



By Order of the Court, Judge Joseph N. Camacho

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FOR PUBLICATION



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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 DENYING THE MOTION FOR
) RELIEF AS THE CNMI CONSTITUTION
) ARTICLE XII, § 2 PROHIBITS A NON-
) NORTHERN MARIANAS DESCENT
) SURVIVING SPOUSE FROM
) INHERITING LAND; FURTHER
) DECEDENT’S NORTHERN MARIANAS
) DESCENT CHILDREN INHERIT THE
) PROPERTIES AND HAVE THE
) AUTHORITY TO SIGN THE GROUND
) LEASE (CHALAN PIAO PROPERTIES)
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I. INTRODUCTION

This matter came before the Court on March 1, 2018 in Courtroom 220A on Administratrix’s Motion for Relief from Order filed on January 3, 2018. Heir Kenneth DLC Nauta (“Kenneth”) was represented by Attorney Brien Sers Nicholas. Administratrix Bernadita Dela Cruz appeared with her counsel, Attorney Rene. C. Holmes. Surviving spouse and heir William A. Nauta Sr. (“William Sr.”) also appeared pro se.

There are three motions currently before the Court: 1. Heir Kenneth DLC Nauta’s Motion for Reconsideration, filed on December 15, 2017; 2. Administratrix’s Motion for Relief from Order, filed on January 3, 2017; Surviving spouse and heir William A. Nauta Sr.’s Petition to Transfer Decedent’s Chalan Piao Estate to Surviving Spouse filed on January 2, 2018. The Court will

1 address each of these motions in separate orders. This order will address Administratrix's Motion
2 for Relief from Order.

3 Based on a review of the filings, oral arguments, and applicable law, the Court makes the
4 following decisions.

5 II. BACKGROUND

6 Decedent Elpidia Dela Cruz Nauta ("Decedent") was a person of Northern Marianas
7 Descent ("NMD").¹ Decedent's surviving spouse, William Sr., is a person of non-Northern
8 Marianas Descent ("non-NMD"). Decedent was survived by her three sons, William Jr., Kenneth,
9 and John, who are NMD like their mother.

10 Administratrix's Motion for Relief from Order asks for relief from an order regarding
11 Decedent's properties in Chalan Piao, Saipan. *Estate of Nauta*, Civ. No. 15-0080 (NMI Super. Ct.
12 Dec. 1, 2017) (Order Finding Ground Lease Agreement Remains Unsigned as the Special Power of
13 Attorney Limited Agent to Negotiating But Not Accepting on the Behalf of Decedent's Heirs
14 (Chalan Piao Properties)) ("Chalan Piao Order"). Decedent's property in Chalan Piao are Lots 572
15 and 573 "C" ("Chalan Piao Properties"). The Chalan Piao Order found that William Sr. could
16 inherit an interest in the Chalan Piao Properties, but that the ground lease as to the Chalan Piao
17 Properties was unsigned, so the Court did not make any order as to how the Chalan Piao Properties
18 should be distributed. Chalan Piao Order at 6, 15.

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¹ 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.

1 The Chalan Piao Order involved a ground lease for the Chalan Piao Properties. William Sr.,
2 William Jr., Kenneth, and John executed a special power of attorney on February 12, 2015
3 authorizing Dr. Ignacio T. Dela Cruz (“Dr. Dela Cruz”) to negotiate the sale or lease of the
4 properties. The special power of attorney provided: “Specifically, we empower him to negotiate the
5 sale or lease of our real property interests and rights to the above described property . . . and to
6 consult with us in writing or verbally on any land sale or lease proposal presented to him.” Chalan
7 Piao Order at 3-4 (emphasis omitted). The special power of attorney further stated: “GIVING AND
8 GRANTING unto our said attorney full power of authority to negotiate the sale or lease of our
9 respective real property interests and rights.” Chalan Piao Order at 4.

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

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

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1 William Sr. ultimately challenged the distribution of the proceeds of the ground lease.
2 Chalan Piao Order at 5. The crux of William Sr.'s challenge was his claim that as the surviving
3 spouse William Sr is entitled to half of the properties².

4 In the Chalan Piao Order, the Court ultimately found that Dr. Dela Cruz exceeded the
5 authority granted to him by the special power of attorney. Chalan Piao Order at 11. Since other
6 parties had signed on to the Chalan Piao lease agreement, the Court found that the lease agreement
7 remained unsigned solely as to William Sr. and Decedent's three sons, William Jr, Kenneth, and
8 John. *Id.* at 14. The Court likewise found that William Sr. and Decedent's three sons, William Jr.,
9 Kenneth, and John had not ratified the ground lease. *Id.* at 14-15. The legal significance is that the
10 lease agreement is binding upon all signatories except William Sr. and Decedent's three sons,
11 William Jr., Kenneth, and John because Dr. Dela Cruz did not have authority to sign on their behalf.

12 On January 3, 2018, Administratrix filed her Motion for Relief from Order. Administratrix
13 argues that the entirety of the ground lease is ratified, except for Section 4.4, which provides for the
14 distribution of lease proceeds amongst the four heirs. Mot. for Relief at 3. Kenneth filed his
15 opposition on January 25, 2018. Administratrix did not file a reply.

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20 ² The Court notes that a statute such as the Probate Code can fill in the gaps and details to implement the Constitution;
21 however, a CNMI statute cannot contradict the CNMI Constitution. When the CNMI Constitution prohibits an action, a
22 CNMI statute cannot grant the ability to do that action. Though the issue is not before the Court because heir William
23 Sr.'s primary residence is outside of the CNMI, the Court notes that the Probate Code also provides a number of
24 exemptions, where property is set aside for the surviving spouse. 8 CMC §§ 2601 *et seq.* "The surviving spouse of the
decedent who was domiciled in the Northern Mariana Islands is entitled to the primary family home and lot," and the
surviving spouse's "[r]ights to exempt property shall have priority over all claims against the estate." 8 § 2601. The
Probate Code also provides a homestead allowance for a surviving spouse, which also has priority over all other claims
on the estate. 8 CMC § 2602. These Probate Code exemptions are statutory and must still comply with CNMI
Constitution, Article XII, Section 2.

1 **III. DISCUSSION**

2 In the Order, this Court noted that the heirs of Decedent: William Sr., William Jr., Kenneth
3 and John executed a special power of attorney authorizing Dr. Ignacio T. Dela Cruz to negotiate the
4 sale or lease of the Chalan Piao properties. Chalan Piao Order at 3. The ground lease was entered
5 into by Dr. Dela Cruz in February 2015. This Court found that the special power of attorney was
6 limited to the negotiation but not acceptance of the terms of lease or sale on behalf of William Sr.,
7 William Jr., Kenneth and John. Chalan Piao Order at 10. This Court further held that the lease
8 which Dr. Dela Cruz executed pursuant to the special power of attorney had not been ratified by
9 William Sr., William Jr., Kenneth, and John. Chalan Piao Order at 12. This Court ultimately ruled,
10 therefore, that the ground lease remained unexecuted as to William Sr., William Jr., Kenneth, and
11 John and thus no proceeds from the lease could be distributed to Decedent’s heirs, namely William
12 Sr., William Jr., Kenneth and John. Chalan Piao Order at 13-14.

13 Administratrix’s Motion For Relief argues that the ground lease signed by Dr. Dela Cruz
14 was, in fact, ratified and therefore was a properly executed document and enforceable. Motion for
15 Relief at 3. The Motion for Relief identified a Stipulated Petition for Approval of the Ground Lease
16 which had been signed by all heirs in March 2017. Motion for Relief at 2-3. The Motion for Relief
17 argued that the Stipulated Petition for Approval of the Ground Lease ratified the entire lease, except
18 the expressly exempted section of the lease addressing the allocation of the proceeds between the
19 heirs of Decedent, specifically Section 4.4. Motion for Relief at 3. The Motion for Relief noted that
20 the ground lease in question contained a severability provision for invalid or void terms: Section
21 17.12, which would allow the unratified section 4.4 to be severed from the remaining valid contract.
22 Motion for Relief at 3.

23 “Ratification is the affirmance of a prior act done by another, whereby the act is given effect
24 as if done by an agent acting with actual authority.” Restatement (Third) of Agency § 4.01(1)

1 (2006). “The act of ratification consists of an externally observable manifestation of assent to be
2 bound by the prior act of another person.” *Id.* at Cmt. b. Further, “[t]he sole requirement for
3 ratification is a manifestation of assent.” *Id.* “[R]atification may be implied from any acts or
4 conduct on the part of the principal reasonably tending to show such an intention on the part of the
5 principal to ratify the acts or transactions of the alleged agent, particularly where his conduct is
6 inconsistent with any other intention. . . .” *McLeod v. Morrison & Eshelman*, 120 P. 528, 530
7 (Wash. 1912).

8 The Administratrix takes the position that based upon the Stipulated Petition for Approval
9 of the Ground Lease, which was signed by William Sr., William Jr., Kenneth, and John in March
10 2017, this Court should find that the ground lease was properly ratified. The only portion left
11 unratified, and thus unexecuted and unenforceable, is Section 4.4, which purports to allocate the
12 proceeds of the lease amongst the four heirs. Because the heirs expressly left Section 4.4 unratified,
13 pursuant to Section 17.12 of the lease—the severability section—that section is unexecuted and
14 severed from the lease.

15 Notwithstanding Administratrix’s position and argument, there is no agreed upon
16 distribution of the rental proceeds among William Sr., William Jr., Kenneth, and John. At the time,
17 there were legal issues that were still pending and taken under advisement by the Court, and the
18 parties understood the risk and agreed to the advancement in consideration of John’s request.
19 Although William Sr., William Jr., Kenneth and John agreed on an advancement to John of \$35,000
20 to pay for his daughter’s education, this advancement was not specifically drawn from the proceeds
21 from the Chalan Piao Properties and was not meant to be a wholesale ratification of the ground
22 lease. *See Estate of Nauta*, Civ. No. 15-0090 (July 17, 2017) (Order After Hearing); Request to
23 Approve Advance Payment at 1-2.

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1 Administratrix requests that, although Section 4.4 of the ground lease is unratified, that the
2 Court should “confirm the fee simple interest of the NMD heirs to one-half of the Chalan Piao
3 property now, with a life estate to William Sr. with a 55-year cap on the other half followed by
4 reversionary interests to the NMD heirs at his death.” Mot. for Relief at 4-5. Administratrix fails to
5 take into account Kenneth’s objection to William, the non-NMD surviving spouse, taking any
6 property from Decedent’s estate. *See* Kenneth’s Opposition to Motion for Relief from Order Filed
7 by Administratrix at 2; Kenneth’s Motion for Reconsideration at 2-9. As outlined in the Court’s
8 order issued on October 5, 2018 regarding the Koblerville Property, William Sr. cannot inherit land
9 from the Decedent’s estate when she has NMD issue who are able to own land in the
10 Commonwealth. *See Estate of Nauta*, Civ. No. 15-0080 (NMI Super. Ct. Oct. 5, 2018) (Order
11 Granting Motion to Reconsider Pursuant to CNMI Constitution, Article XII, § 2 That Prohibits
12 Non-Northern Marianas Descent Surviving Spouses from Inheriting Land Decedent has Northern
13 Marianas Descent Children Who Can Own Land (Koblerville and Chalan Piao Properties)).³ Article
14 XII of the Commonwealth Constitution prohibits a non-NMD surviving spouse from inheriting land
15 when Decedent has NMD issues⁴ that are eligible to inherit land. *Id.* Therefore, pursuant to Article
16 XII, § 2 of the CNMI Constitution and this Court’s order regarding the Koblerville Property,
17 William Sr., as a non-NMD surviving spouse, *cannot* inherit any interest in the Chalan Piao
18 Properties because Decedent has children who are NMD and can inherit the land. *Id.*

19 V. CONCLUSION

20 The CNMI Constitution, Article XII, Section 2 prohibits a non-NMD surviving spouse from
21 inheriting land when a decedent has NMD issue who can own land. Therefore, Decedent’s Northern
22 Marianas Descent children inherit the Chalan Piao Properties. Further, the ground lease for the

23 ³ This order also addressed Decedent’s Koblerville real property.

24 ⁴ Issue is a term of art meaning “lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent.” 8 CMC § 2107(q).

1 Chalan Piao Properties remains unsigned or unratified as to William Jr., Kenneth, and John. As the
2 rightful NMD owners of the Chalan Piao Properties, only Decedent's NMD children William Jr,
3 Kenneth and John have the authority to sign or ratify the ground lease⁵.

4 Accordingly, Administratrix's Motion for Relief from Order is **DENIED**.

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6 **IT IS SO ORDERED** this 5th day of October, 2018.

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10 JOSEPH N. CAMACHO
11 Associate Judge

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24 ⁵ As state above, the other signatories are bound by the lease agreement. In effect, the owner of the lease agreement is a tenant in common with William Jr., Kenneth, and John until they sign the lease or ratify the lease agreement.