

**TRUST TERRITORY OF THE PACIFIC ISLANDS,
Plaintiff-Appellee**

v.

NAMIKO LOPEZ, Defendant-Appellant

Civil Appeal No. 150

Appellate Division of the High Court

Truk District

December 15, 1976

Appeal in foreclosure suit. The Appellate Division of the High Court, Hefner, Acting Chief Justice, held that transaction upon which foreclosure was based was not oppressive or unconscionable and that trusteeship agreement was not to be resorted to in disposition of appeal.

1. Appeal and Error—Evidence—Weight

It is not the function of the appellate division to reweigh evidence on appeal and trial court's findings will not be set aside unless there is manifest error or findings are clearly erroneous.

2. Real Property—Foreclosure—Supporting Evidence

In foreclosure case, review of documents signed by mortgagor, and of transcript of testimony, was more than sufficient to allow finding that mortgagor knew what she had signed and in fact knew that if loan was not paid, she would lose her land.

3. Contracts—Unconscionability

In foreclosure case, where appellant's husband initiated request for funds to run store and appellant joined in, purpose of loan was to assist borrowers in acquiring merchandise for their store, loan was granted, the cash paid out, and interest charged at five per cent per annum, and there was nothing in record to equate government with a loan shark preying on unsuspecting borrowers, and nothing to indicate that property which secured loan was worth significantly more than the \$3,000 loaned, transaction was not oppressive or unconscionable.

4. Trusteeship—Trusteeship Agreement—Particular Cases

In foreclosure case, where transaction involving land in question was binding on appellant-mortgagor, and the legal proceedings provided appellant and government-appellee with a full hearing and judgment of court was in accordance with law and foreclosure was pursuant to terms of the mortgage, there was no deprivation of property without due process of law nor was there a taking of private property for public use without just compensation, and resort to trusteeship agreement which required the government "to protect the inhabitants against the loss of their land" was not required.

5. Trusteeship—Trusteeship Agreement—Generally

Trusteeship agreement does not create a trust capable of enforcement through the courts.

6. Trusteeship—Trusteeship Agreement—Particular Cases

The Economic Development Loan Fund, a special revolving account funded by grants from United States Congress to promote sound economic development, providing funds at low interest rates to Trust Territory citizens not able, in most cases, to obtain funds from regular commercial banks, is not a scheme by the government to make loans so it can foreclose on land given as security and government would be remiss and derelict in its duty to other Trust Territory citizens waiting for funds to become available if it did not make a bona fide effort to recover money paid out even if it meant foreclosing on land given as security; and trusteeship agreement does not create a trust of the fund capable of enforcement.

Before HEFNER, *Acting Chief Justice*; BROWN, *Associate Justice*, and PEREZ, *Designated Judge*

HEFNER, *Acting Chief Justice*

In 1970, Daniel D. Lopez applied to the Economic Development Loan Board (hereinafter referred to as the Board) for a loan of \$3,000 to obtain merchandise for a store. Before the loan was granted, the Board required security for the loan. The only asset of value was the real property owned by the appellant who was the spouse of Daniel Lopez.

Consequently, various documents were prepared and taken to Fefan Island where the appellant signed them, including a mortgage on appellant's land. The entire transaction from the initial application to final payment of the money extended over some nine months.

Thereafter, the appellant and her husband operated the store with the loan proceeds. In 1972, the appellant's husband left for Ponape and the appellant continued to run the store alone until some time later when the operation ceased. Since payments were not made on the loan, the appellee commenced suit against both Mr. and Mrs. Lopez

for the balance due and to foreclose on the property under the terms of the mortgage. The trial court granted the relief prayed for.

Appellant's first contention is that she did not assent to the terms of the mortgage. The trial court found that the mortgage was a valid and enforceable lien against appellant's property. Therefore, appellant is, in effect, challenging the sufficiency of the evidence to sustain the findings of the trial court.

[1] As this court has repeatedly stated, its function is not to reweigh the evidence and the Appellate Division will not set aside the findings of the trial court unless there is manifest error or the findings are clearly erroneous. *Arriola v. Arriola*, 4 T.T.R. 486 (App. Div. 1968); *Calvo v. Trust Territory*, 4 T.T.R. 506 (App. Div. 1969); 6 TTC 355(2).

[2] A review of the documents signed by the appellant and the transcript of the testimony, reveals that there was more than sufficient evidence to find that the appellant knew what she was signing and in fact knew that if the loan was not paid, she could lose her land.

Next, the appellant argues that the foreclosure should be denied on equitable principles. The cases cited by appellant state, in essence, that the courts should deny relief where the contract is unconscionable or oppressive.

[3] The transaction in this case can hardly be called oppressive or unconscionable. The appellant's husband initiated the request to the board and appellant joined in. The purpose of the loan was to assist the borrowers in acquiring merchandise for their store. The loan was granted, the cash paid out, and the interest charged (at five (5%) per cent per annum) was certainly modest. There is absolutely nothing in the record to equate the appellant with a loan shark preying on unsuspecting borrowers.

There is also nothing in the record to indicate that the property, which secures the loan, is worth significantly more than the \$3,000 loaned.

Lastly, the appellant asserts that the appellee "breached its duty under the United Nations Trusteeship Agreement", citing *People of Saipan v. United States Department of Interior*, 502 F.2d 90 (9th Cir. 1974).

It is necessary to point out the import of *People of Saipan* so that it is not misunderstood. The appellant attributes much more to the implications of *People of Saipan* and the trusteeship agreement than is warranted.*

The United States Ninth Circuit Court of Appeals stated that ". . . the trusteeship agreement can be a source of rights enforceable by an individual litigant in a domestic court of law." 502 F.2d at page 97.

However, the majority of the three-member court went on to say:

"The extent to which an international agreement establishes affirmative and judicially enforceable obligations *without implementing legislation* must be determined in each case by reference to many contextual factors; the purposes of the treaty, and the objectives of its creators, the existence of domestic procedures and institutions appropriate for direct implementation, the availability and feasibility of alternative enforcement methods, and the im-

* The decision in *The People of Saipan* case gives this court some concern. It states in effect that the United States courts may assume jurisdiction of a "local" case if the High Court does not apply the trusteeship agreement which is concededly "not precisely defined." It was concluded by the Circuit Court that the High Court should have the case initially "upon the principles of comity".

Comity is the deferring action on causes *properly within its jurisdiction* until courts of another sovereignty *with concurrent powers*, and already cognizant of the litigation, have had an opportunity to pass upon the matter. (emphasis added) *Deer v. Burford*, 339 U.S. 200, 70 S.Ct. 587, 94 L.Ed. 761.

It is incumbent upon the High Court to apply all the law applicable in the Trust Territory to the particular case before it. Pursuant to 1 TTC 101(1) the trusteeship agreement is already part of the law and if and when that document is applicable to a case, the High Court must consider it. If the trial court fails to do this, the Appellate Division of the High Court could and would correct any errors. Until the Congress of the United States provides otherwise, the decisions of the Appellate Division of the High Court shall be final. 6 TTC 357.

mediate and long range social consequences of self- or non-self-execution." (emphasis added) 502 F.2d at 97.

Circuit Judge Trask concurred in the opinion. However, most appropriately, he pointed out the obvious. The Trust Territory Code has always included the trusteeship agreement as part of the law of the Trust Territory (1 TTC 101(1)) and that, further, the High Court shall have original jurisdiction to try all causes. 5 TTC 53. His reasoning led him to the conclusion that the trusteeship agreement is not self-executing. For the reasons stated in his concurring opinion, we agree.

The wording of the trusteeship agreement upon which the appellant claims a grand reservoir of rights cannot be blithely or easily applied. Even the majority of the court in *People of Saipan* acknowledged that ". . . the substantive rights . . . are not precisely defined." (at page 99) The rights relied upon by appellants herein are:

"to protect the inhabitants against the loss of their land".

With all due respect to the majority of the court in *People of Saipan*, the inescapable conclusion results that if and when the High Court needs to rely on the wording of the trusteeship agreement to determine a case, it will have to first parade through a goodly number of statutes, executive or secretarial orders and the common law which are much more definitive and which almost surely will give the inhabitants more specific rights than the trusteeship agreement.

Considering the body of law applicable in the Trust Territory, resort to the broad, general wording of the trusteeship agreement will seldom be required. There may come a time when there is no other law in the Trust Territory which is applicable and the high court may have to resort to the general wording of the trusteeship

agreement pursuant to 1 TTC 101(1). However, this is certainly not the case here.

[4] As seen above, the transaction involving the land in question was one binding on the appellant. The legal proceedings provided both parties with a full hearing and the judgment of the court is in accordance with the law. The foreclosure is pursuant to the terms of the mortgage. There is no deprivation of property without due process of law nor is there a taking of private property for public use without just compensation. (1 TTC 4)

The appellant also argues that the appellee breached its fiduciary duty under the trusteeship agreement by not making a full disclosure to its principal when entering into any business transaction with that principal. This, of course, is nothing more than another attack on the finding of the trial court and which we have determined is a proper finding.

[5] This Court has held that the trusteeship agreement does not create a trust capable of enforcement through the courts. *Alig v. Trust Territory*, 3 T.T.R. 603 (App. Div. 1967). Appellant cites a Trial Division case, *Ngodril v. Trust Territory*, 2 T.T.R. 142 (Tr. Div. Palau 1960) to support the proposition that the government is a trustee. The decision in *Ngodril* is superseded both in time and by the Appellate Division and *Alig* prevails.

Appellant also cites various cases which involved Indian tribes and the U.S. Government.

A review of those cases reveals facts far different than those in this case. *Seminole Nation v. United States*, 316 U.S. 286 (1941) involved payments from a trust fund established by the government as trustee and the Indians as beneficiaries. *Navajo Tribe of Indians v. United States*, 364 F.2d 320 (Ct. Cl. 1966) concerned an assignment of a lease of Indian land to the United States from a private company without informing the tribe. *Pyramid Lake Paiute Tribe of*

Indians v. Morton, 354 F.Supp. 252, involved the government's obligation to protect the water rights of the tribe on Indian land.

The Economic Development Loan Fund (hereafter referred to as the Fund) is a special revolving account funded by grants from the United States Congress. The Board is established to manage and operate the Fund. Trust Territory Manual of Administration, Part 462.2.

[6] The objective of the Fund is to promote sound economic development. Manual of Administration 462.3. It is the means by which the Administration provides funds at low interest rates to Trust Territory citizens to assist them in developing their economy. In most cases, the borrowers are not able to obtain funds from regular commercial banks. It is not a scheme by the Board or the government to make loans so it can foreclose on land given as security. If a borrower does not repay the money, or collection efforts fail, and the Fund is depleted, funds are no longer available to lend to other potential borrowers. Thus, the defendant would be remiss and derelict in its duty to the other Trust Territory citizens waiting for funds to become available if it did not make a bona fide effort to recover the money paid out even if it means foreclosing on land given as security.

At argument, appellant raised additional issues not in her brief and this court relies on the general rule that unless the point is raised in the brief it will not be considered on appeal unless exceptional circumstances dictate otherwise. No exceptional circumstances appear in this case nor do the additional new arguments appear to have merit.

The Judgment of the trial court is *Affirmed*.