



By order of the Court, Associate Judge Wesley M. Bogdan

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

FOR PUBLICATION



E-FILED
CNMI SUPERIOR COURT
E-filed: Nov 16 2018 01:56PM
Clerk Review: N/A
Filing ID: 62675127
Case Number: 18-0041-CV
N/A

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

**ANN CATHERINE BORJA-
MULLARKEY, as Attorney-in-Fact for
Catalina T. Muna Borja,**

Plaintiff,

v.

MERCED MUNA BORJA,

Defendant.

CIVIL CASE NO. 18-0041

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS**

I. INTRODUCTION

THIS MATTER was last before the Court on Defendant's Motion to Dismiss on April 10, 2018 at 9:00 a.m. in Room 2 of the Pedro P. Tenorio Multi-Purpose Center. Attorney Michael A. White appeared on behalf of the Plaintiff. Attorney Matthew T. Gregory appeared on behalf of the Defendant. Both parties were ordered by the Court to provide additional briefing on when the statute of limitations begins to run on quiet title causes of action. After reviewing the parties' arguments and the relevant law, the Court hereby issues the following decision.

II. STATEMENT OF FACTS

1. Catalina T. Muna is a resident of Adkins, Texas and in August 2016 gave her daughter, Ann Catherine Borja-Mullarkey ("Plaintiff"), her Durable Power of Attorney to, among other provisions, commence, prosecute, discontinue or defend any and all actions touching her estate or any part thereof. (Pl.'s Compl., Ex. A).

1 39 Cal. 3d 57, 67 n.8 (1985)) ("The burden of producing evidence sufficient to show [plaintiff's]
2 claim is barred was upon [defendant] who had asserted the statute as a defense.").

3 IV. ARGUMENTS

4 Defendant files its Motion to Dismiss contending that Plaintiff has failed to state a claim
5 upon which relief can be granted specifically because the statute of limitations has run on Plaintiff's
6 claim to recover land based on a forged deed of gift. Defendant argues that Plaintiff's action should
7 be considered as time-barred because the alleged forgery occurred in 2006—as suggested by the
8 Deed of Gift attached as Exhibit B to Plaintiff's Complaint—and because forgery is a specific type
9 of fraud for which the two-year statute of limitations embodied in 7 CMC § 2503 is applied.

10 Plaintiff counters that her action is not based on fraud, but is rather a quiet title action to
11 recover land. Plaintiff maintains that the Complaint seeks no further relief other than for the Court
12 to declare that the Deed of Gift at issue is null, void and without any force or effect. Plaintiff
13 therefore argues that the CNMI's twenty-year statute of limitations for land under 7 CMC §
14 2502(a)(2) should apply and that her claim is timely filed.

15 V. DISCUSSION

16 A. Land and the Nature of the Right Sued Upon

17 As general background, it must be noted that the scarcity of land and its importance in local
18 traditions and customs has long been recognized in the Northern Mariana Islands. *Diamond Hotel*
19 *Co. v. Matsunaga*, 4 NMI 213, 226 (1993). Given such a precept, one might assume that the longer
20 statute of limitations would always apply to causes of action involving land here in the CNMI.
21 However, "[a]n action seeking the recovery of real property does not automatically trigger the
22 longer statute of limitations period applicable to actions for the recovery of land when the claim
23 actually concerns a different theory." *Aldan v. Pangelinan*, 2011 MP 10 ¶ 16 (citing *Watwood v.*
24 *Yambrusic*, 389 A.2d 1362 (D.C. Cir. 1978)). Accordingly, to determine what statute of limitations

1 applies to a given case, courts should view the matter from the basic “nature of the right sued” upon
2 and giving rise to the plaintiff's right to relief. *Hydro-Mill Co., Inc. v. Hayward, Tilton & Rolapp*
3 *Ins. Assocs., Inc.*, 115 Cal. App. 4th 1145, 1153 (2004).

4 At first glance, Plaintiff's underlying cause of action in the Complaint does appear as if it
5 could be based in fraud, and thus subject to the two-year statute of limitations. As Plaintiff claims,
6 the controlling defect in the Deed of Gift is that that the signatures on the Deed of Gift "were forged
7 by a person or persons unknown to Plaintiff." (Pl.'s Compl. ¶ 5). By making such a claim, Plaintiff
8 presents a form of fraud through forgery of her signature on the Deed of Gift executed in July
9 2006.¹

10 Making the issue presented somewhat more complex is the fact that, at this stage, this Court
11 must accept all of Plaintiff's factual allegations as true and draw all reasonable inferences in her
12 favor. *Syed*, 2012 MP at ¶ 22. As such, Plaintiff pleads that the Deed of Gift is invalid because she
13 did not sign or consent to the transfer of property to Defendant. Taken as true, this would mean that
14 Plaintiff's allegations would require factual recognition that fraud occurred (due to Plaintiff's
15 apparent signature on the Deed of Gift). Under this line of analysis, since forgery is a type of fraud,
16 the CNMI two-year statute of limitations would seem to apply to Plaintiff's claims unless some
17 other rule of law applies and controls.

18 //

19 //

20 ¹ "Forgery is a species of fraud." *Fortis Benefits Ins. Co. v. Pinkley*, 926 So. 2d 981, 988 (Ala. 2005). *See, e.g., Abel v.*
21 *Meadow Brook Nat'l Bank*, 44 Misc. 2d 577, 578 (App. Term 1964); *Barbour v. Barbour*, 155 Va. 650, 654 (1931) ("Of
22 course, if the deed was a forgery and a fraud upon Mrs. Barbour, she should have repudiated it promptly."); Black's
23 Law Dictionary (9th ed. 2009), forgery ("[F]orgeries are a species of fraud."). Further, in the CNMI, a person commits
24 the offense of forgery if, with intent to defraud or injure anyone, or with knowledge that he or she is facilitating a fraud
or injury to be perpetrated by anyone, the person makes, completes, executes, authenticates, issues, or transfers any
writing so that it purports to be the act of another or did not authorize that act, or to have been executed at a time or
place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original
existed. 6 CMC §1701(b)(2).

1 **B. Public Records and the Discovery Rule**

2 Adding even more difficulty are arguments that Defendant raises in support of her Motion to
3 Dismiss concerning exactly when Plaintiff’s cause of action must have first accrued. In short, the
4 term "accrue" refers to when a suit may be first initiated or maintained from thereon. *Zhang v.*
5 *Commonwealth*, 2001 MP 18 ¶ 13 n.10 (citing *Dillon v. Bd. of Pension comm'rs*, 18 Cal. 2d 427,
6 430 (1941)). The "discovery rule" generally controls this inquiry and provides that a claim first
7 accrues when the litigant knows or, with due diligence should have known, facts that will form the
8 basis for an action. *Merck & Co. v. Reynolds*, 559 U.S. 633, 646 (2010) (emphasis added).
9 Defendant argues that Plaintiff’s cause of action first accrued in 2006 when the alleged forgery took
10 place and the document was made a “public record” by its recordation in the Commonwealth
11 Recorders Office. Accordingly, Defendant maintains that the statute of limitations has ran and that
12 Plaintiff’s case must be considered as time-barred.²

13 **C. The Applicable Statute of Limitations**

14 Notwithstanding these well-structured arguments, this Court concludes that the CNMI’s
15 twenty-year statute of limitations for the recovery of land embodied in 7 CMC § 2502(a)(2)
16 controls the instant Motion to Dismiss for the following reasons.

17 //

18 //

19 //

20 ² Under, 7 CMC § 2509, if any person who is liable to any action fraudulently conceals the cause of action from the
21 knowledge of the person entitled to bring it, the action may be commenced after the person who is entitled to bring the
22 same shall discover or shall have had reasonable opportunity to discover that he has such cause of action. However, as
23 the Supreme Court of Washington explained, "where facts constituting fraudulent acts were matters of public record,
24 and thus easily ascertainable, the public record serves as constructive notice to all the world of its contents." *Shepard v.*
Holmes, 185 Wash. App. 730, 740 (2014). In the present case, the Deed of Gift was executed on July 26, 2006 and
recorded two days later on July 28, 2006, making it available to the public and easily attainable. Despite this, Plaintiff
did not bring suit until seventeen years later when she filed her Complaint on January 27, 2018. Since Plaintiff filed the
Complaint well beyond the two-year statute of limitations for fraud, her claim would seem to be barred at law if it were
not for the fact that Plaintiff is actually seeking the recovery of her interest in property.

1 **1. Actions for the Recovery of Land or Any Interest Therein**

2 First, the CNMI Supreme Court has provided a very thorough and detailed analysis and
3 history of under what circumstances and when 7 CMC § 2502(a)(2) controls and is applicable to a
4 given set of facts. *Century Ins. Com. Ltd v. Guerrero, et al.*, 2009 MP 16. In *Century Ins.*, the
5 Supreme Court ultimately concluded that an action seeking to enforce a separate agreement to lease
6 property and use it as security for other business transactions is subject to the catch-all six-year
7 statute of limitations of 7 CMC § 2505 and not the twenty-year statute of limitations of 7 CMC §
8 2502(a)(2). *Id.* at ¶ 30. In this Court's understanding (and most helpful in the instant case), the
9 *Century Ins.* case turned on the realization that requiring one party to execute a lease agreement in
10 favor of the other party for real property following a failed construction project eight years earlier
11 was not an action for the recovery of land. *Id.* at ¶ 5.

12 In reaching its conclusion, the *Century Ins.* Court first looked to the Trust Territory High
13 Court and their interpretation of the predecessor statutes to 7 CMC § 2502(a)(2).³ The Supreme
14 Court noted, for example, in *Crisostimo v. Trust Territory*, 7 TTR 375 (App. Div. 1976), the Trust
15 Territory Court held that the twenty-year statute of limitations embodied in the predecessor statute
16 did not apply to land matters generally, but instead only to quiet title suits or suits to recover land
17 specifically. *Id.* at ¶ 12 (emphasis added).⁴

18 The *Century Ins.* Court next looked to similar cases from other U.S. jurisdictions, which
19 recognized a difference between actions to recover real property and other actions that involve
20

21 ³ The predecessor statutes to 7 CMC § 2502(a)(2) were Section 316 of the Trust Territory Code and then later 6 TTC §
22 302. These earlier statutes used language verbatim to 7 CMC § 2502(a)(2) and as acknowledged in interpretations by
the Trust Territory High Court held that the twenty-year statute of limitations could be applied to quiet title actions as in
the present case.

23 ⁴ *Crisostimo* involved a dispute regarding a land exchange agreement between the plaintiff and the Trust Territory
24 Government. Since the gravamen of that complaint was a rescission suit and not a quiet title suit or a suit to recover
land, the *Crisostimo* Court held that the twenty-year statute of limitations did not apply. *Id.*

1 acquiring real property. For example, in *Watwood v. Yambrusic*, 389 A.2d 1362 (D.C. Cir. 1978),
2 the plaintiff brought suit seeking to impose a constructive trust against the defendant on real
3 property that was transferred to the defendant. *Id.* at 16. The plaintiff claimed that the land was not
4 conveyed to the defendant, but was only held in trust as security for a loan and asserted that the
5 longer statute of limitations for the recovery of land applied since she sought the re-conveyance of
6 real property. Ultimately, the Court of Appeals in *Watwood* affirmed the trial court's dismissal of
7 the suit on the grounds that the action was not for the recovery of land and the plaintiff in that case
8 waited six years to file suit after taking other affirmative actions from which she knew or should
9 have known that her cause of action was ripe. *Id.*⁵

10 In the instant case, Plaintiff's claim is—on its face—a quiet title action for the recovery of
11 land. It involves no trust or contractual agreement between parties regarding the property or a
12 security interest in the property and none of the other distinguishing points of law from other
13 jurisdictions apply. These facts support Defendant's claim that the CNMI's twenty-year statute of
14 limitations for the recovery of land embodied in 7 CMC § 2502(a)(2) controls the instant Motion to
15 Dismiss.

16 This conclusion is supported by the more recent case of *Aldan v. Pangelinan*, 2011 MP 10.
17 In *Aldan*, plaintiffs sought quiet title in real property they held in trust which was leased to a tenant.
18 The plaintiffs claimed that the lease was void because the property was originally leased in

19 ⁵ *I-359, Inc. v. AmSouth Bank*, 980 So. 2d 419 (Ala. Ct. App. 2007) is another opinion that our Supreme Court
20 considered in the *Century Ins.* case which clarified that a claim alleging a breach of a covenant contained in a lease
21 triggered the longer statute of limitations, whereas a claim alleging a breach of contract contained in the lease did not.
22 This was because the alleged breaches all stemmed from the same lease agreement and were therefore controlled by the
23 shorter statute of limitations applicable to contracts. *Id.* at ¶ 17. Our Supreme Court also looked to *Lurie v. Dombroski*,
13 Ill. App. 2d 152 (1957). In that case, the plaintiff sought to establish a resulting trust in real property. *Id.* at ¶ 19.
24 Since there was no question regarding the ownership of the land, this was also not a suit to recover real property, and
the longer statute of limitations regarding the recover real property did not apply. In *Brown v. Ramsey*, 472 S.W. 2d 322
(Tex. App. 1971), a trespass-to-try-title suit was barred because even though the plaintiffs were trying to recover land,
the suit was actually one to set aside an earlier judgment awarding the land to the defendants. *Id.*

1 violation of a divorce decree. The CNMI Supreme Court ultimately ruled that "while the Aldans
2 have framed their suit as one to quiet title, what they are really asking the court to do is declare the
3 1979 judgment approving Taniguchi's lease void." *Id.* at ¶ 21. Accordingly, the Court ruled that the
4 twenty-year statutory period under 7 CMC § 2502(a)(2) did not apply to their action. *Id.* As
5 mentioned above, there is no underlying contract or court judgment involved in the present case or
6 related in any way to Plaintiff's cause of action. Plaintiff has instead brought a quiet title action to
7 recover land and asks the Court to declare that Defendant's alleged adverse interest in property is
8 invalid, which weighs greatly in favor of denying Defendant's Motion to Dismiss.

9 **2. A Forged Deed Is Void *Ab Initio***

10 Second, although not directly relied on by either party, this Court believes that ***if*** the 2006
11 deed was forged as suggested in the Complaint (which is something that this Court should accept as
12 true for the purposes of the instant Motion), then the forged deed should be considered as void *ab*
13 *initio*. See *Faison v. Lewis*, 25 N.Y.3d 220 (2015) ("[I]t is well-settled that a forged deed is void *ab*
14 *initio*, meaning a legal nullity at its inception. As such, any encumbrance upon real property based
15 on a forged deed is null and void."). Under this theory, if the deed was forged, then the twenty-year
16 statute of limitations controls and thereby defeats Defendant's Motion to Dismiss because a statute
17 of limitations cannot grant legal significance to a document expressly rejected under the law; the
18 document cannot be used to substantiate what the law has never recognized.

19 This Court finds the *Faison* decision extremely relevant here and it appears that few rules of
20 law are as black-and-white as the rule that a forged deed is invalid. 25 N.Y.3d at 235. The law treats
21 a forged deed as if the deed never existed. *Id.* See also *Dela Cruz v. Wash. Mut. Bank*, No. 2:11-
22 cv-1176-GEB-DED, 2012 U.S. Dist. LEXIS 18949 (E.D. Cal. Feb. 15, 2012) ("Forged documents
23 in a chain of title are void *ab initio*." (citation omitted); *Akins v. Vermast*, 150 Or. App. 236, 241
24 n.7 (1997) ("If fraud is "in factum," such as a forged deed or a situation analogous to forgery, the

1 deed is void *ab initio* and will not support subsequent title in any person."); *Digeo, Inc. v. Audible,*
2 *Inc.*, No. C05-464JLR, 2006 U.S. Dist. LEXIS 62994, at *13 n.5 (W.D. Wash. Aug. 24, 2006) ("In
3 any jurisdiction, a forged title document is void *ab initio*.").

4 The rule to forged deeds even applies to innocent purchasers who buy property at market
5 price in arms-length transactions. Courts will not allow such innocent purchasers to keep title to
6 property under a forged deed, because the innocent purchaser never had title in the first place under
7 the forged deed. *Faison*, 25 N.Y.3d at 235. *See also Ocwen Loan Servicing, LLC v. Lum*, No.
8 CIVIL 13-00497 LEK-KSC, 2015 U.S. Dist. LEXIS 51737, at *16 (D. Haw. Apr. 20, 2015) ("[A]n
9 action to cancel a deed for fraud may be maintained against a true bona fide purchaser if the alleged
10 fraud is fraud in the factum.") (citations omitted); *Parker v. Hunegnaw*, No. 14-13-00031-CV, 2014
11 Tex. App. LEXIS 2257, at *10 (App. Feb. 27, 2014) ("The fact that a grantee is an innocent
12 purchaser is immaterial because one cannot obtain bona fide purchaser status when there is a forged
13 deed in the chain of title."); *Zurstrassen v. Stonier*, 786 So. 2d 65, 68 (Fla. Dist. Ct. App. 2001)
14 ("[A] forged deed . . . is absolutely void and wholly ineffectual to pass title, even to a subsequent
15 innocent purchaser from the grantee under such forged deed.") (citations omitted).

16 **3. The Scarcity and Importance of Land in the CNMI**

17 Finally, this Court must additionally take notice of the fact that property rights are one of the
18 greatest resources for the people of this Commonwealth. Land ownership has long been tied to the
19 Commonwealth's culture and traditions. The Covenant to Establish a Commonwealth of the
20 Northern Mariana Islands in Political Union with the United States of America recognizes the
21 scarcity of land and its importance in local and traditional customs which supports finding
22 applicable the longer statute of limitations. *See Diamond Hotel v. Matsunaga*, 4 NMI 213, 227
23 (1995).

24 //

1 This Court notes further that the public filing of the document in question with the
2 Commonwealth Recorder may not provide such clear public record notice to the Defendant as
3 suggested by the Plaintiff. Real property in the CNMI can remain undeveloped for years sitting
4 completely idle with no real consequence to the landowner. Without development, property tax or
5 other administrative safeguards that are in place in other jurisdictions, it is foreseeable that a
6 substantial amount of time could pass before CNMI landowners inquire the legal status of their real
7 property by checking public records at the Commonwealth Recorder's Office.

8 **VI. CONCLUSION**

9 For the reasons noted above, this Court finds that Plaintiff's Complaint contains sufficient
10 allegations to sustain a recovery on a legal theory at this stage of the litigation. Defendant has not
11 met the burden of proving that the action is time-barred and the Motion to Dismiss therefore cannot
12 be granted. Accordingly, the Court hereby **DENIES** Defendant's Motion to Dismiss.

13 **SO ORDERED** this 16th day of November, 2018.

14 
15 WESLEY M. BOGDAN, Associate Judge
16
17
18
19
20
21
22
23
24