

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

ANTONIO L.G. REYES, for Himself and  
for the Estate of ANTONIO SABLAN  
DELOS REYES, Deceased,

Plaintiffs,

vs.

JOSEPH C. REYES, CARMEN C.  
~~REYES~~, ANTHONY C. REYES, and  
DOLORES R. CLARIS, Heirs of Gallo  
Ambros Sablan Reyes, Deceased,

Defendants.

CIVIL ACTION NO. 00-0406 and 00-0048

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

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JOSEPH C. REYES, CARMEN C.  
REYES, ANTHONY C. REYES, and  
DOLORES R. CLARK, Heirs of Gallo  
Ambros Sablan Reyes, Deceased,

Plaintiffs,

vs.

~~ANTONIO L.G. REYES~~, for Himself and  
for the Estate of ANTONIO SABLAN  
DELOS REYES, Deceased,

Defendants.

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**I. PROCEDURAL BACKGROUND**

This matter came before the court for closing argument on September 18, 2001, in Courtroom 220 at 9:00 a.m. Robert T. Torres, Esq. appeared on behalf of Plaintiffs Antonio L.G. Reyes and Defendants Jacinta and Antonio Tydingco. Joseph A. Arriola, Esq., appeared on behalf of Plaintiffs Joseph C. Reyes, Carmen Castro Reyes, and Dolores Reyes Clark, the heirs of Gallo Ambros Sablan

Reyes, deceased. The court, having heard and considered the arguments of counsel, and having fully considered the evidence and testimony presented at trial, now renders its written decision.

## II. FINDINGS OF FACT

The court, after consideration of the testimony and evidence presented at trial, makes the following findings of facts:

1. Antonio C. Reyes owned certain real property located in As Lito, Saipan. During the course of his lifetime, Antonio C. Reyes orally expressed his intention that his interest in the real property situated in As Lito, Saipan, be distributed equally among his sons.
2. Antonio C. Reyes passed away on June 15, 1944. Antonio C. Reyes had several children' at the time of his death, including: William S. Reyes; Antonio Delos Reyes (Antonio S. Reyes); Gallo S. Reyes; Juan S. Reyes; Ana S. Reyes; Magdalena S. Reyes; Abelina Reyes; and Carmen C. Reyes.
3. On February 6, 1952, the Trust Territory of the Pacific Islands, Office of the High Commissioner, determined that Lot Nos. 514 and 515, located in As Lito, Saipan belonged to the Estate of Antonio C. Reyes, Deceased.
4. Gallo S. Reyes was first married to Isabella Reyes with whom he had two daughters, Ana L. Reyes and Teresita R. Manalo. Isabella Reyes passed away and Gallo S. Reyes subsequently remarried to Juliana Castro Reyes with whom he had several children, Joseph C. Reyes, Carmen C. Reyes, Anthony C. Reyes, and Dolores R. Clark.
5. Antonio S. Reyes and Carmen L.G. Reyes constructed a cattle fence on the Eastern half of Lot No. 514-NEW, which belonged to Gallo S. Reyes. The couple used Gallo S. Reyes' property to raise cattle for several years.

6. Antonio S. Reyes and Carmen L.G. Reyes also used a portion of Juan S. Reyes' share of As Lito for cattle grazing. The consideration for the use of Juan S. Reyes' lot was payment of one head of cattle to Juan S. Reyes each year.
  
7. No evidence was presented that a similar lease agreement was reached between Antonio S. Reyes and Gallo S. Reyes concerning the use of the Eastern one-half of Lot 514 NEW-3 in exchange for payment of one head of cattle per year. Rather, Gallo S. Reyes approached Antonio S. Reyes and his wife Carmen L.G. Reyes and offered to sell one-half of his interest in Lot Nos. 5 14 and 5 15 to Antonio S. Reyes. The one-half portion of Gallo S. Reyes wished to sell was the Eastern side of his share in the As Lito property which was adjacent to As Lito Road. Antonio S. Reyes accepted Gallo's offer to sell the As Lito property and Antonio S. Reyes and Carmen L.G. Reyes paid Gallo S. Reyes five hundred dollars (\$500.00) as consideration for the purchase of the property.
  
8. Gallo S. Reyes passed away on January 18, 1978.
  
9. On September 17, 1986, Antonio S. Reyes and the representative of Gallo S. Reyes, Joseph C. Reyes, executed a "Mutual Deed of Conveyance" (Mutual Deed) whereby Lot No. 5 14, containing an area of 17,092 square meters, was conveyed to Gallo S. Reyes' representative, Joseph C. Reyes. The Mutual Deed was executed in accordance with the orally expressed intention of Antonio C. Reyes that his interest in Lot No. 5 1 was to be distributed among his sons.<sup>1</sup>

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<sup>1</sup>In 1986, a survey was performed on the As Lito lots and the property was severed into four lots consisted with the purported *partida* distribution by Antonio C. Reyes. The Mutual Deed was then executed identifying Gallo S. Reyes' interest as being that of Lot No. 5 14-NEW-3 and Antonio C. Reyes' interest as being Lot No. 5 14-2.

10. Antonio S. Reyes passed away on June 1, 1988. He is survived by his wife Carmen L.G. Reyes. Jacinta Reyes Tydingco and Antonio L.G. Reyes are two of the children of Antonio S. Reyes.
11. Sometime in early 1997, Jacinta R. Tydingco entered the Eastern half of Lot No. 514 NEW-3 and constructed her residence consisting of a wood and tin house. Carmen L.G. Reyes authorized Jacinta R. Tydingco to build on Lot No. 514 NEW-3 because she claimed to have purchased the property from Gallo S. Reyes. Soon after Jacinta's entry, Joseph C. Reyes issued written notice on or about January 30, 1997, directing Jacinta R. Tydingco to vacate and quit the premises because she is trespassing on their family property.
12. Subsequently, around September 3, 1997, Joseph C. Reyes and his sisters Carmen and Dolores executed a Warranty Deed with the Division of Public Lands and Department of Lands and Natural Resources in which they received \$50,550.00. The money was consideration in exchange for conveyance of an area of 337 square meters of Lot No. 514 NEW-3 for the construction of As Lito Road. The two daughters of Gallo S. Reyes from the prior marriage to Isabella, Ana L. Reyes and Teresita R. Manalo, neither authorized the conveyance nor did they receive any of the proceeds from the \$50,550.00 received from the government in the exchange agreement. Ana L. Reyes and Teresita R. Manalo gave Joseph C. Reyes no authority to act on their behalf as the heirs of Gallo S. Reyes.

### III. CONCLUSIONS OF LAW

#### A. Quiet Title Action.

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. 260,265 (1995), see *also*

*Songao v. Commonwealth*, 4 N.M.I. 1816,189-1 **PO** 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.” *Commonwealth v. Augusto B. Atalig*, et al., Civil Action No. 96-0675 (N.M.I. **Super.Ct.** Aug. 3 I, 2000) (Decision and Order) citing *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. Cabreru*, 4 N.M.I. 133 (1994); *Rogolofoi v. Guerrero*, Civil Action No. 89-11149 (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).

B. Antonio C. Reyes’ Oral Expression of Intent to Transfer Interest to Sons/Partida.

Antonio C. Reyes owned certain **real** property located in As Lito, Saipan. During the course of his lifetime, Antonio C. Reyes orally expressed his intention that his interest in the real property situated in As Lito, Saipan, be distributed equally among his sons. This fact is uncontroverted. It was ‘understood by the parties that each of the four sons was to receive an equal share of Antonio C. Reyes’ real property located in As Lito, Saipan. Therefore, the issue as to whether the oral expression constituted **a partida** is not before the court and does not affect whether title should be quieted in favor of the heirs of Antonio S. Reyes or the heirs of Gallo S. Reyes.

C. The Oral Agreement to Transfer the Eastern Half of Lot No. 5 14 NEW-3 to Antonio S. Reyes.

The heirs of Antonio S. Reyes allege that **Gallo S. Reyes** approached Antonio S. Reyes and his wife Carmen L.G. Reyes, offering to sell one-half of his interest in Lot Nos. 5 14 and 5 15 to Antonio S. Reyes. The one-half portion of Gallo S. Reyes allegedly wished to sell was the Eastern side of his share in the As Lito property which was adjacent to As Lito Road. Gallo S. Reyes allegedly needed money to pay his debts and other obligations so that he wished to sell a portion of his share of the As Lito property in return for money. Antonio S. Reyes allegedly accepted Gallo’s offer to sell the As Lito property and Antonio S. Reyes and Carmen L.G. Reyes paid Gallo S. Reyes five hundred dollars (\$500.00) as consideration for the purchase of the property.

The heirs of Gallo S. Reyes, however, assert that the aforementioned purported oral conveyance never occurred. They contend that, if anything, any oral agreement between the parties involved the creation of an informal lease whereby Antonio S. Reyes was allowed to use the Eastern half of Lot No. 514 NEW-3 for pasture in exchange for a yearly payment of one cow. However, although credible evidence was presented that Antonio S. Reyes and Carmen L.G. Reyes entered into such a lease agreement with Juan S. Reyes, no such evidence was presented that a similar lease agreement was reached between Antonio S. Reyes and Gallo S. Reyes concerning the use of the Eastern one-half of Lot 5 14 NEW-3 in exchange for payment of one head of cattle per year.

1. Testimony in Support of Assertion that an Oral Conveyance Occurred.

Carmen L.G. Reyes, widow of Antonio S. Reyes, maintains that sometime after Isabella Reyes' death and well after World War II, Gallo S. Reyes approached her and her husband Antonio S. Reyes offering to sell the Eastern half of Lot No. 514 NEW-3 for \$500.00. Carmen L.G. Reyes stated that Gallo S. Reyes needed money because of his debts such as his power bills and other obligations. To pay Gallo S. Reyes for the land, Carmen L.G. Reyes states that she withdrew her savings from the bank and paid Gallo S. Reyes in cash.

Carmen L.G. Reyes, further maintains that no papers or documents were executed for the purchase of the property because it was a transaction between family and it was not an established practice at the time.

Carmen L. G. Reyes also contends that, after the oral conveyance, they built a fence and raised cattle on the As Lito property. Carmen L.G. Reyes maintains that they also raised cattle and built a fence on the property of Juan S. Reyes. The rental for their use of that property, Carmen L.G. Reyes states, was one head of cattle per year. As to Gallo S. Reyes' property, however, Carmen L.G. Reyes states that the property was purchased for \$500.00 and that **no** cattle were given to Gallo S. Reyes.

Carmen L.G. Reyes states that Gallo S. Reyes and his son Joseph C. Reyes appeared at their residence some years later and offered to return the \$500.00 to get **the** land back. Carmen L.G. Reyes testifies that she said that it was "*cochino*" (dirty) for Gallo S. Reyes to offer the money when Gallo had

sold the As Lito property to her and her husband Antonio. Carmen L.G. Reyes states that she **rejected** the offer of payment from Gallo.

Carmen L.G. Reyes claims no knowledge of the Mutual Deed executed by her husband and the other heirs of Antonio C. Reyes as to the As Lito property. Carmen L.G. Reyes states that in the years prior to his death in 1988, Antonio S. Reyes was often forgetful and absent-minded as to their affairs.

Antonio L.G. Reyes, son of Antonio S. and Carmen L.G. Reyes, testified that his father and mother had informed him that they had purchased Gallo's one-half of Lot No. 5 14 NEW-3 in As Lito for \$500.00. Antonio L. G. Reyes recalls his parents raising cattle on his father's share in the As Lito property, in the area they had purchased from Gallo adjacent to As Lito Road, and that the area belonging to Juan S. Reyes. Antonio L.G. Reyes maintains that his father and mother had stated to him that one-half of Gallo's share in As Lito belonged to their family because they bought it for \$500.00. Gallo offered to sell the property to his parents, Antonio L.G. Reyes testifies, because Gallo S. Reyes needed the money to pay for his debts and obligations.

Antonio L.G. Reyes maintains, with respect to the Mutual Deed purportedly signed by Antonio S. Reyes in 1986, that his father was suffering from memory losses and forgetfulness at the time. Antonio L.G. Reyes reports that his father often could not remember him as a son or remember what transpired a few minutes earlier.

Antonio L.G. Reyes also maintains that after his father's death in 1988, he had approached Joseph C. Reyes on numerous occasions to initiate probate proceedings in the estate of Gallo S. Reyes so that Antonio L.G. Reyes could assert his father's claim to one-half of the As Lito property but that Joseph C. Reyes never initiated the probate proceedings for Gallo S. Reyes because he insisted that the Mutual Deed proved that no oral conveyance had been made between Gallo S. Reyes and Antonio S. Reyes.

## 2. Testimony Against Assertion that Purported Oral Conveyance Occurred.

In his testimony, Joseph C. Reyes maintains that title to the Eastern half of Lot No. 5 14 NEW-3 adjacent to As Lito Road belongs to him and his siblings as the heirs of Gallo S. Reyes. Joseph

C. Reyes denies that Gallo S. Reyes sold one-half of Lot No. 514 NEW-3 to Antonio S. Reyes and Carmen L.G. Reyes for \$500.00. He maintains that his father Gallo S. Reyes stated that Antonio S. Reyes was using their property for cattle grazing in return for rental of one head of cattle per year. As to the Western portion of Lot No. 514 NEW-3, Joseph C. Reyes states that his aunt, Magdalena Reyes, had built a house on that portion but the house is now abandoned. In 1997, Joseph C. Reyes states that Jacinta R. Tydingco entered Lot No. 514 NEW-3 without any permission.

Joseph C. Reyes points to the Mutual Deed as support for his claim that Antonio Reyes never claimed the portion of Lot No. 514 NEW-3. Joseph C. Reyes, however, does not recall who prepared the Mutual Deed. According to Joseph C. Reyes, Antonio S. Reyes quitclaimed his interest in Lot No. 514 NEW-3 to Gallo S. Reyes (deceased) through Joseph Reyes as per *the partida* by Antonio C. Reyes. In his mind, Joseph C. Reyes has no doubt that Lot No. 514 NEW-3, including the Eastern one-half adjacent to As Lito Road, belonged to his father Gallo S. Reyes as *a partida* share from Antonio C. Reyes.

Carmen C. Reyes, daughter of Gallo S. Reyes, maintains that Gallo S. Reyes had never stated to her that he had sold one-half of Lot No. 514 NEW-3 to Antonio S. Reyes and Carmen L.G. Reyes. Carmen C. Reyes states that it was always her “understanding” that Antonio S. Reyes put up the fence and used Gallo S. Reyes’ property to raise cattle in return for one cow per year.

Carmen C. Reyes further claims that she has no interest in Lot No. 514 NEW-3 because her father Gallo had always stated that the As Lito property was for her two brothers. Carmen does not dispute having executed documents conveying a portion of the As Lito property to the government. Carmen C. Reyes had no recollection of having executed a document or the date she signed a document transferring their interest to the government. Carmen C. Reyes, however, does acknowledge having received a share of the proceeds from the transfer of the As Lito property despite not claiming any interest in that property.

### 3. Conclusion of the Court Regarding Existence and Validity of Oral Conveyance.

Oral conveyances of land are admissible if made prior to October 28, 1983, the effective date of the NMI Statute of Frauds. *Guerrero v. Guerrero*, 2 N.M.I. 61, 71 (1991), see also 2 CMC §§

491 1-491 6. “Oral conveyances of land, unless later confirmed in writing, must necessarily be proved by oral testimony.” *Guerrero v. Guerrero*, 2 N.M.I. 61, 71 (1991). “Where the grantor has died, hearsay testimony may be the only evidence available.” *Id.* “Otherwise, there would be no other way that one could establish oral conveyances.” *Id.*

Here, the court finds that a valid oral conveyance was completed and that Gallo S. Reyes offered to sell one-half of his interest in Lot Nos. 5 14 and 5 15 to Antonio S. Reyes and Carmen L.G. Reyes in exchange for consideration in the amount of \$500.00 and that Antonio S. Reyes and Carmen L.G. Reyes did in fact pay \$500.00 for the exclusive right to possess and own the Eastern half of Lot No. 5 14 NEW-3. The court finds that no testimony was presented that Gallo S. Reyes ever entered into a lease agreement with Antonio S. Reyes and Carmen L.G. Reyes concerning the use of the Eastern one-half of Lot 514 NEW-3 in exchange for payment of one head of cattle per year because no evidence was presented that Gallo S. Reyes ever received any cattle.

D. Validity of Mutual Deed.

The Mutual Deed purports to be a conveyance and distribution of the As Lito property of Antonio C. Reyes to his four sons. At the time of the “Mutual Deed of Conveyance,” only Antonio S. Reyes was living and Gallo S. Reyes, William S. Reyes and Juan S. Reyes were all deceased. The Mutual Deed purports to convey and distribute interest in the As Lito property, through the mutual assent of the “entitled heirs,” without a probate of the estate of Antonio C. Reyes.

Further, not all the heirs of the deceased sons signed the Mutual Deed, such as Ana L. Reyes and Teresita R. Manalo, the daughters of Gallo S. Reyes. Another defect in the Mutual Deed is that Antonio S. Reyes distributed shares of the As Lito property to sons who were already deceased but supposedly represented by their elder sons. For example, Lot No. 5 14 NEW-3 was distributed to Gallo S. Reyes, who was already deceased, rather than to his estate.

The question for the court then becomes what is the effect, if any, of the Mutual Deed? The analysis begins with the question of which law applies: the Chamorro custom of land distribution known as *partida*, or the provisions of the Probate Code 8 CMC § 2101. *See In Re Estate of Cabrera*,

2 N.M.I. 195 (1991). Under the Probate Code at 8 CMC § 2102, it states that the property of persons who die before February 15, 1984, shall pass according to Title 13 of the Trust Territory Code and other applicable law.

Under 1 TTC § 102, recognized customary law of the people of the Trust Territory shall have the full force and effect of law. *Cabrera, supra* at 204. A *partida* is the distribution of family land holdings under Chamorro custom. See *In re Estate of Deleon Castro*, 4 N.M.I. 102 (1994). Generally, a *partida* occurs when the father calls the entire family together and outlines the division of the property among his children. *Id.* at 110.

In the instant case, it is not established that Antonio C. Reyes did in fact conduct a *partida* of the As Lito property. There is absolutely no testimony from Joseph C. Reyes or any other heir or child of Antonio C. Reyes that the distribution of the As Lito property was pursuant to Antonio C. Reyes' "last wish." Further, there was no authentication of the Mutual Deed inasmuch as Joseph C. Reyes did not know who prepared the Mutual Deed and therefore one cannot determine whether the recitations in the Mutual Deed authenticate the verbal wish of Antonio C. Reyes.

Also important is the fact that the heirs of Antonio C. Reyes, through the Mutual Deed, were conducting a private probate proceeding with many defects. One defect of the Mutual Deed, however, is that not all the heirs of Antonio C. Reyes assented to the Mutual Deed. For example, the heirs of the female children, such as Magdalena and the two daughters of Gallo s. Reyes, Ana and Teresita, did not sign the Mutual Deed. Another defect of the Mutual Deed is that the document does not identify the property or area that Antonio C. Reyes supposedly distributed *bypartida* and to which son. In fact, the signatories to the Mutual Deed are in essence distributing someone else's property among themselves. See, *In re Estate of Rangamar*, 4 N.M.I. 72 (1993) (mere agreement to new ways of doing things by those benefitted without the consent of those to be adversely affected will not work a sudden change of customary law). The greatest defect is that the property being distributed in the Mutual Deed is being quitclaimed and conveyed to deceased persons, such as Gallo S. Reyes, rather than to the estate of Gallo S. Reyes. The signatories and parties to the Mutual Deed cannot change customary law by executing a Mutual Deed. For the foregoing reasons, the Mutual Deed is defective and has no legal significance with respect to the present action. The present action is a Quiet Title action as between the heirs of

Gallo S. Reyes and the heirs of Antonio S. Reyes with respect to Gallo S. Reyes' share of the As Lito property. The testimony of all witnesses is clear as to the intended distribution of the Western half of Lot No, 5 14 NEW-3. However, the question as to the Eastern half of Lot No. 5 14 NEW-3 is whether the heirs of Antonio S. Reyes have superior title over the heirs of Gallo S. Reyes due to a purported oral conveyance of the property. The Mutual Deed does not have any bearing on the present Quiet Title Action.

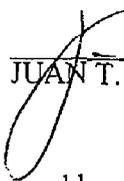
E. Quiet Title to the Eastern Half of Lot No. 514 NEW-3.

Subject to a determination in probate proceedings involving the estates of Antonio S. Reyes and Gallo S. Reyes, the court finds that the heirs of Antonio S. Reyes have superior title in the Eastern half of Lot No. 514 NEW-3. The testimony of Antonio L.G. Reyes and Carmen C. Reyes is credible testimony which clearly and convincingly establishes that Gallo S. Reyes orally conveyed the Eastern half of Lot No. 514 NEW-3 to Antonio S. Reyes and Carmen C. Reyes. As such, **in the context of** the present action but subject to further probate proceedings involving the estates of Antonio S. Reyes and Gallo S. Reyes, the court hereby declares that the heirs of Antonio S. Reyes are entitled to exclusive title, possession and control of the Eastern half of Lot No. 5 14 NEW-3 and shall be permitted to enter and use the Eastern one-half of Lot No. 5 14 NEW-3 until such time as the probate proceedings are completed.

F. Remedy for the Heirs of Antonio S. Reyes.

Neither the estate of Antonio S. Reyes nor the estate of Gallo S. Reyes have been probated. As such, any claim that the heirs of Gallo S. Reyes have against the estate of Antonio S. Reyes must be pursued in the context of probate actions involving the estates of Antonio S. Reyes and Gallo S. Reyes.

SO ORDERED this 27 day of November, 2001.

  
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JUAN T. LIZAMA, Associate Judge