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

JULIAN N. TAMAN, et al., Plaintiffs, v. MARIANAS PUBLIC LAND CORPORATION, Defendant.	Civil Action No. 92-1490 **MEMORANDUM DECISION ON DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

This matter came before the Court on January 26, 1994, on an order by this Court to submit supplemental briefs on issues raised by Defendant Marianas Public land Commission ("MPLC") on a motion for partial summary judgment. MPLC moves for judgment as a matter of law that Plaintiffs were given sufficient notice to provide them with due process in a Title Determination issued by the Trust Territory Land Commission in 1953, to the effect that one of the parcels at issue was the property of the Trust Territory. MPLC also urges the Court to declare this Land Commission proceeding to be res iudicata. Plaintiffs argue that these issues raise questions of fact which must be determined at trial.

FOR PUBLICATION

I. FACTS

Plaintiffs are heirs of Felipe Fanama, who they claim was the owner of some sixteen hectares of land south of Sadog Mames, Saipan, known on Japanese land maps as Lots 648 and 649. By 1952, Felipe Fanama had died, leaving two heirs: his daughter Rufina Fanama (who was in turn the mother of Plaintiff Julian Taman); and his granddaughter Plaintiff Pilar F. Lisua (the daughter of Felipe's son Manuel, who had died in 1936). In 1952, Pilar Lisua was nineteen years old. See Declaration of Pilar F. Lisua.

In 1952, Rufina Fanama filed a claim with the Trust Territory Government for Lot 648. See Statement of Ownership, Exhibit D to Plaintiff's Motion for Summary Judgment. In that statement, Rufina indicated that part of Lot 648 had been leased to Hara Isojiro for twenty years for 300 yen. Id.

The Trust Territory Land Commission held proceedings on Rufina Fanama's claim in 1953, culminating in the issuance of Title Determination No. 766 on November 12, 1953. See Exhibits a through G to Defendant's Motion for Partial Summary Judgment. There is no evidence that Pilar Lisua ever received notice of these proceedings, and MPLC concedes that she did not receive such notice.

However, Rufina Fanama did appear at the Land Commission proceedings. She testified under oath regarding her father's ownership of the land, and asserted that the Conveyance to Mr. Hara was only a twenty-year lease. Id., Exhibits A through D. The Land Commission also received two claims from Hara Kikuo, the son of Hara Isojiro. Id., Exhibit F. According to these claims, Mr. Hara purchased five *cho* of Lot 648 from "Lorenzo Rofag" in

1931 and purchased an additional 4.4 *cho* from "Vicente Taman" in 1932. Id. The Land Commission found that the land, consisting of "ten hectares, more or less," had been owned by "a Japanese national, and is now vested in the [...] Trust Territory pursuant to the vesting order dated 27 September 1951." Id., Exhibit G.

At the initial hearing on MPLC's motion for summary judgment on August 19, 1993, the Court inquired as to the exact boundaries of Lot 648 and asked that a survey of the Lot be taken. MPLC filed such a survey on November 10, 1993; it indicates that Lot 648 consists of 83,543 square meters.

II. ISSUE

MPLC's Motion presents two issues[1/] for resolution:

1. Whether as a matter of law the Land Commission gave sufficient notice to the heirs of Felipe Fanama prior to the proceedings which led to the issuance of T.D. No. 766;

2. Whether as a matter of law T.D. No. 766 should be given res iudicata effect in this proceeding, precluding Plaintiffs from relitigating their claim that the heirs of Felipe Fanama owned Lot 648 in 1952.

[1/] In its November 24, 1993 Order for Supplemental Briefing, the Court raised a third issue: namely, whether the twenty-year statute of limitations of 7 CMC § 2502 should be applied in this case. The parties had briefed this issue during Defendant's first motion for summary judgment, which was denied from the bench on March 31, 1993. Having re-examined the issue, the Court finds no reason to depart from its previous ruling.

III. ANALYSIS

A. SUMMARY JUDGMENT STANDARD

Summary judgment is entered against a party if, viewing the undisputed facts in the light most favorable to the non-moving party, the Court finds as a matter of law that the moving party is entitled to the relief requested. Cabrera v. Heirs of De Castro, 1 N.M.I. 172 (1990). Once the moving party meets its initial burden of showing entitlement to judgment as a matter of law, the burden shifts to the non-moving party to show a genuine dispute of material fact. ***Id.,*** at 176.

B. NOTICE

MPLC first moves for summary judgment that plaintiffs received adequate notice of the Land Commission's proceedings leading to the issuance of T.D. No. 766.

The parties dispute the applicable law. Plaintiff asserted at the January 26, 1994 hearing that 67 TTC § 110 provides the applicable notice requirements for hearings of the Trust Territory Land Commission. However, this statute appears in the 1970 Trust Territory Code; it was adapted from § 1033 of the 1966 Trust Territory Code. Clearly, a statute from the 1966 or 1970 Code cannot be applied retroactively to events in 1953 without a showing that a similar law was in force at the earlier date.

The law governing title determination proceedings at the time of T.D. No. 766's issuance was Land Management Regulation No. 1, issued on June 29, 1953 by the Trust Territory High Commissioner. Regarding notice to interested parties, Regulation No. 1 requires: 1) posting of public notice in various places including on the

land in question; and 2) private notice to the last known address of all "parties of record." Land Management Regulation No. 1, § 6 (1953). Since it is clear that Pilar Lisua was not a "party of record" in the eyes of the Land Commission, no regulation was violated when she did not receive notice.

However, MPLC's motion also poses the more fundamental question of whether Ms. Lisua should now be precluded from claiming that her interests were not represented in the Title Determination because she had no notice of the hearing. MPLC observes that the family is Carolinian and argues that Carolinian custom regarding intestate succession governs this question. See 8 CMC § 2904.[2/] The Court agrees. Since Felipe Fanama died intestate, Rufina Fanama took on the role of land trustee as his oldest surviving daughter. 8 CMC § 2904(a)(3). Therefore, Rufina Fanama was entitled to represent the interests of Pilar Lisua in the Land Commission hearings and did so. The Court finds as a matter of law that Plaintiffs received adequate notice of the proceedings leading to the issuance of T.D. No. 325.

C. ADMINISTRATIVE RES JUDICATA

A Title Determination of the Trust Territory will be given res iudicata effect except in any of the following circumstances: 1) it was void when issued; 2) the record is patently inadequate to support the Land Commission's decision; 3) applying res iudicata contravene an overriding public policy or 4) result in

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[2/] Though not applicable of its own force, this statute codifies pre-existing Carolinian custom and therefore governs events that occurred before its enactment. See Estate of Aldan, 2 N.M.I. 288, 298 (1991) (certain sections of Probate Code codify pre-existing Chamorro custom).

manifest injustice. Estate *of* Dela Cruz, 2 N.M.I. 1, 11 (1991) (emphasis in original).

The parties agree that the primary question here is the adequacy of the record supporting T.D. 766. Estate of Dela Cruz does not state explicitly which party bears the burden of proof in demonstrating the adequacy or inadequacy of a Land Commission record. However, in Estate of Mueilemar, 1 N.M.I. 441, 446 (1999) the Supreme Court clearly placed the burden of challenging a Land Commission decision for lack of notice on the party wishing to set aside the Title Determination. Such an attack, if successful, would render the T.D. "void when issued," which is one of the four exceptions to administrative res iudicata set forth in Dela Cruz. Reading Dela Cruz in the light of Mueilemar, this Court holds that the burden of showing patent inadequacy of the record rests with the party seeking to reverse the Title Determination.

Here, however, the party defending the T.D. has produced the only evidence before the Court. In support of its motion, MPLC has attached Land Commission documents recording the testimony of Rufina Fanama (Exhibits A through D) which show that she made substantially the same arguments to the Land Commission that she makes here, i.e., that Lot 648 was only leased to Mr. Hara, not sold. Marginal notations on Exhibit A indicate that this testimony conflicts with "Japanese Claims No. 148-A and 149-A," the two claims filed by Mr. Hara's son (Exhibit F). For reasons that are unclear on this record, the Land Commission resolved this conflict in favor of Mr. Hara's heirs (Exhibit C), and Lot 648 vested in the name of the Trust Territory (Exhibit G).

MPLC argues that, as a matter of law, this record is not patently inadequate. Plaintiffs counter that the adequacy of the record is a question of fact which must be determined at trial. However, Plaintiffs have produced no evidence to show that the Land Commission's proceedings failed to account for dispositive evidence or made other errors rising to the level of patent inadequacy. These are questions on which Plaintiffs bear the burden of proof.

As pointed out in Cabrera, 1 N.M.I at 176-7, and *Borja* v. *Rangamar*, **1** N.M.I. 347, 356 (1990), a party opposing summary judgment may not rely on conclusory statements that a dispute of fact exists. The fact that the Land Commission records do not contain summaries of witness interviews or other documents showing precisely why the Commission credited the claim of Mr. Hara over Ms. Fanama's testimony does not preclude the granting of summary judgment. It is the nature of administrative agencies that the records of their proceedings are not always complete. Allowing Plaintiffs to go to trial on these facts would mean that any party aggrieved by a Title Determination would be entitled to a trial to establish whether the record was patently inadequate. The doctrine of res judicata is intended to prevent precisely such

outcomes.[3/]

The Court therefore finds that the record supporting T.D. 766 is not patently inadequate as a matter of law. Thus, Plaintiffs are precluded from relitigating their claim that the heirs of Felipe Fanama owned Lot 648 in 1952, or that the Trust Territory's action in promulgating T.D. 766 constituted a taking entitling them to compensation.

IV. CONCLUSION

For the foregoing reasons, the Court ORDERS:

1. Defendant MPLC's motion for partial summary judgment that the heirs of Felipe Fanama received adequate notice of the

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[3/] An additional factor counsels the Court not to reopen the Title Determination here. In deciding whether to give preclusive effect to an agency decision, courts should consider whether "there are procedural opportunities available to the [parties] that are unavailable in the first action of a kind that might be likely to cause a different result." 2 Koch, Administrative Law and Practice, § 6.63, citing *Parklane* Hosiery Co. v. Shore, 99 S.Ct. 645, 651 (1979).

Nearly a decade ago, the Appellate Division expressed considerable skepticism about the validity of Land Commission proceedings in Aldan v. Kaipat, 2 CR 190 (N.M.I. App. Div. 1985). That skepticism was founded in part on the the courts' confidence in its ability to conduct more reliable proceedings than the Land Commission hearings; witnesses who were alive at the time of the pertinent transactions could give solid testimony on issues of land ownership, making reliance on Land Commission proceedings unnecessary. Id. In Dela *Cruz*, the Commonwealth Supreme Court effectively overruled Aldan, placing greater reliance upon Title Determinations absent a showing of the exceptional circumstances enumerated above.

As the mid-1990's arrive, the Court is becoming skeptical of its ability to conduct a more reliable adjudication regarding transactions dating from the 1930's than did a Land Commission proceeding in 1953. Each year the events in question become more remote, memories dim and witnesses die. At a certain point, whatever procedural unfairness attended Land Commission hearings may be outweighed by the procedural unfairness of retrying an issue long decided, where the outcome will be decided on the basis of which side's witnesses happen to be still alive.

Land Commission's proceedings leading up to Title Determination No. 766 is GRANTED.

2. **Defendant MPLC's motion for partial summary judgment that Title Determination No. 766 is entitled to res judicata effect is GRANTED.**

So ORDERED this 11 day of MAY, 1994.

ALEXANDRO C. CASTRO, Presiding Judge