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FOR PUBLICATION

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

BANK OF GUAM,
 Plaintiff,

 v.

OSCAR B. CAMACHO, Individually, OSCAR B.
CAMACHO, as Administrator of the Estate of)
ANTONIO TAITINGFONG CAMACHO,)
NORBERT CAMACHO, JESUS CASTRO,)
LUIS T. CAMACHO, VINCENTE T. CAMACHO,))
TOMASA CAMACHO, and MARIANAS)
PRINTING SERVICE, INC.,)

 Defendants.)

CIVIL ACTION NO. 01-0271

ORDER

I. PROCEDURAL BACKGROUND

This matter came on for a bench trial on April 12, 2002. G. Anthony Long, Esq. appeared on behalf of Defendants Marianas Printing Service, Inc. [hereinafter M.P.S.], Luis T. Camacho [hereinafter Luis], Vincente T. Camacho [hereinafter Vincente], and Tomasa Camacho. Joseph A. Arriola, Esq. appeared on behalf of Defendant Oscar B. Camacho, individually, and in his capacity as Administrator of the Estate of Antonio Taitingfong Camacho [hereinafter Antonio]. Having heard the arguments of counsel and considered all evidence, the Court now renders its written opinion.

II. FACTS

1 On April 30, 1976, Articles of Incorporation and the By-Laws of Marianas Printing Service,
2 Inc. were filed with the government. The Articles and the By-Laws of M.P.S. are typical of those
3 found in a "close" or "family" corporation. Provision (5) of the Articles provided that M.P.S. would
4 issue 1,500 shares of common stock with a par value of one dollar per share. Provision (9) stated that
5 such stock was not owned by the corporation, but would be offered *pro-rata* to the then-existing
6 stockholders of the corporation in relation to the then-current holdings, but if such stockholder did not
7 purchase the stock within thirty days, the stock would be offered back to the corporation. The
8 By-Laws, Section (2), further delineated procedures of how future transfers of stock would be
9 handled. These restrictions are commonly called "right of first refusal" provisions.

10 An Affidavit signed by the officers, Vincente (President), Luis (Vice-President), and Antonio
11 (Secretary, Treasurer) was filed the same day, reaffirming the issuance of 1,500 shares, but also stated
12 that presently "no person has subscribed to the stock" and "the Corporation presently has no paid-in
13 capital or capital surplus, and that none has been paid to the corporation." See Affidavit at 3-4 (April
14 30, 1976). The above officers were also listed as directors of M.P.S. in the Articles of Incorporation.
15 The Articles of Incorporation, By-Laws, and Affidavit were all filed on April 30, 1976, all having the
16 signature of Antonio, Luis, and Vincente as directors, incorporators, and officers.

17 Although detailed provisions in both the Articles and the By-Laws govern the issuance of stock
18 and its subsequent disposition, there is no evidence that such stock was ever issued or paid for. There
19 were no stock transfer books or certificates, and both parties stipulate that no stock was ever paid in.
20 M.P.S. started doing business with the three original incorporators contributing to the corporation:
21 Vincente contributed services of sales and management for approximately four or five years before
22 leaving to different employment; Luis gave testimony of contributing \$12,000 for the purchase of some
23 necessary equipment, and also of sharing his printing expertise with the newly formed corporation;
24 Antonio, in addition to being M.P.S.'s original secretary and treasurer, performed much of the actual
25 printing work being paid an hourly wage, and later received a salary. As time went by, the record
26 shows that Antonio performed most of the day to day operations of M.P.S.

27 A close examination of the corporate reports filed by M.P.S. with the CNMI Registrar of
28 Corporations reveals another story. On the reports dated 1983-85 Antonio is listed as the contact

1 person, and he affirmed that annual stockholders meetings had been held on January 31 of each year,
2 although there is no evidence of any minutes. All three reports also state that no stock had been
3 authorized or issued. The reports also show no officers, shareholders, or paid-in capital stock. A report
4 filed for 1986 is identical, except that it lists Luis as President of M.P.S. *See* Def.'s Exs. 6 and 7.

5 On September 22, 1995, the Registrar of Corporations filed a Notice of Administrative
6 Dissolution regarding M.P.S., for failure to file the required annual corporate reports. *See* Def.'s Ex. 8.
7 To be reinstated, corporate reports for the years 1987-94 were retroactively filed on December 13,
8 1995, by Antonio. All reports list Vincente, Luis, and Antonio as directors. Antonio was listed as
9 President/Secretary/Treasurer and Luis as Vice-President. All retroactive reports were signed solely by
10 Antonio, designating himself as President/General Manager. *See* Def.'s Exs. 9- 16. *More importantly,*
11 *on every report, Antonio lists himself as one hundred percent owner of M.P.S., being the sole*
12 *shareholder of 1,500 common shares.* On December 14, 1995, the CNMI Registrar of Corporations
13 issued a *Certificate of Reinstatement* to M.P.S. *See* Def.'s Ex. 20. The annual reports filed with the
14 Registrar from 1995-98 were identical to those filed for 1987-94, listing the same directors, officers,
15 and again, Antonio as sole owner of all authorized shares.

16 Finally, the Registrar of Corporations dissolved M.P.S. on October 5, 2000, for failure to file its
17 annual report for 1999. A retroactive report was filed on December 6, 2000, still listing Antonio, Luis,
18 and Vincente as directors, but the officers had changed. Now, Antonio was President, Luis,
19 Vice-President, and Vincente, Secretary/Treasurer. *The most significant change, however, was all*
20 *1,500 shares were now listed as owned by Marianas Printing Service Inc., not Antonio T.*
21 *Camacho. See* Def.'s Ex. 23.

22 The current action to determine the rightful shareholders came on May 9, 2001, when the Bank of
23 Guam filed a complaint, requesting to be permitted to pay the account balances of M.P.S. to the Clerk
24 of Court, and to be relieved and discharged from any further liability. The Bank claims that internal
25 disputes have arisen as to who was lawfully authorized to make withdrawals or to draw checks from
26 the accounts in question. Two separate, newly elected, Boards of Directors had sent the Bank different
27 lists as to who would be authorized to make such withdrawals. The branch manager, having received
28 conflicting reports, took reasonable action to protect M.P.S.'s assets.

1 **III. ISSUES**

2 1. Whether or not Marianas Printing Service, Inc. is a lawful corporation under the laws of the
3 CNMI, even though no authorized capital stock was ever paid-in with cash.

4 2. Whether the transfers of shares to Antonio or to M.P.S. were done in accordance with
5 corporation law as it pertains to "closely-held" corporations.

6 **IV. ANALYSIS**

7 **A. M.P.S. is a *de jure* corporation in the CMNI**

8 "Closely-held" or "family" corporations generally must comply with the same incorporation
9 formalities that are required of publically held corporations. In 1976, when M.P.S. first filed its Articles
10 of Incorporation, 37 TTC § 3 governed the application process for corporations, and required the
11 following information in the articles of incorporation:

- 12 (a) Proposed name of the corporation.
- 13 (b) Principal office or place of business.
- 14 (c) Proposed duration.
- 15 (d) Purposes.
- 16 (e) Powers.
- 17 (f) Capitalization.
- 18 (g) Names of incorporators.
- 19 (h) Number of directors, which shall be not less than three, and
proposed officers.
- 20 (i) Names of directors and officers to serve until first election.
- 21 (j) Provisions for management, if any.
- 22 (k) Provisions for voting by members.
- 23 (l) Provisions for shareholding; if any.
- 24 (m) Disposition of financial surplus.
- 25 (n) Provisions for liquidation.
- 26 (o) Provisions for amendment of articles of incorporation.
- 27 (2) In addition to the articles of incorporation, persons seeking a charter as a
28 corporation shall submit for the approval of the High Commissioner proposed
by-laws governing the operation of the corporation.

37 TTC § 3 (1970).

23 The Articles of Incorporation and By-Laws filed by M.P.S. on April 30, 1976 substantially
24 complied with all of the above requirements with the exception of subparagraph
25 (1)(f), regarding capitalization. Trust Territory Corporations, Partnerships and Associations Regulation
26 § 2.7 specifically addressed the problem of undercapitalization:

27 No corporation . . . [shall] engage in business . . . until three-fourths of its
28 authorized capital stock has been subscribed for nor until ten percent of its

1 authorized capital stock has been paid in by the acquisition of cash or by the
2 acquisition of property of a value equal to ten percent of the authorized capital
3 stock . . . in no case . . . shall any corporation . . . engage in business . . . until
4 not less than \$1,000 of its authorized capital stock has been paid in by . . . cash
5 or by the acquisition of property of a net value of not less than \$1,000.

6 Trust Territory Corporations, Partnerships and Associations Regulations, 1 Territorial Reg. 5 (July 15,
7 1974) [hereinafter T.T. Corp. Regs.].

8 A printing business, such as M.P.S., would be hard-pressed to start without the proper capital
9 investment. The cost of the machinery alone, required to start up an enterprise such as this, would far
10 exceed the capitalization requirements of T.T. Corp. Regs. To say that there was no capital investment
11 would be to negate the existence of a business that has been operating for twenty-six years. The Court
12 finds that Luis, Vincente, and Antonio each contributed to the initial capitalization of M.P.S. with
13 in-kind contributions of money, services, labor and expertise. At the outset, they substantially complied
14 with corporate reporting regulations, held themselves out as a corporation, and paid taxes as a
15 corporation. The Court finds that when Marianas Printing Service, Inc. was formed, in 1976, Vincente,
16 Luis and Antonio were each one-third shareholders in this family corporation. This Court also finds that
17 Marianas Printing Service, Inc. is a *de jure* corporation in the Commonwealth, even though it did not
18 strictly comply with the capitalization requirements of the T.T. Corp. Regs. § 2.7.

19 **B. Antonio's transfer of shares to himself is void**

20 Relationships among shareholders of closely-held corporations have been held to a higher
21 fiduciary standard than is recognized in other corporations, sometimes by analogy to partnership law.
22 *See Cook v. Fresh Express Foods Corp.*, 7 P.3d 717 (Or. Ct. App. 2000). In finding that a
23 controlling shareholder in a closely-held corporation has breached his fiduciary duties to fellow
24 shareholders, courts will look not so much to match specific facts of one case to another, but examine
25 the intent and whole pattern of the breaches over time. *See Chiles v. Robertson*, 767 P.2d 903 (Or.
26 Ct. App. 1989) *modified by*, 774 P.2d 500 (Or. Ct. App. 1989). In this case, there is some evidence
27 that a family dispute may have precipitated the tension among the shareholders. This is not a unique
28 situation in a family-held business, and is exactly why the law demands a higher fiduciary standard than
in publically held corporations.

1 In the instant case, there is manifest evidence that Antonio filed corporate reports that were
2 inaccurate. We have no evidence of what was filed before 1983, but from that point on, the veracity of
3 the data in the reports was questionable. *See Facts supra*. Just as important in what is revealed in the
4 reports, is what is *not* revealed. There is no evidence that there were ever shareholder or board
5 meetings, as required by law, to elect officers or to ratify the transfer of shares. Based on the record as
6 a whole, the Court finds that the transfer of the 1,500 shares to Antonio T. Camacho, as reflected in the
7 corporate reports for the years 1987-94, is void. For the same reasons as stated above, the transfer of
8 1,500 shares to Marianas Printing Service, Inc., as reflected in the 1999 corporate report, is also void
9 *ab initio*. The shares are owned as follows: The Estate of Antonio T. Camacho (500 shares), Vincente
10 T. Camacho (500 shares), and Luis T. Camacho (500 shares).

11 **V. CONCLUSION**

12 There is no doubt that Antonio's hard work and perseverance substantially contributed to the
13 success of M.P.S. While it is true that he almost single-handedly controlled and managed the
14 corporation for its financial growth and benefit over the years, it cannot be denied that he and his family
15 also enjoyed the benefit of the income produced thereby. In corporate law, control and management
16 does not automatically translate into one hundred percent ownership. When M.P.S. was formed, there
17 were three brothers who invested time, money, and expertise in a common business venture for profit,
18 The law protects the interests of corporate investors whether they are related to one another or not.
19 Perhaps now that the issue of ownership has been decided, the family will leave old disputes behind
20 and forge ahead to even more profitable future for M.P.S. in compliance with the law, and with each
21 other.

22 The Court hereby ORDERS that stock certificates shall be issued reflecting the ownership as
23 outlined in Part IV(B) of this opinion. At the earliest possible time, not to exceed thirty days, the
24 stockholders shall have a meeting, with minutes taken, to elect directors. When directors have been
25 duly elected, they shall immediately have a board meeting to appoint officers. The board of directors
26 also shall ascertain all past actions taken unilaterally by Antonio affecting M.P.S. in regards to capital
27 improvements, purchases of property and assets, liabilities incurred, and shall ratify such actions by
28 majority vote, with the exception of the transfer of stock to Antonio, and the transfer of stock to M.P.S.

1 The board shall take these actions with the proper procedures, records, and in accordance with law.
2 Such actions are necessary for the corporation to sue and be sued at law, and for the owners to
3 continue to enjoy limited liability. When these actions have been taken, Marianas Printing Service, Inc.
4 shall be removed from receivership.

5
6 SO ORDERED this 15th day of July 2002.

7
8 /s/ Juan T. Lizama
9 JUAN T. LIZAMA, Associate Judge

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