits of the 1979 order, we are as a general matter troubled by the divorce court's failure to appoint a guardian ad litem. The court explicitly placed the property in trust for the benefit of the Aldans, and then when their father breached his trust duty and leased the property without first obtaining judicial approval, it approved the transaction without appointing a third party to protect the minor beneficiaries' interest. While as a matter of law, a bona fide purchaser without notice of trust property prevails over minor trust beneficiaries, *see* Restatement (Second) of Trusts § 284 (1959),[5] a guardian ad litem could have, for example, challenged the trial court's determination that Ferreira was a bona fide purchaser without notice or brought an action against the father for the breach of his fiduciary duty. Given these facts, we will examine the trial court's duty to appoint a guardian ad litem for minors and incompetent adults.

¶ 14 Pursuant to Commonwealth Rule of Civil Procedure 17(c), the trial court is not required to appoint a guardian ad litem in every instance. Rule 17(c) states in pertinent part: "[t]he court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person." Com. R. Civ. P. 17(c). The rule provides that the court shall either appoint a guardian or it shall make an order as it deems proper for the protection of the minor. In either event, the court is charged with the unequivocal duty of ensuing that it protects the rights of minors and other incompetent individuals. This rule exists because the courts are ultimately the guardians of minors, and a guardian ad litem is an officer and agent of the court charged with protecting a minor's rights. *Feliciano v. Superior Court*, 1999 MP 3 ¶ 40. In other words, the courts have an *absolute duty* to protect the rights of minors in all circumstances, and Rule 17(c) gives the trial court discretion in how to best protect those rights. *Id.*

¶ 15 In furtherance of the court's duty to protect minors, the court in *Roberts v. Ohio Casualty Insurance Co.*, 256 F.2d 35 (5th Cir. 1958), provided guidance as to the contours of Federal Rule 17(c). In *Roberts*, the lower court had set aside death benefits awarded to minor children by the Industrial Accident Board of Texas. The court found that the district court's failure to appoint a guardian ad litem constituted reversible error because the court *never considered* such an appointment until *after* it issued its judgment.[6] It found that this exceeded the scope of Rule 17(c). In discussing the rule, the court held that a trial court should usually appoint a guardian ad litem, but that it could also craft an appropriate order to protect a minor. *Id.* at 39. If, however, a court decides to not appoint a guardian ad litem, it must

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5 Restmt. § 284:

> If the trustee in breach of trust transfers trust property to, or creates a legal interest in the subject matter of the trust in, a person who takes for value and without notice of the breach of trust, and who is not knowingly taking part in an illegal transaction, the latter holds the interest so transferred or created free of the trust, and is under no liability to the beneficiary.

6 *Roberts* did not involve a collateral attack like the instant case.

first make an explicit judicial determination that the minor was otherwise protected. *Id*. Thus, a trial court must "give due consideration to the propriety of an infant's representation by a guardian ad litem before he may dispense with the necessity of appointing the guardian." *Id*. We agree with the court's reasoning in *Roberts*, and hold that the appointment of a guardian ad litem is favored, and if the trial court decides against such an appointment, without crafting an otherwise appropriate order, it must first make a judicial determination justifying its decision.

¶ 16 The divorce court had a duty to protect the Aldans' rights, and while we cannot address the merits of its decision to not appoint a guardian ad litem in this appeal, we nevertheless take this opportunity to reiterate the importance of Rule 17(c). The courts have an unequivocal duty to always protect the interests of minors. We hold that if the trial court does not appoint a guardian ad litem or craft an order that adequately protects a minor's or incompetent adult's interests, it must make a judicial determination justifying its decision.

B. The Statute of Limitations

¶ 17 As an additional ground for dismissing the action, the trial court found that the six year statute of limitations found in 7 CMC § 2505 applied, and that the Aldans filing their complaint nineteen years after the youngest child reached the age of majority exceeded this statutory timeframe. The Aldans' maintain that the twenty year period found in 7 CMC § 2502(a)(2) applies. The application of the statute of limitations is a question of law that this Court reviews *de novo*. *Century Ins. Co., LTD v. TAC Int'l Constructors, Inc.*, 2006 MP 10 ¶ 8.

¶ 18 It is undisputed that the Aldans filed their cause of action nineteen years after the statutory period began to toll, so the only issue is whether section 2502(a)(2) or 2505 applies. The six year period, 7 CMC § 2505, states in pertinent part that "[a]ll actions other than those covered in 7 CMC 2502, 2503, and 2504 shall be commenced within six years after the cause of action accrues . . . ." The twenty year period, found in 7 CMC § 2502(a)(2), provides: "(a) The following actions shall be commenced only within 20 years after the cause of action accrues: . . . (2) Actions for the recovery of land or any interest therein." The Aldans' maintain that this suit is one to quiet title, 7 CMC § 2502(a)(2) applies to quiet title actions, and thus, they are within the statutory timeframe. Taniguchi argues, and the trial court agreed, that this is an action to rescind a lease and that the six year statutory period bars appellants from proceeding with their claim.

¶ 19 The trial court relied on *Century Insurance Co. Ltd. v. Guerrero*, 2009 MP 16, in determining that the six year period prevented the Aldans from proceeding against Taniguchi. In *Century*, the Court had to determine whether the six or twenty year period governed a suit concerning an agreement to lease. *Id.* ¶ 7. It held that such agreements were more similar to contract actions than actions seeking the recovery of land, and that the statute of limitations applicable to contracts, a six year period, also governed most

actions on a lease. *Id*. ¶ 29. In this case, the trial court found that the Aldans' attempt to invalidate Taniguchi's lease was similar to an action to enforce an agreement to lease and that the six year period applied.[7]

¶ 20 Determining which statutory timeframe applies requires ascertaining the gravamen of the Aldans' complaint. *Century Insurance*, 2009 MP 16 ¶ 12 (citing *Crisostimo v. Trust Territory*, 7 TTR 375 (App. Div. 1976)). In *Century* we stated that "an action seeking the recovery of real property does not automatically trigger the longer statute of limitations period applicable to actions for the recovery of land when the claim actually concerns a different theory." *Id.* ¶ 16 (citing *Watwood v. Yambrusic*, 389 A.2d 1362 (D.C. Cir. 1978)). In support of this proposition, *Century* cited to *Brown v. Ramsey*, 472 S.W.2d 322, 323-24 (Tex. App. 1971), for the proposition that when a suit seeks to recover land by overturning a judgment, the statute of limitations period governing the recovery of land is not applicable, but instead the period for challenging judgments controls. *Id*. ¶ 19. Thus, it is the nature of the Aldans' suit, and not their pleaded theory or the ultimate outcome they desire that determines the applicable statute of limitations.

¶ 21 While the Aldans have framed their suit as one to quiet title, what they are really asking the court to do is declare the 1979 judgment approving Taniguchi's lease void. This situation is analogous to *Brown*, 472 S.W.2d at 323-24, in that even thought the Aldans are ultimately trying to recover real property held in trust for them, their action is really an attempt to collaterally overturn the divorce court's judgment by having this Court declare the order void ab initio. Title 7 CMC § 2502(a)(2) is inapplicable to such actions because that statutory period does not govern attacks on a judgment.[8] Thus, the Aldans action is not governed by 7 CMC § 2502(a)(2), and the Aldans were untimely in filing their claim nineteen years after the youngest child reached the age of majority.

III

¶ 22 In summary, the failure to appoint a guardian ad litem does not render Taniguchi's lease void. The failure to appoint a guardian ad litem results in court orders being voidable, and voidable orders can only be attacked directly. Since the Aldans' are collaterally attacking the order, they have failed to state a cause of action. Moreover, the nature of the Aldans' suit is not one to quiet title, and thus, the catch-all

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[7] The Aldans' styled their complaint as one to declare Taniguchi's lease void ab initio. The trial court, however, determined that the lease was not void ab initio, thus making it valid, and therefore, the action was one to rescind a lease.

[8] We recognize that 7 CMC § 2502(a)(1) does govern such actions, but the Aldans have not properly attacked the judgment in this lawsuit. Therefore, even though the limitations period is still twenty-years, we will not apply subsection (a)(1) to this matter. Furthermore, if this suit was brought as one to challenge the judgment from civil action 33-73, as discussed *supra* note 4, there is a *possibility* that *Taisacan* would result in this Court invalidating the trust in its entirety. Such a result would eviscerate the Aldans' ability to reclaim the property even if the order was declared invalid for failure to appoint a guardian ad litem.

statute of limitations found in 7 CMC § 2505 bars their suit. Therefore, we AFFIRM the trial court's order that dismissed Taniguchi pursuant to Commonwealth Rule of Civil Procedure 12(b)(6).

SO ORDERED this ___ day of ___________, 2011.

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MIGUEL S. DEMAPAN
Chief Justice

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ALEXANDRO C. CASTRO
Associate Justice

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ALBERTO C. LAMORENA, III
Justice Pro Tem