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2 **For Publication**

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

6 **MARIA DLC. CAMACHO, ANTONIO**) **CIVIL CASE NO. 03- 0502D**
7 **CH. CAMACHO, VICTORIA DELA CRUZ,**)
8 **and EUGENIA DEMAPAN DELA CRUZ,**)
9 **Plaintiffs,**) **ORDER GRANTING IN PART**
10 **v.**) **PLAINTIFFS' MOTION FOR**
11 **JOSE S. DEMAPAN,**) **SUMMARY JUDGMENT**
12 **Defendant.**) **AND GRANTING PLAINTIFFS'**
13) **MOTION TO DISMISS**
14) **DEFENDANT'S**
15) **COUNTERCLAIM**
16)
17)
18)
19)
20)
21)

22 On November 22, 2005, this Court heard arguments on Plaintiffs' motions for summary
23 judgment and to dismiss Defendant's counterclaim. Appearing at oral arguments and/or on the briefs
24 were: Timothy Bellas for Plaintiffs Maria Camacho, Antonio Camacho, Victoria Dela Cruz, and
25 Eugenia Dela Cruz ("Eugenia"); and Antonio M. Atalig for Defendant Jose Demapan ("Defendant").
26 Having carefully considered the pleadings and the arguments of counsel, the Court is now prepared
27 to rule.

28 **I. FACTUAL AND PROCEDURAL BACKGROUND**

Ana DLG Demapan ("Ana") was the mother of Eugenia, Gregorio Demapan ("Gregorio"),
and Sister Asuncion Demapan ("Asuncion"). In the thirteen years prior to her death, Ana lived
mostly with Eugenia and her husband, Cristin Dela Cruz ("Cristin"). Ana also spent several periods
living with Gregorio.

Asuncion took the vows of poverty of a nun in the early 1950s, such that she was unable to

1 own land in her own name.

2 On July 24, 1959, Cristin purchased Lot 835, containing 19,040 square meters, from Ana for
3 \$300. Cristin gave this money directly to Eugenia's brother, Gregorio, prior to Ana's endorsement
4 of the deed. Ana endorsed the deed by her thumb print in front of a witness one week later.
5

6 On July 1, 1968, Eugenia and Cristin leased Lot 8, Block 36, containing 708 square meters,
7 to Tabea Omengebar for 15 years at \$50 per year.

8 Ana DLG Demapan died July 9, 1969.

9 On August 14, 1973, Eugenia and Cristin sold Lot 312-1 (part of Lot 312), containing 1396
10 square meters, to Francisco Cabrera for \$1,500.
11

12 On February 11, 1974, Cristin executed a deed of gift of lot 312-2 (part of Lot 312 containing
13 838 square meters) to his daughter, Victoria Dela Cruz.

14 On April 5, 1974, Cristin sold Lot 312-3 (part of lot 312) to Rosalia Palting for \$7,000.

15 On October 17, 1974, Cristin sold part of Lot 313A (1319 square meters) to Angelina Farley
16 for \$7,000. Cristin amended the record on February 20, 1976, in order to grant purchaser a warranty
17 deed.
18

19 On April 25, 1975, Cristin sold 1570 square meters of Lot EA 835 to Manuel Sablan for
20 \$4,000.

21 On April 18, 1983, Eugenia and Cristin executed a Deed of Gift for Lot 312-2, containing
22 838 square meters, to their daughter, Plaintiff Maria DLC Camacho.
23

24 On June 16, 1983, Gregorio and Asuncion quitclaimed their interest Lot 313, containing
25 6,502 acres, which they acknowledged as their share of their mother's inheritance, to Eugenia. The
26 quitclaim states that Gregorio, Asuncion, and Eugenia are the only heirs to Ana DLG Demapan's
27 estate.
28

1 On June 22, 1983, Eugenia and Cristin consolidated Lot EA 835 and Lot 313 into Lot 313
2 New.

3 On September 9, 1983, Cristin and Eugenia executed a quitclaim of Lot 313-New 2 , part of
4 Lot 313 New, and an easement over Lot 313-RW to Gregorio Demapan. In return (as stated in the
5 same deed), Gregorio quitclaimed Lots 312-RW, 312-R1, and 312-1, containing 13,401 square
6 meters, to Eugenia.
7

8 On February 4, 1984, Eugenia and Cristin executed a warranty deed of Lot 70D-52 (706
9 square meters) to Roman Palacios, Ana Sablan, and Clarence Tenorio for \$25,000.
10

11 On October 20, 1988 Eugenia and Cristin executed a quitclaim, to their niece, Ana S.
12 Demapan, of Lot 313-New 11, part of Lot 313 New, and an easement over Lot 313- RW. In return
13 (as stated in the same deed), Ana quitclaimed Lots 312-RW, 312-R1, and 312-1, containing 13, 401
14 square meters, to Eugenia.

15 In 1990, Maria (Eugenia's daughter) and her husband Antonio Camacho attempted to use
16 Lot 313 New-13 as collateral for refinancing a loan with Union Bank.
17

18 At the October 15, 1991, hearing for the probate of Ana DLG Demapan's estate, the
19 administrator described the only real assets of the estate as Lot Nos. 312-RW (551 square meters),
20 312-R1 (8,965 square meters), 312-1 (3,885square meters), 313 (6,502 square meters), and EA 835
21 (19,040 square meters). Throughout the proceedings, the decedent was referred to as Ana Deleon
22 Guerrero rather than Ana DLG Demapan. The only heirs named were Eugenia, Asuncion, and
23 Gregorio.
24

25 On October 19, 1991, Gregorio and Asuncion, through Counsel Antonio Atalig, objected to
26 the proposed distribution of Ana DLG Demapan's estate. Gregorio and Asuncion claimed that
27 Eugenia had represented to them at the time they executed the Quitclaim Deeds in 1983 that the
28

1 deeds were granted for mortgages or collateral to secure a loan. Gregorio and Asuncion alleged that
2 they were entitled to recover the property they had quitclaimed. They also claimed that the sale of
3 EA 835 from Ana DLG Demapan to Cristin was invalid.
4

5 On November 14, 1991, the probate court issued its decree of final distribution of the estate.
6 The court did not adjudicate Gregorio's and Asuncion's claims, finding that the probate court was
7 an inappropriate arena to raise claims of fraud and invalid transactions involving parties not before
8 the court. Gregorio and Asuncion did not file an appeal and took no further action until the instant
9 case.
10

11 On June 12, 1992, Gregorio and Asuncion both executed quitclaims to Jose Demapan of Lot
12 Nos. 312-RW (551 square meters), 312-R1 (8,965 square meters), 312-1 (3,885 square meters), 313
13 (6,502 square meters), and EA 835 (19,040 square meters). These were the same lots (minus Lot
14 313) described as Ana DLG Demapan's real assets in the probate case. As stated above, Gregorio
15 had previously quitclaimed Lots 312-RW, 312-R1, and 312-1 to Eugenia.
16

17 On October 17, 2003, Plaintiffs brought suit against the Defendant to quiet title to Lots 312
18 -RW, 312-R1, 312-1, 313, and E.A. 835. The complaint also alleged slander to title.
19

20 On November 7, 2003, Defendant filed his Answer and Counterclaims.

21 On January 14, 2005, Plaintiffs filed their First Amended Complaint.

22 On February 14, 2005, Defendant filed his First Amended Answer and Counterclaims to
23 Plaintiffs' First Amended Complaint.
24

25 On February 23, 2005, Plaintiffs filed a Motion to Dismiss Defendant's Counterclaim and
26 Affirmative Defenses.
27

28 On June 27, 2005, the Court granted Plaintiffs' Motion to Dismiss Defendant's First
Amended Counterclaim without prejudice, and required the Defendant to file a Second Amended

1 Counterclaim. The Court did not strike Defendant’s affirmative defenses.

2 On July 13, 2005, Defendant filed a Second Amended Complaint.

3 Litigation paused as counsel for both sides waged a battle of motions for default judgment
4 and sanctions. The parties have since lain to rest their procedural assaults.
5

6 On October 6, 2005, Plaintiffs filed their Motion to Dismiss the Second Amended Complaint
7 and a Motion for Summary Judgment. It is on these motions that the Court now rules.

8 II. ANALYSIS OF DEFENDANT’S CLAIMS

9 A. Defendant, the purchaser of the subject property, does not have standing to litigate an 10 alleged fraud perpetrated upon prior sellers of said property.

11 Defendant’s Opposition to Plaintiffs’ Motion to Dismiss at 2 suggests that Defendant has
12 standing to litigate the rights of Gregorio and Asuncion by virtue of the quitclaim deeds executed
13 to him by Gregorio and Asuncion. The quitclaims purport to grant Defendant a fee simple interest
14 in the subject property “together with all right, title and interest” of Asuncion and Gregorio.
15

16 A quitclaim deed is a “deed that conveys a grantor's complete interest or claim in certain real
17 property but that neither warrants nor professes that the title is valid.” BLACK'S LAW DICTIONARY
18 (8th ed. 2004). “Such a deed in no way obligates the grantor. If he has no interest, none will be
19 conveyed. . . . A seller who knows that his title is bad or who does not know whether his title is good
20 or bad usually uses a quitclaim deed in conveying.” ROBERT KRATOVIL, REAL ESTATE LAW 49 (6th
21 ed. 1974). Thus, if Asuncion and Gregorio had nothing to convey, then Defendant would be left
22 with nothing - - not even a right of action against his grantors.¹
23

24 The rights that Asuncion and Gregorio could have conveyed are unclear. Eugenia never
25 signed a contract promising Asuncion and Gregorio a plot of land at some future time. Even if
26

27 ¹ Compare to a warranty deed, which expressly guarantees the grantor’s good, clear title and contains
28 covenants concerning the quality of title, including warranties of seisin, quiet enjoyment, right to convey, freedom
from encumbrances, and defense of title against all claims. BLACK’S LAW DICTIONARY (8t h ed. 2004).

1 Eugenia *had* made an oral promise to convey land, Asuncion and Gregorio would have no
2 enforceable rights. Under the Statute of Frauds, a transfer of an interest in land for more than one
3 year must be put in writing. 2 CMC §§ 4912, *et seq.*
4

5 Assuming that Asuncion and Gregorio had a right to sue Eugenia on grounds of fraud (a
6 tort), this right would not pass to Jose Demapan by virtue of the quitclaim. Fraud is a personal right
7 belonging only to the person upon whom it is committed and those in privity with that person. *See*
8 RESTATEMENT SECOND OF TORTS §§ 531 (1977). Injury caused by fraud in the sale of land does
9 not run with the land - - a subsequent grantee has no right of action for fraud. *Walker v. Choate*, 14
10 S.W.2d 406 (Ky. App. 1929). *See also Ayers v. Ackerman*, 324 F. Supp. 814, 816 (D.S.C. 1971);
11 *Davis v. Travis*, 52 P.2d 72 (Okla. 1935) (where a party has waived or omitted to exercise the right
12 to institute proceedings to recover lands of which he has been defrauded, such right does not inure
13 to the benefit of subsequent purchasers).
14

15 Thus, Defendant does not have standing to litigate an allegedly fraudulent quitclaim from
16 Gregorio and Asuncion to their sister Eugenia. Nor does he have standing to litigate the 1959 sale,
17 whose connection is even more tenuous to Defendant's own quitclaim.
18

19 **B. The statute of limitations on Defendant's claims has expired.**

20 1. The statute of limitations for a tort action has expired.

21 Defendant alleges fraud with respect to the 1959 sale of land from Ana DLG Demapan to
22 Cristin and the 1983 quitclaim deeds from Gregorio and Asuncion to Eugenia. Misrepresentation
23 or fraud is normally classified as a tort. *See* RESTATEMENT SECOND OF TORTS, § 525.² The statute
24 of limitations for tort claims is two years. 7 CMC § 2503. The CNMI Supreme Court has ruled in
25
26

27
28 ² Under CNMI law, where there is no statutory or customary law on a subject, the Restatements of Law
apply. 7 CMC § 3401; *Pangeinan v. Itaman*, 4 N.M.I. 114, 118 (1994).

1 *Zhang Gui Juan v. Commonwealth*, 2001 MP 18 ¶ 26, that this is the applicable statute of limitation
2 for all tort actions. Based on Defendant’s pleadings, the alleged misrepresentation made to Gregorio
3 and Asuncion must have taken place on some unspecified date prior to the execution of the quitclaim
4 deeds in 1983 (more than twenty years prior to the suit). Any fraud associated with the 1959 deed
5 of sale would have occurred 44 years ago. Thus, the two-year limit for the fraud claims has expired.
6

7 The category of action to which “Sale, Buy, or Lease of Properties without Other Heirs
8 Consent” and “Name of Decedent in Complaint in Error” belong is unclear. If these allegations
9 amount to deliberate or negligent misrepresentations, then they would also be foreclosed by the two-
10 year limit.
11

12 2. The statute of limitations for recovery of land does not apply.

13 An examination of the dates stated in Defendant’s Counterclaim (¶ 13-1974, ¶ 14-1974, ¶
14 15-1975, ¶ 16-1973, ¶ 17-1976, ¶ 18-1968, ¶ 19-1974, and ¶ 20-1984) reveals that all but one of the
15 conveyances are more than twenty years old. The sole exception is the February 4, 1984, deed of
16 Lot 70D-52 (706 square meters) to Roman Palacios, Ana Sablan, and Clarence Tenorio for \$25,000.
17 The application of the 20-year statute of limitations for land transactions, 7 CMC § 2502, would
18 only preserve the allegations pertaining to this February 4, 1984 sale.
19

20 However, the Court is not inclined to construe “Sale, Buy, or Lease of Properties without
21 Other Heirs Consent” as a claim for the recovery of the land, which the 20-year limitation would
22 preserve. The claim does not fall into the limited category of actions to which the 20-year limitation
23 generally applies.³ A review of CMNI jurisprudence failed to uncover any case in which such a
24

25
26 ³ Most claims for recovery of land arise from the unique situation of land transfers in the Northern Mariana
27 Islands. World War II destroyed official land records as well as monuments delineating land boundaries in many
28 parts of the Northern Mariana Islands, such that there were no records determining which lands were public or
private. After the war, many formerly private lots escheated to the Trust Territory of the Pacific Islands. *See Rios v.*
Marianas Pub. Land Corp., 3 N.M.I. 514 (1992). Under Trust Territory Code, any cause of action (for land or
otherwise) existing on May 28, 1951 was considered to have accrued on that date. 6 TTC § 310 (1970). Claimants

1 cause of action was adjudicated at all, much less using the 20-year limitation period.

2 3. The statute of limitations has not tolled.

3 Defendant contends that the statute of limitations was tolled, because he only discovered the
4 alleged fraud sometime in 2002. Defendant's Opposition to Plaintiffs' Motion to Dismiss at 3.
5 Commonwealth law tolls the statute of limitations in certain circumstances. For instance, if
6 Defendant could show that Plaintiffs fraudulently concealed the cause of action from him, then
7 Defendant would be entitled to bring his action after having had a reasonable opportunity to discover
8 the cause of action. *See* 7 CMC § 2509. Further, if Defendant were disabled or could show that
9 Plaintiffs had left the jurisdiction, he would have grounds for tolling the statute of limitations. *See*
10 7 CMC §§ 2506, 2508. However, Defendant has not even alleged a reason for the delay in
11 discovery.
12

13
14 The facts suggest that there is no circumstance justifying the tolling. None of the
15 transactions were done in secret. They were all notarized and recorded. Some of the documents
16 state that they were translated to the grantors by the Notary on Saipan before they were signed.
17 Eugenia exercised dominion and control over the property that she acquired. In fact, prior to the
18 execution and delivery of the 1983 Quitclaim Deeds by Gregorio and Asuncion, Lot 313 was
19 subdivided. Among the lots that were created based on this survey were lots 313-New-2 and 313-

20
21 _____
22 had 20 years from the accrual date to sue for recovery of land. 6 TTC § 302. The defendant in these cases was the
23 Trust Territory, and later the Marianas Public Land Corporation (which succeeded as title trustee to all public land in
the Northern Marianas at the inception of the Commonwealth Government in 1978). *See* 3 N.M.I. 514.

24 The only other type of action in which the 20-year statute of limitations has been applied in this jurisdiction is
25 the quiet-title action. *See Teregeyo v. Fejeran*, No. 96-0909 (N.M.I. Super. Ct Aug. 8, 2002) (applying the 20-year
26 limitation in favor of the defendant, who adversely possessed plaintiff's land). A quiet title action is one in which a
27 plaintiff seeks a declaration from the court that an allegedly adverse interest in property is invalid. *Estate of Faisao v.*
28 *Tenorio*, 4 N.M.I. 260, 264 (1995). 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, that at some point, they were either
in actual or constructive possession of the land. *Cabrera v. Marianas Pub. Land Corp.*, No. 91-0687 (N.M.I. Super. Ct.
Aug. 7, 1992). The counterclaim in the instant case cannot be classified as a quiet title action.

1 New-11 (which were granted to Gregorio and his daughter, Ana S. Demapan).

2 As far back as 1991, Asuncion and Gregorio claimed that the 1983 transaction and the 1959
3 transaction were fraudulent. *See* Asuncion and Gregorio's October 19, 1991 Statement of Claim.
4 Thus, if Defendant were truly in privity with Asuncion and Gregorio (which he would have to be
5 to participate in this action), he would have no grounds to argue that he had only learned of the cause
6 of action in 2002.

7
8 Even if Defendant were not in privity with Asuncion and Gregorio, but somehow entitled
9 to pursue a fraud claim on their behalf, there would be no tolling. Defendant acquired a deed to the
10 subject property in 1992. A review of the records would have indicated that Asuncion and Gregorio
11 had already conveyed the subject property to Eugenia. At that point, Defendant should have been
12 on notice that his title was not clear. However, he did not pursue any action.

13
14 **C. There is insufficient evidence to support a claim of fraud or misrepresentation in**
15 **connection with land sold to Cristin by Ana DLG Demapan or quitclaimed to Eugenia**
16 **by her siblings.**

17 The fact that Eugenia ended up with a disproportionately large share of Ana DLG Demapan's
18 land, in itself, does not mean that the distribution was fraudulent. In her deposition, Asuncion
19 suggested that the reason why Eugenia and her husband were permitted to take title to such a large
20 parcel was that they had been taking care of Ana DLG Demapan before she died. *See* Asuncion's
21 Deposition at pp. 44-46; p. 64, ll. 15-25; and p. 65 ll. 1-3.

22 Further, Eugenia distributed some of the land to other heirs. In return for relinquishing any
23 claims to Ana DLG Demapan's estate, Eugenia and Cristin conveyed Lots 313-New-2 to Gregorio.
24 Further, Eugenia and Cristin conveyed Lot 313-New-11 to Gregorio's daughter, Ana S. Demapan.
25 The reason she received this lot is because Asuncion, a Catholic nun, could not own or pass on real
26 property due to her vows of poverty. *See* Asuncion's Deposition at pp. 37-38, ll. 22-25 and l.1.
27
28

1 Defendant has not provided any evidence of a misrepresentation regarding Eugenia’s alleged
2 need to acquire title to all of the property in order to secure a loan. This representation is
3 unsubstantiated by Asuncion herself, who testified that she clearly understood that she was signing
4 a quitclaim deed, and that its function was to convey the title to real property. While she *assumed*
5 that “maybe” she would get some interest in the land (one third) back, she realized that her signature
6 on the document meant that the grantee would not have to return any part of the property. *See*
7 Asuncion’s Deposition at p. 36, ll. 8-20. Asuncion also stated that she knew nothing else about the
8 status of the property that was the subject of the deed, or of any other reason for signing the deed.
9 *See* Asuncion’s Deposition at p. 26, ll. 13-25.
10
11

12 Even if Asuncion was in the dark as to some nefarious purpose behind the deed, her
13 ignorance would not justify invalidating the deed. In *Benavente v. Marianas Pub. Land Corp.*, 2000
14 MP 13, 6 N.M.I. 136, the Supreme Court reversed a trial court decision finding that a deed should
15 be invalidated because its grantor failed to understand the importance of the document. *Cf. Santos*
16 *v. Santos*, 2000 MP 9 ¶ 22, 6 N.M.I. 113, 117 (“Where the language of a deed is plain, certain and
17 unambiguous, it should be given its plain construction.”); *Ada v. K. Sathwani’s, Inc.*, 3 N.M.I. 303,
18 310 (1992) (“[W]here the language of a writing is plain and precise; a court can, as a matter of law,
19 establish the intentions of the parties as declared in the writing.”); *Tarope v. Igsaiar*, 3 CR 242, 246
20 (Trial Ct. 1987) (rejecting claim that plaintiff relinquished interest in property, where deed clearly
21 listed plaintiff only as witness to transaction).
22
23

24 The *Benavente* court also held that a deed could not be voided due to misrepresentations
25 about a future event: “[t]o be actionable, the alleged false representation must relate to a past or
26 existing material fact, not the occurrence of a future event.” 2000 MP 13 ¶ 43, 6 N.M.I. at 145. The
27 Court explained that an actionable representation cannot consist of “mere broken promises,
28

1 unfulfilled predictions or expectations, or erroneous conjectures as to future events.” *Id.* “This is
2 true even if there is no excuse for failure to keep the promise, and even though a party acted in
3 reliance on such promise.” *Id.* Thus, even if Eugenia had falsely represented her need for a loan,
4 a future event, this representation would be insufficient to invalidate the deed.
5

6 In sum, the causes of action based on fraud or misrepresentation must fail.

7 **D. Defendant’s cause of action for the “Sale, Buy or Lease of Properties without Other**
8 **Heirs Consent” fails because the other heirs ratified the transactions and/or had no**
9 **interest in the subject property.**

10 Defendant alleges a cause of action for the “Sale, Buy or Lease of Properties without Other
11 Heirs Consent.” Cristin and Eugenia were under no obligation to notify Asuncion and Gregorio of
12 their plans for future conveyances with respect to land they owned in fee simple. Thus, Cristin and
13 Eugenia had no obligation to consult with Asuncion and Gregorio regarding the sales of parts of Lot
14 835.

15 Eugenia and Cristin’s conveyances of other portions of land formerly belonging to Ana DLG
16 Demapan is more questionable. When Eugenia and/or Cristin conveyed parts of Lot 312 and 313
17 to third parties, they were conveying land in which *all* of the heirs of Ana DLG Demapan’s Estate
18 had an interest. As heirs, Eugenia and her siblings were tenants in common. *See Estate of Telfer v.*
19 *Board of County Com'rs of San Juan County*, 862 P.2d 637 (Wash. App. 1993). A tenant in
20 common cannot, without the consent or subsequent ratification of the cotenant, convey by metes and
21 bounds a specific parcel of the common estate. *See Pellow v. Arctic Min. Co.*, 128 N.W. 918 (Mich.
22 1910); *Smith v. Benson*, 9 Vt. 138 (Vt.1837). However, co-tenants (or heirs) may forfeit their rights
23 by consenting to the transaction. *See Saunders v. Woolman & Co.*, 75 Tenn. 300 (Tenn. 1881);
24 *Martin v. Rutledge*, 110 A. 222 (Vt.1920). By their actions as well as their inaction, Gregorio and
25 Asuncion have forfeited their rights to their mother’s estate.
26
27
28

1 First, it appears to be generally accepted that Asuncion, as a Catholic nun, was never able
2 to inherit what would have been her share in the estate. By taking the vows of poverty, she forfeited
3 her interest in her mother's estate.

4
5 Second, Gregorio and Asuncion clearly forfeited their interest in Lot 313. The June 16, 1983
6 quitclaim of Lot 313 states that the conveyance is Gregorio's and Asuncion's "share in lands
7 belonging to the Estate of Asuncion Deleon Guerrero." Gregorio furthered released any claim to
8 Lot 312 in his September 9, 1983 to Eugenia. Each of these quitclaims serves to ratify the prior
9 transactions of Eugenia and Cristin to third parties.

10
11 Third, neither Gregorio nor Asuncion felt compelled to object to the deeds Eugenia granted
12 to Gregorio (for Lot 313-New 2) and his daughter, Ana S. Demapan (for Lot 313-New 11).
13 Gregorio's and Asuncion's acceptance of this distribution limits their ability to attack the
14 conveyances of other lands to Eugenia, which were made in the very same deeds.

15
16 Finally, as discussed with respect to the statute of limitations, Gregorio and Asuncion failed
17 to timely object to any deeds which may have been improper. An affirmance of an unauthorized
18 transaction can be inferred from a failure to repudiate it. Restatement Second of Agency § 94 (1958).
19 By waiting for more than 20 years to repudiate the deeds, Gregorio and Asuncion have effectively
20 ratified them.

21 **E. A transfer of land is not contrary to CMNI or Chamorro custom simply because it**
22 **results in an unequal distribution of land among heirs.**

23 Defendant's Second Amended Counterclaim at 9 alleges that the transaction between Ana
24 DLG Demapan and Cristin Dela Cruz was invalid because it was "contrary to Chamorro custom."
25 Defendant's Opposition to Plaintiff's Motion to Dismiss at 5 states that Eugenia breached her duty
26 under Chamorro law as trustee of her mother's estate.

27
28 Under Chamorro customary law, where a person does not make his or her wishes known

1 prior to death, his or her surviving children, and the heirs of any deceased issue by representation,
2 either take equal portions of the estate in fee simple or agree to a distribution that is not necessarily
3 equal. *Estate of Imamura*, No. 89-1009 (N.M.I. Super. Ct. May 1, 1997). Title 8 CMC §§ 2901 and
4 2902 have codified customary law by providing for distribution by representation for intestate
5 estates with no surviving spouse. The code does not restrict parties from making alternative
6 arrangements.
7

8 There is no evidence that any of the parties' conduct was illegal under Chamorro law. First,
9 Lot EA 835 was no longer part of the estate once Ana DLG Demapan sold it to Cristin Dela Cruz.
10 It is notable that the sale occurred an entire decade before Ana's death. If it was Ana's wish to sell
11 the land to Cristin in 1959, it was certainly her prerogative to do so. Second, the heirs ultimately
12 did agree to an unequal distribution. Gregorio voluntarily quitclaimed his interests in certain parcels
13 to Eugenia, and she in return quitclaimed other parcels to him. Asuncion, who could not own
14 property as a nun, also voluntarily quitclaimed her interests to Eugenia. This distribution was settled
15 eight years before Ana's probate was ever opened. Defendant has failed to show that these
16 agreements contravened Chamorro law.
17
18

19 **F. Plaintiffs' failure to include the decedent Ana DLG Demapan's married name in the**
20 **pleadings does not warrant dismissal of Plaintiffs' pleadings or any other action of the**
21 **Court.**

22 Defendant alleges that Plaintiffs improperly referred to Ana DLG Demapan by her maiden
23 name, Ana Deleon Guerrero. While the complaint is unclear as to what consequence this perceived
24 error has caused, Defendant's Opposition to Plaintiffs' Motion to Dismiss at 4 sheds a peephole of
25 light onto Defendant's prayer. The opposition suggests that because of this "fatal defect," the Court
26 should dismiss Plaintiffs' action and re-open the probate estate of Ana DLG Demapan. Further,
27 Defendant suggests that Ignacio DLG Demapan, a non-party to this case, be allowed to enter the
28

1 probate fray and object to the 1991 distribution.

2 Defendant's claim has no basis in the instant action. This is not a probate case.

3 The Court observes that counsel for the Defendant in the instant case was also a party to the
4 probate action of the decedent. If counsel felt that this error was significant to the probate
5 proceedings had in 1990, then he could have raised the matter then. On the contrary, counsel
6 submitted his pleadings using the exact same name of "Ana Deleon Guerrero."
7

8 Defendant, by his own exhibits of the decedent's deeds, has aptly demonstrated to the Court
9 that the decedent was also known as "Ana DeLeon Guerrero." All of the deeds to which the
10 decedent is a party state her name as "Ana Deleon Guerrero."
11

12 Finally, even if the error could in some way be imagined to have fatal consequences, there
13 would be no basis for dismissal of Plaintiffs' complaint. Plaintiffs corrected the name in their First
14 Amended Complaint at ¶ 7.

15 III. ANALYSIS OF PLAINTIFFS' CLAIMS

16 **A. Plaintiffs are entitled to be declared owners of the property in dispute as a matter of**
17 **law.**

18 The Commonwealth, as a race-notice jurisdiction, protects bona fide purchasers. The
19 Commonwealth's Recording Act, 1 CMC §§ 3711, *et seq.*, states, in part:
20

21 No transfer of or encumbrance upon title to real estate or any interest therein, other
22 than a lease for a term not exceeding one year, shall be valid . . . [a]gainst any
23 subsequent purchaser or mortgagee of the same real estate or interest, or any part
24 thereof, in good faith for a valuable consideration without notice of such transfer or
25 encumbrance, or against any person claiming under them, if the transfer to the
26 subsequent purchaser or mortgagee is first duly recorded.

27 A bona fide purchaser (BFP) is one who acquires title for value paid without notice of
28 another's prior claim of right to, or equity in, the property. *See Mafnas v. Laureta*, No. 88-0696
(Super. Ct. Jul. 10, 1995). The significance of the classification is that it establishes priority with

1 the BFP over claims by *prior* purchasers. Here, the Camachos seek to invoke the status of BFP to
2 protect against a claim by a *subsequent* purchaser, Jose Demapan. Thus, the doctrine will not help
3 Plaintiffs unless the Court analyzes the converse argument - that Jose Demapan is *not* a BFP and
4 therefore cannot rely on the race-notice statute for protection.
5

6 As cumbersome as this converse analysis appears, it is relatively simple for the Court to
7 conclude that Defendant is not a BFP. Asuncion and Gregorio's quitclaim of Lot 313 to Eugenia
8 in 1983, as well as Gregorio's quitclaim to parts of Lot 312, were recorded long before Defendant
9 recorded his deed to the same property. Further, Asuncion and Gregorio never had title to Lot EA
10 835 in the first place.
11

12 Even if Defendant could be construed as a BFP, an equitable analysis would weigh in favor
13 of awarding title of the property to the Plaintiffs. The doctrine of laches attaches to bar a claim
14 based on a failure to seasonably assert a right, thereby prejudicing the opposing party. *See Mafnas*
15 *v. Laureta*, No. 88-0696 (Super. Ct. Jul. 10, 1995). Twenty years and many intervening real
16 property transactions stand between the 1983 quitclaims and the Defendant's counterclaim. But for
17 the Plaintiffs bringing this action, the Defendant and his predecessors in interest have taken no
18 affirmative legal action. Meanwhile, parties who *do* meet the qualifications for BFPs have
19 detrimentally relied on the validity of the 1983 quitclaim deeds as well as the 1959 sale.
20

21 Because Defendant is not a BFP and because equity weighs in favor of vesting legal title in
22 those who are BFPs, Plaintiffs are entitled to be declared owners of the property in dispute.
23

24 **B. There is no basis for declaring that Plaintiffs' slander claim must prevail as a matter**
25 **of law.**

26 Plaintiffs Maria and Antonio Camacho allege that they suffered injury as a result of a cloud
27 that Jose Demapan's claim placed on their property (Lot 313 New-313). However, Plaintiffs have
28

1 not provided any briefing in support of this claim. The Court is at a loss to understand how the
2 Camachos' inability to use their property as collateral in *1990* was affected by Defendant's
3 recordation of title to same property *two years later*. Further, it is not clear to the Court why the
4 Camachos are only now bringing this claim. As discussed above, the statute of limitations for torts
5 is two years. See 7 CMC § 2503: "The following actions shall be commenced only within two years
6 after the cause of action accrues: (a) Actions for . . . slander. Thus, while the quiet title claim is
7 timely, the slander claim is not.
8

9 **IV. CONCLUSIONS OF LAW**

10 **A. Defendant's pleadings are insufficient to prevent dismissal.**

- 11
12 1. Plaintiffs have met the Com. R. Civ. P. 9(b) standard for dismissal of Defendant's
13 fraud allegations.

14 Defendant alleges fraud with respect to: (1) the 1959 deed executed between Ana DLG
15 Demapan and Cristin Dela Cruz, and (2) the 1983 deed executed between Gregorio, Asuncion, and
16 Eugenia. Because these allegations concern fraud, they must be specific enough to meet the pleading
17 requirements of Com. R. Civ. P. 9(b).

18 To meet the requirements of Com. R. Civ. P. 9(b), the complaint must contain the essential
19 elements of a fraud allegation: (1) a representation is made as a statement of fact, (2) the
20 representation is untrue and known to be untrue by the party making it, or else recklessly made, (3)
21 the representation is made with the intent to deceive and for the purpose of inducing the other party
22 to act upon it, (4) the other party did in fact rely on the false representation and was induced thereby
23 to act to his/her injury or damage. *Rogolofoi v. Guerrero*, No. 89-1149 (Super. Ct. Feb. 8, 1990)
24 (dismissing allegation of fraudulent quitclaim where pleadings contained only two brief paragraphs
25 describing the claim).
26
27

28 The only facts that Defendant has pled in support of his claim for fraudulent transactions are:

- 1 1. Eugenia represented to her sister and brother that the transfer of title to real property was for
2 her to use as collateral for a loan;
- 3 2. Eugenia promised that the title to the real property, conveyed to her 1983, would later be
4 equally divided among the two sisters and their brother.
- 5 3. Eugenia has never fulfilled this promise.

6
7 These allegations do not state *when* or *where* this alleged misrepresentation occurred, or
8 describe the form in which the promise was allegedly made. They fail to state an essential element
9 of fraud or misrepresentation: that Eugenia knew or should have known that the representation was
10 false when she made it. Nor do they state that Asuncion and Gregorio detrimentally relied on the
11 promise. Further, there are insufficient factual details pled about the “loan.” In sum, the allegations
12 of fraud are insufficient and must be dismissed under Com. R. Civ. P. 9(b).

13
14 2. Plaintiffs have met the Com. R. Civ. P. 12(b)(6) standard for dismissal of the
15 Defendant’s entire counter-complaint.

16 For purposes of a Com. R. Civ. P. 12(b)(6) motion, the court views the complaint in the light
17 most favorable to the non-movant, and takes its allegations as true. *Cepeda v. Hefner*, 3 N.M.I. 121,
18 126 (1992). The court considers whether the allegations constitute a statement under Com. R. Civ.
19 Pro. 8(a). *Id.* (citing CHARLES WRIGHT AND ALAN MILLER, 5A FEDERAL PRACTICE AND PROCEDURE
20 CIVIL 2D § 1357 (1990)). The complaint must contain either direct allegations on every material
21 point necessary to sustain a recovery on any legal theory, even though it may not be the theory
22 suggested or intended by the pleader, or contain allegations from which an inference fairly may be
23 drawn that evidence on these material points will be introduced at trial. *In re Adoption of Magofna*, 1
24 N.M.I. 449, 454 (1990).

25
26 The allegations are so vague that there appear to be no legal grounds on which Defendant
27 could recover. The Court is unable to draw an inference that evidence on material points would be
28

1 introduced at trial. Even if all of Defendant’s allegations were true, Defendant would still lack
2 standing to litigate on behalf of Asuncion and Gregorio. The fraud claims do not meet even the more
3 lenient pleading standards of Com. R. Civ. P. 12(b)(6) standard for specificity. The claim for “Sale,
4 Buy, or Lease of Properties without Other Heirs Consent does not set forth a cause of action upon
5 which Defendant can recover. Even if the claim entitled “Name of Decedent in Complaint in Error”
6 did set forth a cause of action, Defendant could not obtain a remedy in the instant case. Thus, the
7 claims cannot survive a Rule 12(b)(6) motion to dismiss.
8

9 **B. There are no disputed material facts concerning the deeds executed by Eugenia and**
10 **Cristin Dela Cruz that would preclude summary judgment in favor of Plaintiffs on the**
11 **issue of title.**

12 Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories,
13 admissions on file, and affidavits, if any, show that there are no genuine issues of material fact and
14 that the moving party is entitled to judgment as a matter of law. *See* Com. R. Civ. P. 56(b); *see also*
15 *Celotex v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, L.Ed.2d 265 (1986). The court must view the
16 evidence and all inferences to be drawn from the underlying facts in the light most favorable to the
17 non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S.Ct. 2505, 91
18 L.Ed.2d 202 (1986). When the moving party has shown an absence of evidence to support the non-
19 moving party’s case, the non-moving party must present specific facts showing there is a genuine
20 issue for trial. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct.
21 1348, 89 L.Ed.2d 538 (1986); *see also Castro v. Hotel Nikko, Saipan, Inc.*, 4 N.M.I. 268, 272 (1995).
22 If the nonmoving party fails to present a genuine dispute concerning a material fact, the trial court
23 may properly grant summary judgment to the movant. *Borja v. Rangamar*, 1 N.M.I. 347. After
24 reviewing the facts in a light most favorable to the non-moving party, the court may only grant
25 summary judgment when it appears as a matter of law that the moving party is entitled to judgment.
26
27
28

1 *See Cabrera v. Heirs of DeCastro*, 1 N.M.I. 172, 176 (1990).

2 Plaintiffs have shown that Defendant has insufficient evidence to support his case. The deeds
3 of sale themselves do not serve as evidence of fraud or wrongdoing associated with the transactions.
4 Defendant has not shown any other evidence with which this Court could construe a viable cause
5 of action. Plaintiffs, on the other hand, have presented sufficient evidence for the Court to grant
6 summary judgment in their favor on the issue of title.
7

8 On the issue of slander, Plaintiffs have presented insufficient evidence to merit judgment as
9 a matter of law. Further, it appears from the pleadings that the statute of limitations has expired.
10 Thus, Plaintiffs' claim for summary judgment with respect to slander must be denied.
11

12 **V. SUMMARY AND CONCLUSION**

13 Plaintiffs' Motions to Dismiss under Rules 9(b) and 12(b)(6) are GRANTED. Defendant's
14 Second Amended Counter-complaint is dismissed with prejudice. Plaintiff's Motion for Summary
15 Judgment as to their First Amended Complaint on the issue of title is GRANTED in favor of the
16 prior recorded titleholders. Plaintiff's Motion for Summary Judgment as to their First Amended
17 Complaint on the issue of slander is DENIED. Plaintiffs are entitled to schedule an evidentiary
18 hearing to show cause for their slander claim.
19

20 SO ORDERED this 10th day of January 2006.

21 /s/ _____

22
23 Juan T. Lizama, Associate Judge, Superior Court
24
25
26
27
28