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

JOSE C. AYUYU and XIU FANG HUANG,)

CIVIL ACTION NO. 18-0165

Plaintiffs,)

v.)

SYLVAN CABRERA, ANTONIO S.)
CABRERA, JOSE S. CABRERA, ANA S.)
CABRERA and ESTELLA M. CABRERA,)

ORDER GRANTING PRELIMINARY
INJUNCTION

Defendants.)

I. INTRODUCTION

THIS MATTER came before the Court on June 18, 2018 at 9:00 a.m., in the Pedro P. Tenorio Multipurpose Center Room 1 on Plaintiffs' Motion for Preliminary Injunction. Attorney Matthew Gregory represented Plaintiff Jose C. Ayuyu, Charity Hodson represented Plaintiff Xiu Fang Huang on behalf of Robert T. Torres and Daniel Guidotti represented the Defendants.

II. BACKGROUND

The property at issue in this matter is Tract No. 22776-1 ("the Property"), situated in Koblerville, Saipan, Commonwealth of the Northern Mariana Islands. The Property was part of a probate in 1989¹ for the Estate of Antonio Muna Cabrera. In 1996, the Court issued a partial distribution to Joaquin Cabrera.² On November 30, 2001, Defendant Antonio S. Cabrera filed a

¹ *In the Matter of the Estate of Antonio Muna Cabrera*, Civ. No. 89-735 (Super. Ct. August 7, 1989) (Letter of Administration).

² *In the Matter of the Estate of Antonio Muna Cabrera*, Civ. No. 89-735 (Super. Ct. October 30, 1996) (Order of Partial Distribution).

By order of the Court, Presiding Judge Roberto C. Naraja

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1 motion to set aside portions of the 1996 Order of Partial Distribution and on February 12, 2002,
2 the CNMI Superior Court denied the motion.³

3 Defendants Antonio S. Cabrera and Ana S. Cabrera were heirs to the Estate of Antonio
4 Muna Cabrera as well. Defendants Sylvan Cabrera, Antonio Cabrera, and Estella Cabrera live on
5 Tract No. 22776, adjacent to the Property on the north border. According to Estella Cabrera’s
6 testimony, the Defendants have lived there since 1972.

7 On December 26, 2009, Plaintiff Jose C. Ayuyu (“Ayuyu”) obtained the Property through
8 a warranty deed from Joaquin Cabrera, making Ayuyu the fee simple owner of the Property. On
9 January 26, 2017, Ayuyu leased the Property to Plaintiff Xiu Fang Huang for a term of fifty-five
10 (55) years, commencing on January 25, 2017, and ending on January 24, 2072. Xiu Fang Huang
11 plans to build an apartment building on the Property.

12 On April 9, 2018, Steven Dela Cruz (“Dela Cruz”) and Gregorio Basa attempted to enter
13 the Property to build a fence for Xiu Fang Huang. Sylvan Cabrera blocked Dela Cruz’s access to
14 the Property with his vehicle and told the men that he would cut whoever enters the Property
15 with a machete because the land belongs to his family. Cabrera was holding a machete when he
16 said this.

17 On June 8, 2018, Plaintiffs filed an *Ex Parte* Application for a Temporary Restraining
18 Order, which this Court denied. On June 15, 2018, Plaintiffs filed this immediate Motion for a
19 Preliminary Injunction enjoining Defendants from trespassing upon Tract No. 22776-1 or
20 interfering with the legal rights of Lessee Xiu Fang Huang to Tract No. 22776-1.

21 **III. LEGAL STANDARD**

22 NMI R. CIV. P. 65 (“Rule 65”) governs the process for seeking a preliminary injunction.
23 When determining whether to grant or deny a preliminary injunction the Court applies a

24 ³ *In the Matter of the Estate of Antonio Muna Cabrera*, Civ. No. 89-735 (Super. Ct. February 12, 2002) (Order).

1 traditional four-factor test. *See Villanueva v. Tinian Shipping & Transp., Inc.*, 2005 MP 12 ¶ 20.

2 Specifically, the Court analyzes:

3 (1) whether the plaintiff has a strong likelihood of success on the merits; (2) the
4 level of the threat of irreparable harm to the plaintiff if the relief is not granted;
5 (3) the balance between the harm the plaintiff will face if the injunction is denied
6 and the harm the defendant will face if the injunction is granted; and (4) any
7 effect the injunction may have on the public interest.

8 *Id.* (citing *Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427, 1430 (9th Cir.
9 1995) (citing in turn *Dollar Rent A Car v. Travelers Indem. Co.*, 774 F.2d 1371, 1374 (9th Cir.
10 1985))). “Alternatively, a court may issue a preliminary injunction if the moving party
11 demonstrates either a combination of probable success on the merits and the possibility of
12 irreparable harm, or the existence of serious questions going to the merits and a balance of
13 hardships tipping in its favor.” *Id.* (quoting *Villanueva v. Tinian Shipping and Transp., Inc.*, Civ.
14 No. 02–0574 (NMI Super. Ct. Nov. 14, 2002) ([Unpublished] Opinion at 3) (quoting in turn
15 *Johnson*, 72 F.3d at 1430)).

14 IV. DISCUSSION

15 Here, the Court is tasked with assessing whether Plaintiffs’ application for a preliminary
16 injunction should be granted or denied under the four-factor preliminary injunction test. The
17 Court will analyze each of the factors and will balance said factors under the traditional test
18 posited by the NMI Supreme Court in *Tinian Shipping*. *See* 2005 MP 12 ¶ 20.

19 A. Likelihood of Success on the Merits.

20 First, the Court addresses whether Plaintiffs are likely to succeed on the merits. *See*
21 *Tinian Shipping*, 2005 MP 12 ¶ 20.

22 Plaintiffs’ actions against Defendants are to Quiet Title and for Trespass. Defendants’
23 actions against Plaintiffs are for Adverse Possession and to Quiet Title. The Court finds it is
24 appropriate to analyze the likelihood of Defendants establishing an adverse possession claim

1 first. If the Court finds that Defendants are unlikely to succeed on the Adverse Possession claim,
2 then their Quiet Title action will be unlikely to succeed as well. Therefore, it is very likely
3 Plaintiffs will succeed on their Quiet Title and Trespass claims, on the other hand.

4 In the Commonwealth, to establish adverse possession, the possession must be (1)
5 exclusive, (2) actual and uninterrupted, (3) open and notorious and (4) hostile under a claim of
6 right. *Teregeyo v. Fejeran*, 2004 MP 18 ¶ 10 (citing *Chaplin v. Sanders*, 676 P.2d 431, 434
7 (Wash. 1984); *Mackinac Island Dev. Co., Ltd. v. Burton Abstract & Title Co.*, 349 N.W.2d 191,
8 195 (Mich. Ct. App. 1984)). The statutorily-prescribed time for establishing a claim for adverse
9 possession is twenty years. *In Re the Estate of Pilar De Castro*, 2009 MP 3 ¶ 38 (citing 7 CMC §
10 2502(a)(2); *Apatang v. Mundo*, 4 NMI 90, 92 (1994)).

11 The party asserting title by adverse possession bears the burden of proof. *Apatang*, 4 NMI
12 at 92. The standard for proving adverse possession is clear and convincing evidence. *Camacho v.*
13 *Micronesian Dev. Co.*, 2008 MP 8 ¶ 9 (citing *Smith v. Krebs*, 768 P.2d 124, 125 (Alaska 1989);
14 *Hoffman v. Freeman Land and Timber*, 994 P.2d 106, 109 (Or. 1999)). Where the parties are
15 related by blood, the Court applies an “intensified” burden on a party attempting to establish
16 adverse possession. *Apatang*, 4 NMI at 93.

17 1. Exclusive Possession

18 For purposes of adverse possession, exclusive possession means that the person or
19 persons possess the land for themselves, and not for others. *Luttrell v. Stokes*, 77 S.W.3d 745,
20 751 (Mo. Ct. App. 2002) (citing *Whiteside v. Rottger*, 913 S.W.2d 114, 121 (Mo. Ct. App.
21 1995)). Further, the person claiming adverse possession must show they “wholly excluded” the
22 owner from possession for the entire statutory period, but sporadic use, temporary presence, or
23 permissive visits by others, including the record owner, will not defeat the exclusive element. *Id.*
24 (citing *Flowers v. Roberts*, 979 S.W.2d 465, 470 (Mo. Ct. App. 1998); *Machholz-Parks v.*

1 *Suddath*, 884 S.W.2d 705, 708 (Mo. Ct. App. 1994)). The person claiming adverse possession
2 has the burden of showing that the disputed land was neither open to the use of others nor jointly
3 possessed with others. *Id.* (citing *Machholz-Parks* at 708).

4 Here, Defendants allege they have been in exclusive possession of Tract No. 22776-1
5 since 1996. According to Defendant Estella Cabrera’s testimony and the Declaration of Antonio
6 Cabrera, they have only seen Plaintiff, or any of their agents, one instance in 2017. On that
7 occasion, Estella Cabrera allegedly notified Dela Cruz that the Property was Defendants’. This is
8 consistent with the requirement of exclusive possession by showing the disputed land was not
9 open to the use of others.

10 On the other hand, Dela Cruz’s testimony indicated that he and Plaintiff Ayuyu visited
11 the Property every few years, for periods ranging from a few weeks to a few months, to clear
12 tangan tangan, which because of its sporadic and temporary presence would not be enough to
13 defeat the exclusive possession element.

14 2. Actual and Uninterrupted

15 The party claiming the title to land by adverse possession must show they were in actual
16 possession of the land, uninterrupted, for the entire statutory period. The court in *Teson v.*
17 *Vasquez*, 561 S.W.2d 119, 126 (Mo. Ct. App. 1977) explained the element of actual possession:

18 Two concepts are relevant in determining whether a claimant has established his actual
19 possession of the land claimed. They are his present ability to control the land and his
20 intent to exclude others from such control. ... Where the claimant occupies land without
21 color of title, in order to prevail, he must show physical possession of the entire area
22 claimed. ... A mere mental enclosure of land does not constitute the requisite actual
23 possession. ... Rather, there must be continual acts of occupying, clearing, cultivating,
24 pasturing, erecting fences or other improvement and paying taxes on the land. The
performance of all or any combination of these acts of occupancy serves as evidence of
actual possession but is not conclusive. ... Each case must be decided on its own peculiar
fact. (citations omitted).

1 Here, Defendants assert they took the following actions that demonstrated actual
2 possession of Tract No. 22776-1: cleared vegetation, maintained roadways, planted fruits and
3 vegetables, held family events, kept livestock, prevented thieves from coming onto the property,
4 and routinely cleaned up trash and illegal dumping.

5 Preventing thieves from coming onto the property is consistent with the required intent
6 and ability to control the land and exclude others. However, given the overgrown nature of the
7 property, it is unclear whether there was continual use of the property. The property was not
8 cleared for cultivating crops, rather it was overgrown with tangan tangan with fruit trees growing
9 sporadically in various areas on the Property.

10 It is unlikely that Defendants will be able to show clear and convincing evidence that
11 they made continuous use of the entire property for the entire statutory period.

12 3. Open and Notorious

13 No particular act to establish an intention to claim ownership is required to give notice to
14 the world. *Lee v. Raymond*, 456 A.2d 1179, 1183 (R.I. 1983). A claimant's use of the land must
15 be sufficiently open and notorious to put a reasonable property owner on notice of their hostile
16 claim. *Acampora v. Pearson*, 899 A.2d 459, 467 (R.I. 2006). Where the land is wild or
17 undeveloped, the requirement may be heightened in order to put a reasonable property owner on
18 notice that an adversarial claim was being made against the property. *Luttrell*, 77 S.W.3d at 751
19 (citing *Flowers*, 979 S.W.2d at 427).

20 Here, Defendants claim they cleared vegetation on Tract No. 22776-1, maintained
21 roadways, planted fruits and vegetables, held family events, kept livestock, prevented thieves
22 from entering the property, and routinely cleaned up trash and illegal dumping.

23 At the site visit, there was significant tangan tangan and grass growth throughout the
24 property. There were several tangerine trees, coconut trees, and banana trees spread out

1 intermittently throughout the property. On the Northern end of the property, there is an
2 encroaching structure, where the Defendants claim to hold family events, primarily on the
3 weekends during summer. The structure has two bedrooms, a bathroom, and a kitchen. The
4 bedrooms still has a roof attached, as did the bathroom. One bedroom has a mattress in it and
5 several articles of clothing hanging up. This was the room that according to Defendants,
6 Defendant Antonio Cabrera sometimes sleeps. The other bedroom has some children's toys in it.
7 The bathroom appeared to have a working toilet. The kitchen's roof was caved in from Typhoon
8 Soudelor. There was some graffiti on the walls as well.

9 The land on Tract No. 22776-1 was overgrown with wild vegetation, largely undeveloped
10 and wild. Because of this, the Court agrees with the *Luttrell* court that the open and notorious
11 requirement should be heightened. Thus, a reasonable property owner would likely not be on
12 notice that an adversarial claim was being made on this Property.

13 4. Hostile under a Claim of Right

14 A party aiming to establish adverse possession must also show the possession is hostile
15 under a claim of right. The *Teregeyo* Court addressed the "hostility" element and clarified:

16 A showing of force or actual dispute is not necessary to constitute entry or to lay a
17 foundation for a claim of adverse possession. All that is required to establish hostility is
18 that the person claiming adverse possession occupy the property adversely to the rights of
19 the record holder.

20 *Teregeyo*, 2004 MP 18 ¶ 19 (quoting *Barker v. Bd. of County Comm'rs*, 49 F. Supp. 2d 1203,
21 1215-16 (D. Colo. 1999)). Where the parties are related by blood, the Court applies an
22 "intensified" burden on a party attempting to establish adverse possession. *Apatang*, 4 NMI at
23 93.

24 The CNMI Supreme Court has interpreted this "intensified" burden as meaning a court
will presume permissiveness when the occupied land belongs to a blood-relative of the occupier,

1 and the occupier must show that the title holder of the land had “actual knowledge” of the
2 occupation. *Teregeyo*, 2004 MP 18 ¶ 16 (citing *Pioneer Mill Co., Ltd. v. Dow*, 978 P.2d 727, 738
3 (Haw. 1999) (citing 3 AM. JUR. 2D *Adverse Possession* § 202 (Supp. 1997)); see also, *Yin v.*
4 *Midkiff*, 481 P.2d 109, 111 (Haw. 1971); *City and County of Honolulu v. Bennett*, 552 P.2d 1380,
5 1389 (Haw. 1976)).

6 Here, Defendants have asserted that their adverse possession claim began in 1996 against
7 Joaquin Cabrera, cousin of Defendant Antonio S. Cabrera. Because of this relationship by blood,
8 Defendants face an “intensified” burden in establishing their adverse possession claim. To
9 satisfy this burden in regards to the “hostile” element, Defendants must not only prove their
10 claim was hostile, but also prove that Joaquin Cabrera has “actual knowledge” of the hostile
11 occupation. *In Re the Estate of Pilar De Castro*, 2009 MP 3 ¶ 41. So far, Defendants have not
12 shown that Joaquin Cabrera had “actual knowledge” of the occupation of Tract No. 22776-1.

13 5. Statutory Period

14 The statutorily-prescribed time for establishing a claim for adverse possession is twenty
15 years. *In Re the Estate of Pilar De Castro*, 2009 MP 3 ¶ 38 (citing 7 CMC § 2502(a)(2); *Apatang*
16 *v. Mundo*, 4 NMI 90, 92 (1994)).

17 In this case, the Court is tasked with determining the proper starting date for establishing
18 the beginning of the period of adverse possession. Defendants take the position that the proper
19 starting date is October 30, 1996, while Plaintiffs’ position is that the proper starting date is
20 February 12, 2002.

21 Defendants argue that October 30, 1996 is the proper starting date because that is the date
22 of the partial distribution in which Joaquin Cabrera acquired Tract No. 22776-1. At this time it
23 seems unlikely Defendants would be able to show by clear and convincing evidence that their
24 possession of Tract No. 22776-1 was exclusive, actual and uninterrupted, open and notorious,

1 and hostile under a claim of right from 1996 until 2016, as pointed out earlier in this section.
2 Further, up until the February 12, 2002 Order, Defendants were attempting to gain Tract No.
3 22776-1 through litigation, as Antonio S. Cabrera contended his consent to the 1996 Partial
4 Distribution was void as a matter of law because there was no valid, binding, enforceable deed of
5 sale. The Court views this is as an intervening factor that breaks the statutorily-prescribed twenty
6 consecutive years of interrupted possession. Thus, Defendants have failed to show they are
7 likely to satisfy each element of an adverse possession claim for the entire statutory period.

8 On the other hand, Plaintiffs argue that February 12, 2002 is the proper starting date for
9 computing the statutorily-prescribed time period for an adverse possession claim. February 12,
10 2002 was the date the final order was entered in the probate of Antonio Muna Cabrera, in which
11 the CNMI Superior Court denied Defendant Antonio S. Cabrera's motion to set aside portions of
12 the 1996 Order for Partial Distribution. The Court finds Plaintiffs' argument persuasive that the
13 beginning date for adverse possession should begin on February 12, 2002, not October 30, 1996,
14 as this was the final date of litigation in the probate. Under the concept of finality, this date
15 signaled to the parties involved that the dispute came to its conclusion.

16 6. Conclusion as to Plaintiffs' Likelihood of Success.

17 Given that Defendants must prove each element of their adverse possession claim by
18 clear and convincing evidence, and face an "intensified" burden because of their relationship by
19 blood to Joaquin Cabrera, it seems their likelihood of success of prevailing on the merits is low.
20 Further, the Court has serious questions of whether the statutorily-prescribed time for
21 establishing adverse possession has actually been met. This factor weighs in favor of Plaintiffs.

22 **B. Prospect of Irreparable Harm.**

23 When considering whether to grant or deny a preliminary injunction a court must also
24 assess the prospect of irreparable harm if the injunction does not issue. *See Tinian Shipping,*

1 2005 MP 12 ¶ 20. To show irreparable injury the moving party must demonstrate that the injury
2 is actual and imminent, rather than a remote or speculative possibility, and such injury is not
3 compensable with monetary damages. *See Pacific Am. Title Ins. & Escrow (CNMI), Inc. v.*
4 *Anderson*, 1999 MP 15 ¶¶ 12–13.

5 Real property, whether personal or commercial, is considered “unique,” thus the prospect
6 of irreparable harm is very real. *See Zeng v. Crisostomo*, Civ. No. 13-0110 (NMI Super. Ct. 13-
7 0110 June 25, 2013) (Order Granting Preliminary Injunction at 13). Because of this uniqueness,
8 a loss of real property rights generally results in irreparable harm. *Dixon v. Thatcher*, 742 P.2d
9 1029, 1030 (Nev. 1987).

10 Here, Defendants have interfered with Plaintiffs’ quiet enjoyment of Tract No. 22776-1
11 and even prevented Plaintiffs’ agent, Dela Cruz, from entering the Property. Defendants argue it
12 is they, and not Plaintiffs, who will suffer irreparable harm if the Court grants the preliminary
13 injunction because they believe they are in possession of the Property. As discussed above, it
14 seems unlikely Defendants will prevail on their adverse possession claim, thus they have no legal
15 right to possession of Tract No. 22776-1.

16 **C. Balance of the Hardships.**

17 When considering an application for a preliminary injunction a court must examine and
18 balance the hardships associated with granting or denying the application. *See Tinian Shipping*,
19 2005 MP 12 ¶ 20.

20 Plaintiffs argue that they will endure financial hardships if the application for a
21 preliminary injunction is denied. Namely, there will be additional construction costs, additional
22 permitting costs, and in Ms. Xiu’s case, lost opportunity costs.

1 Defendants argue that they are currently in possession of the Property, and any
2 preliminary injunction that prevents them from accessing what they view as their property, tilts
3 the balance of hardships in their favor.

4 Given the likeliness that Defendants will not succeed in asserting their adverse possession
5 claim, thus not even having a legal right to access the Property, this factor weighs in favor of
6 Plaintiffs. If this injunction is denied and Plaintiffs are prevented from beginning construction on
7 the apartment, Plaintiff Xiu will in all likelihood incur large sums of money in associated costs
8 from a delayed project. For example, some of the permits that have been issued have expiration
9 dates, thus if this application is denied, new permits may be necessary because of the delayed
10 start date. Further, Plaintiff Xiu holds a long-term lease on the property, so the longer the project
11 is delayed, the less profit she is able to earn.

12 **D. Public Policy Considerations.**

13 Assessing the public policy implications is the final factor that a court must consider
14 when deciding whether to grant or deny a preliminary injunction application. *See Tinian*
15 *Shipping*, 2005 MP 12 ¶ 20.

16 Plaintiffs argue that granting a preliminary injunction in this case protects the
17 expectations of fee simple land owners to be able to make productive use of their property. In
18 instances such as this case, this means allowing for a fee simple owner to be able to lease
19 property to investors without worrying about interference from trespassers.

20 Defendants argue that the public has an interest in this case by virtue of vindicating the
21 justification for the doctrine of adverse possession. The NMI Supreme Court in *Teregeyo* listed
22 several of the public policy considerations for the existence of the doctrine of adverse
23 possession:

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1 The doctrine of adverse possession, which permits someone to take title away from the
2 lawful owner of land simply by using the land openly for a sufficient period of time, is
3 often justified by references to one or more of three explanations which are as follows:
4 (1) the owner who fails to assert her ownership within the statute of limitations deserves
5 to lose her property for having slept on her rights; (2) the adverse possessor has earned
6 title to the land by working it and putting it to use during the period of the statute of
7 limitations; or (3) adverse possession provides certainty in title.
8 2004 MP 18 ¶ 10

9 As discussed above, it is unlikely Defendants will succeed on their adverse possession
10 claim, thus public policy considerations weigh in favor of Plaintiffs and their expectations to
11 make productive use of their property.

12 V. CONCLUSION

13 For the aforementioned reasons, the preliminary injunction is **GRANTED**. The
14 preliminary injunction is issued based on the reasons set forth more elaborately in this Order.
15 The Plaintiffs have demonstrated 1) a very strong showing of the likelihood of success on the
16 merits and 2) a likelihood of irreparable harm absent injunctive relief. The Court finds that the
17 balance of the hardships tip in Plaintiffs' favor and a preliminary injunction will be in the public
18 interest.

19 For the reasons set forth in this Order, Sylvan Cabrera, Antonio S. Cabrera, Jose S.
20 Cabrera, Ana S. Cabrera, and Estella M. Cabrera, or any person acting through them, are
21 enjoined from interfering with Plaintiffs' use, enjoyment, and possession of the Property, Tract
22 No. 22776-1. Plaintiffs, and anyone acting through them, are allowed to clear and erect a fence
23 around Tract No. 22776-1 and clear Tract No. 22776-1. Any other development or construction
24 (i.e. beginning construction on the apartment building) on Tract No. 22776-1 shall require prior
Court approval before work can begin.

1 Plaintiffs shall post a bond pursuant to NMI R. Civ. P. 65(c)⁴ in the amount of \$10,000.
2 The preliminary injunction shall take effect upon remittance of the full bond to the Cashier of the
3 Superior Court.

4 **IT IS SO ORDERED** this 1st day of August, 2018.

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/s/
ROBERTO C. NARAJA
Presiding Judge

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⁴ NMI R. Civ. P. 65(c) provides that:
No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the Commonwealth or of any officer or agency thereof.

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