

**FILED**  
 08 FEB 1990 0845  
 Clerk  
 Superior Court  
 Northern Mariana Islands  
 By: Jub  
 Deputy Clerk of Court

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

ESTEVAN I. ROGOLOFOI, as	)	CIVIL ACTION NO. 89-1149
administrator of the Estate of	)	
of Antonio T. Rogolofoi,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<u>ORDER</u>
	)	
HERMAN R. GUERRERO,	)	
	)	
Defendant.	)	
	)	

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The defendant has filed a broad based motion against the plaintiff's complaint. The grounds are:

1. The failure of the plaintiff to comply with Com.R.Civ.Pro. Rule 9(b) which requires the plaintiff to state with particularity the circumstances constituting fraud.
2. The failure of the complaint to allege a cause of action for quieting title since possession is not alleged to be in the plaintiff.

FOR PUBLICATION

3. The plaintiff lacks standing because there is no court order authorizing the Administrator of the estate to prosecute this lawsuit. Citing Rule 10 of the Probate Rules.

#### THE FRAUD ALLEGATION

The Amended Complaint has two paragraphs which refer to the purported fraud of the defendant. Paragraph 10 alleges that on March 17, 1972 the defendant "fraudulently obtained a quitclaim deed from Carmen Rogolofoi...." This allegation clearly does not comply with Rule 9(b) of the Rules of Civil Procedure. The allegation is only a general legal conclusion, unsupported by any factual allegations.

The other paragraph is paragraph 18 which reads:

"Sometime prior to March 17, 1972 defendant induced Carmen Rogolofoi to deed the property to him so that he could sue a certain Norita with respect to Norita's claim to A.H. 329. The defendant represented that if he was successful in an action to quiet title against Norita he would then return the said land back to Carmen I. Rogolofoi."

In analyzing whether this allegation meets the requirements of Rule 9(b), the essential elements required to sustain an action for fraud need to be considered. Those elements are: 1) a representation is made as a statement of

fact, (2) the representation is untrue and known to be untrue by the party making it, or else recklessly made, 3) the representation is made with the intent to deceive and for the purpose of inducing the other party to act upon it, 4) the other party did in fact rely on the false representation and was induced thereby to act to his/her injury or damage. 37 AmJur2d, Fraud and Deceit, § 12.

The allegations of the complaint fail to allege these elements. It is unknown what the false representation is. Assuming the defendant said: "Deed the property to me so I can quiet title against Norita," this is not a statement of fact but a request. If the defendant said: "After I quiet title against Norita, I will deed the property back to you," only the latter part of the statement could be considered a statement of fact but this involves an act to be performed by the defendant in the future.

As a general rule, fraud must relate to a present or pre-existing fact and cannot ordinarily be predicate? on representations or statements which involve mere matters of futurity or things to be done or performed in the future. 37 AmJur2d, Fraud and Deceit, § 57. Simply put, defendant's statement, at most, is a promise to do something in the future and Carmen Rogolofoi had no right to rely on the promise. 37 AmJur2d, Fraud and Deceit, §§ 57 and 265.

The exception to this general rule is if the plaintiff can allege and prove that the defendant was possessed of an

actual fraudulent intent at the time he made the promise.  
37 AmJur2d, Fraud and Deceit, § 59.

The allegations in the complaint fail to comply with Rule 9(b) of the Rules of Civil Procedure and the general rules stated above.

#### THE QUIET TITLE ALLEGATIONS

In order to bring an action for quiet title the complainant must have legal title and be in possession at the time the suit is initiated. 65 AmJur2d, Quieting Title, § 36. It is apparent from the pleadings that the plaintiff cannot comply with this general rule as he concedes the defendant is in possession. There is no statute in the Commonwealth that provides relief from this general rule. Since plaintiff is not in possession, he has a legal remedy and cannot call upon the equity powers of the court.

#### THE STANDING ISSUE

Probate Rule 10 provides that the personal representative of an estate shall do such other acts as are necessary to carry out his duties subject to such instructions and orders as the court may issue. The plaintiff filed suit without any court order to do so. However, it appears that all an executor or administrator must allege is his representative capacity and that he sues in such capacity. 31 AmJur2d, Executors and Administrators, § 1268. It is the court's opinion that once the plaintiff received his letters of administration, he could file suit and the failure to obtain

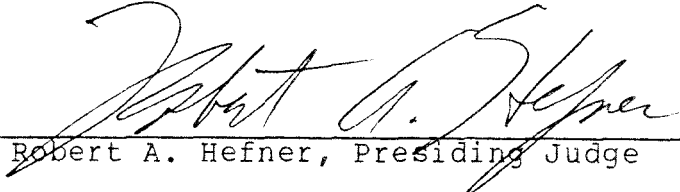
the probate court's approval does not affect his standing. However, a caveat appears in order. Without prior court approval, the personal representative may be left holding the proverbial bag. Should the probate court not approve the actions of the personal representative, he will have to pay the attorney fees, costs and any other liabilities incurred as a result of his actions. Obtaining a prior probate court approval is necessary to assure the personal representative that he can utilize estate resources to prosecute the suit.

However, it is held the failure to obtain such approval does not effect the plaintiff's standing.

ORDER

Defendant's motion to dismiss pursuant to Rule 12(b)(6) is granted. Since a dismissal for failure to state a claim is generally not on the merits, the plaintiff will usually be given leave to amend the complaint. Sidebotham v. Robison, 216 F.2d 816 (9th Cir. 1954); Hughes v. Johnson, 305 F.2d 67 (9th Cir. 1962). This appears to be the proper course to be taken here. Therefore, this order is without prejudice to plaintiff to file an amended complaint not inconsistent with this opinion.

Dated at Saipan, MP, this 8th day of February, 1990.

  
Robert A. Hefner, Presiding Judge