

**MARIANAS PUBLIC LAND
TRUST**

vs.

**GOVERNMENT OF THE
COMMONWEALTH OF THE
NORTHERN MARIANA
ISLANDS, et al.**

**Divil Action No. 85-9006
District Court NMI
Appellate Division**

Decided October 16, 1986

1. Tinian Lease - Agreement

Money in escrow account, which was part of the \$33 million total rent paid by the United States under the Tinian Lease Agreement in "full satisfaction" of its rent obligation, was required to be turned over to Public Land Trust. NMI Const., Art. XI.

2. Tinian Lease - Agreement

The money to acquire the lands for the United States under the Tinian Lease Agreement should have come from the Commonwealth government through normal processes.

3. Appeal and Error - Standard of Review - Factual Findings

The "clearly erroneous" standard applies to review of all factual determinations of the trial court.

4. Appeal and Error - Standard of Review - Factual Findings

A finding of fact of the trial court is "clearly erroneous" when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made.

5. Appeal and Error - Standard of Review - Legal Conclusions

Conclusions of law are freely reviewable by the appellate court.

6. Courts - Stare Decisis

Stare decisis rests upon the principle that the laws by which we are governed should be fixed, definite, and known.

7. Courts - Stare Decisis

Stare decisis effect is accorded to decisions of an equal or higher courts unless the prior decision is clearly erroneous.

8. Courts - Stare Decisis

Stare decisis is applied with less force where matters involving interpretation of a constitution are concerned, because judicial error in construing a constitution cannot be corrected by the legislature and can be corrected only by the court.

9. Courts - Stare Decisis

The stare decisis effect is weakened when only a single precedent is involved.

10. Evidence - Admissions

A judicial admission is a formal act done in court, which dispenses with proof of a fact claimed to be true, and is used as a substitute for legal evidence at the trial.

11. Evidence - Admissions

An admission by an attorney, to be binding upon a client, must be distinct and formal and made for the express purpose of dispensing with formal proof of some fact at trial.

12. Evidence - Admissions

Whether a statement of an attorney should be considered a judicial admission depends to a great extent on whether the statement is made within the scope of his or her authority.

13. Evidence - Admissions

A judicial admission must be unequivocal to be binding.

14. Evidence - Admissions

Where there was not the requisite intent and formality, appellate court would not change appellant's trial attorney with having made a judicial admission regarding the use of a portion of the escrow money to acquire private Tinian lands.

**15. Constitutional Law -
Justiciability - Case or
Controversy**

Suit by Public Land Trust to recover escrow money for rent paid by the United States to Commonwealth for Tinian lands was justiciable where the United States accepted the risk that the Commonwealth would not be able to deliver title when it released the funds into the joint account.

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN MARIANA ISLANDS
4 APPELLATE DIVISION

5 MARIANAS PUBLIC LAND TRUST,)
6 Plaintiff-Appellant,)
7 vs.)
8 GOVERNMENT OF THE COMMONWEALTH)
9 OF THE NORTHERN MARIANA)
10 ISLANDS and MARIANAS PUBLIC)
11 LAND CORPORATION,)
12 Defendants-Appellees.)

DCA NO. 85-9006

OPINION
FILED
Clerk
District Court

OCT 16 1985

For The Northern Mariana Islands
By [Signature]

13 Attorney for Appellant:

Theodore R. Mitchell
P. O. Box 2020
Saipan, CM 96950

14 Attorneys for Appellees:

Dorothy Sellers
Pedro M. Atalig
Juan T. Lizama
P. O. Box 380
Saipan, CM 96950

15 BEFORE: LAURETA, DUENAS and MARSHALL*, District Judges
16 LAURETA, District Judge:

17 BACKGROUND

18 Appellant Marianas Public Land Trust (MPLT) filed a
19 complaint in the Commonwealth Trial Court on October 1, 1984,
20 seeking declaratory and injunctive relief against the
21 Commonwealth of the Northern Mariana Islands (CNMI).
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26 *The Honorable Consuelo B. Marshall, United States District
Judge, Central District of California, sitting by designation.

1 Specifically, appellant sought to have declared unconstitutional
2 a transfer of funds from the Marianas Public Land Corporation
3 (MPLC) to the CNMI General Fund. These funds were received from
4 the United States government as the remaining payment under the
5 Tinian Lease Agreement.

6 Appellant requested but was denied a preliminary
7 injunction on October 10, 1984. The trial court filed a
8 Memorandum Opinion the same day. The parties stipulated to entry
9 of final judgment on March 14, 1985. Final judgment was entered
10 on March 22, 1985, and appeal was made to this Court on April 22,
11 1985.

12 STATEMENT OF FACTS

13 a. The Evolution of the Tinian Lease Agreement

14 On February 15, 1975, the United States and the
15 Northern Mariana Islands entered into a Covenant to Establish the
16 Commonwealth of the Northern Mariana Islands (Covenant). Under
17 §§802 and 803 of the Covenant, the Commonwealth agreed to lease
18 to the United States 17,799 acres of land on Tinian, as well as
19 other acreage not affected by this appeal. A rental price was
20 agreed upon, subject to adjustment based upon the U.S. Department
21 of Commerce Composite Index.

22 At the same time as the signing of the Covenant, the
23 parties entered into a Technical Agreement to implement §§802 and
24 803. By the terms of the Agreement, the Commonwealth agreed to
25 execute the proposed lease if the United States requested it to
26 do so within five years of the effective date of §§802 and 803.

1 The U.S. made such a request and a lease pursuant to
2 the Covenant was entered into on January 6, 1983. This lease
3 affected only Tinian and was called the Tinian Lease Agreement.
4 On that same day the parties executed a Land Acquisition and
5 Deferred Payment Agreement.

6 The Tinian Lease Agreement provided total rent of \$33
7 million. Payment was governed by the Land Acquisition Agreement.
8 The first payment of \$26,434,200 was made within ten days of
9 execution of the Agreement and is not in dispute. The \$6,565,800
10 balance was to be paid in three installments, one for each of
11 three zones referred to in Article 3.b, Sections (2), (3), and
12 (4) of the Land Acquisition Agreement. The zones were created in
13 Article 1.b of the same agreement. Each zone contained land
14 still privately held. Payment for the 3,950 acres within the
15 zones was withheld by the United States because the Commonwealth
16 had failed to acquire title to homestead parcels located in the
17 zones.

18 The \$6,565,800 was deposited in a joint account, with
19 one time certificate of deposit for each zone. Deposit of the
20 money by the United States was to "be considered by the parties
21 to be full satisfaction" of the rental obligations of the United
22 States. The Commonwealth could claim a certificate of deposit
23 for a particular zone upon presenting clear title to all land
24 within the zone.

25 The Land Acquisition Agreement was amended on July 5,
26 1984, to allow the \$6,565,800 to be released immediately to the

1 Commonwealth. The only condition was that, within sixty days of
2 receipt of the \$6,565,800, the Commonwealth would, in fact,
3 either acquire title to the homestead parcels or begin eminent
4 domain proceedings. If the Commonwealth failed to undertake
5 either step, "all unexpended funds... except funds deposited with
6 the appropriate court for eminent domain proceedings, [would]
7 immediately revert to the joint account... ."

8
9 b. The CNMI Constitution

10 Article XI, §1 of the Constitution of the Commonwealth
11 of the Northern Mariana Islands (Constitution) provides that
12 ownership of public lands is held by people of the Commonwealth
13 who are of Northern Marianas descent. Management of public lands
14 is entrusted to a quasi-public agency, the Marianas Public Land
15 Corporation (MPLC) by Article XI, §§4 and 5. Net revenue derived
16 from management of public lands is to be held and invested by the
17 Marianas Public Land Trust (MPLT), as set out in Article. XI, §6.

18
19 c. The Romisher Decision

20 The problem in the instant case has its genesis in
21 Romisher v. Marianas Public Land Corporation, et al.,
22 Commonwealth Trial Court Civil Action No. 83-401 (Nov. 25, 1983).
23 There, plaintiff sought an injunction prohibiting MPLC from
24 disbursing funds in its possession as compensation to private
25 landowners on Tinian under the Tinian Lease Agreement. Two MPLC
26 board members, who stood to reap direct financial benefit from

1 approval of the disbursement, were held by the court to be, as
2 board members, fiduciaries under the CNMI Constitution to
3 citizens of Northern Marianas descent.

4 Then, the trial court raised sua sponte the question of
5 the propriety of MPLC disbursing any funds. The trial court
6 acknowledged MPLC's constitutionally-defined role as manager,
7 only, of public lands. Also, the trial court correctly noted
8 that MPLC is not constitutionally empowered to acquire land. The
9 court noted that only the CNMI Executive Branch, through normal
10 procedures, can negotiate for acquisition of private interests,
11 disburse funds, and acquire title. However, the court then, with
12 no explanation, analysis, or justification approved the "escrow
13 account" (joint account) established in §4(a) of the Land
14 Acquisition Agreement and suggested that MPLC could act as
15 "stakeholder" for the escrow account funds until the Executive
16 Branch determined the value to be paid for the private interests.
17 Then, MPLC could make the disbursement on behalf of the Executive
18 Branch. The court opined that, should the "escrow" funds prove
19 insufficient, alternatives for additional payment existed: A
20 legislative appropriation or a call on MPLT for funds it was
21 holding. No authority is given for this conclusion and it was
22 not required for the decision.

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ISSUE

Whether the \$6,565,800 which was deposited in the joint account established by Article 4.a. of the Land Acquisition Agreement and paid, with interest, to the Commonwealth Government on July 10, 1984, is revenue derived from the lease of public lands, to which the Marianas Public Land Trust is entitled.

DISCUSSION

The Rent and the Joint Account

The issue facing the Court has grown from a fairly simple fact situation. Certain facts are undisputed:

1. The United States and the CNMI sought to, and did, enter into a long-term lease for land on Tinian.

2. The parties agreed upon a total rent of \$33 million.

3. The CNMI failed to carry out its obligation under the lease to secure clear title to the private lands on Tinian which were inside the leased area.

4. A joint account was created. By depositing the remaining \$6,565,800 in this account the United States fully satisfied its rent obligation under the lease.

5. The United States then agreed to amend the lease agreement to allow immediate release to the CNMI of all money in the joint account, prior to receiving clear title to the private lands.

Certain inferences fairly may be drawn from these facts:

1 1. The United States was frustrated with the
2 unwillingness or inability of the CNMI to take the steps
3 necessary to satisfy its lease obligation to secure clear title
4 to the private lands on Tinian.

5 2. In an attempt to accelerate the process the United
6 States released the money in the joint account and divorced
7 itself from the proceedings to follow.

8 3. The CNMI government found it expedient to use a
9 portion of the rent money to purchase the privately-held lands
10 lying within the boundaries of the Tinian Lease Agreement and,
11 accordingly, did so.

12 Appellant argues that the total rent was \$33 million.
13 Any amount less than that which MPLT receives means that full
14 rent has not been paid. Since the United States and the CNMI
15 agree that the full rent obligation has been satisfied by the
16 United States, the joint account money must go to MPLT and cannot
17 be used to acquire private land.

18 Appellee counters that the full rent is not due because
19 the CNMI could not deliver good title as to the private lands.
20 Because of this, the CNMI has not received the full payment to
21 which it would otherwise be entitled.

22 Fragmatism appears to have triumphed over legality; a
23 not uncommon phenomenon. Even appellee implicitly concedes this
24 when it says "the Trust's claim is based on a wishful theory of
25 what might have been, rather than on the actuality of the
26 situation." However, appellee then exposes the flaw in its

1 position by posing and answering this question:

2 What happens to the escrow account if the
3 Commonwealth fails to acquire all private
4 lands within the Tinian Lease Agreement? The
5 answer is that the escrow account will revert
6 to the United States because the United
7 States has retained legal control over the
8 account to protect itself from this very
9 contingency.

10 [1,2] Not quite. As noted above, in the amendment to the
11 lease agreement the United States agreed to immediately release
12 all the rent money being held in the joint account. The joint
13 account money was part of the \$33 million total rent which the
14 United States paid in "full satisfaction" of its rent obligation.
15 Once this rent was paid the CNMI Constitution required that it be
16 turned over to MPLT. The joint account would have been legally
17 acceptable under its initial formulation as a safe repository for
18 the money until the CNMI acquired title to the private lands.
19 However, the money to acquire the lands should have come from the
20 CNMI government through normal processes.

21 The resolution to the problem which was worked out by
22 the parties is perfectly logical if one ignores the threshold
23 problem of its being unconstitutional.

24 When the problem of acquiring private lands arose, the
25 CNMI took the path of least resistance and used a portion of the
26 rent received from the United States to acquire the lands. The
structuring of the joint account and the subsequent release of
the money clearly shows the United States' tacit approval of this
course of conduct. Seeking a pragmatic solution to the problems

1 caused by the inertia of the CNMI government led the parties to
2 this witting or unwitting attempt to circumvent the CNMI
3 Constitution.

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5 Landlord-Tenant, Restatement 2d, Property

6 The parties agree that, absent contrary statutory or
7 decisional law, the Restatement 2d, Property (Restatement)
8 applies in the CNMI by virtue of 7 Commonwealth Code §3401.

9 Appellee argues that under §4.2 of the Restatement the
10 United States, as a tenant faced with a landlord unable to
11 deliver possession of the entire premises, could abate the rent
12 proportionally or seek damages resulting from its inability to
13 use the premises. But, appellee instead says that the United
14 States invented a third option: To re-channel a portion of what
15 would have been rent into curing the CNMI's possession and title
16 problems.

17 Appellant states that, taken together, §§802 and 803 of
18 the Covenant and Part I.2 of the Technical Agreement are an
19 option agreement to make a lease, within the meaning of
20 Restatement §2.5. The subsequent Tinian Lease Agreement meets
21 all formal requirements of a lease according to Restatement §2.2.
22 However, when it came time to execute the lease the CNMI could
23 not deliver full possession of the private lands and these lands
24 constituted a legal interest in the leased premises according to
25 Restatement §4.1(1). Because of this breach the United States
26 could exercise its rights under §4.2, mentioned above.

1 court's decision are subject to the same
2 clearly erroneous standard as that prescribed
3 for reviewing findings of fact. Thus, where
4 the facts in the record are not in
5 significant dispute the task of the appellate
6 court is to determine whether the legal
7 conclusions are contrary to law. [Emphasis added]

8 Factual determinations must be "clearly erroneous"
9 before they will be set aside. Review of legal conclusions must
10 adhere to the "contrary to law" standard enunciated in Pua.
11 Conclusions of law are freely reviewable by the appellate court.
12 Official Creditors' Committee of Fox Markets, Inc. v. Ely, 337
13 F.2d 461, 467 (9th Cir. 1964), cert. denied, 380 U.S. 978, 85
14 S.Ct. 1342, 14 L.Ed.2d 272 (1965).

15 This Court is not bound by the trial court's
16 determination under either standard.

17 Stare Decisis And The Romisher Decision

18 Appellee argues that Romisher is important, whether
19 decided rightly or wrongly, because non-parties could thereafter
20 make decisions based upon it. Appellant notes this Court's duty
21 to correctly state the law of the Commonwealth if it believes
22 Romisher was decided incorrectly.

23 [6-9] Stare decisis rests upon the principle that the laws by
24 which we are governed should be fixed, definite, and known. In
25 Re Proposal to Incorporate Town of Chesapeake, Kanawita County,
26 45 S.E.2d 113, 118, 130 W.Va 527 (1947). Generally, stare
decisis effect is accorded to decisions of an equal or higher
court. Mast, Foos, & Co. Inc. v. Stover Mfg. Co., 177 U.S. 485,

1 488-489, 44 L.Ed. 856, 858, 20 S.Ct. 708, 710 (1900). There is a
2 well-recognized exception where the prior decision is clearly
3 erroneous. Schott Optical Glass, Inc. v. United States, 750 F.2d
4 62, 64 (C.A.Fed. 1984). Stare decisis is applied with less force
5 where matters involving interpretation of a constitution are
6 concerned, because judicial error in construing a constitution
7 cannot be corrected by the legislature and can be corrected only
8 by the court. Smith v. Allwright, 321 U.S. 649, 665-666, 88
9 L.Ed. 987, 998, 64 S.Ct. 757, 765-766 (1944), reh. denied 322
10 U.S. 769, 88 L.Ed. 1594, 64 S.Ct. 1052 (1944). The stare decisis
11 effect is weakened when only a single precedent is involved.
12 United States v. Raynor, 302 U.S. 540, 551-552, 82 L.Ed. 413,
13 420, 58 S.Ct. 353 (1938), reh. denied 303 U.S. 665, 58 S.Ct. 520
14 (1938).

15 This Court is not bound by Romisher. Appellant MPLT
16 was not a party to that case and made no appearance. However, a
17 decision to disavow Romisher insofar as it relates to the issue
18 in the instant matter will neither alter the resolution of the
19 issue in Romisher (board members as fiduciaries) nor belatedly
20 set aside that decision.

21 The "Admission" Of Trial Counsel

22 Appellee argues that MPLT, through its attorney at
23 trial, conceded appellee's right to use a portion of the "escrow"
24 monies to acquire the private land on Tinian. Appellant replies
25 that the trial court explicitly rejected this "admission" and
26

1 that, in any event, it would be manifestly unjust to give
2 dispositive effect to an unauthorized statement of counsel which
3 was so at variance with appellant's complaint.

4 [10-13] An admission such as this is called a "judicial
5 admission." A judicial admission is a formal act done in court,
6 which dispenses with proof of a fact claimed to be true, and is
7 used as a substitute for legal evidence at the trial. Giamanco
8 v. Giamanco, 444 NE2d 1090, 1093 (Ill.App. 1982). An admission
9 by an attorney, to be binding upon a client, must be distinct and
10 formal and made for the express purpose of dispensing with formal
11 proof of some fact at trial. Hogenson v. Service Armament Co.,
12 461 P.2d 311, 314 (Wash. 1969). Whether a statement of an
13 attorney should be considered a judicial admission depends to a
14 great extent on whether the statement is made within the scope of
15 his or her authority. Taylor v. Allis-Chalmers Mfg. Co., 320
16 F.Supp. 1381, 1385 (1969), aff'd 436 F.2d 416 (1970). A judicial
17 admission must be unequivocal to be binding. Glick v. White
18 Motor Co., 458 F.2d 1287, 1291 (1972).

19 [14] There was not the requisite intent and formality to
20 properly charge appellant's trial attorney with having made a
21 judicial admission regarding the use of a portion of the escrow
22 money to acquire private Tinian lands.

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retrieving the money, should the need arise.

The United States chose to release the money. It appears that the Commonwealth, finally, did all it was required to do: It acquired the land or began condemnation proceedings. The United States must deal with the consequences of its earlier decision to release the money.

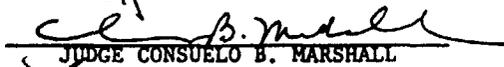
By the terms of the CNMI Constitution the money in the escrow account, which had until establishment of this account always been referred to as rent, should have gone directly to appellant MPLT when it was released.

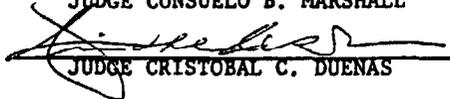
CONCLUSION

The money in the joint account was rent. When the money was released it should have gone to MPLT as income derived from public lands. Money to acquire privately-held lands on Tinian should have come from the CNMI government through normal procedures.

The decision of the trial court is reversed and remanded with instructions that appellee be ordered to immediately pay to appellant the sum of \$6,565,800.00, plus accrued interest.


JUDGE ALFRED LAURETA


JUDGE CONSUELO B. MARSHALL


JUDGE CRISTOBAL C. DUENAS