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

IN THE MATTER OF THE ESTATE OF MARIA V. PANGELINAN,
Deceased.

Supreme Court No. 2016-SCC-0029-CIV

Superior Court No. 15-0111

OPINION

Cite as: 2018 MP 10

Decided December 4, 2018

Michael N. Evangelista, Saipan, MP, for Appellant.

Peter B. Prestley, Saipan, MP, for Appellee.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLOÑA, Associate Justice; PERRY B. INOS, Associate Justice.

PER CURIAM:

¶ 1 Petitioner-Appellant Estate of Maria V. Pangelinan ("Estate of Maria") appeals the probate court's Findings of Fact and Conclusions of Law. There are three issues on appeal: (1) whether partida may only be performed by persons with permanent interests in land, a right exclusive to persons of Northern Marianas descent ("NMD"); (2) whether a person with a possessory interest in land can transfer his interest by a deed of gift; and (3) whether a right to receive rental proceeds may survive the termination of a life estate. For the following reasons, we AFFIRM in part and VACATE in part and REMAND to the trial court for further proceedings consistent with this opinion.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 David E. Pangelinan ("David") and Maria V. Pangelinan ("Maria") were married in 1965. David was a Chamorro from Guam and not an NMD. Maria was a Chamorro and an NMD. Together, they had three children: Steven Villagomez Pangelinan ("Steven"), Jane Pangelinan Lizama ("Jane"), and MaryAnn Pangelinan Morrison ("MaryAnn"). David and Maria divorced in 1998.

¶ 3 The marital estate consisted of two real properties: (1) Lot No. 1897-B2-1 located in Garapan ("Garapan/Ming Palace Property"), including the right to receive monthly rental payments of $3,327 for the lease of the Ming Palace restaurant on the property until the year 2041; and (2) Tract No. 21975, located in Kagman ("Kagman Property"). Subsequently, David married Maria Corazon B. Pangelinan ("Corazon") and adopted Corazon's daughter Jamille Pangelinan ("Jamille").

¶ 4 On February 2, 2000, the trial court issued a Final Distribution order dividing the marital estate as follows:

> [Garapan/Ming Palace Property] [E]ach party shall have a present undivided one-half interest in Lot 1897-B2-1 . . . . Such interest shall be in strict accord with the Commonwealth Marital Property Act and with Article XII of the Commonwealth Constitution. [David] is not of Northern Marianas descent and is therefore restricted to an interest in such property not to exceed a period of 55 years. As such, [David]'s interest in Lot 1897-B2-1 is limited to the term of [David]'s life, such term not to exceed 55 years.
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> Presently, Lot 1897-B2-1 is subject to a lease agreement with Ming Palace . . . . The parties shall make an equal division of this rental income derived from such agreement for the remaining term of the lease . . . .

> [Kagman Property] [E]ach party shall have a present undivided one-half interest in Tract No. 21975 . . . . Such interest shall be in strict accord with the Commonwealth Marital Property Act and with Article XII of the Commonwealth Constitution. [David] is not of Northern Marianas descent and is therefore restricted to an interest in such property not to exceed a period of 55 years. As such, [David]'s interest in Kagman Tract No. 21975 is limited to the term of [David]'s life, such term not to exceed 55 years.

Maria V. Pangelinan v. David E. Pangelinan, Civ. No. 97-0128 (NMI Super. Ct. Feb. 2, 2000) (Final Distribution at 4, 6) (citations omitted). Thereafter, David moved to reconsider the Final Distribution, seeking an amendment regarding the Kagman Property.

¶ 5 The trial court issued an Amended Final Distribution Order modifying David's distributed share of the Kagman property from a life estate not exceeding fifty-five years to a fifty-five-year lease as follows:

> [Kagman Property] [E]ach party shall have a present undivided one half-interest in [Kagman Property] . . . . Such interest shall be in strict accord with the Commonwealth Marital Property Act and with Article XII of the Commonwealth Constitution. [David] is not of Northern Marianas descent and is therefore restricted to an interest in such property not to exceed a period of 55 years. As such, [David]'s interest in Kagman Tract No. 21975 **shall be for a term not to exceed a period of 55 years and at the expiration of such period all interest in said property shall revert to [Maria].**

Maria V. Pangelinan v. David E. Pangelinan, Civ. No. 97-0128 (NMI Super. Ct. April 5, 2000) (Am. Final Distribution Order at 6) (citation omitted). The trial court later issued an Order in Aid of Judgment ("First OAJ") for the two properties as follows:

> [Kagman Property] located in Kagman shall be divided equally between the parties, the method and manner of the division to be agreed between the parties. Thereafter, *[Maria V.] shall execute a lease for a period of 55 years to [David] in his own name*. In the event the parties are unable to reach an agreement as to how the property shall be divided, either party may apply to the Court for the entry of an order for equitable division.
>
> [Garapan/Ming Palace Property] *[David] is entitled to receive fifty percent (50%) of any rentals due* and owing arising out of the parties' lease to the Ming Palace Restaurant. The Ming Palace Restaurant shall continue to make payment *equal to one-half of all payment due as stated within the lease*, without any deduction therefrom, to [David].

In re Estate of Maria V. Pangelinan, Civ. No. 15-0111 (NMI Super. Ct. Nov. 3, 2016) (Findings of Fact and Conclusion of Law at 4).

¶ 6 Because Maria failed to execute a lease of the Kagman Property in compliance with the First OAJ, the trial court issued a second Order in Aid of Judgment ("Second OAJ"), stating: "[David] is entitled to receive fifty percent (50%) of any rentals due and owing arising out of the parties' lease to the Ming Palace Restaurant." *Id.* Again, the trial court ordered that the "Tract No 21975 located in Kagman shall be divided equally between the parties . . . . Thereafter, [Maria] shall execute a lease for a period of 55 years to [David] in his own name." *Id.*

¶ 7 Maria, however, did not execute a lease pursuant to the trial court's Second OAJ. On May 8, 2008, David filed a motion seeking to compel Maria to execute the lease for the Kagman Property and to delete a portion of the Second OAJ which restricted his undivided one-half interest in the Garapan/Ming Palace Property to a life estate.

¶ 8 On May 22, 2008, the trial court issued its third Order in Aid of Judgment ("Third OAJ"), accepting David's proposed division of the Kagman Property and ordering that the property be divided as "per the terms set forth in the [Second OAJ] . . . ." *Id.* at 5. Maria did not execute the lease for the Kagman Property as the trial court ordered and subsequently passed away.

¶ 9 In December of 2013, David executed his Last Will and Testament ("Will") bequeathing all his rights and interests in the Garapan/Ming Palace Property and Kagman Property to Corazon. David also stated in his Will "it is expressly my intent that my natural children take nothing under this will, or from my estate, as they have each received benefits and property from me during my lifetime." *Id*.

¶ 10 Prior to his death, David suffered a debilitating medical emergency and was admitted to the hospital. On October 6, 2014, four days before he passed away, David gathered the family for the purpose of performing a partida, intending to transfer his interest in the Kagman Property to Steven, Jane, and MaryAnn in the presence of Steven, Steven's girlfriend Gina Bacani, and Maria. The same day, David also executed an affidavit conveying all his interest in the Kagman Property in equal shares to Steven, Jane, and MaryAnn. Since David's death, his natural children have refused to share the rental proceeds from the Garapan/Ming Palace Property with Corazon or Jamille.

¶ 11 In February of 2016, Respondent-Appellee the Estate of David E. Pangelinan ("Estate of David") filed a motion in aid of judgment asking the probate court to direct "the Clerk of Court to issue and execute a lease to the [Kagman Property] to David's Estate" and "for an order awarding David Estate's one-half of the rental income derived from the lease of the Garapan/Ming Palace Property for the remaining term of the Ming Palace lease." *Id.* at 6. The Estate of David then filed a notice of claim in the Estate of Maria's probate action, opposing the inclusion of the portion of David's interest in the Kagman Property

and one-half of the rental income from the Garapan/Ming Palace Property as properties of the decedent, Maria.

¶ 12 Following a hearing, the probate court issued its Findings of Fact and Conclusions of Law. The probate court concluded that David could not have performed a valid partida because he, as a non-NMD, did not have a permanent interest in the Kagman Property. The probate court also determined David could not have conveyed his interest in the Kagman Property to Steven, Jane, and MaryAnn by a deed of gift because transfer of a real property interest can only be made by its owner. The probate court thus ordered the Clerk of Court to execute a fifty-five-year lease in the Kagman Property to the Estate of David and terminated David's interest in the Garapan/Ming Palace Property, reverting any interest to the Estate of Maria. Additionally, it declared the Estate of David's right to receive one-half of the rental proceeds from the Ming Palace through the year 2041. The Estate of Maria appealed.

II. JURISDICTION

¶ 13 We have jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3.

III. STANDARDS OF REVIEW

¶ 14 There are three issues on appeal. First, whether partida, a Chamorro custom involving distribution of family lands, may only be performed by a person with a permanent interest in land.[1] Interpretation of customary law is a question of law we review de novo. *In re Estate of Seman*, 4 NMI 129, 130 (1994). Second, whether a person with a possessory interest can transfer his interest in land by a deed of gift. "The determination of the validity of a deed is a question of law also subject to de novo review." *In re Estate of Camacho*, 4 NMI 22, 23 (1993). Third, whether a right to receive rental proceeds may survive the termination of a life estate. We review a court's conclusions of law de novo. *Rogolofoi v. Guerrero*, 2 NMI 468, 473–74 (1992).

IV. DISCUSSION

A. Partida

¶ 15 The Estate of Maria asserts that the probate court erred in concluding that David could not have performed a valid partida because he had only a possessory interest in the Kagman property. It cites our precedent for the notion that the term "family land" has no particularized meaning in Chamorro customary law. Further, it heavily relies on our reasoning in *In re Roberto*, 2003 MP 16, to support the notion that even non-NMDs with a possessory interest may pass title to NMDs through partida.

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[1] The Estate of Maria raises the issue of whether persons with a long-term interest may convey their land by partida. The Estate, however, has neither defined nor briefed what is considered a "long-term interest." Accordingly, we will not consider this issue on appeal.

¶ 16 Partida is "the distribution of family land holdings under Chamorro custom. . . . [which generally] occurs when the father calls the entire family together and outlines the division of the property among his children." *In re Estate of Castro*, 4 NMI 102, 110 (1994) (citations omitted). Whether partida may only be performed by a person with a permanent interest in land is an issue of first impression. There is scant authority on this issue, but we find *Blas v. Blas*, 3 TTR 099 (Trial Div. 1966) instructive.

¶ 17 In *Blas v. Blas*, the Trial Division of the High Court was tasked to answer whether land being divided by partida is considered community property as generally understood in the United States. *Id.* at 105–06. In answering this query, the *Blas* court delved into the history of the Chamorro people as well as the Chamorro custom of land tenure. *Id.* at 105–07. It found that the land being distributed by partida was not considered community property, but rather, was considered what is called in Chamorro "*iyon manaina*":

> *"*[*I*]*yon manaina"*, [sic] probably best translated as "ancestors' land". [sic] This term includes land acquired by a person in any manner from one or more of his ancestors-whether by inheritance, gift during the ancestor's lifetime, will, family agreement, or even purchase. Such land has a very special status in Chamorro society. As some Chamorros put it, it will be much more respected than land which has simply been bought by an individual from outside his family. The basic idea of ancestors' land is that it is for the children of the one who receives it and *is not to be allowed to go out of the line of descendants of the ancestor or ancestors*, is not to be sold unless this becomes absolutely necessary for the subsistence of those entitled to it, and even then, it is not to be sold without the consent of all the adult children and any adult child of the person who received it should have the first chance to purchase it at whatever price sale to any outsider is being considered. Such land whether acquired before or after marriage is considered to come into this peculiar Chamorro type of community property, at least as soon as a child of the marriage is born. From that point on, whatever the situation may be before that, the husband, wife, and child or children are all considered to have interests in it. The exact extent of each of these interests is hard to state in American terms. Perhaps the land in such a situation could best be described as "family property", rather than "community property". . . .
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> Ideally, a father should at some time before his death call his family together and designate a division of all family lands, including those brought in by the wife . . . . This designation of division of family properties is called by Chamorros a "*partida*" . . . , and is a very serious and important matter of which all those concerned are expected to take careful note although it is usually oral. . . . He may turn over formal *ownership* at once *or retain control and formal*

> *ownership* of all or part of the land either until some later date or until he dies.

Id. at 107–09 (emphases added).

¶ 18 The explanation of the concept of family land and its distribution by partida in *Blas* clearly illustrates that partida is intended to be made within the line of descendants of the landowner and mainly for the benefit of the landowner's heirs. *See id.* at 108 ("Clearly the children, as contrasted with the wife or widow, have a much greater interest than is usual in the case of community property in the United States."); *see also In re Estate of Camacho*, 1 CR 395, 404 (Trial Ct. 1983) ("It is concluded that the established Chamorro custom of omitting the spouse from taking iyon manaina shows an intent to keep the real property in the family, provide for the issue . . . and to avoid the possibility of the surviving spouse from dissipating the assets in some manner.") Accordingly, it follows that a partida may only be performed by a person who has a permanent interest in land. A person who has a mere possessory interest would not be able to fulfill the purpose and intent of partida.

¶ 19 Further, concluding that partida requires a permanent interest in land is consistent with the Chamorro customs of land tenure:

> The core of Chamorro land tenure and inheritance on Saipan lies in the *individual ownership* of land and in the *division* of the family holdings among the *children of each generation*. As an observant man remarked, [w]hen a Chamorro thinks of land, he thinks of his children, and of how much land he should have to provide for them. This is always uppermost in his thoughts.

ALEXANDER SPOEHR, SAIPAN: THE ETHNOLOGY OF A WAR-DEVASTATED ISLAND 144 (Chicago Natural History Museum Vol. 41) (emphases added); *see also In re Estate of Camacho*, 1 CR at 401 ("Chamorro society was based on a subsistence economy. Land was passed down generation by generation and was the source of support for the family.")

¶ 20 Further, the seminal case of *Blas v. Blas* and its progeny concerning partida have always appeared to involve a conveyance of a permanent interest in land—never a possessory interest. *See, e.g.*, *Sullivan v. Tarope*, 2006 MP 11 ¶¶ 44–46; *In re Estate of Seman*, 4 NMI 129, 130 (1994); *Blas*, 3 TTR at 101–03; *Muna v. Muna*, 7 TTR 632, 634–35 (H.C.T.T. App. Div. 1978). While the cases themselves are not conclusive evidence that a partida may only be performed by the titleholder of the land, they support the theory that the distribution of a permanent interest in land is central to fulfilling the objectives of partida.

¶ 21 Though we have not addressed this specific issue, our recent decisions, in particular, also seem to suggest that partida involves the transfer of a permanent interest in land. In *In re Estate of Seman*, we defined partida as a "mechanism under which *succession* to family land under Chamorro customary law is effectuated." 4 NMI 129, 132 (1994) (emphasis added). And in *In re Estate of*

Castro, we stated "[a] partida is the distribution of family land *holdings* under Chamorro custom." 4 NMI 102, 107 (1994) (emphasis added). Both of these cases recognize that partida is a mechanism in which family land passes down from one generation to the next—that is, a transfer of land *ownership or tenure* from a father to his children. As such, a person who performs a partida must have a permanent interest in the land.

¶ 22 While the Chamorro custom of partida predates the notion of NMD, the acquisition of a permanent interest in land is exclusive to NMDs in the Commonwealth because of Article XII, Section 1 of the NMI Constitution, which states: "The acquisition of permanent and long-term interests in real property within the Commonwealth shall be restricted to persons of Northern Marianas descent."[2] Accordingly, a partida cognizable at law—in our jurisdiction—is one which is performed by an NMD with a permanent interest in land.

¶ 23 Finally, we note that *In re Roberto*, 2003 MP 16, cited repeatedly by Estate of Maria, is factually and legally distinguishable from the case at bar. In *In re Roberto,* the central issue was whether a non-NMD who apparently acquired a permanent interest in land—in violation of Article XII—and illegally obtained color of fee-simple interest title to a property could pass good title to an NMD. There, we held that a non-NMD purchaser with a right of possession based on an apparent fee simple interest may pass good fee-simple title to any person so long as the statutory limitations period had lapsed. *Id.* ¶ 30. Here, the issue is not whether a person of non-NMD may pass good title to an NMD, but whether the customary law of partida may be effectuated by a non-NMD who does not have ownership of the land. The legal issues present in *In re Roberto* and the case at bar are utterly distinct and different. Thus, *In re Roberto* is inapplicable.

B. Deed of Gift

¶ 24 The Estate of Maria argues that the probate court improperly relied on the restatements of the law to determine whether the deed conveying David's interest in the Kagman Property was valid. They argue that the restatements do not control here because the customary law of partida preempts common law. In the alternative, they argue that even if the restatements apply, the probate court erred in concluding that David could not have conveyed his interest in the Kagman Property to his children. They assert that under the restatements, "David was free

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[2] Article XII, Section 4 of the NMI Constitution defines NMD as:

> [A] person who is a citizen or national of the United States and who has at least some degree of Northern Marianas Chamorro or Northern Marianas Carolinian blood or a combination thereof. . . . [A] person shall be considered to be a full-blooded Northern Marianas Chamorro or Northern Marianas Carolinian if that person was born or domiciled in the Northern Mariana Islands by 1950 and was a citizen of the Trust Territory of the Pacific Islands before the termination of the Trusteeship with respect to the Commonwealth.

to convey by deed of gift whatever legal and beneficial interest he possessed in the Kagman Property." Appellant's Reply Br. at 12.

¶ 25 The Commonwealth's hierarchy of applicable law is governed by 7 CMC § 3401 ("Section 3401"):

> In all proceedings, the rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed as generally understood and applied in the United States, shall be the rules of decision in the courts of the Commonwealth, in the absence of written law or local customary law to the contrary; provided, that no person shall be subject to criminal prosecution except under the written law of the Commonwealth.

Put differently, pursuant to Section 3401, the restatements apply only in the absence of written or local customary law to the contrary. "Written law includes the NMI Constitution and NMI statutes, case law, court rules, legislative rules and administrative rules, as well as the Covenant and provisions of the U.S. Constitution, laws and treaties applicable under the Covenant." *Estate of Ogumoro v. Han Yoon Ko*, 2011 MP 11 ¶ 59 n.21 (citation omitted). Here, the Estate of Maria's deed of gift argument was an alternate theory to the local customary law of partida argument. We have no written law which addresses the specific issue at hand. Thus, the probate court did not err in relying on the restatements, and the restatements apply.

¶ 26 "To make a gift of property, the donor must transfer an *ownership* interest to the donee without consideration and with donative intent. Acceptance by the donee is required for a gift to become complete." Restatement (Third) of Property: Wills and Other Donative Transfers § 6.1(a)–(b) (2003) (emphasis added). "A gift only occurs if the donor makes an effective transfer of an *ownership* interest. . . . In order to make an effective transfer of an ownership interest, the donor must *own the property being transferred* . . . . The donor cannot transfer to the donee a greater ownership interest in the property than the donor owns." *Id.* cmt. c. (emphases added). The Restatement Third of Property makes clear that to effectuate a transfer of interest in land by a deed of gift, the donor must own the property being transferred.

¶ 27 Here, David was a non-NMD who had a mere possessory interest[3] in the Kagman property for fifty-five years.[4] Because David did not own the Kagman

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[3] Possessory interest in land exists when a person has "a physical relation to the land of a kind which gives a certain degree of physical control over the land, and an intent so to exercise such control as to exclude other members of society in general from any present occupation of the land." Restatement (First) of Property § 7 (1936).

[4] "[A] non-NMD purchaser does not acquire ownership of the land. However, the non-NMD does acquire a bare right of possession." *In re Roberto*, 2003 MP 16 ¶ 25.

Property, we conclude that the deed purporting to convey the Kagman property to his natural children, Steven, Jane, and Mary Ann, was invalid.[5]

C. Rental Proceeds

¶ 28 The Estate of Maria argues that the probate court erred in concluding that the Estate of David was entitled to receive rental proceeds from the Garapan/Ming Palace Property until the year 2041, the duration of the lease. The Estate of Maria argues that David had only a life estate in the Garapan/Ming Palace Property. Therefore, his right to receive rental proceeds terminated upon his death.

¶ 29 Whether a life tenant's right to receive rental income may survive the tenant's death is an issue of first impression.[6] Because there is no written law in the Commonwealth, we look to the restatements for guidance. 7 CMC § 3401.

¶ 30 The Restatement First of Property defines a life estate or an estate for life as:

> an estate which is not an estate of inheritance, and (a) is an estate which is specifically described as to duration in terms of the life or lives of one or more human beings, and is not terminable at any fixed or computable period of time; or (b) though not so specifically described as is required under the rule stated in Clause (a), is an estate which cannot last longer than the life or lives of one or more human beings, and is not terminable at any fixed or computable period of time or at the will of the transferor.

Restatement (First) of Property: Estate for Life § 18 (1936). Simply put, a life estate or an estate for life is a right to the use and enjoyment of an estate for one's life. This right includes the right of the life tenant to receive rent and income generated by the land for the *duration of his or her life*. Restatement (First) of Property: Privilege of Owner of Nonpossessory Estate for Life to Receive Rent and Income § 120, illus 1 (1936).

¶ 31 The probate court concluded that David had a life estate in the Garapan/Ming Palace Property and was entitled to the rental proceeds. In so

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[5] The Estate of Maria argues that the deed of gift was a written confirmation of an oral partida, a testamento. Because the probate court did not determine whether a valid partida was performed, we need not determine this issue on appeal.

[6] The Estate of David asserts that this issue presents a mixed question of law and fact. The Estate of David argues that the probate court made a "factual determination that the divorce Court intended to treat the underlying land of the Garapan/Ming Palace Property and David's right to receive rental proceeds from the property differently." Appellee's Br. at 10. We disagree. The probate court's determination that David had a right to receive rental proceeds notwithstanding the termination of his life estate was a conclusion of law. *In re Estate of Maria V. Pangelinan*, No. 15-0111-CIV (NMI Super. Ct. Nov. 3, 2016) (Findings of Fact & Conclusions of Law at 10–11).

doing, it distinguished David's interest in land from his right to receive rents, treating one as realty and the other as personalty. The court erred on this point of law. In *Stephanson v. Teregeyo*, we held that "rents from real estate are deemed to be realty rather than personalty." 2008 MP 13 ¶ 18 (citing Restatement (Third) of Property: Mortgages § 4.2 cmt. a (1997)). Thus, under *Stephanson*, David's right to receive rent was realty, and because his interest in the realty—the land—was for a life estate only, we conclude that his right to receive rental proceeds was only for the duration of his life.

V. CONCLUSION

¶ 32 For the reasons stated above, we AFFIRM in part and VACATE in part and REMAND to the trial court for further proceedings consistent with this opinion.

SO ORDERED this 4th day of December, 2018.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLOÑA
Associate Justice

/s/
PERRY B. INOS
Associate Justice