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

JOSEPH C. ADA, Plaintiff, vs. ELISA P. SABLAN, Defendant.	)	CIVIL ACTION NO. 89-419 OPINION AND ORDER

This matter has returned to the Superior Court following the Commonwealth Supreme Court's reversal of this court's prior determination.

I. COMMONWEALTH SUPREME COURT'S OPINION AND MANDATE

Before this case was appealed to the Supreme Court, the Superior Court held that, under Commonwealth law, all property acquired by a couple during marriage vested in the husband upon divorce. On appeal, the Supreme Court observed that the common law practice of divesting a wife of all ownership rights in property upon marriage was no longer the accepted

practice in the United States.[1] Therefore, the Supreme Court determined that the common law "as applied in the United States" no longer supports the notion that a wife is divested of all ownership rights in property upon marriage.[2] The

[1] The Supreme Court also determined that the common law marital property theory was contrary to Chamorro custom and violative of equal protection.

[2] The Supreme Court reached this conclusion by interpreting 7 CMC § 3401. In so doing, the court established the following new rule: in the absence of written local law, customary law, or a Restatement provision on a given subject, this court must look to the law of all fifty states to determine whether a majority of those jurisdictions have altered the applicable common law principles by statute. *Ada v. Sablan*, No. 90-006, at 9-10 (N.M.I. 1990) (emphasis added in part and omitted in part) (forty states have abolished by statute the common law principle granting husband all rights to wife's property, therefore, it is no longer the law "as generally understood and applied in the United States"); *see also Manglona v. Kaipat*, Appeal No. 91-020, slip op. at 7-8 (N.M.I. 1992) (emphasis added) (although a deed was presumed to create a joint tenancy at common law, most states enacted statutes establishing a preference for tenancies in common).

This decision not only provides a strained interpretation of section 3401 but also places an undue burden on the court and the litigants. Section 3401 establishes that "the rules of common law . . . as generally understood and applied in the United States, shall be the rules of decision in the courts of the Commonwealth, . . ." 7 CMC § 3401. Black's Law Dictionary defines "common law" in the following manner:

> *As distinguished from law created by the enactment of legislatures*, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England.

BLACK'S LAW DICTIONARY 250-51 (5th ed. 1979) (emphasis added).

Trust Territory case law also supports this definition of

"common law." *See Robinson v. Robinson*, No. 89-012, slip op. at 6 (N.M.I. 1990) (interpretation of Trust Territory Code by the Trust Territory High Court is helpful where N.M.I. statute is derived therefrom). In *George v. Walder*, the Trust Territory High Court interpreted 1 TTC § 103, the source of 7 CMC § 3401. 5 TTR 9, 11 (Tr. Div. High Ct. 1970); *see also Likauche v. Trust Territory*, 2 TTR 375, 383 (Tr. Div. High Ct. 1963). The court stated:

> The common law, rather than the statutory law, in the United States is applicable in the Trust Territory in the absence of applicable statute in the Trust Territory. In the United States the common law relating to land transfers has largely been codified by statute. Most of it is therefore not applicable to land transfers in the Trust Territory.

Id. (emphasis added); *accord State of Kansas v. State of Colorado*, 206 U.S. 46, 96-97(1907).

It is, therefore, surprising that the language, "the common law as interpreted and applied," is now deemed to include statutory law, even where the statutes are enacted in derogation of the common law. *See, e.g., Ada v. Sablan*, *supra*, at 9-10; *Manglona v. Kaipat*, *supra*, at 7-8.

In effect, *Ada v. Sablan* and its progeny have amended section 3401 to include the following provision: whenever a majority of the states no longer choose to follow a common law principle, the will of the majority of states automatically becomes the law in the Commonwealth. This is particularly astonishing in light of the right to self-government guaranteed to the people of the Commonwealth by the Covenant. In essence, this right is undercut because the legislatures of Virginia, California, etc., now decide, albeit indirectly, what the law should be in the Commonwealth. Consequently, the Commonwealth Legislature's constitutional prerogative to enact statutes is eroded.

Ada v. Sablan also imposes an impractical and burdensome requirement on litigants. The Superior Court and the parties to a lawsuit are now required to research the law of all fifty states in order to determine whether a majority of the jurisdictions have passed laws that modify, partially repeal, or even abolish a particular common law principle. However, neither the Superior Court law library nor the Federal District Court library have the statutory law of the fifty states. Even if the statutes were accessible, problems would still arise because statutes addressing the same subject matter frequently differ as to terminology and scope. Moreover, the diverse judicial interpretations given similar

Supreme Court concluded that property acquired during marriage is presumptively marital property. A spouse can, however, overcome this presumption by proving that he or she was the sole owner of the land.[3]

II. ON REMAND

Before the Court are two village house lots located respectively in Chalan Kanoa and South Garapan. Pursuant to the Supreme Court's mandate, this Court held a hearing to determine whether the Plaintiff, Mr. Joseph Ada, could overcome the presumption that the lots are part of the marital estate. In an effort to overcome this presumption, the Plaintiff advances several arguments.

First, the Plaintiff contends that 2 CMC § 4249 bars the defendant's claim to any interest in the parcels of land. That section states:

> Any person who has actual or constructive notice of determination of ownership and who claims an interest in the property which is the subject of the Determination of Ownership may file for review of the Determination of Ownership by filing a complaint within 120 days from the date of determination.

2 CMC § 4249.

The Defendant, Ms. Elisa Sablan, did not challenge the

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statutory provisions in different states would make this interpretation unworkable. Despite the multitude of problems, however, the Superior Court is bound by the Supreme Court's interpretation of 7 CMC § 3401.

[3] The Supreme Court did not articulate a standard for determining the point at which this burden is met.

Determinations of Ownership for either parcel within the 120 day period. The Plaintiff, therefore, claims that section 4249 bars the Defendant from seeking an interest in the parcels of land at this time. The Court rejects this argument.

Section 4249 was intended to act as notice to all persons claiming to have obtained an interest in the land prior to the issuance of the homestead permit to the homesteader. The purpose was obviously to protect the homesteader from subsequent litigation by a party wishing to challenge whether the government had proper title to the land when it granted the homestead permit. Section 4249 was not intended to bar a spouse from asserting his or her interests in specific property as part of a marital estate.

Second, given that the title to the properties had not yet vested in either party at the time of the divorce, the Plaintiff claims that the two parcels were not "acquired" during the marriage. Mr. Ada received a quitclaim deed from the government on the Chalan Kanoa property in 1969, one year before the separation. The mere fact that he did not receive the determination of ownership for the property until 1982 does not affect its legal characterization as marital property.

Third, the plaintiff contends that the separation agreement made between the parties somehow vests in him sole legal right to the Chalan Kanoa property. The agreement

states that "Joseph C. Ada, husband, and the two children under his custody, shall have exclusive use and occupany (sic) of their house lot . . . ." (the Chalan Kanoa property). This agreement does not vest title in Mr. Ada. It merely grants him the right to use and to occupy. The Defendant clearly did not give up all interest in the land under the separation agreement.[4] Given that she retained an interest in the land under the agreement, the Chalan Kanoa property qualifies as marital property.

Fourth, the Plaintiff asserts that he individually owned the South Garapan property. Under the separation agreement, neither party can claim an interest in properties acquired after its execution. The Plaintiff argues that the separation agreement legally binds the Defendant as if she deeded the land to the Plaintiff. The Garapan property was purchased during the marriage. As previously noted, the fact that the Certificate of Title to this parcel was issued after the separation has no bearing on the status of the property as a marital asset. The "acquisition" of the property occurred during the marriage despite the fact that title did not vest until after the execution of the separation agreement.

Finally, the Plaintiff claims that his mother purchased the Garapan property for him alone, apparently as an advancement against what he would receive upon her death. After weighing

[4] For example, if the Plaintiff attempted to sell the property, the Defendant would have been entitled to share in the proceeds of the sale.

the credibility of the witnesses, the Court is inclined to believe that the money for the Garapan property was purchased with money from the parties' bank account, not from the Plaintiff's mother.[5]

In view of the arguments advanced by the Plaintiff, the Court finds that the Plaintiff has not overcome the presumption Chalan Kanoa and South Garapan properties are part of the marital estate. The Court, therefore, deems these properties to be marital property subject to equitable distribution under 8 CMC § 1311.

III. 8 CMC § 1311:

Section 1311 governs the disposition of the marital property.[6] In pertinent part, this section states that:

> In . . . granting a divorce, the Court may make such orders . . . for the disposition of either or both parties' interest in any real property in which both have interests, as it

[5] Even if the mother had provided the purchase money, the plaintiff cites no authority supporting a conclusion that this indicates anything more than a gift to the marriage. In fact, the plaintiff does not cite any authority in his effort to overcome the presumption that both properties are marital property.

[6] In response to the Supreme Court's opinion, the legislature enacted "The Commonwealth Marital Property Act of 1990" ("the Act"). Under well-established principles of statutory construction, statutes must be interpreted prospectively unless the legislature clearly indicates that the law is to have retrospective application. *Wabol v. Muna*, 2 CR 963, 980 (D.N.M.I. 1987). The Marital Property Act contains no such retroactive application provision. Consequently, even though the defendant repeatedly referred to the Act during the hearing, it is not applicable to the instant case on remand.

> deems justice and the best interests of all concerned may require.

8 CMC § 1311.

Equitable distribution does not require equal division of the property. The Court need only do that which it believes is equitable in light of the circumstances of the particular case.

The history of the parcels since the separation of the parties shows that the Plaintiff had and continues to have sole and exclusive use to and all the hereditaments, rents, and profits from both parcels of land. As for the final division of marital property in this action, it is hereby ordered and decreed that the Chalan Kanoa property be the sole and exclusive property of the Plaintiff and that the Garapan property be the sole and exclusive property of the Defendant. Both parties shall execute and deliver quit claim deeds for the respective properties to effectuate this decree and order of the Court. Said deeds shall be recorded by the parties no later than thirty days from the date of this order.

The Court recognizes that the improvement erected upon the Garapan property at the sole cost of the Plaintiff. The Defendant shall pay to the Plaintiff $20,000 for the cost of the construction. The money shall be paid to the Plaintiff

within 120 days from the date that the Plaintiff files the above-mentioned quit claim deed.

So ordered, this 19TH day of May, 1993.

Marty W.K. Taylor

MARTY W.K. TAYLOR
Associate Judge