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

ESTATE OF)
ANTONIA CAMACHO SABLAN,)
Deceased.)

CIVIL CASE NO. 98-0122

ORDER FINDING THAT UPON THE
DEATH OF AN OWNER THE REAL AND
PERSONAL PROPERTY VESTS IN THE
HEIRS, SO EVEN THOUGH A WRITTEN
WILL DOES NOT PROVIDE FOR MONIES
INHERITED MANY YEARS LATER, AND
AS THE COURT IS UNABLE TO
DETERMINE FROM THE WILL THE
TESTATRIX'S INTENTION AS SHE WAS
UNAWARE AND DID NOT FORESEE HER
HUSBAND'S CHILD OUTSIDE OF THE
MARRIAGE, THEREFORE PURSUANT TO
8 CMC §§ 2404, 2922 THE NEWLY
INHERITED MONIES SHALL BE
DISTRIBUTED TO ONLY THE
TESTATRIX ANTONIA CAMACHO
SABLAN'S NINE CHILDREN EQUALLY
AS IF SHE DIED INTTESTATE (WITHOUT A
WILL)

I. INTRODUCTION

THIS MATTER came before the Court on December 3, 2020 at 9:00 a.m. and on December 4, 2020 and 1:30 p.m. for an evidentiary hearing on Vicente C. Sablan's Objection to Thomas C. Sablan's Petition for Decree of Partial Distribution in the *Estate of Antonia Camacho Sablan*.

Vicente C. Sablan (also known as Vicente Jesus C. Sablan), the Administrator of the *Estate of Manuel M. Sablan*,¹ was present and represented by Attorney Joaquin DLG. Torres. The Personal

¹ Civil Case No. 13-0241.

By order of the Court, Associate Judge Joseph N. Canacho

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1 Representative of the Will of Antonia Camacho Sablan and the Executor of her Estate, Thomas C.
2 Sablan,² and other heirs including Juan C. Sablan, Ricardo C. Sablan, Lourdes S. Kim, Christie Maria
3 C. Sablan, Margarita C. Sablan and Magdalena S. Hwang, were present and represented by Attorney
4 Janet H. King. Heir Jose C. Sablan was present at the hearings without counsel.

5 The Court heard the testimony of the following individuals: (1) Thomas C. Sablan, son of the
6 Decedent and Executor of the *Estate of Antonia Camacho Sablan*; (2) Magdalena Hwang, daughter
7 of the Decedent; (3) Vicente C. Sablan, son of the Decedent and Administrator of the *Estate of Manuel*
8 *M. Sablan*, the spouse of the Decedent; and (4) Lourdes S. Kim, daughter of the Decedent. Magdalena
9 Hwang and Lourdes S. Kim reside outside of the Commonwealth of the Northern Marianas Islands
10 and testified via video conference. The following two exhibits were admitted as evidence: (a) Petition
11 for Final Decree of Distribution in the case *Estate of Manuel Magofna Sablan*, Civil Action No. 13-
12 0241, from August 2014; and (b) Decree of Partial Distribution in the case *Estate of Manuel Magofna*
13 *Sablan*, Civil Action No. 13-0241, from October 2014.

14 Based on the admitted evidence and testimony at the evidentiary hearing, and the law and
15 rules of Probate, the Court makes the following Order.

16 II. FINDINGS OF FACT

- 17 1. Juan Naog Camacho (“Juan”), the father of Antonia Camacho Sablan,³ died intestate on
18 September 2, 1970.⁴
- 19 2. Antonia Camacho Sablan (“Antonia”) married Manuel Magofna Sablan (“Manuel”).
- 20 3. Juan, Antonia and Manuel were Chamorros.⁵

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23 ² Thomas C. Sablan is referred to in the Decedent’s Last Will and Testament as “Tomas C. Sablan.”

³ Antonia Camacho Sablan is the Decedent’s married name.

⁴ Civil Case No. 16-0253.

⁵ There was testimony in Court that Juan, Antonia and Manuel were Chamorros.

- 1 4. In essence, the sequence of events between Juan, Antonia and Manuel are as follows:
- 2 a. Juan died first on September 2, 1970, and his probate action was opened last in
- 3 2016.
- 4 b. Antonia died second on October 3, 1995, but her probate action was opened first
- 5 in 1998.
- 6 c. Manuel survived his spouse Antonia and died last on June 10, 2005, but his
- 7 probate action was opened second in 2013.
- 8 d. All three probate actions remained open and have yet to be closed.
- 9 5. Antonia and Manuel had nine children together.
- 10 6. Manuel had one additional child with another woman during his marriage to Antonia.
- 11 7. There was no credible evidence or testimony that Antonia, while she was alive, knew
- 12 about Manuel’s additional child.
- 13 8. Antonia executed a valid Last Will and Testament on September 13, 1993. The Will
- 14 identifies her spouse Manuel and her nine natural born children.⁶ After directing that all
- 15 debts and taxes be paid out of the assets of her estate by her Personal Representative, Item
- 16 III of Antonia’s Will states: “[a]ll the rest, residue and remainder of my estate, of every
- 17 nature and kind, **which I may own at the time of my death**, real personal and mixed,
- 18 tangible and intangible, of whatsoever nature and wheresoever situated, I give, devise and
- 19 **bequeath to my spouse, Manuel M. Sablan, providing he survives me.**” Item III further
- 20 provides that, in the event her spouse predeceases her, she gives the rest, residue and
- 21 remainder of her Estate to her son, “Tomas C. Sablan, equally, share and share alike, or
- 22 to their issue, in equal share per stirpes.” (Emphasis in bold)

23 ⁶ The nine children of Antonia and Manuel are: Vicente Jesus C. Sablan, Lourdes S. Kim, Christie Maria C. Sablan,

24 Juan C. Sablan, Margarita C. Sablan, Ricardo C. Sablan, Magdalena S. Hwang, Jose C. Sablan, and Thomas C. Sablan.

1 9. On August 3, 2020, Thomas C. Sablan, the Executor of the Estate of the Antonia, received
2 funds in the amount of \$93,524.83 for the Estate pursuant to a decree of partial distribution
3 of assets from Antonia’s father in the *Estate of Juan Naog Camacho*, Civil Case No. 16-
4 0253. The sources of these funds include the remainder of the partial payment of the
5 second installment of the long-term lease of the San Roque property and a partial land
6 claim compensation payment from the Government of the Commonwealth of the Northern
7 Mariana Islands (the “Commonwealth”). The Administratrix of the Estate of Juan decided,
8 with court approval, that the Estate of Juan should receive land compensation instead of
9 land exchange. Thus, Antonia’s interest in the Estate of Juan is one of personal property
10 and not real property.

11 **III. LEGAL STANDARD**

12 At issue is whether Antonia’s inheritance from the estate of her father Juan will pass according
13 to her Will to the estate of her late spouse, Manuel. The Court will first address the issue of whether
14 Antonia’s interest in her late father Juan’s estate had vested at the time of her death, before addressing
15 the second issue of the effect of the survivorship language included in Antonia’s Will.

16 The Estate of the Antonia takes the position that any money received by the Estate of Antonia
17 should remain in the Estate of Antonia and be distributed in accordance with the Probate Code and the
18 Rules of Probate Procedure, because at the time of Antonia’s death, Antonia did not have an interest
19 in her late father Juan’s Estate prior to his Estate being probated. As a result, Antonia did not have an
20 interest at the time of her death, and consequently all proceeds coming into Antonia’s Estate from her
21 late father Juan’s probate should pass intestate, not according to the terms of her Will.

22 The Estate of Manuel takes the position that that all properties and monies in the inventory of
23 the Estate of Antonia should be transferred to the Estate of Manuel in accordance with Antonia’s Will.
24 The Estate of Manuel highlights that the intention of Antonia to transfer or bequeath the residue of her

1 estate to her spouse Manuel is clear in her Will, and therefore it does not matter where or when Antonia
2 accumulated her assets.

3 **A. Antonia Camacho Sablan’s Rights as an Heir Vested Upon the Death of Her Father**
4 **Juan Naog Camacho**

5 With respect to real property, “the general rule is that real estate becomes vested on the death
6 of the owner in [their] heirs and devisees.” *In re the Estate of Kaipat*, 2010 MP 17 ¶ 17 (citing *Muna*
7 *v. Camacho*, 2 CR 10, 12-13 (1984); *Sablan v. Iginof*, 3 CR 860, 874 (1989)) (finding that an adopted
8 child’s right to inherit from her natural parent vested upon that parent’s death). Northern Mariana
9 Islands Probate Law (the “NMI Probate Code”) clarifies that “[u]pon the death of a person, his or her
10 real and personal property devolves to the persons to whom it is devised by his or her last will [...] or
11 in the absence of testamentary disposition, to the deceased person’s heirs.” 8 CMC § 2922. Therefore,
12 the interest of a devisee or heir in the real and personal property of a decedent vests upon the death of
13 the decedent.⁷

13 **B. The Rules of Construction and Intention of a Will**

14 The NMI Probate Code states that a will passes all property: “[a] will is construed to pass all
15 property which the testator owns at [their] death including property acquired after the execution of the
16 will.”⁸ 8 CMC § 2404.

17 The NMI Probate Code, in setting out the rules of construction and intention, further states that
18 “[t]he intention of a testatrix as expressed in [their] will controls the legal effect of [their] dispositions.
19 The rules of construction expressed in the succeeding sections of this chapter apply unless a contrary
20 intention is indicated by the will.” 8 CMC § 2403.

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23 ⁷ To be clear, Estate Assets are subject to the Probate Code and Probate Rules for the heirs to *fully* realize their real
24 property and personal property inheritance. One such example is 8 CMC § 2925. Final Distribution; the Priority of
Claims.

⁸ Again, to be clear, Estate Assets are subject to the Probate Code and Probate Rules for the heirs to *fully* realize their
real property and personal property inheritance. One such example is 8 CMC § 2601. Exempt Property.

1 However, when a condition arises which is not foreseen in the will, and there is nothing in the
2 will to indicate the intention of the testatrix with respect to this condition, “the court cannot guess at
3 what provision [she] would probably have made and by construction read it as a part of [her] will on
4 the presumption” that she would probably have disposed of her property in that way “if [her] attention
5 had been called to the particular circumstances.” *In re Estate of Kerr*, 433 F.2d 479, 491 (D.C. Cir.
6 1970) (quoting *George Washington Univ. v. Riggs Nat’l Bank of Washington*, 66 App.D.C. 389, 390,
7 88 F.2d 771, 772 (D.C. Cir. 1936)) (quoting *Pontius v. Conrad*, 317 Ill. 241, 148 N.E. 17, 18 (Ill. Sup.
8 Ct. 1925)). Consequently, “[i]n the absence of clear language in the will [with respect to the condition
9 which has actually arisen,] it must be held that the testator died intestate as to [that condition/devise].”
10 *George Washington Univ., id.*, 88 F.2d at 774.

11 **C. Words of Survivorship⁹ in Wills and Antilapse Statutes**

12 Given that “the Commonwealth’s probate statute is largely based on the Uniform Probate Code
13 [UPC], in the absence of expressed legislative intent to the contrary, the UPC reasoning should be
14 given effect.” *In re Estate of Tudela*, 2009 MP 9 ¶ 18.

15 The NMI Probate Code includes an antilapse statute. An antilapse statute “typically provide[s],
16 as a rebuttable rule of construction, that devises to certain relatives who predecease the testator pass to
17 specified substitute takers, usually the descendants of the predeceased devisee who survive the
18 testator.” Restatement (Third) of Prop.: Wills and other Donative Transfers § 5.5 (Am. Law. Inst.
19 1999). In other words, the antilapse statute allows the gift to pass on to the devisee’s descendants rather
20 than force the gift to pass through intestacy. The NMI Probate Code antilapse statute states, in relevant
21 part:

22 [i]f a devisee who is a grandparent or a lineal descendant of a grandparent of the testator
is dead at the time of execution of the will, fails to survive the testator, or is treated as
if he or she predeceased the testator, the issue of the deceased devisee who survive the

23 ⁹ Words of survivorship are words in a will that condition a gift or devise to an individual on that individual surviving
24 the testatrix. Examples include a devise to an individual “if he survives me,” or a devise to “my surviving children.”
Restatement (Third) of Prop.: Wills and other Donative Transfers § 5.5 (Am. Law. Inst. 1999).

1 testator by 120 hours take in place of the deceased devisee and if they are all of the
2 same degree of kindship to the devisee they take equally, but if of unequal degree then
3 those of more remote degree take by representation.
4 8 CMC § 2405.

5 However, the majority of jurisdictions in the United States hold the view that a testatrix may
6 overcome the application of an antilapse statute by using clear and direct language expressing an intent
7 to the contrary in the will. Restatement (Third) of Prop.: Wills and other Donative Transfers § 5.5 cmt.
8 h (Am. Law. Inst. 1999). Under Section 2-603 of the UPC, words of survivorship, such as in a devise
9 to a spouse “providing he survives me,” are not in and of themselves a sufficient indication of an intent
10 contrary to the application of an antilapse statute. Unif. Prob. Code § 2-603 cmt. (amended 2010)
11 (citing Restatement, *id.*, at § 5.5 cmt. i). The American Law Institute explains that in order to be
12 sufficiently clear and direct as to indicate an intent contrary to the application of an antilapse statute,
13 language must “leave no doubt that the testator considered the possibility of the devisee failing to
14 survive the testator and decided against substituting the devisee’s descendants.” *Id.* An example of
15 such sufficiently clear language includes: “and not to [the devisee’s] descendants if [the devisee] fails
16 to survive me” or a provision stating that if any devisee fails to survive the testatrix, the devised
17 property is “not to pass to the devisee’s descendants.” Restatement, *id.* One reason for this stringent
18 requirement is that such survival provisions are often boiler-plate form-book language, and the testatrix
19 may not understand that such language could disinherit the descendants of the devisee. *Id.*, at § 5.5
20 cmt. h. The antilapse statute is based on a constructional preference against disinheriting a line of
21 descent, and this constructional preference is strongest when applied to the descendants of the
22 donor/testatrix. *Id.*

21 **D. Intestacy: Chamorro Customary Law**

22 Antonia identified as Chamorro.¹⁰ Under the NMI Probate Code, Chamorro customary law for
23 properties other than Ancestor’s Land is set out in Section 2903, which provides, in paragraph c, that

24 ¹⁰ There was testimony during the evidentiary hearing that Antonia and Manuel were Chamorro.

1 “if there is no surviving spouse, the surviving issue obtain all properties by representation.” 8 CMC
2 § 2903(c). When representation is called for by the NMI Probate Code, Section 2915 states, in relevant
3 part, that “the estate is divided into as many shares as there are surviving heirs in the nearest degree of
4 kinship.” 8 CMC § 2915.

5 6 **IV. DISCUSSION**

7 **A. Antonia’s Interest in her Father’s Estate Had Vested at the Time of her Death**

8 Antonia, as one of her father Juan’s heirs, held an interest in the real and personal property of
9 the estate of her father Juan, which vested in her upon his death intestate on September 2, 1970. This
10 interest had therefore passed to Antonia prior to her death several decades later on October 3, 1995.

11 Furthermore, under the NMI Probate Code, the interest that passed to Antonia upon Juan’s
12 death included her interest in the real property as well as personal property of his estate. 8 CMC
13 § 2922. Here, the funds inherited from Juan’s estate can be traced to real property that was converted
14 into personal property in the form of money for the purposes of distribution. However, given that both
15 real and personal property vested at the same time — upon the death of Juan—it is irrelevant whether
16 such property was in the form of real property or personal property at the time of vesting. On its face,
17 given that the rights vested at the time her father died in 1970, those rights were vested in her when
18 she prepared her Will and when she passed away, and should therefore pass through the Will.

19 **B. The Inclusion of Words of Survivorship and the Intention of the Testatrix, Antonia**

20 However, in constructing a will, the Court must look to the intention of the testatrix. 8 CMC
21 § 2403. Here, the inclusion of words of survivorship¹¹ with respect to her spouse Manuel indicates
22 that Antonia’s intention was that her spouse Manuel should inherit only when alive, and further

23 ¹¹ Words of survivorship are words in a will that condition a gift or devise to an individual on that individual surviving
24 the testatrix. The words of survivorship included in Antonia’s Will are found in Item III, where she states that she
gives the rest, residue and remainder of her estate to her spouse, “providing he survives me.”

1 implies that her property should not pass after Manuel’s death through his estate and to his heirs.
2 However, the use of the language “providing he survives me” is not sufficiently clear and direct to
3 “leave no doubt that the testator considered the possibility of the devisee failing to survive the testator
4 and decided against substituting the devisee’s descendants.” Restatement (Third) of Prop.: Wills and
5 other Donative Transfers § 5.5 cmt. i (Am. Law. Inst. 1999). Underlying the antilapse statute is the
6 constructional preference against disinheriting a line of descent, which is strongest when applied to
7 the descendants of the testatrix. *Id.*, at § 5.5 cmt. h. However, in the present case, while Antonia and
8 Manuel had nine children together, Manuel had one additional child with another woman during his
9 marriage to Antonia. Antonia did not know about Manuel’s additional child. Thus, the heirs of
10 Antonia’s spouse, who died intestate, include a child who is not also an heir of Antonia, who bears no
11 relation to Antonia, and of whose existence Antonia did not know and was not foreseen when Antonia
12 executed her will.

13 Here, Antonia did not know about Manuel’s additional child, and therefore in drafting her will,
14 Antonia did not account for Manuel’s additional child. In reviewing Antonia’s Will, and “[i]n the
15 absence of clear language in the will [with respect to the condition which has actually arisen,] it must
16 be held that the testator died intestate as to [that condition/devise].” *George Washington Univ., id.*, 88
17 F.2d at 774.

18 This condition — namely the inclusion of Manuel’s child outside of his marriage to Antonia
19 as an heir to Manuel’s estate —is one which does not appear to have been foreseen in the will. To
20 allow the heirs of Manuel (Antonia’s nine children plus Manuel’s additional child) to take a property
21 interest that Antonia inherited from her father would allow an occurrence that Antonia did not foresee,
22 namely the taking of her family inheritance by her spouse’s heirs instead of her own. There is nothing
23 in Antonia’s Will to indicate her intention with respect to this condition, and what provision Antonia
24 would have made had she foreseen these circumstances. *In re Estate of Kerr*, 433 F.2d 479, 491(D.C.
Cir. 1970) (quoting *George Washington Univ. v. Riggs Nat’l Bank of Washington*, 66 App.D.C. 389,

1 390, 88 F.2d 771, 772 (D.C. Cir. 1936)) (quoting *Pontius v. Conrad*, 317 Ill. 241, 148 N.E. 17, 18 (Ill.
2 Sup. Ct. 1925)). “The insurmountable reality [...] is that the testatrix made no provision in her will
3 for that contingency, and neither a party nor the court can remake the testament for her.” *In re Estate*
4 *of Kerr, id.*, 433 F.2d at 492. In such circumstances, it must be held that the testatrix died intestate
5 with respect to that condition.

6 The Supreme Court of the Commonwealth of the Northern Mariana Islands has emphasized
7 that the major policy concern underpinning probate courts is the safeguarding of the interests of those
8 who cannot care for themselves — a concern which is equally implicated regardless of whether the
9 court is protecting the interests of an incapacitated person or a deceased person and their heirs. *In the*
10 *Matter of the Estate of Malite*, 2010 MP 20 ¶ 25 (quoting *Malite v. Tudela, et al.*, 2007 MP 3 ¶ 29).
11 Therefore, a result contrary to the intention of the Decedent should be avoided, namely the unintended
12 distribution of Antonia’s family inheritance to descendants including Manuel’s additional child when
13 Antonia had not foreseen or been aware of this additional child, and may not have intended that child
14 to inherit.

15 Given the absence of express language in the Will indicating that Antonia intended all of her
16 spouse’s heirs (her nine children plus Manuel’s additional child), known or unknown to her, to benefit
17 from her family inheritance from her father Juan, the Court finds that Antonia died intestate as to that
18 inheritance, namely the monies inherited from the Estate of Juan. *George Washington University v.*
19 *Riggs Nat’l Bank of Washington*, 88 F.2d 771, 774 (1936).

20 **C. Antonia’s Family Inheritance from Juan Passes Intestate to Only Her Nine Children**

21 Given that Antonia identified as Chamorro, the funds coming from Juan’s Estate into
22 Antonia’s Estate fall under the provision addressing Chamorro customary law for properties other
23 than Ancestor’s Land, namely Section 2903. Under that provision of NMI Probate Code, where there
24 is no surviving spouse, the surviving issue obtain all properties by representation. 8 CMC § 2903(c).
Representation requires the estate to be divided into as many shares as there are surviving heirs in the

1 nearest degree of kinship. 8 CMC § 2915. In the present case, since Manuel is deceased, such
2 representation would involve the division of the funds received from the Estate of Juan into nine equal
3 shares, with one share for each of Antonia’s nine children: Vicente Jesus C. Sablan, Lourdes S. Kim,
4 Christie Maria C. Sablan, Juan C. Sablan, Margarita C. Sablan, Ricardo C. Sablan, Magdalena S.
5 Hwang, Jose C. Sablan, and Thomas C. Sablan.

6
7 **V. CONCLUSION**

8 Therefore, pursuant to the rules of construction and intention under the NMI Probate Code, the
9 Court denies the Petition for Decree of Partial Distribution of financial assets, including the transfer of
10 funds from the Estate of Antonia Camacho Sablan to the Estate of Manuel M. Sablan. The Court finds
11 that the monies constituting the family inheritance of Antonia Camacho Sablan from her father Juan
12 Naog Camacho shall pass as if Antonia Camacho Sablan had died intestate (without a will), in equal
13 shares, to each of her nine children.

14 **SO ORDERED** this 26th day of April, 2021.

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16
17 /s/
JOSEPH N. CAMACHO, Associate Judge