



By Order of the Court, Judge Joseph N. Camacho

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FOR PUBLICATION



E-FILED
CNMI SUPERIOR COURT
E-filed: Dec 01 2017 04:53PM
Clerk Review: N/A
Filing ID: 61411916
Case Number: 15-0080-CV
N/A

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

ESTATE OF) **CIVIL ACTION NO. 15-0080**
ELPIDIA DELA CRUZ NAUTA)
) **ORDER FINDING NO ADVANCEMENT**
) **OF INHERITANCE OCCURRED THAT**
) **WOULD AFFECT THE DISTRIBUTION,**
) **AS AN ADVANCEMENT REQUIRES**
) **THE PROPERTY BE GIVEN PURSUANT**
) **TO CUSTOM, SUCH AS A PARTIDA OR**
) **TESTIMENTO, OR BY**
) **CONTEMPORANEOUS WRITING OR**
) **WRITTEN ACKNOWLEDGEMENT BY**
) **THE HEIR (LONG BEACH PROPERTY)**
)

THIS MATTER came before the Court on December 29, 2016, at 9:00 a.m. in Courtroom 220 on Administratrix Bernadita Dela Cruz’s (“Administratrix”) Petition for a Decree of Final Distribution (“Petition”). Surviving spouse and heir, William A. Nauta (“William Sr.”), and son and heir, Kenneth Dela Cruz Nauta (“Kenneth”), oppose the Petition on separate grounds.¹ Attorney Jennifer Dockter represents Administratrix. Attorneys Edward Arriola and Brien Sers Nicholas represent William Sr. and Kenneth, respectively.

The Court considers William Sr.’s proposed distribution of the Long Beach Property, situated in the State of California. After a careful review of the filings on record, the applicable

¹ The Petition identified the other heirs as William C. Nauta (“William Jr.”) and John C. Nauta (“John”) who are both Decedent’s sons. However, William Jr. and John did not submit any opposition to the Petition. Decedent and her three sons, William Jr., Kenneth, and John are persons of Northern Marianas descent. William Sr., the surviving spouse, is not of Northern Marianas Descent.

1 laws, and arguments of counsels, the Court **FINDS** that the Long Beach Property is held by
2 William Sr. and Kenneth as joint tenants.

3 As a matter of expeditiousness and to prevent confusion, this Order will only consider the
4 issue surrounding the Long Beach Property and the Court will issue separate Orders addressing the
5 proposed distribution of Lots 572 and 573 “C” (Chalan Piao Properties”) and Lot 31 L 03
6 (“Koblerville Property”).

7 **I. BACKGROUND**

8 Decedent was a person of Northern Marianas Descent (“NMD”).² Decedent’s surviving
9 spouse, William Sr., is a person of non-Northern Marianas Descent (“non-NMD”). The Decedent is
10 survived by her sons, William Jr., Kenneth, and John, who are NMD like their mother.

11 The Administratrix’s Petition, filed on July 7, 2016, sought the disposition of several assets,
12 including Decedent’s real properties. The real properties in question are: (1) Chalan Piao
13 Properties; (2) Koblerville Property; and (3) Long Beach Property. The Court will address the
14 disposition of these three sets of property in separate orders. This Order will address the issues
15 surrounding the Long Beach Property.

16 Although the Petition identified the Chalan Piao and Koblerville properties, it did not
17 reference the proposed distribution of property located in Long Beach, California.³ The Long
18 Beach property first came to the Court’s attention in William Sr.’s Opposition. According to
19 William Sr., Kenneth received the Long Beach Property as an advancement to be deducted from
20 Kenneth’s share of the properties on Saipan to ensure equal distribution among the heirs.

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22 ² A person of Northern Marianas Descent is a person who “is a citizen of the United States and has at least some degree
23 of Northern Marianas Chamorro or Northern Marianas Carolinian blood or a combination thereof.” NMI Const. art. XII
§ 4. Only persons of Northern Marianas Descent may own real property in the Commonwealth. NMI Const. art. XII § 1.

24 ³ The Long Beach Property in Long Beach, California, is described as:
Lot 60 of Tract 20546, as per Map recorded in Book 557, Pages 26 and 27 of Maps, filed in the Office
of the County Recorder of said County of Los Angeles, all the foregoing being commonly known as
6180 Obispo Avenue, Long Beach, California (90805).

1 Decedent and William Sr. owned the Long Beach Property as joint tenants. *See* Affidavit –
2 Death of Joint Tenant.⁴ According to William Sr., at some time prior to the Decedent’s death, the
3 Decedent and himself agreed to give the Long Beach Property to their son Kenneth, since he had
4 not purchased his own family home. *Aff. of William Sr.* William Sr. claims that Decedent also
5 verbally told him how she wished her Saipan properties to be distributed. *Id.*

6 The Decedent died on March 21, 2005. On April 8, 2005, *after* the Decedent died, William
7 Sr. called a family meeting to discuss a “partida” of the Decedent’s property. William Sr. informed
8 his sons that Kenneth would be taking the Long Beach Property. On October 4, 2005, William Sr.
9 added Kenneth as a joint tenant to the Long Beach Property. *See* Certified Copy of Grant Deed.

10 According to William Sr., Kenneth is to take a lesser share of the Decedent’s real property
11 in Saipan compared to his brothers, since the Long Beach Property is an advancement on Kenneth’s
12 share of the Decedent’s estate. When William Sr. added Kenneth as a joint tenant on the Long
13 Beach Property, Kenneth was apparently unaware that taking the Long Beach Property would mean
14 he would take a smaller share of the Saipan properties. *Aff. of Kenneth.*

15 **II. DISCUSSION**

16 “The advancements doctrine is based on the assumption that a parent intends to treat all of
17 [] her children equally. . . . Therefore, when a child receives a substantial gift of real . . . property
18 which was not intended for the purpose of maintaining that child, the common law imposes a
19 presumption that an advancement was intended.” *Estate of Barcinas*, 4 NMI 149, 153 (1994)
20 (citations omitted); *see also Estate of Laniyo, II*, Civ. No. 91-0384(P) (NMI Super. Ct. Nov. 30,
21 1992) (Findings of Fact and Conclusions of Law at 6) (“The common law doctrine of
22 advancements rests on the supposed desire of an ancestor to equalize his estate among his heirs, not

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24 ⁴ A joint tenant is “[a] tenancy with two or more coowners [sic] who take identical interests simultaneously by the same instrument and with the same right of possession.” Black’s Law Dict. 1261 (9th Ed. Abr.).

1 only as to the property left at the time of his death, but as to all property that came for [sic] him, so
2 that one child will not be preferred to another child in the final settlement of the estate.”).

3 Under Title 8, Section 2919, governs advancements in the Commonwealth. Section 2919
4 provides:

5 If a person dies intestate as to all his or her estate, property which the person gave *in his or*
6 *her lifetime* to an heir by *partida* or otherwise is treated as an advancement against the
7 latter’s share in the estate *only if it can be shown that the property was given pursuant to*
custom, or declared in a contemporaneous writing by the decedent, or acknowledged in
writing by their heir to be an advancement. . . .

8 (emphasis added). A careful reading of Section 2919 reveals that an advancement requires that the
9 advancement be made during the decedent’s *lifetime*, and that the property *must* be “given pursuant
10 to custom” or be documented in a contemporaneous writing by the decedent or heir.

11 “A partida is the distribution of family land holdings under Chamorro custom.” *Estate of*
12 *Deleon Castro*, 4 NMI 102, 110 (1994) (citation omitted). Traditionally, “a partida occurs when the
13 father calls the entire family together and outlines the division of the property among his children.”
14 *Id.*; *see also Blas v. Blas*, 3 TTR 99, 108-09 (Tr. Div. 1966) (setting forth the formal elements of a
15 partida: “a father should at some time before his death call his family together and designate a
16 division of all family lands, including those brought in by the wife . . . among the children.”).

17 Here, there is nothing on the record to indicate that any of the requirements of Section 2919
18 were complied with. First, there is nothing on the record indicating that any advancement or partida
19 occurred during the Decedent’s lifetime. Kenneth was not added as a joint tenant to the Long Beach
20 Property until October 4, 2005, months after the Decedent had already passed. Any alleged
21 advancement or partida by William Sr. was done *after* the Decedent’s death. William Sr. cannot
22 give property as an advancement against his wife’s estate as it is not his estate to make
23 advancements on. Although William Sr. is free to partida his own estate as he sees fit, he cannot
24 retroactively partida another person’s estate.

1 Second, there is nothing on the record showing that the advancement was “declared in a
2 contemporaneous writing by the decedent, or acknowledged in writing by [her] heir to be an
3 advancement.” 8 CMC § 2919. Kenneth was entirely unaware that he would be taking the Long
4 Beach Property in exchange for a lesser share of the Saipan Properties. *Kenneth Aff.* Decedent did
5 not memorialize in writing any potential advancement to Kenneth, nor did Kenneth acknowledge in
6 writing that he would be receiving the Long Beach Property as an advancement to be counted
7 against his share in the Saipan properties.

8 Finally, there is nothing on the record to show that the property was properly advanced
9 pursuant to custom. 8 CMC § 2919. Traditionally, “a partida occurs when the father calls the entire
10 family together and outlines the division of the property among his children.” *Estate of Deleon*
11 *Castro*, 4 NMI 102, 110 (1994) (citation omitted). Here, William Sr. called a family meeting to
12 discuss the distribution of the Long Beach Property, pursuant to the Decedent’s testamentary intent.
13 The Court notes that at the time of the family meeting, the Decedent was already deceased, and her
14 share of the Long Beach Property, as a joint tenant with right of survivorship,⁵ had already passed
15 to William Sr. Thus, there is nothing on the record to indicate that the Decedent herself had
16 advanced her property. In effect, William Sr. is attempting to give the Long Beach Property to
17 Kenneth as an advancement against the *Decedent’s* estate and not his own.

18 William Sr. contends that because he held the Long Beach Property with decedent as joint
19 tenants, he became entitled to the entire estate through the right of survivorship. If William Sr. has
20 a right of survivorship, then the decedent could not have advanced the share to Kenneth, even if she
21 wanted to, since she would not be able to advance what does not belong to her. To effectuate
22 decedent’s desire to have Kenneth take decedent’s one-half share in the Long Beach Property,

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24 ⁵ A right of survivorship is “a joint tenant’s right to succeed to the whole estate upon the death of the other joint tenant.”
Black’s Law Dictionary 1440 (9th 2009).

