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

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| <p>IN RE ESTATE OF</p> <p style="text-align: center;">ELENA T. CAMACHO,</p> <p style="text-align: center;">Deceased.</p> | <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> | <p>Civil Action No.: 10-0209</p> <p>ORDER GRANTING MORTGAGEE WELLS FARGO FINANCIAL'S PETITION TO DISTRIBUTE REAL PROPERTY SUBJECT TO MORTGAGE</p> |
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I.
INTRODUCTION

Wells Fargo Financial, Inc. (“Wells Fargo”) holds a mortgage on property owned by Decedent Elena T. Camacho (“Decedent”) at the time of her death. Decedent died unmarried, and her sole heir is her daughter, Soledad Ana Camacho, who is also the Administratrix of the Decedent’s Estate (“Administratrix”). Wells Fargo brought a motion to distribute the mortgaged real property to Administratrix subject to the Wells Fargo mortgage. Administratrix opposed the motion, claiming she is entitled to a distribution of the real property unencumbered by the Wells Fargo mortgage. The motion hinges on the interpretation and interplay of two separate CNMI statutes, one found in the Mortgage statutes and the other in the Probate statutes. The Mortgage statute, 2 CMC § 4517, states that real property distributed via probate is done so subject to any mortgages. The Probate statute, 8 CMC § 2601, deals with property that is exempt from claimants.

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**II.
BACKGROUND**

A. Factual Background:

During her lifetime, Decedent owned, in fee simple, Lot 010 K 242, a parcel of real property located in Saipan, CNMI. On February 15, 2008, Decedent took out a loan from Wells Fargo in the amount of approximately \$54,000.00, and secured the loan with a mortgage (the “Wells Fargo mortgage”) on Lot 010 K 242 (the “mortgaged real property”). According to the Administratrix, she lived on the mortgaged real property with Decedent until Decedent’s death on November 22, 2009.¹

B. Procedural Background:

An Amended Petition for Letters of Administration was filed by Wells Fargo on July 15, 2010, asking the Court to appoint one of Wells Fargo’s employees as Administrator. Notice of Petition and the August 24, 2010 hearing date was published in the Marianas Variety on August 2, 2010 and served personally on the Administratrix and Decedent’s siblings as required under Com.R.Pro. Rules 16 and 21. At the August 24, 2010 hearing, Administratrix appeared and stated she wanted to be appointed, but that her attorney was off-island. The Court issued letters of Administration to Wells Fargo’s employee, and set another hearing for September 21, 2010. At the September 21, 2010 hearing, Administratrix appeared with counsel and was substituted as the sole Administratrix of Decedent’s Estate.

On November 9, 2010, Wells Fargo filed a motion seeking an Order to sell the mortgaged real property to satisfy the mortgage, which the Administratrix opposed. At the hearing, the Court denied Wells Fargo’s motion and set a hearing date for the present motion to distribute the mortgaged real property to Administratrix subject to the mortgage. The present motion was filed December 30, 2010 and heard February 1, 2011. At the hearing, Wells Fargo was represented by Gregory J. Koebel, and Administratrix was represented by Joaquin DLG. Torres. Based upon the

¹ For the purposes of the present motion as filed by Wells Fargo, it was assumed by the parties and the Court that the mortgaged real property was the “primary family home” as claimed by Administratrix.

1 papers submitted to date and the oral arguments of counsel at the hearing, the Court hereby
2 GRANTS Wells Fargo's Motion and hereby DISTRIBUTES Lot 010 K 242 to Administratrix
3 Soledad Ana Camacho subject to the Wells Fargo mortgage.

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5 **III.**
6 **DISCUSSION**

7 **A. Mortgage Statute Cited By Wells Fargo:**

8 The provision cited by Wells Fargo in support of its position that the mortgaged real
9 property must be distributed subject to the mortgage is 2 CMC § 4517, which reads, in full, as
10 follows:

11 **§ 4517. Heirs and Devisees take Subject to Mortgage.**

12 Whenever real property which is subject to a mortgage
13 passes by succession or devise, the successor or devisee is
14 not entitled to have the decedent's personal representative
15 satisfy the mortgage out of the decedent's estate unless
16 there is an express provision in the decedent's will that the
17 estate is to satisfy the mortgage. Unless the mortgage is so
18 satisfied out of the decedent's estate, the heir or devisee
19 takes the property subject to the mortgage.

20 Under the plain meaning of this statute, real property encumbered by a mortgage which
21 passes by succession to a devisee such as the Administratrix passes subject to the mortgage,
22 unless the mortgage debt has been paid by the personal representative of the estate. "In a
23 statutory construction case, the beginning point must be the language of the statute, and when a
24 statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the
25 most extraordinary circumstance, is finished." *Estate of Cowart v. Nicklos Drilling Company*,
26 505 U.S. 469, 475 (1992).

27 Here, where the Administratrix is to receive real property from the Decedent's estate by
28 succession, the plain meaning of 2 CMC § 4517 dictates that if the Wells Fargo mortgage has not
been satisfied out of the Decedent's estate, then she necessarily "*takes the property subject to the*
mortgage." 2 CMC § 4517. Furthermore, as set forth in the statute, this is the case "[w]henever"
real property which is subject to a mortgage passes by succession..." *Id.* The word "whenever" is

1 a broad and inclusive term that is defined to mean “every time that”. OXFORD AMERICAN
2 DICTIONARY 1062 (1986 ed.). “When a word is not defined by statute, we normally construe it
3 in accord with its ordinary or natural meaning.” *Smith v. United States*, 508 U.S. 223, 228 (1993)
4 (Supreme Court opinion utilizing the Webster’s New International Dictionary to define the word
5 “used”). *Id.* at 229. Consequently, use of the word “whenever” in 2 CMC § 4517 dictates that
6 every time a mortgaged real property passed by succession, it passes subject to that mortgage.

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8 **B. Probate Statute Cited By Administratrix:**

9 In opposing Wells Fargo’s motion to distribute the mortgaged real property subject to the
10 Wells Fargo mortgage, Administratrix cites the “exempt property” provision of the Probate Law.
11 The provision, 8 CMC § 2601 reads, in relevant part:

12 **§ 2601. Exempt Property.**

13 The surviving spouse of the decedent who was domiciled in
14 the Northern Mariana Islands is entitled to the primary
15 family home and lot, household furniture, one automobile,
16 furnishings, appliances, and personal effects. If there is no
17 surviving spouse, children of the decedent are entitled
18 jointly to the exempt property. Rights to exempt property
19 have priority over all claims against the estate...

20 Administratrix contends that because the mortgaged real property constituted “the
21 primary family home” of the Decedent, that it should be distributed free from the Wells Fargo
22 mortgage. In support of this contention, Administratrix cites the passage in the statute which
23 reads “[r]ights to exempt property have priority over all claims against the estate” in effect
24 releases the Wells Fargo mortgage by operation of law when the mortgaged real property passes
25 to Adminisratrix from Decedent’s estate by succession.

26 **C. Read Together, the Statutes Dictate Administratrix Takes The Mortgaged Real
Property Subject To Mortgage:**

27 If this Court were to adopt the Administratrix’s interpretation of these statutes, it would
28 have to find that the exempt property section of the Probate Law effectively overrides Mortgage

1 Law. Such a finding would be counter to the well-established rule that “one statutory provision
2 should not be construed to make another provision either inconsistent or meaningless.” *Estate of*
3 *Faiso v. Tenorio*, 4 NMI 260, 265 (1995). The plain language of 2 CMC §4517 states that
4 “[w]hensoever real property which is subject to a mortgage passes by succession or devise [unless
5 the mortgage debt is paid by the personal representative of the estate]...the heir or devisee *takes*
6 *the property subject to the mortgage.*” *Id.* (emphasis added). The provision does not say “except
7 in situations where the property is exempt under the Probate Law”; it says “*whenever*”. So, in
8 accordance with the plain meaning of the statute, *every time that* real property passes by
9 succession or devise, the heir or devisee takes *subject to the mortgage*, unless it has been paid off
10 by the estate’s personal representative.

11 Administratrix’s interpretation of this statute, that it doesn’t really mean “whenever” but
12 really means “when the real property passing by succession is not a family home” is not only
13 contrary to one of the most basic tenets of statutory interpretation, “that language must be given
14 its plain meaning” (*Commonwealth v. Hastino*, 1 N.M.I. 377, 382 (1990)); it would also
15 effectively eviscerate 2 CMC §4517 and render it “meaningless”. The Court must decline the
16 opportunity to so clearly violate these basic rules of statutory construction.

17 Furthermore, these two statutes can be read in harmony to permit the Decedent’s devisee
18 to take the primary family home and lot subject to the mortgage. The Probate Law provision
19 states that “[t]he surviving spouse [or child as is the case here] of the decedent who was
20 domiciled in the Northern Mariana Islands is entitled to the primary family home and lot.” 8
21 CMC § 2601. The Administratrix, as the Decedent’s only child, here should receive the family
22 home and lot (as dictated by the Probate Law), but takes such family home subject to the
23 mortgage (as dictated by the Mortgage Law). This is because the estate can only pass on to the
24 Administratrix the mortgaged real property in the same condition as it is owned by the estate
25 itself.

26 The term “estate” is defined in the Probate Code as “the property of the decedent...as
27 originally constituted and as it exists from time to time during administration.” 8 CMC §2107(j).
28 Here, the estate holds the family home *subject to* the Wells Fargo mortgage. That is how the

1 property at issue here was originally constituted at the time of the Decedent's death and how it
2 exists at present. The mortgage is a condition of the property and the Decedent's estate can only
3 give the Administratrix what the estate itself owns -- that is -- the family home as subject to the
4 mortgage. The Administratrix here asks the Court, by judicial fiat, to alter the very nature of the
5 property of the Decedent's estate by rendering a mortgaged parcel of real property into a
6 mortgage-free parcel of real property. This the Court can not do, any more than it could remove a
7 right-of-way or an easement encumbering the mortgaged real property.

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9 **D. Case Law Holds That "Exempt Family Homes" Remain Subject To Mortgages:**

10 Additionally, case law interpreting homestead statutes similar to 8 CMC § 2601 makes it
11 clear that exempt property is taken subject to mortgages. The court in *Wyoming County Bank &*
12 *Trust Company v. Kiley*, 430 N.Y.S.2d. 900 (N.Y. Sup. Ct. 1980) was interpreting New York's
13 Civil Practice Law and Rules §502, which, like 8 CMC § 2601 extends the homestead exemption
14 to a decedent's surviving spouse and children. N.Y.C.P.L.R. §502(b). In the *Wyoming County*
15 *Bank* case, the defendant claimed that the homestead exemption precluded a foreclosure action
16 commenced against the homestead property. The court disagreed, stating that "[n]o statute
17 precludes exempt property from being sold; nor is there any which expressly interdicts the less
18 drastic step of encumbering such property...Nothing in the law forbids a debtor from executing a
19 non-purchase money mortgage on his residence to secure payment of a just indebtedness and
20 thus create a lien which may be foreclosed despite the property's exempt status under the
21 homestead statute." *Wyoming County Bank*, 430 N.Y.S.2d. 903.

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23 Similarly, the California Court of Appeals recently held that "[h]omestead laws are
24 designed to protect the sanctity of the family home against a loss caused by a forced sale by
25 creditors. The homestead exemption itself does not have any effect on the liens created
26 voluntarily by the property owners." *Title Trust Deed Service Company v. Pearson*, 33
27 Cal.Rptr.3d 311, 315 (Cal. Ct. App. 2005) (emphasis added). Here, the Decedent voluntarily
28 created a mortgage lien on the family home, and such exempt property is thus subject to the

1 Wells Fargo mortgage. The family home, upon distribution to the Administratrix, remains
2 subject to the mortgage given by the Decedent to Wells Fargo.

3 **E. Mortgage Contractually Binds Heirs and Successors:**

4 The mortgage that Decedent entered into with Wells Fargo provides that “[t]his
5 mortgage shall bind the heirs, executors, administrators, successors and permitted assigns of the
6 parties hereto.” *See*, Paragraph 25 of Decedent’s mortgage with Wells Fargo, attached as
7 Exhibit “B” to the September 27, 2010 *Notice of Claim of Wells Fargo Financial, Inc.*, filed
8 herein. Thus, Administratrix, as a devisee to the Estate of the Decedent, is contractually bound
9 by the provisions of the mortgage and must take the property subject to the mortgage.

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11 **IV.**
12 **CONCLUSION AND ORDER**

13 For the reasons stated above, and because the Court recognizes that a finding that
14 mortgages on family homes are expunged by operation of law upon passing the mortgaged
15 property to a spouse or children, mortgages on residential properties in the CNMI would
16 immediately cease; the Court hereby ORDERS that the mortgaged real property described below
17 is HEREBY DISTRIBUTED to Administratrix Soledad Ana Camacho subject to the Wells
18 Fargo mortgage filed as 08-351 at the Commonwealth Recorder’s, Saipan:

19 Lot 010 K 242, as more particularly described on
20 Drawing/Cadastral Plat No. 010 K 01, the original of which
21 was recorded 19 AUG 87 as Document No. 87-2909 at
22 Commonwealth Recorder’s, Saipan

23 **SO ORDERED** this 24th day of August, 2011.

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25 _____/s/
26 **ROBERT C. NARAJA**
27 Presiding Judge
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