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

VICENTE S. CEPEDA, Plaintiff, vs. ROBERT A. HEFNER, et al, Defendants.	CIVIL ACTION NO. 88-682
WILFRED S. REYES, Plaintiff, vs. WILLIAM H. MILLARD, et al., Defendants.	CIVIL ACTION NO. 88-705

DECISION AND ORDER

I. PROCEDURAL HISTORY[1]

On September 22, 1988, Plaintiff Vicente S. Cepeda filed his complaint to quiet title to real property in the Commonwealth Trial Court against defendants Robert A. Hefner, Elizabeth S. Hefner and

[1] The procedural history of each of the instant actions is recounted only insofar as is necessary to establish the relevant procedural events leading to the motions now before the Court.

FOR PUBLICATION

Celina A. Concepcion.[2] On September 29, 1988, Cepeda filed his summons and first amended complaint to quiet title to real property which added Bernadita S. Cabrera as a defendant. All of the defendants timely filed their answers, affirmative defenses and counterclaims to the first amended complaint.

After a motion to strike portions of the plaintiff's first amended complaint was filed by defendant Robert A. Hefner, the plaintiff agreed to file a seconded amended complaint that omitted the language objected to in the motion to strike in exchange for withdrawal of the motion. The second amended complaint was subsequently filed on January 20, 1989. The second amended complaint also dropped Celina A. Concepcion as a defendant. None of the defendants have filed an answer to the second amended complaint.

On October 6, 1988, plaintiff Wilfred S. Reyes filed his summons and complaint to quiet title to real property in the Commonwealth Trial Court against William H. Millard, Patricia H. Millard, Jerry W. Crowe, Mary A. Crowe, Marian Aldan-Pierce and Antonio S. Guerrero.[3] On October 12, 1988, Reyes filed his summons and first amended complaint on the same defendants.

---

[2] This action is now known as Commonwealth Superior Court Civil Action No. 88-682. The Hefners are the current lessees of the property at issue in Cepeda's complaint, having leased it from the current fee simple title holder Concepcion, who purchased it from Bernadita S. Cabrera, Cepeda's grantee.

[3] This action is now known as Commonwealth Superior Court Civil Action No.88-705. At the time Reyes filed his complaint, the Millards were the lessees of the property at issue in the complaint, having leased it from Guerrero who purchased it from Aldan-Pierce, Reyes' grantee. The Millards also claimed an interest in this property by virtue of a lease assignment from the Crowes, who had leased the property from Aldan-Pierce.

On November 2, 1988, the defendants named in the Reyes complaint timely filed their joint answer, affirmative defenses and counterclaims to the first amended complaint. On the same date, the defendants filed a petition for removal to federal court and also filed their answer, affirmative defenses and counterclaims in federal court. The counterclaims also named Frances L. Teregeyo as a defendant.[4] Reyes never filed a reply to the counterclaims either in federal court or this court.

On November 23, 1988, while the Reyes complaint was still pending in federal court, the defendants filed a joint motion for judgment on the pleadings. On November 30, 1988, plaintiff Reyes filed consolidated motions to strike affirmative defenses and dismiss counterclaims against the defendants. On March 17, 1989, this matter was remanded to this court for lack of a federal question. Neither the defendants' nor the Reyes' pending motions were considered by the federal court.

The Cepeda and Reyes actions are two of seven substantially similar actions involving the interpretation of Article XII of the CNMI Constitution (hereinafter Article XII) that are now pending before this court. On May 16, 1990, all of these actions came on for a status conference to determine the manner in which they were to proceed. At that time, it was agreed by all of the parties that the threshold issues involved in the interpretation of Article XII should be decided before consideration of other substantive and procedural

[4] Teregeyo was named as a defendant in the counterclaims for the ostensible reason that she was a co-grantor of the disputed property with Reyes. On November 28, 1988, the defendants and Teregeyo filed a stipulation in federal court that dismissed without prejudice the counterclaims against Teregeyo only.

motions in these seven actions since those motions could be rendered moot depending on the Court's interpretation of Article XII.

In order to put the threshold issues of Article XII interpretation squarely before the court, counsel for the defendants in the Cepeda and Reyes actions represented that they would file motions for judgment on the pleadings that would accomplish this end.

It was then agreed by all the parties to proceed with these threshold Article XII issues in the Cepeda and Reyes actions and to hold the remaining cases in abeyance pending the court's ruling on motions involving Article XII interpretation. It was further agreed that these motions would be heard on August 22, 1990. An order reflecting the above was entered by the court on May 16, 1990.

On June 15, 1990, the defendants in Civil Action Nos. 88-682 and 88-705 did in fact file motions for judgment on the pleadings. The plaintiffs timely filed their responses and the defendants timely filed their reply.

At the hearing on the motions, the defendants were represented by Theodore R. Mitchell, Esq., and the defendants were represented by Donald C. Williams, Esq., and Marcia Schultz, Esq.

It was agreed by the parties that since the issues involved in the motions before the court were the same, the parties' respective arguments on the motions would be collapsed and argued together rather than separately. At the hearing's conclusion, the court took the motions under advisement.

II. THE MOTIONS

As a preliminary matter, it is essential to engage in some procedural housekeeping. The defendants in both of these actions

bring their motions in the posture of a Com.R.Civ.P. 12(c) motion for judgment on the pleadings.[5] Rule 12(c) provides: "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Under Com.R.Civ.P. 7(a), where the answer contains a counterclaim denominated as such, a reply by the plaintiff is mandatory, *Curry v. Pyramid Life Ins. Co.*, 271 F. 2d 1 (8th Cir. 1959), cert. denied 361 U.S. 933, 80 S. Ct. 373, 4 L. Ed 2d 355, and until the reply is filed, the pleadings are not closed. *Flora v. Home Federal Savings and Loan Ass'n*, 685 F. 2d 209 (7th Cir. 1982).

After Reyes filed his first amended complaint, the defendants in that action filed their answers, affirmative defenses and counterclaims. Reyes has not yet filed a reply to the counterclaims thus preventing closure of the pleadings. Under these circumstances, it appears that the Reyes complaint defendants' Rule 12(c) motion is premature. Nevertheless, since the defendants' motion is essentially a challenge to the legal basis of Reyes' complaint, the court may treat the motion as a Com.R.Civ.P. 12(b)(6) motion to dismiss for failure to state a claim upon which relief may be granted. *Amersbach V. City of Cleveland*, 598 F. 2d 1033 (6th Cir. 1979); *Moxley v. Vernot*, 555 F. Supp. 554 (S.D. Ohio 1982)[6] The fact that the

---

5 The Commonwealth Rules of Civil Procedure are patterned after the Federal Rules of Civil Procedure. Accordingly, federal cases construing the analogous federal rule shall be authoritative. ***See,*** *Tenorio v. Superior Court*, No. 89-002, slip op. at 13 (N.M.I. 1990)

6 The court notes that because the Reyes complaint defendants have filed an answer to the first amended complaint, a subsequently filed Rule 12(b)(6) motion would be untimely. However, such motions may be considered were, as in the instant case, a defense of failure to state a claim upon which relief may be

defendants have misnamed their motion is of no import to the court. "The liberality of the ..... federal rules is such that erroneous nomenclature does not prevent the court from recognizing the true nature of a motion." *Owen v. Kronheim*, 304 F. 2d 957, 959 (D.C. Cir. 1962).

The Cepeda complaint defendants' motion for judgment on the pleadings is also not without its procedural infirmities. Pursuant to Com.R. Civ. P. 15(a), the Cepeda complaint defendants may not rely on their answer filed in response to Cepeda's first amended complaint for purposes of the second amended complaint. Under Rule 15(a), they must file an answer to the second amended complaint. The fact that they have not prevents closure of the pleadings, thus precluding a Rule 12(c) motion for judgment on the pleadings. *Mull V. Colt. Co.*, 31 F.R.D. 154 (S.D. N.Y. 1962). However, the court may treat the defendants' motion as a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief may be granted for the same reasons set forth, *supra*, for Rule 12(b)(6) treatment of the Reyes complaint defendants' motion.[7]

III. RULE 12(b)(6) STANDARD

A Rule 12(b)(6) motion is subject to the same standard as a Rule

---

granted was included in the answer. *Bowen v. Pan Am. World Airways, Inc.*, 474 F. Supp. 563 (S.D. N.Y. 1979); ***see also,*** 5A C. Wright & A. Miller, Federal Practice and Procedure §1361 at 445-446 and n. 7 (1990).

[7] ***See also,*** *New York State United Teachers v. Thompson*, 459 F. Supp. 677 (N.D. N.Y. 1978) (Rule 12(c) motions by defendants who had not answered treated motions to dismiss.)

12(c) motion.[8] The accepted rule is that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 78 S. Ct. 99, 2 L. Ed.2d 80 (1957); *Moor v. City of Costa Mesa*, 886 F. 2d 260 (9th Cir. 1989).

For purposes of a motion to dismiss, the complaint is construed in the light most favorable to the plaintiff and its well-pleaded allegations and reasonable inferences therefrom are taken as true. *Miree v. DeKalb County*, 433 U.S. 25, 97 S. Ct. 2490, 53 L. Ed.2d 557 (1977); *Grunnet v. U.S.*, 730 F.2d 573 (9th Cir. 1984). In giving the pleadings a liberal construction, however, the court is not required to accept legal conclusions either alleged or inferred from the pleaded facts. *United States Ex Rel. Chunie v. Ringrose*, 788 F. 2d 638 (9th Cir. 1986), cert. denied, 479 U.S. 1009, 107 S. Ct. 650, 93 L. Ed. 2d 705. When considering the sufficiency of the complaint, the court may take judicial notice of facts outside the pleadings, *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279 (9th Cir. 1986), including records and reports of administrative bodies. Id. at 1282; *Interstate Natural Gas Co. v. Southern California Gas Co.*, 209 F.2d 380 (9th Cir. 1953).

---

[8] ***See generally,*** 5A C. Wright & A. Miller, Federal Practice and Procedure §1368 (1990).

IV. THE PLEADINGS[9]

After distilling the conclusions of law from both complaints, the court is left with the following well-pled factual allegations.[10]

a. The Reyes Complaint

Plaintiff Wilfred S. Reyes and defendant Marian Aldan-Pierce are persons of Northern Marianas descent. Reyes and Frances L. Teregeyo conveyed by warranty deed a certain parcel of real property to Aldan-Pierce.[11] Defendants Jerry W. Crowe and Mary A. Crowe paid the purchase price of the property by paying the outstanding $13,500.00 balance of a loan which Reyes and Teregeyo owed to California First Bank. The Crowes are not persons of Northern Marianas descent.

b. The Cepeda Complaint

Plaintiff Vicente S. Cepeda and defendant Bernadita S. Cabrera

---

[9] The court notes that both of the complaints allege various transactions between various defendants involving the respective properties and occurring after the plaintiffs conveyed these properties by warranty deeds. Allegations of these subsequent transactions are neither relevant nor necessary to the resolution of the motions before the court. The only transactions necessary for determination of the legal sufficiency of the complaints are those between the plaintiffs and their immediate grantees. To the extent that the plaintiffs allege violations of Article XII arising out of these subsequent transactions, they have no standing to pursue these claims as they were not parties to the transactions. ***See,*** *Sablan, et al., v. Iginoef, et al.*, Appeal No. 89-008, slip op. at 13 (N.M.I. 1990).

[10] The court does not accept the plaintiffs' conclusions of law for purposes of a motion to dismiss for failure to state a claim. *U.S. Ex Rel. Chunie v. Ringrose, supra.* Accordingly, those conclusions of law alleged in the complaints are not considered in this decision.

[11] Frances L. Teregeyo is not a party to this action. ***see,*** n. 4, *supra.*

are persons of Northern Marianas descent. On June 9, 1981, Cepeda executed a warranty deed in favor of Cabrera conveying a certain parcel of real property to Cabrera in fee simple. The warranty deed was subsequently recorded.

This transaction was planned and executed by Jack Layne and or Roger Gridley or either of them acting alone through Bernadita S. Cabrera -- their secretary, or through Realty Trust Corporation. Neither Jack Layne nor Roger Gridley are persons of Northern Marianas descent.

Both Cepeda and Reyes claim that the transactions pleaded in their complaints are violative of Article XII. As a result, they contend that their warranty deeds are void *ab initio* and ask the court to quiet title to the respective properties in their names.

V. **ANALYSIS**

The sole issue before the court is whether the well-pled facts of the complaints together with all reasonable inferences therefrom state claims upon which relief may be granted. The logical starting point for this analysis is Article XII as it existed at the time these transactions were executed, which provided in pertinent part:[12]

> Section 1: Alienation of Land: The acquisition of permanent and long-term interests in real property within the Commonwealth shall be restricted to persons of Northern Marianas descent.

---

[12] These transactions must be judged on the law as it existed at the time they occurred. *Wabol, et al., v. Muna, et al.*, 2 C.R. 963 (D.N.M.I. App. Div. 1987) Sections 2, 3 and 6 of Article XII were amended by the 1985 Constitutional Convention. The instant transactions occurred prior to these amendments. Accordingly, the court's analysis of these sections is limited to the original pre-amendment versions as approved by the 1976 Constitutional Convention.

> Section 2: Acquisition: The term acquisition used in section 1 includes acquisition by sale, lease, gift, inheritance or other means.
>
> Section 3: Permanent and Long-Term Interests in Real Property: The term permanent and long-term interests in real property used in section 1 includes freehold interests and leasehold interests of more than forty years including renewal rights.
>
> Section 6: Enforcement: Any transaction made in violation of section 1 shall be void *ab initio*. Whenever a corporation ceases to be qualified under section 5, a permanent or long-term interest in land in the Commonwealth acquired by the corporation after the effective date of this Constitution shall be forfeited to the government.

The term "freehold" as used in section 3 of Article XII is defined in the *Analysis of the Constitution of the Commonwealth of the Northern Marianas Islands* approved by the delegates to the Northern Marianas Constitutional Convention on December 6, 1976, at page 169:

> Section 3: Permanent and Long-Term Interests in Real Property. This section defines the term "permanent and long-term interest in real property" used both in the Covenant and in §1. Two types of interest are included: freehold interests and leasehold interests of longer than forty years, including renewal rights.
>
> The term freehold interests include freehold estates of inheritance which are fee simple absolute, fee simple determinable, fee simple subject to a condition subsequent, fee simple subject to an executory limitation, fee simple conditional and fee tail. It also includes freehold estates not of inheritance which are estates for one's own life, estates for the life of another, and estates for one's life and the life of another. It includes all types of ownership or title granted by all types of deeds, wills, or by intestate succession. It also includes all types of sharing arrangements for ownership -- ownership jointly vested in two or more persons as tenants in common, and ownership in two or more persons vested in succession.

The plaintiffs and defendants have forcefully argued their positions concerning the proper interpretation and application of Article XII. The plaintiffs maintain that since non-NMI descent

persons either planned and executed these transactions or provided the NMI descent person with the purchase money for the land or both, the court should set aside their warranty deeds which set forth that a person of NMI descent has been granted fee simple absolute.[13]

From the plaintiffs' allegations, it can reasonably be inferred that NMI descent persons (Cabrera and Aldan-Pierce) entered into side agreements with non-NMI descent persons (Layne, Gridley and the Crowes) in which the NMI descent persons acted as *de facto* agent-trustees on behalf of the non-NMI descent persons in the sale and acquisition of the plaintiffs' property.[14] For purposes of the motions only, the court (and the defendants) must accept these well-pled facts and reasonable inferences therefrom as true. The point on which the parties disagree and which the court must resolve as a matter of law upon the motions is whether these well-pled facts and inferences therefrom amount to a violation of Article XII that would entitle the plaintiffs to relief.

The plaintiffs argue that upon executing their warranty deeds, legal fee simple title went to Aldan-Pierce and Cabrera while the equitable fee simple title went to Layne, Gridley and the Crowes as a result of these side agreements. Under these circumstances, they claim that non-NMI descent persons received a prohibited long-term

---

[13] As official records of the Commonwealth Recorder's Office, the court may take judicial notice of the plaintiffs' warranty deeds conveying the subject properties in fee simple to Aldan-Pierce and Cabrera. *Interstate National Gas Co. v. Southern California Gas Co.*, 209 F.2d 380 (9th Cir. 1953).

[14] Although the term "agent-trustee" as used in the complaints and this decision is without doubt a conclusion of law, the defendants conceded the existence of such relationships in their briefs and at oral argument for purposes of these motions only.

interest in land thus rendering their warranty deeds void *ab initio*. Under the plaintiffs' interpretation and application of Article XII, they would be entitled to have title to these properties quieted in their names.

The defendants counter that the warranty deeds, involving only NMI descent persons as grantor and grantee, are perfectly valid under Article XII and that the side agreements establishing the *de facto* agency-trust relationships are void *ab initio* under Article XII. As a result, the defendants assert that upon execution of the warranty deeds, Aldan-Pierce and Cabrera received title in fee simple absolute to the properties from the plaintiffs with the legal and equitable interests remaining merged. Under the defendants' interpretation and application of Article XII to the pleadings, the complaints would fail to state claims upon which relief could be granted.

On its face, Article XII gives no indication whether the plaintiffs are entitled to relief based upon the factual allegations of their complaints. Indeed, it would seem that under a plain reading of Article XII, its requirements were satisfied when the plaintiffs conveyed by warranty deeds all of their interests in the properties to Aldan-Pierce and Cabrera, both being persons of NMI descent. While the parties have referred the court to various documents addressing Article XII that were either considered or adopted by the delegates to the 1976 Constitutional Convention, these documents allow only the most general analysis of the pertinent provisions of Article XII and do not contemplate the specific set of circumstances now before the court.

Nevertheless, the extent of the involvement of Layne, Gridley

and the Crowes in these transactions as alleged in the complaints gives rise to the inference that they attempted to acquire a prohibited long-term interest in the properties. Accordingly, the focus of this analysis must be directed to the role these *de facto* agency-trust relationships played in determining who ultimately acquired the legal and equitable interests in the properties.

The general principles which apply to statutory construction are equally applicable in cases of constitutional construction. *Pangelinan v. CNMI*, 2 C.R. 1148 (D.N.M.I. App. Div. 1987). The most basic rule of statutory construction is that the plain language of the statute should be regarded as conclusive. *Fleming v. Department of Public Safety*, 837 F.2d 401 (9th Cir. 1988). Initially, the defendants argue that the side agreements, without more, render the agency-trust relationships void *ab initio*. It is beyond dispute that the side agreements were entered into before the plaintiffs sold their properties. Layne, Gridley and the Crowes could not have acquired a prohibited long-term interest in land based solely on the existence of such side agreements prior to the plaintiffs' conveyances for the simple reason that the plaintiffs still owned the properties. At most, Layne, Gridley and the Crowes had agreements to acquire prohibited long-term interests in land with Aldan-Pierce and Cabrera. The plain language of Article XII speaks only to transactions in which permanent and long-term interests in real property are acquired. The side agreements establishing the *de facto* agency-trust relationships are not such a transactions. Because no "acquisition" was involved, the section 6 enforcement provisions of Article XII could not be triggered at this point.

While Article XII could not come into play at the formation of these *de facto* agency-trust relationships, it is a reasonable inference that they were entered into for an improper purpose -- that is to place long-term interests in land in the hands of non-NMI descent persons. The parties correctly point out that common law rules govern the treatment given to these agency-trust side agreements.[15] The plaintiffs argue that the principles of agency rather than the principles of trust control the agency-trust side agreements and cite Restatement (Second) of Agency §14 B (1957) as supporting this view. Section 14 B provides:

> "One who has title to property which he agrees to hold for the benefit and subject to the control of another is an agent-trustee and is subject to the rules of agency."

To the extent that an agency-trust agreement is not contrary to public policy, the agency principles that the plaintiffs advance would apply. If, however, the agency-trust relationships now before the court are contrary to public policy, Restatement (Second) of Agency §9 provides:

> "The appointment of an agent to do an act is illegal if an agreement to do such an act or the doing of the act itself would be criminal, tortious, or otherwise opposed to public policy."

Comment b. to this section directs the reader to the Restatement (Second) of Contracts for rules governing illegal bargains and the effect of such illegality upon the bargaining parties. Section 179 of the Restatement (Second) of Contracts provides that such agreements are unenforceable. In the instant cases, the agency-trust

---

[15] Pursuant to 7 CMC §3401, "the rules of the common law, as expressed in the restatements of the law, as approved by the American Law Institute .... shall be the rules of decision in the courts of the Commonwealth ..."

agreements were entered into for the purpose of circumventing Article XII. Clearly, this is contrary to public policy and therefore illegal. Thus, under the relevant agency principles, the agency aspects of the side agreements are illegal and unenforceable with the practical result of rendering the agency principles governing legitimate agency agreements inapplicable.

The defendants argue that trust principles control the analysis of the agency-trust side agreements in the cases at bar. An express trust may be created to hold title to land for another. Restatement (Second) of Trusts §17(b). A resulting trust may also be created if a transfer of property is made to one person and the purchase price is paid by another. In such cases, a resulting trust arises in favor of the person who pays the purchase price. Restatement (Second) of Trusts §440.

One exception to these rules is that neither an express trust nor a resulting trust will be created if the purpose of the trust is illegal. Restatement (Second) of Trusts §§60,65. Restatement (Second) of Trusts §444 further provides:

> "If a transfer of property is made to one person and another pays the purchase price in order to accomplish an illegal purpose, a resulting trust does not arise if the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who had entered into an illegal transaction."

Restatement (Second) of Trusts §117 makes it clear that a person who cannot hold legal title to property cannot become the beneficiary of a trust of such property:

> "[A] person who has no capacity to take legal title to property has no capacity to become the beneficiary of a trust of such property, and a person has capacity to continue to be beneficiary of a trust only to the extent that he has capacity to hold the legal title to such property."

Because the agency-trust side agreements are contrary to public policy, they are unenforceable. More importantly however, the trust aspect of the side agreements never came into being upon the plaintiffs' conveyances of their properties to Aldan-Pierce and Cabrera because its purpose was illegal. The application of the Restatement's trust provisions to these side agreements effectively pre-empted Layne, Gridley and the Crowes from acquiring any legal or equitable interest in the properties at the moment of conveyance or at anytime thereafter. The result under this type of analysis leaves nothing for Article XII to render void *ab initio*.

Disregarding common law trust principles and applying Article XII to the trust aspect of the side agreements obtains the same result. The only point at which the trusts could have arisen was at the moment of conveyance because prior to conveyance, there was nothing for Aldan-Pierce and Cabrera to hold in trust. However, upon conveyance by the plaintiffs, the section 6 enforcement provision of Article XII would have been triggered and rendered the trust aspect of the side agreements void *ab initio* because that was the transaction whereby a non-NMI descent person would have obtained a prohibited long-term interest in land. Moreover, that is the only transaction requiring voidance to accomplish the purpose of Article XII.

Thus, under either analysis, the legal and equitable titles to the properties went to Aldan-Pierce and Cabrera and remained with them.[16] Furthermore, since the plaintiffs were not parties to these

---

[16] The defendants have cited numerous cases from other jurisdictions wherein the issues before the court involved the same ones now before this court. In each of those cases, the courts held that the legal and equitable titles remained merged

side agreements, as a matter of law, they have no standing to contest these side agreements. *Sablan, et al., v. Iginoef, et al,*, Appeal No. 89-008, slip op. at 13 (N.M.I. 1990).

VI. CONCLUSION

Based upon all of the foregoing, it is the unalterable conclusion of this court that the plaintiffs' complaints fail to state claims upon which the court may grant relief to them. Several important public policy reasons support such a conclusion.

First, under the plaintiffs' argument, Article XII would be used as a vehicle to penalize and impose a forfeiture upon NMI descent grantees of land. This argument completely ignores Aldan-Pierce's and Cabrera's inherent right as persons of Northern Marianas descent to hold permanent and long-term interests in real property in their homeland. The objects of the restriction and forfeiture provisions of Article XII are non-NMI descent persons. They are the only ones subject to Article XII sanctions and it is they alone who were intended to suffer forfeiture for its violation. To adopt the plaintiffs' argument in these cases would have the effect of turning Article XII on its ear to reach an unintended and wholly unconstitutional result.

---

in the named grantee of land and did not revert to the grantor upon the finding of an illegal trust attempted on behalf of a third person or where a third person provided the purchase money for and excercised control over the property. ***See,*** *Ales v. Epstein*, 222 S.W. 1012 (Mo. 1920); *Bosworth v. Hagerty*, 99 N.W. 2d 334 (S.D. 1959); *Hainey v. Narigan*, 247 Cal. App. 2d 528, 55 Cal. Rptr. 638 (1966); *In Re Tetsumbumi Yano's Estate*, 206 P. 995 (Cal. 1922); *People v. Fujita*, 8 P. 2d 1101 (Cal. 1932). The court has not found, and the plaintiffs have not presented, any cases wherein the title to real property reverted to the original grantor under such circumstances.

Second, both the framers[17] of Article XII and the CNMI Legislature[18] recognized the necessity of having stability in commonwealth land law. Under the plaintiffs' argument, there would be neither stability nor any certainty in land titles in the commonwealth. Most, if not all sellers and lessors of land in the commonwealth would be required to bring quiet title actions against all previous title holders to ensure that no agency-trust side agreements existed in their chain of title. Such a requirement would render recorded title documents and the present land recording system meaningless because any deed could be set aside if the owner was found to have been an agent-trustee of non-NMI descent persons. This court's decision ensures that a recorded deed will not be set aside under such circumstances. Moreover, the admissibility of parol evidence to contradict the clear language appearing in documents of title will remain limited to instances of fraud, duress, illegality[19] and the like.

Finally, the possibilities for fraud and profiteering under the plaintiffs' interpretation of Article XII would be limitless as real or contrived agent-trustee allegations might surface any time after a significant rise in land prices. For instance, if a seller of land knows at the time of sale that the NMI descent buyer is an agent-trustee of non-NMI descent persons, he could keep this knowledge to

---

[17] *See, Briefing Papers for the Delegates to the Northern Marianas Constitutional Convention* (1976) at p. 9.

[18] *See,* 1 CMC §§3701-12.

[19] Since the plaintiffs' warranty deeds are not violative of Article XII and therefore not illegal under the court's analysis, parol evidence would not be admissible to establish otherwise.

himself and wait to see if land prices rose. If they did rise, the seller could then sue to set aside the sale and reap the benefit of an upward spiralling real estate market. In another example, a seller and buyer could conspire to fabricate an agent-trustee connection in their sale transaction years after it had been consumated and after numerous subsequent conveyances of the land. As in the first example, the conspiring seller would sue to set aside his sale and could pay-off his co-conspirator buyer with a portion of the proceeds from his sale or lease at the then higher market price.

This decision avoids the inumerable and perhaps insurmountable problems that would surely result if it were to adopt the plaintiffs' argument. Contrary to the plaintiffs' argument, today's decision does not deprive NMI descent persons of their lands but reaffirms the God-given right of all persons of Northern Marianas descent to sell, purchase and hold "permanent and long-term interests in real property within the Commonwealth", as guaranteed by Article XII of the Constitution of the Commonwealth of the Northern Marianas Islands.

Now therefore, **IT IS HEREBY ORDERED, ADJUDGED, and DECREED** the Defendants' motion to dismiss the complaints is hereby **GRANTED** and the complaints are hereby **DISMISSED** with prejudice, each party to bear their own costs.

Entered this 7 day of November, 1990.

Alexandro C. Castro, Associate Judge