

Angelina C. MUNA as
Administratrix of the Estate of
Gregorio C. Camacho, Deceased
vs.
Juan B. CAMACHO, et al.

Civil Action No. 84-103
Commonwealth Trial Court

Decided December 12, 1984

1. Probate - Descent &

Distribution - Real Property

Real estate becomes vested on the death of the owner in his heirs and devisees, subject to the right of the personal representative, where authorized by the court, to use it to pay creditors in case the personal estate is insufficient to pay the debts of the estate and the expenses of administration; until the payment is needed for the payment of debts, the heirs are entitled to immediate possession.

2. Probate - Descent &

Distribution - Real Property

In the absence of a statute giving the executor or administrator the right to maintain an action affecting realty, any such claim must be brought by the decedent's heirs and not the Administrator of the estate.

3. Probate - Descent &

Distribution - Real Property

Where there is no will of the decedent, the realty passes on his death in equal, undivided shares to his children as a co-tenancy.

4. Real Property - Co-tenancy

One co-tenant is not liable to the other co-tenants for use of the property where there is no ouster or exclusion of the co-tenants.

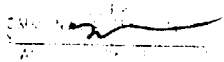
5. Real Property - Co-tenancy - Rights

A co-tenant has the right to use and enjoy the common estate as though he were the sole proprietor.

6. Real Property - Co-tenancy - Claims Among Co-tenants

Where co-tenant builds improvements with his own funds, and it was from these improvements the rentals were derived, and he did not exclude co-tenants from the land, and none of the other heirs or co-tenants objected to the use of the premises, there is no basis for any claim by co-tenants for the rental value of the premises for residential or commercial use.

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
COMMONWEALTH TRIAL COURT

ANGELINA C. MUNA, as)	CIVIL ACTION NO. 84-103
Administratrix of the)	
Estate of Gregorio C.)	
Camacho, Deceased.)	
)	
Plaintiff,)	
)	
vs.)	<u>MEMORANDUM OPINION</u>
)	
JUAN B. CAMACHO, et al.,)	
)	
Defendants.)	

The Administratrix of the estate of Gregorio C. Camacho has brought this suit for certain damages against the defendants.

The basis of the damage claim is that the defendant, Juan B. Camacho (Juan), one of 12 children of Gregorio C. Camacho, possessed, used and leased the property in the name of the deceased without accounting to the other heirs and to the estate.

There are really no factual disputes among the parties.

Though Gregorio Camacho died in 1960, it was not until 1969 that Juan entered upon the property and built a small residence. However, he did not continuously live on the property until 1973. From that time to the present he has expended close to \$45,000

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for various improvements, more or less graphically portrayed on Page II-21 of Plaintiff's Exhibit 1. He still lives on the property in a concrete residence.

As a result of the construction of a commercial shop building in 1978, the defendant operated his own store until May of 1979 when he leased the commercial building to Commonwealth Pacific International, Inc. for \$500 a month to December of 1981 and then he collected rent of \$1,000 per month until August of 1984 when the corporation vacated the premises. (Commonwealth Pacific International, Inc. also expended \$4,000 to \$5,000 for improvements on the property.) The defendant Flame Tree Sha Shin Kan, Inc., was a sub-lessee of Commonwealth Pacific International, Inc. but did not pay any rent.

None of the siblings of Juan objected to any use of the property by him nor was any demand made for a portion of the rental payments. The estate of Gregorio Camacho was commenced in July of 1979 and not until this action was filed in February of 1984 was any formal claim made against the defendants.

A few years ago five of the siblings of Juan transferred their interests in the property to him (Defendant's Exhibit A).

Plaintiff's Exhibit 1 is the appraiser's report showing the fair market value of the land and improvements constructed by the defendant Commonwealth Pacific International, Inc. The plaintiff asserts that using the valuations, close to \$300,000 is due the estate. The court disagrees.

[1] The general rule is that real estate becomes vested on the

1 death of the owner in his heirs and devisees, subject to the
2 right of the personal representative where authorized by the
3 court, to use it to pay creditors in case the personal estate is
4 insufficient to pay the debts of the estate and the expenses of
5 administration. Until the payment is needed for the payment of
6 debts, the heirs are entitled to possession as an incident to
7 their title. 31 AmJur 2d, Executors and Administrators, §§ 196
8 and 246; 23 AmJur 2d, Descent and Distribution, §§ 18, 20 and 21.
9 (See also Chapter X, Section 1, Public Law 3-106) It is noted
10 that there has been no assertion by the Administratrix in this
11 case that possession was required to pay debts nor is there any
12 assertion that defendants refused access to the property. All
13 the Administratrix complains about is that Juan kept all the
14 rental receipts from the commercial buildings he built and that
15 he has occupied the premises as his residence for 11 years.

16 Of the 12 children of Gregorio Camacho, five of them deeded
17 their interest to Juan and there is no evidence that the other
18 six ever attempted to occupy the premises or asked the defendant
19 to occupy a part of the property. None of the remaining six
20 siblings have joined in the suit to claim any denial of
21 possession.

22 [2] It appears that in the absence of a statute giving the
23 executor or administrator the right to maintain an action
24 affecting the realty, any such claim must be brought by the
25 decedent's heirs and not the Administrator of the estate. 31
AmJur 2d, Executors and Administrators, § 793. As to the
collection of rents after the death of the decedent see § 796.

Thus it appears that this entire suit may have been improvidently brought by the Administratrix.

1 Even if this may not be so, if ordinary real estate
2 principles are applied, it becomes clear that what is presented
3 here is the occupancy and use of the property for a number of
4 years by one of the co-tenants in a co-tenancy.

5 [3] Since there was no will of the deceased, the realty passed
6 on his death in equal, undivided shares to the 12 children of
7 Gregorio Camacho - a co-tenancy. 23 AmJur 2d, Descent and
8 Distribution § 58; 20 AmJur 2d, Co-tenancy and Joint Ownership,
9 § 27.

10 [4] As to the residential use of the property by Juan, the
11 general rule is that he is not liable to the co-tenants. 20
12 AmJur 2d, Co-tenancy and Joint Ownership, § 41. This, of course,
13 is true where there is no ouster or exclusion of the co-tenants
14 and none is found here. Nor is there any evidence that
15 defendant Juan has repudiated or attempted to repudiate the
16 tenancy in common. That he has recognized the interests of his
17 siblings is clear and his attempt to obtain deeds of the
18 interests of his brothers and sisters is a manifestation of his
19 acknowledgment of this fact.

20 [5] Juan had the right to enter the premises as a co-tenant in
21 1969 so long as he did not exclude the other co-tenants. He had
22 the right to use and enjoy the common estate as though he were
23 the sole proprietor and utilize the premises. 20 AmJur 2d,
24 Co-tenancy and Joint Ownership, § 34. In view of the fact that
25 he built the improvements with his own funds plus the fact

1 that none of the other heirs and co-tenants have ever objected to
2 this date (this action is by the Administratrix in her official
3 capacity - not as an excluded co-tenant), there is no basis for
4 any claim against Juan for rental value of the premises for
5 residential purposes.

6 [6] This is also true of the commercial structure built by the
7 defendant and leased by him to Commonwealth Pacific International
8 Inc. The evidence is uncontradicted that the entire commercial
9 leasing venture was the result of Juan's efforts on his own
10 behalf and there is no assertion that he bound the interests of
11 the co-tenants nor did he receive the rents for them. The
12 overriding and compelling fact in this case is that the defendant
13 Juan built the improvements with his own funds and it was from
14 these same improvements from whence the rentals were derived. To
15 require him to share the rental with his co-tenants is patently
16 inequitable. Cumming v Anderson, 94 Wash. 2d 135, 614 P.2d 1283;
17 20 AmJur 2d, Co-tenancy and Joint Ownership, § 46.

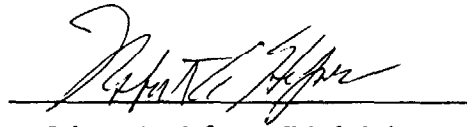
18 According to the appraiser's report (Plaintiff's Exhibit 1)
19 the value of the improvements are substantial and they lend
20 themselves to the commercial/residential use. All co-tenants
21 will benefit from the improvements and it is doubtful if they can
22 be made to contribute to defendant or if the latter can charge
23 his co-tenants with the value or costs thereof. 20 AmJur 2d,
24 Co-tenancy and Joint Ownership, § 63.

25 It is concluded that there is no liability of Juan to the
Estate of Gregorio Camacho. It follows, certainly, there is no
liability of the other defendants to the estate.

Judgment shall be entered for the defendants.

This Memorandum Opinion shall constitute the court's findings of fact and conclusions of law.

Dated at Saipan, CM, this 12th day of December, 1984.

A handwritten signature in cursive script, appearing to read "Robert A. Hefner", is written over a solid horizontal line.

Robert A. Hefner, Chief Judge

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