



By Order of the Court, Judge Joseph N. Camacho

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**FOR PUBLICATION**



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**CNMI SUPERIOR COURT**  
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**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 GROUND LEASE**  
 ) **AGREEMENT REMAINS UNSIGNED AS**  
 ) **THE SPECIAL POWER OF ATTORNEY**  
 ) **LIMITED AGENT TO NEGOTIATING**  
 ) **BUT NOT ACCEPTING ON THE**  
 ) **BEHALF OF DECEDENT’S HEIRS**  
 ) **(CHALAN PIAO PROPERTIES)**  
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**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.<sup>1</sup> Attorney Jennifer Dockter represents Administratrix. Attorneys Edward Arriola and Brien Sers Nicholas represent William Sr. and Kenneth, respectively.

<sup>1</sup> 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 The Court issued two prior orders in this probate action addressing the distribution of the  
2 Koblerville Property on December 1, 2017, and the Long Beach Property on December 1, 2017.<sup>2</sup>  
3 The Court now considers Administratrix’s proposed distribution of Lots 572 and 573 “C” (“Chalan  
4 Piao Properties”).

5 **I. BACKGROUND**

6 Decedent was a person of Northern Marianas Descent (“NMD”).<sup>3</sup> Decedent’s surviving  
7 spouse, William Sr., is a person of non-Northern Marianas descent (“non-NMD”). The Decedent  
8 was also survived by her sons, William Jr., Kenneth, and John, who are NMD like their mother.

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

13 The Petition sought the disposition of the disputed properties<sup>4</sup> as follows:

14 **Chalan Piao Properties:**

15 a. **To [WILLIAM SR.]**, for his life, but in no event longer than fifty five  
16 years, and the vested remainder in fee simple to **WILLIAM C. NAUTA,**  
**KENNETH DLC. NAUTA, and JOHN C. NAUTA,** in equal and  
undivided shares:

17 i. **Lot 572 & 573 “C”:** Chalan Piao, Saipan and containing an area  
18 of about 3,860 square meters, more or less . . . .:

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19 <sup>2</sup> See *Estate of Nauta*, Civ. No. 15-0080 (NMI Super. Ct. December 1, 2017) (Order Granting Administratrix’s Petition  
20 for Final Distribution of Non-Ancessor’s Land as a One-Half Interest with a 55-Year Limit to the Non-Northern  
21 Marianas Descent Surviving Spouse Pursuant to 8 CMC § 2903 and a One-Half Interest in Equal and Undivided Shares  
to the Northern Marianas Descent Children in Fee Simple Absolute (Koblerville Property) (“Koblerville Order”); *Estate*  
22 *of Nauta*, Civ. No. 15-0080 (NMI Super. Ct. December 1, 2017) (Order Finding No Advancement of Inheritance  
Occurred That Would Affect the Distribution, as an Advancement Requires the Property to Be Given Pursuant to  
Custom, Such as a Partida or Testamento, or by Contemporaneous Writing or Written Acknowledgement by the Heir  
(Long Beach Property)) (“Long Beach Order”).

23 <sup>3</sup> A person of Northern Marianas Descent is a person who “is a citizen of the United States and has at least some degree  
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 <sup>4</sup> While the Petition identified the Koblerville and Chalan Piao Properties, it made no mention to the property located in  
Long Beach, California. The Long Beach Property first came to the Court’s attention in William Sr.’s Opposition.

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- 1. Subject to that Ground Lease dated December 23, 1987 . . . which commenced on December 22, 1987 and terminates on December 21, 2042 . . . .
- 2. Subject to that Ground Lease dated February 13, 2015 . . . which commences on December 22, 2042 and terminates on January 29, 2070.

**Koblerville Property:**

b. **To [William Sr] an UNDIVIDED ONE-HALF SHARE**, for his life, but in no event longer than fifty five years, and the vested remainder in fee simple to **WILLIAM C. NAUTA, KENNETH DLC. NAUTA, and JOHN C. NAUTA**, in equal and undivided shares, and

**To WILLIAM C. NAUTA, KENNETH DLC. NAUTA, and JOHN C. NAUTA**, in fee simple in equal and undivided shares an **UNDIVIDED ONE-HALF SHARE** in

i. **UNDIVIDED ONE-EIGHT INTEREST in [the Koblerville Property] . . . .**

Initially, the Petition classified the Chalan Piao Properties as ancestor’s land and determined that the Koblerville Property is non-ancestor’s land or “Other Property” for purposes of intestate succession. However, after considering the objections raised by William Sr. and Kenneth, the parties agreed that the Chalan Piao Properties should be classified as non-ancestor’s land.<sup>5</sup> Thus, the Court’s accepts Administratrix’s request to amend the classification of the Chalan Piao Properties to non-ancestor’s land. None of the heirs objected to the re-classification of the Chalan Piao Properties as non-ancestor’s land.

On February 12, 2015, William Sr., William Jr., Kenneth, and John executed a special power of attorney authorizing Dr. Ignacio T. Dela Cruz (“Dr. Dela Cruz”)<sup>6</sup> to negotiate the sale or lease of the Chalan Piao Properties. The special power of attorney stated in pertinent part:

*Specifically, we empower him to negotiate the sale or lease of our real property interests and rights to the above described property, which in his judgment and due diligence will result in the highest monetary returns to us, and to consult with us in*

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<sup>5</sup> See *Estate of Nauta*, Civ. No. 15-0080 (NMI Super. Ct. Oct. 17, 2016) (Administrator’s Position to Objections at 4).  
<sup>6</sup> Dr. Dela Cruz and the Decedent are siblings.

1 writing or verbally on any land sale or lease proposal presented to him by interested  
2 buyers or potential lessees which in his judgment he deems to be a bona fide and  
serious proposal.

3 **GIVING AND GRANTING** unto our said attorney full power of authority to  
4 negotiate the sale or lease of our respective real property interests and rights as  
described above, fully as to all intents and purposes as we might or could do if  
5 personally present, with full power of substitution, hereby ratifying and confirming  
all that our said attorney shall lawfully do by these presents.

6 See William A. Nauta's Ex. A (emphasis added). The special power of attorney would be valid  
7 from the date signed for a period of six months, "unless sooner changed or revoked by the  
undersigned." *Id.* The special power of attorney also specified "[o]ur share on the sale or lease of  
8 the referenced property hereof shall be equally divided among the undersigned." *Id.*

9 On February 13, 2015, Dr. Dela Cruz entered into a ground lease for the Chalan Piao  
10 Properties on behalf of the heirs, distributing the proceeds of the lease equally amongst William Sr.  
11 and the Decedent's sons in four equal shares of \$164,793.08. Dr. Dela Cruz signed the lease on the  
12 behalf of "Heirs and Beneficiaries of Elpidia DLC. Nauta, Decedent."

13 On March 16, 2015, William Sr., William Jr., and John revoked the special power of  
14 attorney. William Sr., William Jr., and John all signed documents revoking the special power of  
15 attorney that were almost identical to one another, aside from the paragraph identifying the  
16 individual signing the document. The revocations revoked Dr. Dela Cruz's authority to act on their  
17 behalf, since Dr. Dela Cruz had "fully completed his performances described therein." The  
18 revocations also stated that they were unaware that the clause in the special power of attorney  
19 stating that they would receive equal shares of the proceeds is "in violation" of 8 CMC § 2902(a), 8  
20 CMC § 2903(a), and 8 CMC § 2903(b).<sup>7</sup> William Sr., William Jr., and John also claim that Dr.  
21 Dela Cruz did not forward a final draft of the lease to them for their review prior to its execution.  
22

23 \_\_\_\_\_  
24 <sup>7</sup> Section 2902(a) states that "[t]he surviving spouse obtains a life estate, with the issue obtaining a vested remainder in fee simple by representation" when the property in question is ancestor's land. Section 2903(a) states that the surviving

1 William Sr. now argues that he is entitled to half of the proceeds of the Chalan Piao  
2 Properties, with the Decedent's sons taking equal shares of the other half. Surviving Spouse's  
3 Reply at 1-2. William Sr. further argues that Dr. Dela Cruz attempted to "circumvent" the  
4 Commonwealth Code to "short change the surviving spouse's rightful share." Surviving Spouse's  
5 Reply at 2. Specifically, William Sr. argues that he did not authorize Dr. Dela Cruz to *execute* the  
6 lease, but only to *negotiate* the lease. Surviving Spouse's Supp. Br. at 2-3. William Sr. also argues  
7 that distributing the lease proceeds equally among himself and his sons is "illegal." *Id.*

8 Kenneth, on the other hand, argues that William Sr. cannot inherit any interest from the  
9 Chalan Piao Properties, nor can he receive any lease proceeds from those properties, since William  
10 Sr. is a non-NMD. Kenneth DLC Nauta's Obj. to Pet. at 4-6.

11 The Administratrix filed an Administrator's<sup>8</sup> Position to Objections on October 17, 2016,  
12 and an Administrator's Position Regarding the Lease on December 9, 2016, addressing the Chalan  
13 Piao Properties. One of the Administratrix's concerns is that William Sr.'s challenges to the  
14 distribution of lease funds could call into question the validity of the entire lease to the Chalan Piao  
15 Properties. Administrator's Position Regarding Lease at 1. The Administratrix also, as described  
16 above, amended her description of the Chalan Piao Properties to non-ancestor's land; the Court  
17 accepted this change in classification.<sup>9</sup> None of the Decedent's heirs objected to the re-  
18 classification of the Chalan Piao Properties.

19 In total, the proceeds from the lease of the Chalan Piao Properties is \$659,172.32. Of this  
20 amount, \$164,793.08 has been distributed to William Sr. and the Decedent's sons, with the  
21 remaining \$494,379.24 being held in escrow by the Torres Brothers law firm until the Court  
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23 spouse receives half of all property that is not ancestors' land. Section 2903(b) states that a decedent's issue take one  
half of all property that is not ancestor's land by representation.

24 <sup>8</sup> The Administratrix titled her pleadings using the term "Administrator." The terms "Administrator" and  
"Administratrix" are interchangeable. 8 CMC § 2107.

<sup>9</sup> See *Estate of Nauta*, Civ. No. 15-0080 (NMI Super. Ct. Oct. 17, 2016) (Administrator's Position to Objections at 4).

1 determines its distribution. *See* Surviving Spouse’s Reply at 1. John received a \$35,000  
2 advancement on his share of the Decedent’s estate to pay for his daughter’s college education; this  
3 advancement was not specifically drawn from the proceeds from the Chalan Piao Properties. *See*  
4 *Estate of Nauta*, Civ. No. 15-0080 (July 17, 2017) (Order After Hearing); Request to Approve  
5 Advance Payment at 1-2.

## 6 II. DISCUSSION

7 As a threshold matter, the Court must first address Kenneth’s argument that William Sr.  
8 cannot inherit any interest in the Chalan Piao Properties as a non-NMD. The Chalan Piao Properties  
9 are classified as “non-ancestor’s” lands, which entitles William Sr. to an undivided one-half interest  
10 in the Chalan Piao Properties for up to 55 years. *See generally, Estate of Nauta*, Civ. No. 15-0080  
11 (NMI Super. Ct. December 1, 2017) (Koblerville Order) (finding that a surviving spouse will  
12 inherit an undivided one-half interest in decedent’s non-ancestor’s lands for not more than 55 years  
13 where the decedent leaves issue that are eligible to own lands in the Commonwealth and who will  
14 inherit the remaining one-half interest in the underlying non-ancestor’s lands).

15 Thus, the Court will now turn to the key issue regarding the Chalan Piao Properties: what  
16 effect the special power of attorney given to Dr. Dela Cruz had on the lease of the property.  
17 Specifically, the Court must look to the impact the special power of attorney had on the distribution  
18 of the lease proceeds between William Sr. and the Decedent’s sons.

19 William Sr. argues that the lease proceeds should be divided up with himself taking one  
20 half, and the Decedent’s three sons each taking equal shares of the remaining half. Kenneth, on the  
21 other end of the spectrum, argues that William Sr., as a non-NMD, is not entitled to take any  
22 proceeds at all.

23 The lease itself distributes the lease proceeds equally amongst William Sr. and the  
24 Decedent’s sons in four equal shares of \$164,793.08. William Sr. argues that Dr. Dela Cruz

1 exceeded the authority of the special power of attorney by entering into the lease agreement on the  
2 behalf of William Sr., William Jr., Kenneth, and John.

3 Thus, the Court must now turn to whether Dr. Dela Cruz exceeded the authority granted to  
4 him in the special power of attorney. The Court shall consider: (1) the type of power of attorney  
5 invoked by the heirs; (2) the effect it has on the scope of the agency; and (3) whether the agent has  
6 exceeded the scope of his agency.

7 **1. Dr. Dela Cruz was Authorized as an Agent Pursuant to the Special Power of Attorney**

8 A. *Under the law of agency, the authority of a special power of attorney must be strictly*  
9 *pursued, and if it is not, the principal will not be bound.*

10 “A power of attorney is an instrument authorizing another to act as one’s agent.” *Ulloa v.*  
11 *Maratita*, Civ. No. 91-0365 (NMI Super. Ct. July 31, 1995) (Findings of Fact and Conclusions of  
12 Law at 8) (hereinafter “*Maratita*”) (citation omitted), *aff’d*, 1997 MP 15. “A valid power of  
13 attorney, which delineates the extent of the agent’s authority, creates a principal-agency  
14 relationship.” *Id.* (citations omitted); *see also Salas v. Mafnas*, Civ. No. 06-0338 (NMI Super. Ct.  
15 Mar. 11, 2008) (Order Granting in Part and Den. in Part Pl.’s Mot. for Summ. J. at 8) (hereinafter  
16 “*Mafnas*”) (“[T]he execution of a power of attorney automatically creates an agency in which the  
17 attorney-in-fact becomes a fiduciary to the principal.”). Thus, “[b]ecause the power of attorney  
18 creates an agency relationship, the principles of the law of agency are applicable in determining the  
19 authority and duties of an attorney-in-fact.” *Estate of Mehus*, 278 N.W.2d 625 (N.D. 1979) (citation  
20 omitted).

21 Since the Commonwealth has no written or customary law on agency, the Court looks to the  
22 Restatement. 7 CMC § 3401. Under the Restatement, an agency relationship formed under powers  
23 of attorney instruments sets the fiduciary responsibility of an attorney-in-fact to the principal. “An  
24 agent is a fiduciary with respect to matters within the scope of his agency.” *Santos v. Nansay*

1 *Micronesia, Inc.*, 4 NMI 155 (1994), *appeal dismissed*, 76 F.3d 299 (9<sup>th</sup> Cir. 1996) (citing  
2 RESTATEMENT (SECOND) OF AGENCY § 13 (1958)). Moreover, “the majority of common law  
3 jurisdictions reflect the Restatement’s rule that an agency relationship carries with it a concomitant  
4 fiduciary relationship which restricts the actions of the agent with regard to those powers conferred  
5 to him by the power of attorney. . . .” *Mafnas* at 9.

6 *B. There are two types of powers of attorney: general and special*

7 Two types of powers of attorney have been recognized—general and special power of  
8 attorneys. “In a general power of attorney[,] the attorney-in-fact can conduct all business or sign  
9 any document, and in a special power of attorney[,] he or she can only sign documents or act in  
10 relation to special identified matters.” *Salas v. Mafnas*, 2010 MP 9 ¶ 7 n.3. The difference between  
11 the two types of powers of attorney makes it necessary to determine which rules of construction  
12 apply. Where a special power of attorney is created, the agent’s authority is to be strictly pursued.  
13 *See e.g., Seergy v. Morris Realty Corp.*, 121 S.E. 900, 902 (Va. 1924) (holding that because the  
14 agent was a limited special agent and not a general agent, “the established rule is that the authority  
15 of the agent must be strictly pursued, and if it is not, the principal will not be bound”); *Barrett v.*  
16 *McHattie*, 59 P.2d 794, 796 (Mont. 1936) (holding that a special agent’s authority must be strictly  
17 pursued and construed because its power is special and limited and would prevent either the agent  
18 or a third person dealing with him from claiming that the agent had a power which they had not a  
19 right to understand was actually conferred); *Fidelity Trust Co. v. Fowler*, 217 S.W. 953 (Tex. Civ.  
20 App. 1919) (recognizing that the general rules for the interpretation and construction of contracts  
21 are applicable to contracts of agency and that the authority of an agent is to be fairly and liberally  
22 construed, but that the “authority of a special agent being in its nature limited, suggesting  
23 restrictions and qualifications which may be discovered upon investigation, its scope is much more  
24 easy of determination and must not be exceeded . . . [and] his authority . . . strictly pursued, and, if



1 it is not, the principal will not be bound.”); cf. *Hackworth v. Hastings Industrial Co.*, 142 S.W. 681,  
2 682 (Ky. Ct. App. 1912) (“All powers of attorney receive a strict interpretation. . . . Powers of  
3 attorney are not subject to that liberal interpretation which is given to less formal instruments. . .”).

4 *C. The special power of attorney given to Dr. Dela Cruz by the heirs was solely to*  
5 *negotiate a sale or lease of the Chalan Piao Properties.*

6 On February 12, 2015, William Sr., William Jr., Kenneth, and John executed a special  
7 power of attorney authorizing Dr. Dela Cruz to negotiate the sale or lease of the Chalan Piao  
8 Properties. Specifically, the special power of attorney, states in pertinent part:

9 *Specifically, we empower him to negotiate the sale or lease of our real*  
10 *property interests and rights to the above described property, which in his judgment*  
11 *and due diligence will result in the highest monetary returns to us, and to consult*  
12 *with us in writing or verbally on any land sale or lease proposal presented to him by*  
13 *interested buyers or potential lessees which in his judgment he deems to be a bona*  
14 *fide and serious proposal.*

15 ***GIVING AND GRANTING** unto our said attorney full power of authority to*  
16 *negotiate the sale or lease of our respective real property interests and rights as*  
17 *described above, fully as to all intents and purposes as we might or could do if*  
18 *personally present, with full power of substitution, hereby ratifying and confirming*  
19 *all that our said attorney shall lawfully do by these presents.*

20 *See William A. Nauta’s Ex. A (emphasis added).* On February 13, 2015, immediately following the  
21 execution of the special power of attorney, Dr. Dela Cruz entered into a Ground Lease on behalf of  
22 the heirs for the Chalan Piao Properties with the proceeds of the lease distributed to William Sr. and  
23 the Decedent’s sons in equal shares of \$164,793.08 each. On March 17, 2015, William Sr. filed an  
24 amended revocation of the special power of attorney, claiming that the provision delineating each  
heir’s equal share in the lease proceeds violated Commonwealth law. Specifically, William Sr.  
declared that pursuant to 8 CMC § 2902 he should be entitled to one-half of the lease proceeds  
because he has a statutory right to a one-half interest in the Chalan Piao Properties.

Following Administratrix’s petition for a decree of final distribution, William Sr. filed a  
series of opposition, reply, and supplemental briefing essentially arguing that Dr. Dela Cruz

1 exceeded his fiduciary duty by entering into a ground lease for the Chalan Piao Properties.  
2 Although not advocating for the revocation and termination of the Ground Lease due to Dr. Dela  
3 Cruz's lack of authority to enter into one, William Sr. seemingly is attempting to invalidate the  
4 provision of the special power of attorney granting all heirs an equal share of the proceeds of the  
5 lease.

6           Thus, the Court must first look to the scope of the authority afforded to Dr. Dela Cruz in  
7 order to determine whether the Ground Lease remains viable. The "Special Power of Attorney,"  
8 states that Dr. Dela Cruz is "empower[ed] to negotiate the sale or lease of our real property interest  
9 and rights to the [Chalan Piao Properties] . . . and is given full power of authority to negotiate the  
10 sale or lease of our respective real property interests and rights." The power of attorney further  
11 instructs Dr. Dela Cruz to "consult with [the heirs] in writing or verbally on any land sale or lease  
12 proposal presented to him."

13           Based on the foregoing, the Court finds that Dr. Dela Cruz's authority is limited and special  
14 in nature: (1) it delegates that Dr. Dela Cruz is to act on the heirs behalf pertaining to the Chalan  
15 Piao Properties only; (2) the act being limited for the "purpose of negotiating a sale or lease" of the  
16 Chalan Piao Properties; and (3) if a sale or lease proposal is made, Dr. Dela Cruz must consult with  
17 the heirs. These specific and particular instructions ascribed to Dr. Dela Cruz are special in nature,  
18 and therefore, the Court must determine whether Dr. Dela Cruz's acts of entering into a lease  
19 agreement exceeded his authority under the special power of attorney. *Coulter v. Portland Trust*  
20 *Co.*, 2 P. 565, 567 (Or. 1891).

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1           D. Dr. Dela Cruz's execution of a Ground Lease for the Chalan Piao Properties exceeded  
2           the special grant of authority afforded to him by William Sr. and the Decedent's sons,  
3           where the special power of attorney instructed Dr. Dela Cruz to "negotiate the sale or  
4           lease" of the Chalan Piao Properties and to consult with William Sr. and the  
5           Decedent's sons regarding any land or lease proposal presented to him.

6           Whether "negotiate[ing] the sale or lease" of the Chalan Piao Properties confers Dr. Dela  
7           Cruz the right to enter a Ground Lease for said properties is crucial in determining whether the  
8           Ground Lease binds William Sr. and the Decedent's sons. The expression "to negotiate a lease" has  
9           been construed as the mere right to "to bargain" or "to arrange for a sale." *See Salter v. Ives*, 155 P.  
10          84, 85 (Cal. 1916). "The term ['negotiate'] in an agreement . . . has been construed to mean  
11          ['conversation in arranging the terms of a contract'], and . . . it has been held that one empowered  
12          by a writing ['to make and negotiate a sale'] of real property may neither give an effective deed  
13          nor execute a contract for a deed to one desiring to purchase the land." *Id.* (citations omitted); *see*  
14          *also Seergy*, 121 S.E. at 902 ("A special agent's authority is deemed to be limited to that which is  
15          expressly given or necessarily implied . . . A real estate broker or agent is defined to be one who  
16          negotiates the sale of real property. His business is only to find a purchaser who is willing to buy  
17          the land upon the terms fixed by the owner. He has no authority to bind his principal by signing a  
18          contract of sale.") (citation omitted).

19          Here, the Court finds that the special power of attorney only authorized Dr. Dela Cruz to  
20          negotiate the sale or lease of the Chalan Piao Properties, and that the power of attorney only  
21          empowered him to find a purchaser for the property. This is bolstered by the fact that the power of  
22          attorney further instructed Dr. Dela Cruz to consult with William Sr. and the Decedent's sons  
23          whenever an offer to sell or lease the property has been made, whereupon the satisfactory terms of  
24          the offer could either be accepted or rejected by William Sr. and the Decedent's sons. Since Dr.  
25          Dela Cruz only had the power to negotiate the sale or lease of the Chalan Piao Properties, he may  
26          not enter into a lease agreement for the Chalan Piao Properties, and as such, he could not bind

1 William Sr. and the Decedent’s sons to the ground lease. *Seergy*, 121 S.E. at 902 (holding that the  
2 authority of the special agent must be strictly pursued, and if it is not, the principal will not be  
3 bound).

4 Further, as a consequence of Dr. Dela Cruz’s non-authority to enter into a ground lease, the  
5 third party purchaser is deemed to have knowledge of his limited capacity to contract and does not  
6 benefit from the contract for lease. *See Fidelity Trust Co*, 217 S.W. at 955 (“A person dealing with  
7 a special agent, it is constantly said, acts at his own peril, he is put upon inquiry, he is chargeable  
8 with notice of the extent of his authority, it is his duty to ascertain, he is bound to inquire, and if he  
9 does not he must suffer the consequences.”) (internal quotation marks omitted); *Bourland v.*  
10 *Huffhines*, 269 S.W. 184, 187-188 (Tex. Civ. App. 1924) (“Persons dealing with a [special agent]  
11 must, at their peril, inquire into the nature and extent of his authority, and deal with him  
12 accordingly, for as in the case of acts and transaction of a general agent, a special agent cannot bind  
13 his principal by acts outside the scope of his authority.”).

14 Because the Court finds that Dr. Dela Cruz exceeded his authority by entering into a ground  
15 lease, the Court finds that William Sr., William Jr., Kenneth, and John are not bound by the Ground  
16 Lease. The Ground Lease remains unsigned as it pertains to William Sr., William Jr., Kenneth, and  
17 John.

18 **2. William Sr. and the Decedent’s Sons have not Ratified the Ground Lease.**

19 As the scope of agency was exceeded, the Court must now determine whether the resulting  
20 Ground Lease that was entered into by the special agent, outside the scope of his agency, remains  
21 viable through ratification. “Ratification is the affirmance by a person of a prior act which did not  
22 bind him but which was done or professedly done on his account...” RESTATEMENT (SECOND) OF  
23 AGENCY § 82. Affirmance by the principal may be found when the principal either receives or  
24 retains the benefit of a transaction. *Id.* at §§ 98, 99. “[T]he receipt by a purported principal who

1 knows the facts, of things to which he would not be entitled unless the transaction were ratified and  
2 to which he makes no claim independently of the act of the purported agent, indicates his consent to  
3 become a party to the transaction. . . .” *Id.* § 98 cmt. a. Further, even though the “principal disclaims  
4 responsibility for the act of the purported agent, he becomes subject to liability to the person for  
5 whom the things were obtained . . . provided that he receives its proceeds with knowledge of the  
6 facts.” *Id.* Similarly, “[t]he retention by a purported principal, with knowledge of the facts and  
7 before he has changed his position, of something which he is not entitled to retain unless an act  
8 purported to be done on his account is affirmed . . . constitutes an affirmance unless at the time of  
9 such retention he repudiates the act.” *Id.* § 99. When a principal “retains a benefit, and additionally,  
10 manifests dissent to the agent’s act, the third party has a choice. The third party may elect to treat  
11 the principal’s retention of the benefit as a ratification or may rescind the transaction.”  
12 RESTATEMENT (THIRD) OF AGENCY § 4.01 cmt. g. “[R]atification may be implied from any acts or  
13 conduct on the part of the principal reasonably tending to show such an intention on the part of the  
14 principal to ratify the acts or transactions of the alleged agent, particularly where his conduct is  
15 inconsistent with any other intention. . . .” *McLeod v. Morrison & Eshelman*, 120 P. 528, 530 (Wash.  
16 1912); RESTATEMENT (THIRD) OF AGENCY § 4.01 cmt. d. (“It is a question of fact whether conduct  
17 is sufficient to indicate consent.”).

18           The Court found above that William Sr. and the Decedent’s sons were not bound by the  
19 ground lease, since Dr. Dela Cruz exceeded his authority granted by the special power of attorney.  
20 The proceeds from the lease of the Chalan Piao Properties are being held in escrow by the Torres  
21 Brothers law firm pending the resolution of this probate case. While this matter was under  
22 advisement, John made a motion to advance a portion of his share of the Decedent’s estate to pay  
23 for his daughter’s college education. Request to Approve Advance Payment at 1-2. Notwithstanding  
24 the advancement of \$35,000 made to John, which was not specifically drawn from the proceeds of

1 the Chalan Piao Properties, the Court finds that there was no ratification in this case. *See Estate of*  
2 *Nauta*, Civ. No. 15-0080 (July 17, 2017) (Order After Hearing); Request to Approve Advance  
3 Payment at 1-2. There is nothing on the record to indicate that John’s request for an advancement  
4 showed an intent to ratify the Ground Lease for the Chalan Piao Properties.

5         Although some proceeds from the Chalan Piao Properties have been dispersed, the proceeds  
6 are currently being held in escrow by the Torres Brothers law firm. Shortly after the signing of the  
7 ground lease, William Sr., William Jr., and John all revoked Dr. Dela Cruz’s special power of  
8 attorney, stating that they were unhappy with the distribution of the lease proceeds in the lease  
9 signed by Dr. Dela Cruz. This shows that, rather than seeking to *ratify* the lease entered into by Dr.  
10 Dela Cruz, that William Sr., William Jr., and John were all dissatisfied with the lease entered into  
11 by Dr. Dela Cruz and sought to distance themselves from it. *See McLeod v. Morrison & Eshelman*,  
12 120 P. 528, 530 (Wash. 1912) (“[R]atification may be implied from any acts or conduct on the part  
13 of the principal reasonably tending to show such an intention on the part of the principal to ratify  
14 the acts or transactions of the alleged agent, particularly where his conduct is inconsistent with any  
15 other intention. . .”); RESTATEMENT (THIRD) OF AGENCY § 4.01 cmt. d. (“It is a question of fact  
16 whether conduct is sufficient to indicate consent.”).

17         The Court notes that other parties<sup>10</sup> have signed on to the Chalan Piao lease agreement in  
18 addition to William Sr., William Jr., Kenneth, and John. Since Dr. Dela Cruz exceeded the special  
19 power of attorney granted to him by William Sr., William Jr., Kenneth, and John, they are not  
20 bound by the Chalan Piao lease agreement. Thus, Chalan Piao lease agreement remains unsigned as  
21 to the Decedent’s four heirs.

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24 <sup>10</sup> Whether any other special power of attorney agreements entered into by other parties to the Chalan Piao lease agreement was exceeded is not before the Court.

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**III. CONCLUSION**

Based on the abovementioned reasons, the Court finds that the Chalan Piao Properties are non-ancestor’s land. Dr. Dela Cruz exceeded the special power of attorney granted to him by the Decedent’s heirs by signing the Ground Lease to the Chalan Piao Properties on their behalf. As the Court finds that the Decedent’s heirs have *not* ratified the ground lease, the Court **DENIES** Administratrix’s petition for the disposition of the Chalan Piao Properties. The ground lease agreement as to the Decedent’s four heirs remains unsigned.

**IT IS SO ORDERED** this 1<sup>st</sup> day of December, 2017.

/s/  
JOSEPH N. CAMACHO  
ASSOCIATE JUDGE