

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

COMMONWEALTH OF THE  
NORTHERN MARIANA ISLANDS,

Plaintiff,

AUGUSTO B. ATALIG, FIDEL B. ATALIG,  
JOSE B. ATALIG, PEDRO M. ATALIG,  
ANTONIA A. DIAZ, ESTATE OF LYDIA A.  
TAISACAN, ABEL S. BARCINAS, DIEGO D.  
MENDIOLA, and DOES 1-10,

Defendants.

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Civil Action No. 96-675

**DECISION AND ORDER**

This matter came before the court on May 7, 1999 on the motion of Defendant Pedro M. Atalig for summary judgment, the motion of Defendant Augusto B. Atalig for partial judgment on the pleadings, and the motion of Defendant Abel S. Barcinas to dismiss for failure to state a claim, or in the alternative, for summary judgment. Also before the court are the motions of the Commonwealth to strike jury demand on the quiet title action, and a for a jury to be drawn from Saipan. Present at the hearing were Thomas B. Clifford, Esq. for the Commonwealth, Brien Nicholas, Esq. for Defendant Abel S. Barcinas, and Perry Inos, Esq. for Defendant Augusto B. Atalig. Defendant Pedro M. Atalig appeared pro se. Following the hearing, the court took the matter under submission and on March 31, 2000, the court announced its tentative ruling. After consideration of the arguments at the hearing and a careful review of all papers submitted in support of and in opposition to the motions, the court now renders its written decision.

[p. 2]

**I. FACTS**

**A. Procedural Background**

On June 14, 1996, the Commonwealth sued Augusto B. Atalig, Fidel B. Atalig, Jose B. Atalig, Pedro M. Atalig, Antonia A. Diaz, the Estate of Lydia A. Taisacan, and Abel S. Barcinas for

conspiring to fraudulently obtain title to nine hectares of public land in the Chamugi region of Rota. The amended complaint, filed with the court on January 29, 1997, alleges that after Defendant Augusto B. Atalig, then head of the Land Registration Team on Rota, failed to convince the Land Registration Team to give him the land, the Defendants then fraudulently obtained title to it by submitting a false inventory description of the property to the probate court in connection with the estate of Mr. Atalig's mother, Maria Barcinas Atalig. The Commonwealth contends that the heirs never mentioned Augusto Atalig's dispute with the Land Registration Team to the probate court and used the court's subsequent judgment of distribution to obtain certificates of title from the acting senior Land Commissioner.

Pedro M. Atalig was the nephew of Maria Barcinas Atalig and served as the attorney for the decedent's estate. Fidel Atalig, the brother of Augusto and the son of Maria Barcinas Atalig, served as the administrator of the estate. The Commonwealth contends that Pedro and Fidel Atalig knowingly submitted false inventories to the Superior Court on August 3 and September 12, 1989 and used the resultant court order to obtain title certificates on January 30, 1990. In its amended complaint and as the custodian of public lands, the Commonwealth brings this action to quiet title and seeks a ruling from this court that the nine hectares in question are in fact public land, that the Commonwealth is the rightful owner of the land, and that the certificates of title are void. Against the four Defendants allegedly participating in the survey and the probate, the Commonwealth brings a claim for fraud and seeks actual damages for the loss of use of the public land and punitive damages.

On December 31, 1998, this court issued a Scheduling Order directing the parties to file dispositive motions by February 1, 1999. By stipulation of the parties and the resulting Order of this court, the motion filing deadline was extended to March 8, 1999. On March 8, 1999, Pedro M. Atalig filed a motion for summary judgment contending that the Commonwealth could not prevail on its claim to quiet title as a

[p. 3] matter of law.<sup>1</sup> On the same day, Defendant Barcinas filed his motion to dismiss the Commonwealth's claim for fraud, or, in the alternative for summary judgment, asserting that the Commonwealth failed to plead fraud with particularity and specify how Defendant Barcinas allowed, if at all, the "land grabbing" to take place. On March 8, 1999, Defendant Augusto B. Atalig filed his motion for partial judgment on the pleadings to dismiss the Commonwealth's claim for fraud, asserting that the claim is barred by the statute of limitations. The Commonwealth filed a Motion to partially strike jury demand, seeking the trial of its quiet title claims to the court. In its motion for Saipan jury, filed on the same day, the Commonwealth asserted that it would be difficult, or even impossible, to seat a fair and impartial jury on Rota.

After giving these matters careful consideration, the court denies Defendants' motions for summary judgment and Plaintiff's motion for Saipan jury. The court grants Plaintiff's motion to partially strike jury demand only as to its first cause of action for quiet title. The following discussion sets forth the court's conclusions and rationale in support of its rulings.

## **B. Factual Background**

Following World War II, the Northern Mariana Islands, along with other island groups in Micronesia, were placed under an international trusteeship system to be administered by the United

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<sup>1</sup> In a reply to Plaintiff's Opposition to his motion for summary judgment filed on April 15, 1999, Pedro M. Atalig moved for summary judgment on the issue of fraud. Because the motion was untimely, it was not considered by the court.

States.<sup>2</sup> Under the Government of the Trust Territory of the Pacific Islands (“T.T.P.I.”), title to public lands<sup>3</sup> and lands held by former Japanese citizens vested in the T.T.P.I.<sup>4</sup> [p. 4]

Because the war destroyed official land records as well as monuments delineating land boundaries, in many parts of the Northern Mariana Islands, there were no records determining which lands were public, private, or otherwise held by former Japanese residents.<sup>5</sup> In 1958 and pursuant to section 927 of the Trust Territory Code, a Land Title Officer from Saipan was detailed to Rota to determine ownership of privately owned lands that were or had been occupied by the U.S. Government or the Trust Territory Government and, where necessary, return such lands to their owners. *See Tamael v. Trust Territory of the Pacific Islands*, 1 T.T.R. 520, 529 (1958); *In re Estate of Dela Cruz*, 2 N.M.I. 1 (1991). *See also* P. Atalig Reply to Plaintiff’s Opposition to his Motion for Summary Judgment at 10-11.

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<sup>2</sup> *See* Trusteeship Agreement for the Former Japanese Mandated Islands (1947) reprinted in Commonwealth Code at A-201 et seq. [the “Trusteeship Agreement”]. In 1951, the responsibility for administration shifted to a civilian agency, the Department of the Interior. *See generally* Executive Order No. 11021 (May 7, 1962). Although Saipan and Tinian reverted to Naval control in 1953, the political status of Rota remained indeterminate and prevented the organization of a viable land program until Rota was designated as the seventh district of the Trust Territory in 1955, at which time a Land Advisory Board was established to recommend priorities in the land program. *See generally* Secretarial Order No. 2969 (eff. Dec. 28, 1974) (transfer of trust territory public lands to district control).

<sup>3</sup> “Public Lands” were those lands situated within the Trust Territory that were owned and maintained by the Japanese government as government or public lands. They also included such other lands as the government of the Trust Territory acquired or thereafter acquired for public purposes. *See* 67 T.T.C. § 1.

<sup>4</sup> *See generally* Order of the Area Property Custodian of the Trust Territory of the Pacific Islands dated September 27, 1951, § 1 [hereinafter “Vesting Order”] (any interest previously owned or held by the Japanese Government in any land or other property in the Trust Territory vested in the Area Property Custodian). *See also* Trust Territory Policy Letter P-1 of the Pacific Islands, ¶ 11 (December 29, 1947) (rights in lands acquired by the German or Japanese governments were deemed to be property belonging to the Government of the Trust Territory).

<sup>5</sup> J. Johnson, LAND OWNERSHIP IN THE NORTHERN MARIANA ISLANDS, AN OUTLINE HISTORY (1969) [hereinafter, “JOHNSON”] at 11. The only records remaining after the holocaust of war were some belonging to the South Seas Development Company. These few records, along with a reconstructed cadastral map, were initially used to make title determinations. The map bears a note indicating that its “property lines were based on five recovered Japanese District cadastral maps. The geographical features of the Japanese maps appeared to be distorted and although a correction has been applied, this map should not be used for other than schematic purposes.” *Id.*

On April 21, 1958, Maria Barcinas Atalig submitted a claim for “6 hect. more or less” in the Chamugi region of Rota (the “Property”).<sup>6</sup> A Land Title Officer issued a notice of hearing to determine title to the land (*Id.* Ex. A-2). Documents submitted by the Commonwealth establish that Mrs. Barcinas Atalig attended the hearing and testified that although she had title documents at one time, the documents were lost (Claimant’s Testimony as to Land Ownership, appended to Govt. Opp. to P. Atalig Motion as Ex. A-3). In a statement provided at the hearing, Mrs. Barcinas Atalig also claimed an interest in other lands described as “farming land” *Id.*

On October 24, 1958, Elias P. Sablan, as Land Title Officer for the Rota District, issued a Determination of Ownership (also known as a “Title Determination” or “T.D.”) 202, legally recognizing Maria Barcinas Atalig’s ownership of 6.0 hectares, more or less, bounded on the North, South, and East [p. 5] by government land, and on the West by the property of the heirs of Lino Rosario (Govt. Opp. to P. Atalig Motion at Ex. A-5). Although T.D. 202 expressly stated that the parcel of land was “subject to survey,” no map or survey was appended to the Title Determination. Nor was the land ever officially surveyed or titled during Maria Barcinas Atalig’s lifetime.

To survey, map, and record each parcel of public land in the Trust Territory of the Pacific Islands, on June 25, 1974, the T.T.P.I. contracted with Asia Mapping, Inc. (Mot. at 3; Opp. at ¶ 17). In 1975, in preparation for the Asia Mapping survey, Land Registration Teams assumed responsibility for clearing and marking all Rota property boundaries with panels so that the boundaries would be visible in the Asia Mapping aerial photographs (Mot. at 4; Opp. at 17). When necessary, the Teams consulted with, and then conducted any necessary negotiations and adjudications among, landowners. When the T.T.P.I. and the adjacent property owners were able to agree to their corners, the corners were cleared and panels were placed on the property corners so that the boundaries would be visible in the Asia Mapping aerial photographs. All adjacent landowners were involved in the process and where public land adjoined a marker, government representatives participated.

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<sup>6</sup> Govt. Opp. to P. Atalig Mot. at Ex. A-1; *see also* Report of Property Owned Land, attached to Govt’s Opp. to Barcinas’ Motion to Dismiss as Ex. A-1 (describing property as “6 hect. more or less” and executed by Maria B. Atalig).

As a result of this process, on April 23, 1975 the Rota Land Registration team performed a physical inspection of T.D. 202. All adjoining landowners were present to witness, inspect, identify, and confirm the common corners adjoining the property. Augusto B. Atalig represented his ailing mother, Maria Barcinas Atalig, in the corner-by-corner negotiation of the boundaries of T.D. 202.<sup>7</sup> Following the inspection, Maria Barcinas Atalig executed a series of agreements with all adjoining landowners. The corner-by-corner agreements, offered by both parties as exhibits, were witnessed by Land Registration Team members and total six in number.<sup>8</sup> A sketch of the property, drawn by Vincente M. Maratita who headed the boundary negotiation for the Land Registration Team, however, shows T.D. 202 to be a five [p. 6] corner lot with three Japanese and two U.S. monuments.<sup>9</sup> In contrast to Mr. Maratita's sketch of the property and the sketch appearing on the Rota Land Registration Team's request for survey, the Asia Mapping results depict an eight corner lot of approximately 210,005 square meters or 21 hectares. Declaration of Vicente A. Sonsong ("Songsong Decl.") at ¶ 4 and Ex. "A" thereto, attached to the Motion as Ex."K"; Opp. at 8.

During this same period of time, the Secretary of the Interior issued two orders:(1) Secretarial Order No. 2969 (1974), transferring Trust Territory public land to district control, and (2) Secretarial Order No. 2989 (1976), transferring title to all public lands and vesting title in the United States Resident Commissioner for the Northern Mariana Islands (the "Resident Commissioner").<sup>10</sup> In 1975, the people of the Northern Mariana Islands entered into a covenant with the United States, pursuant

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<sup>7</sup> P. Atalig Motion at 4; Excerpts from Deposition of Augusto B. Atalig ("A. Atalig dep."), attached to Govt. Opp. as Ex. B-4 at 277.

<sup>8</sup> Pedro M. Atalig's Motion contains six of the Corner Agreements, each of which also appear in the Opposition as Ex. B-2. The six agreements are described as follows: (1) for the N/E corner #1, (2) for the E/S/corner [#2 or #8], (3) for the W/S corner [#3 or #7], (4) for the W/ corner [#3], (5) for the W/corner [#4], and (6) for the W/corner [#5]).

<sup>9</sup> P. Atalig Mot. at Ex. "C"; Opp. at Ex. B-2 and Ex. B-3 at 14:16-20; *see also* sketch appearing in survey request form submitted by the Rota Land Registration Team (request form "Ginagao Para Medision Tano"), appended to the Opposition.

<sup>10</sup> Secretarial Order No. 2989, 41 Fed. Reg. 15892 (1976) administratively separated the Mariana Islands District from the rest of the Trust Territory of the Pacific Islands and designated the Government of the Northern Mariana Islands of the T.T.P.I. as a separate governmental entity with executive authority vesting in the Resident Commissioner. Part VII, section 1, of Secretarial Order 2989 further transferred title to all public lands and vested title in the Resident Commissioner.

to which the United States agreed to transfer all rights, title and interest to real property in the Northern Mariana Islands to the transitional government of the Northern Mariana Islands.<sup>11</sup> On January 9, 1978, the Government of the Northern Mariana Islands succeeded the interim government. In a constitution adopted by the people of the Northern Mariana Islands pursuant to section 201 of the Covenant, all public lands in the Commonwealth belong, collectively, to persons of Northern Marianas descent.<sup>12</sup>

[p. 7] The lands transferred to persons of Northern Marianas descent are not expressly spelled out in Article XI, section 1 in the Commonwealth Constitution, nor are they specified in Secretarial Orders 2969 and 2989. To address certain questions concerning the vesting of title to public and alien lands transferred by Secretarial Order 2989, the High Commissioner and the Alien Property Custodian executed a series of confirmation deeds to the Resident Commissioner for each of the separate islands. For the island of Rota, such a confirmation deed was executed on February 4, 1981 (the “Confirmation Deed”). It figures prominently in the motion filed by Pedro M. Atalig and is attached thereto as Exhibit “H.”<sup>13</sup>

The public and alien lands described in the Confirmation Deed are described as

All those lands located above the ordinary high water mark on Rota Island, Northern Mariana Islands (formerly Mariana Islands District), as delineated and represented on Exhibit A hereto, such being a 1:2000 scale reproduction of the Rota Island

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<sup>11</sup> COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA (hereinafter, “Covenant”) § 801, 48 U.S.C. § 1601 note, *reprinted in* Commonwealth Code at B-101 et seq.

<sup>12</sup> The Commonwealth Constitution defines as “public lands”: (1) lands transferred under Secretarial Order 2969; (2) the lands transferred under Secretarial Order 2989; (3) the lands transferred under the Covenant; and (4) all submerged lands off any coast of the Commonwealth. N.M.I. CONST. Art. XI, § 1 (1978).

<sup>13</sup> The Confirmation Deed reads, in material part:

NOW THEREFORE, in Order to forever remove any doubt as to the validity of the vesting of title to the Resident Commissioner...pursuant to Secretarial Order 2989, we, the High Commissioner and Alien Property Custodian of the Trust Territory of the Pacific Islands, grantors herein, do hereby ratify, approve, and confirm, the vesting of title to public and alien lands in favor of the Resident Commissioner made pursuant to Secretarial Order 2989, effective as of the first day of April, 1976, *and we further do...*[convey and transfer] all those public and alien lands as ...delineated and represented on Exhibit A hereto [the Rota Island Cadastral Parcel Index] ... bonded as described in Exhibit B hereto...[a computer printout enumerating and describing all public and alien land parcels by metes and bounds keyed to Exhibit A] (emphasis added).

Cadastral Parcel Index, comprised of forty-three (43) sheets, and bounded as described in Exhibit B hereto, such being a computer printout which enumerates and describes by metes and bounds all public and alien land parcels keyed to the sheet number of the Rota Islands Cadastral Parcel Index, containing an area of 7,277.73 hectares, more or less...

P. Atalig Mot. at Ex. H. Sheets 9 and 13 of the Confirmation Deed are appended to Pedro Atalig's Motion as exhibits, as they adjoin T.D. 202.

Augusto B. Atalig testified that after he reviewed the 1975 boundary negotiations, he discovered an error. A. Atalig Dep. at 279. According to Mr. Atalig, the Asia Mapping survey was also not accurate. [p. 8] *Id.* at 277. In 1988, Mr. Atalig asked the Division of Lands and Surveys of the Department of Natural Resources to perform a ground survey of the Property. In Responses to Interrogatories filed with the court on September 7, 1997, Augusto Atalig admitted that he was the only one involved in the 1988 survey, and that he asked the surveyors to survey the upper part of T.D.202, below one of the boundaries negotiated in 1975, and the middle of T.D. 202 "so that there would be an easement through T.D. 202." *See* Responses to First Interrogatories at Interrogatory No.7.

The surveyor performing the 1988 survey was Defendant Abel S. Barcinas. The Barcinas survey, bearing the designation DLS 3008/89, differs from the Maratita sketch, the Rota Land Registration Team sketch, and the Asia Mapping results in that it depicts two lots collectively comprising approximately 16 hectares, with a line dividing the two lots (Barcinas Survey, Opp. to P. Atalig Motion at Ex. A-7). The map identifies one of the lots, Lot 3164, as T.D. 202, which differs from the Maratita sketch in shape and size. The map further depicts the second lot, Lot 3177, as "an additional claim by T.D. 202." *Id.*

Survey Plat 3008/89 indicates that it was prepared by Barcinas or under his direct supervision, and that it was performed in conformance with all applicable laws and regulations (Barcinas survey, attached to Opp. to Barcinas Mot. to Dismiss as Ex. A-6). According to Barcinas, however, it was Defendant Augusto B. Atalig who pointed out the boundaries, monuments, and area for survey (Excepts from Deposition of Abel S. Barcinas, attached to Opp. to Barcinas Mot. to Dismiss as Ex. B-6 at 112:14-24) ("Barcinas Dep."). Barcinas further testified that he had not reviewed the T.D. 202 file prior to performing the survey, and that when he performed the survey,



no government representatives were present (*id.* at 110:23-25). Barcinas admitted, moreover, that the property subject to his survey also included a grazing lease of the late Maria B. Atalig's husband, Jose Camacho Atalig (Barcinas Dep. at 24:7-16, 25 - 25:9).<sup>14</sup> Although Barcinas knew that the land in grazing leases belonged to the public, his survey did not differentiate the grazing lease from the other property, nor did Barcinas otherwise disclose the grazing lease to his supervisor, Aureliano Ocasion, or anyone at the Marianas Public Land Corporation ("MPLC")

[p. 9] (Barcinas Dep at 116:13-18, 117-118, 126). According to Barcinas, that was not part of his job (*id.* at 113-114) (relied on the Land Commission to check the file).

Barcinas further testified that he only surveyed the perimeter of the property (*id.* at 122). At some point, a line dividing the two lots was drawn at the office (*id.*). Jose M. Rosario, an employee of the Rota office of the Division of Land Registration and Surveys who computed and drafted Survey Plat 3008/89, stated that Augusto B. Atalig directed him to draw a line down the length of T.D. 202 "in such a way that the long, rectangular lot was bisected into two separate lots..." (Decl. of Jose M. Rosario, attached to Opp. to Barcinas Mot. as Exhibit "D" at ¶ 8). Barcinas instructed Rosario to Follow Augusto Atalig's directions. *Id.*

The Commonwealth asserts that on or about November 29, 1988, Augusto Atalig, then Chairman of the Land Registration Team, submitted a formal claim for an additional nine acres, representing that he had inherited the nine hectares depicted as Lot 3177 on the Barcinas survey from his mother by deed of gift. *See* First Amended Complaint at ¶ 34. On March 31, 1989, the Acting Senior Land Commissioner issued a certificate of title to Maria Barcinas Atalig for Lot 3164 (T.D. 202) containing an area of 69,410 square meters, as more particularly described on survey plat 3008/89 (Opp. to P. Atalig Mot., Ex. A-10). The Commonwealth contends that shortly thereafter,

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<sup>14</sup> In its Opposition to Defendant Barcinas' Motion to Dismiss, the Commonwealth attached one page of a document purporting to be a Lease dated July 25, 1966 between the Government of the Trust Territory of the Pacific Islands and Jose C. Atalig for property located in Chamugi and comprising an area of 5 hectares, more or less, subject to land survey (MLS -10). Section I of the document provides that the land is to be used exclusively for raising livestock.

on April 14, 1989, the Land Registration Team rejected Augusto Atalig's claim to Lot 3177 (First Amended Complaint at ¶ 35).<sup>15</sup>

On July 31, 1989, Pedro M. Atalig notified Jose Guerrero, then MPLC Chairman, that the heirs of Maria Barcinas Atalig owned lots 3164 and 3177. (Letter from P.M. Atalig to Marianas Public Land Corp. dated July 31, 1989, attached as Ex. A-1 to P. Atalig Motion). In the letter, Pedro M. Atalig claimed that T.D. 202 encompassed both lots, and that, as evidenced by a survey, the total area encompassed by T.D. 202 was 161,430 sq. meters and not the 6 hectares listed as the land area. Mr. Atalig asked the MPLC to disclaim any interest in the actual surveyed area, in that the heirs claimed to have farmed and used the land for grazing for over fifty years. There is no indication that the Commonwealth ever responded to Mr. Atalig's letter. [p. 10]

Five weeks later, Fidel B. Atalig, as administrator for the estate of Maria B. Atalig, submitted an Inventory of Property in Civil Action No. 89-676 listing Lots 3164 and 3177 as property of the estate.<sup>16</sup> The Inventory described Lot 3164 as containing an area of 69,410 square meters, more or less, and Lot 3177 as containing an area of 92,020 square meters, more or less. Pedro B. Atalig submitted the Inventory to the court as the attorney for the Administrator. On September 12, 1989, Fidel B. Atalig, again as administrator for the estate of Maria B. Atalig, filed an Amended Inventory of Property through his attorney, Pedro M. Atalig (Clifford Decl. at Ex. A-3). The Amended Inventory also listed Lots 3164 and 3177 as estate property. Neither the Inventory nor the amended Inventory indicated that Land Registration Team had rejected Augusto Atalig's claim to the additional nine hectares in Lot 3177. Nor was there any mention of Augusto Atalig's written claim to have inherited the nine hectares via a deed of gift. *See* Canfield Decl. at ¶¶ 6-9 and Exs. A-2 and A-3 thereto.

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<sup>15</sup> In his Answer, filed with the court on February 18, 1997, Augusto Atalig denied the Commonwealth's allegations in paragraphs 34 and 35 for lack of sufficient information to admit or deny.

<sup>16</sup> *See* Decl. of Thomas E. Clifford dated August 15, 1996, attached as Exhibit "A" to motion to amend complaint ("Clifford Decl.") and Exhibit A-2 thereto; *see also* P.M. Atalig's Reply to Plaintiff CNMI's Response to Motion for Partial Judgment on the Pleadings, filed June 4, 1997 at 8.

In an Order dated December 7, 1989, Judge Castro, presiding over the probate court, divided the inventoried property among the heirs. *See* Order, attached to Clifford Decl. as Ex. A-4. The probate court held no hearings, and made no ownership determinations or other findings with respect to Lot 3177. Clifford Decl. at ¶¶ 9-10. Based upon the probate court’s division of Lot 3177, the Acting Senior Land Commissioner issued certificates of title to Lot 3177 (Pedro M. Atalig Mot., Ex. A-5).<sup>17</sup>

### **C. Pedro M. Atalig’s Motion for Summary Judgment**

Based largely upon the Asia Mapping effort, the Commonwealth’s reliance on the Confirmation Deed in a prior judicial proceeding, and the Confirmation Deed transferring title to all public lands in Rota [p. 11] dated February 4, 1981, Pedro M. Atalig claims that he is entitled to judgment because the Commonwealth’s own documents demonstrate that lots 3164 and 3177 are not public land. Mr. Atalig contends, first, that because Secretarial Order 2989 failed to name, list, and adequately describe and identify the different parcels of public lands conveyed to the Resident Commissioner, the Confirmation Deed was devised to list, describe, and identify all of the different parcels of public lands in Rota. The Motion maintains that the exhibits to the Confirmation Deed alone depict and define by metes and bounds the location of all “public lands” in Rota. Since Lots 3164 and 3177 do not appear on the exhibits to the Confirmation Deed and, according to Mr. Atalig, the Commonwealth may only claim an interest in the lands described in the exhibits to the Confirmation Deed, the Commonwealth’s own documents establish that the Commonwealth cannot have legal title to the property. *See Borja v. Rangamar*, 1 N.M.I. 347 (1990) (government is bound by its own maps); *see also See CNMI v. Manglona*, Civil Action No. 96-350 (March 27, 1996) (Complaint at ¶ 43) (Commonwealth’s previous characterization of Confirmation Deed as

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<sup>17</sup> Distributed and confirmed as belonging to Augusto B. Atalig were Lots 3164-4, containing an area of 13,882 square meters, and 3177-4, containing an area of 15,854 square meters. Distributed and confirmed as belonging to Lydia A. Taisacan were Lot 3164-R1, containing an area of 13,882 square meters subject to the right of Augusto B. Atalig to use for three years, and Lot 3177-5, containing an area of 15,855 square meters. Distributed and confirmed as belonging to Fidel B. Atalig were Lots 3164-3, containing an area of 13,882 square meters and 3177-3, containing an area of 15,854 square meters. Distributed and confirmed as belonging to Jose B. Atalig were Lots 3164-2, containing an area of 13,882 square meters and 3177-2 containing an area of 15,854 square meters. Distributed and confirmed as belonging to Antonia A. Diaz were Lots 3164-1, containing an area of 13,882 square meters and 3177-1, containing an area of 15,854 square meters. Lot 3177-R1 containing an area of 10,000 square meters was confirmed as belonging to Pedro M. Atalig.

“describ[ing] by metes and bounds the exact location of all public lands in Rota”). Because, to prevail on a claim to quiet title, a complainant must have legal title and be in possession of the property at the time he initiates suit, Movant contends that the Commonwealth’s action to quiet title must therefore fail.

In response, the Commonwealth first challenges Movant’s reading of the Confirmation Deed, contending that the Confirmation Deed on its face ratifies, approves, and confirms the transfer of all public lands conveyed by Secretarial Order 2989 and not simply those properties enumerated in its exhibits. Second, the Commonwealth contends that the Confirmation Deed is essentially unnecessary since Secretarial Order 2989 plainly vested title to all public lands in the Resident Commissioner. Finally, the Commonwealth questions the accuracy of the exhibits themselves as the result of the Asia Mapping survey which, the Commonwealth contends, was never completed, officially approved, signed, certified, or recorded. Pointing out that the Asia Mapping effort is also inconsistent with the 1975 boundary negotiations and the Barcinas survey, the Commonwealth argues that the Asia Mapping effort is not and should not be legally binding in this case.

A quiet title action is one in which a plaintiff seeks a declaration from the court that an allegedly adverse interest in property is invalid. *Estate of Faisao v. Tenorio*, 4 N.M.I. 260, 264 (1995) **[p. 12]** *v. Commonwealth*, 4 N.M.I. 186, 189-190 n. 15 (1994). To pursue an action to quiet title, the plaintiff cannot merely attack the defendant’s title but must plead or prove his or her own claim to the property in question, and, at some point, have been in either actual or constructive possession of the land. *Cabrera v. Marianas Public Land Corporation*, Civil Action No. 91-0687 (N.M.I. Super.Ct. Aug. 7, 1992) (Order), *aff’d sub nom. Sablan v. Cabrera*, 4 N.M.I. 133 (1994); *Rogolofoi v. Guerrero*, Civil Action No. 89-1149 (N.M.I. Super.Ct. Feb. 18, 1990) (Order) (in order to bring an action for quiet title the complainant must have legal title and be in possession at the time the suit is initiated). There is an exception to the general rule, however, where, as here, the government is making a claim to land on behalf of the public, because land that is not privately owned is always public land. *E.g., Hawaii v. Zimmering*, 566 P.2d 726, 731 (Haw. 1977) (land that is not awarded or granted remains in the public domain).

Pedro Atalig points out that in the first quiet title action brought by the Commonwealth in the Superior Court in 1996, it claimed that the Confirmation Deed “describe[d] by metes and bounds the exact location of public lands in Rota.” *See CNMI v. Manglona*, Civil Action No. 96-0350 (March 27, 1996) (Complaint). Although the Commonwealth provides no explanation for its change of position in this case, the prior inconsistent position does not, by itself, preclude the Commonwealth from challenging the Confirmation Deed here. The doctrine of judicial estoppel prevents a party from assuming a position in a legal proceeding inconsistent with one previously asserted. *Kelsey v. Waste Management of Alameda County*, 90 Cal.Rptr. 2d 510, 76 Cal.App.4th 510 (Cal.App. 1999). The doctrine is designed not to protect any party but to protect the integrity of the judicial process. Thus, the doctrine generally applies when: (1) the same party has taken two positions; (2) the positions were taken in a judicial or quasi-judicial administrative proceeding; (3) the party was successful in asserting the first position in that the tribunal adopted the position or accepted it as true; (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake. *Id.*

Judicial estoppel is a concept to be applied with restraint in egregious cases and with clear regard for the facts in the case at bar. While it prevents the use of intentional self-contradiction as a means of obtaining unfair advantage in a forum provided for suitors seeking justice, it is an extraordinary remedy. *Haley v. Don Lewis Motors, Inc.*, 85 Cal.Rptr. 2d 352, 42 Cal.App.4th 497 (1999). Thus when the [p. 13] testimony has been sworn, when there has been an adjudication adopting the prior position, and when an adversary has therefore suffered harm or prejudice by reason of the change, application of the doctrine may be appropriate. Because these factors are not present in this case, the Commonwealth should not be judicially estopped from challenging the Confirmation Deed.

More importantly, the court finds the Commonwealth’s interpretation of the Confirmation Deed persuasive. As an initial matter, a basic principle of construction is that language must be given its plain meaning. *Govendo v. Micronesian Garment Mfg., Inc.* 2 N.M.I. 272, 284 (1991). The Confirmation Deed expressly provides that the lands delineated and described in its exhibits were

not the only property subject to transfer.<sup>18</sup> Following the identification of exhibits, moreover, the Deed contains language transferring “all interests in real property *which are hereafter determined* to have been vested in the Grantors on or before April 1, 1976” (emphasis added),<sup>19</sup> Given the expansive language in the instrument, any reading of the Confirmation Deed that would limit the identification of public lands transferred to those described on the exhibits would be contrary to the plain meaning of the Confirmation Deed and unduly limiting. Further, Article XI, section 1, of the Commonwealth Constitution effectively transfers public lands to the people of the Commonwealth. “Public lands” comprise more than those conveyed by Secretarial Order 2989. *See* note 12, *supra*. The court notes that no deed evidencing their transfer or describing their location was required.

This is not to say, however, that the court has made any determination at this stage of the proceedings as to who owns the land in question or has otherwise drawn any conclusions as to its boundaries. Nor will the court determine on summary judgment whether any of the parties should be equitably estopped from prosecuting a quiet title claim. Defendant claims, on the basis of the Confirmation [p. 14] Deed, the Asia Mapping survey, the Barcinas survey, and the work of its expert witnesses, that he and the other defendants own the land in question. Relying on Maria Barcinas Atalig’s original claim, the boundary negotiation, the testimony of fact witnesses, and the testimony of its own land surveyor expert, the Commonwealth claims that precisely the opposite is true. Both Justice Atalig and the Commonwealth have presented considerable evidence demonstrating that there are material factual disputes regarding the boundaries and ownership of the land. Because the court “cannot weigh the evidence and make findings on disputed factual issues on a motion for summary judgment,” the motion for summary judgment is denied. *Rios v. MPLC*, 3 N.M.I. 512, 519 (1993).

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<sup>18</sup> The Confirmation Deed expressly provides that the lands transferred by Secretarial Order No. 2989 were all public lands, as defined by 67 T.T.C. § 1, and all alien lands as defined in 27 T.T.C. § 1. The Trust Territory Code defines “public lands” as being those lands situated within the Trust Territory that were owned or maintained by the Japanese government as government or public lands, and “*such other lands as the government of the Trust Territory has acquired or may hereafter acquire for public purposes*” (emphasis added). “Alien property” was property situated in the Trust Territory that was formerly owned by private Japanese nationals, private Japanese organizations, the Japanese government, or Japanese government organizations, agencies, quasi-corporations or government-subsidized corporations.

<sup>19</sup> *See* Confirmation Deed, Ex. “H” to P. Atalig Mot at 4.

#### **D. Abel Barcinas' Motion to Dismiss for Failure to State a Claim**

Defendant Abel Barcinas's motion only attacks Plaintiff's cause of action for fraud. First, Barcinas contends that the case against him should be dismissed because the Commonwealth fails to allege with particularity how the Barcinas survey is false or misleading, and how Defendant Barcinas' actions allowed the "land grabbing" to succeed. Alternatively, Barcinas claims he is entitled to summary judgment since all he did was to perform a survey for a claim of the Atalig family that, at most, included Lot 3177 as a separately designated lot. Barcinas further claims that there is no evidence establishing that the survey was false, that he induced his supervisor or anyone else to sign the survey, and that Plaintiff's injuries resulted from his actions instead of the Commonwealth's own negligence in failing to intervene in the probate proceeding to protect whatever interest it now claims to have in the property.

The elements to sustain a cause of action for fraud are: (1) a representation of fact; (2) the representation is untrue and known to be untrue by the party making it, or else recklessly made; (3) the representation is made with the intent to deceive and for the purpose of inducing the other party to act upon it or refrain from action in reliance upon it; and (4) the other party did in fact rely on the false representation and was induced thereby to act to his or her damage. *Rogolofoi* at 2-3; *Atalig v. M.I.C. Corp.*, 3 C.R. 278 (N.M.I. Super. Ct. 1987). [p. 15]

The allegations in the First Amended Complaint successfully allege these elements.<sup>20</sup> The Commonwealth contends: (1) Barcinas knowingly supervised, approved, and certified a survey plat; (2) the Survey Plat was false, in that it failed to distinguish or delineate the grazing lease and contained an arbitrary line dividing the property; (3) although Barcinas knew that the land in grazing leases belonged to the public, his survey did not differentiate the grazing lease from the other property, nor did Barcinas otherwise disclose the grazing lease to his supervisor, Aureliano Ocasion, or anyone at the Marianas Public Land Corporation ("MPLC"); (4) Barcinas failed to

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<sup>20</sup> A motion to dismiss should be granted when a claim clearly does not contain either direct allegations on every material point necessary to sustain recovery on any legal theory, or indicate that evidence on material points will be introduced at trial. *In re Adoption of Magofna*, 1 N.M.I. 449 (1990). When considering a motion to dismiss, however, the court must accept the allegations in the complaint as true and construe them in the light most favorable to the plaintiff. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 272 (283 (1990). Dismissal is improper unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Id.*

differentiate the grazing lease and permitted the arbitrary dividing line to be drawn in order to mislead and induce necessary persons to sign off on the survey and “others” to rely on the official government document; and (5) as a result of the misleading survey, certificates of title wrongly issued in this case, causing the people of the Commonwealth injury for which the Commonwealth seeks now redress. Based upon these allegations, the Court finds that the Commonwealth’s second cause of action as pled in its first amended complaint meets the particularity requirement of Com. R. Civ. P. 9(b) and states a claim for fraud against Defendant Abel Barcinas.

Based upon Barcinas’ actions in this case and his alleged participation in similarly fraudulent land surveys, the Commonwealth contends that Barcinas was indisputably involved in a scheme to permit the unauthorized taking and misappropriation of public land. Barcinas, on the other hand, maintains that he did nothing but follow orders, that he followed office procedures, and that the survey he prepared does nothing more than to distinguish between old and new claims. Because any assessment of credibility and all choices between available inferences are matters to be left for the jury, the court will not decide them on summary judgment. *See Azrelli v. Cohen Law Offices*, 21 F.3d 1517 (2d Cir. 1994). Accordingly, the court denies Barcinas’ motion for summary judgment on the fraud claim. [p. 16]

#### **E. Augusto B. Atalig’s Motion for Partial Summary Judgment**

In his motion for partial judgment on the pleadings, Augusto Atalig contends that because fraud is a cause of action that must be commenced within two years and the purported land grab took place more than two years before Plaintiff filed its complaint, the Commonwealth’s claim is barred by the statute of limitations. In its decision of August 29, 1997,<sup>21</sup> however, this court previously ruled that the Commonwealth’s second cause of action against Defendant Augusto Atalig states a claim for the fraudulent taking of public land, a civil cause of action to enforce a public right. *See CNMI v. Diaz*, Case No. 96-675 (September 2, 1997)(Decision and Order on Motion for Partial Judgment on the Pleadings). Under these circumstances, where the Commonwealth seeks to re-establish its title to the land and recover damages for the fraud, it is acting in its sovereign capacity

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<sup>21</sup> *See* Decision and Order on Motion for Partial Judgment on the Pleadings, dated August 29, 1997.



to preserve title to public lands and to protect the integrity of the judicial process. Because civil statutes of limitation do not apply to the Commonwealth when, as in this case, it brings such an action in its sovereign capacity, Augusto B. Atalig's Motion for Partial Summary Judgment is denied.

**F. Commonwealth's Motion to Strike Jury Demand**

The Commonwealth's motion to strike jury demand is granted in part. The cause of action to quiet title is an equitable claim and therefore not an issue to be tried by a jury. *Beal v. Mars Larsen Ranch Corporation, Inc.*, 586 P.2d 1378, 1383 (Idaho 1978)(an action to remove a cloud upon a title is an equitable one); 7 CMC § 3101(b)(1). However, the second cause of action for fraud shall be tried by a jury.

**G. Commonwealth's Motion for Saipan Jury**

The Commonwealth's motion for Saipan jury is denied. The affidavits supporting the Commonwealth's motion fail to prove to the Court that an impartial jury cannot be impaneled on Rota. In fact, the Court notes that some of the Commonwealth's own witnesses will be from Rota. In any event, [p. 17] should it become apparent during voir dire that an impartial jury cannot be impaneled from a Rota jury pool, then the Court shall select potential jurors from Saipan.

So ORDERED this 31<sup>st</sup> day of August, *nunc pro tunc* to July 6, 2000.

/s/ Alberto C. Lamorena III  
ALBERTO C. LAMORENA III  
Pro Tem Judge  
Superior Court of the Commonwealth  
of the Northern Mariana Islands